

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

40 DAYS FOR LIFE OF WAUSAU, an
unincorporated association, and THERESA
WHITAKER, JANET KRAIMER-NICHOLS,
and MARY LITSCHAUER, individuals,
Plaintiffs,
vs.
RALPH ILLICK, MARATHON COUNTY
PUBLIC LIBRARY, TIM GIERL, AUDREY
ASCHER, GARY BEASTROM, KEN DAY,
ALISON MORROW, KATIE ROSENBERG,
SCOTT WINCH, MARATHON COUNTY,
WISCONSIN, a body politic, and KEITH
LANGENHAHN,
Defendants.

Case No. 11-cv-231

VERIFIED COMPLAINT FOR INJUNCTION & OTHER RELIEF

Plaintiffs, 40 Days for Life of Wausau and Theresa Whitaker, Janet Kraimer-Nichols, and
Mary Litschauer, by and through their undersigned counsel, complain of the Defendants as
follows:

THE PARTIES

1. 40 Days for Life of Wausau is an unincorporated association of persons who
reside in the Wausau, Wisconsin area and who participate in the 40 Days for Life community-
based campaign.

2. Theresa Whitaker is an individual and a member and local coordinator for the 40
Days for Life of Wausau campaign, now being carried on in the Wausau, Wisconsin area
through the 40-day Lenten period. She resides in Wausau, Wisconsin.

3. Janet Kraimer-Nichols is an individual and a member and spokesperson for the 40 Days for Life of Wausau campaign, now being carried on in the Wausau, Wisconsin area through the 40-day Lenten period. She resides in Wausau, Wisconsin.

4. Mary Litschauer is an individual and a member of the 40 Days for Life of Wausau campaign, now being carried on in the Wausau, Wisconsin area through the 40-day Lenten period. She resides in Merrill, Wisconsin.

5. Ralph Illick is the Library Director of the Marathon County Public Library. He is sued in his official and personal capacities.

6. Marathon County Public Library is the public library of Marathon County, Wisconsin.

7. Tim Gierl, Audrey Ascher, Gary Beastro, Ken Day, Alison Morrow, Katie Rosenberg, and Scott Winch are the seven trustees of the Marathon County Public Library. These individuals comprise the Marathon County Public Library Board of Trustees, exercising control over the library in their official capacities.

8. Marathon County, Wisconsin, is the county in which the Marathon County Public Library operates. The Library Board is appointed by the Board of Supervisors of Marathon County.

9. Keith Langenhahn is the Chairman of the Marathon County Board of Supervisors and is sued in his official capacity.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 29 U.S.C. §1331, 1343, 2201, 2202, and 42 U.S.C. §1983.

11. Venue is proper pursuant to 28 U.S.C. §1391 because the Defendants are located in this District.

FACTUAL NARRATIVE

12. Plaintiffs are involved generally in pro-life outreach, including particularly a local “40 Days for Life” campaign in and around Wausau, Wisconsin, in 2011, that is expected to last throughout the Lenten season, from March 9 to April 17, 2011. A “40 Days for Life” campaign includes among other activities, prayer and fasting, vigil, and community outreach, all on the subject of abortion.

13. To draw attention to, and in conjunction with, the campaign, plaintiffs planned to show a pro-life movie, called “BloodMoney.” This movie is a documentary whose aim is to educate viewers about the “business of abortion.” The movie contains no indecent or obscene material. It has been exhibited at both public and private venues across the United States, as well as abroad, and plaintiffs believe that these exhibitions have not provoked any disorderly or violent response.

14. Plaintiffs sought a public, visible venue for their movie exhibition, and to that end, decided to have the showing at the Marathon County Public Library, which offers exhibit and meeting space to the public for a variety of purposes, including so-called “public meeting rooms.” On or about March 1, 2011, plaintiff Theresa Whitaker, calling on her own behalf and on behalf of the 40 Days for Life group, made a reservation of one of these “public meeting rooms,” the Wausau Room, for the express purpose of showing a movie, for Sunday, April 3, 2011, 1:00pm to 3:00pm. The reservation was accepted and confirmed by the library. Library personnel did not inquire as to the content of the film, but instead offered use of the library’s film equipment to the plaintiffs.

