

The Honorable Edward F. Shea

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2  
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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON  
12 AT SPOKANE

13 SARAH BRADBURN, PEARL )  
14 CHERRINGTON, CHARLES )  
15 HEINLEN, and THE SECOND )  
16 AMENDMENT FOUNDATION, )

17 Plaintiffs,

18 v.

19 NORTH CENTRAL REGIONAL )  
20 LIBRARY DISTRICT, )  
21 )

22 Defendant. )  
23 )

NO. CV-06-327-EFS  
DEFENDANT NORTH CENTRAL  
REGIONAL LIBRARY DISTRICT'S  
STATEMENT OF DISPUTED  
MATERIAL FACTS IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

24  
25 DEFENDANT NORTH CENTRAL  
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1 1. Contrary to Plaintiffs' **Fact #5**, Plaintiff Sarah Bradburn cannot  
2 affirmatively state that NCRL's Internet Filter denied her access to material  
3 relating to youth tobacco usage, as opposed to some other technical difficulty.  
4  
5 See Ct. Rec. 29, ¶123.

6  
7 2. Contrary to Plaintiffs' **Fact #9**, Plaintiff Pearl Cherrington cannot  
8 affirmatively state that NCRL's Internet filter denied her access to material on  
9 art of heath topics, as opposed to some other technical difficulty. See Ct. Rec.  
10 29, ¶130.

11  
12 3. Contrary to Plaintiffs' **Fact #22**, Plaintiff SAF has no personal knowledge  
13 its site, [www.womenandguns.com](http://www.womenandguns.com), was blocked by NCRL's Internet Filter.  
14 SAF's 30(b)(6) designee, Alan Gottlieb, testified that he heard from some of his  
15 members that the site was blocked, but that he had never tried to access the  
16 website from an NCRL computer. Plaintiff's Fact #22 is hearsay. See Ct. Rec.  
17 29, ¶116.

18  
19 4. Contrary to Plaintiffs' **Fact #23**, Plaintiff SAF has no personal knowledge  
20 its site, [www.womenandguns.com](http://www.womenandguns.com), was blocked by NCRL's filter for the  
21 reasons set forth in ¶3 above. Accordingly, Plaintiffs' cannot demonstrate that

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1 NCRL’s internet filter prevented SAF from communicating with Internet users  
2 in North Central Washington as alleged. Id.

3  
4 5. Contrary to Plaintiffs’ **Fact #30**, there no factual basis for Plaintiffs’  
5 statement that:

6  
7 Today it is widely accepted that the primary role of the  
8 public library is not to serve as a “temple of culture”  
9 focusing exclusively on collecting “great literature”  
10 with the goal of enlightening and uplifting the public,  
11 but to be a “locus for the receipt of information” and to  
12 serve each person in our communities by providing  
13 collections that reflect each individuals’ face and  
14 voice, particularly when those faces and voices fall  
15 outside the majority’s preferred viewpoint.

16 The above-referenced quote is, in fact, an excerpt from a private letter Ms.  
17 Pinnell-Stevens wrote to a Collection Development Specialist for the Tulsa City-  
18 County Library, expressing her personal opinion about the role of public  
19 libraries in their communities. There is no foundation for Ms. Pinnell’s opinion,  
20 nor any evidence that her personal belief shares universal acceptance in the  
21 public library community. Moreover, to the extent Plaintiffs have not alleged  
22 that NCRL’s filter operates in such a way as to deny access to minority groups  
23

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1 or minority opinions, Plaintiffs' Fact #30 is irrelevant to the issue before the  
2 court.

3  
4 6. Contrary to Plaintiffs' **Fact #42**, Dean Marney was not solely responsible  
5 for developing NCRL's filtering policy. Howard Purcell, NCRL's IT Manager  
6 from 1986 to 2001, drafted the original filtering policy. Mr. Marney was  
7 responsible for the final edits and he presented the policy to the Board for  
8 consideration and approval. See Supplemental Declaration of Dean Marney,  
9 attached hereto as Ex. A; ¶3.

10  
11  
12 7. To clarify Plaintiffs' **Fact #44**, a request to block or unblock a site at the  
13 request of an adult patron is evaluated in terms of whether a given website is  
14 consistent with NCRL's mission to promote reading and lifelong learning, its  
15 collection development policy, and NCRL's duty to comply with CIPA – all of  
16 which are incorporated into NCRL's Internet Usage Policy, either expressly or  
17 impliedly. See Ct. Rec. 29; ¶¶58, 60.

