

MINUTES OF THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:35 p.m. on February 6, 2001 in Room 313-S of the Capitol.

All members were present except: Representative Ray Cox, Excused  
Representative Tony Powell, Excused  
Representative R. J. Wilson, Excused

Committee staff present: Theresa M. Kiernan, Revisor of Statutes  
Russell Mills, Legislative Research Department  
Shelia Pearman, Committee Secretary

Conferees appearing before the committee:

Representative Becky Hutchins  
Brenda Eubanks, concerned citizen  
Kim Borchers, concerned citizen  
Duane Johnson, State Librarian  
David Leamon, Topeka/Shawnee County Public Library Exec. Dir.  
Susan Marchant, Topeka/Shawnee County Public Library  
Ellen Miller, Kansas Library Trustee Association President  
Jim Minges, Kansas Library Association Legislative Chair  
Cynthia Berner Harris, City of Wichita Director of Libraries

Others attending: See attached list

Without objection bill will be introduced as requested by Representative Benlon regarding repeal of sales tax and is a companion of a Senate bill. [HB 2427]

Without objection bill will be introduced as requested by Representative Cook regarding partial-birth abortion ban. [HB 2371]

Without objection bill will be introduced as requested by Representative Morrison regarding certification of behavior analysts. [HB 2372]

Without objection bill will be introduced as requested by Representative Ruff regarding Lewis and Clark Bicentennial Commission. [HB 2504]

Without objection bill will be introduced as requested by Representative Ruff regarding prison to work program. [HB 2529]

Without objection bill will be introduced as requested by Representative Ruff prohibiting smoking in the dorm rooms at the Regents Universities. [HB 2516]

Chairman Mays opened the hearing on **HB 2108 - Prohibiting public libraries from disseminating or promoting obscene materials to minors.**

Representative Hutchins noted this bill resulted due to a minor freely accessing obscene material at a local public library although same minor would not be permitted to purchase same material. (Attachment #1) Legislative Research provided details of K.S.A. 21-4301c. The initial request for this bill was to draft to prohibit materials be checked out to minors which cannot legally be purchased in Kansas under the age of 18. Additional research showed various policies across the State's universities libraries. (Attachment #2)

Ms. Eubanks observed three minors viewing a Playboy magazine at the public library. Phone calls and letters to the Topeka Shawnee County Public Library Director and the Library Board of Directors requesting removal of obscene materials from viewing by minors received no reaction. The Board's Chairman advised her current policy is anyone 14 or older may access these materials as well as under 14 with parental consent. (Attachment #3)

Ms. Borchers cited *Tinker v. DesMoines School Dist.*, 393 U.S. 503, 515 (1969), *Reno v ACLU*, 521 U.S. \_\_\_\_, 117 S. Ct 2329 (1997), and *Ginsberg v New York*, 390 U.S. 629(1968) constitutionally clarified minors' first amendment rights differ from that of adults in regard to harmful material. (Attachment #4) She stated policy means absolutely nothing without enforcement and enforcement will not take place in our local libraries if they are not held accountable.

Mr. Johnson noted more than 2,000 library trustees and 3,000 library employees (Attachment #5) would be subject to potential criminal charges if this bill passes. Just the necessity of mounting a defense whenever a charge is made could create potential financial difficulty and therefore is enough to intimidate and chill the atmosphere for free flow of information in libraries. While he would not defend a violation of the law, he stated he would resolutely defend the individual library's board right and responsibility to make policy within the law.

The Revisor clarified that material which is "harmful to minors" is more narrowly defined than obscenity which includes adults.

Mr. Leamon stated the potential economic effect on the area could be impacted because corporations which consider locating in the Topeka area also consider the library's policies. He referenced the McCarthy era atmosphere. (Attachment #6) Present policy at Topeka Shawnee County Public Library is based on 14 years old because that is where childhood ends.

Due to meeting time limitation, Ms. Miller and Mr. Minges referenced their submitted written testimony and their opposition to **HB 2108** as noted in their submitted testimony (Attachment #7 and Attachment #8) Ms. Harris also submitted written testimony (Attachment #9) and stated the Wichita Public Library does not have the cited publications in their holdings.

The hearing on **HB 2108** was closed.

The committee meeting adjourned at 3:15 p.m. The next schedule meeting is February 8, 2001.

# HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

## COMMITTEE GUEST LIST

DATE: 2/6/01

NAME	REPRESENTING
ELLEN MILLER	Kc. Lib. Trustees Assn
Roger Will	Private Citizen
Maurice Hine	
Deryl W. Wynn, attorney	KC, KS Pub. Libraries
Cynthia Berner Harris	Wichita Public Library
Teresa Dodson	Winfield Public Library
Wray Salt	SKKS / HPL Helebrun, K
Steve Hinds	Independent Living Resource Center - Wichita
TIM BORCHERS	PRIVATE CITIZEN
Freda Dobkins	Pett Walk Reg Library
Kay Russell	North Central KS Libraries
John Edister	Manhattan Public Library
Robert Gille	NORTH CANON KS LIBRARIES
Thomas Carmosh	Johnson County Library
Karen Holthaus	Seneca Free Library
Candee Jull	Bex-Boekman Library
Jim Minges	N.E. KS. LIBRARY SYSTEM
Donna Jagan	Topeka Shawnee Co Public Library
Dennis Wilson	Topeka & SHAWNEE County Public Library



# HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

## COMMITTEE GUEST LIST

DATE: 2/6/01 (continued)

NAME	REPRESENTING
Eleanor Strecka	TSCPL
Paul Brennan	TSCPL
Carh Mahany	PPKM
Brenda Eubanks	Private Citizen
Emily Hutchins	Intern
Kim Borchers	Private Citizen
Robert Banks	TSCPL
Susan Marchant	TSCPL
Diane Lempsold	<del>Topic</del> Kansas Assoc School Lib
Bruce Swost	KLA
Marsha Strahm	CWA of Ks.
Ch M Byll	KS FOP
Garth	KS FOP
John	KS FOP
STEVEN NORMAN	KS FOP
Karen Trautze	KCE
Bruce Dimmitt	KFL Independent

BECKY HUTCHINS  
 REPRESENTATIVE, FIFTIETH DISTRICT  
 JACKSON AND SHAWNEE COUNTIES  
 700 WYOMING  
 HOLTON, KANSAS 66436  
 (785) 364-2612

ROOM 427-S  
 STATE CAPITOL  
 TOPEKA, KANSAS 66612-1504  
 (785) 296-7698



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 VICE CHAIR: FEDERAL AND STATE AFFAIRS  
 MEMBER: ENVIRONMENT  
 TOURISM

## TESTIMONY ON HB 2108

## HOUSE FEDERAL &amp; STATE AFFAIRS COMMITTEE

FEBRUARY 6, 2001

Chairman Mays and members of the House Federal & State Affairs Committee,

HB 2108 is a result of a constituent telephone call I received this fall. My constituent, Brenda Eubanks, called me and asked me a question I quite frankly could not answer. She told me of an incident that happened one day at the Topeka Shawnee County Public Library. While at the library Mrs. Eubanks observed three youth giggling and looking at a *Playboy* magazine.. The one youth then proceeded to the periodical desk and checked out a *Playboy* magazine. When Mrs. Eubanks asked the library employee why a minor could check out a *Playboy* the employee stated that the libraries policy was that anyone over the age of fourteen could check out anything in the library. My constituent contacted me and ask me how it was possible that a minor could check out a magazine at a public library that they cannot legally purchase until they are age eighteen. I did not have an answer for her, but told her that I would look into the matter.

I then took my question to legislative research where they showed me the statutes dealing with promoting obscenity to minors. Lines 33 through 36 on page 1 and lines 36 through 39 on page 2, that are currently stricken in HB 2108, allows public libraries an affirmative defense which in turn enables them to disseminate allegedly obscene material to minors as long as it is in accordance with regular library policies approved by its governing body.

My next stop was to the revisors office where I requested a bill be drafted that would prohibit public libraries from checking out periodicals to minors that minors can not legally purchase in the state of Kansas until the age of eighteen. I am not an attorney so I am not sure this bill could have been drafted in a different manner. I do not know if there is enough support in the committee for HB 2108 in its current form, but I do know

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Attachment No. 1

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that as policy makers we should ask ourselves the question Mrs. Eubanks asked me, discuss the issue and try to come to some sort of a resolution. Thank you.

Representative Becky Hutchins  
50th District State Representative

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To: Jill Wolters  
From: Cindy Roupe  
Re: Playboy magazine subscriptions  
Date: 11/21/2000

### University Libraries

Emporia State University  
No subscription

Kansas State University  
They have 1953-1964, 1986, 1987 on microfilm. In Special Collections, they have 1963-1981, 1988. There are no restrictions on use, however they would not allow a minor to view because "that is against federal law." He informed me that there are books that are "much more graphic" in the art department that circulate just like other books.

Kansas University  
They have 1953-1990 microfilm. If there are any paper copies, the film and paper are shelved together in open stacks.  
Books like "The Madonna" book are kept in the Art Department library. It is locked away, not because of sexual content, but because it is subject to vandalism.

Washburn University  
Their policy in the 1970s was to subscribe to everything indexed in a certain index (probably Reader's Guide). They have canceled their subscription and discarded their issues. They have not updated the Kansas Library Catalog. Updating is one of their "scheduled projects".

