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WENDY FORDE CARRINGTON 6009 N. Beechwood Street Philadelphia, PA 19138,	CIVIL DIVISION
TIARA FULLER 2010 Widener Place Philadelphia, PA 19138,	Term, 2008
SUSAN FEENAN 1429 E. Montgomery Avenue Philadelphia, PA 19125,	No.
MARYANNE MCHALE 3342 Princeton Avenue Philadelphia, PA 19149,	Class Action
SHARON VANN 1201 S. 19 th Street, Apt. 3R Philadelphia, PA 19146,	
JOSINA GUESS 1115 S. Paxon Street Philadelphia, PA 19143,	

On behalf of themselves and others
similarly situated, and

DISTRICT COUNCIL 47, AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES,
AFL-CIO (AFSCME), by its President,
CATHY SCOTT
1606 Walnut Street
Philadelphia, PA 19103,

Plaintiffs

v.

MAYOR MICHAEL A. NUTTER and
THE CITY OF PHILADELPHIA
City Hall
Philadelphia, PA 19107

and

SIOBHAN A. REARDON
President and Executive Director and
THE BOARD OF TRUSTEES of
The Free Library of Philadelphia
1901 Vine Street
Philadelphia, PA,

Defendants

**COMPLAINT
SEEKING DECLARATORY, MANDAMUS AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This is a civil action by citizens of Philadelphia to prevent the illegal closure and abandonment of eleven neighborhood public library branches by the Defendants, scheduled to occur on December 31, 2008. Joining these individual library patrons as party plaintiffs are the librarians who serve them, through their designated labor union, DC 47 AFSCME.

2. These library facilities—several of which are historical treasures—are publicly owned capital assets of the City that perform a unique and critical function within the eleven communities in which they are located, including the only readily accessible library facilities for children who have no libraries in their schools; the only free, public access to computers and the Internet; the principal educational support institution for home-schooling families; and a safe, after-school sanctuary for students who would otherwise be home alone.

3. The City, like state and local governments throughout the nation, is trying to cope with the most serious financial crisis since the Great Depression. Plaintiffs appreciate this fact and understand that the Mayor and the agencies within the City's Executive Branch, including the Free Library of Philadelphia, face a difficult task in maintaining municipal services in this crisis of unknown duration. They also acknowledge that, under the City Charter, the Mayor is the elected official who is responsible for devising and implementing plans to match the City's current expenditures to shrinking tax revenues. Certain options, however, such as the permanent closure and abandonment of functioning City facilities, are not within the lawful prerogatives of the Mayor or his departments and agencies, without obtaining prior approval of City Council.

4. The Philadelphia City Code, § 16-203, expressly prohibits the closure and abandonment of City buildings without the approval of City Council, by ordinance. This law, which derives from the Charter's assignment of the power to acquire and dispose of capital facilities to the Legislative Branch, i.e., City Council, means that the Mayor and his departments are without proper legal authority to unilaterally close and abandon these eleven libraries.

5. Plaintiffs have a personal interest in the preservation of these essential public assets, in addition to the general interest they share with other citizens in having their elected officials and the employees of their municipal government obey the law. In this case, the illegal action of the Defendants is threatening Plaintiffs with substantial, direct, immediate and permanent harms.

6. Plaintiffs seek from this Honorable Court an order granting them declaratory, mandamus and injunctive relief to prevent the eleven library branches from being illegally closed.

II. THE PARTIES

7. Plaintiff Tanya Westbrook is a taxpayer citizen of the City of Philadelphia who resides at 1132 Wagner Avenue, Philadelphia, PA 19141.

8. Plaintiff Wendy Forde Carrington is a taxpayer citizen of the City of Philadelphia who resides at 6009 N. Beechwood Street, Philadelphia, PA 19138.

9. Plaintiff Tiara Fuller is a Philadelphia public high school student and a citizen of the City of Philadelphia who resides at 2010 Widener Place, Philadelphia, PA 19138.

10. Plaintiff Susan Feenan is a taxpayer citizen of the City of Philadelphia who resides at 1429 E. Montgomery Avenue, Philadelphia, PA 19125.

11. Plaintiff Maryanne McHale is a taxpayer citizen of the City of Philadelphia who resides at 3342 Princeton Avenue, Philadelphia, PA 19149.

