UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 11-1685-CV and 11-CV-367

Caption [use short title]: Joe A. Gomes, Plaintiff-Appellant v. New York Public Library, et al, Defendants-Appellees

Motion for: Reconsideration to Vacate prior rulings of the Courts

Set forth below precise, complete statement of relief sought: Appellant moves the court to Reconsider and vacate the Courts 8/3/2011 decision to dismiss Appellants Appeal to vacate and Reverse the incorrect ruling of the USDC SDNY to dismiss and dispose of Plaintiffs claims.

2011 SEP 19 PM 2: 32
U.S. COURT OF APPEALS
CLERK'S OFFICE
RECEIVED

MOVING PARTY: ☑ Plaintiff ☐ Defendant ☑ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY:

MOVING ATTORNEY: Joe A. Gomes (Pro Se)
[name of attorney, with firm, address, phone number and e-mail]
390 9th Avenue
New York, NY 10001
(212) 390-0637
Bagoftricks2@yahoo.com

OPPOSING ATTORNEY [Name]:
[name of attorney, with firm, address, phone number and e-mail]

Court-Judge/Agency appealed from: USDC SDNY, Honorable Loretta A. Preska, Chief United States Judge

Please check appropriate boxes:

Has consent of opposing counsel:
- A. been sought? ☐ Yes ☑ No
- B. been obtained? ☐ Yes ☑ No

Is oral argument requested? ☐ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☐ No
If yes, enter date

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Signature of Moving Attorney: [signature] Date: 9/19/2011

Has service been effected? ☐ Yes ☐ No
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: ______ By: ______

Form T-1080 (Revised 10/31/02).

S.D.N.Y.-N.Y.C.
11-cv-367
Preska, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 3rd day of August, two thousand eleven,

Present:

Robert A. Katzmann,
Reena Raggi,
Gerard E. Lynch,
Circuit Judges.

Joe A. Gomes,

Plaintiff-Appellant,

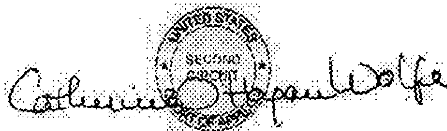
v. 11-1685-cv

New York Public Library, *et al.*,

Defendants-Appellees.

Appellant, *pro se,* moves for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks an arguable basis in law or fact. *See* 28 U.S.C. § 1915(e); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (defining when an action lacks an arguable basis in law or fact).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



SAO-AGC

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 FOLEY SQUARE
NEW YORK, NY 10007
212-857-8500

JOE A. GOMES

Plaintiff – Appellant **11-1685 CV**

v **NOTICE OF MOTION FOR RECONSIDERATION**

New York Public Library, et al.,

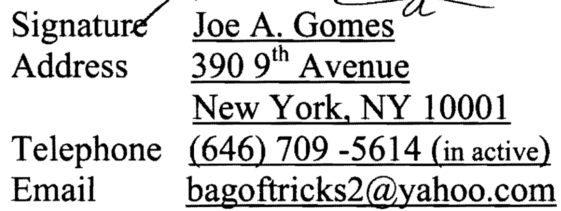
Defendants - Appellees

PLEASE TAKE NOTICE that upon the annexed the affirmation of Joe A. Gomes affirmed on August 17, 2011, and upon the exhibits attached thereto, the Appellants Brief, Appendix and all accompanying documents, the Memorandum of Law in support of this motion and the pleadings herein, Appellant will move this Court, before Robert A. Katzman, Reena Raggi and Gerald E. Lynch, United States Circuit Judges, for an order pursuant to Rule 27.1(g) of the Federal Rules of Appellate Procedure granting an ORDER in favor of Appellant to RECONSIDER the decision on August 3, 2011 of the United States Court of Appeals to Dismiss Appelant;s Appeal to VACATE and REVERSE the incorrect decision of the United States District Court for the Southern District of New York by Honorable Loretta A. Preska, dismissing and disposing plaintiff's claims.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York

August 17, 2011



Signature Joe A. Gomes
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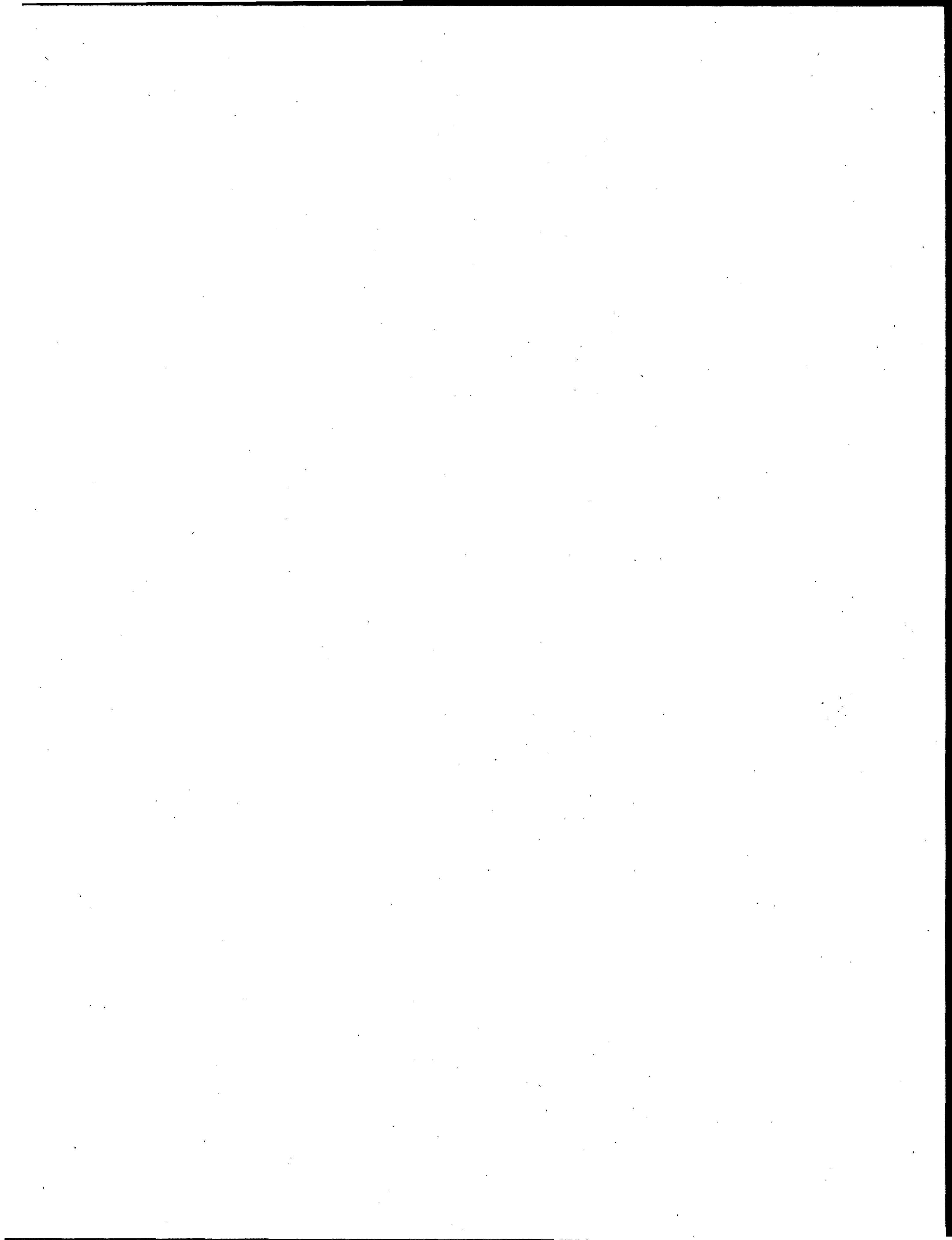
Telephone (646) 709 -5614 (in active)
Email bagoftricks2@yahoo.com



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 FOLEY SQUARE
NEW YORK, NY 10007
212-857-8500

JOE A. GOMES

Plaintiff – Appellant **11-1685 CV**

V **MOTION FOR RECONSIDERATION**

New York Public Library, et al.,

Defendants - Appellees

I, Joe A. Gomes, Appellant in the above entitled action upon the exhibits attached thereto, the Appellants Brief, Appendix and all accompanying documents, the Memorandum of Law, in support of this motion and the pleadings herein, respectively move this Court to issue an order pursuant to Rule 27.1 to RECONSIDER and VACATE the Court's incorrect decision on August 3, 2011 to dismiss and dispose of, Appellants Appeal to VACATE and REVERSE the incorrect decision on March 9, 2011 of United states District Court for the Southern District of New York by Honorable Loretta A. Preska, Chief United States District Judge.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
(*city*) (*state*)

August 17, 2011
(*month*) (*day*) (*year*)

Signature

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE□
40 FOLEY SQUARE□
NEW YORK, NY 10007 □
212-857-8500

JOE A. GOMES

Plaintiff – Appellant **11-1685 CV**

V

AFFIRMATION FOR IN SUPPORT OF MOTION FOR RECONSIDERATION

NEW YORK PUBLIC LIBRARY, et al.

Defendants - Appellees

I, Joe A. Gomes, **affirm under penalty of perjury** that:

1. I, Joe A Gomes, am the Appellant-Plaintiff in the above entitled action, and respectfully move this Court to issue an order to vacate and reconsider the court's decision on August 3, 2011 to dismiss Appellant's cause to vacate and reverse the incorrect decision on March 9, 2011 of the United States District Court for the Southern District of New York by Honorable Loretta A. Preska, Chief United States District Judge.

2. The reason why I am entitled to the relief I seek is that it is well-established fact in the case law that Appellant-plaintiff has a right to access a public library. Such right is at the core of First Amendment Values. Appellant also has a Fifth

Amendment right to exercise his property to use the public Library. Plaintiff was not provided with no process at all after being expelled and excluded from the New York Public Library and had his library privileges suspended. Appellant also has a New York State Constitution and law right which confers a right or state-recognized status to use the public library. Appellant was blacked from using the New York Public Library by the library security detail and the library staff on more than one separate occasion and prevented from entering said library in addition to having his library and Internet privileges suspended without cause, in violation of federal and state law. The foregoing facts and rights under federal and state law establish existing claims under title 42 U.S.C. S1983. The District Court failed to recognize these and other facts such as a Fifth amendment property right to use the public library and the Internet thereof and a Fourteenth Amendment due process violation for being afforded NO process at all by the4 defendants as well as a New York State Constitution and law recognized right or status to access and use the public library and the Internet thereof and take the foregoing and following facts into consideration in its incorrect decision.

The United States District Courts erred in dismissing and disposing the alleged claims of the plaintiff, Gomes, as to the culpability and liability of the defendants as a direct result of their unlawful conduct.

First, the most pertinent and important issues with regards to the alleged claims of the plaintiff (e.g. Const. Amend I, Amend V, and Amend XIV) for review were either completely ignored by the District Court or such court failed to recognize there merits with in the context of the applicable law. Additionally, the District Court failed address there relevance as they pertain to the plaintiff's case or the case at bar.Second, the District Court's errata in dismissing and disposing of the plaintiff's claims; Based on such court's erroneous view both in fact and in law that the plaintiff did not establish a right violated by the defendants as a result of their conduct as presented via the alleged claims of the plaintiff in his complain. As is quite apparent, the court confused the separate and distinct meaning of the phraseology, "acting under the color of state law" with "constituting a state action" by implying that they are synonymous or one in the same. When in fact the two phrases are not synonymous. The two phrases do not mean the same thing. They are separate and distinct in scope with two completely different meanings.

While "constituting a state action" could in certain instances fall within the context of acting under the color of state law." The same cannot be said in the reverse. Because "acting under the color of state law" is much broader in scope and covers areas outside of what generally "constitutes a state action." For example "acting under the color of state law" could involve the unlawful conduct of individuals

(e.g. private) that does not require state action and where no state action is involved.

Additionally, the court's wrongful interpretation of the law, where the Civil Rights Act of 1964 is concerned, through its insistent reliance on the view that the plaintiff's claim must involve a racially-based animus in order for the plaintiff to exercise his rights under title 42 U.S.C. SS 1981, 1982, 1983, 1985 and Title II of the Civil Rights Act of 1964 ("Title II"), 42 U.S.C. S 2000 et seq.

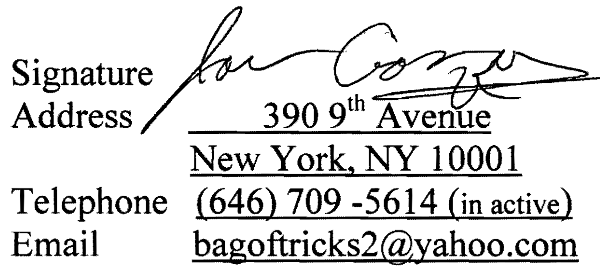
Finally, the District Court declining to address the issues pertaining to the New York State Constitution (e.g. SS 8, 9, 11) and laws, in particular the "Education law" of the State of New York pertaining to "Public Libraries," C.L.S. Educ. Law SS253, 260(12), 262. Especially, when plaintiff asserted and established state law claims under such sections in addition to the claims he asserted involving federal questions. See C.L.S. Educ. Law SS 253, 260(12), 262. It is established fact, that plaintiff has a state law right under such sections in accordance with the prescribed law and established case law. This fact is undeniable.

WHEREFORE, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
(*city*) (*state*)

August 17, 2011
(*month*) (*day*) (*year*)



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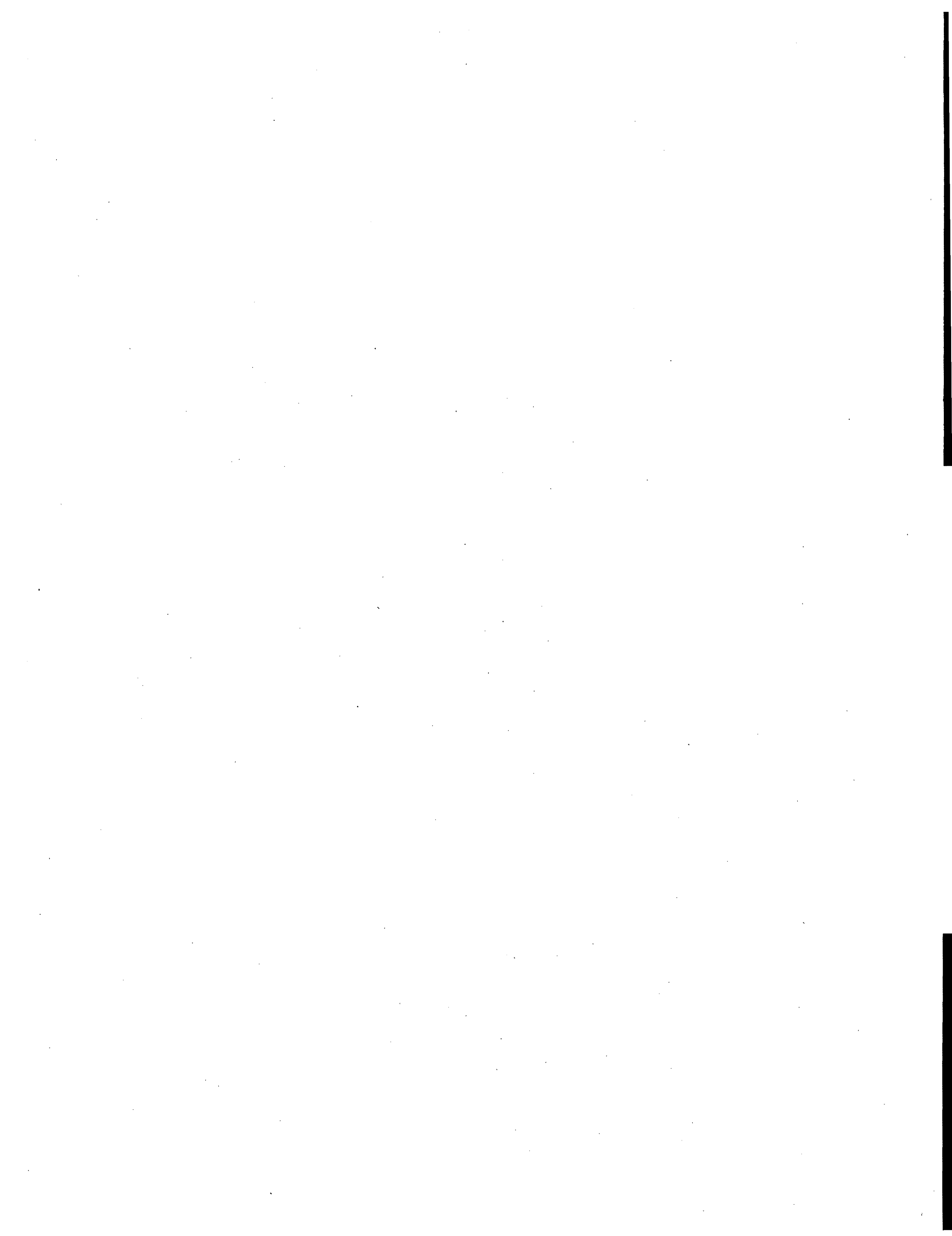

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 FOLEY SQUARE
NEW YORK, NY 10007
212-857-8500

JOE A. GOMES

Plaintiff – Appellant **11-1685 CV**

V **MOTION TO GRANT RELIEF**

New York Public Library, et al.,

Defendants – Appellees

I, Joe A. Gomes, Appellant in the above entitled action, respectively move this Court to issue an order pursuant to Rule FRAP 27(a)(1), (a)(2)(A) to render a decision in favor of Appellant to GRANT him relief to VACATE and REVERSE the incorrect decision on August 3, 2011, of this Court to dismiss, Appellants Appeal to VACATE and REVERSE the incorrect decision of United States District Court for the Southern District of New York by Honorable Loretta A. Preska, Chief United States District Judge, on March 9, 2011.

The reason why I am entitled to the relief I seek is that it is well-established fact in the case law that Appellant-plaintiff has a right to access a public library.

Such right is at the core of First Amendment Values. Appellant also has a Fifth Amendment right to exercise his property to use the public library. Plaintiff was provided with no due process at all after being expelled and excluded from the New York Public Library and having his library privileges suspended. Appellant also has a New York State Constitution and law right which confers a right or state-recognized status to use the public library. Appellant was blacked from using the New York Public Library by the library security detail and the library staff on more than one separate occasion and prevented from entering said library in addition to having his library and Internet privileges suspended without cause, in violation of federal and state law. The foregoing facts and rights under federal and state law establish existing claims under title 42 U.S.C. S1983. The District Court failed to recognize these and other facts such as a Fifth amendment property right to use the public library and the Internet thereof and a Fourteenth Amendment due process violation for being afforded NO process at all by the4 defendants as well as a New York State Constitution and law recognized right or status to access and use the public library and the Internet thereof and take the foregoing and following facts into consideration in its incorrect decision.

The United States District Courts erred in dismissing and disposing the alleged claims of the plaintiff, Gomes, as to the culpability and liability of

the defendants as a direct result of their unlawful conduct.

First, the most pertinent and important issues with regards to the alleged claims of the plaintiff (e.g. Const. Amend I, Amend V, and Amend XIV) for review were either completely ignored by the District Court or such court failed to recognize there merits with in the context of the applicable law. Additionally, the District Court failed address there relevance as they pertain to the plaintiff's case or the case at bar. Second, the District Court's errata in dismissing and disposing of the plaintiff's claims; Based on such court's erroneous view both in fact and in law that the plaintiff did not establish a right violated by the defendants as a result of their conduct as presented via the alleged claims of the plaintiff in his complain. As is quite apparent, the court confused the separate and distinct meaning of the phraseology, "acting under the color of state law" with "constituting a state action" by implying that they are synonymous or one in the same. When in fact the two phrases are not synonymous. The two phrases do not mean the same thing. They are separate and distinct in scope with two completely different meanings.

While "constituting a state action" could in certain instances fall within the context of acting under the color of state law." The same cannot be said in the reverse. Because "acting under the color of state law" is much broader in scope and covers areas outside of what generally "constitutes a state action." For example "acting

under the color of state law" could involve the unlawful conduct of individuals (e.g. private) that does not require state action and where no state action is involved.

Additionally, the court's wrongful interpretation of the law, where the Civil Rights Act of 1964 is concerned, through its insistent reliance on the view that the plaintiff's claim must involve a racially-based animus in order for the plaintiff to exercise his rights under title 42 U.S.C. SS 1981, 1982, 1983, 1985 and Title II of the Civil Rights Act of 1964 ("Title II"), 42 U.S.C. S 2000 et seq.

Finally, the District Court declining to address the issues pertaining to the New York State Constitution (e.g. SS 8, 9, 11) and laws, in particular the "Education law" of the State of New York pertaining to "Public Libraries," C.L.S. Educ. Law SS 253, 260(12), 262. Especially, when plaintiff asserted and established state law claims under such sections in addition to the claims he asserted involving Federal Questions. See C.L.S. Educ. Law SS 253, 260(12), 262. It is established fact, that plaintiff has a state law right under such sections in accordance with the prescribed law, and established case law. This fact is undeniable.

WHEREFORE, I respectfully request that the Court GRANT this motion, as well as such other and further relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
(*city*) (*state*)

August 17, 2011
(*month*) (*day*) (*year*)

Signature

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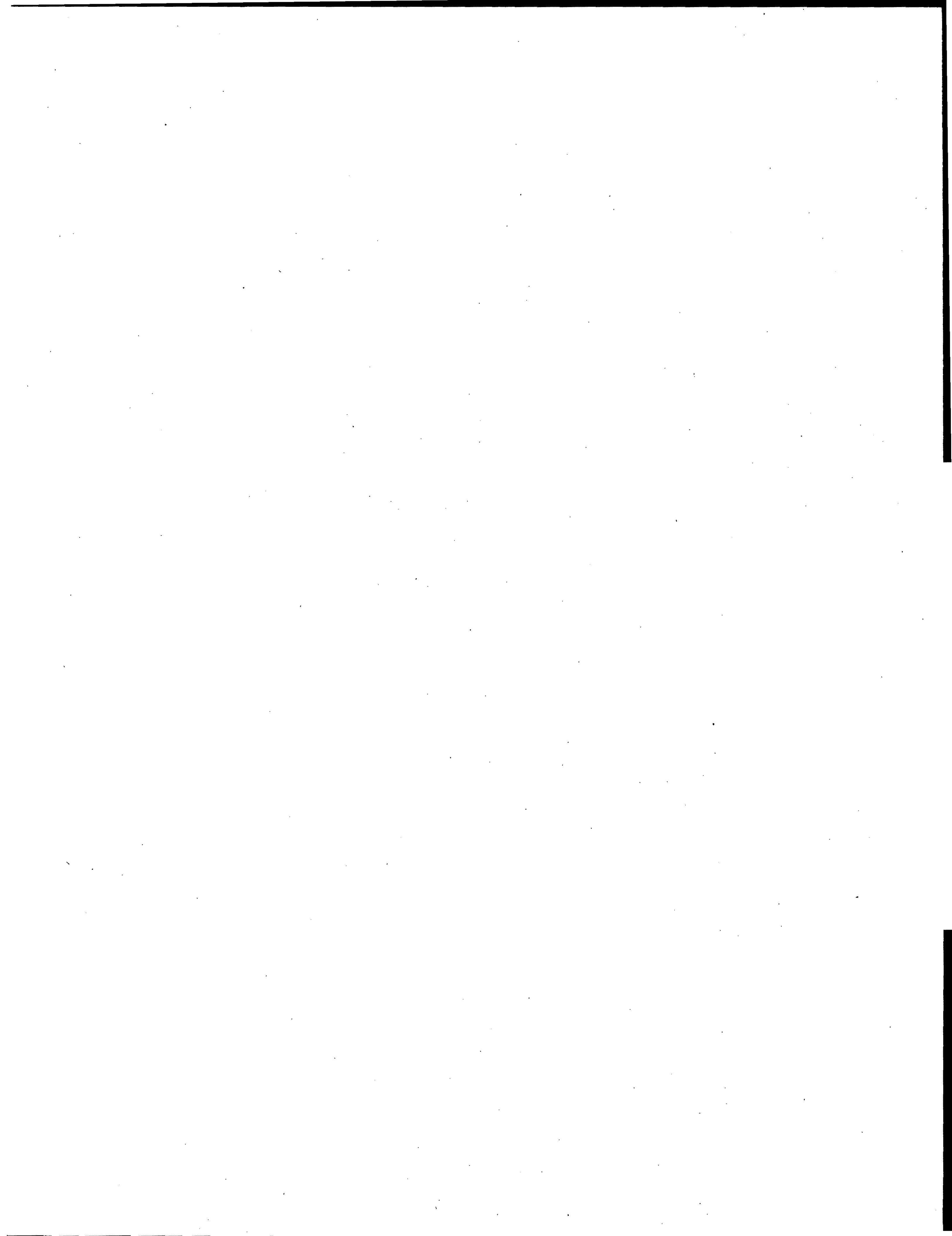

Memorandum of law

"It is a well-established fact in case law that access to a public library is at the core of First Amendment values." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Furthermore, "access to a public library is a well-recognized and understood under settled First and Fifth Amendment principles." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001).

"The court, in Wayfield, determined that a right to access a public library exists." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. "The court found First Amendment right of access to library". David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. "Other courts have found the ability to use a public library implicates important First Amendment rights." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. (See, Kreimer v. Bureau of Police, 958 F.2d 1242 (3rd Cir. 1992); Brinkmiere v. City of Freeport, 1993 U.S. Dist. LEXIS 9255, 1993 WL 248201 (N.D. Ill. 1993)

Gomes' claim is that in suspending his library and Internet privileges and depriving him of access to, use and enjoy the New York Public Library and Internet thereof. Defendants, the New York Public Library (NYPL) or government violated his First Amendment right to access a public library.

Gomes argues that he has a 'liberty' or 'property' interest in using the public library and by denying him of library and Internet access. Defendants deprived him of his Fifth Amendment 'liberty' and 'property' right to access, enjoy and use a public library and the Internet thereof. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("Access to a public library is a right under settled First and Fifth Amendment principles.")

