

1 Donald Williams  
44 1/2 S. Division Apt., 37  
2 Grand Rapids, MI., 49503

Honorable Robert Holmes Bell  
Chief United States District Judge

3  
4 ***In The United States District Court***  
5 ***For The Western District Of Michigan***  
6

7 Donald Williams,

) Case No.: 1:06-cv-635

8 Plaintiff,

) Motion For Summary Judgment

9 vs.

) **FILED - GR**

) July 12, 2007 9:17 AM

10 Grand Rapids Public Library,

) RONALD C. WESTON, SR., CLERK  
) U.S. DISTRICT COURT  
) WESTERN DISTRICT OF MICHIGAN  
BY:       Mc   

11 Defendant

12 **COMES NOW**, the Plaintiff Donald Williams, with his dispositive Motion For Summary  
13 Judgment.

14  
15 **I. MOTION FOR SUMMARY JUDGMENT**

16 **A. BRIEF**

17 **1. Statement Of The Case**

- 18  
19 1. Plaintiff claims Defendant's process or custom or policy and conduct and actions  
20 of banning or barring Plaintiff from public library facilities for viewing a nude  
21 picture purposefully, willfully and intentionally deprived Plaintiff Fourteenth  
22 Amendment Constitutional Right of due process and equal protection of the law  
23 to public library facilities. Defendant thereby subjecting Plaintiff to the deprivation  
24 of rights, privileges, immunities, goods, services, facilities, advantages and  
25 accommodations to public library facilities by persons clothed with the authority  
of state and local government purporting to act under color of law, statute,

1 ordinance, regulation; custom, policy or usage by an affirmative abuse of power  
2 without reasonable justification in any service of a legitimate governmental  
3 objective. Title 28 U.S.C.A. § 1331, 1332, 1343; Title 42 U.S.C.A. § 1983; Rev.  
4 Stat. § 1979; Const. Amend. 1, 4, 5, 8, 14 § 1; 42 U.S.C.A. § 2000a, 2000a(d),  
5 2000d; MCL 37.2302, MCL 600.2907.

6 2. The Defendant's implicitly authorized and approved a process or custom or  
7 policy that abridges Plaintiff Civil Rights and knowingly acquiesced in the  
8 unconstitutional conduct of the offending employee, Tim. The offending  
9 employees Tim's conduct was racially motivated, willful, intentional and  
10 purposeful, with malicious and callous indifference to Plaintiff and to Plaintiffs  
11 Civil Rights in both instances, on 09/21/05 and one or two weeks later. Plaintiff  
12 claims Grand Rapids Public Library (GRPL), Defendant, thereby causing Plaintiff  
13 to be subjected to:

14 a) Abridging Plaintiff's Civil Rights to public library by authorizing, approving  
15 and adopting a process or custom or policy to ban or bar Plaintiff from  
16 public library facilities for viewing a nude picture without reasonable  
17 justification in any service of a legitimate governmental objective. Where,  
18 Plaintiff is not locked out from public library facilities (Const. Amend. 14 §  
19 1). See Plaintiffs Motion To Amend Pleading, First Amended Complaint  
20 and Exhibit 1 and 2.

21 b) Defendant invaded the privacy of Plaintiff by unreasonably searching  
22 Plaintiff laptop computer, papers, pictures, and effects without due  
23 process and equal protection of the law. Plaintiff caught Tim standing  
24 behind Plaintiff looking over Plaintiff shoulder watching and viewing what  
25 Plaintiff was doing on Plaintiff laptop computer. The offending employee,

1 Tim, watched and waited for an opportunity to accuse Plaintiff of some  
2 GRPL policy violation (Const. Amend. 4). See Plaintiffs Motion To Amend  
3 Pleading, First Amended Complaint and Exhibit 1 and 2.

4 c) Defendant created a public scene, disturbance, out of the issue of Plaintiff  
5 viewing a nude picture. There where three other people in the listening  
6 area and a woman passed by during the conversation. Neither was there  
7 a sign prohibiting the viewing of pornography in the area (MCL 600.2907).  
8 See Plaintiffs Motion To Amend Pleading, First Amended Complaint and  
9 Exhibit 1 and 2

10 d) Defendant harassed Plaintiff to leave the public library for viewing a nude  
11 picture. Defendant vexed and troubled Plaintiff by willful, purposeful and  
12 intentional racial maliciousness to Plaintiff and callous disregard of Plaintiff  
13 Civil Rights to public library facilities. (Const. Amend 14 § 1, MCL  
14 600.2907). Tim said "You can't view that in here. "I don't care, you can't  
15 view that in a public place. I'm going to have to ask you to leave. Close it  
16 up (the laptop) you're done." Neither was there a sign prohibiting the  
17 viewing of pornography in the area See Plaintiffs Motion To Amend  
18 Pleading, First Amended Complaint and Exhibit 1, 2, 4, 5 and 6.

19 e) Defendant segregated Plaintiff from public library facilities for viewing a  
20 nude picture. Neither was there a sign prohibiting the viewing of  
21 pornography in the area. (42 U.S.C.A. § 2000a, 2000a(d), 2000d; MCL  
22 37.2302). Tim said "You can't view that in here. "I don't care, you can't  
23 view that in a public place. I'm going to have to ask you to leave. Close it  
24 up (the laptop) you're done." "No, your just ban, barred, from the library  
25 for the day." Mr. Baldrige said "It's our policy not to allow the viewing of

1           nudity in the library”. “We do not allow the viewing of nude pictures in the  
2           library at all. Whether, it is in a magazine, on your personal computer or  
3           on the internet. We have signs in the library prohibiting the viewing of  
4           pornography.” “Yes, Tim was authorized to tell you to leave the library for  
5           the day.” See Plaintiffs Motion To Amend Pleading, First Amended  
6           Complaint and Exhibits 1, 2, 4, 5 and 6.