Wichita State University  
They own 1966-1990 in paper, housed in Special Collections. Public that would like to see particular issues must make a request, the article is then photocopied and given to them. If several issues are wanted, the instructor must come in with the student and make arrangements. There are no written policies on this. The library discourages requests of a prurient nature- *my words*.

### Public Libraries

Johnson County Public Library  
Own fiche subscription only. Open accessibility.

Kansas City Kansas Public Library  
No subscription.

Wichita Public Library  
No subscription.

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Testimony of  
Brenda K. Eubanks

February 6, 2001

To: Chairman Mays and Members of the House Federal and State Affairs Committee  
Subject: House Bill 2108

Thank you for the opportunity to tell my story and voice my concern of public libraries distributing obscene material to minors in Kansas. I support House Bill 2108.

While I was visiting the Topeka/Shawnee County Library in the fall of 1999, I heard laughter from the aisle next to me and found three children looking at a Playboy Magazine. Of course, I assumed they had brought it with them into the library. However, I soon happened to see the young boy, handing the magazine to the lady at the periodical desk. He then gave her a periodical request form for another issue of Playboy, which he received. I was aghast to discover that the obscene material a minor cannot purchase could be "borrowed" by him at a public library, paid for by public taxes. I later talked to the worker at the periodical desk, who told me she was uncomfortable with the transaction, but it was the library's policy.

This began a long journey leading up to this point. First, I called the library's director, Mr. David Leaman. He basically told me that the library would not exclude minors from viewing Playboy due to the First Amendment. I filled out the library's form for requesting the removal of a book. Then, I wrote a letter to each member of the Board of Directors of the Topeka/Shawnee County Library expressing my concerns, asking for a change of policy, and requesting that I be notified of their decision. After no response for months, I contacted Mr. Steve Schwarm, the library Board Chair via phone. He informed me that the current policy is to allow the magazine to go to anyone 14 or older and to those under 14 with parental permission.

Still feeling that 14 is not an appropriate age to obtain obscenity since 18 is the age necessary in all other establishments, I attempted to find some other recourse. I spoke to city and county officials, who said they agreed with me but that they had no jurisdiction in the matter, and to a state library board representative who disagreed with my views. I then sought out Rep. Becky Hutchins who felt compelled to take action.

I want to stress to this committee that everyone I have told about this availability of Playboy to minors is shocked. How can this be allowed? Can we say that a child is too young to purchase the magazine, but can visit the local library for a copy? Why should the library be above the law in this area? Would we allow minors public places to obtain tobacco, alcohol, buy lottery tickets, or see an R-rated movie?

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There is no question that Playboy is pornography. And, we have decided as a culture that pornography is harmful to children. It is a tool for pedophiles, encourages children to act on what they have seen, and it teaches them disrespect for the dignity of people, especially women.

Libraries have been one of my favorite places since I learned to read. My family enjoys trips to the library. But, we want to be able to feel safe there. Knowing that people are viewing and reading obscene material causes us to feel more anxiety.

This bill would be unnecessary if libraries would choose to govern themselves in a manner with which the public is in agreement and common sense deems right. I realize that "obscene material" is a broad term. But we know its intent is to sexually arouse the reader, viewer, or listener. This should not be happening to children and should definitely not be happening in a publicly funded library. Please have the courage to draw a line and protect our children.

Thank you.

Testimony on HB2108

Kim Borchers

2/6/01

Chairman Mays and members of the committee, I am Kim Borchers. I come here today as a mother, taxpayer, and voter. I come on behalf of Kansas children. I'm sure that you would agree that across this state we have thousands of children whose parents barely meet their physical needs, let alone their psychological or emotional needs. These children need libraries that act responsibly.

I recognize that there are many responsible library boards and librarians across this state. This bill would not penalize these individuals or institutions. I am here supporting this bill for those library boards and librarians that may not be acting responsibly. I have enclosed two documents for your review. One is a letter of correspondence from my local library and the other is an editorial that was posted in their staff lounge. Based on those two documents, I am more inclined to believe that the policy of my local library is that which is stated in the editorial rather than that stated in the letter I received.

I know from personal corporate experience, policy means nothing without enforcement. Enforcement will only take place in our local libraries *if they are held accountable*.

The opposition today would like to say that the passage of this bill would lead to frivolous lawsuits and that the library would then in turn go out of business. They also state that some individuals would no longer desire to work at or volunteer in their local library if this bill is passed into law. The question of censorship has also arisen. I would like to address each of these concerns briefly.

Fear of Litigation

When have we ever put a dollar figure on the well being of our children? When have we as a society allowed the fear of litigation to keep us from doing the right or responsible thing?

Fear of inadequate Staff and Volunteers

To say that the library profession in Kansas will suffer from this bill is an argument that does not hold water. There are hundreds of professions across this state that risk litigation on a daily basis, yet people are not deterred from pursuing these careers. The first one that comes to mind is the health care profession. I also believe law enforcement would fit in that category. I simply do not believe we will have a shortage of librarians or volunteers if this bill passes.