The distinction, in case law, exists between individuals applying for licenses and those seeking to prevent suspension or revocation of their licenses. Plaintiff, Gomes, falls into the latter class, the already licensed. He has a vested 'property' interest in the license to access the public library, which forecloses denial without due process. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("The already licensed have a vested property interest in the license, which forecloses denial without due process.") (Citing, Lowe v. Scott, 959 F.2 323 (1st Cir. 1992) (medical license); Roy v. City of Augusta, 712 F. 2d 1517

(1st Cir. 1983) (license to operate a pool hall); Medina v. Rudman, 545 F.2d at 250 ("Doubtless once a license, or equivalent is granted, a right or status recognized under state law would come into being, and revocation of the license would require notice and hearing"); Wall v. King, 206 F.2 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 l. Ed. 411, 74 S. Ct. 275 (driver's license).

The above excerpt could describe the issuance of New York Public Library "ACCESS' card to Gomes and privilege of using such public library. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ('This excerpt could describe issuance of a library card and privilege of using public libraries.")

Gomes argues that he has a 'liberty' or 'property' interest to use and enjoy the public library. Plaintiff points to the library's public nature as tax-supported, tax-exempt municipal institution, public service corporations in service of the public. David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146 (Wayfield points to library's public nature, where as public library's are tax-supported, tax-exempt institutions, municipal, public service corporations in service of the public.")

Gomes claim that by denying him library access with out offering him a pre-deprivation or post-deprivation hearing, in fact, NO hearing at all. Defendants deprived him of 'due process' of law under Fifth and Fourteenth Amendments to the Constitution as protected by 42 U.S.C. S 1983. This assertion is based on the fact that the New York Public Library's access and Internet policies are not narrowly tailored nor reasonable time, place and manner restriction serving compelling government interest. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82, (D.D.C. 2001). ("Court concludes library's "objectionable appearance" regulation violates First Amendment and Fifth Amendment's Due Process Clause, as protected by 42 U.S.C. S 1983, because provision is not narrowly tailored nor reasonable time, place and manner restriction serving a significant government interest.")

Gomes also argues that his 'liberty' or 'property' interest to use the public library falls into the first class of rights that merit due process protection under Fourteenth Amendment, those rights deemed 'fundamental" or "natural." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Rights" that merit due process protection under Fourteenth Amendment may be either of two types. The first of these are those rights deemed 'fundamental" or "natural." (Citing, Medina v. Rudman, 545 F.2d 244, 249 (1st Cir. 1976) (Citing, Schware v.

Board of bar Examiners, 464 U.S. 232 (1957); Meyer v. Nebraska, 262 U.S. 390, 67 L. ED. 1042, 43 S. Ct. 625 (1923)

Gomes asserts that he uses the New York Public Library for receipt of communication and information for learning, research, and study purposes and to work and conduct business. In his complaint, he asserts that the violation of his 'liberty' or 'property' interest in using the public library involves "fundamental" or "natural" rights that merit due process protection under the Fifth and Fourteenth Amendments to the Constitution. David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Rights" that merit due process protection under Fourteenth Amendment.) (Citing, Medina v. Rudman, 545 F.2d 244, 249 (1st Cir. 1976) (Citing, Schware v. Board of Bar Examiners, 464 U.S. 232 (1957); Meyer v. Nebraska 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923). Among these are the 'fundamental' or 'natural' right to an 'Education' and rights created by other provisions of the Constitution. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Rights in the first class, that is "fundamental" or "natural" rights are chiefly those having to do with 'Education' and the rights created by other provisions of the Constitution.") Medina, 545, F.2d at 250 n.7 (Citing, Paul 424 U.S. at 712-13), As well as the "fundamental" or "natural" rights involving 'the right to earn living and to engage in one's chosen profession. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Fundamental rights also include, the right to earn living and to engage in one's chosen profession.") Medina, 545 F. 2d at 249; (Citing, Schware, 464 U.S. 232 (1957)); Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923).

Gomes asserts that he has a 'liberty' interest in his classification as an inhabitant within the citizenry of the City and State of New York. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Wayfield asserts he has a 'liberty' interest in his classification of being included in the citizenship in the Commonwealth of Massachusetts.") Under New York State law such classification is not necessary, because, the law pertaining to 'public libraries' extends library privileges to outsiders (e.g. tourists). See, C.L.S. Educ. Law SS 253, 260(12), 262.

Gomes asserts and states in his complaint the rights violated by defendants for which he makes a claim involve a 'property' and 'liberty interest inherent in state law. David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146; Medina, 545 F. 2d at 250 (Citing, Paul v. Davis, 424 U.S. 693, 708, 47 L. Ed. 2d 405, 96 S. Ct. 1155 91976) ("The second set of rights encompasses rights recognized by state law as being common to all citizens; being so recognized

they achieved the status of 'liberty' or 'property' interests when they are altered or extinguished.")

Gomes, unlike Wayfield specifically specifies that the right he claims is both 'property' under the Fifth Amendment's private personal property clause and a 'liberty' right.

In the Gomes case the District Court suffers no such disadvantage. A recourse to an applicable statute, local law or regulation would resolve the issue of whether Gomes has a protected 'liberty' or 'property' interest. Because, the more narrow the statute, the more circumscribed is government's discretion under substantive state or federal law to withhold the benefit. Thus, the more likely the benefit constitutes 'property,' the more reason for reliance upon its continued availability. The more likely a hearing would enlighten the matter of withholding it. David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Recourse to an applicable statute, local law or regulation would resolve the issue whether Wayfield has a protected liberty or protected property interest, the more narrowly drawn the statute or "the more circumscribed is government's discretion (under substantive state or federal law) to withhold (the) benefit, the more likely that benefit constitutes 'property' for the more reasonable is reliance upon its continued availability and the more likely a hearing would illuminate the appropriateness of withholding it in an individual case.") (Quoting, Beitzell v. Jeffery, 643 F.2d 870, 874 (1st Cir. 1981)

Since, the New York State Statute C.L.S. Educ. Law SS 253, 260(12), 262 confers the right to access, use and enjoy the public library and the Internet thereof upon Gomes, on equal terms with all others in the community. The Court herein finds it has a much easier decision than the Wayfield court did.

"The Court in Medina stated, a state-recognized interest might also exist if (The State) law could be said to confer upon (the Plaintiff) a right upon equal terms with others, to be licensed so as to engage in a common activity or pursuit, it seems likely a state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146, Medina, 545 F. 2d at 250.

The above excerpt describes the issuance of a library "ACCESS" card to Gomes and the privilege of using the public libraries and the In ernet thereof. David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("This excerpt could describe issuance of a library card and privilege of using

public libraries.")

New York State statute's C.L.S. Educ. Law SS 253, 260(12), 262 establish a state-recognized right or status in using a public library. The statutes confer upon plaintiff a right to access, enjoy and use the public library and the Internet thereof upon equal terms with others in the community and a license to engage in a common activity or pursuit such as to access, use and enjoy the public library. Thus, under the above statutes the State of New York holds out a right to a plaintiff to engage in an activity on equal terms with others, and thus a state-recognized status exists.

Thus, Gomes' right to access, enjoy and use the public library can be explained on such a ground as having a state-recognized status or license and on the grounds that the right to an 'Education, to earn a living, to engage in one's chosen profession, to pursue an ordinary occupation as well as the right to work and conduct business are in and of themselves, "fundamental" or "natural" liberty interest. David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Can be explained on such ground as well as on the ground the right to pursue an ordinary occupation is, by itself, a fundamental liberty interest")

The Wayfield Court, was disadvantaged by the lack of a state statute, local law or even a policy statement regarding the library's governing mechanisms." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

In this case, the District Court suffers no such disadvantage. The court has the New York State statute pertaining to 'public libraries' under the Education Law, C.L.S. Educ. Law SS 253, 260(12), 262 to guide it in its effort arrive at a decision, the Wayfield case and all other cases therein referenced to set legal precedent for determining defendants are culpable and liable for violating Gomes' Const. Amend I, Amend V, Amend XIV and title 42 U.S.C. SS 1981, 1982, 1983, 1985 and Title II ("Title II"), 42 U.S.C. 2000a as well as his State Constitution SS 8, 9, 11 and state law rights.

Taking the comparative analysis between Wayfield and Gomes into consideration. Where Wayfield is the worst-case scenario and Gomes the best-case scenario in as far as the facts and merits of the case are concerned. The District Court had no alternative than to rule in favor of plaintiff on all claims as to culpability and liability of defendants as to their conduct.

The United States District Court for the Southern District of New York erred in

dismissing and disposing of petitioner's S 1983 claims based on the incorrect view that petitioner did not establish a right violated by defendants, New York Public Library, its library staff and security detail or government actors and The City of New York, The State of New York and The United States of America as a result of their unlawful conduct. Plaintiff, Gomes, opposes such incorrect determination by the District Court on the facts presented above, the applicable law as it pertains to the case and all other conclusions in this case.

The right to access a public library is a right secured by the First Amendment of the Constitution. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("It is well-established fact in case law that access to a public library is at the core of First Amendment values.") The First Amendment is an integral part of the Constitution of the United States, the supreme law of the land and thereby the supreme law of the United States. Thus, plaintiff meets the first element or criteria to make S 1983 claims.

The 'Education Law' of the State of New York pertaining to 'public libraries,' C.L.S. SS 253, 255, 260(12), 262 confers to plaintiff the right to access and use a public library, the Internet and computers thereof. When the library or government through unlawful conduct of its employees, the library staff and security detail or government actors expelled and excluded plaintiff from the library and Internet thereof and suspended his library privileges contra the New York State 'Education Law' as well as the library's very own policies. Such government acted "under the color of state law" and thereby violated plaintiff's rights under such state laws. Hence, plaintiff meets the second element required to assert a claim under S 1983.

Title 42 U.S.C. S 1983 provides redress for a deprivation of federally protected rights by persons "acting under the color of state law." To state a claim under S 1983, a plaintiff must allege: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law. Plaintiff has satisfied these elements or tests by asserting he has a First Amendment right to access and use a public library, the Internet and computers thereof coupled with a Fifth Amendment 'property' right to access and use the public library, the Internet and computers thereof as well as make use of such property rights. The result is defendants violated the first element of S 1983. When they denied plaintiff his right to access and use the New York Public Library, the Internet and computers thereof and suspended his library privileges.

Thus, the fact that plaintiff was denied access to not one but two or more different libraries and had his library privileges suspended supports the fact that, plaintiff's

S 1983 rights were violated by defendant's as a result of their unlawful conduct.

Plaintiff alleges defendants failed to extend and deliver public services or provide equal treatment under the law thereby violating his Const., Amend I, Amend V, and Amend XIV rights under S 1983. The facts show plaintiff was denied access and use of the public library, the Internet and Internet-accessible (Emphasis) computers thereof on more than one occasion. This supports Plaintiff's above asserted alleged fact. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D. C. 2001) ('The plaintiffs motion for partial summary judgment as to plaintiff's First Amendment, Fifth Amendment due process claims, and Civil Rights Act, 42 U.S.C. S 1983, claim is GRANTED against the District of Columbia, Dr. Hardly Franklin, Director, District of Columbia Public Library and the following Library Trustees, in their official capacities.")

The District Court in its incorrect opinion said "plaintiff alleges that defendants discriminated against him." The court is correct. The court further stated that "the equal benefits protections of S 1981 does not require state action and can be asserted against private parties." Phillip v. University of Rochester, 316 F. 3d 291, 294-95 (2nd Cir. 2003). Here again, the District Court is correct.

What the court neglected or failed to recognize is plaintiff has a 'liberty' and a 'property' right to access and use the public library. Such rights are grounded in the First and Fifth Amendments of the Constitution. Further, plaintiff has a 'liberty' and a 'property' right to access and use the public library grounded in the New York State Constitution SS 8, 9, 11 and state law right, specifically the 'Education Law" (e.g. C.L.S. Educ. Law SS 253, 260(12), 262). Plaintiff also has a license or a 'property' and a 'liberty' interest through the issuance of a New York Public Library "ACCESS" card that he applied for and was granted by the New York Public Library. Likewise, plaintiff had a granted license to access, use and enjoy the New York Public Library via the doctrine of 'prior use' of the library. Wherein, plaintiff had a long history of using the New York Public Library. Where on numerous prior occasions he obtained access to, use and enjoy the library for extended periods of time prior to having his library privileges suspended. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("This excerpt could describe the issuance of a library card and the privilege of using public libraries.")

Given the nature and extent of the facts presented in this case, where fundamental constitutional rights exist and the fact defendants had no legitimate governmental objectives coupled with the fact plaintiff had a state-recognized status and library

granted license as well as established federal and state property right to make use of such rights, status and license. The existence of such federal and state rights, status and license demonstrate plaintiff has in fact showed that not one but several claims were violated by defendants as a result of their unlawful conduct which warrant S 1981 protection under the equal benefits and under the licenses and exactions provisions upon which relief should be granted.

Title 42 U.S.C. S 1981 reads, "and to the full and equal benefit of all laws (Emphasis) and proceedings for the security of persons and property (Emphasis) as enjoyed by white citizens (Emphasis), and shall be subject to like punishment, penalties, licenses, and exactions of every kind (Emphasis) and no other." See, 42 U.S.C. S 1981(a).

The fact plaintiff falls under the classification of white citizen does not deny him equal protection inherent in S 1981.

The District Court gave the reasoning why plaintiff should prevail under S 1981 claims. Barring all irrelevant assertions by the court plaintiff had a requisite to allege he is a racial minority and defendants discriminated against him based on race. As shown above such requisite by the court is not correct. Because it defeats and does grave injustice to the intent and purpose of S 1981 of the Civil Rights Act of 1964 to maintain the status quo and promote equal treatment under law. Giving special preference or treatment to one suspect class designation over all others, including non-suspect classifications such as plaintiff being a white citizen as the court posits. Defeats the legislative intent and purpose for enacting the S 1981 of the Civil Rights Act of 1964.

"When, a state statute or policy does not involve a suspect classification, such as a racially motivated animus or any of the other traditional suspect class designations or a fundamental constitutional right, all Equal Protection Clause requires is the policy classify persons it affects in a rational manner, related to a legitimate government objectives." Id. (Roberts); (Citing, Schweiker v. Wilson, 450 U. S. 221, 230, 67 L. Ed. 2d 186, 101 S. Ct. 1074 (1981)).

Two important points must be made with regards to the Equal Protection Clause, where the case at bar is concerned; (1) Gomes has already established that the defendants are liable with regards to all his claims because they violated "fundamental" or "natural" constitutional rights; and (2) the government actors or government through there illicit and unlawful policies and conduct did not have any legitimate government objectives nor could the library point to any facts which

establish the effects Gomes was subject to were a classification related to legitimate government objectives. Gomes has a right to use the Internet and Internet-accessible computers. Thus he has the right to exercise his "liberty" or "property" interest in the use of the Internet and the library, state law says he does. See, C.L.S. Educ. Law SS253, 260(12), 262.

The court stated, "plaintiff's 'Title II' claims are premised and analyzed under the same framework and on the same criteria as his S 1981 claims. Hence, for the exact same reasons, where defendants had no legitimate governmental objective in either the "these computers are for catalog and database use only" policy or the "suspending and revoking of plaintiff's library privileges and deny him re-entry to the New York Public Library for an extended period of time (e.g. an entire year)"policy coupled with the fact plaintiff had a fundamental First Amendment right to access the library and a Fifth Amendment "liberty or "property " right to use and enjoy the library along with the fact plaintiff had a state-recognized status and a library granted license to access and use such library, which once granted could not be taken away except "for cause." Cause the library did not have. Because they had no legitimate governmental objective as has already been established. Plaintiff also had a 'liberty' or 'property' interest in the license to use the public library and to make use of his own property. Such existing facts demonstrate plaintiff has in fact stated and established not one but several claims that warrant 'Title II' protection under the "equal enjoyment protections" upon which relief should be granted.

Hence, plaintiff does provide sufficient facts in support to establish violations of several of the elements required for a 'Title II' claim. David Wayfield v. Town of Tisbury, 925 F, Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina, 545 F. 2d at 250; ("The court (in medina), stated (state) law could be said to confer upon (plaintiff) a right, on equal terms with others, to be licensed so as to engage in a common activity or pursuit. A state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists.")

Gomes asserts that his First, Fifth and Fourteenth Amendments and the Civil Rights Act of 1964, sections 42 U.S.C. SS 1981, 1982, 1983, 1985, and Title II or 42 U.S.C S 2000a(a) herein cited as well New York State Constitution SS 8,9,11 and state law, C.L.S. Educ. Law SS 253, 260(12), 262) create his alleged 'right' to access, enjoy and use the public library and Internet thereof. The existence of such rights established under federal and state law. Shows Gomes is entitled under Title II to equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the New York Public Library and all emoluments on equal

footing with others in the community without discrimination or segregation, including individuals of a non-traditional non-suspect classification such as plaintiff being a white citizen. Especially, when he is expelled and excluded from the library and has his library privileges suspended and revoked and is deny access to such library for an extended period of time like an entire year by defendants or government actors without good cause or justification as a result of their unlawful conduct. The New York Public Library, The City of New York, The State of New York, the United States of America et al and all other co-defendants violated plaintiff, Gomes' Title II rights.

The District Court erred in dismissing petitioner's S 1982 with the very narrow and incorrect view. The statute is not in any way applicable to petitioner's claim. Petitioner asserts the statute most certainly is applicable and will show this to be true.

The facts already provided. Establish plaintiff holds a state-recognized status and license through the issued library "ACCESS" card he applied for and was granted and the prior use of the library doctrine to access, use and enjoy the New York Public Library. Gomes falls into a class of individuals that are already licensed. Individuals that seek to bar suspension or revocation of their licenses, because, the already licensed have a vested interest in the license. Such vested interest forecloses denial with out due process. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; ("Wayfield falls into a class of individuals known as the already licensed, those individuals who seek to bar suspension or revocation of their licenses. Since, the already licensed have a vested interest in the license, which forecloses denial with out due process.") (Citing, Lowe v. Scott, 959 F. 2d 323 (1st Cir. 1992) (medical license); Roy v. City of Augusta, 712 F.2d 1517 (1st Cir. 1983) (license to operate a pool hall); Medina v. Rudman, 545 F.2d at 250; ("Doubtless once a license, or equivalent, is granted, a right or status recognized under state law would come into being, and revocation of the license would require notice and hearing"); Wall v. King, 206 F.2d 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275; (Driver's license).

Gomes argues that he holds (Emphasis) a 'liberty' or 'property' interest in using the public library. The argument is based on the library's public nature as a tax-supported institution, municipal, public service corporation. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Wayfield argues that he holds a liberty or property interest in using the public library. He bases the argument on the library's public nature (public libraries are tax-supported

institutions, municipal, public service corporations.)"

Gomes further bases his argument on his 'liberty' inherent in his classification of inhabitant with in the citizenry of the City and State of New York. Id. at 6 ("And on his liberty inherent in his classification of citizenship with in the Commonwealth of Massachusetts")

Gomes does, in fact, argue and asserts a 'liberty' interest in using the public library. Which falls under "fundamental" or "natural" rights and rights recognized by state law. Having such distinction they have become 'liberty' or 'property' for the purposes of S 1982. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; ("Rights which have been recognized by state laws and thus have become 'liberty' or 'property'")

"The Supreme Court (in Logan) defined "property" as an INDIVIDUAL entitlement grounded in state law which cannot be removed except "for cause." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982), Id at 430, (additional citations omitted) "The court went on to enumerate the breadth of possible "property" interests."

The excerpt describes the issuance of the New York Public Library "ACCESS" card and Gomes' privilege of using public libraries. Id. at 8 ('this excerpt describes the issuance of a library card and the privilege of using public libraries.")

Gomes asserts the freedom to make use of one's own property, here a library card and the existing right to use a public library under the prior use doctrine as a means of getting or receiving communication, information, free or political speech is a 'liberty' or 'property' which under S 1982 is a right he holds (Emphasis) that cannot be denied or curtailed by a state. Id. at 9 ("Wayfield asserts the freedom to make use of one's own property as a means of getting from place to place is a 'liberty' or 'property' which under section 1982 he holds and cannot be denied or curtailed by a state.") (Quoting, Wall v. King, 206 F.2d 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275.) (Driver's license)

The District Court also erred in dismissing petitioner's S 1985 claim. Petitioner bases such claim on the courts implied narrow and incorrect view. First, the protection against conspiracy by defendants as a result of their unlawful conduct must be motivated by a race-based animus. Second, plaintiff's allegations are vague and conclusory and thus provide no factual basis. Petitioner asserts that no

rational individual would consider conduct such as deliberate expelling, excluding, blocking of plaintiff from the New York Public Library and suspending his library privileges for an entire year by government, the library and one or more library staff and library security detail in active consort in direct violation of his First and Fifth Amendment right to access, enjoy and use the public library, in addition to deny plaintiff access to, use and enjoy such public library on one or more different occasions at different branch libraries either a vague or conclusory allegation or deem it as providing no factual basis. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D. C. 2001); ("Access to public library is at the core of our First Amendment values."); David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 888 (D. Mass, 1996) ("First Amendment protects right to reasonable access to a public library.") (Additional citations omitted).

The allegations described above have all the requisite criteria for a conspiracy. The dictionary definition of a conspiracy or plot is "persons (meaning more than one) banded together and resolved to accomplish an unlawful end." Petitioner asserts by expelling and excluding him from the public library and denying him access to, enjoy and use the New York Public Library and the Internet thereof and by suspending his library privileges. The government, the library, library staff and security detail in active consort accomplished such conspiracy and achieved such unlawful ends. Certainly, the District Court will not dispute these assertions of fact under the law

Considering the fact, the original incident involved two members of the library security detail and a library staff person in active consort verses plaintiff. Under such circumstances no astute individual would deny the fact that there were two or more persons in active consort to deprive plaintiff of equal protection of the law and equal privileges and immunities under law and cause harm, injury, loss and damage to his property and property right under the First and Fifth Amendment right to access and receive information. Which is a definitive deprivation of petitioner's right and privilege as citizen under the Constitution of the United States.

The fact that plaintiff was expelled and excluded from the library on January 15, 16 and 17 of 2009 and banned and excluded from the entire New York Public Library, the Internet and computers thereof into the future for a year with out good cause, legitimate reason or justification. Coupled, with the fact no library policy was abridged and petitioner was within his right with regards to Internet access and computer use at a public library in accordance with state law. Such facts demonstrate an overt act on behalf of the library or government and government

actors, the library staff and security detail in the furtherance of a conspiracy.

Therefore, petitioner's claims meet all requisite tests established under S 1985(3). Thomas v. Roach, 165 F. 3d 137, 146, (2d Cir.1999). Notably, no where under any of the four requisite elements of S 1985 is there a reference or specific requirement of "some racial or other-wise class-based, invidious discriminatory animus behind conspirator's actions as the District Court incorrectly determined. Id. (Thomas) (Quoting Mian v. Donaldson, Lufkin & Jenrette Sec's, Corp., 7 F.3d 1085 (2d Cir 1993); (per curium); See Britt v. Garcia, 457 F.3d 264, 270 (2d Cir. 2006). The simple fact is such position by the District Court discriminates against all other traditional suspect class designations of color, religion, sex, sexual orientation and national origin including non-traditional non-suspect classifications such as petitioner being a white citizen.

In short, the narrow and singular view by the District Court which gives preference and special treatment to one suspect class designation over all others including non-suspect classifications defeats the intent and purpose for the legislature enacting and passing of S 1985 and similar Civil Rights laws to maintain the status quo and secure equal protection under law for all individuals.

Petitioner's allegations are neither vague nor conclusory. They are in fact actual and factual illicit and unlawful deprivations of his First, Fifth and Fourteenth Amendment, Civil Rights and in particular S 1985 rights under the law by defendants as a result of their unlawful conduct. Such unlawful conduct establishes defendant's culpability and liability in the furtherance of a conspiracy to deprive plaintiff of his rights under S 1985.

Finally, the District Court erred in dismissing petitioner's claims against the City of New York. New York Public Library v. New York Pub. Empl. Rels. Bd., 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463 ("The facts show, the city overwhelmingly controlled library's labor relations, it is to be noted, 'government' is not required to be sole employer but merely a "joint" public employer.")

Additionally, The District Court also erred in dismissing petitioner's claims against the State of New York, the United State of America and all other defendants.

The facts, from which the court can infer the government or government actors or agencies named as defendants had knowledge and are responsible, culpable and liable for the alleged misconduct and deprivation of petitioner's First, Fifth and

Fourteenth Amendment, S 1983, S 1981, 'Title II', S 1982, S 1985 claims under the Civil Rights Act of 1964, New York State Constitution SS 8, 9, 11 and the 'Education Law' pertaining to 'public libraries' C.L.S. Educ. Law SS 253, 260(12), 262 of the State of New York are. Plaintiff's allegations are grounded in the fact such governments and officials named as defendants have and do exert direct and overbearing influence over the operation of the New York Public Library. New York Public Library v. New York Pub. Empl. Rels. Bd., 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463 ("these governments (and officials) are constitutionally responsible for setting education policy, standards and rules and are legally required to ensure the entities they oversee carry them out.")