7           f) Defendant used cruel and unusual punishment without due process and  
8           equal protection of the law in disciplining, restricting, segregating or  
9           banning or barring Plaintiff from GRPL facilities for viewing a nude picture  
10           (Const. Amend 5, Const. Amend 8, MCL 600.2907). See Plaintiffs Motion  
11           To Amend Pleading, First Amended Complaint and Exhibits 1 and 2.

12           g) Defendant deprived Plaintiff of life and liberty to public library facilities  
13           without due process and equal protection of the law for viewing a nude  
14           picture (Const. Amend 5). See Plaintiffs Motion To Amend Pleading, First  
15           Amended Complaint and Exhibit 1 and 2.

16           h) Defendant's deprived Plaintiff of rights, privileges, immunities and  
17           advantages to redress Defendant's process or custom or policy without  
18           due process and equal protection of the law (Const. Amend 1). Defendant  
19           has no from of redress for deprivation of Civil Rights in being ban, barred,  
20           from GRPL facilities for viewing a nude picture. See Plaintiffs Motion To  
21           Amend Pleading, First Amended Complaint and Exhibit 1 and 2.

22           i) Defendant further intimidated Plaintiff one or two weeks later about the  
23           original incident on 09/21/05 whose conduct at the time was malicious,  
24           spiteful, and callously indifferent to Plaintiff. See Plaintiffs Motion To  
25           Amend Pleading and First Amended Complaint.

1 j) Defendant is in violation of Defendants own process or custom or policy  
2 where Defendant banned or barred Plaintiff from GRPL for viewing a nude  
3 picture in contrast to Defendant allowing similar white situated citizens to  
4 view nude pictures in the GRPL (42 U.S.C.A. § 2000a, 2000a(d), 2000d;  
5 MCL 37.2302). See Plaintiff's Exhibit 4 and 5.

6 k) Defendant treated Plaintiff differently by banning or barring Plaintiff from  
7 GRPL for viewing a nude picture rather than similar in allowing white  
8 citizens to view nude pictures in GRPL (42 U.S.C.A. § 2000a, 2000a(d),  
9 2000d; MCL 37.2302). See Plaintiff's Motion To Amend Pleadings, First  
10 Amended Complaint, Exhibits 1, 2, 4 and 5.

11 l) Defendant racially discriminated against Plaintiff on grounds of race or  
12 color for viewing a nude picture, because, Defendant's process or custom  
13 or policy and actions demonstrate malicious and callous indifference both  
14 to Plaintiff and to Plaintiff's Civil Rights. Defendant discussed the issue of  
15 catching Plaintiff in violation of GRPL policy with a fellow employee.  
16 Defendant sought an occasion against Plaintiff by invading Plaintiff's  
17 privacy in standing behind Plaintiff watching and viewing what Plaintiff was  
18 doing on Plaintiff's laptop computer. Defendant was neither considerate  
19 nor courteous to Plaintiff in explaining or giving a warning to Plaintiff of  
20 GRPL policy (Just Get Out). Neither was there a sign prohibiting the  
21 viewing of pornography in the area. Defendant segregated Plaintiff from  
22 GRPL for viewing a nude picture in violation of Plaintiff's Civil Rights to  
23 public facilities. One or two week later Defendant intimidated Plaintiff  
24 about the incident on 09/21/05. Defendant violated Defendants own policy  
25 by allowing similar white citizens to view nude pictures in GRPL.

1 Defendant treated Plaintiff differently rather than similar. Defendants  
2 conduct involves “the exercise of power without reasonable or sufficient  
3 justification in any service of a legitimate governmental objective.” See  
4 Plaintiffs Motion To Amend Pleading, First Amended Complaint and  
5 Exhibits 1 and 2.

- 6 3. Consequently, Plaintiff is sheltered by and Defendant’s process or custom or  
7 policy and conduct and actions violates Title 28 U.S.C.A. § 1331, 1332, 1343;  
8 Title 42 U.S.C.A. § 1983; Rev. Stat. § 1979; Const. Amend. 1, 4, 5, 8, 14 § 1; 42  
9 U.S.C.A. § 2000a, 2000a(d), 2000d; MCL 37.2302, MCL 600.2907. The  
10 Defendant’s motivating factor is racial discrimination, segregation and  
11 harassment to Plaintiff. Defendant’s process or custom or policy and conduct  
12 and actions are both malicious and callously indifferent to Plaintiff and to  
13 Plaintiff’s Civil Rights. Defendant thereby causing Plaintiff to be excluded from  
14 participation in and denying Plaintiff benefits of and subjecting Plaintiff to  
15 deprivation of rights, racial discrimination, segregation and harassment under  
16 programs or activities receiving Federal Financial Assistance. Defendant failed  
17 to comply with Title VI of the Civil Rights Act of 1964. See Plaintiff’s Motion to  
18 Amend Pleadings, First Amended Complaint, Exhibits 1, 2, 3, 4, 5, and 6.

19 **B. AUTHORITIES**

20  
21 **1. Affirmative Abuse Of Power**

- 22 1. Plaintiff established Defendant’s actions are pursuant Defendant’s process,  
23 custom, policy, procedure and conduct of banning, barring, Plaintiff from public  
24 library facilities for viewing a nude picture. See Plaintiff’s Motion To Amend  
25 Pleadings, First Amended Complaint and Exhibits 1, 2, 3, 4, 5 and 6.

