



LIBRARY BOARD FACTS ABOUT:

This information sheet is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.

BOOK AND MATERIALS CHALLENGES

- **Materials Challenge or Materials Reconsideration** are the terms used by libraries, publishers, and authors to describe a question or complaint about an item, program, or publication's presence in the collection of a public, school, academic or any other library.
- **Censorship** is the term used when materials are removed from a library due to the subject matter, author, language, or viewpoint of the item. Materials can also be considered censored when access to them is restricted (because of their subject matter, author, language, viewpoint, etc.) with the intent to make the materials difficult to access. This situation can be very contentious.
- **The First Amendment of the United States Constitution guarantees all people the RIGHT to receive information of their choosing.** *Martin v. City of Struthers Ohio*, 319 U.S. 141, (1943), clarified the Supreme Court's interpretation of this right:

"The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature, Lovell v. Griffin, 303 U.S. 444, 452, and necessarily protects the right to receive it."

- **The First Amendment prohibits the restriction of access to information on the basis of viewpoint or topic.** *"The State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge."* *Griswold v. Connecticut*, 381 U.S. 479, 482, (1965).
- There are FIVE (5) types of speech NOT protected by the First Amendment: **Defamation, Fighting Words, Incitement, True Threats, and Obscenity.** (For more information, see pgs. 2-6 of [Book Challenges, Censorship, and Michigan Public Libraries](#)).
- Obscenity is not a label that is based on an individual or group opinion informed by personal beliefs. **Obscenity is a label applied to information by a court of law using a specific set of criteria.** [Miller v. California](#), 413 US 15
- **Pornography is not the same as obscenity.** Obscenity is illegal under federal law, [18 USC 1465](#). If a library can purchase a book or material in the legal mainstream marketplace (via a publisher or Amazon, for example), it is presumably not obscene – even if they depict sexual themes.

- **Pornography that is not obscene is protected under the First Amendment** (Miller v. California) “*Sexual expression which is indecent but not obscene is protected by the First Amendment.*” [Sable Comm. Of Calif. V. FCC, \(1989\)](#).
- Individual states may impose restrictions on the exposure of children to materials that contain sexual themes. **Michigan’s law explicitly exempts Library staff and teachers from prosecution for this**, [MCL 722.676](#). This exemption is evidence that the state considers public libraries not responsible for supervising minors’ choices of reading material. These laws are also not intended for age-appropriate materials that depict controversial themes.
- Michigan public libraries are required to implement mechanisms such as filtering software or privacy screens to limit minors’ exposure to explicit sexual content via the Internet while still permitting adults to have access to such content if requested, [MCL 397.606](#)
- **Uphold your Oath. Municipal officials – INCLUDING library trustees, take oaths of office.** Michigan’s constitutionally prescribed oath pledges that the trustee will support both the Michigan and the US Constitutions. The text of this oath, listed [in Art. XI, Section I is:](#)

*“All officers, legislative, executive, and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that **I will support the Constitution of the United States and the constitution of this state**, and that I will faithfully discharge the duties of the office of according to the best of my ability.”*
- **Board members have no power or authority to act unilaterally.** Library board powers and authority are authorized and granted by the legislature to the board as a WHOLE entity- NOT to individual board members. Board members acting individually are acting outside the scope of their authority See, OAG, 1977–1978, No 5286, p 403, 404 (March 31, 1978) (City council members acting individually have no authority to conduct city business), [County of Saginaw v Kent](#), 209 Mich 160, 167, (individual county board member cannot bind the county by their acts).
- **Members of a governing board have a ‘Fiduciary Duty’ to always act in the best interests of the library-** NOT the bests interests of a personal agenda, political view, religious view, or local municipal government view. **Board members who use their decisions to impose personal, religious, political, or other beliefs onto library users are not acting in the best interests of the library as an entity.** The library belongs to and serves an entire COMMUNITY and trustees are in place to maintain and protect the library **for the entire community** - not just the groups and demographics board members identify with. This is particularly true in matters where Library assets or funds are affected (or where actions could invite a lawsuit).
- **No Community is Homogenous.** The 2020 census has illustrated that the United States is more [diverse](#) in almost every metric. [Michigan](#) reflects this trend. Approximately 7% of Michigan’s population is [LGBTQ+](#). The likelihood that the board (or library staff) alone fully represent every segment of their community is increasingly unlikely. This means that, in order to fulfill its mission and purpose and its responsibility as a resource for the exercise of the constitutional right to information (including information on controversial and uncomfortable topics), a public library may not restrict its collection

only to items deemed “appropriate” by a few based on the personal viewpoints, religion, politics and morals of those few.

