

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

BARBARA ANN WILSON,)	
)	
)	2:10-cv-02386-KOB
Plaintiff,)	
)	
v.)	
)	
THE CITY OF BIRMINGHAM;)	
et al.,)	
)	
Defendants.)	

**PLAINTIFF’S RESPONSE IN OPPOSITION TO
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

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The Plaintiff submits this response in opposition to the Defendant's Motion for Summary Judgment. For the reasons set forth, the Motion should be denied.

RESPONSE TO DEFENDANT'S STATEMENT OF FACTS

The Plaintiff (hereinafter "Ms. Wilson") disputes or makes clarification of the following facts cited by the Defendants:

7. Admitted with clarification. The Birmingham Library Board has admitted it is an entity created pursuant to *Birmingham City Code Section 2-5-71*, et al. and subject to suit in this Court. (Answer of Defendant Birmingham Library Board to Amended Complaint)
9. Admitted in part, denied in part, with clarification. Ms. Wilson also alleges that she has been personally subjected to various sexually hostile acts by patrons because of her sex, including sexually impermissible touching, comments and gestures. (Complaint, paragraphs 18-20; Affidavit of Barbara Wilson; EEOC Charge)
10. Denied. Ms. Wilson alleges the Defendants, through their respective management and security personnel's failure to adequately address the situation, created and/or allowed an unlawful sexually hostile work environment to exist. (Complaint; Wilson Affidavit; Wilson Depo., p.

39-41, 50, 52, 53, 54, 58, 60-61, 63)

11. Denied. Ms. Wilson alleges she was in a hostile sexual environment based on more than three reported incidents. For instance, she testified she would make written reports “On occasion, but not – if I wrote a report each time it happened...I wouldn’t have time to work.” Ms. Wilson alleges dozens of occasions when sexually hostile actions of various types were directed toward her. (Complaint; Wilson Affidavit; Wilson Depo., p. 63; See also paragraphs 15-25, below)
14. Denied. Ms. Wilson has testified, “Patrons are allowed to look at whatever they would like. If they wanted to override a particular website, like with chat or whatever, if they request it, we are to override [the internet policy].” (Wilson Depo., p. 39-40)
15. Clarification provided. The library has used filtration software in an unsuccessful attempt to stop access to such web sites. (Wilson Depo., p. 36, 39-40, 63; EEOC Charge)
16. Clarification provided. The library has never had a camera on the third floor (where Ms. Wilson worked) able to photograph or record the area where the computers are located. (Lee Depo., p. 22)

UNDISPUTED FACTS

Ms. Wilson's Employment

1. The Birmingham Public Library Board (hereinafter "the Board") is a legal entity created pursuant to *Birmingham City Code Section 2-5-71*, et al. and subject to suit in this Court. (Answer of Defendant Birmingham Library Board to Amended Complaint)
2. The City of Birmingham (hereinafter "the City") owns the assets of the library. (Blaylock Depo., p. 41)
3. The Board controls the assets and operates the downtown branch of the library. (Id.; Answer of Defendant Birmingham Library Board to Amended Complaint)
4. The City of Birmingham pays Ms. Wilson for her work at the library and provides all benefits. (Blaylock at 46-47.)
5. The City of Birmingham handles FMLA and Workers Compensation matters for Ms. Wilson and other employees working at the library. (Id. at 48)
6. According to the Board, it employs Ms. Wilson. (Answer of Defendant Birmingham Library Board to Amended Complaint)
7. The funding for operation of the library comes from the City of

Birmingham. (Blaylock at 40)

8. Ms Wilson is subject to the rules and policies set forth in the Employee Handbook/Personnel Handbook for the City of Birmingham. (Lollar Depo., p. 20-21)
9. Ms. Wilson is subject to the City of Birmingham's Safety Rules. (Id. at 21)
10. The City of Birmingham keeps a personnel file on Ms. Wilson. (Id. at 23)
11. The Board has the statutory authority "to provide rules and regulations for its own governance, [and] the governance of its officials and employees...." (*Birmingham City Code Section 2-5-73*)
12. Ms. Wilson has testified she is employed by both the City and the library. (Wilson at 103)
13. Library Director Irene Blaylock, the Board's corporate representative in this case, agrees that both the City of Birmingham and the Board have a duty to protect Ms. Wilson from a sexually hostile work environment. (Blaylock at 49-50)
14. Regarding what Ms. Wilson and other employees should have to deal with, Director Blaylock testified "...the last thing we wanted was for our

staff to have to be confronted by really unpleasant stuff...Whether it's legal or not, it's not – you know, that's not our standard.” (Blaylock at 92)

The Frequency of Sexually Hostile Actions

15. During the course of her employment by the City and the Board, Ms. Wilson has been subjected to numerous unwelcome, offensive sexually charged acts by library patrons. (Wilson Affidavit, para. 2_ ; EEOC Charge; Wilson Depo., p. 36, 63, 68-92)
16. The first time Ms. Wilson was subjected to unwelcome, offensive sexually charged conduct by a patron while at work was in the fall of 2002, shortly after she began working at the library. (Wilson Affidavit, para. 30) During the first several years she worked at the library, patrons made sexual comments about her body such as “You have some big titties,” “You have a nice ass” and “Look at you just shaking that ass.” (Id.) Patrons also looked at pornography on the computers on a daily basis. (Id.) She was also required to print pornographic pictures at the request of patrons and when she complained to her department head, she was told “If they pay for the printing, you have to print it.” (Id.)