- 1 2. Plaintiff has not only shown that Plaintiffs Constitutional Rights have been  
2 infringed. But, Plaintiff has also shown that Plaintiff's Constitutional Rights have  
3 been infringed "under color of [state] statute, ordinance, regulation, custom,  
4 policy or usage" by persons clothed with the authority of state and local  
5 government proporting to purposefully, willfully and intentionally act under color  
6 of law, statute, ordinance, regulation; custom, policy or usage (Rev. Stat. Sec.  
7 1979). Monroe v. Pape, 365, U.S. 167, 187, 81 S.Ct 473, 5 L.Ed.2d 492.  
8 Aldridge vs. Mullins, D.C.Tenn.1972 377 F. Supp 850.
- 9 3. Plaintiff has also shown Defendant is liable for the acts of Defendant's conduct in  
10 a Civil Rights case so long as Defendant's conduct is done under color of law  
11 and deprives Plaintiff of a Civil Right (Rev. Stat. Sec. 1979). Aldridge vs. Mullins,  
12 D.C.Tenn.1972 377 F. Supp 850. § 1. Whether or not the conduct of Defendant  
13 was authorized or even if it was prescribed by law. Monroe v. Pape, 365, U.S.  
14 167, 187, 81 S.Ct 473, 5 L.Ed.2d 492.
- 15 4. Plaintiff's liberty interest, ability and opportunity, to access and use GRPL  
16 facilities could be characterized as a fundamental right protected by the  
17 Fourteenth Amendment as either part of the Plaintiffs right to public library  
18 facilities the government is required to protect or as part of Plaintiffs right not to  
19 be subjected to punishment without due process. Wilson v. Seiter, 501 U.S. 294,  
20 304, 111 S. Ct. 2321, 2327 (1991).
- 21 5. Plaintiff's ability and opportunity, liberty interest, to access and use public library  
22 facilities is a matter of liberty and freedom and is a fundamental right subject to  
23 due process and equal protection. DeShaney v. Winnebago County Dep't of  
24 Soc. Servs., 489 U.S. 189, 200, 109 S. Ct. 998, 1006 (1989). Plaintiff liberty and  
25 freedom is infringed and restrained in a manner similar to the restraints on a

1 prisoner's freedom. Plaintiff was not free to do as Plaintiff pleased when he,  
2 Plaintiff, wanted to access and use public library facilities, services and programs  
3 (See Plaintiff's Motion To Amend Pleading, First Amended Complaint and  
4 Exhibits 1, 2, 4, 5 and 6). "In substantive due process analysis it is the State's  
5 affirmative act of restraining, preventing, or restricting the individual's freedom to  
6 act on his own behalf which is the deprivation of the freedom of liberty triggering  
7 the protections of the Due Process and Equal Protection Clause."

8 6. Furthermore, substantive due process encompasses, in addition to those rights  
9 expressly set forth in the Bill of Rights, "fundamental rights implicit in the concept  
10 of ordered liberty, rooted in this Nation's history and tradition[s]." Kallstrom v.  
11 City of Columbus, 136 F.3d 1055, 1060 (6th Cir. 1998). The Sixth Circuit  
12 observed that fundamental rights subject to protection from arbitrary  
13 governmental action include: "the right to marry, to have children, to direct the  
14 education and upbringing of one's children, to marital privacy, to use  
15 contraception, to bodily integrity, to terminate one's pregnancy, and possibly the  
16 right to refuse unwanted lifesaving medical treatment." Seal, 229 F.3d at 574-75  
17 (citing Washington v. Glucksberg, 521 U.S. 702, 720, 117 S. Ct. 2258, 2267  
18 (1997)). Plaintiff was not free to do as Plaintiff pleased when he, Plaintiff, wanted  
19 to access and use public library facilities, services and programs.

20 7. Having concluded that Plaintiff has a fundamental right to public library facilities.  
21 The question must be answered as to whether Defendant's actions involve "the  
22 exercise of power without reasonable justification in the service of a legitimate  
23 governmental objective." County of Sacramento v. Lewis, 523 U.S. 833, 846,  
24 118 S. Ct. 1708, 1716 (1998).  
25



- 1 a) The Defendant discussed the issue of catching Plaintiff in some GRPL  
2 policy violation with a fellow employee. See Plaintiff's Motion To  
3 Amend Pleadings, Plaintiff's First Amended Complaint and Exhibit 1  
4 and 2.
- 5 b) The Defendant stood behind Plaintiff watched and viewed what Plaintiff  
6 was doing on Plaintiff's laptop computer waiting and watching for an  
7 opportunity to accuse Plaintiff of some GRPL policy violation. See  
8 Plaintiff's Motion To Amend Pleadings, First Amended Complaint and  
9 Exhibit 1 and 2.
- 10 c) The Defendant segregated Plaintiff from the public library by a process  
11 or custom or policy of banning or barring Plaintiff from GRPL for  
12 viewing a nude picture. The Defendants conduct and action were  
13 malicious to Plaintiff and callously indifferent to Plaintiff's Civil Rights  
14 without so much as common courtesy to inform the Plaintiff of GRPL  
15 policy or warn Plaintiff that viewing nude pictures in GRPL was  
16 prohibited. Neither was a sign prohibiting the viewing of nudity in the  
17 area. See Plaintiff's Motion To Amend Pleadings, First Amended  
18 Complaint. and Exhibits 1, 2, 4, 5 and 6.
- 19 d) The Defendant racially discriminated against Plaintiff by a process or  
20 custom or policy of banning or barring Plaintiff from GRPL for being a  
21 black man who viewed a nude picture. See Plaintiff's Motion To  
22 Amend Pleadings, First Amended Complaint. and Exhibits 1, 2, 4, 5  
23 and 6.
- 24 e) Defendant affirmatively and by omission, with regard to Plaintiff's Civil  
25 Rights to public facilities authorized, approved and adopted a process