12. Plaintiff Sharon Vann is a taxpayer citizen of the City of Philadelphia who resides at 1201 S. 19th Street, Apt. 3R, Philadelphia, PA 19146.

13. Plaintiff Josina Guess is a taxpayer citizen of the City of Philadelphia who resides at 1115 S. Paxon Street, Philadelphia, PA 19143.

14. Plaintiff District Council 47, AFSCME is the collective bargaining agent of the professional workers of the City of Philadelphia, including the librarians of the Free Library of Philadelphia, all of whom are also taxpayer citizens of the City. They are represented in this suit by their duly elected President, Cathy Scott. The union's offices are located at 1606 Walnut Street, Philadelphia, PA 19103.

15. Defendant Michael A. Nutter is the Mayor of the City of Philadelphia, with offices at 215 City Hall, Philadelphia, PA 19107.

16. The City of Philadelphia is a political subdivision of the Commonwealth of Pennsylvania; it is the only "city of the first class" under state law; and it is governed by the Philadelphia Home Rule Charter. The official address of the City is One Parkway, 1515 Arch Street, Philadelphia, PA 19102.

17. Defendant Siobhan A. Reardon is the President and Director of the Free Library of Philadelphia, with offices at 1901 Vine Street, Philadelphia, PA 19103. Defendant Board of Trustees of the Free Library of Philadelphia is the legal entity defined under the Philadelphia Home Rule Charter as the governing body of the City's public library system.

III. THE FACTS

A. Background

1. The Free Library system

18. The Free Library of Philadelphia was chartered in 1891 as "a general library which shall be free to all." In March, 1894 the first branch of the Free Library was

opened at City Hall. Later that same year, the Free Library merged with the six branches of the separate Philadelphia Public Library under the Free Library name. By 1898 the Free Library had the largest circulation in the world, at 1,778,387 volumes.

19. There are 54 library locations of the Free Library of Philadelphia situated throughout the city: the Central library at Logan Circle on the Benjamin Franklin Parkway, 49 neighborhood branches, three regional libraries, and one Library for the Blind and Physically Handicapped.

20. Many of the branches were funded by Andrew Carnegie, who donated \$1.5 million to the Free Library in 1903 for the branches to be constructed.

21. Under Section 3-802 of the Charter, the Library system is governed by a Board of Trustees consisting of 22 members and the Recreation Commissioner. Members are appointed alternately by vote of the board or by the Mayor.

22. The Free Library receives most of its operating revenue from the operating budget of the City of Philadelphia. City budget appropriations to the Library are made in the name of the Board of Trustees of the Free Library. In the current budget, approximately \$40 million of the City's \$4 billion operating budget is earmarked for the Free Library.

23. Most of the library branches are open Monday through Friday all day, Wednesday evenings, and Saturday afternoons. The regional and central facilities are also open on Sunday afternoons.

24. During the last two decades, the Philadelphia School District has substantially reduced library services in the public schools, making Philadelphia the only major city in the United States that does not have functioning libraries in most of its

public schools. One of the stated rationales for the reduction of library instruction and services in the schools was the existence of the Free Library branches within walking distance from most schools. As a result, many students and teachers rely on the Free Library branches as the only library resources in their home communities.

25. The role played by the neighborhood branches in Philadelphia's educational infrastructure goes beyond the reliance of the public schools that have lost their libraries and therefore rely on the branches as a necessary resource for their students. Homeschooling parents are very reliant on the branches, as are many of the charter schools that have opened nearby branches. For example, looking at two of the branches designated for closing, the Cohen Ogontz and Logan Branches, the Imhotep Charter School opened a few blocks from Cohen Ogontz and the Delaware Valley Charter School is less than a block from Logan.

26. In recent years, the Free Library branches have assumed a greater social service role beyond their traditional function of offering research resources and the free borrowing of books, periodicals and other materials. For example, the LEAP After-School Program, funded by the City, provides homework assistance, computer literacy, library skills, and multicultural enrichment activities for school-age students in grades 1-12 within each branch every weekday afternoon. During the summer, there are various programs for children also based in the branches, such as the Summer Reading Program and the Science in the Summer Program.

27. The Free Library has become an essential resource to adults as well as school children. Philadelphia has a 45% school drop-out rate and a poverty rate of 25%, the highest of any major city in the United States. The Free Library has assumed a

central role in trying to reverse these demographic trends, though job-search assistance, resume workshops and literacy training classes, as well as through the after-school programs mentioned above.