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21 8. Contrary to the suggestion made in Plaintiffs' **Fact #47**, NCRL's decision  
22 to adopt an automated site review request procedure was not, in any way,  
23

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1 influenced by NCRL administrators' pending depositions. Plaintiffs' statement,  
2 although presented as fact, is argumentative.

3  
4 9. To clarify Plaintiffs' **Fact #49**, of the 81 automated requests NCRL has  
5 received since October 2007, 65 have been evaluated within 24 hours. The  
6 remaining 16 requests were typically made over a weekend or holiday.  
7 Accordingly, decisions could not be made on the same day. See Ct. Rec.  
8 29, ¶59. NCRL object to Plaintiffs' use of the word "languish" in Fact #49 as  
9 argumentative.  
10  
11

12 Contrary to Plaintiffs' **Fact #50**, Mr. Marney did not testify that,  
13 "NCRL's primary stated purpose in filtering Web content at all times is to  
14 promote a family-friendly environment and avoid exposing patrons (particularly  
15 children) to inappropriate images." The question posed to Mr. Marney was not:  
16 "What is the purpose for filtering web content?" The questions was: "How does  
17 the Internet Public Use Policy contribute to a family-friendly environment?"  
18  
19  
20

21 The cited deposition exchange reads as follows:

22 **Mr. Manville**: Do you support the Internet Public Use  
23 Policy?  
24

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1 **Mr. Marney:** Absolutely. It works.

2 **Mr. Manville:** In what way does it work.

3  
4 **Mr. Marney:** It accomplishes what we do. We have  
5 very few problems, as you found out, and we're views  
6 as a family-friendly place. We promote reading like  
7 crazy. Kids feel comfortable there, and in most part  
8 parents feel comfortable sending their kids to the  
9 library alone.

10 **Mr. Manville:** What is it about the Internet Public  
11 Use Policy that you believe contributes to that  
12 environment?

13 **Mr. Marney:** I think that we have – that everything is  
14 filtered, that we're doing everything possible – doing  
15 the most possible to avoid situations where kids will  
16 see inappropriate images.

17 See Marney Dep 97: 1-16.

18 10. In **Fact #51**, Plaintiffs state “NCRL seeks to shield all library patrons  
19 from material that NCRL believes is harmful to minors.” For this fact, Plaintiffs  
20 cite to (but do not excerpt) Mr. Howard’s deposition at 79:16-21, which reads:

21 **Ms. Crump:** Does the library work to block access to  
22 all material that’s harmful to minors.

23 **Mr. Howard:** Yes. As required by CIPA.

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1 Instead, Plaintiffs excerpt the following exchange, occurring three pages later:

2 Ms. Crump: Does the library block access to harmful  
3 to minors material even when adults are trying to  
4 access that content.

5 Mr. Howard: Yes.

6  
7 Plaintiffs' selective paraphrasing skews the context of Mr. Howard's  
8 testimony which demonstrates that NCRL is only trying to block *specific types*  
9 *of materials* it believes is harmful to minors. Prior to and following both above-  
10 referenced portions of the deposition, Mr. Howard is explicitly discussing  
11 specific situations where he has concluded a site was harmful to minors, and  
12 discussed the federally recognized standards that he uses to evaluate a site to  
13 determine if something is harmful to minors – (i.e. whether the requests images  
14 depict sexual activity, genitalia or excretory functions in a manner that did not  
15 have scientific, artistic or literary merit.) See Howard Dep. p 79, lns. 10-25; p  
16 82 5-22. Plaintiffs also ignore Mr. Howard's testimony that Internet filtering  
17 serves collection development purposes as well. (See Ct. Rec 40, p.221-222.)

18  
19  
20  
21  
22 11. Contrary to Plaintiffs' Fact #54, NCRL has meaningful standards in  
23 place for determining whether a particular website should be blocked given the

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1 configuration of the library's Internet filter. See ¶10 above; See also Ct. Rec 29,  
2 ¶58; 60.  
3

4 12. Contrary to Plaintiffs' **Fact #55**, nothing supports Plaintiffs' contention  
5 that NCRL decision makers "are incapable of reach consistent conclusions  
6 regarding whether particular Web sites or categories or classifications of web  
7 site should be blocked." In fact, Mr. Howard and Mr. Marney testified that they  
8 look to CIPA, as well as NCRL's mission statement, their collection  
9 development policy/practices and their Internet policy for guidance. See Ct. Rec  
10 29, ¶¶25-26,58, 60; See also Marney Dep at 85:18-86:1 cited by Plaintiffs at  
11 Fact #54.  
12  
13  
14

15 13. Contrary to Plaintiffs' **Fact #56**, Mr. Howard did not testify that "access  
16 by adults to a Web site containing hundreds or thousand of pages of content  
17 could be denied if only one page on the site contains an image that NCRL deems  
18 harmful to minors." Mr. Howard expressly testified that the legal, or illegal  
19 nature of the content, as well as the size of the website would make a difference.  
20  
21

22 The relevant exchange reads:  
23  
24

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1 **Ms. Crump**: I'd like to talk a little bit about how you  
2 decide whether a website contains harmful to minors  
3 material. Is it sufficient for a Website to have one  
4 harmful to minors image for it to be considered  
5 harmful to minors?

