

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

VICTORY THROUGH JESUS SPORTS  
MINISTRIES FOUNDATION, and GORAN  
HUNJAK,

*Plaintiffs,*

v.

CITY OF OVERLAND PARK, KANSAS,

*Defendant.*

Case No. 12-2534 KHV/KGG

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF, AND DAMAGES**

COMES NOW the Plaintiffs, by counsel, and for their causes of action against Defendant CITY OF OVERLAND PARK, KANSAS, allege and state the following:

**I. INTRODUCTION**

1. This is a federal civil rights action under 42 U.S.C. § 1983 to protect the well-established constitutional right to engage in public speech in a traditional public forum.

2. Plaintiffs Victory Through Jesus Sports Ministries Foundation (“Victory”) and its director, Plaintiff Goran Hunjak, exercise their Christian faith by holding Victory Soccer Camps to teach children the fundamentals of soccer while developing leadership and life skills.

3. Plaintiffs inform the public about the camps by distributing brochures to target audiences – particularly the parents of children who play soccer.

4. The City of Overland Park, through its officers and agents, have prohibited Plaintiffs from distributing literature within the Overland Park Sports Complex, except in designated areas that are at significant distance from Plaintiffs’ target audience.

5. Defendant's actions have deprived and will continue to deprive Plaintiffs of their fundamental right to free speech as provided in the First Amendment to the United States Constitution.

6. Plaintiffs seek injunctive relief, declaratory relief, and damages to redress their legal injuries.

## **II. JURISDICTION AND VENUE**

7. This is a civil rights action under 42 U.S.C. § 1983 raising federal claims under the First and Fourteenth Amendments to the United States Constitution.

8. This Court is vested with original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

9. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. § 2201, *et seq.*

10. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

11. This Court is authorized to award attorneys fees pursuant to 42 U.S.C. § 1988.

12. Venue is proper in the United States District Court for the District of Kansas pursuant to 28 U.S.C. §§ 1391(b), because the Defendant resides in this district and the events giving rise to the claim occurred in this district.

## **III. IDENTIFICATION OF PARTIES**

13. Plaintiff Victory Through Jesus Sports Ministries Foundation was organized as a not-for-profit corporation under the laws of Kansas in 2005.

14. Victory sponsors Victory Soccer Camps to teach children the fundamentals of soccer while developing leadership and life skills.

15. Plaintiff Goran Hunjak is the director of Victory Through Jesus Sports Ministries Foundation.

16. Defendant City of Overland Park (“Overland Park” or “City”) is a municipal corporation located in the State of Kansas, existing under the Constitution and laws of the State of Kansas, and is a corporate entity capable of suing and being sued.

17. Overland Park controls and promulgates regulations for public parks in the city.

#### **IV. STATEMENT OF FACTS**

18. The Overland Park Soccer Complex (“Soccer Complex”) is owned and operated by Overland Park.

19. The 96-acre Soccer Complex is located on the corner of 135th Street and Switzer Road.

20. The Soccer Complex consists of twelve full-size soccer fields, basketball and tennis courts, playgrounds, a skate park, three concessions areas, office space, storage areas, a referee’s lounge, locker rooms, a First Aid office, and parking areas.

21. The park is open and free for use by the general public, except the soccer fields which must be rented in advance, and the playground, the concessions areas, office space, storage areas, the referee’s lounge, the locker rooms, and a first aid office that are all behind gates that are kept closed unless soccer games are ongoing.

22. The areas of the Soccer Complex that are fenced in are depicted on Exhibit “A” attached hereto.

23. The basketball and tennis courts, the skate park, the parking areas, and all of the sidewalks outside the fenced area are open to the public, are not locked, and are generally accessible to the public at any time.

24. When soccer games are ongoing the interior sidewalks between the soccer fields are always accessible to the public.

25. Overland Park maintains complete authority over the Soccer Complex to establish the use and availability of facilities and services.

26. The areas of the Soccer Complex that are not fenced in are a traditional public forum and contain sidewalks, streets, and park areas open for free and general use of the public.

27. The sidewalks and park areas that are inside the fenced area of the Soccer Complex are a traditional public forum.

28. On April 21, 2012, Gina Hunjak, and Tanner Hunjak distributed Victory Soccer Camp brochures at the Soccer Complex. *See* Victory Soccer Camp brochure attached hereto as Exhibit “B”.

29. Gina and Tanner Hunjak chose the Soccer Complex as the location for distribution because their message—the brochure—would be highly relevant to the audience—parents of children who play soccer.

