

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

BRIAN JOHNSON,

Plaintiff,

vs.

MINNEAPOLIS PARK AND
RECREATION BOARD,

Defendant.

CIVIL ACTION NO. _____

VERIFIED COMPLAINT

Comes now Plaintiff Brian Johnson and avers the following:

INTRODUCTION

1. This is a civil rights action pertaining to Minneapolis Park and Recreation Board's rule and practice of banning literature, in particular, the distribution of Bibles, in open and accessible areas of Loring Park during the Twin Cities Pride festival event.

2. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff Brian Johnson (Johnson) seeks injunctive relief, declaratory relief, and nominal damages against Defendant Minneapolis Park and Recreation Board (MPRB).

3. MPRB's rule and practice has deprived - and will continue to deprive - Johnson of his fundamental right to free speech as set out in the First Amendment to the United States Constitution.

4. Every act of MPRB alleged herein was committed under the color of state law and authority.

JURISDICTION AND VENUE

5. Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has jurisdiction over Johnson's claims. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction over Johnson's request for declaratory relief.

6. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the District of Minnesota, given that all claims arise out of this district and MPRB resides in this district.

PLAINTIFF

7. Johnson resides in Hayward, Wisconsin.

DEFENDANT

8. Defendant MPRB is a municipal governmental authority. MPRB controls, manages, and is responsible for public parks in the city of Minneapolis. In conjunction with this responsibility, MPRB promulgates and enforces regulations and rules for the public parks in Minneapolis, including Loring Park.

STATEMENT OF FACTS

Johnson and free Bibles

9. Johnson is a professing Evangelical Christian who strives to live out his faith on a daily basis. Johnson believes that the Bible is God's Word and sets out a plan of salvation for all people. Johnson believes the Bible teaches that all people are sinners and therefore deserve God's wrath, but anyone can receive salvation by believing and trusting in Jesus Christ.

10. Because of his faith and Christian beliefs, Johnson goes to public places to give away free bibles to people and tell them about Jesus.

11. Johnson's public message is purely evangelistic in nature. Through Bible distribution, he communicates in a loving way that all people (including himself) are sinners and need Jesus. He does not try to solicit money or signatures; he does not try to get people to join a church or any other organization.

12. Johnson's expressive activity does not cause obstruction or generate congestion. He never draws a crowd, preferring to deal with individuals one-on-one. Individuals frequently take a Bible or decline a Bible without stopping. Johnson is always willing to step aside and let people walk by him.

13. Johnson seeks to give away free Bibles and express himself in a peaceful manner. He is never confrontational with his speech. He does not force a Bible on anyone. If someone declines a Bible, he does not pursue the person any further. Nor does Johnson ever litter.

14. Johnson considers Bible distribution essential to his expression. He firmly believes that the Bible, being God's word, will not return void, if he is able to distribute it. Johnson's whole message relates to the Bible and he knows from experience that interested individuals will learn the truth for themselves if they will only take the time and effort to read the Bible.

15. In order to reach as many people as possible with his message of good news, Johnson seeks out festivals and celebrations taking place in public, accessible areas where significant numbers of people attend.

Loring Park

16. Loring Park is the largest public park in the Central Community of Minneapolis, consisting of forty-two acres of land and water.

17. The park contains many amenities accessible for public enjoyment, such as a small lake, walking and bike paths that wind through and around the park, tennis and basketball courts, a children's playground, a wading pool, a display fountain, and an off-leash dog area. The park also hosts the Community Arts Center.

18. Loring Park is a popular spot for a wide variety of leisure activities, including jogging, biking, boating, swimming, playing volleyball, and Frisbee throwing.

19. Located just south of downtown Minneapolis, Loring Park sits between Willow Street, West 15th Street, and Lindale/Hennepin Avenue, and is part of the Grand Rounds national byway. Having no physical barriers preventing access to it, Loring Park is accessible on all sides, and serves as a major thoroughfare.

