

The Honorable Edward F. Shea

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

SARAH BRADBURN, PEARL)	
CHERRINGTON, CHARLES)	
HEINLEN, and THE SECOND)	NO. CV-06-327-EFS
AMENDMENT FOUNDATION,)	
)	DECLARATION OF DEAN
Plaintiffs,)	MARNEY
)	
v.)	
)	
NORTH CENTRAL REGIONAL)	
LIBRARY DISTRICT,)	
)	
Defendant.)	

I, Dean Marney, declare as follows:

DECLARATION OF DEAN MARNEY -

1 1. I am over the age of 18 and competent to testify to the matters set
2 forth herein.

3
4 2. I am currently the Director of North Central Regional Library.

5 3. North Central Regional Library (“NCRL”) is an inter-county rural
6 library district and municipal corporation established in 1960.
7

8 4. NCRL is organized and operated pursuant to RCW 27.12 et. seq.

9 5. NCRL provides public library services to over 220,000 people in
10 the areas of Chelan, Douglas, Ferry, Grant and Okanogan counties. (Attached as
11 **Ex. A** is a true and correct copy of a map detailing our branch locations.)
12

13
14 6. The library district is funded by local property taxes, federal
15 money, private grants and endowments.
16

17 7. Management and control of NCRL is vested in a regional board
18 (“the Board”) composed of two trustees from each of the more populated
19 counties (Chelan and Grant) and one trustee each from the remaining three
20 counties.
21

22 8. The Board adopts all policies for the library district.

23
24 9. The Board appoints a Director, who manages the library, directs the
25 employees and serves as the liaison agent and two-way channel of
26 communication between the library board and the staff.
27

28 DECLARATION OF DEAN MARNEY -

1 10. As stated above, I am the current Director, having been appointed
2 to the position in 1990. I have been employed by NCRL since 1977.
3

4 11. NCRL maintains a collection over 675,000 books and other
5 materials which are available through twenty-eight (28) community libraries and
6 NCRL's website.
7

8 12. NCRL provides service to its rural patrons through a mail order
9 library, which is one of the only remaining mail order services in the country.
10

11 13. NCRL's twenty-eight branches vary in size. The largest branch is
12 the Wenatchee, Washington branch, which has approximately 12,000 square feet
13 of public area. The smallest branch is the Twisp, Washington branch which has
14 approximately 701 square feet of public space. The average size of an NCRL
15 branch is approximately 2865 feet.
16
17

18 14. Although there is a separate children's area in each NCRL branch,
19 only one branch has a wall or other partition physically separating the adult
20 section from the children's section.
21

22 15. Twenty NCRL branches are staffed by one librarian.
23

24 16. NCRL is committed to, and responsible for working cooperatively
25 with public schools in our territory. In 14 of the 26 school districts in NCRL
26
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1 territory, NCRL branch libraries actually serve as the defacto school library for
2 school age children.

3
4 17. Internet access is provided in all NCRL branches.

5 18. Fifty-seven (57%) of NCRL branches have only one or two public
6 use computers. Only three branches have more than four public use computers.
7

8 19. In order to qualify for federal LSAT (“Library Services and
9 Technology”) and E-rate funds, NCRL is required to operate “a technology
10 protection measure with respect to any of its computers with Internet access that
11 protects against access through such computers to visual depictions that are
12 obscene, child pornography, or harmful to minors.” (Attached as **Ex. B** is a true
13 and correct copy of the Children’s Internet Protection Act (“CIPA”). See **Ex. B**
14 at ¶1712(a)(2)(f)(1)(A).
15
16
17

18 20. The “E-Rate program” allows qualifying libraries to purchase
19 internet access at discounted rates. The Library Services and Technology Act
20 (“LSTA”) provides grants to states to support public libraries.
21

22 21. CIPA defines the terms obscene, child pornography, or harmful to
23 minors to include depictions of sexual conduct, pornography, lewd
24 exhibitionism, nudity, sexual activity, or simulated sexual activity that have no
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1 serious literary, artistic, political or scientific value to minors. See **Ex. B** at
2 Section ¶1703(b)(1).