15. In reliance on the library's reservation, plaintiffs promoted the event to the public in and around Wausau, Wisconsin, including placing advertisements in church bulletins, mailing flyers to potential attendees, and arranging radio spot advertisements that have been aired repeatedly in the Wausau, Wisconsin, area to invite members of the public to the film's screening, all advising the public of the event's time and place.

16. On Tuesday, March 22, 2011, some three weeks after plaintiffs had made their reservation for showing of the film on April 1st, defendant Illick, the library's director, phoned plaintiff Theresa Whitaker and left a voicemail notifying her of his decision as library director to cancel the reservation for a room to show a movie. Illick said, using these words or words of like substance and effect, that "based on our meeting room policy, it's not going to be the kind of thing we can do. It would very much interfere with the normal use of our library."

17. Later on Tuesday, plaintiff Theresa Whitaker phoned Illick back and spoke to him. Illick stated that he had become aware of some internet activity, including on Facebook, indicating that some people were considering a protest at the library if it allowed presentation of a film that dealt with the subject of abortion. Illick stated that a protest might interfere with the normal use of the library, though he did not indicate how such a protest – ostensibly to be held on public sidewalks or other public rights of way – would interfere with the use of the library. He said that it was for that specific reason he decided to revoke plaintiffs' reservation and to deny them permission to use the room that had been reserved for their showing of the film.

18. After Theresa spoke to Illick, plaintiffs undertook to search the internet for evidence of planned protests but failed to find any.

19. Theresa again called Illick and informed him of this fact. Illick replied that he had seen the information on a private space, inaccessible to the public. Ms. Whitaker asked him

if he would provide evidence of it. Illick stated that he would comply with her request for such evidence, but that it would take him until the next day, March 23. Yet, to the present, no such evidence has been provided to plaintiffs.

20. On Wednesday, March 23, 2011, Illick confirmed that the library would cancel the room reservation in an email to plaintiff Whitaker, which read as follows:

Dear Ms. Whitaker,

Confirming our telephone conversation yesterday afternoon, we have cancelled the room reservation placed by your group, 40 Days for Life, at MCPL on April 3, 2011. This is due to the fact that we cannot permit a program that would invite the possibility for a disturbance on library property. When we spoke yesterday, I reminded you that both sides of the controversial issue of abortion rights have a long history of contentious acrimony, and for that reason we could reasonably expect that problems could follow such a film showing. Further, you agreed that you and members of your group would not, in fact, view the library as an appropriate venue for organizations representing the opposite viewpoint. I agree with your assessment. In the future, I might respectfully suggest that you make *very clear* what your intentions might be when seeking another location for the film to be presented.

I would also be more than happy to personally assist you in finding a more appropriate alternative for your group's showing of the film.

Respectfully,

Ralph Illick

Library Director

Marathon County Public Library (MCPL) - Wausau Headquarters | 300 N. First St.,
Wausau, WI 54403

ralph.illick@co.marathon.wi.us | (715) 261-7211 (direct) / (715) 261-7200 (general info.)

www.mcpl.us

21. Plaintiffs dispute Illick's contention that the public meeting rooms of the library are not "appropriate" for organizations representing opposite viewpoints about issues of public concern, including abortion, and plaintiff Whitaker disputes that she in any way indicated that the library should censor and bar those holding an opposing viewpoint from hers on the issue of abortion from using the public meeting rooms of the library.

22. The library's meeting room policy, accessible at <http://www.mcpl.us/services/meetingrooms/> and attached hereto as exhibit A, explicitly adopts section VI of the American Library Association "Bill of Rights," which states that public meeting rooms are made available "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use." Plaintiffs believe and are informed that the library has adopted the entirety of the American Library Association "Bill of Rights," attached hereto as exhibit B. Plaintiffs contend that the library's conduct in this matter is also inconsistent with other sections of that "Bill of Rights."

23. Moreover, the library's meeting rooms regularly host movie showings, along with a variety of events, as shown on the library calendar, accessible at <http://www.mcpl.us/services/meetingrooms/>, and a "10-day agenda" version of the calendar is attached hereto as exhibit C.

24. The library's bookshelves are filled with books, movies and periodicals that espouse myriad subjects and viewpoints, including 108 titles available when searching the library's collection under the keyword, "abortion," and the first page of the search results from the library's online search, at <http://vcap.wvls.lib.wi.us/ipac20/ipac.jsp?profile=mcpl>, are attached hereto as exhibit D.

