

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

JAMES DEVIN O’NEAL and)
VOICES OF MERCY OUTREACH)
MINISTRIES,)

Plaintiffs,)

v.)

RECREATION AND PARK)
COMMISSION FOR THE PARISH)
OF EAST BATON ROUGE (BREC),)
and KENNETH RICHE, VERGE)
AUSBERRY, JR., CARLOS SAM,)
AUDREY NABORS-JACKSON,)
DAVID GUILLORY, CRAIG M.)
FREEMAN, LARRY SELDERS, LLOYD)
BENSON, II, and JOHN TAYLOR, each in)
their official capacities as Commissioners)
of BREC,)

Defendants.)
_____)

Civil Action No. _____

**VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF,
AND DAMAGES PURSUANT
TO 42 U.S.C. § 1983**

JURY DEMANDED

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. Voices of Mercy Outreach Ministries (“VOM”) and its director, James Devin O’Neal, desire to exercise their Christian faith by ministering to at-risk youth, particularly those in the projects of East Baton Rouge. Sidewalk Sunday School is one of VOM’s ministry programs designed for children, and it uses drama, object lessons, games, music, prizes, and Bible stories to teach youth foundational Biblical principles.

3. O’Neal obtained permission from Recreation and Park Commission for the Parish of East Baton Rouge (“BREC”) to use Cadillac Street Park for his Sidewalk Sunday School

ministry outreach. However, five years after granting permission to use the Park, Defendants notified O'Neal and VOM that their religious ministry outreaches violated BREC's Park Use Policy. The Policy prohibits all religious use of BREC-operated public parks, including Cadillac Street Park.

4. By prohibiting O'Neal and VOM from engaging in any religious activity in a public park, Defendants have violated Plaintiffs' First Amendment rights of free speech and free exercise of religion, as well as their Fourteenth Amendment rights of due process and equal protection of the laws. The policy is also hostile to religion and excessively entangles the Defendants with religion in violation of the First Amendment's Establishment Clause.

5. Plaintiffs challenge the Park Use Policy both on its face and as applied to Plaintiffs' religious speech and activities.

6. Plaintiffs seek declaratory and injunctive relief, and damages against Defendants for enforcing the anti-religious Park Use Policy against Plaintiffs.

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 has original jurisdiction over the federal claims by operation of 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution.

9. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201(a).

10. This Court has authority to issue the requested preliminary and injunctive relief under Fed. R. Civ. P. 65.

11. This Court is authorized to award attorney's fees under 42 U.S.C. § 1988(b).

12. Venue is proper under 28 U.S.C. § 1391 in the Middle Judicial District because a substantial part of the events or omissions giving rise to the claims arose in this District.

III. IDENTIFICATION OF PLAINTIFFS

13. Plaintiff James Devin O'Neal is an adult male resident of Zachary, Louisiana, and citizen of the United States.

14. Plaintiff Voices of Mercy Outreach Ministries is a Christian ministry formed in 2006. It is an outreach ministry that works with at-risk youth and women struggling with substance abuse.

IV. IDENTIFICATION OF DEFENDANTS

15. Defendant Recreation and Park Commission for the Parish of East Baton Rouge (BREC) is a political subdivision of the State of Louisiana and operates public park and recreation facilities and programs throughout East Baton Rouge Parish, Louisiana, including Cadillac Street Park. BREC is authorized to adopt and promulgate park regulations, and can sue and be sued in its own name. La. Rev. Stat. § 33:4570.3.

16. Defendant Kenneth Riche is Chairman of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

17. Defendant Verge Ausberry, Jr. is Vice-Chairman of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

18. Defendant Carlos Sam is Treasurer of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

19. Defendant Audrey Nabors-Jackson is a Commissioner of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

20. Defendant David Guillory is a Commissioner of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

21. Defendant Craig M. Freeman is a Commissioner of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

22. Defendant Larry Selders is a Commissioner of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

23. Defendant Lloyd Benson, II is a Commissioner of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

24. Defendant John Taylor is a Commissioner of BREC and is sued in his official capacity. As a Commissioner, Defendant is charged with enacting and enforcing BREC park policies, including the Park Use Policy prohibiting all religious use of BREC-operated parks.