3
4 22. CIPA defines the “technology protection measure” to include an
5 Internet filtering device. See **Ex. B**, at Section ¶1703(b)(1).

6
7 23. CIPA gives librarians the option of disabling these filters if an adult
8 patron specifically requests they be turned off under specific circumstances, but
9 the statute does not require such requests be granted. See **Ex. B** at ¶1721(D).

10
11 24. Consistent with our broad discretion to decide what material to
12 provide to our patrons in fulfillment of our mission to promote reading and
13 lifelong learning, our obligation to create a safe environment for our patrons and
14 employees, as well as our duty to comply with the Children’s Internet Protection
15 Act, all Internet use on NCRL library computers is filtered.

16
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18 25. The mission of the North Central Regional Library is to promote
19 reading and lifelong learning.

20
21 26. NCRL’s collection development practices reflect our mission.
22 (Attached as **Ex. C** is a true and correct copy of our Collection Development
23 Policy.)
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1 27. NCRL's Internet Public Use Policy is applied to reflect our
2 mission. (Attached as **Ex. D** is a true and correct copy of our Internet Public
3 Use Policy.)
4

5 28. NCRL will evaluate any request to unblock a site that falls within
6 the blocked categories and classifications contained in our filtering profile.
7

8 29. NCRL has created an automated process whereby if a site is
9 blocked, a patron can immediately send an email to NCRL administrators asking
10 them to review the site.
11

12 30. Either Director of Public Services, Dan Howard, myself or my
13 designate evaluate each request as we any other collection decision. We
14 consider whether the requested content is consistent with the library's mission.
15

16 31. Of the 81 properly submitted automated requests we have received
17 since October 2007, 65 have been evaluated with in 24 hours. The remaining 16
18 requests were typically made over a weekend or holiday, so decisions could not
19 be made on the same day.
20
21

22 32. NCRL's current filtering profile is consistent with our mission to
23 promote reading and lifelong learning, as well as create a safe environment for
24 our patrons and staff.
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1 33. NCRL's current filtering profile also facilitates compliance with the
2 Children's Internet Protection Act (CIPA).

3
4 34. CIPA emphasizes that determinations regarding what matter is
5 appropriate for minors shall be made locally, not by the federal government,
6 leaving room for community standards. See **Ex. B** at ¶1732 (2).

7
8 35. The statute also gives libraries the option of disabling the filter at
9 an adult patrons request to enable access for bona fide research or other lawful
10 purpose. See **Ex. B** at ¶1712(3).

11
12 36. Although NCRL researched the feasibility of completely removing
13 the filter for adult patrons, it ultimately decided such a policy change would not
14 only present a technological challenge, but would be inconsistent with its
15 mission.
16

17
18 37. Without having to purchase additional authentication software and
19 hardware, or purchasing a new filtering solution, NCRL would have to
20 designate one computer at each location for unfiltered access.
21

22 38. Thirty-two percent (32%) of NCRL branches currently have only
23 one public use computer.
24

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28 DECLARATION OF DEAN MARNEY -

1 39. Beyond the technological challenges, complete removal of the filter
2 would allow for the dissemination of unprotected speech, illegal materials, and
3 information that could dismantle NCRL's entire computer network.
4

5 40. Complete removal of the filter would also allow patrons to obtain
6 pornography and other graphic, inappropriate material NCRL would not
7 otherwise provide to its patrons through other mediums.
8

9 41. NCRL decided access to such materials would create an
10 unacceptable risk for children and could create a hostile atmosphere for families,
11 children and staff in the library, so it elected to continue its policy of providing
12 filtered access to the Internet at all public use computers.
13
14

15 42. NCRL's decision to continue providing filtered Internet access was
16 informed by the fact that many of its branches are located in buildings that do
17 not allow for much, if any, segregation of children and adults.
18

19 43. NCRL's policy of providing filtered Internet access also took into
20 account branch library staff levels.
21