6 **Mr. Howard**: I don't think I've ever – when I've  
7 review anything that I thought had images that were  
8 potentially harmful to minors I don't remember  
9 encountering – ever encountering a site that just had  
10 one image.

11 **Ms. Crump**: If the site only had one image that was  
12 harmful to minors, would you recommend blocking  
13 access to the whole site?

14 **Mr. Howard**: If like, for example, it had one image  
15 that had child pornography, yes, that would be  
16 sufficient to block that site.

17 **Ms. Crump**: What if it wasn't child pornography?

18 **Mr. Howard**: Sure. If it was obscene and it had been  
19 declared illegal by a court of law, then that would be  
20 sufficient as well.

21 **Mr. Crump**: What if the content wasn't illegal? It  
22 was pornographic, but not illegal. A picture of a naked  
23 woman, for instance.

24 **Mr. Howard**: If it was pornographic, then one image  
25 would likely be sufficient to block that site.

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1 **Ms. Crump:** Would it matter how big the website  
2 was? Whether it had ten pages or a thousand pages,  
3 for instance?

4 **Mr. Howard:** I think our approach to blocking it or  
5 allowing access would be affected by how large the  
6 site was. I think that Craigslist is a really good  
7 example of that. It's a larger site with many different  
8 functions. And in that particular case we have tried to  
9 allow access to as much as possible as we can that  
10 would fit with our approach to the Internet. So, yes, I  
11 think that if you're asking if size – the size of the site  
12 and the amount of content that would – is within it is  
13 part of our decision the, yeah, I think it might affect  
14 that decision on how we would approach blocking it.

15 14. As set forth in Plaintiffs' **Fact #60**, Mr. Marney testified that he believed  
16 more people would view pornography, obscenity or child pornography on  
17 NCRL computers if the filter were disabled because:

18 [l]ibraries have a peculiar problem that we attract a  
19 certain element in our communities that isn't always  
20 family friendly. Recently there was the gentleman that  
21 self-described himself as a pedophile. and in reading  
22 the newspaper, he was saying – telling people to go to  
23 the library because it was a good place where children  
24 hung out. We've had incidents with sex offenders, and  
25 my assumption is that would continue to be a problem  
26 and might increase.

27 Marney Dep at 55:3-10.

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1  
2 Contrary to Plaintiffs' suggestion in **Fact #62**, that Mr. Marney had no further  
3 justification for his belief that more people would look at pornography if the  
4 filter were disabled, Plaintiff Charles Heinlen explicitly seeks access to  
5 pornography. See Ct. Rec 29, ¶141.  
6

7 18. Contrary to Plaintiffs' **Fact #80**, Ms. Walters did not testify that there  
8 was "no technological impediment to disabling the Fortiguard filter at the  
9 request of an adult." The relevant exchange reads:  
10

11 **Mr. Manville:** So it's possible to disable the filter for  
12 *a particular workstation, yes?*  
13

14 **Ms. Walters:** I have never disabled a filter for a  
15 particular workstation. But, yes it would be possible.

16 **Mr. Manville:** Yes, I understand that you haven't  
17 done it.

18 **Ms. Walters:** Okay.

19 **Mr. Manville:** I was just asking whether it's  
20 technically possible.  
21

22 **Ms. Walters:** Yes.  
23

24 \*\*\*

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1 **Mr. Manville:** Okay. Would it be possible to disable  
2 the filter *for a particular patron?*

3 **Ms. Walters:** Again, I'd have to answer I don't know.  
4 I've never tried. I've never created a policy that way.  
5 There's a lot involved...

6 Although Ms. Walters testified that it would be technically possible to  
7 disable the filter at a particular work station, she did not testify that the filter  
8 could be disabled and re-enabled at the request of an adult patron. Moreover,  
9 what is technically possible is not the same as what is practical, affordable, or  
10 legally-required. In fact, NCRL currently lacks the software and infrastructure  
11 resources to easily disable the filter at a particular computer terminal and then  
12 enable it again when the adult patron finishes. (Ct. Rec. 28, ¶¶66-67). In  
13 addition, fifty-seven (57%) of NCRL branches have only one or two public use  
14 computers. Ct. Rec. 29, ¶17.

