

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BARBARA ANN WILSON,)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	CV-10-KOB-2386
CITY OF BIRMINGHAM, et al.,)	
Defendants.)	

**SECOND MOTION TO DISMISS DEFENDANT
THE BIRMINGHAM PUBLIC LIBRARY FOUNDATION WITH
SUPPORTING AFFIDAVIT**

The Defendant, the Birmingham Public Library Foundation (“Foundation”), in the above styled case, by and through its Attorneys of Record, pursuant to Rule 12 of the Federal Rules of Civil Procedure, moves the Honorable Court to enter an Order dismissing the Defendant, the Birmingham Public Library Foundation, from the above styled case and in support states as follows:

1. The Complaint fails to state a claim against this Defendant upon which relief may be granted.
2. The management and control of the Birmingham Public Library, its branches, its employees, property and all other library interest is vested in the Birmingham Library Board. The Birmingham Library Board, in turn, hires an Executive

Director. Birmingham City Code Section 2-5-71, et. al. (*Exh. 1- Affidavit*)

3. The Foundation is an independent 501C-3 tax-exempt, nonprofit association that solicits donations for the Birmingham Public Library. The Foundation is not a legal entity, department or agency operating under the authority and control of the City of Birmingham. The Foundation plays no role in the management or policy of the Birmingham Public Library, its branches, its employees, property and other library interest. The Birmingham Public Library Foundation did not make policy decisions regarding the library and the matters as alleged in the Complaint. The Birmingham Public Library Foundation is not the employer of the Plaintiff, Ms. Barbara Wilson. (*Exh. 1- Affidavit*)

WHEREFORE PREMISES CONSIDERED, the Defendant, the Birmingham Public Library Foundation, respectfully requests this Honorable Court pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss with prejudice the Birmingham Public Library Foundation as a Defendant from the above styled case.

Respectfully submitted,

/s/Fredric L. Fullerton, II
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Assistant City Attorney

/s/Nicole E. King
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NO ORAL ARGUMENT REQUESTED

The Defendant does not request oral argument on this motion however, if the Court grants such, the Defendant wishes to participate.

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2010 I electronically filed the foregoing with the Clerk of the Court using the e-filing system which will send notification of such filing to the following:

Adam P. Morel, Esq.,
517 Beacon Parkway West
Birmingham, AL. 35209

/s/Fredric L. Fullerton, II
Of Counsel