Technically, the New York Public Library as a public agency entrusted to carry out certain public functions and duties within the community falls within the realm of a division or sub-division of State under direct influence and control of government and its officials. Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999) ("The real property upon which library is situated is owned by the district and used by library at no charge. The District provides the library's funding. Under these circumstances, library, while perhaps a distinct corporation, is so closely tied to the district by its purse-strings")

"The district created the library pursuant to Arts and Cultural Affairs Law S 61.05 and Education Law S 255. The district provides funding for the library. The district provides building in which library is situated at no cost to library. Indeed, the library is completely dependent upon the district for its very existence." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999), (Cf. Sarmine v. Mohawk Val. Gen. Hosp., 75 AD2d 1012, 429 NYS2d 134 (1980))

Such library and the Board of Trustees are still governed, overseen, influenced and subject to the education policies, standards and rules of the named defendants, City of New York, State of New York, United States of America and officials thereof. Hence, we find the proof via facts the allegations asserted by petitioner indicate direct management and control by the named defendant governments and their officials especially with regards to involvement, knowledge and responsibility for deprivation of his rights. By the facts presented under the applicable law appellant shows the asserted allegations have merit from which the District Court could infer the governmental actors are culpable and liable for the unlawful misconduct as entities in charge of setting policy, standards and rules and seeing that they are followed and being the only source responsible for the library's operating funds with out which the New York Public Library could not carry out its duties and

functions as a public agency within the community.

Conclusion

I therefore respectfully ask that this prestigious and revered court reverse the Judgment of Honorable Loretta A. Preska, Chief United States District Judge for the United States District Court for the Southern District of New York entered herein, with a finding of fact and law in favor of the Appellant for all relief requested in his complaint; or if the court does not feel that it would be justified by the facts in so doing that it remand the case for a fair and impartial trial before an unprejudiced jury, on proper evidence and under correct instructions as the law deem just and proper.

Although, given the strength of the merits of the case, the record, the facts, the applicable statutes and case law and on the comparative analysis here in presented, Appellant would strongly argue and urge this most prestigious and revered court to opt for the first option and rule to reverse the decision of the lower court.

Appellant asks the Appellate Court to GRANT him all relief requested, asked for or petitioned for as to Appellant's First Amendment right to access, use and enjoy a public library and the internet thereof, Fifth Amendment "liberty" and "property" right to make use of one's own property, Fifth and Fourteenth Amendment due process claims and Civil Rights Act of 1964, title 42 U.S.C. SS 1981, 1982, 1983, 1985, 'Title II' claims ("Title II"), 42 U.S. C. S 2000a(a) claims as well as New York State Constitution SS 8, 9, 11 and state law, C.L.S. Educ. Law SS 253, 260(12), 262 claims as to defendants, government and government actors, New York Public Library (NYPL), City of New York, State of New York, United States of America, New York Public Library Director of Library Services, and Board of Library Trustees and all other co-defendants et al, in their official capacities with regards to their culpability and liability as a direct result of their unlawful conduct herein proved.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

U.S.C.A. Docket No.

11-1685-CV

Joe A. Gomes

Plaintiff - Appellant

V. (Case Caption)

New York Public Library, et al.,

Defendants - Appellees

CERTIFICATE OF SERVICE

I, Joe A. Gomes (Pro Se) hereby certify under the penalty of perjury

that on the ____________ day of ______________________, ________________
DAY MONTH YEAR
served by United States Mail or hand delivery the ______________________________

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11-1685-CV

Brief & Accompanying documents
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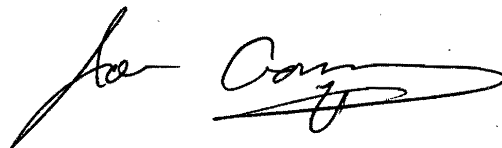

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"It is well-established fact in case law that access to a public library is at the core of First Amendment values." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 2, 15

"access to a public library is a well-recognized and understood under settled First and Fifth Amendment principles." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 2, 3

"The court, in Wayfield, nevertheless determined that a right to access a public library exists." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 3

"The court found First Amendment right of access to library." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 3

"Other courts have found the ability to use a public library implicates important First Amendment rights." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. (See, Kriemer v. Bureau of Police, 958 F.2d 1242 (3rd Cir. 1992); Brinkmeire v. City of Freeport, 1993 U.S. Dist. Lexis 9255, 1993 WL 248201 (N.D. Ill. 1993). Plaintiffs Brief at 3

"Defendants is under no obligation to provide Internet access to its patrons, it has chosen to do so and is therefore restricted by the First Amendment in the limitations it is allowed to place on patron access." Miller v. Northwest Regional Library Board, 348 F. Supp. 2d 563; 2004 U.S. Dist. LEXIS 25403, 33 Media L. Rep. 1243. Plaintiffs Brief at 3

"Such ('patron') policy offends and violates the guarantee of free speech in

conjunction with the free association guarantee (Morristown Library) of the First Amendment of the United States Constitution." Miller v. Northwest Regional Library Board, 348 F. Supp. 2d 563; 2004 U.S. Dist. LEXIS 25403, 33 Media L. Rep. 1243 . Plaintiffs Brief at 3

"Defendant has asserted a broad right to censor the expressive activity of the receipt and communication of information through the Internet with a policy that: (1) is not necessary to further any compelling government interest, (2) is not narrowly tailored, (3) restricts the access of adult patrons to protected material, (4) provides inadequate standards for restricting access, (5) provides inadequate procedural safeguards to ensure prompt judicial review. Such policy offends the guarantee of free speech in the First Amendment and is therefore unconstitutional." Miller v. Northwest Regional Library Board, 348 F. Supp. 2d 563; 2004 U.S. Dist. LEXIS 25403, 33 Media L. Rep. 1243. Plaintiffs Brief at 3

"The Morristown Library "patron policy' violates the first Amendment to the United States Constitution; these provisions (Paragraphs 1,5,9 and the last two unnumbered paragraphs) are not narrowly tailored or reasonable time, place and manner regulations which serve a significant interest. "Paragraphs 1,5,9 violate the free association guarantee of the First Amendment." Kreimer v. Bureau of Police, 958 F.2d 1242 (3rd Cir. 1992). Plaintiffs Brief at 3,4

"the court concludes that the library's "objectionable appearance" regulation violates the First Amendment... ...as protected by 42 U.S.C. S1983, because the provision is neither narrowly tailored nor a reasonable time, place and manner restriction serving a significant government interest." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) Plaintiffs Brief at 4

"The amorphous appearance regulation impermissibly vest unfettered and subjective enforcement discretion in whomever the regulation enforcer happens to be at a given hour or day." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 4

"The regulation is imprecise and provides no articulable standard to guide either the government officials or employees who must enforce the regulation of the public who must conform conduct to the barring regulations vague requirements." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 4

"The court finds First Amendment right of access to library and notes the absence

of "formal procedure whereby a person may challenge his denial of access to the library," as evidence that "the policy is less than reasonable." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146, Id. (Mathews) at 6. Plaintiffs Brief at 4

"Given the foregoing, the court has no option but to conclude that plaintiff Wayfield has alleged sufficient facts to state a claim of relief under the First Amendment." Miller v. Northwest Regional Library Board, 348 F. Supp. 2d 563; 2004 U.S. Dist. LEXIS 25403, 33 Media L. Rep. 1243. Plaintiffs Brief at 4, 5

"Defendant is enjoined from enforcing the undefined terms of the "objectionable Appearance" section of the District of Columbia Public Library Guidelines fro Handling Security Matters, specifically, the terms "body, odor, filthy clothing, etc.," Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 5

"Given the nature and extent of this ruling, it may be appropriate for the court, sua sponte, to render Summary Judgement to Wayfield as to the liability of the defendants on his claims." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 5

"Access to a public library is a right under settled First and Fifth Amendment principles." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 5

"The already-licensed, have a vested property interest in the license, which forecloses denial without due process." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (Citing, Lowe v. Scott, 959 F.2 323 (1st Cir. 1992) (medical license); Roy v. City of Augusta, 712 F. 2d 1517 (1st Cir. 1983) (license to operate a pool hall); Medina v. Rudman, 545 F.2d at 250 ("Doubtless once a license, or the equivalent is granted, a right or status recognized under state law would come into being, and the revocation of the license would require notice and hearing... ID.); Wall v. King, 206 F.2 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 l. Ed. 411, 74 S. Ct. 275 (driver's license). Plaintiffs Brief at 5

"This excerpt could describe the issuance of a library card and the privilege of using public libraries." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 5, 6

"Court found "the freedom to make use of one's own property, here a motor vehicle as a means of getting about from place to place… is a 'liberty' which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Raper, 488 F.2d at 75; (Quoting, Wall v. King, 206 F.2d 878, 882 (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. CT. 275). Plaintiffs Brief at 6

"Wayfield holds his library privileges were arbitrarily suspended without 'good cause'. Thus, his case falls into the latter category – a case in which the plaintiff already holds a license – a category in which, the First Circuit has recognized, due process is required." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 6

"The First Circuit warned in Lowe to scrutinize carefully the assertion by state officials that their conduct is 'random and unauthorized' within the meaning of Parratt and Hudson,' where such a conclusion limits procedural due process inquiry under S1983 to the question of the adequacy of state-post-deprivation remedies." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Lowe, 959 F.2d at 341. Plaintiffs Brief at 6

"The court finds that the appropriate standard for deciding what process is due Wayfield is the familiar Mathews v. Eldrige standard." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 6

"Under the standard, the court must look first at the "private interest that will be affected by the official action." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (Citing, Mathews, 424 U.S. at 322). Plaintiffs Brief at 6

"Under the analysis set forth in Medina and related cases this court finds that Wayfield states a sufficient claim to support a finding that the suspension of his access to the library was a deprivation of a "liberty" or "property" right." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 6,7

"Wayfield points to the library's public nature, where as public libraries are tax-supported, tax-exempt institutions, municipal, public service corporations in the service of the public."" David Wayfield v. Town of Tisbury, 925 f. Supp. 880,

1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 7

"Court concludes that the library's "objectionable appearance" regulation violates the First Amendment and the Fifth Amendment's Due Process Clause, as protected by 42 U.S.C. S1983, because the provision is not narrowly tailored nor a reasonable time, place and manner restriction serving a significant government interest." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67. 82 (D.D.C. 2001). Plaintiffs Brief at 7

"Rights" that merit due process protection under the Fourteenth Amendment may be either of two types. The first of these are those rights deemed 'fundamental" or "natural"." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. (Citing, Medina v. Rudman, 545 F.2d 244, 249 (1st Cir. 1976) (Citing, Schware v. Board of Bar Examiners, 464 U.S. 232 (1957); Meyer v. Nebraska, 262 U.S. 390, 67 L. ED. 1042, 43 S. Ct. 625 (1923). Plaintiffs Brief at 7

""Rights" that merit due process protection under the Fourteenth Amendment." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (Citing, Medina v. Rudman, 545 F.2d 244, 249 (1st Cir. 1976) (Citing, Schware v. Board of Bar Examiners, 464 U.S. 232 (1957); Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923). Plaintiffs Brief at 7

"Rights in the first class, that is "fundamental" or "natural" rights are "chiefly those having to do with... ..."Education" and "the rights created by other provisions of the Constitution." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina, 545, F.2d at 250 n.7 (Citing, Paul, 424 U.S. at 712-13) Plaintiffs Brief at 8

"Fundamental rights also include, "the right to earn living and to engage in one's chosen profession." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina, 545 F. 2d at 249 (Citing, Schware, 464 U.S. 232 (1957)); Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923). Plaintiffs Brief at 8

"The first step in determining whether a plaintiff has a due process claim is to identify a specific 'liberty' or 'property' interest affected by the alleged governmental action." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. (Citing, Board of Regents v. Roth, 408 U.S. 564, 569, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972). Plaintiffs Brief at 8

"The next step, if a 'liberty' or 'property' interest has been affected, is to evaluate what process was due the plaintiff, and whether he was afforded it." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146 (See also, Mathews v. Eldridge, 242 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976). Plaintiffs Brief at 8

"Wayfield's loss of his library privileges is only actionable under S1983, if he was deprived of his 'liberty' or 'property' interest with out due process." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146 (Citing, Zinerman v. Burch, 494 U.S. 113, 125, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990)) (Citing, Parratt v. Taylor, 451 U.S.527, 537, 68 L. ed. 2d 420, 101 S. Ct. 1908 (1981). Plaintiffs Brief at 8

"Applying this reasoning (Lowe) to the case at bar, Wayfield can make a colorable argument that (1) the deprivation he experienced was one that the state could be expected to anticipate 9it does not require a leap of imagination to think that a patron's library privilege might be suspended; (2) the state could have provided pre-deprivation process (whether in the form of a warning letter and an opportunity to respond, or a hearing before the Trustees, or in some other manner; and (3) that the state had delegated the library authority to effect the deprivation so their actions could not be said to be "unauthorized." Wayfield dose not argue this point. However, because he is Pro Se, the court has a duty to read his papers liberally." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146; (See, Estelle v. Gamble, 429 U.S. 97, 106, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976); Nestor Ayala Serrano v. LeBron Gonzales, 909 F. 2d 8, 15, (1st Cir. 1990). Plaintiffs Brief at 8, 9

"The second inquiry is "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards."" David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 9

"The record before the court indicates that Wayfield was afforded no deprivation process. This fact combined with the lack of standards or rules governing the suspension of library privileges, leads the court to believe that the risks of erroneous deprivation are great." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 9

"The court must to consider the government's interest in its decision, including the function involved and the fiscal and administrative burdens that the additional or

substantive procedural requirement would entail." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 9

"The officials of the library could undertake a number of not particularly onerous prophylactic measures that would protect the due process rights of its patrons with out significantly burdening the library. For example, the library could send a letter to patrons who were threatened with potential suspensions, notifying them of the action pending against them and inviting them to argue their cases, in writing or in person." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 9

"The court determines that under the three-part analysis of Mathews v. Eldridge, the defendants did not afford Wayfield adequate due process. Indeed, it appears from the record in this case that they afforded him no process at all." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 10

"Given the nature and extent of this ruling, it may be appropriate for the court, sua sponte, to render summary judgment to Wayfield as to the liability of the defendants on his claim." David Wayfield v. Town of Tisbury, 926 F. Supp, 880. 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 10

Rights under State Law

"Wayfield asserts that he has a "liberty interest" in his classification of being included in the citizenship in the Commonwealth of Massachusetts." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 10

"The second encompasses rights recognized by state law as being common to all citizens; being so recognized they achieved the status of 'liberty' or 'property' interests when they are altered or extinguished." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146; Medina, 545 F.2d at 250 (Citing Paul v. Davis, 424 U.S. 693, 708, 47 L. Ed. 2d 405, 96 S. Ct. 1155 91976). Plaintiffs Brief at 10

"The court concludes that the library's "objectionable appearance regulation violates the First Amendment and the Fifth Amendment's Due process Clause as protected by 42 U.S.C. S1983, because the provision is not narrowly tailored nor a reasonable time, place an manner restriction serving a significant government

interest." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 10

"The second class of rights that merit due process protection comprises a much broader spectrum, specifically... ...it includes rights which have been recognized by state law and thus have become "liberty" or "property" for the purposes of the Fourteenth Amendment." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 11

"The Supreme Court (in Logan) defined "property" as an INDIVIDUAL entitlement grounded in state law which can not be removed except "for cause."" David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L. Ed. 2d. 265, 102 S. Ct.1148 (1982), ID. At 430 (Citing, Memphis Light, Gas and Water Div., v. Craft, 436 U.S. 1, 11-12, 56 L. Ed 2d 30, 98 S. CT. 1554 (1978); Goss v. Lopez, 419 U.S. 565, 573-74, 42 L. Ed.2d 725, 95 S. Ct. 729 (1975); Board of regents v. Roth, 408 U.S. 564, 576-78, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972). "The court went on to enunciate the breadth of possible "property" interests." Plaintiffs Brief at 11

"Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible relating to the whole domain of social and economic fact." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; National Mutual Ins. Co., v. Tidewater Transfer Co., 337 U.S. 582, 646, 93 L. Ed. 1556, 69 S. CT. 1173 (1949) (parallel citations omitted) (Frankfurter, J. dissenting); Arnett v. Kennedy, 416 U. S. 134, 207-208, 40 L. Ed. 2d 15,94 S. Ct. 1633 (parallel citations omitted); Board of regents v. Roth, 408 U.S. at 571-572, 576-77 (1972) (parallel citations omitted); See, Goss v. Lopez, (419 U.S. 565, 42 L. Ed. 2d 18, 96 S. CT. 893 (1975) (high school education); Bell v. Burson, 402 U.S. 535, 29 l. ed. 2d 90, 91 S. Ct. 1586 (1971) (parallel citations omitted) (driver's license); Connell v. Higginbotham, 403 U.S. 207, 29 L.Ed.2d 418, 91 S. Ct. 1772 (1971) (parallel citations omitted) (government employment). Plaintiffs Brief at 11

"As for "liberty" in this context, the First Circuit has commented that, "it has long been held that...'liberty" encompasses much more than the simple right to be free from unwarranted bodily restraint.'" David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Raper v. Lucey, 488 F.2d 748, 752 (1st Cir. 1973) (Citing, Board of Regents v. Roth, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972)) (additional citations omitted). Plaintiffs Brief at 11

"The court in Raper analogized that case (application for a driver's license) to a case in which a driver's license was suspended. The court found "the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place... is a 'liberty' which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law."" David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Raper, 488 F.2d at 752 (Quoting, Wall v. King, 206 F.2d 878, 882 (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275). Plaintiffs Brief at 11, 12

"The difference between "liberty" and "property" is of no consequence in this context; The Supreme Court has said that the same test for determining process due is applied whether 'liberty' or 'property' is at stake." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Zinerman v. Burch, 494 U.S. 113, 108 L. Ed. 2d 100, 110 S. Ct. (1990). Plaintiffs Brief at 12

"The court of Appeals for the First Circuit found the following to be protected rights which cannot be denied without due process." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 12

"A doctor's property right in his or her medical license." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Lowe v. Scott, 959 F.2d 323 91st Cir. 1992). Plaintiffs Brief at 12

"On the right to apply for a driver's license." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Raper v. Lucey, 488 F.2d 748 (1st Cir. 1993). Plaintiffs Brief at 12

"Under the analysis in Logan, the first inquiry is whether Wayfield has "an individual entitlement grounded in state law," David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Logan, 455 U.S. at 430. Plaintiffs Brief at 12

"Recourse to an applicable statute or local law or regulation would help resolve the issue whether Wayfield has a protected liberty or protected property interest, the more narrowly drawn the statute or "the more circumscribed is the government's discretion (under substantive state or federal law) to withhold (the) benefit, the more likely that benefit constitutes 'property' for the more reasonable is reliance upon its continued availability and the more likely that a hearing would illuminate the appropriateness of withholding it in an individual case. David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (Quoting,

Beitzell v. Jeffery, 643 F.2d 870, 874 (1st Cir. 1981). Plaintiffs Brief at 12

"The cases cited above include an analysis of a state or local law which creates the plaintiff's alleged 'right.'" David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 13

"The absence of a state statute or local law , the court would have to reason from governing case law. The First Circuit's opinion in Medina provides an appropriate framework for analysis." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina v. Rudman, 545 F. 2d 244 (1st Cir. 1976), cert. denied 434 U.S. 891, 54 L. Ed. 2d 177, 98 S. Ct. `266. ("Involving an application to participate in a greyhound racing license"). Plaintiffs Brief at 13

"The Court in medina, stated that, a state-recognized interest might also exist if (The State) law could be said to confer upon (The Plaintiff) a right upon equal terms with others generally, to be licensed so as to engage in a common activity or pursuit... ...it seems likely that a state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina, 545 F. 2d at 250. Plaintiffs Brief at 13
"This excerpt could describe the issuance of a library card and the privilege of using public libraries." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 13

"The cited language from Medina does not specifically require that the "state-recognized interest" be related to employment. Indeed, the Medina court posited the "common acitivity or pursuit" rationale as a separate independent reason for the Supreme Court's holding in Schware." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 13, 14

"The case of Schware, finding a right to due process with respect to bar admissions." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L. Ed. 2d 796, 77 S. Ct. 752 (1957) (parallel citations omitted). Plaintiffs Brief at 14

"Can be explained on such ground as well as on th3e ground that the right to pursue an ordinary occupation is, by itself, a fundamental liberty interest..." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 14

"The Wayfield Court which was disadvantaged by the lack of a state statute or local law (or even a policy statement) regarding the library's governing mechanisms." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 14

"It seems more likely that library access is intended to be "open to all persons who meet prescribed standards (e.g. residency and minimum age) than that it is "treated as discretionary" by a supervisory board." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 14

"One final point: Gomes argues that the suspension of his library privilege is an occurrence important enough to warrant due process protection. The court determines that he is correct." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. Plaintiffs Brief at 15

"It is well-established fact in case law that access to a public library is at the core of First Amendment values" Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Plaintiffs Brief at 15

"The First Circuit warned, "to scrutinize carefully the assertion by state officials that their conduct is "random and unauthorized" with in the meaning of Parratt and Hudson, where such conclusion limits the procedural due process inquiry under S 1983 to adequacy of state post-deprivation remedies" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. 7146; (Citing, Lowe, 959 F.2d at 341). Plaintiffs Brief at 17

'The plaintiffs motion for partial summary judgment as to plaintiff's First Amendment, Fifth Amendment due process claims, and Civil Rights Act, 42 U.S.C. S 1983, claim is GRANTED against the District of Columbia, Dr. Hardly Franklin, Director, District of Columbia Public Library and the following Library Trustees, in their official capacities" Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D. C. 2001). Plaintiffs Brief at 17

"The equal benefits protections of S 1981 does not require state action and can be asserted against private parties." Phillip v. University of Rochester, 316 F. 3d 291, 294-95 (2nd Cir. 2003). Plaintiffs Brief at 18

"This excerpt could describe the issuance of a library card and the privilege of using public libraries" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 18

"Where, a state statute or policy does not involve a suspect classification or fundamental constitutional right, all the equal protection (or benefit) clause requires is the policy

classify persons it affects in a manner rationally related to legitimate governmental objectives.") Roberts v. Reno County Law Library, 1997 U.S. App. LEXIS 2833, 1997 Col. J.C.A.R. 2837; (Citing, Schweiker v. Wilson, 450 U.S. 221, 230, 67 L. Ed. 2 186, 101 S. Ct. 1074 (1981)). Plaintiffs Brief at 18

"When, a state statute or policy does not involve a suspect classification, such as a racially motivated animus or any of the other traditional suspect class designations or a fundamental constitutional right, all Equal Protection Clause requires is the policy classify persons it affects in a rational manner, related to a legitimate government objectives." Id. (Roberts); (Citing, Schweiker v. Wilson, 450 U. S. 221, 230, 67 L. Ed. 2d 186, 101 S. Ct. 1074 (1981)). Plaintiffs Brief at 19

"The court (in medina), stated (state) law could be said to confer upon (plaintiff) a right, on equal terms with others, to be licensed so as to engage in a common activity or pursuit. A state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists." David Wayfield v. Town of Tisbury, 925 F, Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina, 545 F. 2d at 250. Plaintiffs Brief at 20

"Recourse to an applicable statute, local law or regulation would help resolve the issue of whether Wayfield has a protected 'liberty' or 'property" interest, because the more narrowly drawn the statute or 'the more circumscribed is government's discretion (under substantive state or federal law) to withhold (the) benefit, the more likely the benefit constitutes property; the more reasonable is reliance upon its continued availability." David Wayfield v. Town of Tisbury, 925 F, Supp. 880, 1996 U.S. Dist. LEXIS 7146; O'Neill, 545 F. Supp. at 452; (Quoting, Beitzell v. Jeffrey, 643 F.2d 870, 874 (1st Cir. 1981)). "The cases cited above include an analysis of state or local law, which creates plaintiff's alleged 'right'." Id. (Wayfield). Plaintiffs Brief at 20

"Wayfield falls into a class of individuals known as the already licensed, those individuals who seek to bar suspension or revocation of their licenses. Since, the already licensed have a vested interest in the license, which forecloses denial with out due process." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (Citing, Lowe v. Scott, 959 F. 2d 323 (1st Cir. 1992) (medical license); Roy v. City of Augusta, 712 F.2d 1517 (1st Cir. 1983) (license to operate a pool hall); Medina v. Rudman, 545 F.2d at 250; ("Doubtless once a license, or equivalent, is granted, a right or status recognized under state law would come into being, and revocation of the license would require notice and hearing"); Wall v. King, 206 F.2d 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275; (Driver's license). Plaintiffs Brief at 21

"Wayfield argues that he holds a liberty or property interest in using the public library. He bases the argument on the library's public nature (public libraries are tax-supported institutions, municipal, public service corporations." David Wayfield v. Town of Tisbury,

925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 21, 22

"And on his liberty inherent in his classification of citizenship with in the Commonwealth of Massachusetts") . Id. (Wayfield). Plaintiffs Brief at 22

"'Rights' recognized by state law as being common to all citizens; being so recognized they achieved the status of 'liberty' or 'property' interests when they are altered or extinguished." Id. Medina, 545 F.2d at 250; (Citing, Paul v. Davis, 424 U.S. 693, 708, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976). Plaintiffs Brief at 22

"Rights which have been recognized by state laws and thus have become 'liberty' or 'property'" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. Plaintiffs Brief at 22

"The Supreme Court (in Logan) defined "property" as an INDIVIDUAL entitlement grounded in state law which cannot be removed except "for cause." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982), Id at 430, (additional citations omitted) "The court went on to enumerate the breadth of possible "property" interests." Plaintiffs Brief at 22

"Once that characteristic is found, the types of interests protected as "property' are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact."" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; National Mutual Ins. Co., v. Tidewater; (additional citations omitted). Plaintiffs Brief at 22

"This excerpt describes the issuance of a library card and the privilege of using public libraries."' Id. (Wayfield), Plaintiffs Brief at 22

"Wayfield asserts the freedom to make use of one's own property as a means of getting from place to place is a 'liberty' or 'property' which under section 1982 he holds and cannot be denied or curtailed by a state." (Quoting, Wall v. King, 206 F.2d 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275.) (Driver's license). Id. (Wayfield), Plaintiffs Brief at 22, 23

"Access to public library is at the core of our First Amendment values.") Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D. C. 2001). Plaintiffs Brief at 23

"First Amendment protects right to reasonable access to a public library.") David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 888 (D. Mass, 1996) (Additional citations omitted). Plaintiffs Brief at 23