30. Gina and Tanner began distributing brochures inside the Soccer Complex.

31. Tim, a field marshal employed by the Blue Valley Soccer Club, confronted Gina and Tanner and demanded that they stop distributing the pamphlets.

32. When asked why, Tim asserted that the Soccer Complex is owned by Blue Valley Soccer Club.

33. The Soccer Complex is not owned by the Blue Valley Soccer Club.

34. The Blue Valley Soccer Club merely uses some of the soccer fields for games at certain times.

35. The City of Overland Park retains ownership and full control of the Soccer Complex at all times.

36. Gina refused to cease distributing brochures, stating that the Soccer Complex was open to the public and her actions were constitutionally protected.

37. Mr. Hunjak arrived at the scene and Tim told him that not only could the Hunjak family not distribute brochures, but they could not be on Soccer Complex premises.

38. Wishing to avoid a scene, Mr. Hunjak told Tim that he had a right to be at the Soccer Complex, but that he would move outside the fenced area of the Soccer Complex to the sidewalk by the parking area.

39. The Hunjak family began distributing brochures from the sidewalk by the parking area.

40. About twenty minutes later, Tim confronted them again, this time claiming that Soccer Complex manager Mike Laplante said their actions were prohibited.

41. Again, wishing to avoid a scene, the Hunjak family chose to leave.

42. At no point did any member of the Hunjak family block the flow of traffic, harass anyone, force anyone to take a brochure, solicit money or gifts, or interfere with any activities going on at the Soccer Complex.

43. On April 27, 2012 Mr. Hunjak went to Overland Park City Hall and asked the clerk for a copy of any part of the Overland Park Municipal Code that may prohibit literature distribution at the Soccer Complex.

44. The clerk could not find any policy regarding First Amendment expressive activity at the Soccer Complex.

45. The clerk informed Mr. Hunjak that she did not have the authority to tell him that he could distribute the brochures and directed him to the police station next door to speak with the code officer.

46. The code officer told Mr. Hunjak that he had a right to be at the Soccer Complex and that he was not violating any codes by distributing literature there.

47. Mr. Hunjak returned to City Hall, where he met with the city attorney, Michael Santos, and the senior assistant city attorney, Steve Horner.

48. After Mr. Hunjak expressed his concerns about his First Amendment rights, Mr. Santos and Mr. Horner searched the code for a policy regarding literature distribution at the Soccer Complex.

49. Neither Mr. Santos nor Mr. Horner found such a policy.

50. Mr. Santos and Mr. Horner both admitted to not knowing if Mr. Hunjak's literature distribution violated any City code.

51. Mr. Santos, Mr. Horner, and Mr. Hunjak then placed a conference call to Tony Cosby, the City's manager of leisure services.

52. Mr. Cosby was equally unsure as to whether literature distribution at the Soccer Complex violated any rules.

53. After the conference call, Mr. Hunjak showed Mr. Santos and Mr. Horner on Google Maps exactly where in the Soccer Complex he would like to distribute literature.

54. Mr. Santos then gave Mr. Hunjak a copy of Overland Park Municipal Code Chapter 5.64 entitled "Solicitors." *See* Chapter 5.64 attached hereto as Exhibit "C".

55. Mr. Hunjak read Chapter 5.64 and pointed out to Mr. Santos that the chapter only refers to solicitation on private property, and was therefore irrelevant.

56. Nonetheless, Mr. Santos told Mr. Hunjak that literature distribution inside the fenced areas of the Soccer Complex was prohibited.

57. Mr. Santos remained uncertain whether distribution was permissible outside the fenced areas of the Soccer Complex, on sidewalks leading to and from the fields.

58. At the meeting's conclusion, Mr. Santos and Mr. Horner were unable to produce a written policy prohibiting the distribution of literature at the Soccer Complex.

59. Despite lack of a policy governing literature distribution at the Soccer Complex, Mr. Santos and Mr. Horner told Mr. Hunjak that literature distribution at the Soccer Complex, both inside and outside the fenced area, was prohibited.

60. On May 4, 2012 Mr. Hunjak met with Michael Santos, Steve Horner, and Tim Cosby at the office in the Soccer Complex.

61. Santos, Horner, and Cosby showed Mr. Hunjak a map of the Soccer Complex and pointed out where Mr. Hunjak would be allowed to distribute his pamphlets. *See* Map attached hereto as Exhibit "D".

62. The map purported to limit literature distribution to sidewalks along 135th street, Switzer road, a running trail through the Soccer Complex, and two locations along the vehicle road running through the Soccer Complex property. *See* Exhibit "D".

63. Mr. Hunjak pointed out that the areas on the map would only allow him to access vehicle traffic which would not stop along the road to receive literature, or sparse foot traffic along the running trail and away from his target audience.

