

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOHN BARNES, JULIAN RAVEN,)
JAMES DEFERIO,)

Plaintiffs,)

) Civil Action No.

vs.)

CITY OF ELMIRA, NEW YORK,)
CAPTAIN MICHAEL MARRONE, in)
his individual capacity, CAPTAIN)
JAMES WANDELL, in his individual)
capacity, SERGEANT SHARON)
MOYER, in her individual capacity,)

JURY DEMAND

Defendants.)

_____)

COMPLAINT

I. INTRODUCTION

1. This civil rights action is brought to address the policies and actions of Defendants that violated Plaintiffs' constitutional rights by singling them out for censorship of free speech and free exercise of religious beliefs at a public event in the traditional public forum of a city park.
2. Defendants acted upon an official policy of restricting Plaintiffs from exercising their First and Fourteenth Amendment rights in a traditional public forum, specifically the well-established rights to engage in free speech in a traditional public forum, to freely exercise religious beliefs, to be provided equal protection of the law, and to enjoy due process of law.

3. On June 14, 2008, Defendants prevented Plaintiffs from expressing their religious views to others in a public park during an event that was sanctioned through a city permit but clearly open to the public. Defendants prevented Plaintiffs from freely expressing their beliefs under threat of removal from the event and threat of arrest. Defendants required Plaintiff Mr. Barnes to remove a shirt displaying a message that Defendants believed would arouse discomfort in other attendees of the public event. Defendants also prevented Plaintiff Mr. Raven from distributing or even possessing literature at the same public event. Defendants ordered Plaintiff Mr. DeFerio to stop holding a sign on a public sidewalk that was adjacent to the public part or else he would be arrested, and further told Mr. DeFerio he would not be permitted to share a biblical message on the sidewalk during the event.
4. These actions of Defendants were taken to suppress and silence Plaintiffs' religious views. By silencing Plaintiffs through threats of arrest, Defendants violated the First and Fourteenth Amendments to the United States Constitution.
5. Plaintiffs seek a permanent injunction and a declaration prohibiting Defendants from arresting them, forcibly removing them, or otherwise restricting their speech in traditional public fora due to the content and viewpoint of such speech, or because of their religious beliefs. Plaintiffs seek a declaration that Defendants' policies and actions, as detailed below, in manipulating Plaintiffs' actions under threat of removal from a public event and threat of arrest, and in otherwise restricting their speech, were unconstitutional. Plaintiffs seek a declaration that Defendants' policies and actions prohibiting them from displaying a written message on clothing or on a sign or distributing written materials to attendees of

the Southern Tier Pride event on June 14, 2008, due to Defendants' assessment of Plaintiffs' religious beliefs and views, were unconstitutional. Finally, Plaintiffs seek damages due to the violation of their constitutional rights.

II. JURISDICTION AND VENUE

6. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. §§ 1983 and 1988.
7. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.
8. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.
9. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).
10. This Court is authorized to award the requested damages under 28 U.S.C. § 1343(3).
11. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.
12. Venue is proper under 28 U.S.C. § 1391 because this claim arose within this District, and because upon information and belief all Defendants reside within the District.

III. IDENTIFICATION OF PLAINTIFFS

13. Plaintiffs John Barnes and Julian Raven are, and were at all times relevant to this case, residents of Elmira, New York.
14. Plaintiff James DeFerio is, and was at all times relevant to this case, a resident of Syracuse, New York.

IV. IDENTIFICATION OF DEFENDANTS

15. Defendant City of Elmira, New York (“City”) is a civil body politic, organized under New York law. The City is authorized to sue and be sued in its own name.
16. Defendants Captain Michael Marrone, Captain James Wandell, and Sergeant Sharon Moyer are police officers for the City of Elmira, and are each sued in their individual capacities.