"Some racial or other-wise class-based, invidious discriminatory animus behind conspirator's actions as the District Court incorrectly determined. Thomas v. Roach, 165 F. 3d 137, 146, (2d Cir.1999). (Quoting Mian v. Donaldson, Lufkin & Jenrette Sec's, Corp., 7 F.3d 1085 (2d Cir 1993); (per curium); See Britt v. Garcia, 457 F.3d 264, 270 (2d Cir. 2006). Plaintiffs Brief at 24

"The facts show, the city in fact overwhelmingly controlled the library's labor relations, it is to be noted that "government" is not required to be sole employer but merely a "joint" public employer. New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463. Plaintiff Brief at 25

"These governments (and officials) are constitutionally responsible for setting education policy, standards and rules and are legally required to ensure the entities they oversee carry them out." New York Public Library v. New York Pub. Empl. Rels. Bd., 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463. Plaintiff Brief at 25

"There is authority for the proposition a public library is an "Education Corporation" (General Construction Law SS 66(6))" Id. (Bovich) ("The library was created by the District pursuant to Education Law S 255". Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999). Plaintiff Brief at 25

"There is authority in New York law for the proposition a public library is an "Education Corporation" this does not mean it cannot also be a municipal corporation. Public libraries clearly serve functions at public expense." Margaret M. Bovich v. East Meadow Public Library, 16 A.D. 3d 11; 789 N.Y.S 2d 511, 2005 N.Y. App. Div. Lexis 1354. Plaintiff Brief at 25

"More pertinent, the union to which library's employees belong bargains directly with the city. The library, although the provisions of its original agreements with the city theoretically leave managerial decisions in its hands, does not even participate in the negotiations. Through them, library employees who are paid with city funds have won the right to participate in the city pension program, right to same insurance and fringe benefits as other city employees receive, right to benefit of the classification system applied to all city employees and the right to receive same salaries as do all other city employees in these classifications. These arrangements have not come about by default. The library has agreed it will abide by city decisions as to salary levels and benefits resulting from collective bargaining negotiations. Negotiations conducted on behalf of library employees are not conducted separately, but as part and parcel of negotiations for all city employees similarly classified. Nor does library pay any negotiated increases until

the city agrees to fund them.") These city funds include contributions from the State of New York and United States of America. The funds and all influence they exert are still subject to approval and controls of the three governments and their officials. New York Public Library v. New York Pub. Empl. Rels. Bd., 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463. Plaintiff Brief at 26

"The city and library entered into the arrangement permitted by legislation. It is the foundation of their relationship today. Even as viewed by its creators, the relationship is at least a joint one, envisioning mutual responsibilities, public benefits and a great dependency on city tax levies. That dependency now results in the city providing some 80% of the library's operating costs. Most of the books are owned by the city; most of the employees' salaries, the largest budget item, are paid by it (the city). The remaining 20% of operating funds, the bulk are State and Federal, not private. Id. (New York Public Library). Plaintiff Brief at 26

"The State of New York under the Education Law gives management and control of library and its operating funds to the Board of Trustees. " Id. (New York Public Library). Plaintiff Brief at 26

"A search of New York Statutes database in Westlaw reveals 105 laws containing the term "public library." Not one defines exactly what type of corporation a public library is. The plaintiff contends the library is a "district corporation," as defined by General Construction Law S 66(3), district corporations, by definition, possess power to levy taxes. There is no evidence in the record the library has power to levy taxes. To the contrary, the record demonstrates the library is dependent upon the district for it's funding." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999). Plaintiff Brief at 26, 27

"The Supreme Court of New York, Appellate Division, Second Department, is persuaded a public library under certain circumstances is a variety of public corporation." Margaret M. Bovich v. East Meadow Public Library, 16 A.D. 3d 11; 789 N.Y.S 2d 511, 2005 N.Y. App. Div. Lexis 1354. Plaintiff Brief at 27

"The library in question, located on property owned and mainly funded by school district, fell within definition of a municipal public corporation." Id. (Bovich) Plaintiff Brief at 27

"The close fiscal ties between defendant and public school district that provided building in which the library was situated free of cost, it was appropriate to treat defendant as a variety of municipal corporation" Id. (Bovich) Plaintiff Brief at 27

"The real property upon which library is situated is owned by the district and used by library at no charge. The District provides the library's funding. Under these

circumstances, library, while perhaps a distinct corporation, is so closely tied to the district by its purse-strings") Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999). Plaintiff Brief at 27

"The district created the library pursuant to Arts and Cultural Affairs Law S 61.05 and Education Law S 255. The district provides funding for the library. The district provides building in which library is situated at no cost to library. Indeed, the library is completely dependent upon the district for its very existence." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999), (Cf. Sarmine v. Mohawk Val. Gen. Hosp., 75 AD2d 1012, 429 NYS2d 134 (1980)) Plaintiff Brief at 27

"Under various statutes delegating powers to various libraries and the contract made with City of New York the Board of Trustees of the library is the body charged with duty of distributing funds already appropriated by the Board of Estimate. The Board of Trustees was intended, by statute and contract, to have discretionary powers so long as they were exercised in good faith to fix various salaries of its employees and carry out its administrative duties.") In Matter of the Application of the Brooklyn Public Library for a Preemptory Writ of Mandamus Directed to Charles L. Craig, as Comptroller of the City of New York; 201 A.D. 722; 194 N.Y.S. 715; 1922 N.Y. App. Div. LEXIS 6399. Plaintiff Brief at 27, 28

STATEMENT OF THE SUBJECT MATTER AND APPELLATE JUSIRDICTION

(A) Plaintiff, appearing pro se, brought action in the United States District Court for the Southern District of New York, under Const. Amend I, Amend. V, Amend XIV and title 42 U.S.C. SS1981, 1982, 1983, 1985, 1986 and Title II of the Civil Rights Act of 1964 ("Title II"), 42 U.S.C. S2000 et seq., alleging that Defendants violated his federal and state constitutional and law rights as well as his Civil Rights under the above referenced sections. Especially, those rights pertaining to access to, enjoyment and use of a public library and the internet thereof and further that defendants discriminated against him by expelling plaintiff from said library, and further by refusing to let plaintiff enter, access and use the New York Public Library (NYPL) or any of its branch libraries and the internet and the internet –accessible computers thereof and further by banning and excluding plaintiff from the library and all its branch libraries and suspending his library privileges with out cause or justification to do so and with out the individuals in question having proper, in fact, no authority to do so what-so-ever under the state law. Thus, additionally plaintiff also makes claims for violation of his rights under the New York Constitution and laws, especially the "education law" pertaining to "public libraries," C.L.S Educ. Law SS253, 260, 262.

Under the law and local rules of court procedure, a plaintiff finds he has subject matter jurisdiction to initiate proceedings in a United States District Court, if his claim falls under either two types of cases. First, the case must involve a federal question, where the subject matter alleged involves a violation of the U.S. Constitution and federal laws, or treaties. See, 28 S 231. Second, the case must involve diversity of citizenship of the parties, where the alleged violation involves subject matter in which a citizen of one state sues a citizen of another state and the amount of damages is more than $75,000.

Plaintiff's alleged claims with regards to being deprived of access to, enjoyment and use of the public library involves both a violation of the constitution and federal law. "It is well-established that access to a public library is at the core of First Amendment guarantees." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001).

The law pertaining to jurisdiction states that, "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States. This is called a Federal Question. A federal Question arises when the complaint claims that federal law – either a provision of the federal Constitution, a

statute passed by Congress, or a treaty ratified by the United States – has been violated." In a case based on violation of federal law, it does not matter how much or how little money is sought.

Thus, to put it succinctly, it is obvious that the plaintiff has met the first of the two elements required to initiate proceedings with regards to the deprivation of his rights by defendants as a result of their unlawful conduct. Additionally, plaintiff has established the right to initiate proceedings in the United States District Court for the Southern District of New York. Therefore, it is also blatantly obvious that the United States District Court for the Southern District of New York has jurisdiction over the subject matter claimed and alleged in plaintiff's complaint.

(B) Upon finding the decision of the district Court was made in error in interpreting as well as applying the applicable law as to the facts and merits of his case. And thus, finding such ruling to be completely inadequate and unsatisfying to plaintiff's cause. And further upon determining that he, the plaintiff, was in complete disagreement with the articulated decision and position of the District Court in its unjust and outwardly incorrect determination, ruling and decision. Hence, thus finding grounds for an appeal based on the fact that the District Court Judge, Chief Judge Loretta A. Preska, in the case made significant errors in interpreting the applicable law with regards to the facts presented in the complaint and the merits of the case. And further finding and noting significant errors in the procedural rulings of the case, where the District Court Judge failed to recognize or address the most pertinent and relevant issues of the case with regards to fact and law. Wherein the court reached an incorrect decision as a result of such above referenced ill-suited errors. Plaintiff in accordance with 28 U.S.C. S 1291 undertook the elective to have the decision of the District Court with regards to all the claims he made in his case reviewed by a higher federal court with the filing of an appeal under the doctrine aptly called "An appeal as of right."

The appeal in the case at bar, the Gomes case, is made in reference to the Final Order and Judgment entered by the United States District Court for the Southern District of New York on all issues claimed and alleged by plaintiff in the case made in favor of the defendants as a direct result of unlawful conduct and thereby prejudicing the plaintiff with regards to such alleged claims.

Hence, plaintiff filed a "Notice of Appeal" to appeal his case from the Final Order and Judgment of the United States District Court for the Southern District of New York to the United States Court of Appeals for the Second Circuit for review pursuant to applicable law 28 U.S.C. S 1291 and Rule 4 ( ) ( ) of the federal Rules

of Appellate Procedure ("FRAP") as well as local rule ___________.

Relevant Filling Dates Establishing the Timeliness of the Appeal

(C) (Insert Relevant Filing dates File)

Relevant Filling Dates Establishing the Timeliness of the Appeal

Date	Plaintiff/ Petitioner Number	Federal Court Number	Document	Date
1/11/11	1	1	DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS	1/11/11
1/11/11	2	2	COMPLAINT against New York Public Library and co-defendants	1/11/11
1/11/11	3	3	MOTION for an Order to Grant relief	1/11/11
1/25/11	4	4	Pro Se Acknowledgement Letter Mailed	1/25/11
2/4/11	5		District Court received return mail re: 4 Pro se Acknowledgement Letter. Mail was addressed to J.A.G at 390 Ninth Avenue, New York, NY 10001	2/4/11
3/9/11	6	5	ORDER OF DISMISSAL	3/9/11
3/9/11	7		NOTICE OF CASE ASSIGNMENT - Sua Sponte to Judge Loretta P. Preska	3/9/11
3/9/11	8	6	CIVIL JUDGEMENT: ORDERED, ADJUDGED AND DECREED	3/9/11
3/18/11	9		District Court Received return Mail: Mail addressed to J.A.G	3/18/11
4/5/11	10	7	NOTICE OF APPEAL from 5 Order of Dismissal, 6 Judgement	4/5/11
4/5/11	11		Appeal Remark as to 7 Notice of Appeal filed by Joe A. Gomes	4/5/11
4/5/11	12		IN FORMA PAUPERIS Request filed	4/5/11
4/18/11	13		Letter: Notice of AppealRreceipt Acknowledgement	4/18/11
4/20/11	14		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals (Entered 04/20/2011)	4/20/11
4/20/11	15		Transmission of Notice of Appeal to District Judge re: & Notice of Appeal (Entered 04/20/2011)	4/20/11
5/4/11	16		Appeals record Sent to USCA (Electronic File)	

4/25/11	17	1	NOTICE OF CIVIL APPEAL	4/25/11
4/25/11	18	2	MOTION to proceed In Form Pauperis	4/25/11
4/28/11	19	4	Instructional Forms, to Pro Se Litigant	4/28/11
4/28/11	20		Docketing Notice received by Petitioner	4/28/11
5/4/11	21		Appeal Record Sent to USCA (Electronic File)	5/4/11
5/5/11	22	10	ELECTRONIC INDEX, in lieu of record, FILED	5/5/11
5/9/11	23	11	NOTICE OF APPEARANCE, on behalf of Appellee Robert M. Bennett, Board of Trustees or Library Trustees of New York Public Library, Andrew Cuomo, Richard P. Mills, Regents of the University of the State of New York, Eric T. Schneiderman, State of New York and Janet Welch FILED	5/9/11
5/11/11	24	12	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Eric H. Holder, Jr., Michael B. Muckasey and United States of America, FILED	5/11/11
5/12/11	25	13	ATTORNEY, Sarah Sheive Normand, in place of attorney Katherine Polk	5/12/11
5/16/11	26	14	ACKNOWLEDGEMENT AND NOTICE OF APPEARANCE FORM, ON BEHALF OF JOE A. GOMES	5/16/11
5/16/11	27		Civil Appeal Transcript Information	5/16/11
5/16/11	28	16	PRO SE SCHEDULING NOTIFICATION , on behalf of Appellant Joe A. Gomes	5/16/11
5/16/11	29	17	SUPPLEMENTARY PAPERS TO MOTION, on behalf of Appellant Joe A. Gomes, FILED	5/16/11
5/16/11	30		Final Affidavit, Motion For Forma Pauperis	5/16/11
5/21/11	31		Receipt of Letter: Attorney General State of New York	5/21/11
5/24/11	32		Receipt of Letter: U.S. Attorney's Office	5/24/11
7/6/11	33	21	NOTICE, to Appellee to Michael A. Cardozo and City of New York, for	7/6/11

			failure to file appearance	
8/3/11	34	24	MOTION ORDER, denying motion to proceed in forma pauperis (2) filed by Appellant Joe A. Gomes	8/3/11
8/3/11	35	25	NEW CASE MANAGER, Anna Steglich, ASSIGNED	8/3/11
8/3/11	36	26	appeal, pursuant to court order, dated 08/03/2011, DISPOSED	8/3/11

(D) The Appeal arises from the Final Order or a Final Judgment of the United States District Court for the Southern District of New York by Honorable Loretta A. Preska, Chief United States District Judge. In which, the court failed to acknowledge the facts and the merits of the case at bar as presented via the allegations presented by the plaintiff in his complaint. Likewise, the court failed in its application of the appropriate law with regards to the most pertinent and relevant issues in the case, opting instead to incorrectly address the less relevant issues. While the lower courts decision to dismiss and dispose of plaintiff's alleged claims was sufficiently lacking in the recognition of the most important and pertinent allegations of fact. The District Court failed in three separate and very distinct areas with regards to the plaintiff's case:

First, the court either failed to recognize or completely ignored the most important and relevant claims under Const. Amend I, Amend V, and Amend XIV with regards to culpability and liability of the defendant library and co-defendant governments and the employee government actors for violating the plaintiffs right to access, enjoy and use the public library as well as the internet and internet computers thereof and for violating the plaintiff's 'liberty' and "property" right in such access, use and enjoyment of such public library as well as violating the right of the plaintiff by depriving him of both a pre-deprivation and a post-deprivation hearing under due process, in fact affording him no process at all.

Second, the court wrongly dismissed and disposed of the plaintiff's other claims made pursuant to his Civil Rights under title 42 U.S.C. SS 1983, 1982, 1981, 1985 and Title II claims, 42 U.S.C. S20009. Based on the District Courts incorrect determination of the facts and application and interpretation of the law with regards to the above sections under which plaintiff's claims were made. Thereby, dismissing and disposing of valid claims founded on established fact as presented in plaintiff's allegations of fact with frivolous, narrow, unjust and self-defeating interpretations of the issues, the facts and the law.

Third, the court declined, although unwisely, to exercise supplemental jurisdiction over the plaintiff's state law claims. Even though, such court was well with in its jurisdiction. Given the fact that the case involved not one but a series of federal questions coupled with the fact that the plaintiff established alleged claims founded and grounded in the New York State Constitution and law, in particular, the section of the "Education Law" pertaining to "public libraries." See C.L.S. Educ. Law SS253, 260(12), 262.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Three (3) Points for review

Each of the points for review has its own separate and distinct identity with regards to the United States District Courts errors in dismissing and disposing the alleged claims of the plaintiff, Gomes, as to the culpability and liability of the defendants as a direct result of their unlawful conduct.

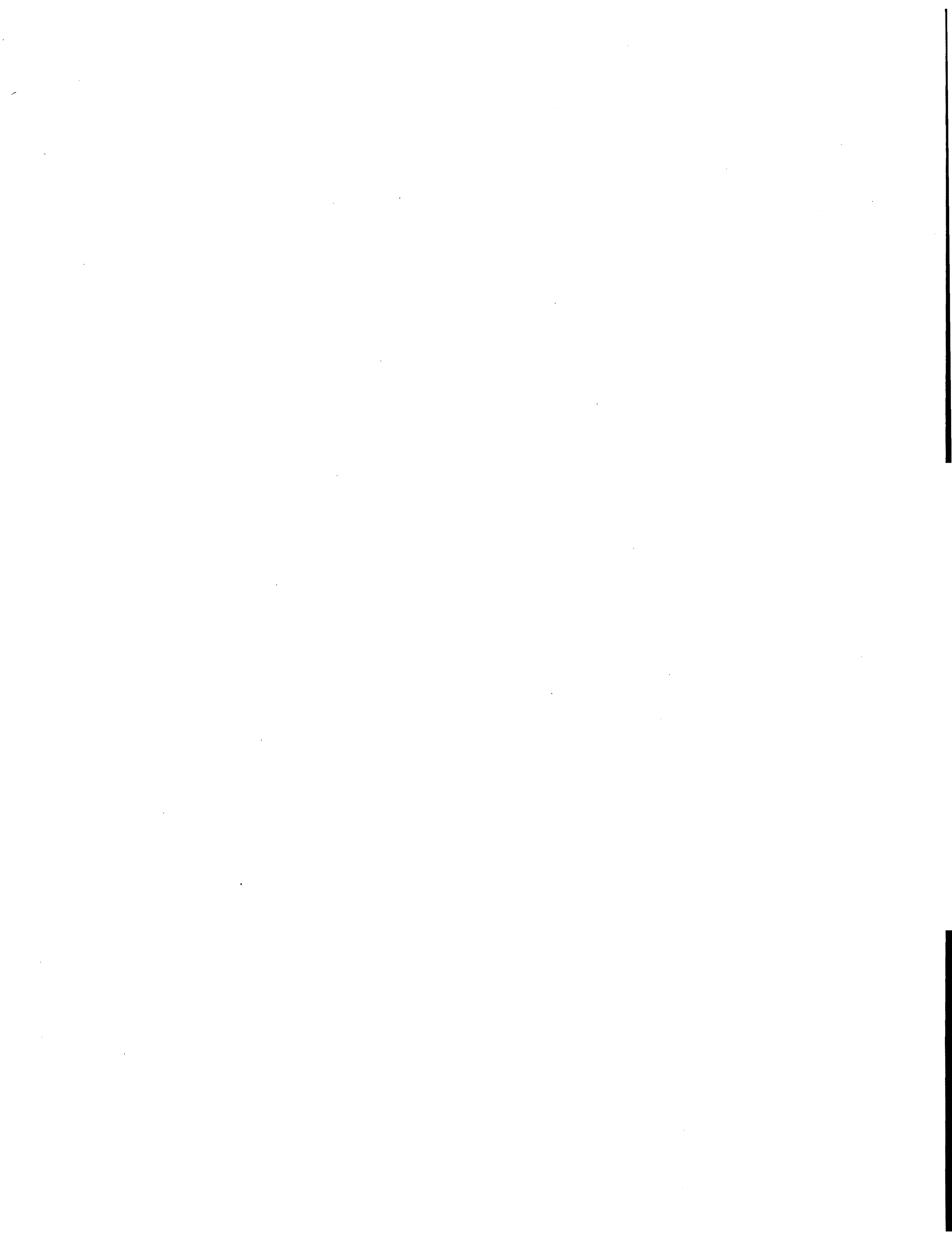
First, the most pertinent and important issues with regards to the alleged claims of the plaintiff (e.g. Const. Amend I, Amend V, and Amend XIV) for review were either completely ignored by the District Court or such court failed to recognize there merits with in the context of the applicable law. Additionally, the District Court failed address there relevance as they pertain to the plaintiff's case or the case at bar.

Second, the District Court's errata in dismissing and disposing of the plaintiff's claims; Based on such court's erroneous view both in fact and in law that the plaintiff did not establish a right violated by the defendants as a result of their conduct as presented via the alleged claims of the plaintiff in his complain. As is quite apparent, the court confused the separate and distinct meaning of the phraseology, "acting under the color of state law" with "constituting a state action" by implying that they are synonymous or one in the same. When in fact the two phrases are not synonymous. The two phrases do not mean the same thing. They are separate and distinct in scope with two completely different meanings.

While "constituting a state action" could in certain instances fall within the context of acting under the color of state law." The same cannot be said in the reverse. Because "acting under the color of state law" is much broader in scope and covers areas outside of what generally "constitutes a state action." For example "acting under the color of state law" could involve the unlawful conduct of individuals (e.g. private) that does not require state action and where no state action is involved.

Additionally, the court's wrongful interpretation of the law, where the Civil Rights Act of 1964 is concerned, through its insistent reliance on the view that the plaintiff's claim must involve a racially-based animus in order for the plaintiff to exercise his rights under title 42 U.S.C. SS 1981, 1982, 1983, 1985 and Title II of the Civil Rights Act of 1964 ("Title II"), 42 U.S.C. S 2000 et seq.

Finally, the District Court declining to address the issues pertaining to the New York State Constitution (e.g. SS 8,9,11) and laws, in particular the "Education law" of the State of New York pertaining to "Public Libraries," C.L.S. Educ. Law SS253, 260(12), 262. Especially, when plaintiff asserted and established state law claims under such sections in addition to the claims he asserted involving federal questions. See C.L.S. Educ. Law SS 253, 260(12), 262. It is established fact, that plaintiff has a state law right under such sections in accordance with the prescribed law and established case law. This fact is undeniable.



STATEMENT OF THE CASE

He nature of the case at bar is simple. This is a case in most respects comparable to the Wayfield v. Town of Tisbury case with a few slight differences, in the exception. Although, in all respects the facts and merits of the case presented are in favor of the plaintiff, Gomes. The main difference between the two is that instead of just deciding the case for failure of defendants to provide either a pre-deprivation or a post-deprivation hearing as a direct result of their unlawful conduct in accordance with Const. Amend XIV due process. Meaning, the plaintiff was afforded no hearing at all. Unlike Wayfield, in the case at bar, the Gomes case, the rights of the plaintiff violated by the defendants in accordance with the allegations made in the plaintiff's complaint are expanded to include other federal and state constitution and law questions. These include:

(1) The violation of Const. Amend I, or the violation of the plaintiff's First Amendment right to access, enjoy and use a public library. "It is well-established fact in case law that access to a public library is at the core of First Amendment values." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001); (2) The violation of Const. Amend V or the violation of plaintiff's Fifth Amendment "liberty" or "property" right to access, enjoy and use the public library. The plaintiff like Wayfield has established that he has both a "liberty" and a "property" interest in using a public library. The illicit and unlawful actions of the defendants with regards to suspending his library privileges and denying plaintiff access to the New York Public Library (NYPL) deprived him of the "liberty" and "property" right in using his own private or personal property found in the Fifth Amendment and thereby violated such amendment.

Additionally, the plaintiff argues that he has established that he has a 'liberty' and 'property' interest in using the public library under title 42 U.S.C. SS 1981, 1982, 1983, 1985 and Title II of the Civil Rights Act of 1964 ('Title II"), 42 U.S.C. S 2000 et seq. He bases his argument on his "liberty" inherent in his classification of inhabitant with in the citizenry of the State of New York and the City of New York. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146, ("he bases his argument on his inherent classification of citizenship in the Commonwealth of Massachusetts.")

Furthermore, plaintiff argues that such rights under the Civil Rights Act of 1964 are not singularly dependent on a race-based animus or any other animus or suspect class classification or designation as the United States District Court for the Southern District of New York so incorrectly determined. Because such a

singular classification or designation as reached by the District Court would discriminate against the whole intent and purpose of such laws to maintain the status quo in guaranteeing equal treatment under the law.

Further, plaintiff argues that the alleged fact that one or more individuals or government actors working in active consort for and on behalf of the library and the co-defendant governments were involved. Whereas, in the case at bar, the plaintiff acted alone. The fact that such group consisting of the library staff and the library security detail or the government actors were working in active consort to suspend plaintiff's library and internet privileges and deprive the plaintiff from entry and access to as well as enjoyment and use of the library and the internet thereof on more than three separate occasions at different branch libraries. Coupled with the fact that an outside government agency such as the police (or NYPD) was either called by the library by the security detail or the library staff and not by the plaintiff or showed up at the library on more than one occasion. When the plaintiff was blocked by such library staff and library security detail from entry and denied access to use and enjoy the library, along with the fact that the plaintiff was never formerly charged or arrested on any occasion. Such allegations of fact over-whelming prove two things. First, the plaintiff was in the right and did nothing to warrant the expelling and exclusion from the library or the suspension of his library or Internet privileges. Additionally, the library had no justification to block, deny or restrict plaintiff access to use and enjoy the New York Public Library (NYPL) or the Internet thereof. Second, the above presented facts over-whelming show as well as prove that a conspiracy to deny the plaintiff access, use and enjoyment of the public library and the Internet thereof and suspend his library and internet privileges did in fact exist and take place under both the dictionary and text book definition of a conspiracy. The Definition of a conspiracy is "one or more persons (e.g. a group) acting together to achieve an unlawful ends." Denying plaintiff of his First Amendment right to access and his Fifth Amendment "liberty' or "property" right to use the New York Public Library (NYPL) and the Internet thereof is that unlawful ends. It would either be a blatant case of complete ignorance of the facts and law or a case of un-yielding illiteracy or both to determine otherwise.

In order to initiate proceedings in a Federal Court such as the United States District Court for the Southern District of New York and for the District Court to have jurisdiction over the subject matter the case must involve a federal question where the subject matter alleged involves a violation of the U.S. Constitution and federal laws, or treaties. See, 28 S 231. The subject matter of the case at bar involves the violation of not one but several federal questions coupled with the violation of

various sections of the Civil Rights Act of 1964 as well as violations of the New york State Constitution and laws.