V. STATEMENT OF FACTS

25. Voices of Mercy Outreach Ministries (“VOM”) is a Christian ministry that works with at-risk youth and women who are struggling with substance abuse.

26. VOM partners with churches on evangelism, outreaches, and special needs areas, and operates Bible clubs and weekly Sidewalk Sunday Schools for children.

27. VOM’s purpose in operating the Sidewalk Sunday School ministry is to teach youth the foundational principles of the Bible through drama, object lessons, games, music, prizes, and Bible stories.

28. James Devin O’Neal is the director of VOM and leads the Sidewalk Sunday School outreach.

29. O’Neal and VOM have a sincere religious belief that they are to minister to the hurting, needy, and at-risk in their community.

30. BREC was created by a State Legislative Act as a political subdivision of the State of Louisiana to develop, maintain, and operate public park and recreational properties and facilities in East Baton Rouge Parish.

31. Cadillac Street Park is a public park operated by BREC.

32. O’Neal, individually, first began using the Cadillac Street Park for Sidewalk Sunday School in March of 2005.

33. In 2005, O’Neal met with Linda Drewery and Mary Weatherspoon, BREC staff members, and obtained permission to use Cadillac Street Park for the Sidewalk Sunday School.

34. Sidewalk Sunday School was first held every Saturday afternoon, and later moved to every second and fourth Saturday.

35. VOM was organized in 2006, and Sidewalk Sunday School became a ministry outreach of VOM.

36. In March, 2010, a BREC director notified O'Neal that, pursuant to BREC policy, he and VOM could no longer use the park because the program was religious.

37. BREC's Park Use Policy states that "[u]nder no circumstances can a public park be used for . . . religious . . . purposes." *See* Exhibit A.

38. O'Neal explained that VOM was preparing to host a "Wild Jam" event at Cadillac Street Park and had already invested \$30,000 in the event. VOM was permitted to hold the "Wild Jam" event, but was prohibited from using the park for further religious activities.

39. O'Neal and VOM have not been permitted to use Cadillac Street Park since March of 2010, which prevents them from ministering to the youth living in the projects surrounding Cadillac Street Park and has greatly diminished their ministry outreach.

40. On its face, the BREC Park Use Policy permits non-religious organizations to use the public park.

41. Upon information and belief, BREC permits similarly-situated organizations and persons to use the public park.

42. BREC has invited other religious organizations to participate in events at BREC-operated parks, including inviting VOM's dance team to perform at a neighborhood event and inviting Glen Oaks Baptist Church to host a Community Outreach Day which included the distribution of religious literature.

43. O'Neal and VOM want to resume their Sidewalk Sunday School outreach events at Cadillac Street Park.

VI. ALLEGATIONS OF LAW

44. Each and all of the acts alleged herein were done by Defendants, their officers, agents, servants, employees, and persons acting at their behest, and continue to be done under the color and pretense of state law.

45. Defendants have enforced the challenged Policy against the Plaintiffs pursuant to their policies and practice.

46. The decisions to deny Plaintiffs access to a traditional public forum based on the content and viewpoint of Plaintiffs' speech and activity are a direct result of the policies, practices, customs, and usages officially adopted and promulgated by BREC and each Defendant.

47. As a direct result of the Defendants' violation of their constitutional rights, as alleged below, Plaintiffs are unable to minister to the people in the projects surrounding Cadillac Street Park, their ministry has been greatly diminished, and their right to free use of the park has been abridged, resulting in irreparable harm for which there is no adequate remedy at law.

48. Plaintiffs' speech and religious expression are fully protected by the United States Constitution.

49. Concomitantly, denial of access to a public forum to engage in religious speech and activity is a violation of the First Amendment and Fourteenth Amendment to the United States Constitution.