15  
16  
17  
18  
19 19. Contrary to Plaintiffs' **Fact #82**, the decision whether to block a  
20 category of sites does not rest entirely within the discretion of NCRL Director  
21 Dean Marney. Dan Howard has significant input into such decisions and is also  
22 involved in deciding which specific sites should be blocked or unblocked when  
23  
24

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1 requests are made by NCRL patrons. See Howard Dep at 44: 4-10; 50:9-17; Ct.  
2 Rec. 31, ¶30.

3  
4 20. To clarify Plaintiffs' **Fact #85**, NCRL stopped blocking Drug Abuse in  
5 January 2007; Illegal or Unethical in January 2007; and Web Translation in  
6 February 2007. NCRL began blocking the image search class in January 2007.  
7  
8 See Supplemental Declaration of Dean Marney, attached hereto as Ex. A; ¶5.

9  
10 21. To clarify Plaintiffs' **Fact #86**, NCRL stopped blocking the Plagiarism  
11 category in February 2008. Id. at ¶6.

12  
13 22. To clarify Plaintiffs' **Fact #87**, NCRL unblocked personal relationships  
14 in January 2007. Id. at ¶7.

15  
16 23. Contrary to Plaintiffs' **Fact #95**, it is too simplistic to suggest that Dean  
17 Marney testified that NCRL "could" block MySpace in the future.

18 **Mr. Manville:** How did the MySpace terms of use  
19 change?

20 **Mr. Marney:** That they were going to enforce no  
21 adult explicit images. And that they were going after  
22 people who were lying about their age.

23 \*\*\*

24  
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1 **Mr. Manville:** Is it possible that the NCRL will block  
2 MySpace again in the future?

3 **Mr. Marney:** I don't know.

4 **Mr. Manville:** What would – what could cause the  
5 NCRL to block MySpace again?

6 **Mr. Adams:** (counsel for NCRL): Object to the form  
7 of the question. Calls for speculation.

8 **Mr. Marney:** We would review it again if somebody  
9 made a complaint.

10 **Mr. Manville:** So, if you, let's say you got a  
11 complaint from a patron that their kid had accessed a  
12 page on MySpace that had adult materials on it, what  
13 would you do with that?

14 **Mr. Marney:** We would talk to the people and find  
15 out – investigate it and then discuss it.

16 **Mr. Manville:** And is it possible that at that point you  
17 would decide to block MySpace again.

18 **Mr. Marney:** I don't know.

19  
20 24. Contrary to Plaintiffs' **Fact #97**, not all web publishers design website  
21 with discrete URL pages that can be individually blocked. With sites that are so  
22 designed, NCRL will attempt to restrict access only to web pages that raise  
23

24  
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1 issues under NCRL's policies upon request of a patron. An example of this  
2 approach is NCRL's treatment of www.craigslist.com. See ¶13 above; See also  
3  
4 Walters Dep at 54:11-21 as cited by Plaintiffs.

5 25. Contrary to Plaintiffs' **Fact #111**, Mr. Resnick's study does, in fact,  
6  
7 raise a substantial challenge to the results of Mr. Haselton's test of the  
8 Fortiguard filter. Mr. Resnick conducted a test to estimate Fortinet's tendency  
9  
10 to overblock within NCRL's network setting, based on the web sites actually  
11 viewed at NCRL branch libraries during the week of August 23-29, 2007. (Ct.  
12 Rec. 29, ¶104). Prof. Resnick concluded that a test based on URLs actually  
13  
14 visited by NCRL patrons was more meaningful than testing a random sample  
15  
16 from the universe of all domain names, as with Mr. Haselton's study, because it  
17  
18 allowed for direct assessment of the FortiGuard filter on NCRL patron browsing  
19  
20 tendencies. (Id. at ¶105.) Moreover, patrons tend to visit more popular web  
21  
22 sites than a random sample of sites would account for. Prof. Resnick theorizes  
23  
24 that FortiGuard would make fewer classification errors on more popular sites.  
25  
26 (Id.) Based on his study, Prof. Resnick determined that less than 1/3000 (1/30<sup>th</sup>

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1 of 1%) of patron requests for webpages resulted in incorrect blocks. (Id. at  
2 ¶111).