The Federal questions include the plaintiffs First Amendment right to access, enjoy and use a public library or the free or political speech within and the internet thereof and the free and political speech therein. As well as the information, free speech or political speech as a "liberty" or "property" right grounded in the Fifth Amendment right to access and make use of that 'liberty' or 'property' interest. See, Const. Amend I, Amend V.

The course of the proceedings in the District Court progressed to the point in which a complaint alleging all the plaintiffs claims was filed. The court in its undue decision to dismiss and dispose of all the alleged claims with regards to the defendants culpability and liability as to their conduct either failed to recognize and address the most pertinent and relevant issues involving the case or made erroneous determinations and misjudgments with regards to the liberal reading of the alleged facts or interpretation of the applicable law as well as the merits of the case. The court even declined to address the plaintiffs New York state constitution and law claims even though it was well within its jurisdiction to do so.

In essence, the District Court completely ignored, failed to recognize or inadequately addressed the meat of the alleged claims in the plaintiff's complaint. The court failed to see that "the right to access a public library is at the core of First Amendment guarantees." Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("Access to a public library is at the core of First Amendment values") Like wise, the same can be said with regards to access to the Internet of said library.

Additionally, the right to access the public library and the internet thereof as well as make use of that right (or make use of one's own property) is a 'liberty' or 'property' interest inherent in the Fifth Amendment. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("access to a public library is a right under settled First and Fifth Amendment principles.") David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146, ("The court found "the freedom to make use of one's own property, here a motor vehicle as a means of getting about from place to place, is a 'liberty' which under the Fourteenth (Fifth) Amendment cannot be denied or curtailed by a state without due process of law." Raper, 488 F. 2d at 75; (Quoting, Wall v. King, 206 F. 2d 878, 882 (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. CT. 275)

Furthermore, the court failed to see that the defendants by expelling, excluding and banning plaintiff from the library and by suspending his library and Internet privileges and then blocking and denying him access to, enjoy and use said library without a deprivation hearing, in fact, affording him no process at all in accordance with due process under the Fifth and Fourteenth Amendment, just like the Wayfield case. In fact, in doing a comparative analysis or analogizing the Wayfield case to the case at bar, the Gomes case. One finds the two cases to be very similar in many respects. The major difference is that where Wayfield was decided on just the Fourteenth Amendment due process violation. Gomes or the case at bar is expanded to include violations under the First Amendment and the Fifth Amendment of the Constitution as well as the Fourteenth Amendment along with various provisions of the Civil Rights Acts of 1964 and violations of the New York State Constitution and laws. In the comparative analysis between the two cases, Wayfield would account for the worst-case scenario or the low end of two different and opposite extremes. While, Gomes would amount to best-case scenario or the high end of two different and opposite extremes. The court in Wayfield moved, sue sponge, for Summary Judgment in favor of the plaintiff, Wayfield, with regards to the culpability and liability of defendants as a direct result of their unlawful conduct in violating the plaintiff's Fourteenth Amendment rights for affording no due process at all. There is absolutely no reason why the court in the case at bar, the Gomes should not have done the same and rule, sue sponte, in favor of the plaintiff, Gomes, with regards to all his claim as to the culpability and liability of the defendants or state actors as a result of their conduct for not only violating the plaintiff's Fourteenth Amendment rights for affording no due process at all. But also for violating the plaintiff's First and Fifth Amendment rights under the Constitution.

Nevertheless, plaintiff has asserted and established a right as an inhabitant within the citizenry of the State of New York under 42 U.S.C. SS1981, 1982, 1983, 1985, Title II of the Civil Rights Act of 1964 ("Title II") 42 U.S.C. S2000a (a) et seq. and that these rights were also violated by the defendants as a direct result of their unlawful conduct. The plaintiff has also alleged and asserted that the defendants engaged in a conspiracy in denying him access to, enjoyment and use of the public library and the intent thereof as well as the free or political speech therein and proved that such conspiracy not only existed but did in fact take place. He basis such allegations on the dictionary definition of a conspiracy ('the coming together of individuals into a group to achieve an unlawful ends") and on the fact that it was always one or more of the library staff and library security detail acting in active consort against or in opposition to the sole individual plaintiff, Gomes, on more

than one separate occasion at more than one different location or library. Given the definition of a conspiracy and the facts presented, it would simply be highly illogical, not very prudent or not very intelligent to assume that the events that took place on January 15, 16 and 17 of 2009 and on other earlier occasions prior to these dates between the library and the plaintiff were a coincidence and not a conspiracy undertaken by a group (one or more person) to achieve an unlawful ends. Such unlawful ends was clearly to suspend plaintiff's library and internet privileges and to deprive him of his right to access, enjoy and use the public library and the internet thereof as well as the information, free or political speech therein by the defendants or state actors as a direct result of the unlawful actions of the defendants the library, the governments and the government actors or the library employees.

Finally, plaintiff alleged violations of his right to access enjoy and use a public library and the Internet thereof under the Constitution and laws of the State of New York, especially the "Education Law" pertaining to public libraries. See, Const. SS 3, 8, 9 and 11 and C.L.S. Educ. Law 253, 255, 260, 262. The federal court in Wayfield pointed out and alluded to the existence of his state law claims, but that he never made any allegations under such state law claims.

That is not the situation with regards to the case at bar, unlike Wayfield, the plaintiff in the case at bar, Gomes, does make claims with regards to violation of the New York State Constitution and laws, especially the "Education Law" pertaining to 'public libraries' C.L.S. Educ. Law SS253, 260, 262. Further, it has already been established that the federal court like the federal court in Wayfield does in fact have jurisdiction over the subject matter of this case.

The District Court in the case at bar, plaintiff's case, incorrectly dismissed and disposed of some claims with regards to the Civil Rights Act of 1964, failed to adequately address the most important, pertinent and relevant with regards to federal questions (e.g. Const. Amend I, Amend V and Amend XIV) and recused itself from addressing the New York State Constitution and state law claims. Of those that it did address, dismiss and dispose of, the lower court either failed to see or recognize the validity of the facts alleged in the claims, ignored or confused the facts and the interpretation of applicable law or relied on such a narrow singular interpretation such as the insistence that plaintiff's claims be founded or grounded on a race-based animus, that it (the court) completely ignored the essence of the provisions of the Civil Rights statutes asserted to the point as to where such mistaken interpretations discriminate, work against, essentially defeat and do grave injustice to the inherent intent and purpose of those statutes in maintaining the

status quo and promoting equal treatment under the law. The main reasons the Legislature enacted and passed the Civil Rights Act of 1964 in the first place.

11-1685-CIVIL

UNITED STATES COURTS OF APPEALS
FOR THE SECOND CIRCUIT

JOE GOMES,

PLAINTIFF-APPELLANT,

V.

THE NEW YORK PUBLIC LIBRARY (NYPL) AND THE CITY OF NEW YORK, AND THE STATE OF NEW YORK, AND THE UNITED STATES OF AMERICA, et al,

Defendants – Appellees,

On Appeal from the United States District Court for the Southern District of New York

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Appellant Joe Gomes Brief

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Argument

Summary

This case can be summed up quite clearly. The case at bar could be analogized via a comparative analysis to the Wayfield v. Town of Tisbury case. In Wayfield the court, sua sponte, ruled in favor of plaintiff, Wayfield on his alleged claim for deprivation of due process under the Fourteenth Amendment as to culpability and liability of defendants or government actors as a result of their unlawful conduct. Clearly, astute individuals can see the two cases are similar in a great many respects with regards to fact and law. The Court in Wayfield, ruling in his favor stipulated that no process was afforded him at all. In the Gomes case, the same argument exists with regards to process due under the Fourteenth Amendment. Gomes, like Wayfield was afforded no process at all.

The two cases, similar in many respects, do have a few distinct, important differences with regards to alleged claims in fact and applicable law. Primarily, the allegations in the Gomes case are expanded to include First Amendment right of access violations, Fifth Amendment 'liberty' and 'property' right to use and enjoy personal property violations, Fifth Amendment due process violations, various violations under Title 42 U.S.C. SS 1981, 1982, 1983, 1985 and 'Title II' of the Civil Rights Act of 1964 ("Title II"), 42 U.S.C. S 2000a(a), violations of New York State Constitution SS 8, 9, 11 and state law under the Education Law of New York State pertaining to 'public libraries,' C.L.S. Educ. Law SS 253, 260(12), 262.

The comparative analysis between the two cases shows. They are at opposite ends of two different extremes. Wayfield having no state statute to guide the court with an existing state-recognized status to confer upon plaintiff a right to access, use and enjoy the public library, the Internet thereof and to receive communication, information, free or political speech and all emoluments therein. Finds itself at the low end of the extreme or the worst-case scenario. Consequently, Wayfield was still prevailed in a court of law.

Gomes, does have a state-recognized status which confers the right to access, enjoy and use the public library, the Internet and Internet-accessible (Emphasis) computers thereof and to receive communication, information, free or political speech and all emoluments therein upon him to support his claims is at the high end of the extreme or best-case scenario. The United States District Court should have ruled, sua sponte, in favor of, Gomes, with regards to defendants or government and the library employees or government actor's culpability and liability as a result of their unlawful conduct.

The District Court in Wayfield ruled in his favor or the worst-case scenario. Certainly, in the case at bar, The District Court had even more reason to rule, sua sponte, in favor of Gomes, the best-case scenario. The District Court failed to recognize the merits of Gomes' case as to the facts and law. Thus, we the find the reason and have jurisdiction

for the Appeal. Now, The United States Court of Appeals for the Second Circuit must reverse the incorrect finding and decision of the lower court, the United States District Court for the Southern District of New York. The Court of Appeals should rule sua sponte, in favor of appellant, Gomes, on all relief requested in his complaint as to culpability and liability of defendants or government actors as a result of their unlawful conduct.

Body

A. The District Court ignored all relevant issues in the case

The District Court failed to recognize the pertinent issues with regards to the relevant facts presented in Gomes' complaint and in deciding the applicable law. The court ignored and failed to recognize petitioner's First Amendment right of access to, use and enjoy the public library, the Internet and computers thereof. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D. C. 2001); ("Access to a public library is at core of our First Amendment values."); David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 888 (D. Mass, 1996) ("First Amendment protects right to reasonable access to a public library.") (See, Kreimer v. Bureau of Police, 058 F. 2d 1242, 1264-65 (3rd Cir. 1992)).

Likewise, the District Court failed to recognize plaintiff's Fifth Amendment "property" interest in reasonable access to, use and enjoy the public library, the Internet and computers thereof.

Plaintiff shows the court was biased, prejudicial and unjust in siding with the public library or government, the library staff and security detail or government actors in its ill-conceived decision. The court with its erroneous and narrow of the facts and merits of the case and law erred in dismissing and disposing of petitioner's claim under the Fourteenth Amendment's right to due process. The District Court failed to recognize the fact plaintiff, Gomes, was never provided with a pre-deprivation or post-deprivation hearing to explain and argue his case and be heard on the facts with regards to being expelled, excluded, blocked and barred from the New York Public Library, having his library privileges suspended and being denied access by the library or government, the library staff and security detail or government actors.

B. First Amendment

"It is a well-established fact in case law that access to a public library is at the core of First Amendment values," Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001). Furthermore, "access to a public library is a well-recognized and understood under settled First and Fifth Amendment principles." Id.

"The court, in Wayfield, determined that a right to access a public library exists," David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. "The court found First Amendment right of access to library." Id. at 6, 12 "Other courts have found the ability to use a public library implicates important First Amendment rights." Id. at 12; (See, Kreimer v. Bureau of Police, 958 F.2d 1242 (3rd Cir. 1992); Brinkmiere v. City of Freeport, 1993 U.S. Dist. LEXIS 9255, 1993 WL 248201 (N.D. Ill. 1993)

Gomes' claim is that in suspending his library and Internet privileges and denying access to, use and enjoy of the New York Public Library and Internet thereof. Defendants, the New York Public Library (NYPL) or government violated his First Amendment right to access a public library.

Defendants had no obligation to provide library or Internet access. However, the New York Public Library chose to do so. The First Amendment restricts the limitations. The library is allowed to place on plaintiffs' access. Miller v. Northwest Regional Library Board, 348 F. Supp. 2d 563; 2004 U.S. Dist. LEXIS 25403, 33 Media L. Rep. 1243 ("Defendants is under no obligation to provide Internet access to patrons, it has chosen to do so and is therefore restricted by the First Amendment in the limitations it is allowed to place on patron access.")

Defendants The New York Public Library or government in the Gomes case have asserted a broad right to 'CENSOR' his expressive activity to communicate and receive information through the Internet and library, by restricting his access to, use and enjoy the library and Internet thereof and by suspending his library and Internet privileges with unconstitutionally vague and overbroad policies that:

(1) are not necessary to further a significant government interest

(2) are not narrowly tailored or reasonable time, place and manner regulations, "which serve a significant interest" Kreimer v. Bureau of Police, 958 F.2d 1242 (3rd Cir. 1992.

(3) restrict access of adult patrons to protected material

(4) provide inadequate standards for restricting access

(5) provide inadequate procedural safeguards to ensure prompt judicial review

Such ('patron') policies offend and violate the guarantee of free speech and free association guarantee Id. (Kreimer) of the First Amendment of the United States Constitution and are therefore unconstitutional. Id. (Miller) ("Defendant has asserted a broad right to censor expressive activity of receipt and communication of information through the Internet with a policy that: (1) is not necessary to further any compelling government interest, (2) is not narrowly tailored, (3) restricts access of adult patrons to protected material, (4) provides inadequate standards for restricting access, (5) provides inadequate procedural safeguards to ensure prompt judicial review. Such policy offends the guarantee of free speech in the First Amendment and is therefore unconstitutional."); Kreimer v. Bureau of Police, 958 F.2d 1242 (3rd Cir. 1992.) ("Morristown Library 'patron policy' violates First Amendment to the United States Constitution; the

provisions are not narrowly tailored or reasonable time, place and manner regulations which serve a significant interest and violate free association guarantee of First Amendment.")

The New York Public Library's objectionable use of computers with regards to its Internet policy, "computers are for catalogs and database use only" and objectionable use of library policy as to "expel, exclude, and ban plaintiff from library, suspend his library privileges, restrict and deprive him access with out good cause" violate the First Amendment as protected by 42 U.S.C. S 1983. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("Court concludes library's "objectionable appearance" regulation violates First Amendment, as protected by 42 U.S.C. S 1983, because the provision is neither narrowly tailored nor a reasonable time, place and manner restriction serving a significant government interest.")

The overbroad and vague policies of the New York Public Library wrongly give unrestricted and subjective enforcement discretion to the enforcer at any given hour or day. Id. (Armstrong) ("The amorphous appearance regulation impermissibly vest unfettered and subjective enforcement discretion in whomever the regulation enforcer happens to be at a given hour or day.")

The facts presented above show the New York Public Library's policies violate important values at the core of First Amendment. Id. (Armstrong) ("The regulation is imprecise and provides no articulable standard to guide government officials or employees who must enforce the regulation or the public who must conform conduct to the barring regulations vague requirements.")

"Court finds First Amendment right of access to library and notes absence of 'formal procedure whereby a person may challenge his denial of access to the library,' as evidence 'the policy is less than reasonable.'" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146, Id. (Mathews) at 6.

The facts show the District Court had no other alternative than to conclude Gomes, had alleged sufficient facts to state a claim for relief under the First Amendment. Miller v. Northwest Regional Library Board, 348 F. Supp. 2d 563; 2004 U.S. Dist. LEXIS 25403, 33 Media L. Rep. 1243; ("Court concludes plaintiff has alleged sufficient facts to state a claim for relief)

The forgoing reasons show Defendants should without a doubt be enjoined from enforcing the undefined terms of the New York Public Library policies as to the objectionable Internet and library access and use by plaintiff as far as handling of security matters under First Amendment of the Constitution. Especially, the words "expelled, banned, excluded, restricted, blocked, suspended, deprived or denied," with regards to access, enjoyment and use of library and Internet thereof. Armstrong v. District of

Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("Defendant is enjoined from enforcing the undefined terms of "Objectionable Appearance" section of District of Columbia Public Library Guidelines for handling security matters, specifically, the terms "body, odor, filthy clothing, etc.,")

The facts and merits of the Gomes case show. It was appropriate for the United States District Court, sua sponte, to render a decision to GRANT plaintiff all relief requested under the First Amendment right to access the library as to culpability and liability of defendants on his claim. The lower court failed to recognize the facts and merits inherent in the case. The Court of Appeals For the Second Circuit now must reverse the District Court's ruling in the Gomes case and, sua sponte, render a decision in accordance with established First Amendment principles to GRANT Gomes all relief requested as to culpability and liability of defendants on all his claims. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Given the nature and extent of this ruling, it may be appropriate for the court, sua sponte, to render Summary Judgment to Wayfield as to liability of defendants on his claims.")

C. Fifth Amendment

Gomes argues that he has a 'liberty' or 'property' interest in using the public library and by denying him of library and Internet access. Defendants deprived him of his Fifth Amendment 'liberty' and 'property' right to access, enjoy and use a public library and the Internet thereof. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("Access to a public library is a right under settled First and Fifth Amendment principles.")

In case law, a distinction exists between individuals applying for licenses and those seeking to prevent suspension or revocation of their licenses. Plaintiff, Gomes, falls into the latter class, the already licensed. He has a vested 'property' interest in the license to access the public library, which forecloses denial without due process. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("The already licensed have a vested property interest in the license, which forecloses denial without due process.") (Citing, Lowe v. Scott, 959 F.2 323 (1st Cir. 1992) (medical license); Roy v. City of Augusta, 712 F. 2d 1517 (1st Cir. 1983) (license to operate a pool hall); Medina v. Rudman, 545 F.2d at 250 ("Doubtless once a license, or equivalent is granted, a right or status recognized under state law would come into being, and revocation of the license would require notice and hearing"); Wall v. King, 206 F.2 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 l. Ed. 411, 74 S. Ct. 275 (driver's license).

The above excerpt could describe the issuance of New York Public Library "ACCESS' card to Gomes and privilege of using such public library. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ('This excerpt could describe issuance of a library card and privilege of using public libraries.")

Gomes did possess a New York Public Library "Access" card at the time of the incident. The card had been issued to him by the New York Public Library. Thus, he had a 'liberty' or 'property' right to make use of such license to access New York Public Library. Likewise, Gomes had already obtained access and was using the New York Public Library and Internet thereof for a number of years prior to the suspension of his library privileges. Thus, via the doctrine of 'prior use,' Gomes already had established that a 'liberty' or 'property' interest or license to access and use such public library existed. Having such established 'liberty' and 'property' interest through the two mechanisms, Gomes thus had an existing 'liberty" and 'property' right to access, enjoy and use the New York Public Library which could not be denied or curtailed by a state without due process of law. Id., at 9 ("Court found 'freedom to make use of one's own property, here a motor vehicle as a means of getting about from place to place is a 'liberty' which under the Fourteenth and Fifth Amendment cannot be denied or curtailed by a state without due process of law." Raper, 488 F. 2d. at 75; (Quoting, Wall v. King, 206 F. 2d. 878, 882, (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. CT. 275)

Gomes, holds that his library privileges were arbitrarily suspended without good cause or justification. His case falls into the latter category, a case in which plaintiff already holds a license. A category in which the First Circuit has recognized due process is required. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Wayfield holds his library privileges were arbitrarily suspended without 'good cause'. Thus, his case falls into the latter category – a case in which plaintiff already holds a license – a category in which, the First Circuit has recognized, due process is required.")

"The First Circuit warned (in Lowe to) scrutinize carefully the assertion by state officials that their conduct is 'random and unauthorized' within the meaning of Parratt and Hudson,' where such a conclusion limits procedural due process inquiry under S 1983 to question the adequacy of state-post-deprivation remedies." Id. at 10.

The Mathews v. Eldridge standard should be used by the District Court to determine the appropriate standard for deciding what process is due Gomes. Id., at 11 ("Court finds the appropriate standard for deciding what process is due Wayfield is the Mathews v. Eldridge standard.")

"Under the above standard, the court must first look at the "private interest that will be affected by the official action." Id., at 12; (Citing, Mathews, 424 U.S. at 322)

The court should find that Gomes does state a sufficient facts to support a claim and finding that suspension of his library and Internet access and use privileges was a deprivation of his 'liberty' or 'property' rights under the Fifth Amendment. Id.at 9; ("Under the analysis set forth in Medina and related cases court finds that Wayfield states

a sufficient claim to support a finding that suspension of his access to library was a deprivation of a 'liberty' or 'property' right.")

D. Question of Due Process and Equal Protection

E. Fourteenth Amendment

Gomes argues that he has a 'liberty' or 'property' interest to use and enjoy the public library. Plaintiff points to the library's public nature as tax-supported, tax-exempt municipal institution, public service corporations in service of the public. Id. at 6; (Wayfield points to library's public nature, where as public library's are tax-supported, tax-exempt institutions, municipal, public service corporations in service of the public.")

Gomes claim that by denying library access with out offering him a pre-deprivation or post-deprivation hearing, in fact, NO hearing at all. Defendants deprived him of 'due process' of law under Fifth and Fourteenth Amendments to the Constitution as protected by 42 U.S.C. S 1983. This assertion is evident in the fact the New York Public Library's access and Internet policies are not narrowly tailored, nor reasonable time, place and manner restriction serving compelling government interest. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82, (D.D.C. 2001) ("Court concludes library's "objectionable appearance" regulation violates First Amendment and Fifth Amendment's Due Process Clause, as protected by 42 U.S.C. S 1983, because provision is not narrowly tailored nor reasonable time, place and manner restriction serving a significant government interest.")

Gomes also argues that his 'liberty' or 'property' interest to use the public library falls into the first class of rights that merit due process protection under Fourteenth Amendment, those rights deemed 'fundamental" or "natural." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Rights" that merit due process protection under Fourteenth Amendment may be either of two types. The first of these are those rights deemed 'fundamental" or "natural." (Citing, Medina v. Rudman, 545 F.2d 244, 249 (1st Cir. 1976) (Citing, Schware v. Board of Bar Examiners, 464 U.S. 232 (1957); Meyer v. Nebraska, 262 U.S. 390, 67 L. ED. 1042, 43 S. Ct. 625 (1923).

Gomes asserts that he uses the New York Public Library for receipt of communication and information for learning, research, and study purposes and to work and conduct business. In his complaint, he asserts the violation of his 'liberty' or 'property' interest in using the public library involves "fundamental" or "natural" rights that merit due process protection under Fifth and Fourteenth Amendments to the Constitution. Id. at 6; ("Rights" that merit due process protection under Fourteenth Amendment.) Among these are the 'fundamental' or 'natural' right to an 'Education' and rights created by other provisions of the Constitution. Id. at 6; ("Rights in the first class, that is "fundamental" or "natural" rights are chiefly those having to do with 'Education' and the rights created by other

provisions of the Constitution.") Medina, 545, F.2d at 250 n.7 (Citing, Paul 424 U.S. at 712-13), As well as the "fundamental" or "natural" rights involving 'the right to earn living and to engage in one's chosen profession. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Fundamental rights also include, the right to earn living and to engage in one's chosen profession.") Medina, 545 F. 2d at 249; (Citing, Schware, 464 U.S. 232 (1957)); (additional citations omitted).

"The first step in determining whether a plaintiff has a due process claim is to identify a specific 'liberty' or 'property' interest affected by the alleged governmental action." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. (Citing, Board of Regents v. Roth, 408 U.S. 564, 569, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972).

"The next step, if a 'liberty' or 'property' interest has been affected, is to evaluate what process was due plaintiff, and whether he was afforded it." Id. (Wayfield) (See also Mathews v. Eldridge, 242 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976).

Gomes' loss of his library privileges is actionable under S 1983, if he was deprived of his 'liberty' or 'property' interest with out due process of law. David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146 (Citing, Zinerman v. Burch, 494 U.S. 113, 125, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990)) ("Wayfield's loss of his library privileges is only actionable under S 1983, if he was deprived of his 'liberty' or 'property' interest with out due process.") (Citing, Parratt v. Taylor, 451 U.S.527, 537, 68 L. ed. 2d 420, 101 S. Ct. 1908 (1981)

Applying the Lowe reasoning, Gomes makes a very good argument that (1) the deprivation he experienced was one the state could have anticipated. It does not require imagination to see that a patron's library privileges could be suspended. The state could have provided pre-deprivation process such as a warning letter, and opportunity to respond, a hearing before the trustees or some other process. In fact, the state had authorized the library to effect deprivation. So, the state actors cannot say that their conduct is "unauthorized." Gomes does argue and make this specific point in his complaint. The District Court should have read his papers liberally, on account that Gomes is Pro se. David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. ("Applying this reasoning (Lowe) to the case at bar, Wayfield can make a colorable argument that (1) deprivation he experienced was one the state could be expected to anticipate (it does not require a leap of imagination to think that a patron's library privilege might be suspended; (2) the state could have provided pre-deprivation process (whether in the form of a warning letter and opportunity to respond, or a hearing before the Trustees, or in some other manner; and (3) that the state had delegated the library authority to effect deprivation their actions could not be said to be "unauthorized." Wayfield dose not argue this point. Because he is Pro Se, the court has a duty to read his papers liberally.") (See, Estelle v. Gamble, 429 U.S. 97, 106, 50 L. Ed. 2d 251, 97 S. Ct.

285 (1976); Nestor Ayala Serrano v. LeBron Gonzales, 909 F. 2d 8, 15, (1st Cir. 1990).

"The second inquiry is 'the risk of an erroneous deprivation of such interest through the procedures used', and probable value, of additional or substitute procedural safeguards." David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146.