17. During the 180 day period from April 10, 2009, until she filed her EEOC Charge on October 7, 2009, Ms. Wilson was subjected to unwelcome and offensive, sexually charged comments, touchings or gestures by library patrons while at work many times. (Id., para. 4) She was subjected to pornography on computers on a daily basis. (Id.) She was subjected to patrons fondling or masturbating their genitals on at least two occasions. (Id.) Patrons made advances on her, asking her out on dates dozens of times. (Id.) She had one patron rub up against her buttocks with his erect penis. (Id.) Other patrons would come in and stare at her. (Id.)
18. After she filed her EEOC Charge, Ms. Wilson continued to be subjected to unwelcome, offensive sexually charged conduct by patrons, right up until she had to leave work because of how it affected her in late November, 2010. (Id., para. 5) She continued to be subjected to pornography on the computers on a daily basis. (Id.) She also was asked out by patrons on a regular basis. (Id.) One patron made comments about how nice her body was and then asked her out. (Id.) When she declined, he grabbed Ms. Wilson's hand and tried to hold her so that she could not move. (Id.) One patron came in almost every day

for several months and sat at a desk near her desk and stared at her. (Id.) He had been kicked out one day and then returned the very next day. (Id.) He also followed Ms. Wilson from floor to floor. (Id.) On one occasion, a patron told Ms. Wilson “You have pretty lips.” (Id.) Another told her “I want to paint your face” with a nasty look on his face. (Id.) In approximately June of 2010, a patron turned in his laptop to Ms. Wilson which still had pornographic images on the monitor. (Id.) He stood there and stared at Ms. Wilson as she looked at the laptop, even after she gave him his ID back. (Id.)

Comments and Advances Aside, The Pornography on Computers Was Also Directed at Ms. Wilson due to her Gender

19. On dozens of occasions, Ms. Wilson observed patrons who saw that she had seen pornographic pictures or video on the computers they were using. (Id., para. 6) In those instances, she regularly observed the patrons make eye contact with her, smile, and stare at her while continuing to look at the pornography. (Id.) It was clear to Ms. Wilson, those patrons enjoyed making her uncomfortable. (Id.)
20. As far as Ms. Wilson can remember with one exception, the pornographic sites which were accessed by male patrons in her presence

depicted only heterosexual sexual acts or nude pictures of females without depictions of males. (Id., para. 7) They did not include pictures or videos depicting males without females. (Id.) They included sites such as “watchmygf.com” and “teensexmania.com,” among many others. (Id.; Ex. 28, Blaylock Depo.)

21. Ms. Wilson has observed and made eye contact with patrons who saw that she had seen them masturbating or fondling their genitals. (Id., para. 8) In those instances, she observed the patrons make eye contact with her, smile, and stare at her while continuing to fondle themselves. (Id.)
22. Twenty or more times, male patrons have leered at Ms. Wilson and followed her around the library. (Id., para. 9) Several different patrons did this. (Id.) One in particular kept doing this during Ms. Wilson’s last year at the library. (Id.) He would say things like “When are we going to go out?” “Are you going to marry me?” and “Stop calling me a man-whore.” (Id.)
23. All of the sexually charged acts directed at Ms. Wilson or to which she was exposed during her employment were perpetrated by males. (Id., para. 10)

24. For most of her career, Ms. Wilson worked on the third floor of the downtown library eight hours a day, five days a week. (Id., para. 11) She never saw a patron continue to view pornography or masturbate after being caught engaging in that conduct by her male co-employees. (Id.)
25. Ms. Wilson has never seen any patron ask one of her male co-workers for a date, say sexually explicit things about their bodies, follow them around the library or touch them in any manner, let alone in the vicinity of their chest, buttocks or genitals. (Id., para. 12)

Ms. Wilson Reported the Sexual Harassment

26. Ms. Wilson verbally reported or complained about sexual misconduct directed at her or done in her presence to her Department Head, Barbara Clotfelter. (Clotfelter Depo., p. 21)
27. In addition to verbal reports, Ms. Wilson also made multiple written reports of sexual misconduct directed toward her. (Id. at 18-19; Blaylock at 263; Wilson at 72-73)¹
28. Ms. Wilson's written reports were made as early as January of 2007.

¹In July of 2008, Ms. Wilson had also provided a written report of a male patron exposing himself to a female patron. (Wilson at 68, 70-71.)

(Blaylock Depo., p. 223)

29. In one report, Ms. Wilson notified library management in January of 2010 that she was concerned about her safety due to one patron who sat across the desk from her for over five months staring at her. She further reported the patron had been escorted out of the library for sexual harassment once and the following day he was back in the library.