25. Moreover, a patron can access a computer at the library and view a trailer of the movie in plain sight of the public.

26. On Friday, March 25, 2011, plaintiffs' counsel wrote a letter, attached hereto as exhibit E, to the library and its board to demand a reinstatement of the room reservation. Late in the afternoon on Tuesday, March 29, 2011, the Marathon County Corporate Counsel sent a response, attached hereto as exhibit F, offering to relocate the plaintiffs' movie exhibition away

to a county office building, which is closed and empty on Sunday. The reservation at the library has not been reinstated, nor has any substantive evidence been provided by corporate counsel to support Illick's claim that a "civil disturbance" would result from the showing of the movie.

27. Defendants' denial of plaintiffs' right of free expression constitutes an irreparable injury, for which plaintiffs have no adequate remedy at law. Enjoining defendants' threatened prohibition of the exhibition and screening of the movie would impose no cognizable expense or harm on the defendants, as indeed a police presence could adequately protect against any potential disruption accompanying a potential protest, whereas the denial of plaintiffs' fundamental rights – even for a brief time – tips the balance of hardships decidedly in favor of plaintiffs. As an injunction against lawless censorship and suppression of the fundamental rights of free speech imposes no legally cognizable harm on defendants, the Court should dispense with any requirement for posting of bond by the plaintiffs.

FIRST CAUSE OF ACTION
U.S. CONSTITUTION, FIRST AMENDMENT, 42 U.S.C. § 1983
AGAINST ALL DEFENDANTS

28. Plaintiffs incorporate the allegations of paragraphs 1 through 27, inclusive, as though fully set forth herein.

29. Defendants first accepted, then rescinded, plaintiffs' request for a room at defendants' library for the purpose of showing a movie about "the business of abortion," citing the mere potential for a protest demonstration at or near the library and the mere potential that such protest demonstration would impair the normal operation of the library.

30. Defendants' conduct constitutes illicit, standardless censorship and suppression of free speech and imposition of a prior restraint on free expression in violation of the First Amendment of the Constitution, which prohibits the government from "abridging the freedom of

speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The suppression of this movie was explicitly based, *post hoc*, on its subject matter related to the abortion issue – content-based viewpoint discrimination which is devoid of any compelling justification. On the contrary, Defendants merely purport to cite the fact that citizens generally have had differing, even “contentious” views on that issue, and their mere speculation that there *might* be a protest that *might* interfere with the library’s normal operation jettisons plaintiffs’ fundamental liberty on the flimsiest grounds, based merely on a *potential* “heckler’s veto.” Audience reaction to speech, especially when merely hypothetical and speculative – as here – gives government no grounds for censoring it, let alone banning or suppressing it as Defendants threaten to do here.

SECOND CAUSE OF ACTION
WISCONSIN CONSTITUTION, ARTICLE I, SECTION 3
AGAINST ALL DEFENDANTS

31. Plaintiffs incorporate the allegations of paragraphs 1 through 30, inclusive, as though fully set forth herein.

32. Article I, Section 3 of Wisconsin’s Constitution provides, “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press.”

33. Defendants’ conduct violates Article I, Section 3 of Wisconsin’s Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that judgment be entered in their favor and that relief be granted against defendants as follows:

1. For an order preliminarily and permanently enjoining defendants, their officers, agents, servants, employees, and all persons acting in concert or participation with

them who receive actual notice of the injunction, from enforcing the laws, customs, practices, and policies alleged herein, and specifically, to enjoin and prevent defendants from banning plaintiffs from showing the film “BloodMoney” at the library in accord with their prior confirmed reservation.

2. For declaratory relief to the effect that defendants’ banning said exhibition and screening of “BloodMoney” violates their fundamental rights, as pled herein, and that they are entitled to relief consistent with this injunction prayed for, *supra*.
3. For attorneys fees and costs of suit pursuant to 42 U.S.C. §1988, and any other applicable law.
4. For any and all further relief to which plaintiffs may be entitled to recover upon the foregoing premises as the Court deems just and proper.

Respectfully submitted,

AXLEY BRYNELSON, LLP

Dated: March 30, 2011

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VERIFICATION

I verify under penalty of perjury that the foregoing is true and correct.

Executed on March 30, 2011.

Theresa Whitaker
Theresa Whitaker