28. As stated below, an additional role that the neighborhood Free Library branches are now providing is that they serve as the only free connection to the Internet for low-income families that would otherwise have no access at all.

2. The Digital Divide and the Special Role of the Libraries

29. The World Wide Web, or Internet, has become an essential ingredient of life in the 21st century.

30. Increasingly, nationwide, public libraries play an important role in providing Internet access to citizens who would otherwise not have such access. Of the 143 million Americans using the Internet, approximately 10%, or 14.3 million people, access the Internet at a public library. About 20.3% of Internet users with household family income of less than \$15,000 per year use public libraries for their Internet access.

31. Among the public library facilities in the Commonwealth of Pennsylvania, 73.4% report that they are the only provider of free Internet access in their communities.

32. An emerging and increasingly significant service that public libraries provide involves “e-government,” meaning, the access to, use of and instruction related to federal, state and local government information, forms, and services. In addition, most job applications in the public and private sector are now submitted via the Internet, and the college application process is migrating to an Internet-based system. As a result, the public library has become for most low-income Americans their principal means to

obtain information about government services and benefits, to apply for employment and to apply to colleges.

33. Philadelphia has one of the lowest Internet penetration rates in the country, ranking 26th out of the 30 major American cities.

34. Most of the major employers within each of the principal private employment sectors in Philadelphia—health, universities, retail and hospitality—are now requiring job applications to be made via the Internet.

35. In addition to reducing or abandoning library services in its public schools, the Philadelphia school system has also reduced its college counseling resources in public high schools. As a result, the neighborhood library branches have become, for those thousands of Philadelphia high school students who do not have Internet in their home, not only their only means to complete school research projects and apply for jobs, but also, a primary vehicle for learning about colleges and submitting applications to colleges.

36. In recognition of the increasingly critical function played by the Free Library branches in enabling Philadelphia citizens to be connected to the Internet, the City recently retrofitted all 54 of the Free Library buildings with wireless Internet access, as the result of multi-million-dollar capital investment funded by the William Penn Foundation, a project completed in October, 2007.

3. The City's Budgetary Crisis and the Decision to Close 11 Branches

37. In September, 2008, as a result of substantial declines in tax revenues caused by the nationwide economic recession, the Free Library was informed by the Mayor's Office that it would have to cut its operating budget by \$8 million.

38. Upon information and belief, most City departments were told to trim approximately 10% from their spending budgets, while the Free Library, in contrast, was told to absorb a loss of 20%.

39. At a meeting of the Board of Trustees of the Free Library on September 23, 2008, it was announced that there would have to be service reductions at the libraries to absorb the necessary budget cut, but that there was no danger of any branch closings. The initial discussions focused on reducing weekend hours throughout the system.

40. During the following weeks, Defendant Reardon and her staff met with the Friends of the Free Library—a nonprofit organization that represents library patrons and is a primary stakeholder in library services—to review possible spending scenarios that would produce the necessary savings. The closing of branches was not among the discussed expense-cutting scenarios.

41. Contrary to the public statements of the Board of Trustees and contrary to the representations made by Defendant Reardon to the Library's key community stakeholders, Defendant Reardon decided, with the authorization of the Board, to use the Mayor's mandate to make cuts in the Library's operating budget as a political opportunity to implement a pre-existing, undisclosed plan—described by her in a published interview as a plan “five years in the making”—to alter the capital structure of the Free Library system.

42. This capital restructuring program—now being characterized as “right-sizing” the system—includes a) replacing the smaller neighborhood branch buildings with two newly constructed regional libraries, b) a major expansion of the Central Library, and c) several mobile “bookmobiles” for use in the neighborhoods. This

program was recently embodied in a “wish list” sent by the Mayor to the incoming Obama Administration, a list that requested federal capital assistance for each of these projects.

43. This capital restructuring program has never been presented to the public, nor expressly adopted by the Board of Trustees, nor has it ever been submitted to the Philadelphia City Council, let alone approved by that body.