V. STATEMENT OF FACTS

17. John Barnes and Julian Raven are residents of Elmira, New York, and are professing Christians.
18. James DeFerio is a resident of Syracuse, New York, and a professing Christian.
19. Based on Biblical commands, Plaintiffs desire to share their religious views with others.
20. One way in which Plaintiffs share their religious views is by speaking and distributing literature in public areas.
21. Plaintiffs have no intent to harass anyone, to encourage violence, or to express themselves in any way other than in a peaceful manner.
22. On June 14, 2008, Plaintiffs desired to share their religious views with attendees of a special event permitted by the City.
23. The special event in question (“Event”) was called “Southern Tier Pride 2008,” was held on City property at Wisner Park (“Park”), was open to the public, and was promoted as a celebration of homosexual, bisexual, and transgender lifestyles.
24. The Event was advertised on a website operated by the City.
25. No admission fee was collected from those attending the Event.
26. No ropes, barricades, or other obstructions were set up to exclude members of the public from the Event.

27. Plaintiffs wanted to communicate their religious views to those persons participating in and attending the Event.
28. In addition, Plaintiffs wanted to attend the Event to build connections with individuals in the homosexual community in and around the City of Elmira.
29. Mr. Barnes arrived at the Event location approximately two hours before the scheduled start of the Event wearing a t-shirt with the message, "Liberated from sin by the blood of Jesus."
30. Upon belief and information, no attendee of the event expressed discomfort due to the message on Mr. Barnes' shirt.
31. Captain Marrone, a police officer of the City, told Mr. Barnes some time before the scheduled start of the Event that he must take off his shirt or leave the area where the Event would take place.
32. Captain Marrone made this order because of the content and viewpoint expressed by the message on the shirt Mr. Barnes was wearing.
33. Captain Marrone's stated reason for this order was to prevent a "negative atmosphere" at the Event.
34. Upon belief and information, no other attendee of the event was required by Defendants to alter any outfit or message thereon, religious or otherwise.
35. Mr. Barnes complied with the order to take off his shirt so he could be present at the Event.
36. Mr. Barnes feared arrest if he did not comply with Captain Marrone's order.
37. Mr. Raven and others arrived soon thereafter, carrying copies of a Christian newsletter ("Newsletter"), the "Elmira Protestor." (The Newsletter is attached as Exhibit A.)

38. The Newsletter contained no obscene or otherwise illegal material.
39. Rather, the Newsletter contained constitutionally protected speech.
40. Upon belief and information, no attendee of the event made any allegation that the Newsletter contained obscene or otherwise illegal material.
41. During the Event, Captain Marrone told Mr. Raven he could not distribute or possess copies of the Newsletter at the Event, or he would be arrested for disorderly conduct.
42. Mr. Raven dispossessed himself of the Newsletter so as to avoid arrest.
43. Captain Marrone made this order because of the content and viewpoints contained in the Newsletter.
44. Upon belief and information, exhibitors and attendees at the Event were permitted to express their views, religious and otherwise, and distribute literature, religious and otherwise, without interference by the police or other officials of the City.
45. During the Event, Captain Wandell and Sergeant Moyer, police officers of the City, told Mr. DeFerio he could not hold a sign on the public sidewalk adjacent to the Park and must move across the street.
46. The sign read, “Thousands of ex-homosexuals / have experienced / the life-changing / love of Jesus Christ / Check out testimonies at: / www.exhomosexuals.com / www.exodusglobalalliance.com / www.hopeforhomosexuals.com.”
47. Captain Wandell and Sergeant Moyers told Mr. DeFerio the reason he must go across the street was because he was protesting.
48. Captain Wandell told Mr. DeFerio that if he failed to cross the street, he would be arrested for disorderly conduct.

