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May 19, 2023

Mr. John D. Miller  
Lapeer County Prosecuting Attorney  
255 Clay Street  
Lapeer, Michigan 48446-2205

re: Amy Churchill/Lapeer District Library

Dear Mr. Miller:

I represent Amy Churchill, the librarian of the Lapeer District Library. I have been retained as her attorney, in cooperation with the ACLU of Michigan, regarding the accusations you have leveled against her in connection with her duties as that librarian, and specifically in connection with the library's collection including an award-winning book entitled *Gender Queer: A Memoir*, by Maia Kobabe. These accusations have absolutely no support in the law, contravene the First Amendment, and violate your ethical duties as a prosecuting attorney.

Yesterday, following a complete review including opportunity for public comment, the Lapeer District Library's board of trustees voted to uphold Ms. Churchill's decision to keep *Gender Queer* in the library's collection. I strongly urge you to respect that decision and allow the Library to continue serving the public without further action, threats, or public comment from your office.

**I. Including *Gender Queer* in the Public Library's Collection Is Not a Crime Under Michigan Law.**

In a series of public statements beginning in March 2023, you have accused Ms. Churchill, either implicitly or explicitly, of committing crimes in connection with the Library's inclusion of *Gender Queer* in its collection. Specifically, you opined or implied that by authorizing *Gender Queer* to be on the Library's shelves, Ms. Churchill has violated Michigan's laws against dissemination of sexually explicit materials to minors and/or against enticing minors to engage in unlawful sexual activity. You also have suggested that drawings in the book are the equivalent of child sexual abusive materials (CSAM), commonly referred to as child pornography. These accusations are simply, and demonstrably, untrue.

Taking them in turn:

- MCL 722.675 proscribes knowingly providing sexually explicit matter that is harmful to minors. However, MCL 722.676 contains express exceptions from the proscriptions in 722.675. In addition to parents, teachers, and health care providers, excepted is "[a] librarian . . . employed by a public library, who disseminates sexually explicit matter in

the course of that person's employment." MCL 722.676(d). Therefore, putting aside whether anything in *Gender Queer* could possibly meet the statutory definition of sexually explicit matter that is harmful to minors, there is no basis to accuse Ms. Churchill, a public librarian, of violating the law in this fashion by shelving *Gender Queer*.

- MCL 750.145a proscribes "accost[ing], entic[ing], or solicit[ing] a child less than 16 years old" to engage in sexual activity "with the intent to induce or force" that child to do so. Libraries of any size house a plethora of books that discuss, describe, or allude to sex or sexuality as part of the ordinary human condition. *Gender Queer* is one of those books. By shelving that book or any other, they cannot conceivably be accused of accosting, enticing, or soliciting minors to engage in that activity, let alone providing those books with the specific intent of inducing or forcing a minor to engage in that activity. Again, there is no basis for accusing Ms. Churchill of potential criminal exposure under MCL 750.145a.
- MCL 750.145c proscribes possessing or distributing "child sexually abusive material" (CSAM). However, as you conceded at a public meeting on March 16, 2023, CSAM in this specific context requires the use of "an actual person under the age of 18." *Gender Queer* consists entirely of cartoon illustrations and thus does not show "actual persons," just like other books on sex and sexuality do not show "actual persons," and therefore the library having this book in its collection doesn't even come close to violating CSAM proscriptions. Your suggestions that having *Gender Queer* in the library's collection even approaches proscriptions against CSAM is, again, baseless and does a gross injustice to innocent librarians just doing their jobs.

## II. Prosecuting a Librarian for Lending *Gender Queer* Would Violate the First Amendment.

In addition to not being authorized under Michigan law, any criminal prosecution based on *Gender Queer* would violate the First Amendment to the United States Constitution. "As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245 (2002). In *Miller v. California*, 413 U.S. 15 (1973), the Supreme Court limited obscenity prosecutions to "works which depict or describe sexual conduct," *id.* at 24, and held that in such cases the state is required to prove beyond a reasonable doubt "that the work, *taken as a whole*, [1] appeals to the prurient interest, [2] is patently offensive in light of community standards, and [3] lack serious literary, artistic, political, or scientific value," *Ashcroft*, 535 U.S. at 246 (emphasis added). All three of the above requirements must be met. *Id.* And by requiring a work to be "taken as a whole," *Miller* prohibits the state from using a few scenes or pages from a film or book, taken in isolation and divorced from their context, to remove a work from First Amendment protection. *Id.* at 248.

Applying the *Miller* test here, it is obvious *Gender Queer* is not obscene, either as to adults or, as defined under MCL 722.674, for minors. *Gender Queer* has been approved for school libraries and has won numerous mainstream literary awards, including a prize from the American Library Association specifically designed for teen readers; its serious literary merit, both for adults and for

teens, is beyond question. Nor is it credible to contend that *Gender Queer*, taken as a whole, appeals to the “prurient interests” of adults or minors, as even its harshest critics can identify only a few pages out of its 240 that depict anything remotely sexual. And even in light of varying community standards, this serious and moving personal memoir of a person coming to terms with their sexuality and gender identity could not be genuinely described, taken as a whole, as “patently offensive.”