Twin Cities Pride Festival

20. Twin Cities Pride Festival ("Pride Fest") is an annual event that takes place in Loring Park, typically, during the last weekend of June. This event celebrates and promotes the Gay, Lesbian, Bisexual, Transgender ("GLBT") community.

21. MPRB supplies Twin Cities Pride - the nonprofit organization that sponsors Pride Fest -with a non-exclusive permit to use Loring Park for the two-day event.

22. Loring Park remains open and accessible to the public during the entire course of the Pride Fest, with no fences or gates barring entry, except for the section set apart for the festival's beer garden. Admission to the festival is free. Festival and non-festival traffic are free to enter into the festival area.

23. During Pride Fest, Loring Park, in addition to maintaining its purpose as a park, serves as a venue for many Pride Fest functions and activities, including various sporting events, a family activity zone, three stages of live entertainment, and food courts. At night, attendees can enjoy the annual firework display emanating from the park.

24. For Pride Fest, there are a number of spaces reserved for booths adjacent to portions of some of the pathways in Loring Park. In these spaces, vendors and nonprofits from various industries set up tents, sell products, and/or display wares. One must pay a fee to secure space for a booth.

Johnson and Pride Fests before 2009

25. Johnson has sought to give out free Bibles and share his message about Jesus at Loring Park during the Pride Fest since around 1995.

26. Johnson wants to distribute Bibles at Pride Fest for two predominant reasons. First, Pride Fest is an immensely popular event, attracting large crowds each and every year. Johnson wants to be where he can reach large numbers of people with his

message in one setting, thinking the more people he can reach the better, and Pride Fest affords him a unique opportunity to do this. Second, Johnson has developed a deep, abiding concern for individuals in the GLBT community. Over the years, Johnson has come across many individuals in the GLBT community who have expressed disdain and distrust for organized religion, and Johnson wants those individuals to know the real Jesus.

27. For the first several years he attended Pride Fest, Johnson walked around and conveyed his evangelistic message. Starting in approximately 1998, Johnson obtained a booth at Pride Fest to share his faith.

28. Johnson utilized a booth at Pride Fest in Loring Park for handing out Bibles and disseminating his message for approximately 10 to 11 years in succession. During this time that Johnson had a booth during Pride Fest, at no point did he ever cause any altercations with any of the organizers or participants. While some individuals occasionally voiced disagreement with some of his presumed views, dialogue always remained respectful. Johnson never initiated any disturbances or problems.

29. While engaging in conversations with individuals attending Pride Fest, Johnson has always made a conscious effort to avoid any discussion about the propriety of homosexuality. He does not go there to condemn anyone. He focuses on the reality that all people sin – whether involved homosexual behavior or not – and thus all need Jesus.

30. In obtaining a booth for Pride Fest each year, Johnson paid the requisite fee for booth space. For the 2008 Pride Fest, his last year to have a booth, he paid the booth fee set for the nonprofit/no sales category, which was \$140.00.

31. For each year he was asked to do so, including 2008, Johnson agreed to abide by and sign a non-discrimination agreement, acknowledging that he would not discriminate in hiring in connection to his booth.

Johnson and 2009 Pride Fest

32. In anticipation of the 2009 Pride Fest, Johnson met all requirements for obtaining a booth. He submitted a timely application for a booth, along with the requisite payment, and a signed non-discrimination agreement. Notwithstanding, the Executive Director for Pride Fest refused to honor his application. The Executive Director – communicating via email - questioned whether Johnson could meet the “intentions” of the non-discrimination agreement. He specifically expressed concern about Johnson believing and expressing that homosexuality is a sin.

33. Responding by email, Johnson reminded the Executive Director that he had used a booth at the Pride Fest for at least a decade, and had always expressed his views in a non-confrontational way. He also confirmed that he has always been willing to abide by the non-discrimination agreement. Johnson suggested that they meet over coffee to discuss any misgivings the Executive Director might have about his presence at Pride Fest.