The record before the court indicates that Gomes, like Wayfield was afforded no deprivation process at all. This fact combined with the lack of standards or rules governing suspension of library privileges should have led the District Court to determine, the risks of erroneous deprivation are great. Id. at 12; ("The record before the court indicates that Wayfield was afforded no deprivation process. This fact combined with the lack of standards or rules governing the suspension of library privileges, leads the court to believe that the risks of erroneous deprivation are great.")

"The court should consider the government's interest in its decision, including the function involved and fiscal and administrative burdens that additional or substantive procedural requirement would entail." Id. at 12

The library officials of could implement a number of inexpensive preventive measures to protect the due process rights of plaintiff, Gomes with out creating a burden for the library. For example, the New York Public library could have allowed Gomes to access, enjoy and use the library, on a subsequent day after the incident. When he attempted to access the library, but was denied. The library could have invited Gomes to meet with the Director of Library Services in order to set up a meeting with Board of Trustees to discuss the unwarranted expulsion, exclusion, blocking and suspension of his library and Internet access and use privileges. So, he could argue and explain his side of the issues. The library could via a letter or by notice offer a hearing with the Board of Trustees. When on subsequent days plaintiff attempted to access and use the library. The library could have sent Gomes a letter to notify him in person about the potential suspension and action to be taken against him and invite him to come in and argue his case before the Board of Trustees. Id. at 12 ("The officials of the library could undertake a number of not particularly onerous prophylactic measures that would protect due process rights of patrons with out significantly burdening the library. For example, the library could send a letter to patrons threatened with potential suspensions, notifying them of action pending against them and inviting them to argue their cases, in writing or in person.")

The United States District Court for the Southern District of New York had no alternative, but to determine under the three-part analysis of Mathews v. Eldridge defendants did not afford, Gomes, adequate due process. Using the comparative analysis, where Wayfield based on the facts presented is the worst-case scenario as to the merits of the case. Gomes thus is the best-case scenario. Indeed, the record in the case shows defendants afforded, Gomes, no process at all. Id. at 12; ("Court determines that under three-part analysis of Mathews v. Eldridge, defendants did not afford Wayfield adequate

due process. Indeed, from the record in this case they afforded him no process at all.")

For the foregoing reasons, it was appropriate for the District Court to decide in favor of plaintiff, Gomes. The court should have ruled in favor of Gomes, sua sponte, and GRANT him all relief requested as to culpability and liability of defendants on all his claims. Id. at 12; ("Given the nature and extent of this ruling, it may be appropriate for the court, sua sponte, to render Summary Judgment to Wayfield as to liability of defendants on his claim.")

Since that did not occur then the duty falls upon the United States Court of Appeals for the Second Circuit, to reverse the District Courts decision and rule, sua sponte, to render a decision favor of the Appellant, Gomes to GRANT him all relief requested in his complaint as to culpability and liability of defendants on all claims.

F. Rights under Applicable State Law

Gomes asserts that he has a 'liberty' interest in his classification as an inhabitant within the citizenry of the City and State of New York. Id. at 6; ("Wayfield asserts he has a 'liberty' interest in his classification of being included in the citizenship in the Commonwealth of Massachusetts.") Under New York State law such classification is not necessary, because, the law pertaining to 'public libraries' extends library privileges to outsiders (e.g. tourists). See, C.L.S. Educ. Law SS 253, 260(12), 262.

Gomes asserts and states in his complaint the rights violated by defendants for which he makes a claim for, involve a 'property' and 'liberty interest inherent in state law. David Wayfield v. Town of Tisbury, 926 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146; Medina, 545 F. 2d at 250; (Citing, Paul v. Davis, 424 U.S. 693, 708, 47 L. Ed. 2d 405, 96 S. Ct. 1155 91976) ("The second set of rights encompasses rights recognized by state law as being common to all citizens; being so recognized they achieved the status of 'liberty' or 'property' interests when they are altered or extinguished.")

The second Class of rights that merit due process protection comprise a much broader spectrum. They include rights recognized by state law that have become "liberty" or "property" for the purposes of the Fifth and Fourteenth Amendment to the United States Constitution. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("Court concludes that the library's 'objectionable appearance' regulation violates the First Amendment and Fifth Amendment's Due process Clause as protected by 42 U.S.C. S 1983, because the provision is not narrowly tailored nor a reasonable time, place an manner restriction serving a significant government interest."); David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("The second class of rights that merit due process protection comprises a much broader spectrum, it includes rights which have been recognized by state law and have become "liberty" or "property" for purposes of the Fourteenth Amendment.")

"The Supreme Court (in Logan) defined "property" as an INDIVIDUAL entitlement grounded in state law, which can not be removed except 'for cause.'" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L. Ed. 2d 265, 102 S. Ct.1148 (1982), ID. At 430 (Citing, Memphis Light, Gas and Water Div., v. Craft, 436 U.S. 1, 11-12, 56 L. Ed 2d 30, 98 S. CT. 1554 (1978); Goss v. Lopez, 419 U.S. 565, 573-74, 42 L. Ed.2d 725, 95 S. Ct. 729 (1975); Board of Regents v. Roth, 408 U.S. 564, 576-78, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972). The court went on to enunciate the breadth of possible "property" interests.

"Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible relating to the whole domain of social and economic fact." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; National Mutual Ins. Co., v. Tidewater Transfer Co., 337 U.S. 582, 646, 93 L. Ed. 1556, 69 S. CT. 1173 (1949) (parallel citations omitted) (Frankfurter, J. dissenting); Arnett v. Kennedy, 416 U. S. 134, 207-208, 40 L. Ed. 2d 15,94 S. Ct. 1633 (parallel citations omitted); Board of regents v. Roth, 408 U.S. at 571-572, 576-77 (1972) (parallel citations omitted) See, Goss v. Lopez, (419 U.S. 565, 42 L. Ed. 2d 18, 96 S. CT. 893 (1975) (high school education); Bell v. Burson, 402 U.S. 535, 29 l. ed. 2d 90, 91 S. Ct. 1586 (1971) (parallel citations omitted) (driver's license); Connell v. Higginbotham, 403 U.S. 207, 29 L.Ed.2d 418, 91 S. Ct. 1772 (1971) (parallel citations omitted) (government employment).

"As for "liberty" in this context, the First Circuit has commented that, "it has long been held that 'Liberty' encompasses much more than the simple right to be free from unwarranted bodily restraint." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Raper v. Lucey, 488 F. 2d 748, 752 (1st Cir. 1973) (Citing, Board of Regents v. Roth, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972)) (additional citations omitted)

"The court in Raper analogized that case (application for a driver's license) to a case in which a driver's license was suspended. The court found "the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place is a 'liberty' which under the Fifth and Fourteenth Amendment cannot be denied or curtailed by a state without due process of law." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Raper 488 F. 2d at 752 (Quoting, Wall v. King, 206 F.2d 878, 882 (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275)

Gomes, unlike Wayfield specifically specifies that the right he claims is both 'property' under the Fifth Amendment's private personal property clause and a 'liberty' right.

"The difference between 'liberty' and 'property' is of no consequence in this context;

The Supreme Court has said the same test for determining process due is applied whether 'liberty' or 'property' is at stake." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Zinerman v. Burch, 494 U.S. 113, 108 L. Ed. 2d 100, 110 S. Ct. (1990).

"The court of Appeals for the First Circuit found the following to be protected rights, which cannot be denied without due process." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Lowe v. Scott, 959 F.2d 323 91st Cir. 1992) ("A doctor's property right in his or her medical license."); Raper v. Lucey, 488 F.2d 748 (1st Cir. 1993) (" on the right to apply for a driver's license').

Determining whether Right to Access a Public Library is recognized by State law as a Common Right to all citizenry.

The first inquiry is does Gomes have an INDIVIDUAL entitlement grounded in state law. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Logan, 455 U.S. at 430 ("Under the analysis in Logan, the first inquiry is whether Wayfield has "an individual entitlement grounded in state law,")

Unlike Wayfield, where no party cited a statute, local law or regulation governing the access and use of the public library, nor was the District Court able to find a such state statute, local law or regulation to guide it in its decision.

In the Gomes case the District Court suffers no such disadvantage. A recourse to an applicable statute, local law or regulation would resolve the issue of whether Gomes has a protected 'liberty' or 'property' interest. Because, the more narrow the statute, the more circumscribed is government's discretion under substantive state or federal law to withhold the benefit. Thus, the more likely the benefit constitutes 'property,' the more reason for reliance upon its continued availability. The more likely a hearing would enlighten the matter of withholding it. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Recourse to an applicable statute, local law or regulation would resolve the issue whether Wayfield has a protected liberty or protected property interest, the more narrowly drawn the statute or "the more circumscribed is government's discretion (under substantive state or federal law) to withhold (the) benefit, the more likely that benefit constitutes 'property' for the more reasonable is reliance upon its continued availability and the more likely a hearing would illuminate the appropriateness of withholding it in an individual case.") (Quoting, Beitzell v. Jeffery, 643 F.2d 870, 874 (1st Cir. 1981)

"The cases cited above include an analysis of a state or local law which creates the plaintiff's alleged, 'right'." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Unlike Wayfield, Gomes does not suffer such a disadvantage. He asserts that in his case, such a law does exist. See, C.L.S. Educ. Law SS 253, 260(12), 262.

"Absence of a state statute or local law, the court would have to reason from governing case law. The First Circuit's opinion in Medina provides an appropriate framework for analysis." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina v. Rudman, 545 F.2d 244 (1st Cir. 1976), cert. denied 434 U.S. 891, 54 L. Ed. 2d 177, 98 S. Ct. 266. ("Involving an application to participate in a greyhound racing license").

Since, the New York State statutes C.L.S. Educ. Law SS 253, 260(12), 262 confer the right to access, use and enjoy the public library and the Internet thereof upon Gomes, on equal terms with all others in the community. The Court finds it has a much easier decision than the Wayfield court did.

"The Court (in Medina) stated, a state-recognized interest might also exist if (The State) law could be said to confer upon (the Plaintiff) a right upon equal terms with others, to be licensed so as to engage in a common activity or pursuit, it seems likely a state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists." David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146, Medina, 545 F. 2d at 250.

The above excerpt describes the issuance of a library "ACCESS" card to Gomes and the privilege of using the public libraries. Id. at 8; ("This excerpt could describe issuance of a library card and privilege of using public libraries.")

New York State statute's C.L.S. Educ. Law SS 253, 260(12), 262 establish a state-recognized right or status in using a public library. The statutes confer upon plaintiff a right to access, enjoy and use the public library and the Internet thereof upon equal terms with others in the community and a license to engage in a common activity or pursuit such as to access, use and enjoy the public library. Thus, under the above statutes the State of New York holds out a right to Gomes to engage in an activity on equal terms with others, and thus a state-recognized status exists.

"The cited language in Medina does not specifically require the "state-recognized interest" be related to employment. Indeed, the Medina court posited the "common activity or pursuit" rationale as a separate independent reason for the Supreme Court's holding in Schware." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"The case of Schware, finding a right to due process with respect to bar admissions." Id. at 8; Schware v. Board of Bar examiners, 353 U.S. 232, 1 L. Ed. 2d 796, 77 S. Ct. 752 (1957); (parallel citations omitted)

Thus, Gomes' right to access, enjoy and use the public library can be explained on such a ground as having a state-recognized status or license and on the grounds that the right to an 'Education, to earn a living, to engage in one's chosen profession, to pursue an ordinary occupation as well as the right to work and conduct business are in and of themselves, "fundamental" or "natural" liberty rights. David Wayfield v. Town of Tisbury, 925 f. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Can be explained on such ground as well as on the ground the right to pursue an ordinary occupation is, by itself, a fundamental liberty interest")

"The Wayfield Court, was disadvantaged by the lack of a state statute, local law or even a policy statement regarding the library's governing mechanisms." Id. at 8

In this case, the District Court suffers no such disadvantage. The court has the New York State statute pertaining to 'public libraries' under the Education Law, C.L.S. Educ. Law SS 253, 260(12), 262 to guide it in its effort arrive at a decision, the Wayfield case and all other cases therein referenced to set legal precedent for determining defendants are culpable and liable for violating Gomes' Const. Amend I, Amend V, Amend XIV as well as his New York Constitution SS 8,9,11 and state law rights.

Taking the comparative analysis between Wayfield and Gomes into consideration. Where Wayfield is the worst-case scenario and Gomes the best-case scenario in as far as the facts and merits of the case are concerned. The District Court had no alternative than to rule in favor of plaintiff on all claims as to defendants' culpability and liability as to their conduct.

Library access is designed to be "open to all persons and not "treated as discretionary" by a supervisory board or government actors such as the library staff and the library security detail. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. ("It seems more likely library access is intended to be "open to all persons who meet prescribed standards (e.g. residency and minimum age) than to "treated it as discretionary" by a supervisory board.")

Important to note, neither the prescribed standards of residency or minimum age stipulations apply in the case at bar, because the New York State Statute under the Education Law pertaining to 'public libraries' extends of library privileges to outsiders. See C.L.S. Educ. Law SS 253, 260(12), 262.

The District Court failed to recognize the fact that under the 'Education Law 'of the State of New York pertaining to 'public libraries' neither the library staff or security detail have authority to expel, exclude, ban or block petitioner from the public library. Under such laws, the authority is reserved to the Board of Trustees of the New York Public Library and no one else.

One final point: Gomes argues the suspension of his library privilege is an occurrence important enough to warrant due process protection. The court should determine he is correct. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U. S. Dist. LEXIS 7146. ("Wayfield argues the suspension of his library privilege is an occurrence important enough to warrant due process protection. He is correct.")

G. The District Court Erred in its decision based on its erroneous view.

H. Title 42 U.S.C. S 1983

The United States District Court for the Southern District of New York erred in dismissing and disposing of petitioner's S 1983 claims based on the incorrect view that petitioner did not establish a right violated by defendants, New York Public Library, its library staff and security detail or government actors and The City of New York, The State of New York and The United States of America as a result of their unlawful conduct. Plaintiff, Gomes, opposes such incorrect determination by the District Court on the facts presented above, the applicable law as it pertains to the case and all other conclusions in this case.

The right to access a public library is a right secured by the First Amendment of the Constitution. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D.C. 2001) ("It is well-established fact in case law that access to a public library is at the core of First Amendment values.") The First Amendment is an integral part of the Constitution of the United States, the supreme law of the land and thereby the supreme law of the United States. Thus, plaintiff meets the first element or criteria to make S 1983 claims.

The 'Education Law' of the State of New York pertaining to 'public libraries,' C.L.S. SS 253, 255, 260(12), 262 confers to plaintiff the right to access and use a public library, the Internet and computers thereof. When the library or government through unlawful conduct of its employees, the library staff and security detail or government actors expelled and excluded plaintiff from the library and Internet thereof and suspended his library privileges contra the New York State 'Education Law' as well as the library's very own policies. Such government acted "under the color of state law" and thereby violated plaintiff's rights under such state laws. Hence, plaintiff meets the second element required to assert a claim under S 1983.

Title 42 U.S.C. S 1983 provides redress for a deprivation of federally protected rights by persons "acting under the color of state law." To state a claim under S 1983, a plaintiff must allege: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law. Plaintiff has satisfied these elements or tests by asserting he has a First Amendment right

to access and use a public library, the Internet and computers thereof coupled with a Fifth Amendment 'property' right to access and use the public library, the Internet and computers thereof as well as make use of such property rights. The result is defendants violated the first element of S 1983. When they denied plaintiff his right to access and use the New York Public Library, the Internet and computers thereof and suspended his library privileges.

Plaintiff must address the District Court's ill-conceived determination with regards to "a right violated by a person acting under the color of state law." It is apparent the Court is confusing the meaning of the terms "constituting a state action," which is a matter involving the government or a government employee or actor as one of the parties involved, with "acting under color of state law," which does not require any of defendants or parties be in the employment of government or even require government involvement. In the case at bar, the library staff and security detail are government actors on the payroll or under contract.

The court erred in determining of the facts and law because it confused the meaning of the phrase 'acting under the color of state law' with the phrase 'constituting a state action,' implying the two phrases are synonymous. Petitioner asserts the phrases are not one in the same.

While 'constituting a state action' falls within the ambit of 'acting under the color of state law.' The reverse does not hold true. "Acting under the color of state law" is much broader in scope and does not just involve government or the library employees or government actors. "Acting under the color of state law" could conceivably involve the conduct of individuals or parties that are not government or in government employment or classified as library or government actors. It could conceivably involve individuals that claim authority under the law, which they have not been granted or have been completely denied by it.

Whereas "constituting a state action" is unlawful conduct where the government and the library employees or government actors are either one or both of the parties involved.

New York State law reserves expelling and excluding and banning right as well as suspending of library and Internet privileges exclusively to the Board of Trustees and no other person or entity. The library staff and security detail through words and actions, 'ordered plaintiff to leave the library and banned him for an entire year, expelling him for an exorbitant period of time, excluded him from the Internet-accessible (Emphasis) computers, ordered him to leave the library on more than one separate occasion and suspended his library and Internet privileges without having good cause, legitimate reason or justification in violation of the law. When a deprivation of a right for even five minutes is a violation actionable under law. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. 7146; ("The First Circuit warned, "to scrutinize carefully the

assertion by state officials that their conduct is "random and unauthorized" with in the meaning of Parratt and Hudson, where such conclusion limits the procedural due process inquiry under S 1983 to adequacy of state post-deprivation remedies") (Citing, Lowe, 959 F.2d at 341)

Thus, the fact that plaintiff was denied access to not one but two or more different libraries and had his library privileges suspended supports the fact that, plaintiff's S 1983 rights were violated by defendant's as a result of their unlawful conduct.

Plaintiff alleges defendants failed to extend and deliver public services or provide equal treatment under the law thereby violating his Const., Amend I, Amend V, and Amend XIV rights under S 1983. The facts show plaintiff was denied access and use of the public library, the Internet and Internet-accessible (Emphasis) computers thereof on more than one occasion. This supports Plaintiff's above asserted alleged fact. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D. C. 2001) ('The plaintiffs motion for partial summary judgment as to plaintiff's First Amendment, Fifth Amendment due process claims, and Civil Rights Act, 42 U.S.C. S 1983, claim is GRANTED against the District of Columbia, Dr. Hardly Franklin, Director, District of Columbia Public Library and the following Library Trustees, in their official capacities.")

The petitioner intends to show that the District Court was biased, prejudicial and unjust via its ill-conceived decision to dismiss and dispose of petitioner's S 1981 and 'Title II' claims based on the Courts very narrow and incorrect view. Wherein, the Court posits its argument for dismissal and disposal of the action on the mistaken position that such Civil Rights claims must be founded only on the fact that they be motivated by a race based animus. Petitioner asserts that by giving preference and special treatment to one of the traditionally known suspect class designations such as a race based animus or race. And completely ignoring the other suspect class designations such as color, religion, (sex, sexual orientation) and national origin and non-traditional non-suspect classifications such as petitioner being a white citizen, the District Court defeats the whole intent and purpose of section 1981 and Title II of the Civil Rights Act of 1964 with respect to their primary objective to maintain the status quo and equal treatment under the law for all. In so doing, the District Courts ruling in the case at bar does grave injustice to the legislative intent for enacting and passing such civil rights laws.

I. Section 1981 Claims or 42 U.S.C. S 1981(a)

The District Court in its incorrect opinion said "plaintiff alleges that defendants discriminated against him." The court is correct. The court further stated that "the equal benefits protections of S 1981 does not require state action and can be asserted against private parties." Phillip v. University of Rochester, 316 F. 3d 291, 294-95 (2nd Cir. 2003). Here again, the District Court is correct.

What the court neglected or failed to recognize is plaintiff has a 'liberty' and a 'property' right to access and use the public library. Such rights are grounded in the First and Fifth Amendments of the Constitution. Further, plaintiff has a 'liberty' and a 'property' right to access and use the public library grounded in the New York State Constitution SS 8, 9, 11 and state law right, specifically the 'Education Law" (e.g. C.L.S. Educ. Law SS 253, 260(12), 262). Plaintiff also has a license or a 'property' and a 'liberty' interest through the issuance of a New York Public Library "ACCESS" card that he applied for and was granted by the New York Public Library. Likewise, plaintiff had a granted license to access, use and enjoy the New York Public Library via the doctrine of 'prior use' of the library. Wherein, plaintiff had a long history of using the New York Public Library. Where on numerous prior occasions he obtained access to, use and enjoy the library for extended periods of time prior to having his library privileges suspended. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("This excerpt could describe the issuance of a library card and the privilege of using public libraries.")

Hence, given the fact that these federal and state rights are created and exist and under federal and state law. Gomes was entitled to equal benefit in the use of his rights and licenses under title 42 U.S.C. S 1981. When a state statute or policy does not involve a suspect classification or fundamental constitutional right. All the Equal Protection (or benefit) Clause requires is the policy classifies persons it affects in a manner rationally related to legitimate governmental objectives. Plaintiff has already established no significant government interest exists. Roberts v. Reno County Law Library, 1997 U.S. App. LEXIS 2833, 1997 Col. J.C.A.R. 2837; (Citing, Schweiker v. Wilson, 450 U.S. 221, 230, 67 L. Ed. 2 186, 101 S. Ct. 1074 (1981)) ("Where, a state statute or policy does not involve a suspect classification or fundamental constitutional right, all the equal protection (or benefit) clause requires is the policy classify persons it affects in a manner rationally related to legitimate governmental objectives.")

Defendants had no legitimate governmental objective to expel and exclude plaintiff from the library and Internet or suspend and revoke his library and Internet privileges or to deny him access and re-entry to the library and the Internet for an extended period of time. More importantly, plaintiff has a fundamental First Amendment right to access, use and enjoy a public library. Plaintiff established above that he has a state-recognized status and a library granted license to access, use and enjoy the New York Public Library and all emoluments therein on equal footing with others which creates a 'liberty' or property' right. Thus, plaintiff had 'liberty' or 'property' interest via the state-recognized status and the library given license to access the public library and make use of such property by using and enjoying the New York Public Library.

Given the nature and extent of the facts presented in this case, where fundamental constitutional rights exist and the fact defendants had no legitimate governmental objectives coupled with the fact plaintiff had a state-recognized status and library granted license as well as established federal and state property right to make use of such rights,

status and license. The existence of such federal and state rights, status and license demonstrate plaintiff has in fact showed that not one but several claims were violated by defendants as a result of their unlawful conduct which warrant S 1981 protection under the equal benefits and under the licenses and exactions provisions upon which relief should be granted.

Title 42 U.S.C. S 1981 reads, "and to the full and equal benefit of all laws (Emphasis) and proceedings for the security of persons and property (Emphasis) as enjoyed by white citizens (Emphasis), and shall be subject to like punishment, penalties, licenses, and exactions of every kind (Emphasis) and no other." See, 42 U.S.C. S 1981(a).

The fact plaintiff falls under the classification of white citizen does not deny him equal protection inherent in S 1981.

The District Court gave the reasoning why plaintiff should prevail under S 1981 claims. Barring all irrelevant assertions by the court plaintiff had a requisite to allege he is a racial minority and defendants discriminated against him based on race. As shown above such requisite by the court is not correct. Because it defeats and does grave injustice to the intent and purpose of S 1981 of the Civil Rights Act of 1964 to maintain the status quo and promote equal treatment under law. Giving special preference or treatment to one suspect class designation over all others, including non-suspect classifications such as plaintiff being a white citizen as the court posits. Defeats the legislative intent and purpose for enacting the S 1981 of the Civil Rights Act of 1964.

J. Equal Protection Clause

"When, a state statute or policy does not involve a suspect classification, such as a racially motivated animus or any of the other traditional suspect class designations or a fundamental constitutional right, all Equal Protection Clause requires is the policy classify persons it affects in a rational manner, related to a legitimate government objectives." Id. (Roberts); (Citing, Schweiker v. Wilson, 450 U. S. 221, 230, 67 L. Ed. 2d 186, 101 S. Ct. 1074 (1981)).

Two important points must be made with regards to the Equal Protection Clause, where the case at bar is concerned; (1) Gomes has already established that the defendants are liable with regards to all his claims because they violated "fundamental" or "natural" constitutional rights; and (2) the government actors or government through there illicit and unlawful policies and conduct did not have any legitimate government objectives nor could the library point to any facts which establish the effects Gomes was subject to were a classification related to legitimate government objectives. Gomes has a right to use the Internet and Internet-accessible computers. Thus he has the right to exercise his "liberty" or "property" interest in the use of the Internet and the library, state law says he does. See, C.L.S. Educ. Law SS253, 260(12), 262.

K. Title II or 42 U.S.C. S 2000a(a)

The court stated, "plaintiff's 'Title II' claims are premised and analyzed under the same framework and on the same criteria as his S 1981 claims. Hence, for the exact same reasons, where defendants had no legitimate governmental objective in either the "these computers are for catalog and database use only" policy or the "suspending and revoking of plaintiff's library privileges and deny him re-entry to the New York Public Library for an extended period of time (e.g. an entire year)"policy coupled with the fact plaintiff had a fundamental First Amendment right to access the library and a Fifth Amendment "liberty or "property " right to use and enjoy the library along with the fact plaintiff had a state-recognized status and a library granted license to access and use such library, which once granted could not be taken away except "for cause." Cause the library did not have. Because they had no legitimate governmental objective as has already been established. Plaintiff also had a 'liberty' or 'property' interest in the license to use the public library and to make use of his own property. Such existing facts demonstrate plaintiff has in fact stated and established not one but several claims that warrant 'Title II' protection under the "equal enjoyment protections" upon which relief should be granted.

Hence, plaintiff does provide sufficient facts in support to establish violations of several of the elements required for a 'Title II' claim. David Wayfield v. Town of Tisbury, 925 F, Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina, 545 F. 2d at 250; ("The court (in medina), stated (state) law could be said to confer upon (plaintiff) a right, on equal terms with others, to be licensed so as to engage in a common activity or pursuit. A state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists.")