3  
4 26. Contrary to suggestions made in Plaintiffs' **Fact ¶113**, NCRL patrons  
5 are not permitted to view Internet pornography in NCRL branch libraries. If a  
6 patron is observed viewing pornography, the individual is asked to stop. Ct. Rec  
7 29, ¶88. NCRL does not expect NCRL librarians to confront patrons engaging  
8 inappropriate behavior facilitated by unrestricted Internet access. Id. NCRL's  
9 decision not to implement alternative privacy measures to keep patrons from  
10 inadvertently viewing inappropriate materials in based, in part, on the expense  
11 and ineffectiveness of the measures, but more importantly on NCRL's belief that  
12 the filter works best at carrying out its mission. Id. at ¶77; See also ¶9 above.  
13  
14  
15

16  
17 27. Contrary to Plaintiffs' **Fact ¶114**, NCRL has articulated additional  
18 reasons why it has not installed privacy screen on its public use computers, and  
19 why providing unfiltered access is not consistent with its mission, collection  
20 development practices, or responsibilities under state or federal law. Ct. Rec.  
21 29, ¶71, 77-81.  
22  
23  
24

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1 28. Contrary to Plaintiffs' **Fact #115**, NCRL did not forgo recessed desks as  
2 a "cost saving measure." NCRL has expressed concern about the costs, but also  
3 found that the recess configuration did not prevent people passing by from  
4 viewing the screen. Moreover, NCRL has an overarching concern that  
5 providing access to materials that would create an unacceptable risk for children  
6 and could create a hostile atmosphere for families, children and staff in the  
7 library. Ct. Rec. 29, ¶¶79, 82-84.

8  
9  
10  
11 29. To clarify Plaintiffs' **Fact #116**, NCRL decision not to substitute a "tap-  
12 and-tell" policy was based on its concerns with providing unfiltered access (as  
13 articulated in ¶28-29 above), as well as the fact that it did not want to employ a  
14 procedure that involved differing and possibly inconsistent view regarding the  
15 appropriateness of what people were accessing on the Internet. Ct. Rec. 29, ¶74.

16  
17  
18 30. Contrary to suggestions in Plaintiffs' **Fact #117**, NCRL does not  
19 knowingly permit patrons to view on-line pornography. Awareness of a single  
20 incident in which a patron became upset after having been asked to stop viewing  
21 pornographic images, ignores instances where other patrons and staff have been  
22  
23

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1 adversely affected by having to view pornographic content. Ct. Rec. 29, ¶¶86-  
2 98.

3  
4 31. Contrary to Plaintiffs' **Fact #117**, Plaintiffs cannot establish as a matter  
5 of fact that "many libraries have found ways to promote a safe, family friendly  
6 environment without burdening adult speech through continuous filtering." Ms.  
7 Pinnell-Stevens' experience is limited in scope and derives from Fairbanks,  
8 Alaska, a library that has not show to be similar to NCRL is size, geographic  
9 reach or demographic.  
10

11  
12 32. Contrary to Plaintiffs' **Fact #123**, Ms. Pinnell-Stevens cannot  
13 affirmatively state that Fairbanks, Alaska's library has not received any  
14 complaints relating to its Internet. Ms. Pinnell is no longer employed by the  
15 library and has not been since February 14, 2006.  
16

17 //

18 //

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25 DEFENDANT NORTH CENTRAL  
26 REGIONAL LIBRARY DISTRICT'S  
27 STATEMENT OF DISPUTED  
28 MATERIAL FACTS IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT - 18

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DATED this 15<sup>th</sup> day of February, 2008.

KARR TUTTLE CAMPBELL

By: /s/ Thomas D. Adams

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Attorneys for Defendant North Central

Regional Library District

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DEFENDANT NORTH CENTRAL  
REGIONAL LIBRARY DISTRICT'S  
STATEMENT OF DISPUTED  
MATERIAL FACTS IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT - 19

CV-06-327-EFS  
#658441 v1 / 42703-001

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

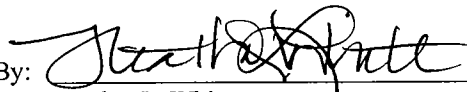
Duncan Manville  
1629 2nd Ave. W  
Seattle, WA 98119

Aaron Caplan  
ACLU of Washington  
705 Second Ave., Ste. 300  
Seattle, WA 98103

Notice has been delivered by U.S. Mail to:

Catherine Crump  
American Civil Liberties Union Foundation  
125 Broad Street, 17<sup>th</sup> Floor  
New York, NY 10004

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By:   
Heather L. White  
hwhite@karrtuttle.com

DEFENDANT NORTH CENTRAL  
REGIONAL LIBRARY DISTRICT'S  
STATEMENT OF DISPUTED  
MATERIAL FACTS IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT - 20

CV-06-327-EFS  
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