22 44. If a library patron views child pornography or other inappropriate
23 content, NCRL has determined its employees could be unwelcomingly exposed
24 to, and put in the position of, having to confront patrons.
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1 45. NCRL did not want to employ a procedure that involved a
2 multitude of different opinions from each branch's staff regarding the
3 appropriateness of what people were accessing on the Internet.
4

5 46. NCRL administration considered potential options of implementing
6 commonly used privacy measures, such as privacy screens or recessed desks in
7 but rejected them in light of concerns from employees who had previously
8 worked with such technology in other library districts, including Dan Howard.
9
10

11 47. SAF did not speak to NCRL staff or administrators about its
12 concern regarding the alleged unavailability of its "Women & Guns" website
13 prior to filing suit.
14

15 48. NCRL did not have an opportunity to investigate or potentially
16 remedy SAF's concerns.
17

18 49. At this time, Women & Guns' website is available to NCRL
19 patrons through the public use computers.
20

21 50. Ms. Bradburn did not speak to NCRL staff or administrators about
22 her concerns that NCRL's filter was allegedly denying her access to particular
23 websites prior to filing suit.
24

25 51. NCRL did not have an opportunity to investigate or potentially
26 remedy Ms. Bradburn's concerns.
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1 52. NCRL was utilizing the BESS filter at the time Ms. Bradburn was
2 conducting her research, so it is not clear whether the sites she was attempting to
3 access would be blocked by NCRL's current filtering profile or the Fortiguard
4 filter.
5

6 53. Ms. Cherrington did not speak to NCRL staff about her concerns
7 that NCRL's filter was allegedly denying her access to particular websites prior
8 to filing suit.
9

10 54. NCRL did not have an opportunity to investigate or potentially
11 remedy Ms. Cherrington's concerns.
12

13 55. NCRL was utilizing the BESS filter at the time Ms. Cherrington
14 was conducting her research, so it is not clear whether the sites she was
15 attempting to access would be blocked by the current Fortiguard filtering profile.
16

17 56. NCRL currently allows access to YouTube.com, as well as Myspace,
18 understanding site administrators are actively enforcing the Terms of Use policies.
19

20 57. Mr. Heinlen is the only Plaintiff who spoke to NCRL staff and
21 administrators prior to filing suit. However, Mr. Heinlen simply demanded the
22 BESS filter be removed and did not request specific sites be unblocked.
23

24 58. When BESS was the operative filter, Mr. Heinlen was the only
25 patron to ask NCRL administration to completely disable the filter.
26
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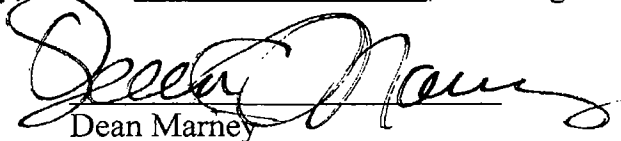
28 DECLARATION OF DEAN MARNEY -

1 59. Since Fortiguard has been installed, no patron has asked NCRL
2 administration to completely disable the filter.
3

4 60. As a matter of policy, NCRL will not completely remove the
5 Internet filter at an adult patron's request.
6

7
8 I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct.
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12 Dated this 7th day of February, 2008 at Wenatchee, Washington.
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15 Dean Marney
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28 DECLARATION OF DEAN MARNEY -

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 4, 2008, I electronically filed the foregoing with the Clerk of the Court
3 using the CM/ECF system which will send notification of such filing to the persons listed below:


4 Duncan Manville
5 1629 2nd Ave. W
6 Seattle, WA 98119

Aaron Caplan
ACLU of Washington
705 Second Ave., Ste. 300
Seattle, WA 98103

6 Notice has been delivered by U.S. Mail to:

7 Catherine Crump
8 American Civil Liberties Union
9 Foundation
10 125 Broad Street, 17th Floor
11 New York, NY 10004

11 KARR TUTTLE CAMPBELL

12
13 By: 
14 Heather L. White
15 hwhite@karrtuttle.com

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28 **DECLARATION OF DEAN MARNEY -**

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