

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 AMENDMENT)	NO. CV-06-327-EFS
FOUNDATION,)	
)	DEFENDANT NCRL'S RESPONSE TO
Plaintiffs,)	PLAINTIFFS' MOTIONS IN LIMINE
)	
v.)	
)	
NORTH CENTRAL REGIONAL LIBRARY)	
DISTRICT,)	
)	
Defendant.)	
_____)	

Defendant North Central Regional Library ("NCRL") hereby responds to Plaintiffs
Objections to Defendants' Motions in Limine.

1 **A. The Court should permit testimony of NCRL branch librarians and board**
2 **members whose testimony became relevant and necessary following recent**
3 **motion practice.**

4 1. The Branch Librarians

5 In its Witness and Exhibit List, NCRL identified the following witnesses, among
6 others: Connie Kuhlman, Katy Sessions, and Sharon Reddick. Ms. Kuhlman is the Grant
7 County Regional Manager and head of Moses Lake Branch. Ms. Sessions is the
8 Chelan/Douglas County Regional Manager & Head of Wenatchee Branch. Ms. Reddick is
9 the Okanogan/Ferry County Regional Manager & Head of Omak Branch. Each is expected to
10 testify regarding her personal experience with NCRL's internet filter, including instances
11 where individuals have circumvented the filter to obtain sexually explicit material.
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13 In its initial disclosure in February 2007, NCRL identified the branch librarians
14 generally and stated that it was "not known" whether they would have information necessary
15 for the defense of the case. This was an accurate statement at the time, given the general and
16 broad allegations in Plaintiffs' complaint which simply stated that NCRL's policy of refusing
17 to disable its Internet filter at the request of an adult patron violated the United States and
18 Washington State Constitutions. Accordingly, in its initial disclosure, NCRL focused on
19 identifying those individuals who developed and implemented the subject Internet Use policy,
20 including Dean Marney, Dan Howard and Barbara Walters.
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22 The first time that NCRL realized the testimony of the branch librarians was relevant
23 came after reviewing Plaintiff's opposition to NCRL's motion for summary judgment. In
24 response to NCRL's assertion that one of the justifications for its policy of filtered access was
25 to protect its staff from exposure to inappropriate content, Plaintiffs' argued that (1) NCRL's
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1 discussion of staff concerns was unpersuasive; (2) there was no evidence that the
2 confrontations between patrons and staff had caused staff unreasonable discomfort or
3 consisted of anything more than “a polite exchange or words”; and (3) there is no evidence
4 that unfiltered access would have an adverse impact on staff. (Ct. Rec. 53, pp. 14-15).

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6 NCRL did not include declarations from staff members in support of its motion
7 because NCRL does not believe it is necessary to prove the consequences of unfiltered
8 internet access to justify its concern for protecting staff from possible consequences.
9 Although NCRL believes Dan Howard, the manager who supervises branch librarians can
10 testify about staff experiences, Plaintiffs contend otherwise. Thus, the branch librarians
11 should be allowed to testify to rebut Plaintiffs’ position. Plaintiffs’ may not have it both
12 ways. If this case is tried, NCRL should be permitted to introduce witnesses beyond Dean
13 Marney or Dan Howard, to refute Plaintiffs’ argument that unfiltered access does not
14 adversely impact staff.
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17 Moreover, it has only recently become clear that Plaintiffs intend to support their
18 argument on this point with the testimony June-Pinnell Stevens, Kenton Oliver, library
19 professionals who claim that their districts have had relatively few problems with unfiltered
20 adult Internet access. (Ct. Rec. 41, pg. 21-23). As set forth in NCRL’s Motion in Limine to
21 exclude these witnesses, Ms. Pinnell-Stevens and Mr. Oliver are personally opposed to
22 Internet filtering, have no personal knowledge of what will or will not work at NCRL branch
23 libraries, and are offered solely to advance the official positions of the American Library
24 Association and the American Civil Liberties Union. (Ct. Rec. 76, pp. 1-6). The only
25 individuals beyond Mr. Marney and Mr. Howard who are competent to testify regarding the
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1 impact of NCRL's Internet Policy on NCRL staff, is the staff itself. Thus, if Mr. Oliver and
2 Ms. Pinnell-Stevens testify, the testimony of NCRL's branch librarians must be allowed to
3 rebut the testimony.
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5 For all of the aforementioned reasons, NCRL's disclosure of Ms. Kuhlman, Ms.
6 Sessions, and Ms. Reddick is substantially justified and all three should be permitted to
7 testify. Should Plaintiffs wish to depose them before trial, NCRL will make them available.
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9 2. NCRL Trustee Deborah Moore

10 NCRL has identified Deborah Moore as a trial witness. Ms. Moore is an NCRL
11 Trustee from Grant County. NCRL acknowledged the Board generally in its initial
12 disclosures, but Ms. Moore was not specifically named. In light of the vague allegations in
13 Plaintiffs' complaint, it was not clear at that time whether the individual Board members
14 would have information necessary for the defense of the case.
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16 The relevancy of Ms. Moore's testimony became apparent when NCRL received
17 Plaintiffs' motion for summary judgment. In their supporting papers, Plaintiffs' painted Mr.
18 Marney as a censor, wielding unfettered discretion with respect to NCRL's Internet Usage
19 Policy. (Ct. Rec. 41, p. 8-10; Ct. Rec. 55, p. 11-13; Ct. Rec 58, p. 6;). Ms. Moore's
20 testimony would refute such arguments and clarify that serves as a liaison between the Board
21 and library staff, and that Mr. Marney answers to the Board and implements the policies that
22 the Board adopts. (Ct. Rec. 29, p. 2-3).
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24 For these reasons, NCRL's disclosure of Ms. Moore is substantially justified. NCRL
25 will make Ms. Moore available for deposition should Plaintiffs wish to take it.
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1 **B. Mr. Howard and Mr. Marney may testify regarding the justifications for**
2 **NCRL's policy of filtering Internet access, to include their personal knowledge of**
3 **staff concerns with unfiltered access.**