Censorship

***Tinker v DesMoines School Dist., 393 U.S. 503, 515(1969)***

The first Amendment rights of a minor are not "co-extensive with those of adults. A child...is not possessed of that full capacity for individual choice which is presupposition of First Amendment guarantees."

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***Reno v ACLU, 521 U.S. \_\_\_, 117 S.Ct 2329(1997)***

The protection of children from exposure to obscene and harmful material is a matter of “compelling” and “surpassing” state interest.

***Ginsberg v New York, 390 U.S. 629(1968)***

The court ruled that it was constitutionally permissible to accord to minors a more restricted right than that assured to adults to judge and determine for themselves what sexual material they may read or see, and that such restrictions do not invade the area of freedom of expression constitutionally secured to minors.

In addition, the Supreme Court has uniformly ruled that governmental regulations may also act to facilitate parental control over children’s access to sexually explicit material. The majority of the court adopted the legal position that societal availability of pornography erodes public standards of morality and this, in turn, affects all members of the community and in particular our children.

In closing, our society does not allow minors to exercise personal discretion over matters that are extremely harmful. Purchase and consumption of alcohol and tobacco are illegal throughout the United States. We do not allow minors to purchase pornography or to enter establishments where pornography is on prominent display. The public library should not allow minors to view material from which minors are banned in every other setting. It would be a sad day when the reputation of our Kansas libraries is that they are no longer a place of quietude, knowledge and beauty, but rather “the best place in town to view pornography at the taxpayers expense.” Library policy means nothing without enforcement. And enforcement will not occur until the library is held accountable. This is why I strongly encourage you to support HB2108.



**TOPEKA AND  
SHAWNEE COUNTY  
PUBLIC LIBRARY**

April 17, 2000

Mrs. Kim Borchers  
5521 NW Timber Edge Dr.  
Topeka, KS 66618

Dear Mrs. Borchers:

Thank you for your April 2, 2000, letter that you sent to Library Board Chairperson, Steve Schwarm. He has asked me to respond to your concerns about library policy and the Internet. In an earlier conversation with you, I believe you will recall that I outlined our plan to implement a "filtering" process for the computer stations to be located in the Youth Services department of the new Library. At this time, there are only two Internet access terminals in Youth Services, directly adjacent to the staff Information desk where they can be observed at all times. Currently, we are gathering information about filtering costs, and the variety of options available that will best meet our needs in the new Library.

We appreciate and share your concerns and we are attempting to develop policies that serve our Library patrons without violating First Amendment Rights, as you mentioned. In addition to filters in the Youth Services areas, there will be some terminals with limited access in Adult Public Services as well. By the time the first phase of new Library construction opens in December/January of 2000/2001, our Internet Policy will have been completed, and the filtering process begun.

The Library Board, Administration, and Staff are keenly aware of the problems that the Internet brings. As we discussed, there is no absolute way to completely filter all sites all of the time. New sites are created daily as old sites disappear from the Net. We encourage parents to take an active interest in working with their children and the Internet, use the Internet as opportunity to create and set expectations and standards and values to guide them, as we do at the library, to sites that are interesting, useful, and even fun. We are constantly attentive to the interests and needs of our young patrons. As I mentioned to you, we have been caring for youngsters at our library for over 130 years. We cannot assume parental responsibility for every child that uses the library, but we do encourage parents to visit the library, talk with the librarians, and ask to see how access to the Internet is managed here.

DAVID L. LEAMON, EXECUTIVE DIRECTOR  
ROBERT BANKS, DEPUTY DIRECTOR OF OPERATIONS  
NANCY E. WATKINS, DEPUTY DIRECTOR OF FINANCE  
1515 SW 10TH AVENUE, TOPEKA, KANSAS 66604-1374  
TELEPHONE 785 233 2040 FACSIMILE 785 233 2055

WWW.TSCPL.ORG

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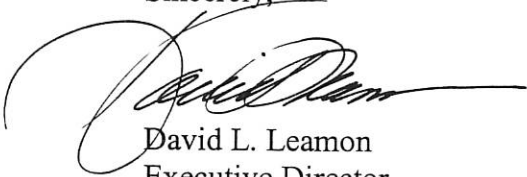
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Technology is changing daily at a pace that is nearly impossible to harness. We are in the business of serving our public, helping children to learn and grow in a nurturing environment, and attempting to present a contemporary, state-of-the art library service. Your interest helps to guide us and support us, and we appreciate that. Topeka and Shawnee County Residents have a long and proud tradition of library service.

Expectations have always been high and our service standards have supported community expectations. Thank you for taking the time to express your concerns and communicate with us.