The First Amendment would also prohibit any prosecution based on your allegation that *Gender Queer* contains illustrated depictions of a minor engaged in sexual activity, on grounds that it involves “child sexually abusive material,” or child pornography. As the Supreme Court has explained, outside of material that meets the legal definition of obscenity, the state’s only legitimate interest in prohibiting visual depictions of sex acts by a minor is in preventing the victimization or exploitation of an actual minor who is being photographed or filmed. Accordingly, depictions of adult actors who are portraying minors, or—as relevant here—mere illustrations or “virtual” depictions of minors, are protected by the First Amendment and cannot be criminalized. *Ashcroft*, 535 U.S. at 249-51. *Gender Queer* obviously did not involve the photography or filming of any minors; it consists entirely of hand-made drawings to illustrate the memoirs of the author. Therefore, the First Amendment bars any prosecution here.

### **III. It Is Unethical to Use the Office of the Prosecuting Attorney to Push for the Removal of *Gender Queer* from the Public Library.**

Also troubling are your statements that leveraged your office as the Lapeer County Prosecuting Attorney in publicly accusing Ms. Churchill of wrongdoing. First, you were reported to have said that Ms. Churchill and other employees or officials of the Lapeer District Library could be violating MCL 750.145a by having *Gender Queer* on the Library’s shelves. (Bridge Magazine, “*Michigan prosecutor mulls charging Lapeer library over LGBTQ book*,” 3/13/23.) You were quoted in that same article as having the “hope that is not the outcome of this . . . . I want this to come to a conclusion [that would] remove the book from the library.” I am sure you can appreciate how menacing and coercive a statement such as this one, from the chief law enforcement officer of the county, would feel to Ms. Churchill, its target. Essentially, you were saying, “I think Ms. Churchill is committing the felony of accosting, enticing, or soliciting a child by approving this book in the Library’s collection. But if the Library would only remove the book, I’ll forgive the transgression.”

Second, at a public hearing on March 16, 2023, you spoke in public comment, introducing yourself as “John Miller, Prosecuting Attorney.” You claimed that the statements attributed to you four days earlier were “taken out of context,” but went on to say “I appear here tonight as the prosecuting attorney for Lapeer County and as the advocate for children everywhere.” You went on to excoriate the Library and, by association, its director Ms. Churchill, of endangering children by having *Gender Queer* in the Library’s collection. You further went on to say that, as part of your duty to protect children from child exploitation and to “educate Lapeer County citizens on complying with the laws of the State of Michigan,” including about “books that encourage children to engage in sexual acts when they are not the legal age.” You went on essentially to equate *Gender Queer* with CSAM (even while acknowledging that it wasn’t), and then further suggested that it depicted child abuse in various forms. You further asserted that the book was inappropriate to be in the Library because it “clearly exploits the sexuality of children.” (Mlive, “Controversial LGBTQ+ memoir the subject of heated Lapeer library meeting,” embedded video of John Miller, 3/17/23).

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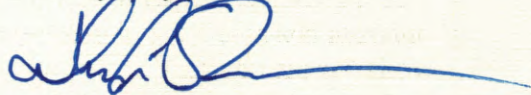
The Michigan Rules of Professional Conduct govern the conduct of prosecutors in certain respects. MRPC 3.6(a)(4) proscribes a prosecutor uttering “any opinion as to the guilt or innocence of a defendant or suspect” in a criminal case. In Ms. Churchill’s case, your statements described above, collectively and sometimes even standing alone, constitute your personal indictment of Ms. Churchill in criminal activity involving offenses against minors. They are well beyond the pale defined by MRPC 3.6(a)(4).

Of course, you are entitled to your own personal opinions about *Gender Queer* or any other literary work, as part of the individual rights and autonomy that all of us share in our capacity as private citizens. However, it is wholly inappropriate, and an abuse of your office, to throw those individual opinions around with the endowed weight of the office of Lapeer County’s chief law enforcement official, as you have done by threatening prosecution in the media and introducing yourself by your title in public settings before speaking on the matter. And you are not allowed to express your opinion as the Lapeer County Prosecuting Attorney of the innocence or guilt of Ms. Churchill or anyone else in Lapeer County as to any offense that you claim to have jurisdiction to prosecute, which you have done either explicitly or implicitly on numerous occasions.

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For the reasons set forth above, I hope you will agree that there is no legal basis for you or anyone in your office to continue investigating this matter, explicitly or implicitly threatening to prosecute Ms. Churchill, or using the power or title of your office to suggest that Ms. Churchill, by including *Gender Queer* in the public library’s collection, is violating any law. Should you wish to discuss this matter, or if you do not intend to cease and desist from using your office to pursue it, please contact me at my office number above, or by email at [jashea@earthlink.net](mailto:jashea@earthlink.net).

Very truly yours,



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Cooperating Attorney, American Civil  
Liberties Union Fund of Michigan

cc: Amy Churchill  
Daniel S. Korobkin, Legal Director, ACLU of Michigan  
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Attorney General Dana Nessel