(Blaylock at 236-237)

30. Ms. Wilson also notified library security personnel “as she should.”

(Clotfelter at 19)

31. According to Ms. Clotfelter, a 29 year employee and Department Head for 21 years, Ms. Wilson always reported sexual misconduct the way she was supposed to. (Id., at 21)

32. Ms. Wilson also reported sexual harassment in a face to face meeting with Library Director Irene Blaylock and Library Personnel Director Edith Major. (Blaylock Depo., p. 58-59)

33. Ms. Wilson also reported sexual harassment in a face to face meeting with then-Associate Director Pam Lyons. (Id. at 61-62)

34. Director Blaylock admits that Ms. Wilson complained of sexual misconduct in the library for a long time prior to filing her EEOC

Charge. (Blaylock at 135)

35. Library Associate Director Angela Hall concedes library management had “a body of complaints...maybe ten in a year” from various people regarding patrons using library computers to view sexually inappropriate images. (Hall Depo., p. 89-90)

Library Management Admits Ms. Wilson’s Allegations of Sexual Misconduct are True

36. Associate Director and second in command Angela Hall, testified as follows:

Q. When asked under oath, “So when Ms. Wilson and Ms. Jackson say that there’s ongoing continuous sexual misconduct in the form of either looking at pornography by patrons on computers or at other times, masturbation or other types of aggressive behavior like following them around, those kinds of things, when they say that’s happening all the time, your testimony is you agree that the library is doing everything it can to try to address it, is that fair?”

A. I agree that it is happening to them.

(Hall Depo at. 52-53)

37. Hall further testified, “What is happening to them is not made up, is happening to them.” (Hall at 52)
38. Regional Coordinator and former Public Service Coordinator and third in command at the downtown library Sandra Lee testified that she is

familiar with the allegations Ms. Wilson is making in this lawsuit. When asked, “in terms of the things she says were going on in the library, you’re not disputing that they went on the way she describes them, correct?” she testified “No. It’s true I’m not disputing them.” (S. Lee Depo., p. 43-44)

39. Ms. Clotfelter told management in writing “We have many repeat offenders in the building every day. Why can’t we get them gone?” (Clotfelter at 65)
40. When asked whether and when she should have been made aware of one of Ms. Wilson’s written complaints regarding a patron who tried to rub up against her and then followed her, Director Blaylock responded “This is the kind of thing that happens in a public library all the time.” (Blaylock at 204)²

Management’s Response to Ms. Wilson

41. Ms. Clotfelter has testified under oath that, in a discussion about another incident reported by Ms. Wilson between herself, Ms. Wilson and Ms. Blaylock, Ms. Blaylock stated in Ms. Wilson’s presence, “If you don’t

²Blaylock then changed her testimony, stating an incident in which the same man did the same thing three times should have been “put out” and that kind of thing does not happen all the time.” (Blaylock at 204)

like it, leave.” (Clotfelter at 43, 45-48)³

42. Ms. Lee also testified she has heard Director Blaylock tell employees “If you don’t like it leave” more than three or four times when the topic was sexual misconduct. (S. Lee at 46-48)
43. Ms. Clotfelter further testified that Ms. Lee has also said to Ms. Wilson and other employees who had complaints about sexual misconduct or other patron behavior in the library “If you don’t like it leave.” (Clotfelter at 36.)
44. The prior Director, Ms. Sirmans also told employees “If you don’t like it leave.” (Clotfelter at 35) According to Ms. Lee, Sirmans said this on more than half a dozen occasions. (S. Lee at 47)

Did the Defendant’s Adequately Address the Problem?

45. Since November of 2008, Edith Major has been the Board’s chief Personnel Officer and highest ranking Human Resources Officer. (Major Depo., p. 7-8, 13)
46. Among other things⁴, Ms. Major is responsible for compliance with EEO

³When asked about the statement, Ms. Blaylock testified “I have no idea who said that. It wasn’t me. I can tell you that.” (Blaylock at 179-180)

⁴Ms. Major is also responsible for personnel needs, payroll, and interpretation of policies and procedures. (Major at 7-8)

issues for the entire Birmingham Library System which has over 280 employees spread across 17 branches around Birmingham. (Major at 7-8, 12, 24)

47. Ms. Major is also responsible for making sure complaints of sexual harassment are properly addressed. (Major at 23)
48. Other than a few days in the past year, she has been the only person in the Human Resources Department and she has never had more than one other person to assist her. (Major at 10-11)
49. Ms. Major does not believe the Human Resources Department has been provided with the resources it needs to actually do the job that needs to be done. (Id. at 26)
50. Ms. Major was never made aware of any of the verbal or written complaints of sexual misconduct made by Ms. Wilson prior to October of 2009 when she filed her EEOC Charge. (Major at 13-14)
51. Although she expects to be brought into the loop when an employee is alleging sexual misconduct at work, she never was until after Ms. Wilson filed her charge in October 2009. (Major at 15)
52. Ms. Major has never conducted an investigation of any of Ms. Wilson's claims of sexual misconduct in the library. (Id. at 17) She testifies, she

should have investigated the complaints, had she known about them.
(Id.)

53. Ms. Major has testified one of the ways the library is obligated to address issues of sexual misconduct is through the actions of the Security Department. (Id. at 24)
54. Ms. Major admits she has had a romantic relationship with Mike Lee, the Chief of Security, from 2008 through the present.
55. Ms. Clotfelter has testified that there were times when there were not many security guards around and that “There may be times where you might not see anyone for awhile.” (Clotfelter at 61)
56. Ms. Wilson testified there is usually a time lapse before security will show up after they are called “...and then they look at you with their eyes rolled.” (Wilson at 61)
57. Ms. Clotfelter told then-Associate Director Pam Lyons “I think we have two problems, security and computers. The feeling is, security won’t do anything and it is a waste of time to call them.....We have never been given any other options other than remove yourself from the situation that makes you uncomfortable and call security.” (Blaylock Depo., p. 174, 176; Ex. 11).

