

1 The Honorable Edward F. Shea  
2  
3  
4  
5  
6  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 SARAH BRADBURN, PEARL  
11 CHERRINGTON, CHARLES  
12 HEINLEN, and the SECOND  
13 AMENDMENT FOUNDATION,

14 Plaintiffs,

15 v.

16 NORTH CENTRAL REGIONAL  
17 LIBRARY DISTRICT,

18 Defendant.

No. CV-06-327-EFS

**PLAINTIFFS' RESPONSE TO  
DEFENDANT'S AMENDED  
OBJECTIONS TO PLAINTIFFS'  
WITNESS AND EXHIBIT LIST**

19 Pursuant to Paragraph 8 of the Court's November 6, 2007 Scheduling  
20 Order, Plaintiffs Sarah Bradburn, Pearl Cherrington, Charles Heinlen and the  
21 Second Amendment Foundation respond as follows to Defendant North Central  
22 Regional Library's Amended Objections to Plaintiffs' Witness and Exhibit List  
23 With Attached Exhibits.  
24  
25  
26

PLAINTIFFS' RESPONSE TO DEFENDANT'S  
AMENDED OBJECTIONS TO PLAINTIFFS'  
WITNESS AND EXHIBIT LIST – Page 1

1 **I. WITNESSES.**

2 **1. Sally Beesley and Kenton Oliver.**

3 For the reasons stated in Plaintiffs’ Opposition to Defendant’s Motions in  
4 Limine (to be filed separately today; incorporated herein by reference), fact  
5 witnesses Sally Beesley and Kenton Oliver should be allowed to testify at the  
6 trial of this matter.  
7

8 **2. June Pinnell-Stephens.**

9 For the reasons stated in Plaintiffs’ Opposition to Defendant’s Motions in  
10 Limine, expert witness June Pinnell-Stephens should be allowed to testify at  
11 trial.  
12

13 **II. EXHIBITS.**

14 **1. Plaintiffs’ Trial Exhibit No. 1.**

15 Plaintiffs’ Exhibit No. 1 (the Library Bill of Rights promulgated by the  
16 American Library Association (“ALA”)) will be used during the testimony of  
17 Plaintiffs’ expert June Pinnell-Stephens, who will discuss the traditional role and  
18 societal mission of libraries. The ALA Bill of Rights informed the expert  
19 opinions that Ms. Pinnell-Stephens has developed in this matter, and Ms.  
20 Pinnell-Stephens should be allowed to testify about the Bill of Rights at trial.  
21

22 NCRL’s argument relies on a straw man, namely that a library does not  
23 necessarily violate the United States or Washington State Constitutions if it acts  
24 in contravention of the ALA Bill of Rights. No one is contending otherwise.  
25 But the ALA Bill of Rights is relevant to the constitutional questions presented  
26

1 in this case because it sheds light on the proper role of libraries in our society,  
2 which NCRL itself has frequently acknowledged to be a relevant topic. For  
3 example, in its Opposition to Plaintiffs’ Motion for Summary Judgment, NCRL  
4 said: “[i]n arguing against NCRL’s Policy, Plaintiffs lose sight of NCRL’s  
5 traditional role and societal mission.” Ct. Rec. 48 at 11 (emphasis added); see  
6 also Ct. Rec. 61 at 14 (“NCRL’s Policy also advances NCRL’s traditional role  
7 and duty as a public library ...”). The primary legal authority that NCRL cited  
8 for these assertions was the plurality opinion in United States v. American  
9 Library Ass’n, Inc., 539 U.S. 194 (2003) (“ALA”). The ALA plurality  
10 discussed the traditional role of public libraries in our society – in the process  
11 repeatedly citing the ALA Bill of Rights. ALA, 539 U.S. at 203-04. The ALA  
12 Bill of Rights is plainly relevant, and the Court should overrule NCRL’s  
13 objection to Plaintiffs’ Exhibit No. 1.

