

September 28, 2026

Daniel Shults
Arkansas Department of Education
Four Capitol Mall
Little Rock, AR 72201
Sent via email to ADE.RulesComments@ade.arkansas.gov



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Steven Barger
President

Holly Dickson
Executive Director

John Williams
Legal Director

Re: Revision to Proposed Rule 13 CAR § 4-109 (Library Resources)

Dear Mr. Shults:

The Arkansas Civil Liberties Union is a non-partisan, non-profit organization dedicated to preserving and defending the civil liberties guaranteed to all Arkansans under the U.S. and Arkansas Constitutions and civil rights laws. We write concerning the State Library's revision to the above-referenced proposed rule. The ACLU of Arkansas commented on the earlier version of this proposed rule. While the revision appears to correct one problem that the ACLU identified, the proposed rule remains problematic because it continues to condition state library funding on restriction of constitutionally protected materials.

The revision continues to be objectionable as a matter of First Amendment law because of its extraordinarily broad definition of "sexually explicit" works. As a condition of state funding, the rule restricts access to any material that "contains images or description of" sexual acts, sexual contact, or human genitalia. Materials that depict or describe sexual acts, sexual contact, and human genitalia are protected under the First Amendment unless they meet the legal definition of obscenity. It should go without saying that many works of fiction and nonfiction address sexuality and the physical body. There likely are many materials in Arkansas public libraries that fit the definition of "sexually explicit" in the proposed rule. But few of those works rise to the level of obscenity (even accounting for how the definition of obscenity is applied to children).

We appreciate that the State Library has proposed to amend the requirement in the initial proposed rule that libraries not "knowingly promote or advertise sexually explicit materials." That requirement would

have prevented libraries from (for example) recommending books that depict sex or from advertising a talk by an author of a book that mentions genitalia. As revised, the proposed rule would now preclude a library from “knowingly includ[ing] sexually explicit materials in promotions or advertisements.” As we read this amendment, a public library will not lose its funding if it recommends books that depict sex or advertises a talk by an author of a book that mentions genitalia. Rather, the promotion or advertisement may not itself contain descriptions of sex or genitalia. Assuming we are reading this as the State Library intends, this is a reasonable rule that does not unduly restrict speech or access to constitutionally protected materials.¹

We continue to be concerned by the other restrictions in the rule: that the library place all “sexually explicit materials” in an adult section and that the library require parental consent for patrons under 16 to check out “sexually explicit materials” or “materials designated for adult readers by the publisher.” Though the revision now says that libraries must take “reasonable steps” toward these aims, rather than achieving them without fail, we do not view this change as meaningful. Libraries are still required to either restrict access to constitutionally protected material or lose funding. As we wrote in our initial comment, these rules would burden an excessive amount of material that is constitutionally protected as to juveniles. *See Shipley, Inc. v. Long*, 454 F. Supp. 2d 819, 829–30 (E.D. Ark. 2004) (holding that a statute that fails to distinguish between younger and more mature minors “effectively stifles the access of . . . older minors to communications and material that they are entitled to receive and review”); *Counts v. Cedarville School District*, 295 F. Supp. 2d 996, 1002 (W.D. Ark. 2003) (holding unconstitutional a policy that imposed “the stigmatizing effect of having to have parental permission to check out a book”).

Finally, we would like to address the Eighth Circuit’s recent decision in *Fayetteville Public Library v. Crawford County*, 183 F.4th 1020 (8th Cir. 2026), concerning Arkansas Act 372. That law precludes libraries from “furnishing a harmful item to a minor.” The court found that the plaintiffs challenging Act 372 had not made an adequate showing that the statute

¹ If the State Library intends this provision as a broader restriction than what we articulate above, it should further revise the rule for clarity. In that event, the ACLU might continue to object to this provision on constitutional grounds.

was overbroad—*i.e.*, that it restricts an unacceptable amount of constitutionally protected material. While plaintiffs are seeking additional review of that decision, the ruling, even if it stands, does not clear a constitutional path for the State Library’s proposed rule. Act 372 concerns only materials that are “harmful to minors”—a category of speech that is carefully defined. *See* Ark. Code Ann. § 5-68-501(2). Speech that is “harmful to minors” is not constitutionally protected for minors. By contrast, the proposed rule sweeps in a vast amount of material that *is* constitutionally protected for minors—a book is not “harmful to minors” simply because it is “sexually explicit” as the proposed rule defines that term. The proposed rule creates a constitutional problem of a different order by burdening minors’ access to a vast array of constitutionally protected materials.

In sum, while the revised version of the proposed rule appears to contain some improvements, the proposed rule continues to be overbroad and continues to present serious First Amendment problems. You should continue to narrow the restrictions in the proposed rule (though scrapping it altogether is the better course). Otherwise, the State Library and public libraries that implement the rule run the risk of litigation.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Williams", with a stylized, cursive script.

John Williams