1 or custom or policy that abridges Plaintiff Civil Rights (West v. Atkins,  
2 487 U.S. 42, 48 (1988); Redding v. St. Edward, 241 F.3d 530, 532 (6<sup>th</sup>  
3 Cir. 2001)) and knowingly acquiesced in the unconstitutional conduct  
4 of the offending employee, Tim. Leach v. Shelby County Sheriff, 891  
5 F.2d 1241, 1246 (6<sup>th</sup> Cir. 1989) (citing Hays v. Jefferson, 668 F.2d 869,  
6 874 (6<sup>th</sup> Cir 1982). See Plaintiff's Motion To Amend Pleadings, First  
7 Amended Complaint and Exhibits 1, 2, 4, 5 and 6.

8 f) Defendant violates the Defendant's own process or custom or policy by  
9 banning or barring Plaintiff for viewing a nude picture and allowing the  
10 viewing of nude pictures by similar white citizens. See Plaintiff's  
11 Motion To Amend Pleadings, First Amended Complaint and Exhibit 4  
12 and 5.

13 g) Defendant treated Plaintiff differently rather than similar by banning or  
14 barring Plaintiff for viewing a nude picture and allowing the viewing of  
15 nude pictures by similar white citizens. See Plaintiff's Motion To  
16 Amend Pleadings, First Amended Complaint and Exhibit 1, 2, 4 and 5.

17 h) Defendant again treated Plaintiff differently rather than similar one or  
18 two weeks later by the Defendant creating another incident with the  
19 Plaintiff by intimidating the Plaintiff about the incident which previously  
20 occurred on 09/21/05. See Plaintiff's Motion To Amend Pleadings and  
21 Plaintiff's First Amended Complaint.

22 i) The offending employees Tim's conduct in both instances was racially  
23 motivated, willful and intentional, with the purpose of malicious and  
24 callous indifference to Plaintiff and to Plaintiffs Civil Rights. See  
25

1 Plaintiff's Motion To Amend Pleadings, First Amended Complaint and  
2 Exhibits 1, 2, 4, 5 and 6.

3 8. There is no policy preventing Plaintiff from public library facilities where the  
4 Plaintiff is not locked out. The Defendant's violates Defendant's own process or  
5 custom or policy by allowing the viewing of nude pictures by similar white citizens  
6 and banning or barring Plaintiff for viewing a nude picture. Defendant's conduct  
7 and action treated Plaintiff differently rather than similar white citizens. City of  
8 Cleburne v. Cleburne Living Center, Inc., 473, 439 (1985). The Defendant  
9 process or custom or policy and conduct and actions are not rationally or  
10 substantially related to a legitimate state interest. Id., 440. City of New Orleans  
11 v. Dukes, 427, U.S. 297, 303 (1976).

12 9. Applying the deliberate indifference standard to the facts of the present case.  
13 Defendant's conduct shocks the conscience because Defendant is deliberately  
14 malicious to Plaintiff and callously indifferent to Plaintiff's Civil Rights. County of  
15 Sacramento v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708, 1716 (1998). See id.  
16 at 846-850, 118 S. Ct. at 1717-18. Id. at 851, 118 S. Ct. at 1719. Thus, where  
17 there is an opportunity to deliberate, the deliberate indifference standard is  
18 appropriate. See id. at 850-52, 118 S. Ct. at 1718-19.

19 10. Because, the Defendant violates the Defendants own process or custom or  
20 policy and because the Defendant's conduct and actions treated Plaintiff  
21 differently rather than similar. Defendant's process or custom or policy and  
22 conduct and actions is not rationally or substantially related to a legitimate state  
23 interest. Defendants process or custom or policy of banning or barring Plaintiff  
24 from GRPL for viewing a nude picture involves "the exercise of power without  
25 reasonable justification in any service of a legitimate governmental objective."

1 See id. at 846-850, 118 S. Ct. at 1717-18. Id. at 851, 118 S. Ct. at 1719. See  
2 Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6. See Plaintiff's Exhibits 1, 2, 4, 5 and 6.

3 11. Defendants process or custom or policy and conduct and actions demonstrates  
4 both Defendants maliciousness to Plaintiff by racial discrimination, segregation  
5 and harassment of the Plaintiff and Defendants callous indifference to Plaintiff  
6 Civil Rights in banning or barring Plaintiff from GRPL for viewing a nude picture.  
7 Furthermore, Defendant has no policy for Plaintiff to redress Defendant's  
8 unconstitutional application of law where Defendant has no form of redress. See  
9 Plaintiff's Motion To Amend Pleadings, First Amended Complaint and Exhibits 1,  
10 2, 3, 4, 5 and 6.

11 12. The factual evidence shows that had Defendant adopted and relied upon an  
12 accurate rational process or custom or policy Plaintiff would have been treated  
13 similar rather than differently and Plaintiff's Civil Rights had not been deprived.  
14 See Plaintiff's Motion To Amend Pleadings, First Amended Complaint and  
15 Exhibits 1, 2, 4, 5 and 6.

16 13. Additionally, this Honorable Court should enter an injunctive order against  
17 Defendant and award Plaintiff compensatory and punitive damages against  
18 Defendant because Defendant's actions demonstrates both malicious and  
19 callous indifference, an evil motive and bad faith intent, both to Plaintiff and to  
20 Plaintiff's Civil Rights. See Plaintiff's Exhibit 3. Smith v. Wade, 461 U.S. 30, 56,  
21 103 S. Ct. 1625, 1640 (1983).

