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Exclusive report: Marathon County supervisors violated First Amendment protections in library fight

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11–14 minutes



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Attorneys reviewing Marathon County’s threats to reduce funding for the public library after demands to remove challenged books concluded that those actions violated First Amendment protections, placing the county at legal risk.

“Removing books—based solely upon content and viewpoint—violates the First Amendment,” a Jan. 23, 2023 report from von

Briesen & Roper, S.C., declares. “Similarly, deciding to reduce [Marathon County Public Library] funding—based upon MCPL’s refusal to remove books challenged on the basis of content and viewpoint—violates the First Amendment,” which protects the right of both adults and children to receive information.

The Library Board of Trustees on Dec. 20, 2022 engaged the firm to complete a report regarding the recent wave of challenges to books contained within the MCPL’s collection, along with related funding discussions held last fall by Marathon County Supervisors. Attorneys were asked to assess the liability risks now faced by Marathon County as a result of the challenges. In their summary, the attorneys caution supervisors to “separate their personal and doctrinal views from their political actions, and consider their constitutional and ethical obligations to the people of Marathon County.”



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Supervisor Chris Dickinson in 2022 spearheaded an attempt to slash the library budget by \$365,000, specifically citing the library’s unwillingness to remove or relocate books and their “slow response” to calls for removal. That effort was defeated, though a

proposal by Vice-Chair Craig McEwen, who said he agreed with Dickinson's remarks on the books review process, succeeded and removed \$69,000 from the library budget.

In November, the Marathon County Board of Trustees reviewed public comments, legal definitions and state rules governing library books before endorsing a recommendation to keep challenged books in its juvenile nonfiction section. The decision was made in the wake of demands by a number of residents to remove books they said contain "pornographic materials" be removed from the public library system and that the composition of the library board "reflect both sides."

Marathon County Public Library Director Leah Giordano acknowledged the controversy in a September email to Wausau Pilot & Review.

"We take the concerns of our community very seriously and address them through our long-standing Complaint Policy for Materials Collection and its associated procedure."



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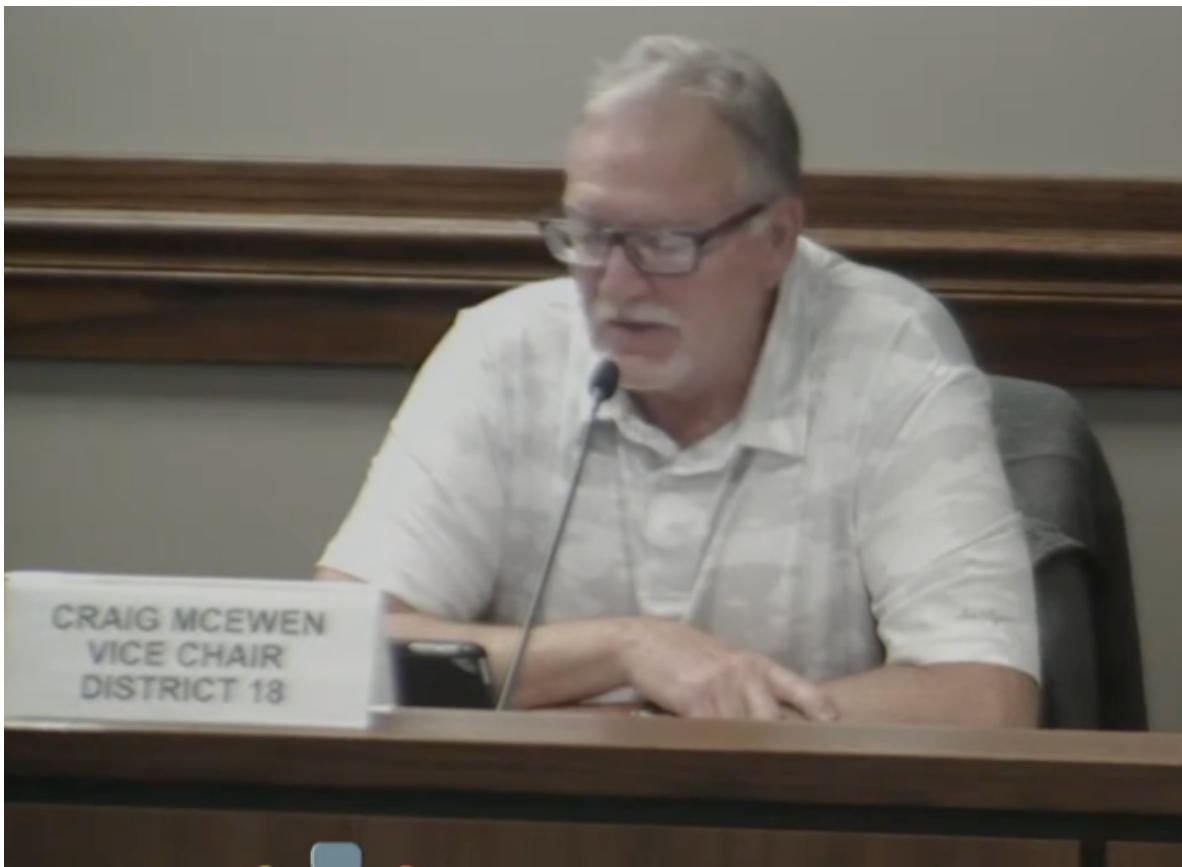
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Giordano said this week that the library has received nine requests within the past two years to reconsider materials. All nine books remain on the shelves.