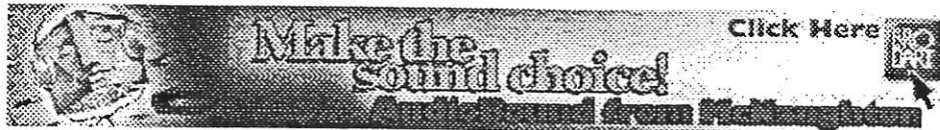
Sincerely,



David L. Leamon  
Executive Director

cc: Mayor Joan Wagnon  
Steve Schwarm, Board Chairperson  
Rep. Becky Hutchins  
Commissioner Mike Meier  
Bruce Henriksen

*Post Staffroom*



**LIBRARY JOURNAL**

VIEWS

# Editorial

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by John Berry, III

October 1, 1999

## We "Protect" Free Expression

*If your library is not "unsafe," it probably isn't doing its job*

"Little shops of subversion" is what Father Timothy Healy called the Branch Libraries of the New York Public Library more than a decade ago, when he was appointed to preside over that great institution.

Healy would have enjoyed the New York Public Library's designation as one of the "Ten Most Unsafe Public Libraries for Children" by propagandists for filtering the Internet and their allies on society's religious fringes. A decade or more before Healy, critic John Ciardi called the public library "the most dangerous place in town." So it is no surprise that the New York Public Library and nine of the very best libraries in America are, of course, considered "unsafe" for children by the censorious disciples of the religious right.

In case you are wondering, the other libraries targeted in this latest assault are the public libraries of Los Angeles; St. Louis; Denver; Multnomah County, OR; Sonoma County, CA; San Francisco; San Antonio; Seattle; and Chicago. Considering the list, it is obvious that few, if any, good American public libraries will escape these extremist labels.

One of the reasons these libraries share that honor is that they all have very similar policies about free expression. They all warn, like good libraries anywhere, that the library "does not limit access to materials or attempt to protect users." Most of the "unsafe" club and most other good libraries assert that "parents or legal guardians must assume responsibility for deciding what library resources are appropriate for their own children."

That is, after all, the American way. You don't tell my kid what to read, see, and hear, and I won't tell your kid. As a parent, I'll try to

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provide any protection my child needs, and you do the same for yours.

No matter how you look at it, what the profiltering crowd wants is for government to intervene, to dictate what children can read, see, or hear. That is the stuff of totalitarianism. That is the stuff of government control, and in our society we founded libraries for the opposite reason. Libraries, like our Bill of Rights, are an important protection in our society. But it is not the protection against ideas that the filtering crowd and the religious right seek to impose. Libraries, like our Bill of Rights, protect the ideas from government interference with them.

Only in America do we have a government agency to go with our huge body of law to protect us from the excesses of government. That same agency and law protect us from religious oppression and from the control of ideas by central authorities, whether they are religious censors, government agents, or ideological true believers.

That means that like its libraries, our whole society is "unsafe." You can't escape free expression in America, whether it is political, sexual, or blasphemous. The censors and religious true believers will never understand that. The top priority here in America, the very first item in our Bill of Rights, is free expression. That means a lot of people can express a lot of very hostile and unpleasant ideas. We don't trust the government, the churches, the schools, or any other institutions to put limits on that freedom. We sure as hell don't entrust that protective duty to some machine. Our government, including its libraries, is prohibited by law from intervening in our free expression.

So be proud if your library happens to be among those designated one of the "~~Ten Most Unsafe Public Libraries for Children.~~" It must be doing its job: protecting free expression by providing it in all formats and media for all people. If the profiltering folks want to "protect" their kids from that freedom, they'll have to do it themselves.

If your library is not among the "Ten Most Unsafe," take a closer look. It may not be doing all it should be to "protect" free expression where you live.



Go to [Editorial](#) archive.

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**FEDERAL AND STATE AFFAIRS COMMITTEE of the House of Representatives**  
**Representative Doug Mays, Chairperson**  
**Representative Becky Hutchins, Vice-Chairperson**  
**Representative Rick Rehorn, Ranking Minority Member**

February 6, 2001  
House Bill 2108

Statement from Duane Johnson, State Librarian, Room 343, Capitol Building.

Mr. Chairman and members of the committee,

Thank you for the opportunity to speak to you today.

Very respectfully, I am speaking in opposition to House Bill 2108.

The removal the "affirmative defense" to prosecution that the bill proposes would be a dramatically threatening action against library boards and library employees. The negative effect would be significant. The people's library service would be seriously affected by the loss of qualified and effective people who would no longer choose to govern and work in this service.

Kansas library service is good because high quality people choose to accept appointment and give their time and skills in the governing of this education service. I have the highest admiration and appreciation for the library trustees and the employees who would be directly and negatively affected by the action of House Bill 2108.