14  
15  
16 **2. Plaintiffs’ Trial Exhibit No. 2.**

17 NCRL contends that Plaintiffs’ Exhibit No. 2 (NCRL’s prior Collection  
18 Development Guidelines and Procedures) is irrelevant because “NCRL’s former  
19 guidelines were not in place at the time Plaintiffs’ claims arose...” NCRL does  
20 not explain when it believes Plaintiffs’ claims arose. Suffice it to say, however:  
21 NCRL’s current Collection Development Policy (Plaintiffs’ proposed Trial  
22 Exhibit No. 19) was adopted in January 2004 (see Ct. Rec. 41-4 at 222).  
23 Plaintiff Sarah Bradburn testified at deposition (and will testify at trial) that  
24 NCRL’s Internet filter denied her access to various Web sites in October or  
25  
26

1 November 2003 (see Ct. Rec. 41 at 2). And it is apparent from NCRL’s own  
2 proposed exhibits (Nos. 700-703, consisting of correspondence from July 2003  
3 between Plaintiff Charles Heinlen and NCRL Director Dean Marney regarding  
4 NCRL’s refusal to disable its Internet filter upon request), and it will also be  
5 clear from Mr. Heinlen’s trial testimony, that NCRL’s Internet filter denied him  
6 access to various Web sites in 2003 – well before NCRL implemented its  
7 current Collection Development Policy. The Court should overrule this  
8 objection.  
9

10 **3. Plaintiffs’ Trial Exhibits Nos. 17 and 18.**

11 Plaintiffs’ Exhibits Nos. 17 and 18 describe policies of the Jefferson  
12 County Library District (“JCLD”) in Madras Oregon. These exhibits are  
13 relevant to the testimony that JCLD’s Director, Sally Beesley, will give at trial  
14 regarding JCLD’s policy of providing unfiltered Internet access to its patrons,  
15 and regarding the consequences of implementing and maintaining that policy.  
16 Far from being misleading or confusing as NCRL suggests, the exhibits will  
17 help the Court gain an understanding of JCLD’s policies and procedures. Ms.  
18 Beesley’s testimony is relevant and admissible for the reasons stated in  
19 Plaintiffs’ Opposition to NCRL’s Motions in Limine. The Court should  
20 overrule this objection.  
21  
22

23 **4. Plaintiffs’ Trial Exhibit No. 66.**

24 NCRL wishes to redact the personal information of library patrons from  
25 documents showing NCRL’s history of responding to unblocking requests.  
26

1 Regardless of whether NCRL's reading of RCW 42.56.310 is correct, Plaintiffs  
2 are amenable to modifying Exhibit No. 66 to remove the names and personal  
3 information of NCRL's patrons. However, Plaintiffs note that all the documents  
4 comprising Exhibit No. 66 – including a large number of unredacted documents  
5 – were voluntarily produced by NCRL in discovery. Plaintiffs should not be  
6 burdened with having to redact these documents when, according to NCRL, the  
7 documents should have been redacted before their initial production. Should  
8 NCRL wish to have the names and personal information of its patrons deleted  
9 from Plaintiffs' Exhibit No. 66, NCRL should be required to redact that  
10 information itself sufficiently in advance of trial to enable the parties to reach  
11 agreement concerning the form of a modified exhibit.  
12

13  
14 **5. Plaintiffs' Trial Exhibit No. 70.**

15 Plaintiffs' Exhibit No. 70 shows how NCRL configured the Internet filter  
16 (a product known as SmartFilter, Bess Edition) that was in place until the eve of  
17 this lawsuit. The exhibit is relevant to show how NCRL has exercised and may  
18 in the future exercise its discretion to implement and configure its Internet filter.  
19 Moreover, NCRL cites no authority (nor are Plaintiffs aware of any) for the  
20 proposition that at trial Plaintiffs should be limited to presenting only a  
21 decontextualized snapshot of NCRL's current practices. It is undisputed that  
22 NCRL has filtered Internet content continuously since it first made the Internet  
23 available to library patrons in the late 1990s. It is undisputed that NCRL has  
24 used several filtering products, that the categories of filtered Web content have  
25  
26