50. Unless and until the Defendants' exclusion of the Plaintiffs from the public park is enjoined, the Plaintiffs will suffer and continue to suffer irreparable harm to their constitutional rights.

FIRST CAUSE OF ACTION: Violation of the Free Speech Clause of the First Amendment to the United States Constitution.

51. The allegations contained in paragraphs 1-50 are incorporated herein by reference.

52. Cadillac Street Park is public property and a traditional public forum.

53. The Defendants have intentionally made Cadillac Street Park generally available to the public for a broad range of private expression and activities.

54. Plaintiffs used the Park, and want to continue using the Park, for religious expression and activities such as drama, object lessons, games, music, prizes, and Bible stories.

55. Religious expression, including the drama, object lessons, games, music, prizes, and Bible stories that Plaintiffs have engaged in and want to continue, is fully protected by the First Amendment.

56. Defendants silenced Plaintiffs' speech and activities and prohibited their use of the Park because of the content and viewpoint of Plaintiffs' message.

57. Defendants' Policy, and the enforcement thereof:

- a. Singles out religious expression for discriminatory and unfavorable treatment;
- b. Conditions access to a generally available public forum based on the content and viewpoint of the speaker;
- c. Restrains constitutionally-protected speech in advance of its expression;
- d. Chills the Plaintiffs' speech and that of other individuals and organizations attempting to use the Park;

e. Burdens religious expression like that of Plaintiffs.

58. The Defendants have no compelling reasons that would justify their prohibition of religious speech in Cadillac Street Park.

59. Accordingly, the Policy and its enforcement against the Plaintiffs violate Plaintiffs' right to the freedom of speech guaranteed by the First Amendment to the United States Constitution, as applicable to the states under the Fourteenth Amendment.

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

SECOND CAUSE OF ACTION: Violation of the Free Exercise Clause of the First Amendment to the United States Constitution.

60. The allegations contained paragraphs 1-50 are incorporated herein by reference.

61. Plaintiffs desire to host Sidewalk Sunday School in the Cadillac Street Park to minister to the youth living in the projects surrounding that Park.

62. Plaintiffs' desire is motivated by their sincerely-held religious belief that they are to minister to the hurting, needy, and at-risk in their community.

63. Defendants' Policy prohibiting any religious use of BREC-operated parks is neither facially neutral nor generally applicable with respect to religion.

64. Defendants' Policy specifically and discriminatorily targets religion by prohibiting all religious use of the Park.

65. The Policy selectively burdens Plaintiffs' religious exercise by restricting their access to a generally available public park based solely on the religious nature of their speech and conduct.

66. Defendants have no compelling reason that justifies denying Plaintiffs, or any other applicant, equal access to a generally available public forum solely because of the religious nature of their speech and conduct.

67. The Policy and Defendants' enforcement thereof are not the least restrictive means of furthering any governmental interest.

68. Accordingly, the Policy and its enforcement against the Plaintiffs violate their right to the free exercise of religion guaranteed by the First Amendment to the United States Constitution, as applicable to the states under the Fourteenth Amendment.

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

THIRD CAUSE OF ACTION: Violation of the Establishment Clause of the First Amendment to the United States Constitution.

69. The allegations contained in paragraphs 1-50 are incorporated herein by reference.

70. The Policy prohibiting religious use of the Park and the Defendants' enforcement thereof in prohibiting Plaintiffs from using the Park are hostile towards religion and favor irreligion over religion.

71. Defendants' enforcement of the Policy treats some religious organizations more favorably than other religious organizations, because BREC has invited some religious organizations to participate in events at BREC-operated parks, including VOM's dance team and Glen Oaks Baptist Church, while prohibiting Plaintiffs from using the Park.

72. The Policy and Defendants' enforcement therefore treat the Plaintiffs as second-class citizens of the community and deny them access to Cadillac Street Park because of their protected religious expression, beliefs, and conduct.

73. The Policy and the Defendants' enforcement thereof were specifically targeted to burden religious expression and religious exercise.