34. Remaining dissatisfied and apparently unwilling to meet Johnson in person, the Executive Director of Pride Fest demanded in another email that Johnson divulge his personal beliefs about homosexuality, in particular, that he answer whether he personally considered homosexuality or the sexual intercourse of persons of the same sex to be sin or a perversion. In response to this inquiry, Johnson candidly answered that he does believe the Bible specifies homosexual conduct as a sin. But Johnson was quick to clarify that he does not single out homosexuality as a sin in his communications at Pride Fest – and, in fact, tries to avoid the subject – as he wants people to repent of their sins and trust Jesus no matter what their sins happen to be. Johnson added that he did not believe that homosexual or heterosexual temptations, in and of themselves, constitute sin. Johnson offered to clarify his beliefs further, should the Executive Director deem it beneficial to do so.

35. Johnson's strident efforts to alleviate the Executive Director's concerns were for naught; Twin Cities Pride eventually denied his application for a booth during the 2009 Pride Fest.

36. Remaining resolute in his ardent desire to reach people attending the 2009 Pride Fest, Johnson, along with wife and son, went to the Pride Fest that year sans booth. Their intention was to walk through Loring Park, hand out Bibles, and share the good news of Jesus.

37. Johnson had no interest in participating in – or interfering with – Pride Fest activities. He only wanted to express his message via Bible distribution, a message distinct from the festival itself. Johnson only wanted to hand out Bibles and talk about Jesus.

38. Johnson and his family drove to Loring Park on June 27, 2009, and parked their car near a sidewalk alongside the perimeter of the park. But as soon as the Johnsons exited their vehicle, festival officials confronted them about their presence. The Johnsons were told that they were not welcome at the event.

39. A few minutes later, city police officers arrived on the scene. Acting pursuant to MPRB policy, the police officers ordered the Johnson family to leave the public park under the threat of arrest. One of the police officers declared: “This [Loring Park] is not public property today...it is private property. Today, they [Twin Cities Pride] don’t want you on their property.” Disagreeing with this assessment about public property, Johnson remained, and was soon arrested for trespassing. The charges were subsequently dropped.

Johnson, 2010 Pride Fest and Twin Cities Pride’s litigation

40. Following the arrest in 2009, Johnson’s desire to share his Christian message during the Pride Fest did not wane, but he did not wish to get arrested again.

41. On April 5, 2010, Johnson, through counsel, sent a letter to various MPRB and city officials, seeking relief from the ban on his speech. In this letter, Johnson recounted the incident in 2009 when he was arrested for trying to hand out Bibles in a

public park, and demonstrated, through legal precedent, his constitutional right to speak on public property during Pride Fest. Johnson specifically asked for assurance that he be allowed to enter Loring Park and engage in his desired expression during future Pride Fest events, including the 2010 Pride Fest.

42. A few weeks later, on April 26, 2010, MPRB, through counsel, responded to Johnson's plea. MPRB had reviewed Johnson's request and determined that he did indeed have a constitutional right to distribute Bibles in Loring Park during Pride Fest. The response letter assured Johnson that MPRB would not prevent him from entering Loring Park or its perimeter sidewalks and handing out Bibles during the 2010 Pride Fest. In giving this assurance, MPRB conceded that Loring Park remained a traditional public forum during the entirety of the Pride Fest.

43. For the 2010 Pride Fest, Johnson, once again applied for a booth. This request, like the year prior, was denied by Twin Cities Pride. Despite being denied a booth, upon receiving written assurance from MPRB that his freedom to speak would be respected, Johnson looked forward to attending the event, handing out Bibles, and talking about Jesus in the open and accessible areas of Loring Park during the 2010 Pride Fest.

