

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

NORTH POINTE CHURCH,

Plaintiff,

vs.

ROBERT J. MOPPERT, DR. ANGELO
MASTRANGELO, GEORGE F. AKEL, JR.,
JAMES ORBAND, ZACH RILEY,
NICHOLAS G. SERAFINI, TIMOTHY
GRIPPEN, JOYCE MAJEWSKI, MARC
NEWMAN, in their individual and official
capacities as members of the Broome
Community College Board of Trustees;
DANIEL T. HAYES, in his individual and
official capacities as President of Broome
Community College; GRANT NEWTON, in
his individual and official capacities as Vice
President of Administrative and Financial
Affairs of Broome Community College,

Defendants.

Civil Action No.: _____

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

Plaintiff North Pointe Church (“Church”), by and through counsel, makes this Complaint against Defendants and states as follows:

INTRODUCTION

1. This is a civil rights action seeking declaratory and injunctive relief and damages against the Broome Community College Board of Trustees and two of its administrators (collectively, the “College”). The College has made its facilities generally available to the public for a wide array of expressive activity, but is now enforcing a policy that will force the Church to stop using those facilities solely because its expression addresses otherwise permissible topics from a religious perspective.

2. The College's discriminatory policy and its enforcement violate the Church's First Amendment rights to free speech and the free exercise of religion, as well as its Fourteenth Amendment rights to due process and equal protection under law. They are also hostile to religion and excessively entangle the College with religion in violation of the First Amendment's Establishment Clause.

3. The Church is in urgent need of injunctive relief by this Court because the College is forcing the Church to cease meeting at its facility beginning March 1, 2009, at which time the Church will be without an adequate location to meet.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 42 U.S.C. § 1988(b) to award attorneys fees; under 28 U.S.C. § 2201(a) to secure declaratory relief; and under 28 U.S.C. § 2202 to secure preliminary and permanent injunctive relief.

5. Venue is proper in the United States District Court for the Northern District of New York under 28 U.S.C. § 1391(b), because the events giving rise to the claim occurred within the District and because the Defendants are residents of or located in the District.

PARTIES

6. Plaintiff North Pointe Church is organized for religious, charitable, and educational purposes. It is in the process of becoming incorporated in New York as a Religious Corporation.

7. Defendant Robert J. Moppert is President of the Broome Community College Board of Trustees. In this capacity, Mr. Moppert is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

8. Defendant Dr. Angelo Mastrangelo is Vice President of the Broome Community College Board of Trustees. In this capacity, Dr. Mastrangelo is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

9. Defendant George F. Akel, Jr. is a member of the Broome Community College Board of Trustees. In this capacity, Mr. Akel is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

10. Defendant James Orband is a member of the Broome Community College Board of Trustees. In this capacity, Mr. Orband is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

11. Defendant Zach Riley is a member of the Broome Community College Board of Trustees. In this capacity, Mr. Riley is responsible for adopting rules and regulations that govern

Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

12. Defendant Nicholas G. Serafini is a member of the Broome Community College Board of Trustees. In this capacity, Mr. Serafini is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

13. Defendant Timothy Grippen is a member of the Broome Community College Board of Trustees. In this capacity, Mr. Grippen is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

14. Defendant Joyce Majewski is a member of the Broome Community College Board of Trustees. In this capacity, Ms. Majewski is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. She is sued in his official and individual capacities.

15. Defendant Marc Newman is a member of the Broome Community College Board of Trustees. In this capacity, Mr. Newman is responsible for adopting rules and regulations that govern Broome Community College and for providing oversight of its administrators and employees. He is sued in his official and individual capacities.

16. Defendant Daniel T. Hayes is the President of Broome Community College. In this capacity, Mr. Hayes' duties include overseeing the College, promulgating College policies and regulations, and enforcing those policies and regulations, including those at issue in this matter. He is sued in his official and individual capacities.

17. Defendant Grant Newton is the Vice President of Administrative and Financial Affairs at Broome Community College. In this capacity, Mr. Newton's duties include overseeing the College's administrative services, and promulgating College policies and regulations, and enforcing those policies and regulations, including those at issue in this matter. He is sued in his official and individual capacities.

FACTS

18. Kenneth Mulligan is the founder and Senior Pastor of the Church, and is authorized to act on its behalf.

19. The Church's sincerely-held religious beliefs require that its members and participants gather together on a regular basis to collectively express and share its religious beliefs, to discuss principles of living from a Biblical perspective, and to help individuals at the church and the community at large to overcome any challenges they are confronted with.

20. These meetings typically involve sermons by Pastor Mulligan that teach on a subject of community interest from a Biblical perspective, singing, prayer, taking communion, and discussions about social issues.

21. Pastor Mulligan's sermons cover a wide array of topics. Some examples of topics that he has addressed or plans to address include financial responsibility in difficult economic times, how to improve a marriage, how to raise children to have a positive influence on the community, understanding how to forgive and reconcile damaged relationships, the importance of confining sexual relationships to marriage, and the importance of working hard in our places of business.