44. At the November 18, 2008 meeting of the Board of Trustees, it was announced that the operating budget reductions requested by the Mayor would be achieved by closing eleven of the 49 neighborhood branches. The eleven branches named are:

- i. The Charles L. Durham Branch, 3320 Haverford Ave., 19104;
- ii. The David Cohen Ogontz Branch, 6017 Ogontz Ave., 19141;
- iii. The Eastwick Branch, 2151 Island Ave., 19153;
- iv. The Fishtown Community Branch, 1217 E. Montgomery Ave., 19125;
- v. The Fumo Family Branch, 2437 S. Broad St., 19148;
- vi. The Haddington Branch, 446 N. 65th St., 19151;
- vii. The Holmesburg Branch, 7810 Frankford Ave., 19136;
- viii. The Kingsessing Branch, 1201 S. 51st St., 19143;
- ix. The Logan Branch, 1301 Wagner Ave., 19141;
- x. The Queen Memorial Library, 1201 S. 23rd St., 19146 and the
- xi. Wadsworth Branch, 1500 Wadsworth Ave., 19150.

45. According to Defendants’ public statements, the basis for selecting these eleven for closing was an analysis that supposedly identified the “smallest” branches.

46. Defendants claim to have looked at such factors as the turnstile counts and numbers of books in circulation, number of children attending the LEAP program, and the size of the building in making this determination. However, several of the branches chosen for closure actually have higher book circulation (Holmesburg, Eastwick and Wadsworth) and higher turnstile counts (Holmesburg, Cohen Ogontz, Kingsessing and the Fumo Family Branch) than branches not selected.

47. Among the factors that, upon information and belief, Defendants did not consider in deciding which branches to close were the following:

- a. The existence, quality and accessibility of any library services in the public, private and parochial schools in those neighborhoods;
- b. The extent to which neighboring public and charter schools are dependent on the branches for their educational programs;
- c. The existence of other free Internet access alternatives for users of the branches;
- d. The degree of Internet penetration in the immediate neighborhoods served by the branches;
- e. The real feasibility of branch users being able to access services at the identified alternative branches, either in terms of the capacity, distance, social geography, public transit or safety issues related to the identified alternatives;
- f. The usage per square feet of space—meaning that smaller libraries were selected regardless of their space efficiencies in delivering services;
- g. The actual nonpersonnel costs associated with the buildings, such as heating and air-conditioning, meaning that building efficiencies were ignored;
- h. The age and/or historical significance of any of the buildings;
- i. The existence of any private funding or volunteer resources in the communities affected that might be able to assist the Library in reducing or shifting costs; and

- j. The existence of alternative resources in the more affluent neighborhoods where some of the branches not selected are located—such as bookstores and private internet connections—that do not exist in the neighborhoods which are to lose their branches.

48. As a result of Defendants' rushed and flawed analysis, a number of obvious anomalies emerged including the fact that among the eleven chosen branches included the newest facility (the Cohen Ogontz Branch) and four that were part of the original Carnegie gift to the City supposedly for perpetual use as libraries (Haddington, Holmesburg, Kingsessing and Logan). Defendant Reardon also acknowledged that she did not know that, unlike other major cities in the United States, most public schools in the City do not have libraries.

49. The Holmesburg Branch, unlike the other branches selected for closure was not selected because of its smaller usage metrics. In fact, Holmesburg has high usage metrics. This branch was selected for closure purely because of its geographic location in the Northeast section of the City which, for political reasons, the Defendants decided, they needed to include on its list.

50. The buildings housing the Holmesburg, Haddington, Kingsessing and Logan Branches were each constructed with funds donated to the City by Andrew Carnegie in 1903 on the condition that the City operate a public library in those buildings.

51. The land on which the Holmesburg Branch was built was acquired by the City through a donation made by the Trustees of Lower Dublin Academy, pursuant to a deed dated April 3, 1905 and duly recorded in the City's Department of Records. The said deed includes the following condition:

It is understood covenanted and agreed between the parties hereto and this deed is made upon condition that the premises above described and

conveyed shall be used as a site for one of the thirty branch library buildings heretofore referred to and should such premises at any time hereafter cease to be used for such purpose then the same shall revert to and become the property of the said the Trustees of Lower Dublin Academy its successors and assigns without any conveyance thereof being required.