49. If Mr. DeFerio had gone across the street, he would have been unable to communicate effectively with other participants of the Event.
50. Mr. DeFerio dispossessed himself of his sign to avoid arrest.
51. Later, Captain Marrone and Sergeant Moyer told Mr. DeFerio he could not speak about the Bible to any person at the Event.
52. Captain Marrone ordered Mr. DeFerio to move across the street or he would be arrested.
53. Mr. DeFerio moved away from the Event so as to avoid arrest.
54. At no time did Mr. Barnes, Mr. Raven, or Mr. DeFerio make any representation that they were members of, or affiliated with, any organization sponsoring or otherwise hosting the Event.
55. Defendants singled out Plaintiffs and their companions for restraint of speech based on the religious content of their speech and their specific Christian beliefs and viewpoints.
56. Defendants knew or should have known that their policies and actions violated clearly established law.
57. Based on Defendants' unconstitutional policies and actions, Plaintiffs feared arrest and removal from the Event of June 14, 2008 if they did not comply with Defendants' orders.
58. Upon information and belief, there will be future events in the City of Elmira celebrating homosexual, bisexual, and transgender lifestyles.
59. Based on Defendants' unconstitutional policies and actions, Plaintiffs fear arrest or removal if they attend such future events or speak or distribute literature on public property at or near such events.
60. Plaintiffs' speech and religious exercises have been, and are being chilled by Defendants because they have refrained, and are refraining from, distributing literature and engaging

in other forms of speech in traditional public fora in the City of Elmira due to Defendants' unconstitutional policies and actions.

61. The individual Defendants knew or should have known that their policies, practices, and actions violated the civil rights of the Plaintiffs.

VI. ALLEGATIONS OF LAW

62. Each and all of the acts alleged herein were done by Defendants under the color and pretense of local ordinances, regulations, customs, usages, and policies of the City of Elmira.

63. Defendants' actions were pursuant to the City's policies and practices.

64. Defendants' actions were the result of the City's failure to properly train its police officers.

65. The decisions to deny Plaintiffs their rights in a traditional public forum were direct results of laws, policies, practices, customs, and usages officially adopted and promulgated by the City and each Defendant.

66. All of the actions of the Defendants were done in violation of clearly established law.

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

68. Concomitantly, denial of access to public fora to engage in protected religious speech is a violation of the First Amendment and the Fourteenth Amendment to the United States Constitution.

69. Unless and until the Defendants' unconstitutional policies and actions are enjoined, the Plaintiffs will suffer and continue to suffer irreparable harm to their federal constitutional rights.

VII. FIRST CAUSE OF ACTION – VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE UNITED STATES CONSTITUTION

- 70. The allegations contained in all preceding paragraphs are incorporated herein by reference.
- 71. Wisner Park, the location of the Event, is public property and a traditional public forum.
- 72. Defendants prohibited Plaintiffs from sharing religious materials with others at the Event, wearing clothing expressing a religious message, or holding signs on the public sidewalk near the Event under threat of arrest.
- 73. Defendants’ policies and actions prohibiting Plaintiffs from wearing clothes with a religious theme, passing out literature, holding signs, and otherwise chilling them from freely engaging in communication with others at the Event violated Plaintiffs’ free speech rights.
- 74. These policies and actions were content-based speech restrictions.
- 75. These policies and actions were viewpoint-based speech restrictions.
- 76. These policies and actions were based on Plaintiffs’ religious views.
- 77. Defendants’ policies are impermissibly overbroad in their restriction of protected speech, violating the free speech rights of Plaintiffs, and other not before the Court.
- 78. Defendants’ policies and actions do not serve a compelling governmental interest, nor are they narrowly tailored to achieve a compelling governmental interest.
- 79. Plaintiffs were not given reasonable opportunity to engage in free speech activities given the public nature of the event.

VIII. SECOND CAUSE OF ACTION – VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION UNDER THE UNITED STATES CONSTITUTION

- 80. The allegations contained in preceding paragraphs are incorporated herein by reference.

81. Plaintiffs' desire to speak about their faith is motivated by their sincerely held religious beliefs.
82. The Bible instructs believers to speak about the Gospel with others, and Plaintiffs rely on the Bible to guide their words and actions.
83. Plaintiffs sought, and continue to seek, to discuss issues from a religious perspective and to engage in religious speech through sharing their faith on public property, including verbal communication as well as various forms of non-verbal communication.
84. Defendants' policies and actions restricting Plaintiffs' religious speech in a traditional public forum impose a burden on the Plaintiffs that is not imposed on other individuals.
85. By forcing Plaintiff to choose between abandoning their religious beliefs in order to gain access to speech in the traditional public forum, or abiding by their religious beliefs only to face removal or legal penalties, Defendants have imposed a substantial burden on Plaintiffs' sincerely held religious beliefs.
86. Defendants' actions and practices serve no rational or compelling interest, nor are they narrowly tailored to achieve any legitimate government interest.