"Recourse to an applicable statute, local law or regulation would help resolve the issue of whether Wayfield has a protected 'liberty' or 'property" interest, because the more narrowly drawn the statute or 'the more circumscribed is government's discretion (under substantive state or federal law) to withhold (the) benefit, the more likely the benefit constitutes property; the more reasonable is reliance upon its continued availability." David Wayfield v. Town of Tisbury, 925 F, Supp. 880, 1996 U.S. Dist. LEXIS 7146; O'Neill, 545 F. Supp. at 452; (Quoting, Beitzell v. Jeffrey, 643 F.2d 870, 874 (1st Cir. 1981)). "The cases cited above include an analysis of state or local law, which creates plaintiff's alleged 'right'." Id. (Wayfield)

Gomes asserts that his First, Fifth and Fourteenth Amendments and the Civil Rights Act of 1964, sections 42 U.S.C. SS 1981, 1982, 1983, 1985, and Title II or 42 U.S.C S 2000a(a) herein cited as well New York State Constitution SS 8,9,11 and state law, C.L.S. Educ. Law SS 253, 260(12), 262) create his alleged 'right' to access, enjoy and use the public library and Internet thereof. The existence of such rights established under federal and state law. Shows Gomes is entitled under Title II to equal enjoyment of the

goods, services, facilities, privileges, advantages and accommodations of the New York Public Library and all emoluments on equal footing with others in the community without discrimination or segregation, including individuals of a non-traditional non-suspect classification such as plaintiff being a white citizen. Especially, when he is expelled and excluded from the library and has his library privileges suspended and revoked and is deny access to such library for an extended period of time like an entire year by defendants or government actors without good cause or justification as a result of their unlawful conduct. The New York Public Library, The City of New York, The State of New York, the United States of America et al and all other co-defendants violated plaintiff, Gomes' Title II rights.

L. Title 42 U.S.C. S 1982

The District Court erred in dismissing petitioner's S 1982 with the very narrow and incorrect view. The statute is not in any way applicable to petitioner's claim. Petitioner asserts the statute most certainly is applicable and will show this to be true.

The facts already provided. Establish plaintiff holds a state-recognized status and license through the issued library "ACCESS" card he applied for and was granted and the prior use of the library doctrine to access, use and enjoy the New York Public Library. Gomes falls into a class of individuals that are already licensed. Individuals that seek to bar suspension or revocation of their licenses, because, the already licensed have a vested interest in the license. Such vested interest forecloses denial with out due process. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; ("Wayfield falls into a class of individuals known as the already licensed, those individuals who seek to bar suspension or revocation of their licenses. Since, the already licensed have a vested interest in the license, which forecloses denial with out due process.") (Citing, Lowe v. Scott, 959 F. 2d 323 (1st Cir. 1992) (medical license); Roy v. City of Augusta, 712 F.2d 1517 (1st Cir. 1983) (license to operate a pool hall); Medina v. Rudman, 545 F.2d at 250; ("Doubtless once a license, or equivalent, is granted, a right or status recognized under state law would come into being, and revocation of the license would require notice and hearing"); Wall v. King, 206 F.2d 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275; (Driver's license).

Gomes argues that he holds (Emphasis) a 'liberty' or 'property' interest in using the public library. The argument is based on the library's public nature as a tax-supported institution, municipal, public service corporation. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. ("Wayfield argues that he holds a liberty or property interest in using the public library. He bases the argument on the library's public nature (public libraries are tax-supported institutions, municipal, public service corporations.)"

Gomes further bases his argument on his 'liberty' inherent in his classification of

inhabitant with in the citizenry of the City and State of New York. Id. at 6 ("And on his liberty inherent in his classification of citizenship with in the Commonwealth of Massachusetts")

"'Rights' recognized by state law as being common to all citizens; being so recognized they achieved the status of 'liberty' or 'property' interests when they are altered or extinguished." Id. at 6; Medina, 545 F.2d at 250; (Citing, Paul v. Davis, 424 U.S. 693, 708, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976).

Gomes does, in fact, argue and asserts a 'liberty' interest in using the public library. Which falls under "fundamental" or "natural" rights and rights recognized by state law. Having such distinction they have become 'liberty' or 'property' for the purposes of S 1982. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; ("Rights which have been recognized by state laws and thus have become 'liberty' or 'property'")

"The Supreme Court (in Logan) defined "property" as an INDIVIDUAL entitlement grounded in state law which cannot be removed except "for cause." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982), Id at 430, (additional citations omitted) "The court went on to enumerate the breadth of possible "property" interests."

"Once that characteristic is found, the types of interests protected as "property' are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact."" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; National Mutual Ins. Co., v. Tidewater; (additional citations omitted).

The excerpt describes the issuance of the New York Public Library "ACCESS" card and Gomes' privilege of using public libraries. Id. at 8 ('this excerpt describes the issuance of a library card and the privilege of using public libraries.")

Gomes asserts the freedom to make use of one's own property, here a library card and the existing right to use a public library under the prior use doctrine as a means of getting or receiving communication, information, free or political speech is a 'liberty' or 'property' which under S 1982 is a right he holds (Emphasis) that cannot be denied or curtailed by a state. Id. at 9 ("Wayfield asserts the freedom to make use of one's own property as a means of getting from place to place is a 'liberty' or 'property' which under section 1982 he holds and cannot be denied or curtailed by a state.") (Quoting, Wall v. King, 206 F.2d 878 (1st Cir. 1953), cert. denied 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275.) (Driver's license)

M. Title 42 U.S.C. S 1985

The District Court also erred in dismissing petitioner's S 1985 claim. Petitioner bases such claim on the courts implied narrow and incorrect view. First, the protection against conspiracy by defendants as a result of their unlawful conduct must be motivated by a race-based animus. Second, plaintiff's allegations are vague and conclusory and thus provide no factual basis. Petitioner asserts that no rational individual would consider conduct such as deliberate expelling, excluding, blocking of plaintiff from the New York Public Library and suspending his library privileges for an entire year by government, the library and one or more library staff and library security detail in active consort in direct violation of his First and Fifth Amendment right to access, enjoy and use the public library, in addition to deny plaintiff access to, use and enjoy such public library on one or more different occasions at different branch libraries either a vague or conclusory allegation or deem it as providing no factual basis. Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67, 82 (D.D. C. 2001); ("Access to public library is at the core of our First Amendment values."); David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 888 (D. Mass, 1996) ("First Amendment protects right to reasonable access to a public library.") (Additional citations omitted).

The allegations described above have all the requisite criteria for a conspiracy. The dictionary definition of a conspiracy or plot is "persons (meaning more than one) banded together and resolved to accomplish an unlawful end." Petitioner asserts by expelling and excluding him from the public library and denying him access to, enjoy and use the New York Public Library and the Internet thereof and by suspending his library privileges. The government, the library, library staff and security detail in active consort accomplished such conspiracy and achieved such unlawful ends. Certainly, the District Court will not dispute these assertions of fact under the law.

Petitioner in his complaint filed with the United States District Court for the Southern District of New York, alleged. He was expelled and excluded from the New York Public Library, a division of the State and City of New York or government, by library staff and security detail or government actors. Individuals that have no authority under New York State Law to expel or exclude plaintiff from the public library, especially with out good cause, legitimate reason or justification. (See Educ. Law SS 253, 260(12), 262). Petitioner also alleges. He was blocked and deliberately denied access to, use and enjoy the New York Public library, the Internet and computers thereof on one or more separate occasions in violation of the First Amendment, Fifth Amendment, Fourteenth Amendment and the Education law of the State of New York pertaining to 'public libraries'. Such illicit and unlawful conduct definitely meets all requisite criteria that a conspiracy was involved.

Considering the fact, the original incident involved two members of the library security detail and a library staff person in active consort verses plaintiff. Under such circumstances no astute individual would deny the fact that there were two or more

persons in active consort to deprive plaintiff of equal protection of the law and equal privileges and immunities under law and cause harm, injury, loss and damage to his property and property right under the First and Fifth Amendment right to access and receive information. Which is a definitive deprivation of petitioner's right and privilege as citizen under the Constitution of the United States.

The fact that plaintiff was expelled and excluded from the library on January 15, 16 and 17 of 2009 and banned and excluded from the entire New York Public Library, the Internet and computers thereof into the future for a year with out good cause, legitimate reason or justification. Coupled, with the fact no library policy was abridged and petitioner was within his right with regards to Internet access and computer use at a public library in accordance with state law. Such facts demonstrate an overt act on behalf of the library or government and government actors, the library staff and security detail in the furtherance of a conspiracy.

Therefore, petitioner's claims meet all requisite tests established under S 1985(3). Thomas v. Roach, 165 F. 3d 137, 146, (2d Cir.1999). Notably, no where under any of the four requisite elements of S 1985 is there a reference or specific requirement of "some racial or other-wise class-based, invidious discriminatory animus behind conspirator's actions as the District Court incorrectly determined. Id. (Thomas) (Quoting Mian v. Donaldson, Lufkin & Jenrette Sec's, Corp., 7 F.3d 1085 (2d Cir 1993); (per curium); See Britt v. Garcia, 457 F.3d 264, 270 (2d Cir. 2006). The simple fact is such position by the District Court discriminates against all other traditional suspect class designations of color, religion, sex, sexual orientation and national origin including non-traditional non-suspect classifications such as petitioner being a white citizen.

In short, the narrow and singular view by the District Court which gives preference and special treatment to one suspect class designation over all others including non-suspect classifications defeats the intent and purpose for the legislature enacting and passing of S 1985 and similar Civil Rights laws to maintain the status quo and secure equal protection under law for all individuals.

Petitioner's allegations are neither vague nor conclusory. They are in fact actual and factual illicit and unlawful deprivations of his First, Fifth and Fourteenth Amendment, Civil Rights and in particular S 1985 rights under the law by defendants as a result of their unlawful conduct. Such unlawful conduct establishes defendant's culpability and liability in the furtherance of a conspiracy to deprive plaintiff of his rights under S 1985.

N. Error in Dismissing Claim against City, State and United States

Finally, the District Court erred in dismissing petitioner's claims against the City of New York. New York Public Library v. New York Pub. Empl. Rels. Bd., 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463 ("The facts

show, the city overwhelmingly controlled library's labor relations, it is to be noted, 'government' is not required to be sole employer but merely a "joint" public employer.")

Additionally, The District Court also erred in dismissing petitioner's claims against the State of New York, the United State of America and all other defendants.

The facts, from which the court can infer the government or government actors or agencies named as defendants had knowledge and are responsible, culpable and liable for the alleged misconduct and deprivation of petitioner's First, Fifth and Fourteenth Amendment, S 1983, S 1981, 'Title II', S1982, S 1985 claims under the Civil Rights Act of 1964, New York State Constitution SS 8, 9, 11 and the 'Education Law' pertaining to 'public libraries' C.L.S. Educ. Law SS 253, 260(12), 262 of the State of New York are. Plaintiff's allegations are grounded in the fact such governments and officials named as defendants have and do exert direct and overbearing influence over the operation of the New York Public Library. New York Public Library v. New York Pub. Empl. Rels. Bd., 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463 ("these governments (and officials) are constitutionally responsible for setting education policy, standards and rules and are legally required to ensure the entities they oversee carry them out.")

The public library is considered an educational institution under the Constitution and Laws of New York and is governed by the Education Law pertaining to 'public libraries'. See C.L.S. Educ. Law SS 253, 260, 262. Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999), ("There is authority for the proposition a public library is an "Education Corporation" (General Construction Law SS 66(6))" Id. (Bovich) ("The library was created by the District pursuant to Education Law S 255").

The New York Public Library is subject to the laws and rules pertaining to 'public libraries' found within the Education laws and rules for State University of New York. Margaret M. Bovich v. East Meadow Public Library, 16 A.D. 3d 11; 789 N.Y.S 2d 511, 2005 N.Y. App. Div. Lexis 1354 ("There is authority in New York law for the proposition a public library is an "Education Corporation" this does not mean it cannot also be a municipal corporation. Public libraries clearly serve functions at public expense.")

The City of New York, State of New York and United States of America combined provide nearly all of the operating funds of the New York Public Library without which the library would not be able to carry out its duties and functions as a public agency within the community. No private money goes to support the operating of the library. In fact that 80% of the New York Public Library's operating funds come from the City of New York. New York Public Library v. New York Pub. Empl. Rels. Bd., 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463 ("More pertinent, the union to which library's employees belong bargains directly with the city.

The library, although the provisions of its original agreements with the city theoretically leave managerial decisions in its hands, does not even participate in the negotiations. Through them, library employees who are paid with city funds have won the right to participate in the city pension program, right to same insurance and fringe benefits as other city employees receive, right to benefit of the classification system applied to all city employees and the right to receive same salaries as do all other city employees in these classifications. These arrangements have not come about by default. The library has agreed it will abide by city decisions as to salary levels and benefits resulting from collective bargaining negotiations. Negotiations conducted on behalf of library employees are not conducted separately, but as part and parcel of negotiations for all city employees similarly classified. Nor does library pay any negotiated increases until the city agrees to fund them.") These city funds include contributions from the State of New York and United States of America. The funds and all influence they exert are still subject to approval and controls of the three governments and their officials.

Additionally, the State of New York and United States of America make up the other 20% of the New York Public Library's operating funds. The State of New York and United States portion of the library's operating funds is larger. Primarily, because they contribute significant funds through grants and other means such as education and library funds and give aid to the City of New York a portion of which is used to supplement the 80% of the funds the city contributes to operation the New York Public Library. Id. New York Public Library) ("The city and library entered into the arrangement permitted by legislation. It is the foundation of their relationship today. Even as viewed by its creators, the relationship is at least a joint one, envisioning mutual responsibilities, public benefits and a great dependency on city tax levies. That dependency now results in the city providing some 80% of the library's operating costs. Most of the books are owned by the city; most of the employees' salaries, the largest budget item, are paid by it (the city). The remaining 20% of operating funds, the bulk are State and Federal, not private.

"The State of New York under the Education Law gives management and control of library and its operating funds to the Board of Trustees. " Id. (New York Public Library).

"A search of New York Statutes database in Westlaw reveals 105 laws containing the term "public library." Not one defines exactly what type of corporation a public library is. The plaintiff contends the library is a "district corporation," as defined by General Construction Law S 66(3), district corporations, by definition, possess power to levy taxes. There is no evidence in the record the library has power to levy taxes. To the contrary, the record demonstrates the library is dependent upon the district for it's funding." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999),

"The Supreme Court of New York, Appellate Division, Second Department, is persuaded a public library under certain circumstances is a variety of public corporation." Margaret M. Bovich v. East Meadow Public Library, 16 A.D. 3d 11; 789 N.Y.S 2d 511, 2005 N.Y.

App. Div. Lexis 1354

In essence, the New York Public Library with regards to its ability to carry out its duties and functions as a public agency in the community is equal to that of an agency or division of State such as a City or a sub-division of the division of State such as a city agency. Id. (Bovich) ("The library in question, located on property owned and mainly funded by school district, fell within definition of a municipal public corporation")

"The close fiscal ties between defendant and public school district that provided building in which the library was situated free of cost, it was appropriate to treat defendant as a variety of municipal corporation" Id. (Bovich)

Technically, the New York Public Library as a public agency entrusted to carry out certain public functions and duties within the community falls within the realm of a division or sub-division of State under direct influence and control of government and its officials. Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999) ("The real property upon which library is situated is owned by the district and used by library at no charge. The District provides the library's funding. Under these circumstances, library, while perhaps a distinct corporation, is so closely tied to the district by its purse-strings")

"The district created the library pursuant to Arts and Cultural Affairs Law S 61.05 and Education Law S 255. The district provides funding for the library. The district provides building in which library is situated at no cost to library. Indeed, the library is completely dependent upon the district for its very existence." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999), (Cf. Sarmine v. Mohawk Val. Gen. Hosp., 75 AD2d 1012, 429 NYS2d 134 (1980))

The library is comparable to a subsidiary within a corporate enterprise. It has its own separate management team to run the operation and have control over the funds. The subsidiary is still a division or sub-division of the much larger corporate enterprise and subject to its mandates and control over the operating funds.

The Board of Trustees of the New York Public Library is a separate administrative entity responsible for management and control of library and its operating funds. In Matter of the Application of the Brooklyn Public Library for a Preemptory Writ of Mandamus Directed to Charles L. Craig, as Comptroller of the City of New York; 201 A.D. 722; 194 N.Y.S. 715; 1922 N.Y. App. Div. LEXIS 6399; ("Under various statutes delegating powers to various libraries and the contract made with City of New York the Board of Trustees of the library is the body charged with duty of distributing funds already appropriated by the Board of Estimate. The Board of Trustees was intended, by statute and contract, to have discretionary powers so long as they were exercised in good faith to fix various salaries of its employees and carry out its administrative duties.")

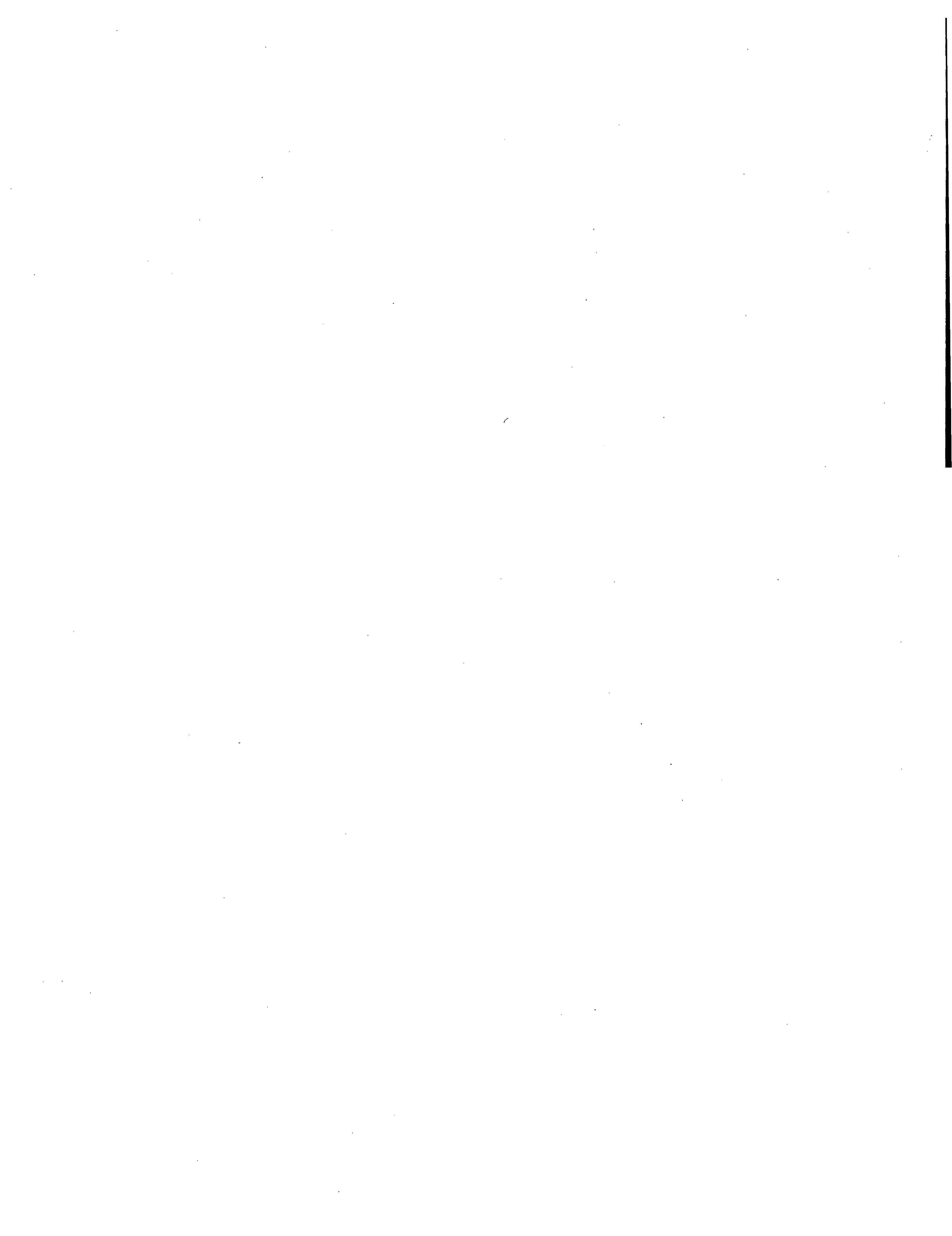
Such library and the Board of Trustees are still governed, overseen, influenced and subject to the education policies, standards and rules of the named defendants, City of New York, State of New York, United States of America and officials thereof. Hence, we find the proof via facts the allegations asserted by petitioner indicate direct management and control by the named defendant governments and their officials especially with regards to involvement, knowledge and responsibility for deprivation of his rights. By the facts presented under the applicable law appellant shows the asserted allegations have merit from which the District Court could infer the governmental actors are culpable and liable for the unlawful misconduct as entities in charge of setting policy, standards and rules and seeing that they are followed and being the only source responsible for the library's operating funds with out which the New York Public Library could not carry out its duties and functions as a public agency within the community.

Conclusion

We therefore respectfully ask that this prestigious and revered court reverse the Judgment of Honorable Loretta A. Preska, Chief United States District Judge for the United States District Court for the Southern District of New York entered herein, with a finding of fact and law in favor of the Appellant for all relief requested in his complaint; or if the court does not feel that it would be justified by the facts in so doing that it remand the case for a fair and impartial trial before an unprejudiced jury, on proper evidence and under correct instructions as the law deem just and proper.

Although, given the strength of the merits of the case, the record, the facts, the applicable statutes and case law and on the comparative analysis here in presented, Appellant would strongly argue and urge this most prestigious and revered court to opt for the first option and rule to reverse the decision of the lower court.

Appellant asks the Appellate Court to GRANT him all relief requested, asked for or petitioned for as to Appellant's First Amendment right to access, use and enjoy a public library and the internet thereof, Fifth Amendment "liberty" and "property" right to make use of one's own property, Fifth and Fourteenth Amendment due process claims and Civil Rights Act of 1964, title 42 U.S.C. SS 1981, 1982, 1983, 1985, 'Title II' claims ("Title II"), 42 U.S. C. S 2000a(a) claims as well as New York State Constitution SS 8, 9, 11 and state law, C.L.S. Educ. Law SS 253, 260(12), 262 claims as to defendants, government and government actors, New York Public Library (NYPL), City of New York, State of New York, United States of America, New York Public Library Director of Library Services, and Board of Library Trustees and all other co-defendants et al, in their official capacities with regards to their culpability and liability as a direct result of their unlawful conduct herein proved.



Statement of facts

The following facts divulge a true and accurate picture of the issues involved in this case between the plaintiff Gomes and the New York Public Library and all other co-defendants. They are presented to give the court a clearer picture arriving at a decision to reverse the lower courts ruling and to render, sua sponte, in favor of the plaintiff on all his claims with regards to the culpability and liability of the defendants as to their unlawful conduct. The facts are as follows:

Plaintiff alleges that on January 15, 2009 he was accessing and using the Internet through a desktop computer terminal at the Science Industry and Business Library ("SIBL"). Compl. IIIC, at 3

On January 15, 2009, plaintiff alleges that he was drawn into discourse, with several members of the library staff and security detail, not an altercation as the District Court posits in its opinion. Compl. IIIC, at 3

Plaintiff alleges that a library staff informed him that the "internet accessible" (Emphasis) computer he was using was "for catalogs and database use only." Id at 4; And that such information was contrary to the New York Public Library's policy. Id at 4

Plaintiff alleges that he was ordered off the Internet by defendant library staff. He believes was Robert Fornabaio. Id at 4

The computer in question was internet-accessible as well as internet-ready and available. Otherwise, plaintiff could not have obtained access and use of the Internet or for that matter have been ordered off of the Internet and said internet-accessible computers.

Plaintiff has a state law right under the "Education Law" of the state of New York pertaining to 'public libraries' to access and use the Internet and the internet-accessible computers. See C.L.S. Educ. Law SS 260(12).

Plaintiff obtained access to the Internet via a link in the database (e.g. Hoover's Investor Service), which the New York Public Library makes available to its patrons for use.

Hoover's makes the database available to the library via a license in accordance with under certain terms and conditions for which the library pays a subscription

fee.

The link to the Internet in the database exists. So, the users of the database can obtain access to additional or supplemental information from other locations on the Internet such as a company's website or other business services that is not contained in the database itself.

The library has no say over what capabilities and functions the producers and manufacturers of the database incorporate into their product (Emphasis).

Where the database is concerned. The library is held to the terms and conditions of the licensing agreement. Hence, they cannot block any of the database's functionality in anyway, shape or form.

Plaintiff for all intents and purposes was in complete compliance with the library's policy with regards to Internet and the internet-accessible computer use.

Plaintiff for all intents and purposes was in complete compliance with the library' staff's alleged claim that the computers are for catalog and database use only." Because, he in fact was using one of the databases (e.g. the Hoovers database) the library makes available for plaintiff's use.

The library staff has no complaint, issue or reason with regards to its Internet and computer use policy to base its decision to suspend plaintiff's Internet and internet-accessible computer use or to order plaintiff from the Internet. Thus, the library lacked a sufficient basis and facts as well as merit and justification to execute its policy to order plaintiff off of the Internet and the Internet-accessible computers or to suspend his library and Internet privileges.

The library staff even lacked sufficient basis, merit or justification to draw plaintiff into the discourse. Given the fact that plaintiff was in complete compliance with the library's policy pertaining to Internet and computer use with regards to the catalogs and databases. He was using a database.

The library security detail member defendant Bob Doe, the Assistant in Charge of Library Security lacked a sufficient basis, merit or justification as well as insufficient reason to order plaintiff to leave the library. He did not have any authority under the New York State Statutes to expel, ban, exclude plaintiff from the library or suspend his library privileges. Such authority is reserved to the Board

of Trustees. See, C.L.S. 253, 262.

Plaintiff was well within his right to refuse to leave the library and well with in his right to remain seated and calmly attempt to explain his position to the library employees or government actors.

