

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

40 DAYS FOR LIFE OF WAUSAU, an
Unincorporated association, and THERESA
WHITAKER, JANET KRAIMER-NICHOLS,
and MARY LITSCHAUER, individuals,

Plaintiffss,

Case No.: 11-CV-231

v.

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, KEITH
LANGEHAHN.

Defendants.

**ANSWER ON BEHALF OF RALPH ILLICK, MARATHON COUNTY PUBLIC
LIBRARY, TIM GIERL, AUDREY ASCHER, GARY BEASTROM, KEN DAY,
ALISON MORROW, KATIE ROSENBERG, SCOTT WINCH, MARATHON
COUNTY AND KEITH LANGEHAHN**

Ralph Illick, Marathon County Public Library, Tim Gierl, Audrey Ascher, Gary
Beastrom, Ken Day, Alison Morrow, Katie Rosenberg, Scott Winch, Marathon County
and Keith Langehahn, by their attorneys, CRIVELLO CARLSON, S.C., as and for their
answer to the plaintiffs' complaint respond as follows:

1. Answering ¶ 1, lack knowledge and information sufficient to form a belief
as to the allegations contained therein and therefore deny the same putting the Plaintiffs
specifically to their burden of proof thereon.

2. Answering ¶ 2, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

3. Answering ¶ 3, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

4. Answering ¶ 4, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

5. Answering ¶ 5, admit that Ralph Illick is the Library Director of Marathon County Public Library who has acted within the course and scope of his office and authority.

6. Answering ¶ 6, admit that the Marathon County Public Library is the public library of Marathon County; as further answer, affirmatively allege that the public library may not be a suable entity.

7. Answering ¶ 7, admit that Tim Gierl, Audrey Ascher, Gary Beastron, Ken Day, Alison Morrow, Katie Rosenberg, Scott Winch are the seven trustees of the Marathon County Public Library who acted within the course and scope of their office and authority; as further answer, deny Plaintiffs' description is either complete or correct.

8. Answering ¶ 8, admit that Marathon County is an municipal entity and that the Marathon County Public Library operates therein; as further answer, admit that the Library Board is appointed by the Board Of Supervisors of Marathon County.

9. Answering ¶ 9, admit that Keith Langenhahn is the Chairman of the Marathon County Board of Supervisors who has acted within the course and scope of his office and authority; as further answer deny.

10. Answering ¶ 10, admit that this Court has jurisdiction under these statutes but deny any such violations in this instance; as further answer deny.

11. Answering ¶ 11, admit that events occurred within the Western District of Wisconsin; as further answer, deny.

12. Answering ¶ 12, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

13. Answering ¶ 13, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

14. Answering ¶ 14, admit that Theresa Whitaker made a reservation for Sunday, April 3, 2011 1:00 p.m. to 3:00 p.m. at the Marathon County Public Library; as further answer, deny Plaintiffs' description is either complete or correct.

15. Answering ¶ 15, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

16. Answering ¶ 16, deny Plaintiffs' description is either complete or correct.

17. Answering ¶ 17, deny Plaintiffs' description is either complete or correct.

18. Answering ¶ 18, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

19. Answering ¶ 19, deny Plaintiffs' description is either complete or correct.

20. Answering ¶ 20, admit Illick sent an email on March 23, 2011 to Ms. Whitaker whose contents are contained therein.

21. Answering ¶ 21, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

22. Answering ¶ 22, admit that the Library's meeting room policy is attached as Exhibit A and that it contains a reference to Section IV of the American Library Association "Bill of Rights"; as further answer, deny Plaintiffs' description is either complete or correct.

23. Answering ¶ 23, admit the library's meetings rooms have been used for movie showings or other events and that a copy of an agenda version of the calendar from March 30, 2011 through April 7, 2011 is attached as Exhibit C.

24. Answering ¶ 24, admit that Exhibit B purports to show search results from the Library's on-line search and that the Library contains many books, movies and periodicals on many subjects and viewpoints.

25. Answering ¶ 25, admit that a patron can access a computer at the Library; as further answer, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their burden of proof thereon.

26. Answering ¶ 26, admit that Exhibit E is correspondence dated March 25, 2011 from Plaintiffs' counsel to the Library and their Board requesting reinstatement of the room reservation; as further answer, admit that Exhibit F is correspondence dated March 29, 2011 from the Marathon Corporation Counsel offering an accommodation; as further answer, deny Plaintiffs' description is either complete or correct.

27. Answering ¶ 27, these allegations state a conclusion of law for which no answer is required and to the extent any factual assertion is made, these answering Defendants deny the same, putting the Plaintiffs specifically to their proof thereon; as further answer, deny and affirmative allege that Plaintiffs' claims are moot.

28. Answering ¶ 28, repeat, re-allege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

29. Answering ¶ 29, deny Plaintiffs' description is either complete or correct.

30. Answering ¶ 30, these allegations state a conclusion of law for which no answer is required and to the extent any factual assertion is made, these answering Defendants deny the same, putting the Plaintiffs specifically to their proof thereon; as further answer, deny and affirmative allege that Plaintiffs' claims are moot.

31. Answering ¶ 31, repeat, re-allege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

32. Answering ¶ 32, admit.

33. Answering ¶ 33, deny.

AS AND FOR affirmative defenses to the plaintiffs' Complaint, these answering defendants assert the following:

- a. The plaintiffs' Complaint contains claims which fail to state a claim upon which relief can be granted as against these answering defendants.
- b. The Court lacks jurisdiction based upon mootness.
- c. One of more plaintiffs may lack standing pursue to these allegations.
- d. The defendants are immune from suit under common law and statutory immunities including qualified and absolute immunities.
- e. To the extent that the plaintiffs purport to state claims under Wisconsin law, they are subject to the limitations, prerequisites and immunities contained within Wis. Stats. § 893.80.
- f. The Marathon County Public Library may not be a suable entity.

WHEREFORE, Ralph Illick, Marathon County Public Library, Tim Gierl, Audrey Ascher, Gary Beastrom, Ken Day, Alison Morrow, Katie Rosenberg, Scott Winch, Marathon County and Keith Langehahn, respectfully requests judgment as follows:

- a. for a dismissal of the plaintiffs' complaint upon their merits along with their request for preliminary and permanent injunctions;
- b. for the costs and disbursements of this action;
- c. for reasonable actual attorneys fees pursuant to 42 U.S.C. § 1988; and
- d. for such other relief as this court deems just and equitable

Dated this 7th day of April, 2011.

BY: s:/Julie P. Wilson

REMZY D. BITAR

State Bar No.: 1038340

JULIE P. WILSON

State Bar No. 1034792

CRIVELLO CARLSON, S.C.

Attorneys for Ralph Illick, Marathon County Public Library, Tim Gierl, Audrey Ascher, Gary Beastron, Ken Day, Alison Morrow, Katie Rosenberg, Scott Winch, Marathon County and Keith Langehahn

Crivello Carlson, S.C.

710 North Plankinton Avenue

Milwaukee, Wisconsin 53203

414-271-7722

Email: rpollen@crivellocarlson.com

rbitar@crivellocarlson.com