52. The land upon which the Haddington Branch was built was acquired by the City through a donation made by one Alex Simpson, Jr. and his wife, Ellen Fran Simpson, pursuant to a deed dated May 23, 1912, and duly recorded in the City's Department of Records. The said deed includes the following condition:

It is understood covenanted and agreed between the parties hereto and this Deed is made upon Condition that the premises above Described and Conveyed shall be used only as a site for one of the thirty library branch buildings heretofor referred to and should such premises at any time hereafter cease to be used for such purpose then the same shall revert to and become the property of the said grantor Alex Simpson Jr. his Heirs and assigns without any Conveyance thereof being required . . .

53. As a result of the conditions in these deeds, the Defendants' stated intention of closing the Holmesburg and Haddington Branches could result in an automatic reversion of publicly owned land to the heirs of the respective grantors.

54. The Defendants have announced that the permanent closures of the eleven branches will take place on December 31, 2008 at 5:00 PM.

B. Factual Allegations Pertaining to the Plaintiffs

55. Plaintiff Tanya Westbrook is a single mother who, with her two sons, Elijah and Tyrell, resides across the street from the Logan Branch. The proximity of the branch was a significant factor in her decision to purchase her home and enhances its market value.

56. Plaintiff Westbrook has an associates degree but has been unemployed since April, 2008. She needs access to the Internet in order to apply for work, but she has no Internet in her house.

57. Plaintiff Westbrook uses the Logan Branch almost every day it is open. Nearly every job application she makes, and every temp agency she uses, requires her to take tests and submit resumes over the Internet.

58. Plaintiff's son, Elijah Westbrook, is a 7th grader at Birney Middle School. Tyrell Westbrook is an 11th grader at Imhotep Charter School. Both use the Logan Branch several times every week to complete their homework—often with the help of the Internet access at the Branch. Many of the assignments they receive presume access to the Internet. In addition, both sons use the Internet at the Branch to pursue their hobbies and to explore higher education and career goals, and Tyrell completes job applications on-line.

59. For both of the Westbrook sons, the Logan Branch is their most important community institution. Elijah meets his friends there and they do homework together; Tyrell performs his community service there, collecting books for reshelving and assisting with catalogue-related tasks.

60. For the Westbrook family, the loss of the Logan Branch would cause immeasurable harms, including the loss of a reliable and accessible connection to the Internet; interference in their efforts to complete homework, find employment and plan pathways out of poverty; and the loss of a facility that has created a sense of community for them. It would also have a negative effect on the value of their home.

61. The next closest library branch for the Westbrooks is the Greater Olney Branch at 5th Street and Tabor Road. That branch is already overcrowded, having a long wait for computers and allowing only 20 minutes on-line because of the overcrowding. Any other library branch in the Free Library system would require them to make a long trip on public transportation to get there.

62. Plaintiff Wendy Forde Carrington lives with her husband and two children in a house that is four blocks from the David Cohen Ogontz Branch which she and her family use constantly.

63. Plaintiff Carrington was an assistant pre-school teacher but is now disabled from injuries suffered from giving birth to her now three-year old son. The family budget is very strained, particularly now that she cannot work. Due to their poverty, they cannot afford Internet service in her home.

64. Plaintiff Carrington has been homeschooling her 12-year old daughter, Shani, for the past two years. They use the Cohen Ogontz Branch as an essential resource for the homeschooling. Shani is a voracious reader who is now testing advanced in both reading and math, and has tested in the 99th percentile in an IQ exam and been determined to be gifted. She aspires to being a judge.

65. At least once a week, Shani uses the Internet access at the Cohen Ogontz Branch to conduct a research project Plaintiff assigns her. She also uses the Internet there to prepare presentations for her homeschool group and for her church. Most recently, she has been researching the history of China and Korea on the Cohen Ogontz Branch computers.

66. If Cohen Ogontz closes, it will cause a substantial disruption, inconvenience, and burden to Plaintiff and Shani and will require additional time and the additional expense of a public transit trip to another branch, an expense of at least \$40.00 per month for only one weekly library trip. Plaintiff believes that the closure of Cohen Ogontz would cause substantial harms throughout the surrounding neighborhood, as many of the neighborhood children receive homework help there after school.

67. Plaintiff believes that the services provided by the Cohen Ogontz Branch provide her and her neighbors with important, accessible tools to move beyond poverty. The loss of the facility as an easily enjoyed neighborhood institution would put many of these tools out of reach.