44. Upon hearing the news about Johnson being allowed to hand out Bibles, Twin Cities Pride asked MPRB to reverse its decision and either ban Johnson from conveying his message via Bible distribution in Loring Park during Pride Fest or require Johnson to convey his message from the streets across Loring Park during Pride Fest. MPRB declined to do this.

45. On June 23, 2010, just a few days before the Pride Fest was scheduled to begin, Twin Cities Pride filed a federal action in United States District Court for District of Minnesota, Civil Action 0:10-cv-02579, against MPRB, along with a motion for temporary restraining order. In this action, Twin Cities Pride specified a concern about Johnson's presence at the event and his intention to engage in expression, specifically, Bible distribution, and sought an injunction "prohibiting any person or organization from distributing written materials or tangible objects outside of an authorized exhibitor or vender booth in the area and for the times during which Twin Cities Pride has a permit to operate the Twin Cities Pride Festival."

46. After learning about the lawsuit and realizing that Twin Cities Pride was seeking a judicial order that would effectively preclude him from exercising his First Amendment rights in Loring Park, Johnson petitioned to intervene as a party defendant in the case.

47. In a responsive pleading, MPRB refused to acquiesce to Twin Cities Pride's requested relief, contending that Johnson has a First Amendment right to distribute Bibles in Loring Park since the park remains a traditional public forum during the Pride Fest. MPRB further argued that Twin Cities Pride had no right to demand that persons with divergent views be banned from Loring Park during Pride Fest.

48. On the following day, June 24, 2010, the District Court held a hearing on Twin Cities Pride's motion for temporary restraining order, to which, Johnson's counsel participated. Following argument, the Court announced that it would take the motion

under advisement. Twin Cities Pride then requested guidance from the Court for an alternative way to shut out Johnson's expression should the Court deny the sought-after relief.

49. On the next day, June 25, 2010, the District Court issued a written order denying Twin Cities Pride's motion for a temporary restraining order. The Court ruled that MPRB would not violate the First Amendment by allowing Johnson to distribute Bibles in open, accessible areas of Loring Park during Pride Fest and that, in fact, the requested relief would violate Johnson's First Amendment rights. The District Court also granted Johnson's motion to intervene.

50. In this same opinion, via footnote, the District Court responded to Twin Cities Pride's request for guidance and speculated that a "compromise" could involve Twin Cities Pride "[i]n theory" designating "free speech zones" in Loring Park during Pride Fest, assuming that attendees have ample alternative channels of expression.

51. As noted by the District Court in this footnote, the parties had not briefed the issue; the Court itself introduced the suggestion. Had Johnson been given an opportunity to address the matter, he would have vehemently objected to the concept, given that a "free speech zone" necessarily creates a vast "no speech zone" in a traditional public forum.

52. In light of the Court's order, Johnson and his family exercised their First Amendment rights in Loring Park during the Pride Fest on June 26 and 27, 2010. They walked throughout the area, while wearing T-shirts saying "free Bibles," and handed

out Bibles to anyone willing to take them. They also engaged in respectful conversations when given the opportunity. Johnson conducted this activity without incident. Their distribution of Bibles did not create any disturbances, generate any congestion concerns, or lead to littering. Having a distinct message, the expressive activity did not interfere with the Pride Fest in the least.

53. While distributing Bibles during Pride Fest, the Johnson family never remained in any one spot for very long, and generally kept moving.

54. Following the denial of the TRO, the District Court entered a scheduling order, setting out deadlines for discovery and dispositive motions in the Twin Cities Pride litigation. The parties exchanged initial discovery, but no further discovery was pursued.

55. Shortly thereafter, Twin Cities Pride approached MPRB about settling the case that would involve MPRB agreeing to set up a “free speech zone,” where individuals who were not permitted to obtain a booth would be forced to go to hand out materials.