58. Ms. Clotfelter also reported to management, in writing, that her “staff reports that our guards are as guilty of making inappropriate comments as the patrons.” (Id., at 63)
59. If Ms. Clotfelter thought her staff reports, which she admits may have been made by Ms. Wilson or Karen Jackson, were false, she would not have passed their concerns up to management. (Clotfelter at 59)
60. Associate Director Angela Hall claims it is the policy of the Board that any allegation of sexual misconduct made by an employee is investigated. (Hall at 15)
61. Ms. Lee, as Public Service Coordinator and a member of the Administration, never investigated to determine whether security guards were part of the problem and is not aware of anyone that did. (S. Lee at 67)
62. Ms. Clotfelter never investigated her staff’s concerns about the security department, nor did anyone else ever follow up with her on it. (Clotfelter at 64-65)
63. Ms. Hall, as Associate Director, is responsible for supervising the Security Department. (Hall at 14, 18)
64. Ms. Hall never investigated the reports, or even went to Ms. Clotfelter

to ask who was making the report and which guards engaged in what questionable conduct. (Hall at 75)

65. Mr. Lee says he asked then Associate Director Pam Lyons who was reporting that his guards were part of the problem and which guards were involved but she never got back to him. (Lee at 51-55)
66. Director Blaylock claims she investigated the matter but that there is no documentation of it. (Blaylock at 187)
67. Ms. Blaylock considers it a significant problem for staff to perceive that security officers themselves are engaged in making inappropriate comments. (Blaylock at 200)
68. However, Ms. Blaylock admitted under oath, she never even asked anyone which guards had engaged in inappropriate conduct. (Blaylock at 187, 192)
69. According to Chief Lee, there has never been an investigation of the Security Department. (Lee Depo., p. 58)
70. Ms. Lee testifies former Director Ms. Sirmans “did not let us take action about specific patrons or people that we knew were having - were doing certain things that were illegal....improper at least....sexual.” (Lee at 48)
Lee recounted one example in which “we had identified at least one

gentleman that we knew was masturbating during - in the library, that we could not ban from the library. We were able to move him out of certain areas of the library but they wouldn't let us remove him from the library permanently." (S. Lee at 49)⁵

71. Mr. Lee has been Chief of Security since 2001. (Lee at 31) The Department consists of five full time guards, all of whom have been there since Lee arrived in 2001. (Id.)
72. Mr. Lee admits more security manpower is needed. (Id. at 12)
73. Prior to January of 2011, library computers were dispersed around the East building in the different departments. (Lee at 18) Lee concedes it is hard to have a security presence when all the computers are spread out. (Id.) The more centralized the computers, the easier it is to maintain a security presence. (Id.)
74. Mr. Lee testifies that if you have a security presence around the computers, assuming they are all centralized, can assist in better addressing sexual misconduct with the computers. (Id. at 19)
75. Not until January 2011, were the computers were brought together in a centralized location on the third floor now called the Computer

⁵Ms. Blaylock replaced Ms. Sirmans as Director in June of 2009. (Blaylock at 78-79)

Commons. (Lee at 17-18)

76. One purpose of the moving the computers to a centralized location was to allow assignment of a security guard to stay in the area of the computers on a more regular basis. (Hall at 85-86) The Computer Commons also allows Ms. Wilson and other librarians to have reduced exposure to the computers. (Id. at 88)
77. In January 2011, for the first time, a security officer was actually assigned to patrol that area which acts as a deterrent against illicit conduct. (Hall at 97-99)
78. There has never been a security camera that was able to take a visual of the computer area on the third floor, even after the Computer Commons was implemented. (Lee at 22)
79. Mr. Lee believes it would assist with security if he had a camera with a view of the computer area. (Lee at 26)
80. Mr. Lee believes, when it comes to management's support of his department in connection with addressing sexual misconduct in the library, "maybe the technology got ahead of them..." (Lee at 29)
81. Library management brought in Warren Graham, a security expert, in January and again in October of 2009. (Blaylock at 73, 80)

82. Graham worked with security on sexual harassment matters. (Blaylock at 194)
83. Graham did a workshop with Security and also made a presentation with the entire staff of employees. (Blaylock at 81) According to Blaylock, “We were trying to, you know, figure out better ways of maintaining order in the library.” (Id. at 79)
84. Chief of Security Lee has testified, bringing in Mr. Graham was a waste of time. (Lee at 75)
85. Mr. Lee testified “...the fact that they’re bringing in somebody who was mall security, I had a problem with that, me personally. Me personally.” (Lee at 72)
86. Mr. Lee made jokes during Mr. Graham’s presentation to the rest of the employees. (Lee at 77)
87. Ms. Clotfelter wrote management a memorandum stating “...part of yesterday’s session with Warren Graham and Mike Lee was like a pissing match.” (Clotfelter at 51) Clotfelter testified security’s response to Mr. Graham was “disrespectful” with an “undercurrent” of “murmuring” the whole time he was giving his presentation. (Id. at 55)
88. Ms. Lee says Mr. Graham was “very proactive...and address situations

head on...put particular procedures in place that would give you the ability to address the situation with a track record of incidents...” (S. Lee at 64-65)