The action proposed would affect all 324 public library boards with 2,275 volunteer board members, and approximately 3,200 library employees. All of these would be left open to the potential of a criminal charge for the availability of information some of which from time to time is controversial to some people. Library boards use good judgment, but even the judgment of the Supreme Court of the United States cannot provide a clear and firm definition of acceptability.

With the removal of the affirmative defense, any charge brought would require an expensive legal defense. The criminal classification of the charge would require the defense to be a personal liability. Any library board member or employee would be personally responsible for the financial requirements of defense of a charge. Short of a criminal charge, this would create an increased potential for harassment of library officials over the issue of a controversial item of information.

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Library boards throughout this state are made up of effective, responsible people, representing a cross section of each community. They create and direct the policy for a education service about which there is continuing study and debate to identify the norms of acceptability. Library boards are operating very well and in the interests of all of the people of their community. There is no problem with Kansas libraries that would require or justify the action directed by House Bill 2108.

With sensitivity for the diverse interests of children and adults and with understanding for the information needs of all people, library boards are operating your libraries very carefully and very well. In serving such diversity, it is impossible to avoid all controversy. Even with the occasional debate over acceptability, library boards are operating as they should and with sensitivity and care.

Nevertheless, with the threat of criminal charge, with the threat of financial ruin, and with the potential for harassment, the circumstance of liability that House Bill 23108 would create would make it impossible for a prudent individual to accept appointment to a library board.

I respectfully urge you not to endorse this bill to the Legislature.

Thank you for the opportunity to speak to the committee. I'll do my best to respond to your questions.

Duane Johnson  
State Library  
Capitol Building, Third Floor  
785-296-3296                      duanej@ink.org

GOOD AFTERNOON: MY NAME IS DAVID LEAMON, AND I AM THE DIRECTOR OF THE TOPEKA & SHAWNEE COUNTY PUBLIC LIBRARY.

I AM HERE TODAY TO EXPRESS MY CONCERN AND OPPOSITION FOR HB-2108, AND THE AMENDING OF EXISTING STATUTES KSA 21-4301a AND 21-4301c.

I HAVE BEEN ACTIVELY INVOLVED IN LIBRARY WORK FOR THE PAST 30 YEARS AND EXECUTIVE DIRECTOR OF THE TOPEKA AND SHAWNEE COUNTY PUBLIC LIBRARY FOR THE PAST 9. OUR LIBRARY IN TOPEKA HAS BEEN SERVING THE PUBLIC FOR OVER 130 YEARS, TEACHING, NURTURING, GUIDING, AND HELPING CHILDREN AND ADULTS IN OUR COMMUNITY.

LIBRARIES OFTEN REFLECT THE HEART AND SOUL OF A COMMUNITY. THEY UNDERTAKE AN ENORMOUS RESPONSIBILITY FOR PROVIDING ACCESS TO CURRENT INFORMATION AND RESOURCES.

THE GOVERNING BOARD OF EVERY LIBRARY I'VE EVER BEEN INVOLVED WITH HAS CREATED POLICIES THAT PROVIDE GUIDANCE TO STAFF AND TO THE PUBLIC REGARDING HOW WE SERVE CHILDREN AND YOUTH. NEVER HAVE I SEEN EVIDENCE THAT THE LIBRARY STAFF HAVE DISREGARDED POLICY OR COMMON SENSE BY PROMOTING OBSCENITY TO MINORS.

SHOULD SUCH LEGISLATION AS DESCRIBED IN HB-2108 EVER BE PUT

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INTO EFFECT, I BELIEVE IT WOULD AKIN TO THE McCARTHY ERA—NOT ACCUSING PEOPLE OF BEING COMMUNIST, BUT INSTEAD ACCUSING INNOCENT PEOPLE, -- LIBRARY TRUSTEES AND LIBRARY STAFF-- OF PROMOTING OBSCENITY TO MINORS. FOR 130 YEARS OUR LIBRARY HAS TAKEN A SUCCESSFUL LEADERSHIP ROLE WITH CHILDREN. WE CLEARLY STATE THAT CHILDREN ARE OUR NUMBER 1 PRIORITY! THE CONSEQUENCES OF SUCH A LAW AS HB-2108 WOULD BE DEVASTATING TO US AND TO THE COMMUNITY. SUCH A LAW WOULD CONFIRM IN THE MINDS OF MANY PEOPLE THAT THE LIBRARY, ITS STAFF, AND THE TRUSTEES WHO GOVERN THEM SHOULD BE SUBJECT TO CRIMINAL PROSECUTION. LEGISLATION CREATED ON A WHIM, WITHOUT A SIGNIFICANT BASE OF INFORMATION CONFIRMING THAT THE PROBLEM IS RAMPANT, AND BEING ACHIEVED BASED UPON A "HE SAID, SHE SAID," PROBABLE SINGLE INCIDENT, SHOULD BE FULLY EXAMINED TO GAIN ALL OF THE FACTS BEFORING BEING ENACTED AS A LAW.