1 changed, and that all Plaintiffs complain about Web sites having been blocked  
2 by the Bess filter. It would make no sense for the Court to allow Plaintiffs to  
3 testify about their unsuccessful attempts to use the Internet on NCRL's  
4 computers before this lawsuit was filed (testimony to which NCRL apparently  
5 does not object), while excluding evidence about the filtering product that  
6 restricted Plaintiffs' ability to access the Web. NCRL is not prejudiced by  
7 Exhibit No. 70, since its witnesses will be free to testify regarding when and  
8 why the Bess filter was replaced, and about NCRL's current Internet filter and  
9 its configuration. The Court should overrule NCRL's objection to Plaintiffs'  
10 Exhibit No. 70.  
11

12  
13 **6. Plaintiffs' Trial Exhibits Nos. 61 and 71.**

14 Plaintiffs have no objection to using Exhibit No. 71 and not Exhibit No.  
15 61 at trial.

16 **7. Plaintiffs' Trial Exhibit No. 76.**

17 Plaintiffs' Exhibit No. 76 summarizes voluminous Exhibit No. 66, the  
18 admissibility of which is not in question. Exhibit No. 76 is admissible under  
19 Fed. R. Evid. 1006, which contemplates that a chart (such as Exhibit No. 76)  
20 summarizing voluminous records that cannot conveniently be examined in court  
21 may be admitted into evidence, provided the underlying records are also made  
22 available for examination or copying. The Advisory Committee notes  
23 accompanying the rule explain that "[t]he admission of summaries of  
24 voluminous books, records, or documents offers the only practicable means of  
25  
26

1 making their contents available to judge and jury.” As stated in Wright &  
2 Miller:

3 Rule 1006 permits secondary evidence concerning the contents of  
4 voluminous writings, recordings, or photographs to be admitted in  
5 the form of a chart, summary, or calculation. This exception to  
6 Rule 1002 is based on the practical need to streamline the process  
7 of proof where evidence is contained in a large number of originals  
that cannot conveniently be examined in court. The practice was  
well established at common law.

8 31 Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure  
9 Evidence § 8041 (2008); accord United States v. Catabran, 836 F.2d 453, 458  
10 (1988) (chart summarizing inventory information from general ledger material  
11 was admissible as summary under Fed. R. Evid. 1006).

12 As for NCRL’s request that it be allowed to “supplement” Plaintiffs’  
13 Exhibit No. 76, it would not be appropriate for the Court to order such  
14 supplementation. As an initial matter, Plaintiffs intend to revise Exhibit No. 76  
15 prior to trial to include references to all the unblocking requests that NCRL has  
16 received – including requests received since Exhibit No. 76 was prepared and  
17 disclosed. More to the point, NCRL should not be permitted to tinker with  
18 Plaintiffs’ exhibits. Should NCRL wish to develop and use at trial its own table  
19 accurately summarizing the information contained in Plaintiffs’ Exhibit No. 66,  
20 it may certainly do so.  
21  
22  
23  
24  
25  
26

1 DATED this 7<sup>th</sup> day of April, 2008.

2 AMERICAN CIVIL LIBERTIES  
3 UNION OF WASHINGTON  
4 FOUNDATION

5 By: /s/ Duncan Manville

6 Duncan Manville, WSBA #30304  
7 1629 2<sup>nd</sup> Avenue W.  
8 Seattle, WA 98119  
9 Tel. (206) 288-9330  
10 Fax (206) 624-2190  
11 duncan.manville@yahoo.com

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

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

Counsel for Plaintiffs



1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that on April 7, 2008, I filed the foregoing  
3 Plaintiffs' Response to Defendant's Amended Objections to Plaintiffs' Witness  
4 and Exhibit List with the Clerk of the Court using the CM/ECF system, which  
5 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 American Civil Liberties Union of Washington Foundation  
16 705 Second Avenue, Third Floor  
17 Seattle, WA 98103  
18 [caplan@aclu-wa.org](mailto:caplan@aclu-wa.org)

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

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

25 Executed at Seattle, Washington this 7<sup>th</sup> day of April, 2008.  
26

27 /s/ Duncan Manville  
28 Duncan Manville, WSBA #30304  
29 1629 2<sup>nd</sup> Avenue W.  
30 Seattle, WA 98119  
31 Tel. (206) 288-9330  
32 Fax (206) 624-2190  
33 [duncan.manville@yahoo.com](mailto:duncan.manville@yahoo.com)