

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,)	Case No. 11-cv-231
)	
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.)	
)	

STATEMENT OF FACTS PLAINTIFFS INTEND TO PROVE AT AN EVIDENTIARY HEARING ON THEIR MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. Plaintiffs either are or represent citizens of the United States and residents of the State of Wisconsin (cplt., pars. 1-4). Defendants are citizens of the United States and residents of the State of Wisconsin (cplt., pars. 5-9).
2. Plaintiffs Whitaker, Kraimer-Nichols, and Litschauer are volunteers for co-plaintiff 40 Days for Life of Wausau (cplt., pars. 1-4).
3. Defendant Ralph Illick is the Library Director in charge of defendant Marathon County Public Library, a public library (cplt., pars. 5-6).
4. Defendants Tim Gierl, Audrey Ascher, Gary Beastrom, Ken Day, Alison Morrow, Katie Rosenberg, and Scott Winch are the seven trustees of the Marathon County Public Library,

comprising the Board of Trustees of the library and exercising control over the library (cplt., par. 7).

5. Marathon County, Wisconsin, is the county in which the Marathon County Public Library operates and whose Board of Supervisors appoints the library trustees (cplt., par. 8).

6. Keith Langenhahn is the Chairman of the Marathon County Board of Supervisors (cplt., par. 9).

7. Plaintiffs are involved in a local “40 Days for Life” campaign in and around Wausau, Wisconsin, that runs from March 9 to April 17, 2011 (cplt., par. 12).

8. To draw attention to, and in conjunction with, the campaign, plaintiffs sought to show a pro-life documentary, “BloodMoney,” whose aim is to educate viewers about the “business of abortion” (cplt., pars. 12-13).

9. The movie contains no indecent or obscene material and has been exhibited at both public and private venues across the United States, as well as abroad, without known disorderly or violent response (cplt., par. 13).

10. Plaintiffs sought a public, visible venue for their movie exhibition, and to that end, decided to have the showing at defendant Marathon County Public Library, which offers exhibit and meeting space to the public for a variety of purposes, including so-called “public meeting rooms” (cplt., par. 6 & 14).

11. On or about March 1, 2011, plaintiff Theresa Whitaker, calling on her own behalf and on behalf of 40 Days for Life of Wausau, made a reservation of one of these “public meeting rooms,” for the express purpose of showing a movie, for Sunday, April 3, 2011, 1:00pm to 3:00pm (cplt., par. 14).

12. The reservation was accepted and confirmed by library staff, without inquiry as to the content or title of the movie (cplt., par. 14).

13. In reliance upon the library's agreement to reserve a room and permit the presentation, plaintiffs promoted, prepared and advertised the time, date, place, and content of the event widely to the public (cplt., par. 15).

14. On Tuesday, March 22, 2011, defendant Ralph 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 the room to show the movie, as the movie showing would "interfere with the normal use of our library" (cplt., pars. 5 & 16).

15. Whitaker called back later on Tuesday, and Illick stated to her that he had revoked her reservation due to the potential for a protest at the library, which potential protest he stated that he learned of on the internet (cplt., par. 17).

16. Though Whitaker asked for and Illick agreed to provide evidence that such a protest was being planned, no such information was provided, and plaintiffs have not been able to find any such evidence, despite their best efforts (cplt., pars. 17-19).

17. On Wednesday, March 23, 2011, Illick confirmed the cancellation via an email in which he stated, "... 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" (cplt., par. 20).

18. The library's policy with regard to its "public meeting rooms" is to reserve them for members of the public "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use" (cplt., par. 22 & exhs. A & B).

19. The library offers its public meeting rooms for a wide variety of events and causes, including movie nights (cplt., par. 23 & exh. C).

20. 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" (cplt., par. 24 & exh. D).

21. A patron can access a computer at the library and view a trailer of the movie, "BloodMoney," in plain sight of the public (cplt., par. 25).

22. On Friday, March 25, 2011, plaintiffs' counsel wrote a letter to the library and its board, demanding a reinstatement of the room reservation (cplt., par. 26 & exh. E).

23. Late in the afternoon on Tuesday, March 29, 2011, the Marathon County Corporate Counsel responded via letter offering to relocate the plaintiffs' movie exhibition away from the public visible library location to a closed and empty county office building. In the letter, defense counsel states that "Marathon County continues to analyze the evidence that exists that a civil disturbance would ensue as a result of showing the film," but no such "evidence" is attached to defense counsel's letter nor has such been provided (cplt., par. 26 & exh. F).

24. Plaintiffs are irreparably harmed with no adequate remedy at law (cplt., pars. 12-33).

25. Enjoining defendants from threatened prohibition of the exhibition and screening of the movie would impose no cognizable expense or harm on the defendants (cplt., par. 27).

26. The denial of plaintiffs' fundamental rights – even for a brief time – tips the balance of hardships decidedly in favor of plaintiffs (cplt., par. 27).

27. The public interest is served by an injunction (cplt., pars. 27-33).

28. Plaintiffs are likely to succeed on the merits (cplt., pars. 12-33).

Respectfully submitted,

AXLEY BRYNELSON, LLP

Dated: March 30, 2011

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