64. Steve Horner emailed Mr. Hunjak later that day to inform him that the map was to be considered by the City Council's Community Development Committee meeting on June 4, 2012.

65. On May 19, 2012, the Hunjak family returned to the Soccer Complex and distributed literature in two locations outside the fenced area, on the sidewalk between the fields and the Soccer Complex parking lot. *See* Exhibit “E” attached hereto for depiction of literature distribution locations.

66. Dan Atkins, an official with the Soccer Complex, told Mr. Hunjak to cease distributing literature and to leave immediately.

67. Mr. Hunjak refused to leave and explained that he had a First Amendment right to be there.

68. Mr. Atkins called the Overland Park Police Department.

69. Officer Deloffney responded to the call.

70. Mr. Hunjak explained to Officer Deloffney that he had the right to be there distributing literature.

71. Mr. Atkins continued to assert that the Soccer Complex was private property.

72. The Soccer Complex is not private property.

73. Officer Deloffney was uncertain, so she called her supervisor, Sergeant Mark Wilson.

74. When Sergeant Wilson arrived, he ordered Mr. Hunjak to cease distributing literature and to leave the premises.

75. Sergeant Wilson threatened to arrest Mr. Hunjak if he did not cease literature distribution and leave immediately.

76. Not wanting to cause a scene, Mr. Hunjak agreed to leave.

77. On May 29, 2012, Alliance Defending Freedom (at that time, Alliance Defense Fund), at the request of Plaintiffs, sent a letter to Michael Santos requesting that the City

abandon the city map regarding literature distribution at the Soccer Complex and explaining how the treatment of Mr. Hunjak by Overland Park officials violated the U.S. Constitution. *See* Letter of May 29, 2012, attached hereto as Exhibit “F”.

78. On June 6, 2012, the Overland Park Community Development Committee met to consider adopting Resolution 3946, which purported to delineate the areas of the Soccer Complex available for First Amendment expressive activity. *See* Resolution 3946 attached hereto as Exhibit “G”.

79. Resolution 3946 adopted as City policy the map prepared by Mr. Santos, Mr. Horner, and Mr. Cosby. *See id.*

80. On June 18, 2012 the City Council adopted Resolution No. 3946 (“Resolution”). *See* City Council Action Summary attached hereto as Exhibit “H”.

81. The Resolution prohibits First Amendment expressive activity at the Soccer Complex, except for the public sidewalks along two major thoroughfares and two small strips of property adjacent to the vehicular roadway running through the Soccer Complex.

82. The Resolution specifies that:

The building interiors, the interior grounds, the parking lots, the interior parking lot sidewalks and the exterior grounds of the Soccer Complex and the Farmstead are hereby declared to be “non-public” forums, not open to the indiscriminate use of the general public for First Amendment expressive activity. These areas are not intended to be used as a forum for individuals to impose or offer their views to others unless invited to do so. Speeches, picketing, hand billing, pamphleteering and similar expressive activity shall not be allowed in these areas. The areas of the facilities that are declared to be “non-public” forums where First Amendment expressive activity is not permitted is shown on the map attached hereto as Exhibit A and described in the legend as “Not Permitted.”

83. The Resolution also specifies that:

The public sidewalks along 135th Street and Switzer Road adjacent to the Soccer Complex and the Farmstead are recognized as traditional public

forums. These public sidewalks are shown on the map attached hereto as Exhibit A and described in the legend as "Permitted."

84. Plaintiffs desire to return to the Soccer Complex to distribute literature about the soccer camps.

85. The Resolution adopted by the City prohibits Plaintiffs from distributing literature or conducting any First Amendment expressive activity inside or near the Soccer Complex.

86. Plaintiffs fear arrest and/or prosecution for exercising their First Amendment rights to distribute literature at the Soccer Complex.

87. If not for the Resolution, the actions of Defendant in enforcing this policy, and the fear of arrest, Plaintiffs would return to the Soccer Complex to distribute literature.

88. The fear of arrest chills and severely limits Plaintiffs' constitutionally-protected expression at the Soccer Complex.

89. The impact of chilling and deterring Plaintiffs from exercising their constitutional rights at the Soccer Complex constitutes irreparable harm to Plaintiffs.

90. Plaintiffs do not have an adequate remedy at law for the loss of their constitutional rights.

## **V. ALLEGATIONS OF LAW**

91. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and are continuing to be done under the color and pretense of law, including the ordinances, codes, regulations, customs, policies, and usages of the County.

92. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at its behest or direction constituted the custom, policy, or practice of the City.

93. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivations of their federal rights by Defendant.