22  
23 **2. Matters Of Law**

24 1. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
25 under §1983 providing redress for "the deprivation of any rights, privileges or

1 immunities secured by the Constitution and laws" of the United States. Where a  
2 claim is grounded on a protection of the Fourteenth Amendment or one of the  
3 provisions of the Bill of Rights, the suitability of section 1983 for redress is  
4 unlikely to be questioned. 42 U.S.C. § 1997c 457 U.S. at 509. Daniels v.  
5 Williams, 720 F.2<sup>nd</sup> 792 (4<sup>th</sup> Cir. 1986). Aff'd, 477 U.S.327 (1986).

6 2. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
7 by this section embracing deprivation of both due process of law and equal  
8 protection of laws. It contemplates such deprivation through unconstitutional  
9 application of law by conspiracy or otherwise and it permits damages, including  
10 punitive damages. See Plaintiff's Exhibit 3. Mansell v. Saunder, C.A.Fla.1967,  
11 372 F.2d 573. Monroe v. Pape, 365, U.S. 167, 187, 81 S.Ct 473, 5 L.Ed.2d 492.

12 3. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
13 where Plaintiffs complaint states a claim under Rev. Stat. § 1979. To state claim  
14 under due process clause, it need not be alleged that purpose of acts  
15 complained of was to discriminate between persons or classes of persons. To  
16 state claim under statute providing for civil action of deprivation of rights,  
17 allegation that act was committed under color of state law is necessary. Cohen  
18 v. Norris, 300 F.2d 24 (9<sup>th</sup> Cir. 1962). Under section 1979 unless it appears  
19 beyond doubt that the plaintiff can prove no set of facts in support of his claim  
20 which would entitle him to relief. Conly v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct  
21 99, 101, 102, 2L.Ed, 2d 80. A complaint states a claim under section 1979 and  
22 the facts alleged show that the Defendant: (1) is acting under color of state or  
23 local authority, and (2) subjected the Plaintiff, or caused the Plaintiff to be  
24 subjected, to the deprivation of rights, privileges and immunities secured to the  
25 Plaintiff by the Constitution and laws of the United States. Marshall v. Sawyer,

1 301 F.2d at page 646; Cohen v. Norris, at page 30. See Plaintiff's Motion To  
2 Amend Pleadings, First Amended Complaint, Exhibits 1, 2, 3, 4, 5 and 6.

- 3 4. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
4 where Defendant is not immune from suit. State and municipal officials whose  
5 actions violate constitutional rights are not protected by the states sovereign  
6 immunity or by U.S.C.A. Const. Amend 11. Subdivisions of the state, such as  
7 counties, and municipalities are not protected by Eleventh Amendment. Lincoln  
8 County v. Luning, 133 U.S. 529, 10 S.Ct. 363, 33 L.Ed. 766 (1890). The  
9 Eleventh Amendment limits the jurisdiction only as to suits against a state<sup>1</sup>.  
10 Ybarra v. City of Town of Los Altos Hills, C.A.Cal.1974, 503 F.2d 250. Federal  
11 Courts recognize Three exceptions to Eleventh Amendment immunity: (1)  
12 waiver/consent by the state, (2) abrogation of immunity by Congress, and (3)  
13 prospective injunctive relief pursuant to Ex Parte Young, 209 U.S. 123, 28 S.Ct.  
14 441 (1908). Lawson, 211 F.3d at 334-35. The state has no power to impart to  
15 Defendant any immunity from responsibility to the supreme authority of the  
16 United States. Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).  
17 The doctrine of immunity does not immunize criminal conduct proscribed by an  
18 Act of Congress. O'Shea v. Littleton, Ill.1974, 94 S.Ct. 669, 414 U.S. 488, 38  
19 L.Ed 2d 674. Municipalities have no qualified immunity form liability under  
20 Section 1983. Owen v. City of Independence, 445 U.S. 622, 655-58 (1980).  
21 Public officials are not immune from suit when they transcend their lawful  
22 authority by invading constitutional rights. American Federation of State, County,  
23 and Municipal Emp., AFL-CIO v. Woodward, C.A.Neb.1969, 406 F.2d 137.

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<sup>1</sup> Suits may be brought by private citizens against counties and municipalities under section 1983. Monell  
v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978).

1 Under the fiction Ex parte Young officials may be stripped of their character as  
2 agents of the state when they violate federal law. Lawson, 211 F.3d at 334-335.  
3 Prospective and declaratory relief against individual state and county officials  
4 should not be dismissed.

5 5. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
6 where Plaintiff ability and opportunity to access and use public library facilities is  
7 a matter of "liberty interest" and freedom and is a fundamental right subject to  
8 due process and equal protection DeShaney v. Winnebago County Dep't of Soc.  
9 Servs., 489 U.S. 189, 200, 109 S. Ct. 998, 1006 (1989). Wilson v. Seiter, 501  
10 U.S. 294, 304, 111 S. Ct. 2321, 2327 (1991). Kallstrom v. City of Columbus, 136  
11 F.3d 1055, 1060 (6th Cir. 1998). Seal, 229 F.3d at 574-75 (citing Washington v.  
12 Glucksberg, 521 U.S. 702, 720, 117 S. Ct. 2258, 2267 (1997)).