56. Twin Cities Pride then contacted the Magistrate Judge about setting up a formal mediation. By email dated September 20, 2010, Twin Cities Pride advised MPRB of available dates. By copy of this same email, Twin Cities Pride provided first notice of the prospect of settlement to Johnson, without any information about possible terms, and asked Johnson if he would like to participate.

57. Johnson responded on this same date. While being highly skeptical of the benefits of mediation, Johnson advised, through counsel, that he was willing to participate in mediation, provided that Twin Cities Pride supply a concrete settlement

proposal beforehand so Johnson could assess the differences between the parties and the prospects of settlement.

58. Twin Cities Pride replied, declining to supply a concrete proposal. Twin Cities Pride did indicate, though, that they would seek a settlement involving a zone for “non-participants and/or protestors.” Emailing back, Johnson informed that he could not properly assess the benefits of mediation without having a more concrete proposal. Twin Cities Pride advised that a letter to the Magistrate Judge, asking for dates for mediation between Twin Cities Pride and MPRB, would be forthcoming.

59. Believing no genuine issues of material fact existed in the case, and that the legal issues had been effectively decided by the Court in ruling on the TRO, Johnson, on October 5, 2010, filed a motion for summary judgment.

60. In the meantime, Twin Cities and MPRB carried on settlement discussions without Johnson. A settlement conference for Twin Cities Pride and MPRB was set for November 23, 2011.

61. In preparation for the settlement conference, MPRB researched Twin Cities Pride’s proposal regarding “free speech zones” and concluded that such zones would not pass constitutional muster. MPRB advised Twin Cities Pride of their legal conclusion and decision not to construct free speech zones in Loring Park during Pride Fest. Twin Cities Pride supplied MPRB additional case law that they thought supported the idea of free speech zones, but MPRB remained unconvinced. The scheduled settlement conference was subsequently cancelled.

62. Coinciding with this legal conclusion, MPRB adopted a policy that it would not restrict the First Amendment rights of park users while an event was taking place in Loring Park or any other park under the control of MPRB. In conjunction with the policy, MPRB determined to change language on permit applications so that permit holders would acknowledge that MPRB does not provide exclusive rights to use parks, and that the First Amendment rights of any person on park property open to the public could not be restricted.

63. Thereafter, on November 29, 2010, Twin Cities Pride sought permission to amend its complaint. Twin Cities Pride requested an amendment to the complaint to seek relief that would force MPRB to set up free speech zone in Loring Park during Pride Fest. MPRB opposed this request on the ground that the complaint would be futile since the requested relief would violate the constitutional rights of Johnson and others, and the requested relief could not possibly be afforded to Twin Cities Pride. Nevertheless, the Court allowed Twin Cities Pride to amend as requested.

64. On January 5, 2011, MPRB, as it had indicated, passed a resolution in regularly scheduled public meeting to include specific language in its permits to advise prospective permittees of their non-exclusive use of a park for an event open to the public, reading as follows: “Unless expressly provided for in a permit, Special Event Permits do not grant the permit holder with exclusive rights to park property including but not limited to any right to restrict access, use, and First Amendment activities of any person on park property open to the general public.”

65. On March 3, 2011, MPRB wrote counsel for Twin Cities Pride, and requested that Twin Cities Pride voluntarily dismiss the lawsuit on the basis that the claims set out in the amended complaint was without merit. In light of a recent Supreme Court case, MPRB reiterated the belief that it could not properly limit the First Amendment rights of persons whose speech Pride Fest does not approve.

66. On March 14, 2011, Twin Cities Pride submitted an application for use of Loring Park for the 2011 Pride Fest. Per MRPB resolution, the permit application to be filled out by Twin Cities Pride disallowed exclusive use of the park. Twin Cities Pride, however, altered the application so as to secure exclusive use of Loring Park and allow them to restrict messages they did not deem appropriate for Pride Fest.

67. MPRB, on March 16, 2011, responded to the altered permit application. In this response, a representative of MRPB denied the application and informed that the request for exclusive control over the park for the 2011 Pride Fest “is unacceptable because the event is open to the general public.”