- **70% of the American public are against [limits](#) or bans on library materials.** Another [poll](#) suggests that a minority of people are the ones likely to initiate complaints and censorship behavior.
- **At no time should a board member (while representing themselves as a board member or while on duty as a board member) participate in or advocate for the illegal removal of materials, programs, items, etc., from the library.** This action is not only a likely constitutional violation, but a violation of their oath of office, an arguable breach of fiduciary duty and an arguable misuse of library assets and money (irresponsibly discarding useable materials paid for by library funds). [Challenges to Materials and Programs: The Role of Library Trustees & Board Members](#) (3/31/22)
- Trustees’ failure to uphold their oath, protect constitutional rights, comply with their fiduciary duty, and adhere to the laws and regulations applicable to Michigan libraries and government organizations could result in hefty fines and expensive lawsuits for a library. **Lawsuits can and are happening:** [Texas public library board in Llano County is sued over book bans | The Texas Tribune](#)
- **Only parents have the responsibility and the right to dictate what their children can or cannot read/view/check out of the library.** Public libraries do not have the same legal responsibilities or duties towards children as schools do. Public libraries are NOT “in Loco Parentis” like public schools are.
- **A public library is not a childcare facility. It is not a school.** It is a government service in a public building. For example, the Post Office expects parents to monitor their children, and so does the public library.
- **Public library trustees, like any public official (even a school board) have no authority or right to assert their personal viewpoints and beliefs as the preferred or designated beliefs of an entire community.** The public library, as an entity uniquely situated to facilitate people’s exercise of their First Amendment right to information, has a responsibility and a duty to nurture a collection that represents a variety of beliefs and viewpoints.

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion If there are any circumstances which permit an exception, they do not now occur to us.” [West Virginia Board of Education v. Barnette](#), 319 U.S., at 642, quoted by.” [Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico](#), 457 U.S. 853, (1982).
- **Know your library’s [Collection Development Policy](#).** Collection Development Policies define a library’s design for its collections and is a library’s template for how they purchase items for the community to borrow and utilize.

- **Know your library's [Materials Reconsideration Policy](#)** that describes the procedure and criteria for removing material from the collection.
- **Know your library's [Patron Behavior Policy](#)** which addresses problematic patron behavior – including “First Amendment” issues that are really behavior issues (viewing or reading pornography is protected by the First Amendment- engaging in inappropriate behavior or lewd actions while viewing pornography is not protected). Behavior policies should include robust consequences and an appeals process.
- **Know your library's Public Relations, Crisis Communication, or Media Contact Policies.** These policies will determine which library employee or official is authorized to be an official spokesperson for the library in the event of a public incident or crisis.

RESOURCES

[Pornography & Obscenity, by David L. Hudson Jr., First Amendment Center, Updated July 2009](#)

[Libraries and Intellectual Freedom](#), The First Amendment Encyclopedia, The Free Speech Center, Middle Tennessee State University visited 5/20/2022

[CBS News Poll – Big Majorities Reject Book Bans, February 2022](#)

[Handling Materials Reconsideration, Challenges and Censorship, A Checklist, Library of Michigan, 2020](#)

[Book Challenges, Censorship, and Michigan Public Libraries, Library of Michigan, December 2021](#)

[Terms and Definitions Related to Intellectual Freedom and Censorship United for Libraries, February 2022](#)

[Materials Challenges – Key Library Policies to Review and Revise, United for Libraries, February 2022](#)

Clare Membiela, MLS JD
Library Law Consultant
Library of Michigan

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