13 6. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
14 where Defendant affirmatively and by omission, with regard to Plaintiff Civil  
15 Rights, did formulate, adopt, approve and authorize a process or custom or  
16 policy of banning or barring Plaintiff from public library facilities for viewing a  
17 nude picture which abridged Plaintiff Civil Rights to public library facilities. See  
18 Plaintiff's, Exhibits 1, 2, 3, 4, 5 and 6. West v. Atkins, 487 U.S. 42, 48 (1988);  
19 Redding v. St. Edward, 241 F.3d 530, 532 (6<sup>th</sup> Cir. 2001).

20 7. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
21 where Defendant implicitly authorized and approved a process or custom or  
22 policy which deprives Plaintiff's Civil Rights and knowingly acquiesced in the  
23 unconstitutional conduct of the offending employee, Tim. Leach v. Shelby  
24 County Sheriff, 891 F.2d 1241, 1246 (6<sup>th</sup> Cir. 1989) (citing Hays v. Jefferson, 668  
25 F.2d 869, 874 (6<sup>th</sup> Cir 1982). See Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6.

1 8. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
2 where Defendant violates Defendant's own process or custom or policy by  
3 banning or barring Plaintiff for viewing a nude picture and allowing the viewing of  
4 nude pictures by similar white situated citizens. See Plaintiff's Exhibits 1, 2, 3, 4,  
5 5 and 6. County of Sacramento v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708,  
6 1716 (1998). See id. at 846-850, 118 S. Ct. at 1717-18. Id. at 851, 118 S. Ct. at  
7 1719. The Defendant's motivating factor is racial discrimination, segregation and  
8 harassment to Plaintiff.

9 9. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
10 where Defendant treated Plaintiff differently rather than similar white citizens who  
11 are allowed to view nude pictures in GRPL by banning or barring Plaintiff for  
12 viewing a nude picture. See Plaintiff's Exhibits 4 and 5. County of Sacramento  
13 v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708, 1716 (1998). See id. at 846-850,  
14 118 S. Ct. at 1717-18. Id. at 851, 118 S. Ct. at 1719. The Defendant's  
15 motivating factor is racial discrimination, segregation and harassment to Plaintiff.

16 10. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
17 where Defendant's actions involve "the exercise of power without reasonable  
18 justification in any service of a legitimate governmental objective." County of  
19 Sacramento v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708, 1716 (1998). See id.  
20 at 846-850, 118 S. Ct. at 1717-18. Id. at 851, 118 S. Ct. at 1719. See id. at 850-  
21 52, 118 S. Ct. at 1718-19. See Plaintiff's Exhibits 4 and 5. Defendant's treated  
22 Plaintiff differently in banning or barring Plaintiff from GRPL for viewing a nude  
23 picture rather than similarly by allowing white citizens to view nude pictures.  
24 Defendant's process or custom or policy and conduct and actions can not be  
25



1 rationally or substantially related to a legitimate state interest. See Plaintiff's  
2 Exhibits 1, 2, 3, 4, 5 and 6.

3 11. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
4 where Defendant's process or custom or policy and actions demonstrates  
5 malicious and callous indifference both to Plaintiff and to Plaintiff's Civil Rights.  
6 Defendant's motivating factor is racial discrimination, segregation and  
7 harassment to Plaintiff. See Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6. Smith v.  
8 Wade, 461 U.S. 30, 56, 103 S. Ct. 1625, 1640 (1983).

9 12. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
10 where Plaintiff has shown Defendant violated the equal protection clause.  
11 Washington v. Davis, 426 U.S. 229, 239 (1976). Plaintiff has shown direct  
12 evidence that (1) Defendant purposefully, willfully and intentionally treated  
13 Plaintiff differently by banning or barring Plaintiff for viewing a nude picture  
14 because Plaintiff is a black man rather than treating Plaintiff as similarly situated  
15 white citizens who are allowed to view nude pictures in GRPL (See Plaintiff  
16 Exhibit 4 and 5) (2) Plaintiff belongs to a protected minority group, black minority  
17 (3) Plaintiff has right to public library facilities, services and programs (4) Plaintiff  
18 was denied the benefits of public library facilities, services and programs (5)  
19 Defendant violates Defendants own process or custom or policy (6) similarly  
20 white situated citizens are allowed to view nude pictures in GRPL in violation of  
21 Defendants process or custom or policy of banning or barring Plaintiff for viewing  
22 a nude picture. Lautermilch v. Findlay City Schools, 314 F.3d 271, 275-276 (6<sup>th</sup>  
23 Cir. 2003). McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

24 13. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
25 where Plaintiff has shown Defendant violated the due process clause. Holbrook

1 v. Pitt, 643 F.2d 1261, 1276-1277 (7th Cir. 1981). Plaintiff has shown that (1)  
2 Plaintiff is entitled to public library facilities, services and programs which  
3 Defendant denied (2) Defendant used a discriminatory criterion such as race or  
4 color (See Plaintiff Exhibits 4 and 5) (3) Defendant precluded Plaintiff from  
5 exercising Plaintiff's right to public library facilities, services and programs (4)  
6 Defendants process or custom or policy of banning or barring Plaintiff from public  
7 library facilities for viewing a nude picture resulted in Plaintiff being deprived the  
8 right of liberty interest or due process clause. Davis v. Mansfield Metropolitan  
9 Housing Authority, 751 F.2d 180, 184 (6<sup>th</sup> Cir. 1984). Parate v. Isibor, 868 F.2d  
10 821, 831 (6<sup>th</sup> Cir. 1989).