LIBRARIES HAVE ALWAYS EXISTED AND WILL CONTINUE TO EXIST IN THE BEST INTEREST OF THE PUBLIC. THE PUBLIC INTEREST IN KANSAS WILL NOT BE SERVED BY THE ENACTMENT OF THIS BILL. I URGE OPPOSITION FOR HB-2108. THANK YOU

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Date 2/6/2001  
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Kansas Library Association • Hutchinson Public Library

901 N. Main • Hutchinson, KS 67501 • (316) - 663 - 5441

Testimony before the  
House Federal and State Affairs Committee  
Tuesday, February 6, 2001 concerning HB2108

Good afternoon. Members of the Committee, staff and others, thank you for the opportunity to testify before you. I am Ellen Miller, 8128 Westgate Drive, Lenexa, 66215. I am president of the Kansas Library Trustee Association, which has 518 members statewide.

House Bill 2108 proposes amendments to current Kansas state law concerning minors and obscenity. HB 2108 is deeply flawed on four counts:

- #1. Any library user or community member who believes he/she has found an obscene item in a child's book, audio tape or other materials could file criminal charges against library staff and/or a library trustee. People differ greatly on what "obscene" means.
- #2. Combating criminal charges would require:
  - Time to gather records, prepare reports. The majority of our state's 324 public libraries have four or fewer staff. In many cases, not even the head librarian is a full-time employee.
  - Unexpected expenses for attorneys, court fees and overtime. This is potentially devastating since 39% of our public libraries have TOTAL local income of less than \$8,000/year. (That covers books, utilities, salaries, supplies, everything).
- #3. It removes the affirmative defense of our state's 2,100 library trustees. We volunteers would be liable to criminal charges, greatly chilling the interest of potential and current trustees in serving our communities.
- #4. This harsh bill appears to single out libraries in a punitive manner. None of the three other categories having affirmative defense are changed.

On behalf of the Kansas Library Trustee Association, I urge you to vote "No" concerning HB 2108. Thank you for your attention to this important matter.

P.S. Phone is 913-888-9029; fax is 913-894-0147. I'm happy to discuss this anytime, anywhere.

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State Affairs

Date 2/6/2001

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# Kansas Library Association

**Executive Office**  
**901 North Main Street**  
**Hutchinson, Kansas 67501**

**Legislative Committee**  
**3300 Clinton Parkway Court**  
**Lawrence, Kansas 66047**  
**Email: jminges@nekls.lib.ks.us**

Testimony before the  
 House Federal and State Affairs Committee  
 Tuesday, February 6, 2001 concerning HB2108

Good afternoon. Thank you for the opportunity to testify before you. I am Jim Minges, Legislative Chair of the Kansas Library Association, and Director of the Northeast Kansas Library System. On behalf of the 324 Kansas public libraries, the Kansas Library Association is opposed to House Bill 2108. I would particularly like to express the problems that this bill would create for the libraries serving small and medium size communities throughout Kansas.

1. Those libraries operate with very limited funding. The success of their services is due in large part to the dedication of librarians who work for very limited salary, and library boards who receive none. These are very serious and dedicated individuals who devote themselves to their obligation to provide a balanced collection representing the interests of their community. The selection of library materials and policies for their use are in good hands with local library boards. However well intentioned, this bill to strip protection from criminal prosecution away from those boards is unnecessary and dangerous.
2. There is a broad range of opinion about what is obscene or harmful. This proposed bill would leave every public library open to criminal charges filed by any person who disagrees with the contents of certain books or magazines.
3. Even if the library were easily able to demonstrate its innocence it would be at risk of incurring major expenses for legal defense. Over 39% of libraries operate on tax income of less than \$8,000, and over 50% have incomes below \$15,000. They would be financially helpless in the face of any such criminal prosecution.
4. HB 2108 would have a chilling effect on selection of library materials. Libraries would be pressured to strictly censor their collections for fear of criminal prosecution. Free inquiry is the very purpose of the public library, and this bill would undercut that freedom.
5. Worse, many volunteer library trustees might be unwilling to continue in those positions if they are in jeopardy of criminal prosecution for performing in good faith their duty to provide a balanced collection dealing with a wide range of issues. The very reasonable fear of legal fees, fines, bonds and potentially a felony conviction would persuade many fine trustees not to volunteer their time and efforts.

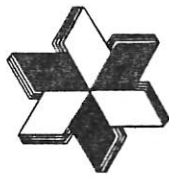
I urge the committee vote against HB 2108. Thank you for your consideration.

