

The Honorable Edward F. Shea

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SARAH BRADBURN, PEARL  
CHERRINGTON, CHARLES  
HEINLEN, and the SECOND  
AMENDMENT FOUNDATION,

Plaintiffs,

v.

NORTH CENTRAL REGIONAL  
LIBRARY DISTRICT,

Defendant.

No. CV-06-327-EFS

**PLAINTIFFS' OBJECTIONS  
TO DEFENDANT'S WITNESSES  
AND EXHIBITS**

Pursuant to Paragraph 8 of the Court's November 6, 2007 Scheduling Order, and for the reasons stated below, Plaintiffs Sarah Bradburn, Pearl Cherrington, Charles Heinlen and the Second Amendment Foundation submit the following objections to the witnesses and exhibits that Defendant North Central Regional Library District listed in its March 24, 2008 Witness and Exhibit List and its March 28, 2008 Amended Witness and Exhibit List.

**PLAINTIFF'S OBJECTIONS TO DEFENDANT'S  
WITNESSES AND EXHIBITS – Page 1**

1 **I. WITNESSES.**

2 Plaintiffs object to NCRL's previously-undisclosed witnesses – Connie  
3 Kuhlman, Sharon Reddick, Katy Sessions and Deborah Moore – for the reasons  
4 stated in Plaintiffs' Motions in Limine and Memorandum in Support of  
5 Plaintiffs' Motions in Limine, to be filed separately today.  
6

7 Plaintiffs reserve the right to object at trial to testimony by any of NCRL's  
8 witnesses that is inadmissible for any reason – including without limitation  
9 because the testimony is irrelevant, lacks proper foundation, constitutes hearsay,  
10 is speculative or purports to state a legal conclusion.  
11

12 **II. EXHIBITS.**

13 Plaintiffs object to NCRL's proposed Exhibits 533-536 (Attachment A  
14 hereto) on the grounds that the exhibits are irrelevant, that NCRL will be unable  
15 to lay a proper foundation for the exhibits at trial (since none of NCRL's timely-  
16 disclosed witnesses participated in preparing the exhibits or was present for any  
17 of the events described therein), and that the exhibits constitute hearsay. See  
18 Fed. R. Evid. 401, 402, 801, 802, 901. With regard to relevance in particular,  
19 proposed Exhibits 533-536 purport to describe incidents in which library patrons  
20 engaged in inappropriate behavior or in which suspected sex offenders were  
21 observed in NCRL branches. None of the proposed exhibits indicates that the  
22 incident described therein had anything to do with patrons accessing obscenity  
23 or other similar content on NCRL's computer terminals. Moreover, NCRL's  
24 Director, Dean Marney, testified at deposition that he did not know whether any  
25  
26

1 of the individuals described in NCRL's proposed Exhibits 533-536 had looked  
2 at any inappropriate material on NCRL's computers, see Marney Dep. at 69:11-  
3 73:22; Dep. Ex. 31; and that he had "no idea" whether sex offenders have a  
4 tendency to look at pornography online in public libraries:  
5

6 Q. Handing you Exhibit 30, can you tell me what this is?

7 A. It is an incident report. It's a copy of an email report from  
8 the Moses Lake Branch.

9 \* \* \*

10 Q. Do you know if this gentleman looked at any inappropriate  
11 material on NCRL computer?

12 A. No.

13 \* \* \*

14 Q. Do you think that there is any connection between this  
15 document that's been marked Exhibit 30 and the lawsuit?

16 A. I think it shows that we do deal with an element of society  
17 that is attracted to a public space that we're trying to protect  
kids from.

18 Q. Do you know – and the element of society you're talking  
19 about here is sex offenders, registered sex offenders?

20 A. Correct.

21 Q. Do you know if those registered sex offenders have a  
22 tendency to come into public libraries and look at  
pornography on Internet terminals?

23 A. I have no idea. I have no idea that they don't.

24 Q. Do incidents like this – well, how many incidents like this are  
25 you aware of at NCRL branches?

26 A. I think we provided you with three or four.

1 Marney Dep. at 67:6-68:25 (emphasis added); see also Dep. Ex. 30. Incident  
2 reports suggesting that library patrons may occasionally engage in conduct  
3 violating library rules and that sex offenders may occasionally frequent public  
4 libraries have nothing to do with any of the issues before this Court. NCRL  
5 should not be permitted to introduce proposed Exhibits 533-536 into evidence,  
6 or to use them for any purpose during its case-in-chief.  
7

8 Plaintiffs have not been provided with copies of NCRL's proposed  
9 Exhibits 542-645. NCRL's attorneys have advised Plaintiffs' counsel that these  
10 exhibits will comprise requests by NCRL patrons to allow access to particular  
11 Web sites, along with correspondence related to those requests. According to  
12 NCRL's counsel, Exhibits 542-645 will be "nearly identical" to Plaintiffs'  
13 proposed Exhibit 66. Assuming Exhibits 542-645 consist exclusively of  
14 unblocking requests and related correspondence and essentially mirror Plaintiffs'  
15 proposed Exhibit 66, Plaintiffs do not anticipate asserting any objections to those  
16 exhibits prior to trial. However, because Plaintiffs have not yet seen proposed  
17 Exhibits 542-645, Plaintiffs reserve the right to object to them in advance of  
18 trial.  
19  
20

21 Plaintiffs do not object to the report prepared by NCRL's expert, Paul  
22 Resnick (NCRL's proposed Exhibit 648), being admitted into evidence –  
23 provided Dr. Resnick testifies at trial regarding his work and opinions, and is  
24 available for cross-examination; and the report prepared by one of Plaintiffs'  
25  
26

1 experts, Bennett Haselton (Plaintiffs' proposed Exhibits 53 and 54), is also  
2 admitted into evidence.