22. Pastor Mulligan and the Church also believe that a church is not meant to be a place to retreat to once a week, but rather is a means by which people can gather together to help meet the needs of the community.

23. To this end, the Church teaches the need to help the poor and work for justice. It makes a priority of serving the community and scheduling opportunities for its members and participants to be involved in hands-on service projects throughout Broome County. Some examples of existing or planned projects include visiting a local prison and seeking out ways to support those who are incarcerated or who work at the prison, performing repair work or yard work for the elderly and those in the community who are unable to do such work on their own, arranging for family social outings to help strengthen familial relationships, and providing safe and entertaining social events for area children.

24. The Church initially was formed of a small group of leaders who were preparing to launch a larger fellowship by regularly doing community service, strategizing about how to connect with members of the community, and looking for a facility large enough to support gatherings of all the projected members and visitors from the community.

25. After a period of fruitless searches, the Church successfully contracted with the College in September of 2008 to rent meeting space on a monthly basis. A copy of the College's Facility Rental Agreement and Information Form is attached hereto as Exhibit 1.

26. The College publishes a brochure advertising its facilities that are available for rent. It states that "[t]he facilities of Broome Community College are available for use by groups, organizations, and businesses when the facilities are not being used for campus activities...Spaces are generally available throughout the summer months, on weekends, and at other periods when the college is not in session." The brochure does not provide any limitations

on the content of speech that is permitted in the facilities or on the type of organization that is permitted to use them. A copy of the College's brochure is attached hereto as Exhibit 2.

27. The Church held monthly meetings at the College facility through January of 2009.

28. In February, the Church successfully contracted with the College to hold weekly meetings on each Sunday in February.

29. Because the College was agreeable to this arrangement, the Church planned to continue meeting at the College facility for the foreseeable future. So the Church paid for advertisements regarding its meetings with the goal of attracting more visitors and expanding the Church's ability to serve the community. These advertisements included statements that the Church was meeting at the College's facility.

30. After the Church's first meeting in February, the College contacted the Church and informed Pastor Mulligan that it received two or three complaints from individuals in the community regarding advertisements that the Church had produced which stated that the Church was meeting at the College's facility.

31. The College warned Pastor Mulligan that it was reviewing the situation and may terminate the Church's remaining lease for the month of February.

32. On February 11, the College informed Pastor Mulligan for the first time that it had a policy that prohibits the use of campus facilities for "religious services or observances . . . for the benefit of the general public." A copy of that policy is attached hereto as Exhibit 3.

33. The policy, which the College faxed to Pastor Mulligan, states that it was promulgated under the authority of the College President and approved on June 28, 1995.

34. Pursuant to this policy, the College informed Pastor Mulligan that the Church would not be allowed to continue leasing its meeting space after the month of February.

35. After spending significant time searching for adequate facilities in recent months, the Church has been unable to find any other adequate facilities for rent in the community that can accommodate its meetings.

36. Being without an adequate location to meet, the Church's ability to serve its members and the community will be significantly hampered.

37. In an attempt to resolve this matter quickly and informally, the Church sent Defendant Hayes a letter through counsel on February 13, 2009, explaining that the College's policies and its treatment of the Church are unconstitutional. The letter requested that the College respond by February 18. A copy of the Church's letter is attached hereto as Exhibit 4.

38. As of the time this Complaint was filed, the College had not responded to the Church's letter.

39. Despite the aforementioned policies, the College has allowed religious groups to access its facilities for annual religious conferences during the summer and allows religious student groups to use its facilities for weekly religious studies.

STATEMENTS OF LAW

40. All of the College's acts alleged herein were committed and continue to be committed under the color of state law by the College, its officers, agents, servants, employees, or persons acting at its behest or direction, including through the promulgation and enforcement of the discriminatory Religious Purposes Guidelines.

41. The College will consummate this violation of the Church's constitutional rights, and the Church will suffer irreparable harm to those rights, unless the Court acts before March 1,

2009 to enjoin the College from enforcing its discriminatory policy against the Church and denying the Church equal access to the College's publicly-available facilities.

**FIRST CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREEDOM OF SPEECH**

42. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

43. Religious speech, including the Church's, is protected by the Free Speech Clause of the First Amendment.

44. The College has created a public forum by intentionally making its facilities generally available to the public for a wide variety of free speech activities.

45. The College's policies regulating the use of that forum, and its enforcement of those policies against the Church, single out religious speech for unequal treatment and discrimination on the basis of viewpoint.

46. The College's policies, and their enforcement against the Church, restrain constitutionally protected speech in advance of its expression, with insufficient guidelines and standards to guide the discretion of College administrators and employees charged with enforcing those policies.

47. The College's policies are unconstitutionally overbroad and have a substantial chilling effect on the free speech rights of Plaintiffs and others not before the Court.

48. As such, the College's policies, and their enforcement against the Church, violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

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**SECOND CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREE EXERCISE OF RELIGION**

49. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

50. The Church desires to gather with its members and others to engage in religious expression and activity that is motivated by its sincerely-held religious beliefs.

