

# THOMAS MORE SOCIETY

*A National Public Interest Law Firm*

March 24, 2011

**Via U.S. Mail and Fax: 715-261-7210**

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Ms. Audrey Ascher  
Vice President, MCPL Board of Trustees  
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**Via U.S. Mail and Fax: 715-261-7210**

Mr. Ralph Illick  
Library Director, MCPL  
300 North First Street  
Wausau, Wisconsin 54403

**Re: First Amendment Violations in Refusing a Room Reservation to Wausau 40 Days for Life**

Dear Mr. Gierl, Ms. Ascher, Mr. Langenhahn, and Mr. Illick:

The undersigned represent 40 Days for Life (“40 Days”) in Wausau, WI. We are writing concerning the decision by the Marathon County Public Library (“MCPL”) accepting and then subsequently denying 40 Days’ request for a public meeting room at the library to show the film Blood Money, which concerns the topic of abortion. Your decision to cancel 40 Days’ public meeting room reservation wields the censor’s scissors in a way that contradicts your own stated principles and policies and violates our client’s constitutional right to free speech. With respect, our client demands that the MCPL immediately restore and honor its April 3, 2011 reservation and permit 40 Days to present the film Blood Money for public viewing as originally agreed.

The Marathon County Public Library (MCPL) offers exhibit and meeting space to patrons for many purposes. A review of your website calendar shows a wide variety of groups reserving meeting rooms for a wide variety of activities, including the showing of films. Your “Library Bill of Rights” guarantees that meeting rooms will be made “available ... on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use ....” The only apparent limitation is that meeting rooms may not be used for a purpose “which, in the opinion of the Library Director or the Library Board of Trustees, may interfere with the normal use of the library.” Following this policy, MCPL has permitted the public to use its meeting rooms on many occasions to screen films expressing a wide variety of subjects and viewpoints. Moreover, the MCPL shelves are filled with books, movies, and periodicals that espouse myriad subjects and varying viewpoints. Indeed any patron could enter the library, reserve an MCPL computer, access the internet, and, in plain sight of the public, download and view a trailer of the film Blood Money.

Over three weeks ago, 40 Days sought and received from MCPL a reservation to use a meeting room on April 3, 2011, from 1 to 3 p.m., to screen the movie *Blood Money*. This film, a documentary, is available at 100 S. LaSalle | Suite 440 | Chicago, IL 60603 | www.thomasmoresociety.org | P: 312.782.1680 | F: 312.782.1887

*“Injustice anywhere is a threat to justice everywhere.” – Rev. Dr. Martin Luther King*

Exhibit  
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aims to educate viewers about the abortion industry. It contains no indecent or obscene material. At the time of the initial reservation, MCPL personnel made no inquiry as to the content of the film but instead offered to allow use by 40 Days of library film equipment. In reliance upon MCPL's promise to permit the presentation, 40 Days has expended substantial resources to promote and prepare for the event. This includes placing advertisements in church bulletins and arranging radio spots that have been aired to inform the public of the event, the time, and the place.

On March 22, 2011, Mr. Illick, MCPL's director, left a voicemail for Terri Whitaker of 40 Days, notifying her of his unilateral decision to cancel the reservation and deny our client access to public facilities because of the content of the film they planned to present. Mr. Illick said words to the effect that, "based on our meeting room policy, it's not going to be the kind of thing that we can do. It would very much interfere with normal use of our library."

Later the same day, Ms. Whitaker called Mr. Illick. By way of explanation for the cancellation of reservation, Mr. Illick stated that he had heard some "internet chatter," including on Facebook, to the effect that people were "chattering about staging a protest at the library" if it allowed presentation of a film that deals with the subject of abortion. On the basis of speculation that a protest could take place, Mr. Illick advised that such activity might interfere with the normal use of the library and, for that reason, as Library Director, he had decided that 40 Days could not use the library's public meeting rooms. Mr. Illick added that had he known initially that the film was about abortion, he would not have accepted the reservation.

After she spoke to Mr. Illick, Ms. Whitaker and other members of 40 Days searched the internet including Facebook but found no evidence of the "chatter" or threatened protests to which Mr. Illick had referred. Ms. Whitaker again called Mr. Illick and informed him of this fact. He replied that what he had referred to was on "private chat space." Asked if he would provide evidence of it, he replied that he could, but that it might take time.

The next day (March 23, 2011) Mr. Illick confirmed the cancellation of the room reservation in an email to Ms. Whitaker, saying 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."