68. Plaintiff Tiara Fuller is a 9th grader at the Parkway Northwest School for Peace and Social Justice, a special admission, college preparatory public high school located in the Mt. Airy section of Philadelphia. She lives in the Ogontz neighborhood and takes three buses in order to get to and from school.

69. Plaintiff Fuller has been a regular user of the Cohen Ogontz Branch since she was in kindergarten. Now, as a college-bound high school student, she takes out books two times every week from the branch and the branch is where she does all her homework assignments that require use of the Internet. Most recently, these assignments have included the politics and economy of Mali; statistics and images regarding homelessness and the chemical properties of scandium.

70. Plaintiff owns an old computer at home that is very slow and often does not work at all. She does not own a printer. Her family cannot afford to buy her a working computer and printer.

71. Last week Plaintiff received the highest score in her class on the benchmark test for reading and writing. She believes that the learning and the love for reading that she has acquired at the Cohen Ogontz Branch has contributed immensely to her academic successes.

72. Plaintiff Fuller has begun researching colleges, also on the Cohen Ogontz Branch computers. This summer she visited Spelman College which, for the moment, is where she hopes to attend. Her career interests include pediatrics and journalism.

73. She does not have any feasible alternatives to the Cohen Ogontz Branch. There is a branch near her school in Mt. Airy, but she could not spend the same amount of time there that she spends at Cohen Ogontz, especially when the days are shorter and she would face a long and dangerous trip home in the dark.

74. Plaintiff Fuller cannot imagine being able to pursue her studies and her dreams without Cohen Ogontz.

75. Plaintiff Susan Feenan lives in the Fishtown neighborhood of Philadelphia with her husband and her three elementary-school aged daughters. She and her daughters are frequent users of the Fishtown Community Branch library, at least weekly during the school year and more frequently during the summer.

76. The library use by the family of Plaintiff Feenan of the services provided by the Fishtown Branch includes constant borrowing of books, periodicals, CD's, movies and audio books; use of the noncommercial educational software on the library computers; use of reference materials for school and personal research; participation in the Summer Reading Program and the Science in the Summer Program at the Branch;

attendance at weekly performing and/or creative arts events for children during the summer.

77. Plaintiff Feenan is an active community volunteer at the Fishtown Branch as a member of Friends of the Fishtown Library; a board member of By My Side's Neighborhood Parenting Program; and a volunteer at the recently revived weekly Preschool Storytime Series.

78. For the Plaintiff Feenan and her family, the Fishtown Branch is more than the services it provides their children. It is the key public institution in their neighborhood, offering a sense of place, permanence and stability that provides a calm oasis in an otherwise boisterous environment and a rare leveling ground among the disparate people who populate the neighborhood.

79. While plaintiff Feenan has the personal means to drive her children to another branch in the event of a closure, the unique contributions that the Branch provides to her and her neighbors—many of whom do not have the means to go elsewhere—are irreplaceable.

80. The City has announced that Fishtown residents can replace the services received at the Fishtown Branch at the Kensington Branch. However, that branch is located in a high-crime area underneath the Market-Frankford El that is so dangerous that the Free Library does not offer evening hours there. Few, if any, of Fishtown's school children will travel to Kensington for after-school homework and enrichment activities.

81. Plaintiff Maryanne McHale resides in the Mayfair section of Northeast Philadelphia with her 5th-grade age son, Timothy, whom she homeschools. The

Holmesburg Branch, located within walking distance of her home, is a principal support resource for her home schooling.

82. Plaintiff's son Timothy is an avid reader and artist who has immersed himself in the Branch's vast collection of history, science, math, language, music and art materials. His passions include science fiction, classical and jazz music and cartooning. Closing the Holmesburg Branch would have the effect of forcing Timothy to read, listen and view this stimulating material to a far lesser degree.

83. Plaintiff McHale has a back condition that makes it difficult for her to carry any weight and travel long distances. Neither the Tacony nor Torresdale Branches—representing, according to the Defendants, reasonable substitutes for Holmesburg patrons—present Plaintiff with a realistic alternative. Both of them require a two-bus trip which, in addition to the physical difficulties presented, would impose on her an additional expense, for her and Timothy, of \$8.80 per library trip. The burden of absorbing this additional expense alone will require her to reduce her trips to the library with Timothy.