89. According to Ms. Lee, Chief of Security Mike Lee “did not adhere to the same philosophy, I don’t think, that Warren Graham presented when he came.” (Id. at 64)
90. Ms. Lee’s impression is that Mr. Lee was skeptical about the sexual harassment complaints being made by library employees and that “it influenced the other security guards and their approach to how to handle the complaints and the situations they encountered. (S. Lee at 62)
91. Until November of 2010, there was existed no official or written policy or guidelines regarding when a patron should or could be banned. (Lee at 88)
92. There is no way to keep track of which patrons have been banned from the library - it is helter skelter. Mr. Lee says you just “try to remember. Try to remember.” (Lee at 96, 98)
93. Mr. Lee testified two different studies were done by outside organizations of security at the downtown library but that he was never provided with them and has never seen them. (Lee at 106)

94. Ms. Lee, however, says when it comes to the manner or results of the Security Departments efforts, “it was very difficult to get any kind of specific information from [Mr. Lee]. (S. Lee at 63-64)
95. Ms. Lee concedes “They were probably not as effective. I don’t think they were trained very well in how to handle [sexual misconduct in the library]....they didn’t know how to handle it.” (S. Lee at 39)
96. Ms. Hall is responsible for making certain that the Security Department receives needed training. (Hall at 19)
97. Ms. Hall says she was worried about both the perception and the reality regarding the Security Department. (Hall at 79) She wants to do more training for security guards. (Hall at 77)
98. Ms. Hall concedes that “referring to this particular case....that if documentation has been presented, that there’s a problem it may not have been acted on appropriately.” (Hall at 83).
99. Ms. Hall concludes that training of security is one area that may not have been acted on appropriately. (Hall at 83)
100. Ms. Lee testifies that, ultimately, the responsibility for ensuring security is trained lies with the Director or the Board. (S. Lee at 41)
101. According to Ms. Lee, library Administration has not been as supportive

as it should have been to the Security Department in connection with handling sexual misconduct in the library. (S. Lee at 77-78)

102. Director Blaylock: “I felt like we had not done an adequate job of training all staff in handling people...” (Blalock at 79-80)
103. When asked if she ever considered that security was not doing its job properly, Ms. Blaylock testified “Yes. I did. And that’s one reason we tried to get more training for the security.” (Blaylock at 226)
104. Ms. Blaylock says the library generated a Customer Service Handbook but that it did not get into the hands of the staff until November of 2010 “...because we were inefficient and ineffective in getting it done.” (Blaylock at 81-82)
105. Until December of 2010 or January of 2011, there has never been a security office located in any way that is visible to the patrons. (Blaylock at 94-95)
106. There has never been security present in a stationary spot in a place where it was clear to patrons that was anywhere near the computers. (Blaylock at 97-98)
107. None of the computers have privacy screens. (Blaylock at 102)
108. There is no signage to inform patrons what is expected of them or what

the guidelines are. (Blaylock at 103)

109. The general rules are not posted by the computers. (Blaylock at 104)
110. There has never been a sign near the computers of any kind, and no sign informing patrons that the library will cooperate with law enforcement if they engage in public display of unlawful pornography. (Blaylock at 246)
111. Patrons can log onto library computers without a library card or providing their name. (Wilson at 39, 54)
112. Patrons were allowed to stay all day and move from computer to computer accessing the internet without a time limit and many did that. (Clotfelter at 50-51)
113. Ms. Clotfelter believes setting a time limit on how long patrons can use the computers would “move people along.” (Clotfelter at 50)
114. Once when Ms. Clotfelter and Ms. Wilson both saw a patron in their department with his hands in his pants, Ms. Clotfelter said to Ms. Wilson something “similar to” “Maybe if we stand up and look at him, he’ll take the hint and leave.” (Clotfelter at 68-69)
115. Pursuant to library policy, patrons can look at whatever they like. If they ask override a particular website, the librarian has to override it.

(Wilson at 39-40)

116. When patrons ask a librarian who has logged them off of a computer to log them back on, the librarian must do so. (Wilson at 53-54)
117. Dave Ryan is a Computer Services Liaison (CSL) for the library. (Ryan Depo., p. 83-84) CSLs received formal training and were responsible for going out and ensuring staff was implementing computer technology. (Blaylock at 252)
118. According to Mr. Ryan, Cybrarynet was not used for dealing with patrons using computers for viewing pornography - he used it for people who were listening to music too loudly based on guidelines provided by the Administration. (Ryan Depo., p. 83-84)
119. CybraryNet had no message concerning objectionable websites or pornography. (Wilson at 50, 52)
120. On November 1, 2010, Ms. Blaylock sent an email to the staff acknowledging that staff might be misinformed regarding how to use CybraryNet to shut down patron computers. (Blaylock at 248-250)
121. According to Department Head Clotfelter, up until October of 2009 (the same month Ms. Wilson filed her EEOC Charge), no one from Administration had instructed her to use CybraryNet to send messages

to patrons on their computers. (Clotfelter at 32)

122. As a result, Ms. Clotfelter wrote an email to management on October 30, 2009, stating “And, no, we haven’t been sending messages with CybraryNet...” (Id.)
123. When Ms. Lee received monthly reports from employees, she did not always read them during the same month; she would usually be a month or two behind. (S. Lee at 201-11) She admits it is problematic that an employee’s reports of sexual harassment might not be read by her until much later, after the fact. (Id. at 27)
124. There was a period of time when Ms. Wilson’s monthly reports were never being passed along to the next person in the chain of command, the Associate Director. (S. Lee at 27) Ms. Lee and the Director have had many discussions about “the need better communication.” (Id. at 79)
125. Ms. Hall admits that before March of 2011, the Associate Directors did not get employees’ monthly reports. (Hall at 22) Up to that time, there was no requirement for the Public Service Coordinators to send the reports up the chain to the Associate Director. (Id. at 24) The monthly reports did not and still do not go to the Director either, nor is there

presently any requirement they be sent to her, according to the Director.