Report calls out several supervisors

The von Briesen report, obtained by Wausau Pilot & Review as part of an open records request, details communications of concern involving several Marathon County Supervisors starting in September that illustrate a legally problematic connection between library materials and funding.



Vice Chair Craig McEwen

On Sept. 13, Dist. 13 Supervisor Michael Ritter wrote to a constituent regarding the book “Fun Home,” which he described as “disgusting, “filth,” and an effort to “normalize” pedophilia. “Until our libraries are purged of this garbage I will not be supporting any asks of our libraries that are brought to the County Board,” Ritter wrote.

Then on Sept. 19, Supervisor Tim Sondelski calls out books he says are “pornographic” and suggests they violate state law by exposing children to harmful material.

“I’ll just say the library is funded through the county board so that could have implications too if they don’t get things straightened up here.” Later, on his Facebook page, he called the fight against such content “exactly why God put many of us Christians [sic] the board, to fight the evil and protect the children. It is the time of

reckoning, let's see how Supervisors stand on the matter.”

Sondelski again on Sept. 25 posted on his Facebook page. “Put pressure on the library board and they will understand there will be real consequences if they don't follow through,” his post read.

Dickinson, the Dist. 29 supervisor who called for \$365,000 in funding cuts for the library, commented publicly at an Oct. 17, 2022 MCPL Board meeting in a virtual appearance. In his comments, he said: “And just stating that our budget is coming up here and I know there are some that are looking for action to be taken within the budget if no action is taken by the Library Board about these books.”

Another supervisor, David Baker of Dist. 23, sent a request Oct. 18, 2022 to Marathon County Corporation Counsel Mike Puerner for a legal opinion as to whether supervisors could pass an ordinance prohibiting the library from lending certain item. Puerner's response makes it clear that a county board is not authorized to restrict materials in such a way.

Puerner also addressed First Amendment implications and cautioned the board about the issue in a memo that pointed to a U.S. Supreme Court decision that concluded there are limits to the discretion of governing officials to remove library books. That decision also held that local officials removing books from library shelves to deny access to ideas with which they disagreed is unconstitutional.

But again on Oct. 31, 2022, another supervisor, Tony Sherfinski, outright suggested a 50 percent reduction in library funding in a response to a citizen's assertion that the board has “the influence and power to do something to apply pressure with the purse

strings.”

“...One option that we always have is that of funding. I suggest that we use it and apply a significant reduction in funding for the library,” he wrote, in an email to 23 of the 38 county board supervisors.

Annual budget hearing prompts additional connections

On Nov. 2, the Marathon County Board held its annual meeting and budget hearing, during which several supervisors addressed the MCPL book challenges and funding – ignoring Puerner’s caution and other warnings from Board Chair Kurt Gibbs of the potential legal peril ahead.