74. The Policy lacks a secular purpose and has the primary effect of being hostile to religion.

75. The Policy requires that Defendants scrutinize private speech and conduct to determine whether it is done for religious purposes, thus impermissibly and excessively entangling government with religion.

76. Defendants have no compelling interest that justifies their hostility towards religion, or that justifies their excessive entanglement with religion.

77. Accordingly, the Policy and its enforcement against the Plaintiffs violate the Establishment Clause of the First Amendment to the United States Constitution, as applicable the states under the Fourteenth Amendment.

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

FOURTH CAUSE OF ACTION: Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

78. The allegations contained in paragraphs 1-50 are incorporated herein by reference.

79. The Policy prohibits using BREC-operated parks for "religious . . . purposes," but does not define a religious purpose.

80. The Policy is vague and because it does not define a religious purpose, the Policy lacks sufficient objective standards to restrain the discretion of Defendants, allowing the Policy to be enforced in an *ad hoc* and discriminatory manner.

81. The Defendants have no compelling reason that would justify their prohibition of religious uses of a public park that has been made generally available the public, solely on the basis of the applicant's religious character, speech, or conduct.

82. The Policy and the Defendants' enforcement against the Plaintiffs therefore violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

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

FIFTH CAUSE OF ACTION: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

83. The allegations contained in paragraphs 1-50 are incorporated herein by reference.

84. The Equal Protection Clause requires the government to treat similarly-situated persons equally.

85. The Policy, on its face, gives similarly-situated secular organizations unfettered access to the park, such that an organization offering non-religious drama, object lessons, games, music, prizes, and story-time would be permitted to use the Park, but denies Plaintiffs access to the Park for the same activities solely on the basis of their religious nature, speech, and conduct.

86. The Policy, as applied by Defendants, treats religious organizations differently by prohibiting Plaintiffs' from using the Park, while allowing other religious organizations – such as VOM's dance team and Glen Oaks Baptist Church – to use BREC-operated parks for religious activities.

87. The Defendants have no compelling reason that would justify their Policy and enforcement thereof.

88. Accordingly, the Policy and the Defendants' enforcement against the Plaintiffs violate their right to the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

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

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests the following relief:

A. Preliminarily and permanently enjoin the Defendants, and their agents, servants, employees, officials, and any other persons acting on their behalf, from enforcing the Policy to the extent that it violates Plaintiffs' constitutional rights, including an injunction permitting Plaintiffs to hold their Sidewalk Sunday School in the Cadillac Street Park without censorship of their religious content and views;

B. Declare that the Policy is facially unconstitutional and violates the First and Fourteenth Amendments to the United States Constitution;

C. Declare that the Policy is unconstitutional as applied to Plaintiffs, violating their rights guaranteed by the First and Fourteenth Amendments to the United States Constitution;

D. Award damages to Plaintiffs against the Defendants;

E. Award the costs and expenses of this action to Plaintiffs, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law;

F. Grant any other relief that the Court deems equitable, just, and proper;

G. Adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such determination shall have the force and effect of final judgment; and

H. Retain jurisdiction of this matter as necessary to enforce the Court's orders.

Respectfully submitted this 31st day of May, 2012.

s/ Jay M. Simon
JAY M. SIMON
LA Bar Roll No.: 26515
jms@duncansimonlaw.com
DUNCAN & SIMON, L.L.C.
8480 Bluebonnet Blvd., Suite G
Baton Rouge, LA 70810
225-768-7803
225-768-7187 Facsimile

JOEL L. OSTER*
KS Bar Roll No.: 18547
joster@telladf.org
ERIK W. STANLEY**
KS Bar Roll No.: 24326
estanley@telladf.org
ALLIANCE DEFENSE FUND
15192 Rosewood Street
Leawood, KS 66224
913-685-8000
913-685-8001 Facsimile

Attorneys for Plaintiffs

*Pro Hac Vice Motion submitted herewith

** Pro Hac Vice Motion to be submitted