(Blaylock at 134, 138)

126. Issues like reports of sexual misconduct were not brought to Ms. Hall's attention until this case was filed. (Hall at 29)
127. Director Blaylock was never made aware of any complaint made by Ms. Wilson about sexual misconduct in the library until Ms. Wilson until September of 2009. (Blaylock at 62)
128. Even after making multiple complaints that the library was not addressing the public display of pornography on its computers, for several months, Ms. Wilson was required to check laptops which were returned by patrons after they had checked them out for use for a history of pornographic web sites. (Clotfelter at 70; Wilson Affidavit, para. 13). She and other employees were told to check for and make a note of any pornographic sites which were accessed, so the IT department could add those sites to the filter. (Id.) In order to do this, there were times when the only way to tell what the nature of the sites accessed was, was to look at the content of the site itself and be exposed again to pornography. (Id.)
129. Ms. Lee admits Ms. Wilson performed this function and that the

Administration could have used other options for checking the histories and that it was inappropriate to ask Ms. Wilson to do it given that she had been complaining for a long time about being offended by that very topic. (S. Lee at 95)

130. Ms. Wilson complained many times about the sexually hostile work environment but nothing changed. (Wilson Affidavit, para. 14) Management made it very clear to her they did not care about the problem and she felt she was the one being blamed. (Id.) One time when Ms. Wilson made another report of the problem, Ms. Blaylock told her to “Get over it and stop living in the past.” (Id.) Ms. Blaylock told Ms. Wilson several times “If you don’t like it, leave.” (Id.) Former Director Ms. Sirman and Ms. Lee also said the same thing to her. (Id.) Ms. Wilson testifies that attitude was part of the culture of the library. (Id.)

The Board’s Highest Members of Library Administration Admit Failures

131. When asked if she agreed that the Birmingham Public Library has *not* done as good a job as it should have, *or could have*, to protect Ms. Wilson from a sexually hostile work environment, Ms. Lee responded

under oath “For the most part. Yes.” (S. Lee at 75)

132. Associate Director Hall admits she told Ms. Wilson and Ms. Jackson when discussing harassing behavior in the library, “It’s been a lot of years of things not happening as it should.” (Hall at 48) Further, Ms. Hall admits she was telling the truth when she made that statement, testifying in her own words “Based on the litigation that was presented to us, and this conversation was a direct response to all of that. Yes.” (Id. at 48-49) She does not disavow it now. (Id. at 49)
133. Ms. Blaylock admits “none of us was were [sic] doing everything that we could do.” (Blaylock at 227)

Argument

The Defendants appears to make five arguments in support of their Motion for Summary Judgement: (1) that the Board is not a separate legal entity and not subject to suit; (2) that certain of the actions Ms. Wilson alleges are time barred because they occurred more than 180 days from the date she filed her EEOC Charge; (3) that the harassment was not based on Ms. Wilson’s sex; (4) that the harassment was not severe and pervasive and (5) that they had policies in effect to adequately address the sexual harassment. Each of the Defendants’ arguments fails.

The Board is a Legal Entity Subject to Suit

The Plaintiff's *Amended Complaint* alleges the following at paragraph 7:

“Defendant, Birmingham Library Board, is an entity created by *Birmingham City Code Section 2-5-1*, et al. and is subject to suit in this Court. See *Amended Complaint*.

In paragraph 7 of its *Answer of Defendant Birmingham Library Board to Amended Complaint*, the Board contains the following language: “Defendant **admits** the averments contained in paragraph 7.” See *Answer of Defendant Birmingham Library Board to Amended Complaint*. (emphasis added)

The Board did not file any further amendment to its Answer.

None of the Actions Alleged by Ms. Wilson are Time-Barred

“A hostile work environment claim is comprised of a series of separate acts that collectively constitute one “unlawful employment practice.” ... It does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.” *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101, 122 S. Ct. 2061, 2074 (2002).

“Where an employee charges an employer with continuously maintaining any illegal employment practice, he may file a valid charge of discrimination based upon that illegal practice until 180 days after the last occurrence of an instance of that practice.” *Beavers v. American Cast Iron Pipe Co.*, 975 F.2d 792, 796 (11th Cir. 1992), (quoting *Gonzalez v. Firestone Tire & Rubber Co.*, 610 F.2d 241, 249 (5th Cir. 1980)).

Where the discriminatory acts constitute a “continuing violation,” a plaintiff may bring a suit on the basis of these acts so long as the “last occurrence of an instance of that practice” occurred within the 180-day window. *Id.*

The *Beavers* Court stated, “In determining whether an employer’s constitutes a continuing violation, therefore, we must distinguish between the “present consequence of a one-time violation,” which does not extend the limitations period, and the “continuation of the violation into the present,” which does. See *Webb v. Indiana National Bank*, 931 F.2d 434,438 (7th Cir. 1991)” *Beavers*, at 796.

“A hostile working environment claim is the quintessential continuing violation since it finds its basis in an ‘ongoing pattern of offensive conduct’.” *Lane v. Ogden Entertainment, Inc.*, 13 F. Supp. 2d 1261, 1272 (M.D. Ala. 1998).