94. Unless and until enforcement of Defendant's policies and practices of prohibiting First Amendment expression in the Soccer Complex is enjoined, the Plaintiffs will suffer and continue to suffer irreparable injury to their constitutional rights.

**COUNT I - Violation of Free Speech Clause**

95. Plaintiff realleges all matters set forth above in ¶¶ 1-94.

96. Defendant's policies and practices, and enforcement thereof, violate the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

97. Plaintiffs' expressive activity in distributing literature is protected First Amendment speech.

98. The Soccer Complex is a government-created public park, a premises traditionally held open for First Amendment activity.

99. The Soccer Complex streets, sidewalks, and park areas are a traditional public forum.

100. Defendant has excluded Plaintiffs from a traditional public forum.

101. Defendant has no compelling governmental interest for its outright exclusion of Plaintiffs from a traditional public forum.

102. Defendant's exclusion of Plaintiffs from a traditional public forum is not the least restrictive means available to advance any governmental interest.

103. Defendant's policies and procedures, and enforcement thereof, are substantially overbroad because there is no government interest that could justify an absolute prohibition of all

First Amendment activity on all soccer fields, basketball and tennis courts, playgrounds, and parking areas, as well as nearly every sidewalk within or near the Soccer Complex.

104. Defendant's policies and practices, and enforcement thereof, are unreasonable time, place, and manner restrictions because they limit First Amendment activity to the sidewalks of two major thoroughfares and the sidewalks of the adjacent access road – both situated at significant distance from the target audience and which areas render literature distribution virtually impossible.

105. Defendant's policies and practices, and enforcement thereof, are not narrowly tailored to achieve any significant interest of the City.

106. Defendant's policies and practices, and enforcement thereof, are not even rationally related to any legitimate interest of the City.

107. Defendant's policies and practices, and enforcement thereof, do not leave open ample alternative channels of communication because First Amendment activity is limited to distant sidewalks which prevent speakers from reaching their target audience and which render literature distribution virtually impossible.

108. Defendant's policies and practices are an unconstitutional prior restraint on speech because they prohibit speech unless it is invited.

109. Defendant's policies and practices contain no adequate safeguards to prohibit the exercise of unfettered discretion in determining what speech is invited.

110. Defendant's policies and practices do not contain any time limits for determining what speech is invited and thus allowed at the Soccer Complex.

111. Defendant's policies and practices do not allow for the exercise of judicial review in determining what speech is invited and thus allowed at the Soccer Complex.

112. Defendant's policies and practices of allowing only invited speech at the Soccer Soccer Complex are unconstitutionally vague because it is unclear who extends the invitation and under what circumstances an invitation will be deemed acceptable thus allowing for First Amendment expressive activity.

113. Defendant's policies and practices of allowing only invited speech unconstitutionally allow for the exercise of unfettered discretion which could lead to prohibited viewpoint discrimination.

114. Defendant's policies and practices of allowing only invited speech are a content-based restriction on speech that lack a compelling governmental interest that is advanced in the least restrictive means available.

115. Even if the Soccer Complex is determined to be a non-public forum, Defendant's policies and procedures, and enforcement thereof, are unreasonable restrictions on free expression because they limit First Amendment activity to the sidewalks of major two thoroughfares and the sidewalks of the adjacent access road – both situated at significant distance from the target audience, and the restriction renders literature distribution virtually impossible.

WHEREFORE, Plaintiffs respectfully pray the Court grant the equitable and legal relief set forth in the prayer for relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That this Court issue a preliminary injunction enjoining Defendant, its officers, agents, servants, and employees from enforcing Resolution 3946 and from prohibiting Plaintiffs from distributing literature at the Soccer Complex and from engaging in conduct or activities that

violate the rights of the Plaintiffs under the First and Fourteenth Amendments to the United States Constitution;

B. That this Court permanently enjoin the Defendant, its officers, agents, servants, and employees from enforcing Resolution 3946 and from prohibiting Plaintiffs from distributing literature at the Soccer Complex and from engaging in conduct or activities that violate the rights of the Plaintiffs under the First and Fourteenth Amendments to the United States Constitution.;

C. That this Court render a Declaratory Judgment declaring Resolution 3946 and Defendant's enforcement thereof as alleged herein to be invalid and unconstitutional in all respects under the First and Fourteenth Amendments to the United States Constitution;

D. That this Court grant to Plaintiffs damages;

E. That this Court grant to Plaintiffs an award of its costs of litigation, including reasonable attorneys' fees and expenses;

F. That this Court grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 14th day of August, 2012.

s/ Erik W. Stanley  
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