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CLN Board Majority
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Dear Trustees Hanley, Plass, and Ottosen,

I have had an opportunity to review the updated draft policies as posted in advance of your upcoming special meeting of November 2nd. This letter is written in response to the same and is submitted to you in my professional capacity as an attorney. By way of brief background, I graduated law school with high honors and was third in my class of 101 law students. I sat for and passed 2 state bar exams (Idaho and Washington) consecutively following graduation. I also served as the Editor in Chief of the Law Review and am currently the President Elect of the Idaho Trial Lawyers Association. I provide this overview of my professional qualifications so that you can appreciate I write to you in that vein and with pure motives and intentions. I hold no personal animus against you over the partisan manner in which you campaigned for your seats. Rather, I am and continue to be a staunch supporter of libraries and the role they play in our communities.

Toward that end, this letter constitutes notice that your current undertaking is ill-advised and undoubtedly will subject the Community Library Network to litigation. As my last correspondence outlined, government action must have a legitimate purpose. Given that the Board of Trustees last updated the Materials Selection Policy on November 4, 2022, the Board lacks any rationale for its current review and proposed wide-ranging revisions. From what I can surmise from the meetings you have held since June, 2023, neither the Board nor Staff have identified any problem associated with the existing policy. In fact, the Board Chair has clearly departed from *decades* of established procedure by unilaterally adding the materials selection policy to the agenda. Not once in the past 5 months have any of you stated in a public meeting a reason for its inclusion on the agenda. Strikingly, every other agenda item has come from the Library Director or from the Board *by consensus*. Please enlighten me on what date it was discussed in an open session the purpose for revisiting this policy less than a year after its adoption.

Chair Ottosen will no doubt recall her request (which was joined by Trustee Robinson) to take up the materials selection policy following her swearing in (in 2021). While it could not immediately be placed on the agenda due to other pending matters, then sitting Chair Blank brought the issue to the attention of the full Board and advised that, per its terms, the Materials Selection policy is subject to review triennially. The Board then agreed by consensus to conduct this time-based review, the result of which incorporated the legislature's concern about harmful materials, and the updated Materials Selection Policy included the following sweeping limitation—

Materials for minors under the age of eighteen (18) that violate Idaho Codes 18-1513, 18-1514, and 18-1515 will be excluded from the juvenile and young adult collections.

A few short months thereafter the Board also adopted the Library Cards for Minors Policy. This policy complements the Materials Selection Policy by providing a tool for parents desiring to filter the content accessible to their children. Virtually all complaints voiced by members of the public concerned materials classified as young adult. The then-existing age range for books in this category was between 13 to 18, which span is quite broad given differences in maturity levels in tweens compared to older teenagers. The policy adopted in March 2023 modified the classifications entirely and created a new Teen collection, designated and suitable for ages 13 – 15. Families wishing to avoid young adult material can now choose a limiting tier, i.e., books appropriate for 15 year olds and younger.

Together these two policies promote a practical and workable solution to a problem. The prior Board identified the problem (protecting minors from harmful materials) and crafted policies specifically designed to address and remedy it. The prior Board had a legitimate government interest to shield *children* from being exposed to pornographic and/or overtly sexually explicit content. The prior Board then acted within appropriate due process boundaries by directly connecting the changes made to CLN policies to accomplishing the stated objective. Implementing the Library Cards for Minors policy has brought about **dramatic** changes to CLN's operation, which is why library staff needed several months to implement it fully.

In contrast to the deliberative and fully transparent process adhered to by the prior Board, you three have recklessly forged ahead with modifying the Materials Selection Policy (on your own with absolutely no input from staff) without ever expressly identifying what problem you are trying to solve. This writing represents the **third** time I have brought what can only be termed a blatant and intentional omission to your attention. Mr. Boyles cautioned you appropriately at the October 19, 2023 meeting by prefacing his legal advice with the comment, **"If we do change these policies . . ."** (2:24:52). Moreover, he advised against post hoc justifications for policy changes. (2:25:35). Simply put, your motives (and the very manner in which this policy appeared on the agenda) remain hidden and obviously suspect when Director Eccles has attempted to get other policies on the agenda for review to no avail. *E.g.*, Public Records

and Retention Schedule (last reviewed in 2012), Member Confidentiality (last reviewed in 2016), Long Range Planning, and a Facilities Master Plan.¹

In case you were unaware, let this letter be the final reminder you need that all formulations of policy (including the bases and reasons therefore) must be carried out publicly:

74-201. FORMATION OF PUBLIC POLICY AT OPEN MEETINGS. The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

In conclusion, I have chosen not to expound on the many, glaring constitutional deficiencies contained in the proposed drafts, i.e., Hanley's Materials Selection Policy, draft dated 11/2/23 and Hanley's Materials Withdraw and Reconsideration Policy. I have, however, contacted organizations with both the means and the appetite to seek judicial review of any policy attempting to suppress information and ideas or constituting a prior restraint of speech.

Respectfully,

OWENS, McCREA & LINS COTT, PLLC



REGINA McCREA

cc: Colton Boyles
Alexa Eccles
Vanessa Robinson
Katie Blank

¹ Each of these policies are much more pressing and do not implicate trustees' personal agendas.