4 In its Witness and Exhibit List, NCRL described the expected testimony Dan Howard
5 as follows:

6 Dan Howard is the Public Services Director for NCRL. Mr.
7 Howard administers NCRL's 28 branch libraries and its mail
8 order library. He also coordinates collection development
9 activities and administer grants. With respect to the individual
10 branches, Mr. Howard's responsibilities include, among other
11 things, management of personnel. This includes supervision of
12 all NCRL branch librarians.

13 Mr. Howard will testify regarding NCRL's policies, to include:
14 its mission statement, collection development policy and
15 internet usage policy. He will discuss the relationship between
16 the filter and collection development. He will testify regarding
17 his district's need to comply with the Children's Internet
18 Protection Act ("CIPA"). Mr. Howard will also discuss
19 NCRL's current internet filtering profile and the procedure for
20 requesting that certain internet content be unblocked. Mr.
21 Howard will discuss the unblocking requests that NCRL has
22 received from patrons and the process that he and Mr. Marney
23 use in evaluating the requests.

24 Mr. Howard will also discuss his experience with certain
25 privacy measures suggested by Plaintiffs, including: (1) privacy
26 screens; (2) recessed desks and (3) a "tap and tell" policy. Mr.
27 Howard discuss his concerns with unfiltered access and the
28 impact on branch staff.

As discussed previously, Mr. Howard supervises all NCRL branch librarians and
addresses their concerns as part of his job responsibilities. These concerns include issues
librarians have had with the inappropriate use of public use computers by adult patrons. In
support of its motion for summary judgment, NCRL offered the declaration of Mr. Howard,
which contained discussions of some of these generalized staff concerns. (Ct. Rec. 29. pp.

1 23-27). These discussions are not offered to prove the truth of the matter asserted, (i.e. Ms.
2 Lucile Ames, NCRL’s Okanogan branch librarian actually reported seeing inappropriate
3 pornographic materials on public use computers). Rather, the discussions are offered as
4 evidence of Mr. Howard’s personal knowledge of staff anxiety and concerns.
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6 Contrary to Plaintiffs’ argument, NCRL does not seek to introduce the discussions as
7 “evidence that patrons often view pornography on its library terminals, and that this occurs
8 with such frequency or severity as to justify measures alleged to violate the First
9 Amendment.” (Ct. Rec 78, p. 78). First, there is no constitutional requirement that NCRL
10 show that the incidents are frequent or severe to permit filtering. Second, Plaintiffs’
11 categorization of the discussions in Mr. Howard’s declaration as “anecdote and supposition”
12 is self-serving and inaccurate. The discussions proffered by Mr. Howard’s declaration are
13 admissible both in support of NCRL’s motion for summary judgment and at trial.
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16 Similarly, Mr. Howard and Mr. Marney may testify regarding their personal concerns
17 with unfiltered access and their perceived impact of unfiltered access on branch staff. As
18 administrators of the library, Mr. Howard and Mr. Marney are free to discuss their
19 justifications for their policy, to include the need to protect staff from the inadvertent viewing
20 of illicit or illegal sexual material. This may include their personal knowledge of staff
21 concerns with unfiltered access. Plaintiffs may make hearsay objections during the course of
22 trial. However, an order granting Plaintiffs motion relating to hypothetical hearsay
23 statements, beyond those contained in Mr. Howard’s declaration, would be premature.
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25 **C. Mr. Marney may testify regarding the justifications for NCRL’s policy of**
26 **filtering Internet access, to include his personal knowledge of widespread**
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1 **concerns with patrons using public library Internet terminals to view**
2 **pornography.**

3 NCRL seeks to introduce several newspaper articles discussing the availability of
4 pornography at public libraries across the county. Contrary to Plaintiffs' claims, these articles
5 are not offered to prove the truth of the matter asserted (i.e. on January 22, 2008, a Dallas,
6 Texas reporter observed numerous instances in which library patrons obtained pornography
7 at public use computer terminals.) Rather, NCRL seeks to introduce the articles as
8 perspectives on issues associated with internet use in public libraries and their effect on
9 NCRL's policy choices.
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11 Mr. Marney has collected hundreds of newspaper articles discussing a number of
12 topics relating to Internet filtering, only a fraction of which have been identified as trial
13 exhibits. Mr. Marney's personal knowledge of public discourse on the issue of pornography
14 in public libraries is based, in small part, on the particular articles that NCRL seeks to
15 introduce. The articles support for Mr. Marney's belief that absent filtering, more people
16 would use library computers to obtain pornography and other illicit sexual material.
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1 DATED this 11th day of April, 2008

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15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on April 11, 2008, I electronically filed the foregoing with the
17 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
18 persons listed below:

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