Ms. Wilson has alleged and submitted substantial evidence of multiple actions of offensive, sexually charged actions directed at her due to her sex which occurred within 180 days of filing her charge: During the 180 day period from April 10, 2009, until she filed her EEOC Charge on October 7, 2009, Ms. Wilson was subjected to unwelcome and offensive, sexually charged comments, touchings or gestures by library patrons while at work many times. (Wilson Affidavit, para. 4) She was subjected to pornography on computers on a daily basis. (Id.) She was subjected to patrons fondling or masturbating their genitals on at least two occasions. (Id.) Patrons made advances on her, asking her out on dates dozens of times. (Id.) She had one patron rub up against her buttocks with his erect penis. (Id.) Other patrons would come in and stare at her. (Id.)

Ms. Wilson has also alleged and submitted substantial evidence of multiple actions of offensive, sexually charged actions directed at her due to her sex which occurred more than 180 days of filing her charge, as well as multiple such actions occurring after she filed her charge.

Simply put, Ms. Wilson has alleged more than one act contributing to the claim which occurred within the filing period,. As such, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.

Moreover, the actions alleged constitute an ongoing basis of similar, connected conduct. The conduct alleged to have occurred more than 180 days before she filed her charge involve the same type of discrimination and acts/ommissions - both from the standpoint of the patrons (making ongoing sexual advances on her, groping her, viewing pornography etc.) and from the standpoint of the Defendants (ongoing failure to take adequate measures to address the conduct regarding security failures in numbers, attitude and practices, lack of signage, lack of library card requirement to use computers, lack of training to staff on how to implement effective measures, lack of privacy screens, etc.).

Additionally, the pre- April 10, 2009 actions in question are not in the nature of isolated and discrete, stand-alone work assignments or personnel decisions but, rather, are recurring actions toward her by patrons and recurring failures to address the ongoing patterns of unlawful conduct by the Defendants.

In short, pre-April 10, 2009 incidents alleged by Ms. Wilson are not time-barred because she alleges at least one act contributing to her claim which falls within the 180 day statute of limitations period and because all of the acts, when viewed in their totality, collectively constitute an unlawful employment practice.

The Harassing Acts Were Based on Ms. Wilson's Sex

All of the acts alleged and demonstrated by substantial evidence by Ms. Wilson are sexual in nature. All the acts were perpetrated by males. None were perpetrated by females. None were perpetrated toward males.

Ms. Wilson has submitted evidence that male patrons made sexually charged comments about her body: "You have some big titties," "You have a nice ass," "Look at you just shaking that ass," and "You have pretty lips." "Another patron told her "I want to paint your face" with a nasty look on his face. Ms. Wilson has submitted evidence of being touched in sexual ways: One patron rubbed up against her buttocks with his erect penis. She has submitted evidence of being asked out on dates and being made the subject of other advances exclusively by male patrons.

Meanwhile, there is no evidence suggesting male employees were similarly the subject of sexual comments, touching or advances.

Ms. Wilson has submitted evidence that all of the pornography she was exposed to consisted of pornographic images of women being viewed by males, that the pornographic material involved heterosexual subject matter which depicted only women in degrading and pornographic ways (for example, see Ex.

28 to Blaylock Depo.).⁶ See *Asklar v. C.H. Robinson Worldwide, Inc.*, 2007 WL 7084789; *Carlson v. C. H. Robinson Worldwide, Inc.*, No. 02-3780 WL 758602, at **12 (D. Minn, March 21, 2005) (rejecting Defendant's argument that Plaintiffs' exposure to pornography did not constitute harassment based on sex where Plaintiffs stated that the pornography involved almost exclusively images of naked women and finding that such allegations demonstrated that the pornography objectified women and satisfied the “ ‘based on sex’ ” requirement).

Ms. Wilson has submitted evidence that male patrons after having displayed pornographic images on library computers, asking her to print the images and provide the printed images to them, which she was required to do by her Department Head.

Additionally, Ms. Wilson has submitted evidence from which a reasonable jury could find that the actions of patrons viewing nude females in pornographic acts or poses was directed at Ms. Wilson because of her sex as demonstrated by the behavior of the males who appeared to enjoy or desire to be “caught” by Ms. Wilson: On dozens of occasions, she observed patrons who saw that she had seen them masturbating or viewing pornographic images. In those instances, the

⁶It is thought to be beyond any reasonable dispute that these materials (which include images of very young women being subjected to hardcore sexual acts by older males, or multiple males, in various obscene poses, on websites with names such as seemy gf.com, as an example) are specifically degrading to women, in particular. (See Ex. 28 to Blaylock Depo.)

patrons regularly made eye contact with her, smiled, and stared at her while continuing to masturbate or look at the pornography. Ms. Wilson has testified, “It was clear they enjoyed making me uncomfortable.” (Wilson Affidavit, para. 6) Moreover, Ms. Wilson has testified none of this behavior appearing to be aimed at the librarian/enjoyment at being “caught” was ever exhibited by patrons toward male library employees - and no evidence exists disputing this fact.

Ms. Wilson has presented substantial evidence that the harassment she suffered was due to her sex.

The Harassment was Severe and Pervasive

Ms. Wilson has submitted substantial unrefuted evidence of severe harassment, which was both humiliating and physically threatening.