11 14. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
12 whether or not the conduct of Defendant was authorized or even if it was  
13 prescribed by law. Monroe v. Pape, 365, U.S. 167, 187, 81 S.Ct 473, 5 L.Ed.2d  
14 492. Defendant is liable for the consequences of Defendant's acts in a Civil  
15 Rights case so long as the conduct of Defendant is done under color of law and  
16 deprives a Plaintiff of a Civil Right (Rev. Stat. Sec. 1979). Aldridge vs. Mullins,  
17 D.C.Tenn.1972 377 F.Supp 850. See Plaintiff's Motion To Amend Pleadings,  
18 First Amended Complaint and Exhibits 1, 2, 3, 4, 5 and 6.

19 15. Plaintiff Is Entitled To Judgment As A Matter Of Law on the issue of liability alone  
20 where the rights of the Plaintiff are clearly established. Defendant is not liable for  
21 allegedly violating rights which are not clearly established. Harlow v. Fitzgerald,  
22 457 U.S. 800, 818, 73 L. Ed. 2d 396, 410-11, 102 S. Ct. 2727 (1982). In Harlow,  
23 the United States Supreme Court provided a mechanism by which "insubstantial  
24 claims [could be resolved] on summary judgment." *Id.*  
25

1 [T]he judge appropriately may determine, not only the currently  
2 applicable law, but whether that law was clearly established at the  
3 time an action occurred. If the law at that time was not clearly  
4 established, an official could not reasonably anticipate subsequent  
5 legal developments.

6 Id. If the right of the Plaintiff is not clearly established, summary  
7 judgment for the Defendant is appropriate.

### 8 **3. The Pleadings**

- 9
- 10 1. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
11 issue as to any material fact (FRCP Rule 56(c)). In the circumstances of the  
12 present case Defendant has rested upon mere allegations and denials of  
13 Plaintiffs' pleadings and has not set forth specific evidence showing that there is  
14 a genuine issue for trial. Celtics Corp. v. Catrett, 477 U.S. 317, 325 (1986).  
15 Daniel v. Cantrell, 375 F.3d 377, 381 (6<sup>th</sup> Cir. 2004). FRCP Rule 56(e).
  - 16 2. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
17 issue as to any material fact under Rev. Stat. § 1979. The facts alleged show  
18 that Defendant (1) is clothed with and acting under color of state or local  
19 government authority and (2) subjected the plaintiff or caused the plaintiff to be  
20 subjected to the deprivation of rights, privileges and immunities secured to the  
21 plaintiff by the Constitution and laws of the United States and (3) purported to  
22 willfully, intentionally and purposefully deprive Plaintiff's Civil Rights under color  
23 of law, statute, ordinance, regulation, custom, policy or usage. See Plaintiff's  
24 Exhibit 6(A) Request For Admission No. 1 and Request For Admission No. 8.  
25 Marshall v. Sawyer, 301 F.2d (at page 646), Cohen v. Norris, 300 F.2d 24 (9<sup>th</sup>

1 Cir. 1962) (at page 30). Screws v. United States, 325 U.S. 91, 111, 65 S.Ct.  
2 1031, 89 L.Ed, 1495.

3 3. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
4 issue as to any material fact of Defendant's officials "implicitly authorizing and  
5 approving a process or custom or policy that abridges Plaintiff's Civil Rights and  
6 knowingly acquiescing the unconstitutional conduct of the offending employee  
7 Tim." See Plaintiff's Exhibit 6(A) Request For Admission No. 8. Leach v. Shelby  
8 County Sheriff, 891 F.2d 1241, 1246 (6<sup>th</sup> Cir. 1989 (citing Hays v. Jefferson, 668  
9 F.2d 869, 874 (6<sup>th</sup> Cir. 1982).

10 4. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
11 issue as to any material fact of Defendant violating Defendant's own process or  
12 custom or policy of banning or barring Plaintiff for viewing a nude picture by  
13 allowing similar white situated citizens to view nude pictures in GRPL. See  
14 Plaintiff's Exhibits 4 and 5. County of Sacramento v. Lewis, 523 U.S. 833, 846,  
15 118 S. Ct. 1708, 1716 (1998). See id. at 846-850, 118 S. Ct. at 1717-18. Id. at  
16 851, 118 S. Ct. at 1719.

17 5. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
18 issue as to any material fact of Defendant treating Plaintiff differently by banning  
19 or barring Plaintiff for viewing a nude picture rather than similarly allowing white  
20 situated citizens to view nude pictures in GRPL. See Plaintiff's Exhibits 1, 2, 4  
21 and 5. County of Sacramento v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708,  
22 1716 (1998). See id. at 846-850, 118 S. Ct. at 1717-18. Id. at 851, 118 S. Ct. at  
23 1719.

24 6. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
25 issue as to any material fact of Defendants process or custom or policy and

1 conduct and actions being reasonably or substantially related to a legitimate  
2 governmental objective. City of Cleburne v. Cleburne Living Center, Inc., 473,  
3 439 (1985). Id., 440. City of New Orleans v. Dukes, 427, U.S. 297, 303 (1976).  
4 See Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6.

5 7. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
6 issue as to any material fact of the Defendants process or custom or policy and  
7 conduct and actions involving the "exercise of power without reasonable  
8 justification in any service of a legitimate governmental objective." County of  
9 Sacramento v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708, 1716 (1998). See id.  
10 at 846-850, 118 S. Ct. at 1717-18. Id. at 851, 118 S. Ct. at 1719. See id. at 850-  
11 52, 118 S. Ct. at 1718-19.

12 8. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no sufficient  
13 evidentiary basis not to find Summary Judgment in favor of Plaintiff. Celtics  
14 Corp. v. Catrett, 477 U.S. 317, 325 (1986). This Court should determine that  
15 Plaintiff can prove facts in support of Plaintiff's claims which would entitle Plaintiff  
16 to relief (Rev. Stat. § 1979). See Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6. Conly v.  
17 Gibson, 355 U.S. 41, 45-46, 78 S.Ct 99, 101, 102, 2L.Ed, 2d 80. Celotex Corp.  
18 v. Catrett, 477 U.S. 317, 323 (1986).