68. A couple of weeks later, on April 4, 2011, the District Court ruled on Johnson’s motion for summary judgment. In this ruling, the Court denied the motion. Also, the Court, *sua sponte*, without any party seeking or suggesting it, dismissed Johnson as a party-intervener in the case. The Court surmised that MPRB was adequately representing Johnson’s interests in the case.

69. On the following day, April 5, 2011, Johnson sent a letter to the Court requesting leave to file a motion for reconsideration of the ruling, particularly, the ruling

dismissing Johnson as a party. Johnson never had the opportunity to brief or even address the issue before the Court dismissed Johnson as a party. Johnson did not believe his interests would be adequately represented by MPRB going forward in the litigation and wanted to the opportunity to present this argument to the Court. But, on April 19, 2011, the request for leave was denied.

70. With Johnson out of the way, within just a couple of days, on April 21, 2011, Twin Cities Pride and MPRB met once again to discuss settlement of the case. Johnson, no longer a party, was not a part of - or privy to - these settlement discussions.

71. On April 25, 2011, Twin Cities Pride forwarded a letter to the Magistrate Judge, seeking available times to meet and discuss a potential settlement with MPRB. Counsel explained in this letter that MPRB could vote on proposed settlement on May 5, 2011. On that same day, Twin Cities Pride and MPRB submitted a joint stipulation seeking to extend deadlines to facilitate settlement discussions.

72. Then, on May 20, 2011, approximately one month before the 2011 Pride Fest was set to begin, Twin Cities Pride and MPRB submitted a stipulation of settlement and dismissal to the District Court for approval. Pursuant to this stipulation, MPRB agreed to ban the distribution of materials in the portion of Loring Park subject to the permit given to Twin Cities Pride for Pride Fest (which would include Bibles). In accordance with the stipulation, there would also be a “drop box” on the permitted grounds where individuals could place noncommercial literature at their own risk, provided that individuals did not linger or hand out materials in that area.

73. As a provision to this stipulation, MPRB further agreed to set aside a non-permitted area within Loring Park – a part of the park not set aside for Pride Fest – where individuals and groups denied access to booths at Pride Fest could be allowed to rent for the purpose of handing out literature. Attached to the stipulation was a map displaying the permitted and non-permitted areas of Loring Park during Pride Fest. This map showed the non-permitted area, the spot created for those rejected by Pride Fest, as being on the outskirts of the Pride Fest, and on the perimeter of the park, in the southwest corner. The non-permitted area is placed away from all of the routes and pathways entering Loring Park.

74. A few days later, on May 25, 2011, the District Court entered an order granting the parties stipulation of settlement and dismissal. Final judgment was filed on the same day.

Johnson and 2011 Pride Fest

75. Following the order and judgment, MPRB published rules for Exhibitor/Vendor Booth at Loring Park regulating speech in the non-permitted area for the 2011 Pride Fest. As explained in those rules: “Twin Cities Pride, a non-profit organization, has a permit for a portion of Loring Park to hold the Festival for the two day event. The Minneapolis Park and Recreation Board (MPRB) has designated an area in Loring Park outside of the permitted area for individuals or groups who either do not elect and/or are not qualified to rent a Pride Booth to rent a booth from MPRB.”

76. The booth space(s) in the non-permitted zone are rented out in 10' by 10' squares, and are available on a first-come, first-serve basis. MPRB reserves the right to place exhibitors and vendors in any location MPRB deems appropriate.

77. To obtain a booth, an exhibitor must obtain liability insurance and pay a rental fee, as well as an administrative fee.

78. Pursuant to MPRB rules, MPRB only granted Twin Cities Pride a non-exclusive permit for the portion of Loring Park used for the festival, requiring free and open access to the permitted area of Loring Park during the festival.

