

February 10, 2023

Dear Members of the ND Senate Judiciary Committee,

I serve as director of James River Valley Library System in Jamestown, and I'm contacting you in respectful opposition to SB 2360.

As father of a teenage young man, I share your concerns with the materials that he and other young people may encounter in schools or libraries. I want age-appropriate materials for everyone's children, although I realize views of age-appropriateness are subjective, varying from parent to parent. As a library director, I attempt to stay middle-of-the-road with respect to materials offered, recognizing that not everyone will be pleased, but hoping most people in Stutsman County will feel their basic values are respected.

Despite the fact that I share some of your concerns, I still urge the Senate to reject SB 2360. First, this bill changes the definition of obscenity from wording established by the Supreme Court; second, it envisions criminal penalties based on materials over which reasonable people may disagree; and third, it could result in loss of online databases and eBooks in ND—not just for school-aged children, but also for adults.

The legal definition of obscenity (which covers pornography) was established by the Supreme Court in *Miller v. California* (1973). Current ND law follows the wording from *Miller*. By changing the wording of our current law (Section 1), this bill challenges the three-pronged Miller test. Based on *Miller*, I firmly believe ND libraries do not have any pornographic or obscene materials as some people contend. Libraries may have materials that you or I might find offensive, but there is no actual obscenity as defined by the Supreme Court.

SB 2360 also envisions criminal penalties to people for providing “objectionable materials” (Section 3). Objectionable is something upon which reasonable people could disagree. There are processes already in place for people to challenge library materials. These processes are locally administered by duly elected school boards or appointed library boards. The path forward should be to allow those boards to do their jobs, with accountability to their local communities.

Finally, Section 5 could jeopardize access to online databases and eBooks in ND. I believe there is no pornography in online databases (as defined by *Miller*), but it seems this bill and similar bills seek to redefine obscenity in a manner to prohibit materials currently not defined as obscene or pornographic. With that in mind, there is no filter that will block all the materials some might wish to remove. If a book is written for children and carried by an eBook vendor, that book wouldn't be blocked by a child filter, even if many North Dakotans find it offensive. Thus, ND libraries could be forced to drop eBook contracts under this legislation, to the great disservice of our patrons.

A free society requires toleration for the needs and rights of others, particularly as related to information in a public library. Librarians are stuck in the middle between people who want to redefine certain things as “obscenity,” and others who may wish to redefine certain political, religious, or scientific views as “hate speech” or “misinformation.” Librarians defend everyone's right to free speech and thought, keeping in mind that the First Amendment was especially

designed to protect unpopular views. Popular speech does not need protection. As a society, I hope we can exercise our freedoms respectfully and judiciously for the benefit of all.

Sincerely,



Joseph Rector

Director

James River Valley Library System