3 Plaintiffs object to NCRL's proposed Exhibit 699 (Attachment B hereto)  
4 because the document has no relevance to any of the issues before the Court, and  
5 constitutes hearsay. See Fed. R. Evid. 401, 402, 801, 802. NCRL should not be  
6 permitted to introduce proposed Exhibit 699 into evidence, or to make any use  
7 of it during its case-in-chief.  
8

9 The last exhibit listed in the Witness and Exhibit List that NCRL timely  
10 filed with the Court on March 24, 2008 pursuant to paragraph 8 of the Court's  
11 November 6, 2007 Scheduling Order was Exhibit 704 ("NCRL Bylaws"). On  
12 March 28, 2008, NCRL filed an Amended Witness and Exhibit List identifying  
13 fifteen new exhibits (proposed Exhibits 706-720) – including ten newspaper  
14 articles (proposed Exhibits 706-715, Attachment C hereto). NCRL should not  
15 be permitted to introduce Exhibits 706-715 into evidence at trial, or to use those  
16 documents during its case-in-chief, because the exhibits were not timely or  
17 properly disclosed. Plaintiffs also object to the exhibits for the reasons stated in  
18 Plaintiffs' Motions in Limine and Memorandum in Support of Plaintiffs'  
19 Motions in Limine, to be filed separately today.  
20  
21

22 Plaintiffs reserve the right to object at trial to any proposed defense  
23 exhibit should NCRL fail to lay a proper foundation for the exhibit or attempt to  
24 use the exhibit for a hearsay or other improper purpose.  
25  
26

1 Copies of the proposed exhibits to which Plaintiffs object (except  
2 proposed Exhibits 542-645) are being submitted herewith.

3 DATED this 31<sup>ST</sup> day of March, 2008.

4  
5 AMERICAN CIVIL LIBERTIES  
6 UNION OF WASHINGTON  
7 FOUNDATION

8 By: /s/ Duncan Manville

9 Duncan Manville, WSBA #30304  
10 1629 2<sup>nd</sup> Avenue W.  
11 Seattle, WA 98119  
12 Tel. (206) 288-9330  
13 Fax (206) 624-2190  
14 duncan.manville@yahoo.com

15 Aaron H. Caplan, WSBA #22525  
16 American Civil Liberties Union of  
17 Washington Foundation  
18 705 Second Avenue, Third Floor  
19 Seattle, WA 98103  
20 Tel. (206) 624-2184  
21 Fax (206) 624-2190  
22 caplan@aclu-wa.org

23 Catherine Crump, pro hac vice  
24 American Civil Liberties Union  
25 Foundation  
26 125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
Tel. (212) 519-7806  
ccrump@aclu.org

Counsel for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that on March 31, 2008, I filed the foregoing  
3 Plaintiffs' Objections to Defendant's Witnesses and Exhibits, along with  
4 Attachments A-C thereto, with the Clerk of the Court using the CM/ECF system,  
5 which will send notification of such filing to the persons listed below:  
6

7 Thomas D. Adams  
8 Celeste M. Monroe  
9 Karr Tuttle Campbell  
10 1201 Third Ave., Suite 2900  
11 Seattle, WA 98101  
12 [tadams@karrtuttle.com](mailto:tadams@karrtuttle.com)  
13 [cmonroe@karrtuttle.com](mailto:cmonroe@karrtuttle.com)

14 Aaron Caplan  
15 ACLU of Washington  
16 705 Second Ave.  
17 Suite 300 Hoge Bldg.  
18 Seattle, WA 98104-1799  
19 [caplan@aclu-wa.org](mailto:caplan@aclu-wa.org)

20 Catherine Crump  
21 American Civil Liberties Union  
22 125 Broad St., 18<sup>th</sup> Floor  
23 New York, NY 10004  
24 [ccrump@aclu.org](mailto:ccrump@aclu.org)

25 I declare under penalty of perjury that the foregoing is true and correct.

26 Executed at Seattle, Washington this 31<sup>st</sup> day of March, 2008.

\_\_\_\_\_  
/s/ Duncan Manville

Duncan Manville, WSBA #30304  
1629 2<sup>nd</sup> Avenue W.  
Seattle, WA 98119  
Tel. (206) 288-9330  
Fax (206) 624-2190  
[duncan.manville@yahoo.com](mailto:duncan.manville@yahoo.com)