IX. THIRD CAUSE OF ACTION – VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

87. The allegations contained in all preceding paragraphs are realleged and incorporated herein by reference.
88. Defendants' policies and actions prohibiting Plaintiffs from wearing clothes with a religious theme, passing out literature, holding signs, and otherwise chilling them from freely engaging in communication with others at the Event violated Plaintiffs' right to due process of law.

89. Defendants' policies and actions are arbitrary and capricious.
90. Defendants' policies and actions were vague.
91. Defendants had unfettered discretion to restrict speech based on viewpoint.
92. Defendants' policies and actions denied, and are denying, Plaintiffs a fundamental right.
93. Defendants' policies and actions do not serve a compelling governmental interest, nor are they narrowly tailored to achieve a compelling governmental interest.

X. FOURTH CAUSE OF ACTION – VIOLATION OF THE RIGHT TO EQUAL PROTECTION OF THE LAW UNDER THE UNITED STATES CONSTITUTION

94. The allegations contained in preceding paragraphs are incorporated herein by reference.
95. Plaintiffs were not permitted to engage in religious speech by sharing their faith on public property through the distribution of literature.
96. Others at the same event were permitted to discuss issues from a religious perspective and to engage in religious speech through sharing their faith on public property, including through distribution of literature, free of interference from the City or its police officers.
97. Plaintiffs were not permitted to express religious messages on clothing.
98. Others at the same event were permitted to express messages, religious and otherwise, through their choice of clothing.
99. Plaintiffs were prevented from engaging in other forms of verbal and non-verbal communication with other attendees of the Event.
100. Others at the same event were permitted to engage in various forms of communication without interference.
101. Defendants' policies and actions restricting Plaintiffs' religious speech in a traditional public forum impose a burden on the Plaintiffs that is not imposed on other individuals.

102. Defendants' policies and actions constitute a sanctioning of one particular viewpoint and a burden on those with a differing viewpoint.
103. Defendants carried out these policies and actions because they believed Plaintiffs' viewpoint would cause discomfort in those holding the viewpoint sanctioned by Defendants.
104. Defendants' policies and actions deprived Plaintiffs of the equal protection of the law guaranteed by the Fourteenth Amendment.
105. Defendants' policies and actions do not serve a compelling governmental interest, nor are they narrowly tailored to achieve a compelling governmental interest.

XI. PRAYER FOR RELIEF

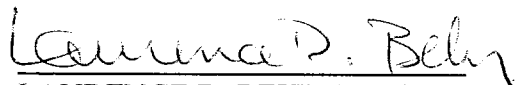
WHEREFORE, Plaintiffs respectfully request the following relief:

- A. That this Court issue a permanent injunction prohibiting Defendants from arresting them, or from otherwise restricting their speech, in a traditional public forum due to the content and viewpoint of their speech or because of their Christian perspective, including during future events celebrating homosexual behavior;
- B. That this Court enter a Declaratory Judgment declaring Defendants' policies and actions, in prohibiting Plaintiffs from wearing, distributing, or displaying religious messages in a traditional public forum, were unconstitutional;
- C. That this Court enter a Declaratory Judgment declaring that Defendants' policies and actions, in manipulating Plaintiffs' actions under threat of removal from a public event and threat of arrest, and in otherwise restricting their speech, were unconstitutional;

- D. That this Court award Plaintiffs nominal and compensatory damages from Defendants due to these violations of Plaintiffs' clearly established constitutional rights;
- E. That this Court order a trial by jury on all issues entitled to jury determination;
- E. That this Court award Plaintiffs their costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988;
- F. That this Court grant such other and further relief as this Court deems equitable and just; and
- G. That this Court retain jurisdiction of this matter as necessary to enforce the Court's orders.

August 12, 2008

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