Regardless of whether Mr. Illick's speculation that protests may occur is probable (although he has provided no credible evidence that it is), it offers no legal justification for blatant censorship and suppression of free speech. Denying citizens the ability to speak and freely express ideas – even controversial ones – in a public forum such as the library, based on the mere possibility that other citizens may not like the message espoused and might engage in disruptive activity, would grant to those espousing one viewpoint a "heckler's veto" purporting to authorize and legitimate the censorship and suppression of another citizen's opposite viewpoint. The library recognizes as much in its Library Bill of Rights, which provides that meeting rooms will be made available to the public "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use." Only uses which "may interfere with the normal use of the Library" are excepted.

There is no question that the library accepts and allows the screening of a wide variety of movies involving many different groups and expressing many different points of view. A glance at its website room reservation calendar confirms this, (<http://www.mcpl.us/events/>), as does a review of the library's catalog of books and movies. Indeed using library rooms and film equipment to show a film (a film that educates and stimulates debate), appears to fall squarely in line with a "purpose" that actually *promotes* and *advances* "normal use of the library." The MCPL has no qualms about placing other material that clearly invites controversy into the library for public consumption.

Indeed, this present denial qualifies as a classic example of a heckler's veto in the teeth of our fundamental law that "[l]isteners' reaction to speech is not a content-neutral basis for regulation" (*Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992)). Indeed, our First Amendment jurisprudence establishes that free speech "best serve[s] its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger" and "[t]he right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes" (*Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949)). And if a library, equally as a university, would serve as "one of the vital centers for the Nation's intellectual life," it must not shrink from robust debate and dialogue involving diverse points of view and refrain from discrimination against any one of those viewpoints (*Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995)).

A case from the United States Court of Appeals for the Seventh Circuit illustrates the problem. A school prohibited students' distribution of religious pamphlets after school, citing possible disruption arising from confusion as to who (the school or the students) were actually distributing religious literature. The Seventh Circuit held the censorship unconstitutional, observing:

Public belief that the government *is* partial does not permit the government to *become* partial. Students therefore may hand out literature even if the recipients would misunderstand its provenance. The school's proper response is to educate the audience rather than squelch the speaker. Consider a parallel: the police are supposed to preserve order, which unpopular speech may endanger. Does it follow that the police may silence the rabble-rousing speaker? Not at all. The police must permit the speech and control the crowd; there is no heckler's veto. (*Hedges v. Wauconda Community School Dist.* 118, 9 F.3d 1295, 1299-1300 (7<sup>th</sup> Cir. 1993)(internal citation omitted)).

If a school must protect free expression of adolescent students against potential disruptors, how much more so must a library, ostensibly a temple of free expression, protect free expression of the public against those who would disagree with it? The library may not constitutionally throw its lot in with hecklers and shut down speech through censorship. Rather, it must resist hecklers and protect the proposed expression. As the Seventh Circuit stated, there is no heckler's veto, particularly here, where hecklers are a phantom, and the possibility of disruption mere speculation!

Moreover, even if people were to enter the library and create disruption, the Library could ask police to remove any disorderly people from the premises. This film has been presented in numerous, public venues across the nation and neither we nor 40 Days knows of any instance of public disorder or lawless misbehavior occurring in connection with these events. Rest assured that no such lawlessness or

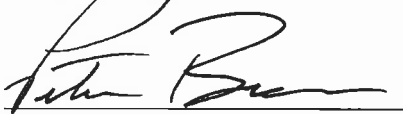
disorder will be initiated, condoned, or tolerated by 40 Days for Life, as our clients are committed to the peaceable expression of their views and dedicated to foster civil discourse and debate regarding the issues they espouse.

Even if the MCPL continues to claim that its Meeting Room Policy would be violated if it allowed 40 Days to hold its program, the policy is ambiguous and grants such unbridled discretion to the Library Director to regulate speech in the public facilities, that it is invalid on its face. The MCPL policy vests virtually unlimited authority in the Director and Trustees to grant or deny a member of the public permission to use the library facilities. As such it violates the First Amendment (*see DeBoer*, 267 F. 3d at 572-3 (*citing Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969)) (“Any regulations governing the speaker’s access to a forum must contain ‘narrow, objective, and definite standards’ to guide a governmental authority so that such regulations do not operate as a prior restraint that may result in censorship.”)).

The authority granted to the Director by MCPL’s policy is virtually unlimited, totally subjective, and contains no standard whatsoever to constrain or even guide the Director’s exercise of his authority. Thus MCPL has used its ambiguous policy as a basis to engage in unlawful censorship of 40 Days for Life’s message.

Cancelling the program at this late date would cause 40 Days for Life irreparable injury even if our client could find a suitable alternate location and reschedule the event before the Lenten Season is over. If MCPL and Marathon County Board of Supervisors wishes to avoid immediate legal action, please contact the undersigned by telephone, to advise of your decision to restore 40 Days for Life’s reservation.

Very truly yours,



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