84. Plaintiff Sharon Vann lives at 19th and Federal Streets, three blocks from the Queen Memorial Branch.

85. Plaintiff's 11-year old daughter, Sherron, attends Smith Elementary School which does not have a library.

86. Sherron uses the Queen Memorial Branch nearly every day after school, and on Saturdays. The library, and its librarian, have helped her make friends, have taught her computer skills and have instilled in her a love for reading.

87. Because Queen Memorial is so close to Plaintiff's home, she is comfortable allowing Sherron to go back and forth to the Branch on her own, particularly after school. Plaintiff would not allow her to travel on her own to another branch in another part of the City. Realistically, the closure of Queen Memorial would effectively end the important, daily relationship that Sherron has with the library, and result in her spending her after-school time in the house.

88. Plaintiff Josina Guess is the mother of three children, ages five, three and eight months. For years she and her husband lived in the West Philadelphia neighborhood served by the Kingsessing Branch, and she has been a regular user. Approximately two years ago, she and her husband purchased their first house. One of the reasons they selected that particular house is its proximity to the Kingsessing Branch, a fact that adds to its market value.

89. Plaintiff Guess owns a laptop computer but does not have Internet service in her home. When she or her husband want to check their email or do any search on the Internet, they use Kingsessing for its wireless service.

90. The Kingsessing Branch is the site of numerous community services and, as a result, has become essentially the town square for its neighborhood. When Plaintiff Guess had her first child, she took advantage of support programs for mothers there and developed important friendships she would not have otherwise had. She and her children regularly attend educational events there and benefit from the educational materials available to users. Plaintiff is the head of the youth ministry of her local church and, from that vantage point, as well as that of a mother, she has personal knowledge of the

extent to which the community depends on the LEAP program, the summer reading program and other programming for children.

91. A closure of Kingsessing will cause irreparable harms to Plaintiff's community, including the loss of its only free Internet connection; cultural and educational deprivation; and a loss of social cohesion. It will also reduce the market value of her home.

92. Plaintiff District 47 AFSCME includes the librarians who staff the eleven branches. These librarians enjoy the satisfaction of rewarding work within Philadelphia neighborhoods that value their work immeasurably. They regard themselves as public servants not only to the Free Library and the City as a whole, but to the very specific communities in which they work. The closure of these facilities will cause them substantial, direct and immediate loss of personal ties they have forged with these communities.

IV. CLASS ACTION ALLEGATIONS

93. Plaintiffs Westbrook, Carrington, Fuller, Feenan, McHale, Vann and Guess are suing as class representatives of all citizens of Philadelphia who are regular users—either themselves or their children—of the eleven Free Library branches chosen for closure.

94. The proposed class is so numerous that the joinder of all members is impracticable. Upon information and belief, the number is in the tens of thousands.

95. There are questions of law and fact common to the class including, but not limited to: whether the Defendants are closing or abandoning these library buildings, or threatening to "allow them to go into disuse," within the meaning of Philadelphia Code

§ 16-203; whether a plan represented as a response to temporary operating revenue shortfalls is being used as a pretense for the capital restructuring of the Free Library system through the closure or abandonment of the eleven branches; whether the Defendants' actions are in violation of § 16-203; whether the Defendants are unreasonably rejecting alternative courses that would yield the necessary savings without violating the law and subjecting the class to the prospect of so much disruption and harm.

96. The claims of the representative parties are typical of the claims of the class. Each of them is a regular user of the affected branches. Collectively, they include many of the most common and most egregious harms being faced by the class, including college-aspiring high school students and job seekers who are threatened with loss of access to computers and the Internet; homeschoolers who are threatened with the loss of one of their most important educational resources; and children and families facing the loss of an institution that is for them an irreplaceable source of safety, community and educational stimulation.

97. A class action provides a fair and efficient method for adjudication of the controversy in that—

- a. Common questions of law and fact will predominate over any question affecting only individual members;
- b. There is little if any likelihood of difficulties, either regarding the size of the class or other factors, in the management of the case as a class action;
- c. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent adjudications with respect to the legality of the Defendants' actions, and as a practical matter, a decision

for or against the Plaintiffs' claims will be dispositive of the interests of the class;

- d. There is no already pending litigation by or against members of the class regarding the issues involved in this action;
- e. This forum is appropriate for the litigation of the claims of the class in that they are all citizens of Philadelphia and
- f. The Defendants are acting or refusing to act on grounds generally applicable to the class as a whole, thereby making final equitable or declaratory relief appropriate with respect to the class.

