

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU



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MEMORANDUM

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TO: Katherine Orr
Montana State Library

FROM: Madison Mattioli
Agency Legal Counsel

RE: Freedom to Read Statement

DATE: October 31, 2022

MEMORANDUM

This memo will identify key legal principles in support of the Library's proposed Freedom to Read statement.

As the American Library Association proscribes in its Library Bill of Rights, "[a] person's right to use a library should not be denied or abridged because of origin, age, background, or views." The United States Supreme Court has held that children and young adults unquestionably possess First Amendment rights, including the right to receive information through the library in print, sound, images, data, social media, online applications, games, technologies, programming, and other formats. *Brown v. Entertainment Merchant's Association, et al.*, 564 U.S. 08-1448 (2011).

The Montana Constitution also provides that, "[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

Mont. Const., Art. II § 15. Because Montana law does not restrict a minor’s use of a library, minors have the right to use a library just as an adult would. The legislative history of the adoption of Article II, section 15, indicates that legislators were concerned about affording minors “the same constitutional standards of fairness and due process” rights that adults possess, although none of the testimony specifically mentions the first amendment or access to libraries.

The “except where specifically provided by law” statement was intended to cover only laws on the books that “protect and enhance” the individual minor, such as driving laws or alcohol consumption laws. The comments to the Bill of Rights Committee proposal indicate that exceptions can be made on “clear showing that protection is being enhanced.”

The ALA endorses the proposition that, “[c]onstitutionally protected speech cannot be suppressed solely to protect children or young adults from ideas or images a legislative body believes to be unsuitable for them.”¹ Cited in support of this statement, *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975) states that, “[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them. In most circumstances, the values protected by the First Amendment are no less applicable when government seeks to control the flow of information to minors.” See also *Tinker v. Des Moines School Dist.*, 393 U.S.503 (1969); *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943); *AAMA v. Kendrick*, 244 F.3d 572 (7th Cir. 2001).

CONCLUSION

The Freedom to Read statement accurately states legal principles related to the first and fourteenth amendments. The statement also falls in line with the American Library Association’s Bill of Rights and related statements. Because Montana law does not restrict any minor’s use of the library to enhance their protection, the library cannot restrict their access to use the library in all ways adults would. This analysis does not include confidentiality of library materials, which must remain confidential unless a parent financially responsible for the child’s library card requests a list of overdue materials.

¹ Access to Library Resources and Services for Minors: An Interpretation of the Library Bill of Rights, <https://www.ala.org/advocacy/intfreedom/librarybill/interpretations/minors>.