19 9. Plaintiff Is Entitled To Judgment As A Matter Of Law where there is no genuine  
20 issue as to any material fact. Summary Judgment is properly granted if "the  
21 pleadings, depositions, interrogatories, admissions and affidavits if any show  
22 there is no genuine issue as to any material fact and the moving party is entitled  
23 to judgment as a matter of law." FRCP Rule 56(c).

24  
25 Although, there is a genuine issue as to the amount of damages.  
Lambert v. Inryco, 569 F.Supp. 908 (Ok., 1980)).

1 10. The non-moving party must come forward with evidence that there is a genuine  
2 issue of material fact FRCP Rule 56(e). The “mere existence of a scintilla of  
3 evidence in support of the non-moving party’s position will be insufficient; there  
4 must be evidence on which a jury could reasonably find for the non-moving  
5 party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). *Id.*, 252. An  
6 issue is “genuine” only if there is sufficient evidence favoring the non-moving  
7 party upon which a jury could base a verdict for that party. *Id.*, 249-50. If the  
8 non-movant’s evidence is “colorable, or not significantly probative, summary  
9 judgment may be granted. *Id.* When the non-moving party bears the burden of  
10 proof the movant’s initial burden can be met simply by pointing the district court  
11 to the absence of evidence to support the non-movant’s case”. Celtics Corp. v.  
12 Catrett, 477 U.S. 317, 325 (1986).

13 11. Plaintiff Is Entitled To Judgment As A Matter Of Law where Plaintiff’s evidence is  
14 so one-sided that Plaintiff must prevail as a matter of law (See Plaintiff’s Exhibits  
15 1, 2, 3, 4, 5 and 6). Plaintiff’s evidence is so powerfully overwhelming that no  
16 reasonable trier of fact or jury would disbelieve it. *Arnett*, 281 F.3d at 561. There  
17 is no sufficient disagreement to require submission to a jury. Anderson v. Liberty  
18 Lobby, Inc., 477 U.S. 242, 251-52 (1986).

### 19 **C. CONCLUSION**

20  
21 1. A complaint states a claim under Rev. Stat. § 1979 and Defendant is clothed with  
22 the authority of state and local government purporting to act under color of law,  
23 statute, ordinance, regulation, custom, policy or usage while subjecting the  
24 Plaintiff and causing the Plaintiff to be subjected to the deprivation of rights,  
25 privileges and immunities secured to the Plaintiff by the Constitution and laws of

1 the United States. Plaintiff has in a light most favorable to Defendant shown  
2 Plaintiff is entitled to judgment as a matter of law on the issue of liability alone.

- 3 2. The one-sided facts show Defendant's process or custom or policy and conduct  
4 and actions involve the "exercise of power without reasonable justification in any  
5 service of a legitimate governmental objective." Defendant's arbitrary and  
6 capricious process or custom or policy dose not relate to a legitimate  
7 governmental objective and Defendants flagrant conduct and actions treated  
8 Plaintiff differently rather than similar white citizens.
- 9 3. Defendant overwhelmingly failed to comply with Title VI of the Civil Rights Act of  
10 1964 and caused Plaintiff the denial of the full rights and privileges of a place of  
11 public accommodation or a place of public use. Defendant thereby caused the  
12 Plaintiff to be subjected to deprivation of civil rights, racial discrimination,  
13 segregation and harassment.
- 14 4. Summary Judgment should be rendered in favor of Plaintiff on the issue of  
15 liability alone, because, the evidence is one-sided and so powerfully  
16 overwhelming that no trier of fact would reasonably submit it to a jury. Although,  
17 there is a genuine issue as to the amount of damages.

18  
19 **WHEREFORE**, Plaintiff Prays this Honorable Court, GRANT Plaintiffs Motion For  
20 Summary Judgment.

21 ***D. EFFORT TO COMPLY WITH LCIVR 7.1(d)***

- 22 1. In an effort to comply Plaintiff would show the Court that this Courts Case  
23 Management Order is that All Dispositive Motions are to be filed by July 15,  
24 2007.

- 2. In an effort to comply Plaintiff would show the Court that Plaintiff requested Mr. Ophoff acquiescence to Plaintiff's "Motion For Summary Judgment" by letter and US mail on Friday, July 6, 2007.
- 3. In an effort to comply Plaintiff would show the Court that Plaintiff, in good faith, believes that Defendant will object to Plaintiff Motion For Summary Judgment.

Dated This Thursday, July 12, 2007

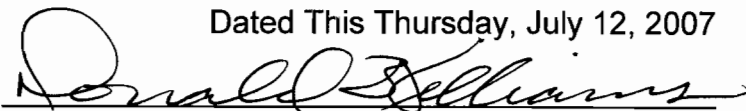
By: 

<p><b>Donald V. Williams</b>  <b>44 ½ S. Division St., SE., Apt., 37</b>  <b>Grand Rapids, MI., 49503</b></p>
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**E. CERTIFICATION OF MAILING**

I do hereby certify that on the 12 day of July, 2007. I mailed a true and correct copy of the above and foregoing instrument to Daniel A. Ophoff, Assistant City Attorney, 620 City Hall, 300 Monroe Ave., NW, Grand Rapids, MI., 49503.

Dated This Thursday, July 12, 2007

By: 

<p><b>Donald V. Williams</b></p>
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