98. The attorneys representing the class is experienced in the prosecution of class actions and will adequately represent the interests of the class.

99. The named party plaintiffs have no conflict with the interests of the class as a whole and there is no reason why they will not be able to fulfill their responsibilities as class representatives. Moreover, numerous community organizations and interested citizens have come forward to ensure that the plaintiffs have sufficient resources to prosecute this case.

V. LEGAL CLAIM

100. The above allegations are reaverred and incorporated by this reference.

101. All of the eleven branches are housed in buildings owned by the City of Philadelphia.

102. Under the City Charter, the Philadelphia City Council is the Legislative Branch of the City's government.

103. As part of its authority as the Legislative Branch, Council is responsible for acquiring property and constructing and improving public buildings. Such activities are exercised through its capital budget powers under § 2-303 of the Charter. As an example of the exercise of this power, the most recently constructed library branch building is the Cohen Ogontz branch which opened in 1997. It was built as a result of a capital budget ordinance long championed by the late Councilman David Cohen and it was renamed in his memory, by ordinance, after his death.

104. In addition to being the political body responsible for deciding to build a library, City Council is also the responsible body that would decide to sell a library. Under the City Charter, § 8-205, City Council must approve any sale or exchange of City-owned real estate.

105. In furtherance of that Charter delegation to the City Council, Philadelphia Code, § 16-203, provides as follows:

No City-owned capital facility shall be closed, abandoned, or allowed to go into disuse without specific approval therefor from City Council, by Ordinance.

The Defendants have not sought the approval of the City Council for either its capital restructuring plan or of its decision to immediately close the eleven branches, nor has Council granted this approval, as required by Philadelphia Code § 16-203. On the contrary, on December 4, 2008, the Council passed a resolution urging the Mayor “to delay closing any City libraries in order to allow time for further analysis of the issue.” Resolution 080939.

106. Under 53 P.S. § 12127, the Mayor has the legal duty to “cause the ordinances of the city . . . to be executed and enforced” and to “perform such duties as may be prescribed by law or ordinance.”

107. Under Section 4-800 of the Philadelphia City Charter, the Free Library of Philadelphia is required “to exercise the powers and perform the duties vested in and imposed upon it by statute or ordinance.”

108. Defendants have considerable discretion in devising and implementing reductions in library-related operating expenses. However, that discretion is constrained by § 16-203.

109. By taking steps to close, abandon and/or put into disuse eleven City-owned library facilities, without first obtaining the specific approval of City Council, by Ordinance, the Defendants are in violation of § 16-203 and are thereby acting contrary to law and without proper legal authority, to the above-described detriment of the Plaintiffs.

110. As to the Holmesburg and Haddington Branches, the action of the Defendants is risking the automatic reversion of the real estate upon which those branches are built, in accordance with the terms of the original indentures that transferred these properties to the City. Such reversions would constitute the equivalent of a sale or exchange of real estate which, if it did occur, would constitute a violation by the Defendants of the City Charter itself, in addition to Philadelphia Code, § 16-203.

111. In recent news reports anticipating the commencement of this action, the City Solicitor has stated that she advised the Mayor that he and his departments do not have to obey and enforce § 16-203 because, in her judgment, this provision improperly

interferes with the Mayor's responsibility under the City Charter to balance the operating budget.

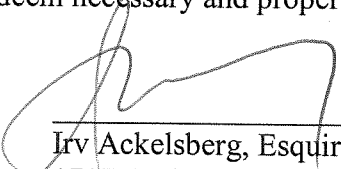
112. The City Solicitor's responsibility under the Charter to render legal advice to the Mayor (and to the City Council) is not the source of legal authority that overrides the Mayor's duty under state law to obey and enforce all properly enacted ordinances in the Philadelphia Code. 53 P.S. § 12127.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests this Honorable Court grant them the following relief:

- A. Certification of the above-mentioned class pursuant to the Rules of Civil Procedure;
- B. Declaratory relief that Defendants are violating the law as described herein;
- C. A peremptory judgment in mandamus, ordering Defendants to comply with Philadelphia Code, § 16-203;
- D. An order preliminarily and permanently enjoining the implementation of Defendants' plan to close library branches without obtaining the prior approval of City Council; and
- E. Such other relief that the Court may deem necessary and proper.

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