She was subjected to multiple sexual comments which are explicit in nature: “You have some big titties,” “You have a nice ass,” “Look at you just shaking that ass,” and “You have pretty lips,” “I want to paint your face”.

She has submitted evidence of aggressive, unwelcome touching: a male patron rubbed his erect penis against her buttocks, she was gripped by the hand by a male patron attempting to keep her from escaping his advances.

She has submitted evidence of being followed from floor to floor around the library by male patrons.

She has submitted evidence of male patrons smiling at her while masturbating in her presence.

She has submitted evidence of male patrons asking her out over and over again.

She has submitted evidence of male patrons repeatedly smiling at her and staring at her while sexually degrading images of nude women and girls in obscene poses and explicit, hard core sex acts are selected and made visible on computer screens in her presence in the form of both pictures and videos.

Ms. Wilson has submitted substantial unrefuted evidence the harassment was pervasive.

She has submitted evidence the harassment took place over a series of years.

She has submitted evidence the harassment took place on a daily basis.

She has submitted evidence that on dozens of occasions, she has had patrons who she “caught” viewing pornography, smile and stare at her as they continued to display the images.

She has submitted evidence of more than 20 occasions in which male patrons have followed her around the library while leering at her.

In addition to the above testimony, She has testified to at least ten specifically identifiable examples of sexual harassment directed toward her by male patrons.

She has submitted substantial evidence demonstrating multiple instances in which she reported sexually harassing incidents, whether verbally or in writing.

Critically, with the notable exception of the Director, the Defendants' own management team does not dispute Ms. Wilson's allegations regarding the nature of the sexual harassment. This includes the Defendants' Associate Director, Public Service Coordinator and Department Head. See paragraphs 36-39, above.

Ms. Wilson has demonstrated that the harassment directed at her was both severe and pervasive to the point it caused to her leave her job in November 2010.

The Defendants Failed to Adequately Address the Harassment

The record is rife with admissions by management at all levels that it failed to adequately address Ms. Wilson's repeated complaints of ongoing harassing acts. Among other things, the Defendants' management team has admitted under oath that it (1) failed to adequately communicate Ms. Wilson's complaints up the chain of command, (2) failed to adequately staff the security department; (3) failed to adequately train the security department; (4) failed to adequately train staff on how to use CybraryNet or otherwise deal with problem patrons; (5) failed to centralize

computers for more effective patrol and monitoring by security; (6) failed to put a video surveillance camera in the computer area; (7) failed to investigate claims of improper, sexually harassing conduct by their own security staff; (8) failed to protect Ms. Wilson from additional, unnecessary exposure to pornography by, instead, requiring her to view more of it by documenting patron's elicited behavior on the computers; and (9) operated under a one person Human Resources Department with responsibility for addressing sexual harassment and all other personnel issues for 280 employees in 17 branches across the city, while that person was in a long-term romantic relationship with the Chief of Security she was charged with overseeing. See paragraphs 45-129, above.

In addition, Ms. Wilson has submitted evidence that the Defendants employed a Chief of Security who openly mocked a "security expert" it brought in while he was in the midst of a sexual harassment presentation and in the presence of the whole library staff, failed to employ signage of any kind informing patrons of what constituted impermissible behavior and what its consequences would be, failed to install privacy screens on computer monitors, failed to timely respond to security calls, failed to have any guidelines for how or when a patron could be banned from the library, failed to have any system for memorializing which patrons had been banned and under what circumstances and failed, even to this

day, to enact measures to ensure all complaints of sexual harassment made in monthly reports submitted by staff members are provided to the Director. See paragraphs 45-129, above.

Instead, when Ms. Wilson complained about the sexual misconduct directed at her, both Public Service Coordinator Sandra Lee (third in command) and present Library Director Irene Blaylock told her, “If you don’t like it leave.” See paragraphs 41-43, above.⁷

When asked if she agreed that the Birmingham Public Library has *not* done as good a job as it should have, *or could have*, to protect Ms. Wilson from a sexually hostile work environment, Ms. Lee responded under oath “For the most part. Yes.” (S. Lee at 75)

Associate Director Hall admits she told Ms. Wilson and Ms. Jackson when discussing harassing behavior in the library, “It’s been a lot of years of things *not* happening as it should.” (Hall at 48) Further, Ms. Hall admits she was telling the truth when she made that statement, testifying in her own words “Based on the

⁷ Notably, the testimony describing these specific responses does not come solely from Ms. Wilson. The same testimony was given by Ms. Wilson’s Department Head Barbara Clotfelter, a 29 year employee and third in command Sandra Lee, both of whom are presently employed in management positions by the Defendants. Both Clotfelter and Lee testified former Director Sirmans made the same statements repeatedly.

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Ms. Blaylock admits “none of us was were [sic] doing everything that we could do.” (Blaylock at 227)

Ms. Wilson has submitted extensive and compelling evidence that the Defendants’ failed to adequately address her repeated complaints of sexual harassment.

Conclusion

The Defendants’ have failed to meet their burden under the standard for determining whether summary judgment is appropriate. In light of the breadth and depth of the evidence in the record, a reasonable jury could find that the Defendants’ have violated Ms. Wilson’s right under Title VII of the Civil Rights Act to be free from a sexually hostile working environment. As a result, their Motion for Summary Judgment should be denied.

Respectfully submitted,

s/Adam P. Morel

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

s/Adam P. Morel

OF COUNSEL