79. Upon obtaining the permit for the Pride Fest, and choosing who could obtain booths for the event, Twin Cities Pride sent out vendor information and a map of Loring Park showing areas rented out for festival booths. On this provided map, Twin Cities Pride labeled the non-permitted area on the outskirts of the Pride Fest as a "no pride" MPRB zone. And a notation about the "no pride" zone read: "Per a settlement reached with the Minneapolis Park and Recreation Board (MPRB), this area is not included in the Twin Cities Pride Festival. The MPRB is leasing this space to individuals and groups who do not support the message of Twin Cities Pride."

80. Johnson found this new arrangement banning literature distribution to be a complete and unacceptable abridgement on his right to speak. Having been denied access to a booth within the confines of Pride Fest, Johnson wanted the freedom to move about in open spaces in the festival area and hand out Bibles as he had done in 2010 Pride Fest.

81. A booth outside of the Pride Fest event did not allow Johnson to reach his intended audience (those attending Pride Fest) with his message via Bibles. The drop-off zone for materials was equally unsuitable because Johnson wanted to supply the Bibles himself, assuring that interested individuals would receive the Bibles (instead of being destroyed or thrown away) and that he would be available to converse with anyone who was interested in his Bible message.

82. Because of the 2011 agreement between Twin Cities Pride and MPRB, and the rules adopted by MPRB, Johnson was prevented from engaging in his desired expression in a traditional public forum during the 2011 Pride Fest. He did not attempt to hand out Bibles in the open, accessible areas of Loring Park for fear of arrest.

83. During the 2011 Pride Fest, the MPRB non-permitted, “no pride” zone remained empty at all times during the festival. The area was outside of the festival and not adjacent to any entry to the park. Due to lack of foot traffic, the area was unsuitable for literature distribution.

84. The drop-off zone was located within the festival area, but placed in an isolated space away from the major traffic for the event, and on a path that led to a dead-end. The booth itself was not marked so as to signify its purpose.

85. Although the MPRB did not allow Johnson or anyone else to walk through the 2011 Pride Fest and distribute literature, it did allow much festival and non-festival traffic to traverse through the 2011 Pride Fest on the same spaces that Johnson would have used. These permitted activities included people standing around conversing, talking on cell

phones, standing around eating, waiting in line at booths, walking around with baby strollers and dogs, sitting on chairs in the grass, playing volleyball, and walking through the festival while pushing their bikes. MPRB also allowed street performers to come into Loring Park during the 2011 Pride Fest and engage in performances.

Johnson, 2012 Pride Fest and beyond

86. The next Pride Fest is scheduled for June 23 and 24, 2012. For this year's Pride Fest, the website for Pride Fest references the "no pride" zone for the use of those not permitted to obtain a booth.

87. For the 2012 Pride Fest and for future Pride Fests, MPRB intends to ban literature distribution everywhere in Loring Park, except for the festival booths controlled by Pride Fest. Literature distribution can only take place in the "no pride" zone outside of the permitted area of the festival. The ban is in place despite Twin Cities Pride only having a non-exclusive use permit for Loring Park.

88. Johnson's ardent desire to hand out free Bibles for the purpose of sharing his faith is stronger than ever, and he does not anticipate his desire going away. He wants to go to Loring Park for the 2012 Pride Fest and during future Pride Fests, and hand out Bibles. He would undoubtedly do so, except for the MPRB rules preventing him from handing out Bibles.

89. The MPRB rules that serve to ban Johnson's Bible distribution in a traditional public forum effectively serve to chill and deter Johnson's expression.

90. The MPRB rules impose an intolerable burden on Johnson's expression, leaving him with no to alternative for getting Bibles to his intended audience, that being, those individuals attending Pride Fest.

91. For fear of arrest, Johnson is deterred from returning to the 2012 Pride Fest and future Pride Fests and sharing his Christian beliefs. If not for the rules and actions of MPRB, and the anticipated enforcement of the rules, Johnson would attend the 2012 Pride Fest and subsequent Pride Fests and give away free Bibles while walking through Loring Park.