51. The College has intentionally made its facilities generally available to the public for a wide variety of activities.

52. The College's policies regulating the use of those facilities, and their enforcement against the Church, are not neutral and generally applicable with respect to religion.

53. The College's policies, and their enforcement against the Church, selectively burden the Church's religious exercise by restricting its access to a generally available public facility based solely on the religious nature of its speech and conduct.

54. The College has no compelling reason that justifies denying the Church, or any other applicant, equal access to a generally available public facility solely because of the religious nature of its speech and conduct.

55. As such, the College's policies, and their enforcement against the Church, violate the Free Exercise Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

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**THIRD CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
ESTABLISHMENT OF RELIGION**

56. The College hereby incorporates by reference all foregoing allegations as if set forth fully herein.

57. The College's policies, and their enforcement against the Church, are hostile towards religion and favor irreligion over religion.

58. The College's policies, and their enforcement against the Church, treat the Church as a second-class member of the community because of its protected religious expression, belief, and conduct.

59. The College's denial of equal access to an important government benefit in the form of access to a public forum conveys a governmental message that the Church is an outsider and not a full member of the community.

60. Further, the College's policies require that school officials scrutinize private speech and conduct to determine whether it constitutes prohibited "religious services or observances," thus impermissibly entangling the College with religion.

61. The College is therefore violating the Establishment Clause of the First Amendment to the United States Constitution, as incorporated and applied to the states under the Fourteenth Amendment.

**FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
DUE PROCESS**

62. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

63. The College's policies are vague and lack sufficient objective standards to cabin the discretion of College administrators and officials charged with enforcing them, allowing the College to enforce the policies in an *ad hoc* and discriminatory manner.

64. The College has no compelling reason that justifies its refusal to grant the Church equal access to its generally available public facilities solely based on the Church's religious beliefs, speech, and conduct.

65. As such, the College's policies, and their enforcement against the Church, violate the Due Process Clause of the Fourteenth Amendment.

**FIFTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
EQUAL PROTECTION**

66. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

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

68. The College's policies give similarly-situated organizations access to its meeting facilities, while denying equal access to the Church solely because of the Church's religious beliefs, speech, and conduct.

69. By treating the Church in a discriminatory manner, the College has intruded on the Church's fundamental constitutional rights.

70. The College has no compelling reason that justifies its discrimination against the Church solely because of its religious beliefs, speech, and conduct.

71. As such, the College's policies, and their enforcement against the Church, violate the Equal Protection Clause of the Fourteenth Amendment.

PRAYER FOR RELIEF

Wherefore, the Church prays for judgment against Defendants and respectfully requests the following relief:

A. Injunctive relief: The Church does not have an adequate remedy at law, and the urgency of this case requires that for relief to be accorded, the Court dispense with the notice of motion requirement of Local Rule 7.1(b). Therefore, the Church seeks injunctive relief against the Defendants, ordering them and all those acting in concert with them and under their authority to do the following:

1. Appear on or before February 27, 2009, and show cause why a temporary restraining order and preliminary injunction pursuant to Federal Rule of Civil Procedure 65 should not be immediately issued;

2. Refrain from enforcing their policies prohibiting the Church from using Broome Community College facilities solely because of the Church's religious beliefs, speech, and conduct;

3. Allow the Church to use the Broome Community College facilities under the same terms and conditions as other non-religious organizations in the community.

The Church further requests the following relief:

B. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter and claims in controversy in order that such declarations shall have the force and effect of final judgment, and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;

C. Pursuant to 28 U.S.C. § 2201, declare that the College's policies and practices, as alleged above, violate the First and Fourteenth Amendments to the United States Constitution both on their face and as applied to the Church;

D. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 65, and 42 U.S.C. § 1983, preliminarily and permanently enjoin the College from enforcing their unconstitutional policies and practices against the Church and others similarly situated;

E. Pursuant to 42 U.S.C. § 1988 and other applicable law, award Plaintiff its costs and expenses incurred in bringing this action, including its reasonable attorneys' fees;

F. Award Plaintiff nominal damages and compensatory damages for the damages suffered in violation of federal law in an amount to be determined by the trier of fact; and

G. Grant such other and further relief as the Court deems equitable, just and proper.

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Respectfully submitted this 23rd day of February, 2009,

By Attorneys for Plaintiff:

/s/ Byron J. Babione

Benjamin W. Bull (of counsel)

Byron J. Babione (2714780)

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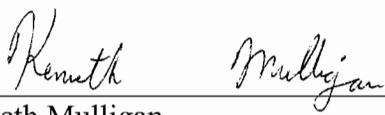
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**Pro hac vice application pending*

VERIFICATION

On this the 20th day of February, 2009, I, Kenneth Mulligan, pursuant to 28 U.S.C. § 1746, declare that I have read the foregoing Verified Complaint, and the same is true to my own knowledge. With respect to matters of law, I have relied upon the advice of counsel.



Kenneth Mulligan