McEwen, whose proposal to cut the MCPL’s funding by \$69,000 ultimately passed, spoke about the institution’s “pornographic materials” and said he wished “the Marathon County Library Board would have taken this serious before we had to start talking about their budget.”

Another supervisor, Jennifer Aarestad of Dist. 17, said the issue came down to “protecting our children” and said if only the library would “come to an agreeable compromise on this issue, it will make it easier for the County Board to vote in favor of the proposed library budget.”

Sherfinski, who represents Dist. 16, also urged supervisors to “remember” that “we’re a policy-setting board” and “act accordingly.”





Supervisor Chris Dickinson on Nov. 10, 2022

Supervisor Dickinson’s comments stand out as those which perhaps best illustrate the lack of understanding supervisors had about the First Amendment issues at hand. When calling for the \$365,000 library budget reduction, Dickinson specifically pointed to the library’s “slow response to the books controversy” and said the “County Board’s main influence and control on the library is financial, it’s on the budget. We do have the appointments of some members to that, but obviously, it’s in the budget. . . . the controversy surrounding the books within the library exists and it needs a resolution.”

“The interesting thing about this controversy is that it helps me and helps us, in fact, look at the budget for the library, which probably would not have been done in the same way,” Dickinson said. “I had hoped that my communication with the Library Board President would have taken more seriously in regards to this budget vote timeline.”

Dickinson repeats many of his comments on Nov. 10 and repeats his funding reduction demand, even after Corp. Counsel advises supervisors of the potential risks. And in a Nov. 14, 2022 email to then-MCPL Board President Sharon Hunter, the supervisor doubles down on his threat to consider funding issues if a book was not removed.

“It has come to my attention that you have denied a request to remove a book. If that is the case I look forward to engaging in further dialog next year during budget time, Have a good night,” he wrote.

Hunter, along with Dist. 1 Supervisor Michelle Van Krey, were since removed from their roles on the library board. On Dec. 13, a majority of supervisors declined their reappointment, an apparent retaliation over their refusal to remove or relocate books from the facility. Supervisors opposed to their reappointment said they couldn't support either candidate since they failed to address concerns over books in the library. The vote was 20-12, even after Chair Kurt Gibbs again warned that taking action against library board members could expose the county to significant liability.

Legal precedent

The von Briesen report cited case law in multiple instances to validate their conclusion that such actions put the county at risk of a lawsuit that would be difficult to defend. Courts are firm that if the government's decision to censor public library materials is substantially connected to content or viewpoint discrimination, that conduct violates the First Amendment.

In San Antonio, Tex., a group of residents successfully sued Llano

County commissioners individually for their role in “removing systematically removing award-winning books from library shelves because they disagree with the ideas within them.” The right to publish and receive ideas – even politically unpopular ideas or those that some find offensive or distasteful – is enshrined in our Constitution, court documents state.

In another case, plaintiffs sought a declaration that the Library of Congress violated the First amendment by removing braille copies of Playboy from its shelves. “The government has no power to restrict expression because of its message, ideas, subject matter or content,” court documents state. This case in particular, according to the von Briesen report, illustrates the “fragile position” that government leaders put public libraries in when they engage in the business of censorship.

“Additionally, if government actors dangle money in exchange for speech regulation or restriction, courts will not give public libraries a free pass; public libraries remain obligated to comply with the First Amendment even if politicians do not,” the report states.

County officials have not said whether they will consider restoring the lost \$69,000 in funding to the Marathon County Public Library or reinstate the two board members who were denied reappointment and whose replacements have already been chosen. But the von Briesen report is clear.

“Removing MCPL books or reducing MCPL funding—based on objections to the content or viewpoints expressed in MCPL books—violates the First Amendment and would subject MCPL and Marathon County to litigation that would be difficult and costly to defend,” the attorneys’ conclusion reads. “Removing MCPL

books or reducing MCPL funding—based on the content or viewpoints expressed in MCPL books—could also be considered a violation of Marathon County’s Core Values and Code of Conduct. Accordingly, current and future MCPL trustees and county supervisors should be advised and cautioned against removing MCPL books based on their content or viewpoint—or reducing funding if those books are not removed—to avoid liability.”

To date, no legal action has been filed against the county or individual supervisors regarding these actions.

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