92. The fear of arrest severely limits Johnson's constitutionally-protected expression in a public park and adjacent public ways.

93. Being chilled and deterred from exercising his constitutional rights constitutes irreparable harm for Johnson.

94. Johnson does not have an adequate remedy at law for the loss of his constitutional rights.

CAUSE OF ACTION: VIOLATION OF FREE SPEECH

95. Johnson's religious expression constitutes protected speech under the First Amendment.

96. MPRB's rules banning literature distribution in Loring Park during Pride Fest are viewpoint discriminatory, content-based, vague, allow unbridled discretion, lack any significant government interest, are not narrowly tailored, are unreasonable, and fail to leave open alternative avenues for expression.

97. MPRB's rules banning literature distribution in Loring Park during Pride Fest serve to chill the free speech and free exercise of religion of Johnson and those of third party citizens.

98. MPRB has no legitimate reason that can justify the censorship of religious viewpoints sought to be expressed by Johnson and others.

99. MPRB's rules banning literature distribution in Loring Park during Pride Fest, and the enforcement thereof, violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment.

WHEREFORE, Johnson respectfully prays the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Johnson respectfully prays for the following relief:

- A. Assume jurisdiction over this action;
- B. Enter a judgment and decree declaring that MPRB violated Johnson's constitutional rights during the 2009 Pride Fest and the 2011 Pride Fest by preventing him from engaging in religious expression and handing out Bibles in a traditional public forum.
- C. Enter a judgment and decree declaring that the MPRB's rules banning literature distribution in Loring Park during Pride Fest, and threatened enforcement thereof, are unconstitutional on their face and as applied to Johnson's desired speech

(distribution of free Bibles) because they violate Johnson's rights and the rights of third parties not before the Court, as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

D. Enter a preliminary and permanent injunction enjoining MPRB, its agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from applying the MPRB rules banning literature distribution during Pride Fest or any other policy or practice having similar effect, so as to restrict constitutionally-protected speech of speakers, including Johnson, in Loring Park during Pride Fest;

E. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

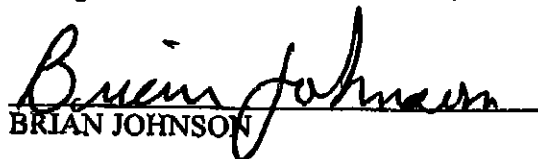
F. That this Court award Johnson nominal damages for the violation of his constitutional rights in 2009 and 2011, arising from the rules and acts of MPRB, representing an important vindication of constitutional rights;

G. That this Court award Johnson his costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

H. Grant such other and further relief as appears to this Court to be equitable and just.

VERIFICATION OF COMPLAINT

I, Brian Johnson, a citizen of the United States and a resident of Hayward, Wisconsin, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.


BRIAN JOHNSON

Respectfully submitted,

NATHAN W. KELLUM* TN BAR #13482; MS BAR # 8813 Center for Inalienable Rights 699 Oakleaf Office Lane, Suite 107 Memphis, TN 38117 (901) 684-5485 telephone (901) 684-5499 – Fax nkellum@cirlaw.org JONATHAN SCRUGGS* TN Bar # 025679 Alliance Defense Fund 699 Oakleaf Office Lane, Suite 107 Memphis, TN 38117 (901) 684-5485 telephone (901) 684-5499 – Fax jscruggs@telladf.org Attorneys for Plaintiff *Motion for Admission <i>pro hac vice</i> filed concurrently	<u>s/ Stanley N. Zahorsky</u> STANLEY N. ZAHORSKY Attorney License 137534 Zahorsky Law Firm 7129 Bristol Blvd Edina, MN 55435 (952) 835-2607 telephone szahorsky@zahorskylaw.com Attorney for Plaintiff
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