House Fed. &  
 State Affairs

Date 2/6/2001

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WICHITA PUBLIC LIBRARY  
The Discovery Center

Testimony Concerning HB2108  
Before the House Committee on Federal and State Affairs

My name is Cynthia Berner Harris, Director of Libraries for the City of Wichita. I come before you today on behalf of the City of Wichita as well as the members of our Library Board of Directors and Friends of the Library Board of Governors in opposition of the changes proposed in HB2108.

The Wichita Public Library takes seriously its mission of addressing the information needs of children and adults and providing equitable access to information for the citizens of the greater Wichita area. To accomplish this mission we provide materials in print, non-print and electronic formats. Additions to our materials collection are guided by a collection development policy. Each type of material is considered in terms of its own excellence and the audience for whom it is intended. Some materials are judged primarily in terms of artistic merit, scholarship or value to humanity. Others are selected to satisfy the informational, recreational or educational interests of our diverse community. The Library strives to provide a collection that embraces a wide range of ages, interests, cultural and educational backgrounds and reading skills, and collects materials that reflect a variety of viewpoints on controversial issues. We recognize that any given item in our collection may be of concern to one or more of our customers. Without anticipated approval or disapproval, selections are made solely on the merits of items in relation to the building of our collection and to serving the interests of our customers. We encourage parents to be involved in their children's choice of library items and offer whatever assistance we can to help parents identify library materials that they deem appropriate for their children's use.

As you might expect, the category of information that is most rapidly increasing in interest and use by our customers is our electronic information. We have offered public access to the Internet since January of 1997. Through the generosity of the Bill and Melinda Gates Foundation, public access workstations within our libraries more than doubled last year, allowing us to make electronic information and access to remote databases more widely available to all areas of our community.

From the very beginning of our decision to include electronic information in our service mix, customer access to that information has been governed by strict acceptable use policies and procedures. On two occasions during that past four years, the Board of Directors has made revisions to the Library's Acceptable Use Policy to clarify expectations about what is and is not appropriate use of our electronic resources. The policy currently states that the Library "does not monitor an individual's use of any site except when material displayed on the screen is not appropriate in a public environment."

The Wichita Public Library does not use filtering software on its public access workstations because we believe that the best way to encourage responsible use of our resources is through education, not through restriction. To that end, our employees maintain a web site of what we believe are some of the best resources about the subjects most commonly requested by our customers. Our "Kid's Web" page includes search engines that index age-appropriate resources for children. Our employees are trained in the parental control options available within the search engines and portals we list on our web pages and are always willing to assist customers who choose to make use of these features. Just as with our

print and media collections, we encourage parents to be involved with their children's access to the Internet and we provide parents with the option of restricting library Internet access for their minor children. Since the opening of our Technology Training Center last October, library staff have presented dozens of training sessions instructing customers on the best ways to make effective, efficient and responsible use of our electronic resources. The evaluations we receive at the end of each training session -- and the increasing number of waiting lists for available spaces in these sessions -- tell us that our approach is one that appeals to our library's clientele.

I share these details with you because I want you to understand how seriously our library system takes its duty to balance our responsibilities for providing information services to a diverse community with the desire of some customers to avoid inadvertent exposure to materials with which they may disagree or take offense.

Do our policies and procedures ensure beyond any shadow of doubt that a customer cannot or will not attempt to view inappropriate materials from within our facilities? Regrettably, no. But does our staff promptly address each and every abuse of our acceptable use policies that is brought to our attention so as to minimize the effect of that misuse for other library customers? Absolutely.

The Board of Directors of the Wichita Public Library is facing many significant issues. Creative ways must be found to alleviate the shortages of collections, staff, space and hours of operation we offer in comparison to state standards for library service. Our branch library system must be realigned to provide more equitable delivery of services to all areas of our growing community. We must continue to aggressively seek partnerships to help deliver information services beyond the walls of our library facilities. To successfully address these issues, our Library relies upon high caliber community volunteers who are willing to serve on our Board of Directors. Removing the affirmative defense to prosecution for library employees and trustees as proposed in HB2108 will make recruitment of new board members difficult, if not impossible. The potential for private action should a customer question an item in the Library's collection seems unreasonably great. Current board members tell me that most people will be unwilling to place themselves in the position of being open to criminal charges by anyone who might apply an expansive definition of obscenity to library materials. In addition, the change will likely force significant if not total reductions in our electronic information services. There is no fool-proof way we can ensure that computer users will not be able to access information of the kind you intend to discourage short of removing the computer workstations and electronic access altogether. It has the potential of doing the same for our book, magazine, cassette, CD and video collections as well.

Our library takes great care to create and deliver high quality programs and services to our customers. Do not prosecute us for activities of library customers that fall outside our library policy and procedures. We urge you to oppose this initiative.



Cynthia Berner Harris  
Director of Libraries  
Wichita Public Library

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Date 2/6/2001

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