Defendant Bob Doe ordered plaintiff to leave the library a second time without good reason or just cause.

Defendant Bob Doe threatened plaintiff with calling the police and having him arrested.

The facts show that plaintiff had done absolutely nothing to illicit being drawn into the discourse with the library staff and security detail or the order to leave the library or the threat to call the police or to be threaten with arrest for that matter.

Plaintiff had every right to ignore the threats and attempt to explain his position. The fact is that he was in the right with regards to the internet and internet-accessible (Emphasis) computer use in accordance with New York State Statutes (See, C.L.S Educ. Law S 260(12), the Hoover's database use and the library policy with regards to computer and internet use.

Defendant Bob Doe informed plaintiff that he was "banned and expelled" from the library (SIBL branch) and would be "banned and excluded" (from the library) for an entire year. ID

On January 16, 2009, plaintiff attempted to access and use the Science Industry and Business (SIBL) Branch. The library security detail blocked his entry and refused to grant him access. Plaintiff pleaded his right to access and use the library. The library security detail informed plaintiff they would call the police, if he didn't leave. Plaintiff asked why and questioned their motives. The police arrived and told plaintiff, quote "they don't want you here" and suggested plaintiff use another library. Plaintiff left the library of his own volition (power of choice). The police followed him out with no arrest. Thus, plaintiff was denied access to, enjoyment and use of the SIBL branch. Compl. III C, at 9

Plaintiff was given access to enjoy and use another branch at Fifth and 42nd street later on in the day on January 16, 2009. Compl. III C, at 9

The next morning, Jan 17, 2009, plaintiff was denied and refused access to the

library at Fifth and 42nd St. Compl. III C, at 5, 9-10 ("Plaintiff alleges he was "blocked (to obstruct), barred (to prohibit), impeded (to hamper, to obstruct), prohibited (to forbid, to prevent) and denied (to refuse to admit) access (to the library) without use (to avail one's self of - in the negative, so not to avail ones self of) and ordered to leave the library." (Emphasis) Compl. III C, at 5.

Plaintiff alleges defendants failed (did not succeed) to extend (to accord, to hold out, e.g. the (library access) and deliver (to hand over) public (not private, pertaining to the whole community, open to all, common, the people) services (official duties, e.g. access to library and Internet) and provide equal treatment under the law in violation of his First, Fifth and Fourteenth Amendment rights under S 1983. (Emphasis) Compl. IV.

Plaintiff alleges discrimination in violation of S 1981 ("all persons... ...shall have the same right (Emphasis) to full end equal benefit of all laws and proceedings for the security of persons and property (Emphasis), and shall be subject to like licenses (Emphasis), and exactions of every kind; and no other.") The plaintiff does sufficiently meet "more than one of the elements to make a claim under S1981," especially the equal rights and benefits, security of (personal) property (or interest) and its use and the license to access the library and Internet and make use of one's own license or (personal) property.

Plaintiff alleges discrimination in violations of Title II of the Civil Rights Act of 1964. Compl. IV. ("All persons shall be entitled to full and equal enjoyment of the (Emphasis) services, facilities, privileges, advantages and accommodations (Emphasis) without discrimination or segregation (Emphasis) on the ground of race, color, religion, or national origin.") Plaintiff shows sufficient allegations to make a claim for relief under 'Title II'. Under 'Title II' he has a right to equal enjoyment of library services, library facilities, library privileges, the advantages of using a library and library accommodations (Emphasis) without discrimination or segregation (Emphasis). This most assuredly includes individuals designated a non-traditional non-suspect classification such as members of the white race, which plaintiff is classified as. The very narrow or singular interpretation of the law such as the District Courts view, defeats the objective, intent and purpose of Title II of the Civil Rights Act of 1964 to maintain the status quo and promote equal benefit or treatment under the law, by excluding members of any suspect class and non-suspect class designation. Such plaintiff being designated a member of the white race. Plaintiff was refused access to the New York Public Library (NYPL) or the government and the Internet thereof. This alleged fact supports plaintiff's right to make a claim for relief under Title II of the Civil Rights Act of

1964. Any other conclusion, determination, interpretation or suggestion would do grave injustice to the whole intent and purpose of 'Title II' of the Civil Rights Act of 1964.

Plaintiff contends that he was expelled (to drive out, to banish) and excluded (to keep out, to ban, to omit) from the library for allegedly (to assert often without proof) violating rules at SIBL branch. The rule, "these computers are for catalogs and database use only," the plaintiffs allegedly violated are contra the library policy with regard to computer and Internet use. Such rules go contra and violate the 'Education Law' of the State of New York pertaining to 'public libraries' regarding computer and Internet access and use. See C. L.S. Educ. Law SS 260 (12), 262. Further, such rules are a broad right by the New York Public Library (NYPL) or the government to censor the expressive activity of the plaintiff to receive of information and engage in communication over the Internet and the Internet-accessible computer with an unconstitutionally vague and overbroad policy that:

(1) Is not necessary to further any compelling government interest. There is no government interest in censoring the entire Internet as well as all communication and information therein in favor of the limited information and communication on the catalogs and databases of the library.
(2) Is not narrowly tailored or reasonable time, place and manner regulations, which serve a compelling or significant government Interest.
(3) Restricts the access of adult patrons to protected material, such as free or political speech.
(4) Provides inadequate standards for restricting access.
(5) Provides inadequate procedural safeguards to ensure prompt judicial review.

In fact, the library rule or policy with regards to the Internet and the Internet-accessible (Emphasis) computers in question censors patrons from the Internet in favor of the limited communication and information in the library catalogs and databases. Why, would such censorship be a significant government interest? Common sense tells you that if the computers are internet-accessible the plaintiff could not violate the rules or policy in using such computers or inr using the Internet found therein.

What applies to the Internet-accessible computers applies to the library and the library access and use policy as well as the library's no hearing at all policy with regards to due process. They are just censorship on the part of the library or government to keep plaintiff from the protected material therein (e.g. communication, information, free or political speech and all other emoluments).

The State of New York has recognized that a status exists and the equal protection and benefit clauses in the laws in question protect. The library policies also fail when it comes to the five elements of 'Title II' posited above. The New York Public Library (NYPL) policies and rules are an over broad attempt by the library or government to censor the expressive activity of the plaintiff with regards to receipt and communication of information, free or political speech and all other emoluments therein through unconstitutionally vague and overbroad library and Internet access and use policy as well as the library's due process clause.

State law, the 'Education law" of the State of New York pertaining to 'public libraries' reads that only the Board of Trustees has the authority to expel or exclude the plaintiff from the library. Compl. III C, at 6. See, C.L.S Educ. Law SS 253, 262.

Plaintiff posits that when the library staff and library security detail acting under their own accord and acting under there own volition (power of choice) undertook to expel and exclude the plaintiff from the library and the Internet thereof and suspend his library privileges. They did so without authority. It is unquestionable that the state authorizes the library to expel patrons from a public library. But, that authority is specific in scope. The 'Education Law' of the State of New York specifically states that only the Board of Trustees can expel and exclude a patron from the library and suspend his library privileges.

The plaintiff was expelled and excluded and had his library privileges suspended by the library that is a fact. State law grants the library the authority to expel and exclude a patron for violating the rules of the Board of Trustees. But plaintiff was not expelled and excluded or had his library privileges suspended by the Board of Trustees in accordance with state law. Plaintiff was expelled and excluded from the library and had his library privileges suspended by the library staff and library security detail contra the specific authority granted by the state under C.L.S. Educ. Law SS 253, 262 to the Board of Trustees. The library afforded the plaintiff, Gomes, no due process at all with the Board of Trustees. The duly authorize entity to expel, exclude and suspend plaintiff's library privileges. Under New York state law the library staff and the library security detail have no authority to expel or exclude any patron from the library or suspend his library privileges.

The state grants authority to expel and exclude a patron from the library. Thus, the library or the government cannot claim that they are not culpable or liable for wrongful deprivation or suspension of plaintiffs existing state recognized status (e.g. right or license) to access, enjoy and use the public library. It is clear that in

the case at bar, the Gomes case, a wrongful deprivation did occur. The state actors in question did not have authority to expel or exclude the plaintiff or to suspend his library privileges under the law. The library staff and library security detail or the government actors were "acting under the color of law." The plaintiff did not violate any rule of the Board of Trustees as per state law to effectuate such suspension and deprivation of library and Internet privileges. Undeniable the government actors violated the section of the 'Education Law' of the State of New York pertaining to 'public libraries' and the Internet access and use thereof as well as all other federal and state laws under which claims were asserted by the plaintiff in his complaint.

Defendant's violated plaintiffs due process under the (Fifth and) Fourteenth Amendment by affording plaintiff, Gomes, no due process at all. They did, neither provide plaintiff with a pre-deprivation or a post deprivation hearing or notice as required under these laws. Nor did they afford him the opportunity to meet with the Board of Trustees. The duly authorized entity to air his grievances (e.g. being expelled and excluded and having his library privileges suspended from the library and to afford plaintiff due process.) Compl. at 7-8, IV at 2-3.

"Applying the reasoning (in Lowe) to the case at bar, Gomes certainly makes a very good argument that (1) the deprivation he experienced was one that the state (the library or government) could be expected to anticipate, ("it does not take a leap of the imagination to see that a patron's library privileges might be suspended")." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (see Estelle v. Gamble, 429 U.S. 97, 106, 50 L. Ed. 2d 251, 97 S. Ct 285 (1976); Nestor Ayala Serrano v. LeBron Gonzales, 909 F.2d 8, 15 (1st Cir. 1990). Especially, when the state or the library as in the Gomes case are the reason for or the instigators, which bring about such expulsion, exclusion, deprivation and suspension of plaintiff's library and Internet privileges; "(2) the state could have easily provided either a pre-deprivation or post-deprivation process, ("in the form of a warning letter and an opportunity to respond, or a hearing before the trustees, or in some other manner." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (see Estelle v. Gamble, 429 U.S. 97, 106, 50 L. Ed. 2d 251, 97 S. Ct 285 (1976); Nestor Ayala Serrano v. LeBron Gonzales, 909 F.2d 8,15 (1st Cir. 1990); "and (3) the state had delegated the library or more to the point the Board of Trustees the authority to effect deprivation, so their actions could not be said to be "unauthorized.""

The actions of the library staff and library security detail to expell and exclude plaintiff from the New York Public Library (NYPL) and the Internet thereof and

suspend his library privileges are "unauthorized." Under state law, such government actors have no authority to effectuate the suspension of plaintiff's library privileges and thereby the deprivations of such privileges or expel and exclude plaintiff from the library.

The library or the state or government could not make a claim of ignorance with regards to plaintiff's due process rights. Because, they were authorized by the state to suspend the library privileges of a patron. Gomes does argue these points and asserts them in his complaint. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (see Estelle v. Gamble, 429 U.S. 97, 106, 50 L. Ed. 2d 251, 97 S. Ct 285 (1976); Nestor Ayala Serrano v. LeBron Gonzales, 909 F.2d 8,15 (1st Cir. 1990)

"The record before the court indicates" that Gomes was afforded no pre-deprivation or post deprivation process, in fact no due process at all. "This fact combined with the lack of standards or rules governing the suspension" of library and Internet privileges as well as with regards to effectuating the expulsion and exclusion, "should lead the court to conclude that the risks of erroneous deprivation are great." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

The library officials or government actors could have undertaken a number of not so very burdensome preventive measures along the lines of the examples referenced above that would protect the due process rights of the plaintiff without burdening the library. David v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

The Real or Hard Facts:

Plaintiff has a First Amendment right under established case law to access a public library. See, Armstrong and Wayfield.

Plaintiff has a Fifth Amendment "liberty' or 'property' right to access a public library and a 'liberty' and 'property' right to use and enjoy a public library. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (citing Medina) ("Under the analysis set forth in Medina and related cases, this court finds that Wayfield states a sufficient claim to support a finding that suspension of his access to the library was a deprivation of a 'liberty' or 'property' right.")

"The court, in Raper found "the freedom to make use of one's own property", here in the case at bar, library and Internet access and use and the 'liberty' or 'property' right in the license to access and use the library and the Internet thereof as asserted by plaintiff via the fact that plaintiff was given and was the holder of a New York Public Library "Access" card and had been given a license under the doctrine of 'prior use' of the library and the Internet by having been granted access to and use of the library on numerous prior occasions. Is a 'liberty', which under the Fifth and Fourteenth Amendment cannot be denied or curtailed by a state without due process of law." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. (Quoting Wall v. King, 206 F.2d 878, 882 (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. Ct. 275) "

"The Supreme Court has defined "property" (in Logan) as an INDIVIDUAL entitlement grounded in state law which cannot be removed except 'for cause.'" David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982), Id at 430 (Citing Memphis Light, Gas and Water Div. v. Craft, 436 U.S. 1, 11-12, 56 L. Ed. 2d 30, 98 S. Ct. 1554 (1978); Goss v. Lopez, 419 U.S. 565, 573-74, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975); Board of Regents v. Roth, 408 U.S. 564, 576-78, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972), the court went an to enunciate the breadth of possible "property" interests.

Plaintiff has a Fifth Amendment due process claim or cause as protected by 42 U.S.C. S 1983. Plaintiff has a right to gather into groups or associate over the Internet or in a library or under the free association guarantee of the First Amendment. Northwest Regional Library System,

Plaintiff has a First Amendment guarantee free speech, which protects the right to be free from censorship of expressive activity of receipt and communication of information through the Internet or via access to a public library.

The First Amendment restricts limitations placed on patron's access to the Internet, once someone (i.e. the library) has chosen to provide such access.

<u>In summation:</u>

Fact, plaintiff has:

(1) A First Amendment right to access the public library

(2) A Fifth Amendment "liberty' and 'property' right to access, enjoy and use the public library.

(3) A S 1982 right under the Civil Rights Act of 1964 to hold 'personal property' (e.g. a license to use the public library granted under state law or a library card granted by the New York Public Library (NYPL) to use the library).
(4) Having an existing that a state recognized-status, which creates a 'liberty' or 'property' interest to access and use the public library and the Internet thereof. Plaintiff has a S 1981 claim to "full and equal benefit of all the laws and proceedings for the security of his person and property, and shall be subject to like, licenses (Emphasis), and exactions and no other."
(5) Having such license coupled with an existing state recognized status which confers a 'liberty' and 'property' right (interest) to access, use and enjoy the public library and the Internet thereof. Under S 1982, plaintiff is entitled to "full and equal enjoyment of all the goods, services, facilities, privileges, advantages and accommodations" of the New York Public Library (NYPL) and the Internet thereof "without discrimination or segregation." When defendants, the New York Public Library et al or the government suspended plaintiff's library privileges and expelled and excluded the plaintiff from the library without authority having been granted authority by the state. Such authority is granted specifically to the Board of Trustees. Defendants in fact, violated his SS 1982, 1981, 1983, 1985, 2000a, United States Constitution First, Fifth and Fourteenth Amendment rights and his New York Constitution SS 8, 9, 11 and C.L.S. Educ. Law SS 253, 260(12), 262 rights.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:

Joe A. Gomes v.
New York Public
Library, et al.,

CERTIFICATE OF SERVICE
Docket Number: 11-1685-CV

I, Joe A. Gomes (name), hereby certify under penalty of perjury that on ______________ (date), I served a copy of ______________

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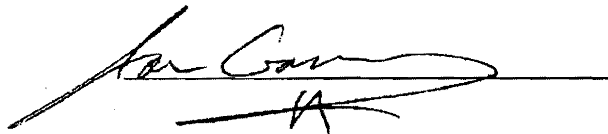

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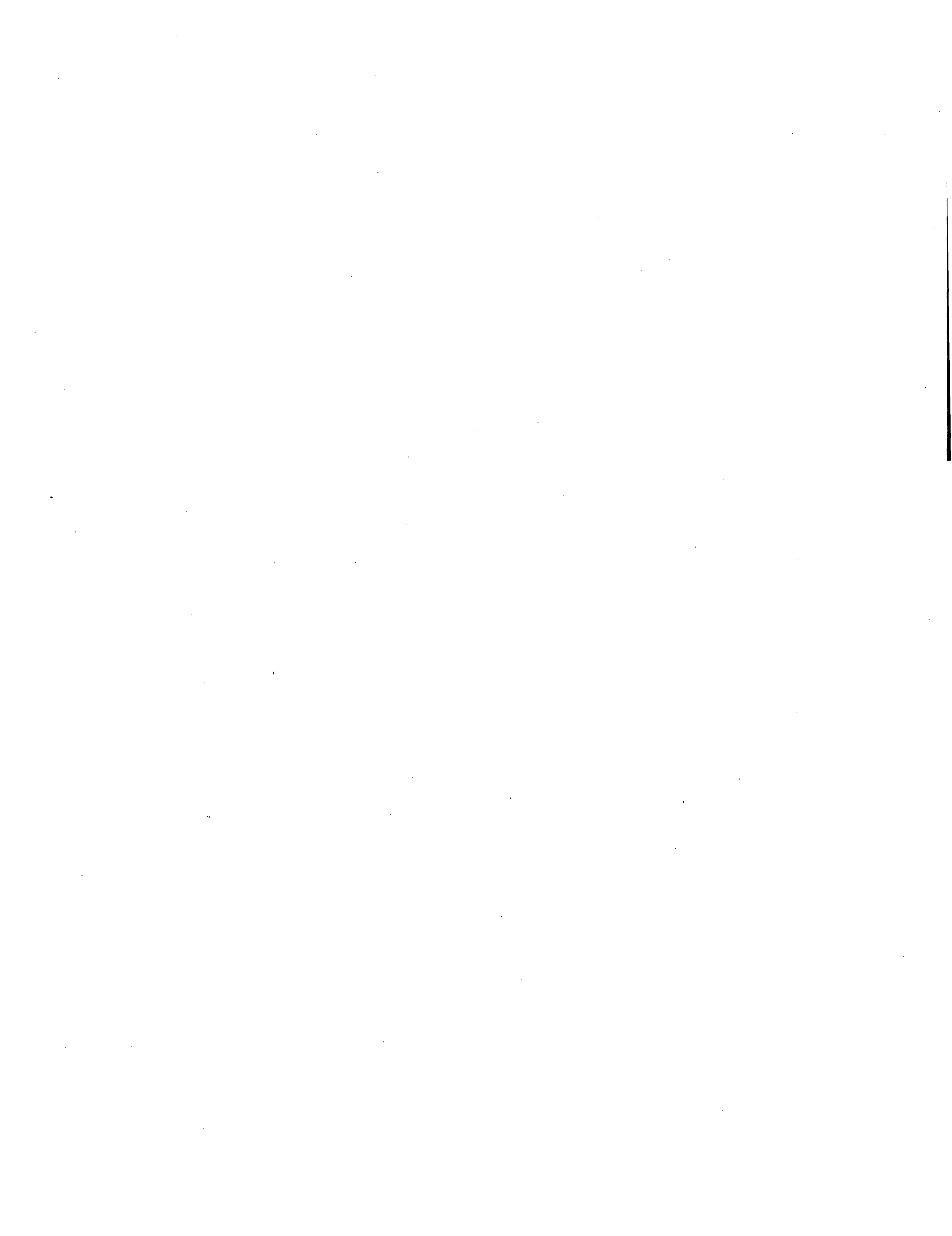

11-1685-CIVIL

UNITED STATES COURTS OF APPEALS
FOR THE SECOND CIRCUIT

JOE GOMES,

PLAINTIFF-APPELLANT,

V.

THE NEW YORK PUBLIC LIBRARY (NYPL) AND THE CITY OF NEW YORK, AND THE STATE OF NEW YORK, AND THE UNITED STATES OF AMERICA et al,

Defendants – Appellees,

On Appeal from the United States District Court
for the Southern District of New York

Appellant Joe Gomes Appendix

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CLOSED, APPEAL, PRO-SE

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:11-cv-00367-LAP

Gomes v. The New York Public Library (NYPL) et al
Assigned to: Judge Loretta A. Preska
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 01/11/2011
Date Terminated: 03/09/2011
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Joe A. Gomes

V.

Defendant

The New York Public Library (NYPL)

Defendant

The Science Industry & Business Library (SIBL)

Defendant

The City of New York

Defendant

The State of New York

Defendant

The United States of America

Defendant

The Board of Trustees or Library Trustees of New York Public Library

Defendant

The Regents of the University of the State of New York

Defendant

Paul LeClerc
President and CEO of the Corporation of the New York Public Library

Defendant

David Ferriero

Defendant

Andrew W. Mellon
Director

Defendant

Robert Vanni
Vice President

Defendant

James Pisaniello
Vice President of Facility Operations and Security

Defendant

Robert Fornabaio
Director of Client Support Service (NYPL)

Defendant

John 'Doe'
Head of Security (SIBL)

Defendant

Bob 'Doe'
Assistant Security Supervisor (SIBL)

Defendant

Bill 'Doe'

Defendant

Steve 'Doe'
Technical Processing (SIBL)

Defendant

Kristen McDonough

Defendant

Robert and Joyce Menschel
Director (SIBL)

Defendant

Alec 'Doe'
library security guard (SIBL)

Defendant

Robert M. Bennett
Chancellor of the Board of Regents of the University of the State of New York

Defendant

Richard P. Mills
Commissioner of Education/President of the University of the State of New York

Defendant

Janet Welch
State Librarian/Assistant Commissioner of Libraries of the New York State Library

Defendant

Catherine C. Marron
Chairperson of the Officers of the Corporation of the New York Public Library (NYPL)

Defendant

David Strum
Vice President/Chief Information officer of the New York Public Library (NYPL)

Defendant

Michael A. Cardozo
Corporation Counsel of the office of the Corporation counsel of the City of New York

Defendant

Andrew Cuomo
former Attorney General of the Office of the Attorney General of the State of New York

Defendant

Eric T. Shneiderman
current Attorney General of the Office of the Attorney General of the State of New York

Defendant

Michael B. Mukasey
Former Attorney General of the Office of the Attorney General of the Department of Justice of the United States

Defendant

Eric H. Holder, Jr.
current Attorney General of the Office of the Attorney General of the Department of Justice of the United States

Defendant

The Patrons of the New York Public Library

Date Filed	#	Docket Text
01/11/2011	1	DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by J.A.G.(mro) (Entered: 01/24/2011)
01/11/2011	2	COMPLAINT against Alec 'Doe', Robert M. Bennett, Bill 'Doe', Bob 'Doe', Michael A. Cardozo, Andrew Cuomo, David Ferriero, Robert Fornabaio, Eric H. Holder, Jr, John 'Doe', Paul LeClerc, Catherine C. Marron, Kristen McDonough, Andrew W. Mellon, Richard P. Mills, Michael B. Mukasey, James Pisaniello, Robert and Joyce Menschel, Eric T. Shneiderman, Steve 'Doe', David Strum, The Board of Trustees or Library Trustees of New York Public Library, The City of

		New York, The New York Public Library (NYPL), The Patrons of the New York Public Library, The Regents of the University of the State of New York, The Science Industry & Business Library (SIBL), The State of New York, The United States of America, Robert Vanni, Janet Welch. Document filed by J.A.G. (Attachments: # 1 part 2)(mro) Modified on 1/24/2011 (mro). (Entered: 01/24/2011)
01/11/2011	3	MOTION for an Order to grant relief to keep and maintain the plaintiff's name anonymous in the caption heading and case files and use plaintiff's initials as the point of reference in order to secure plaintiff's privacy in accordance with the privacy guarantees in the United States Constitution. Document filed by J.A.G.(mro) (Entered: 01/24/2011)
01/25/2011	4	Pro Se Acknowledgment Letter Mailed: Pro Se acknowledgment letter mailed to the plaintiff via USPS to the address noted on the Complaint on 1/25/2011. (msa) (Entered: 01/25/2011)
02/04/2011		Received returned mail re: 4 Pro Se Acknowledgment Letter Mailed. Mail was addressed to J.A.G. at 390 Ninth Avenue, New York, NY 10001 and was returned for the following reason(s): return to sender-attempted, not known, unable to forward. (msa) (Entered: 02/04/2011)
03/09/2011	5	ORDER OF DISMISSAL: The Clerk of Court is directed to assigned this matter to my docket. Plaintiff's Complaint, filed in forma pauperis under 28 U.S.C. 1915(a)(1), is dismissed pursuant to 28 U.S.C. 1915(e)(2)(B)(ii). The Clerk of Court is directed to replace the pseudonym "J.A.G." with Plaintiff's full name, Joe A. Gomes, on the docket. The Court certifies, pursuant to 28 U.S.C. 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. (Signed by Judge Loretta A. Preska on 3/09/2011) Copies Mailed By Pro Se Office. (mro) (Entered: 03/14/2011)
03/09/2011		NOTICE OF CASE ASSIGNMENT - SUA SPONTE to Judge Loretta A. Preska. Judge Unassigned is no longer assigned to the case. (mro) (Entered: 03/14/2011)
03/09/2011	6	CIVIL JUDGMENT: ORDERED, ADJUDGED AND DECREED: That the Complaint is dismissed. 28 U.S.C. 1915(e)(2)(B)(ii). The Court certifies, pursuant to 28 U.S.C. 1915(a)(3), that any appeal from the Court's Order would not be taken in good faith. (Signed by Judge Loretta A. Preska on 3/9/2011) Copies Mailed By Pro Se Office. (mro) Modified on 3/14/2011 (mro). (Entered: 03/14/2011)
03/18/2011		Received returned mail: Mail was addressed to J.A.G. at 390 Ninth Ave. New York, NY 10001 and was returned for the following reason(s): Unclaimed. (eef) (Entered: 03/18/2011)
04/05/2011	7	NOTICE OF APPEAL from 5 Order of Dismissal, 6 Judgment. Document filed by Joe A. Gomes. (tp) (Entered: 04/20/2011)
04/05/2011		Appeal Remark as to 7 Notice of Appeal filed by Joe A. Gomes. $455.00 APPAL FEE DUE. IFP REVOKED 3/9/11. (tp) (Entered: 04/20/2011)

04/20/2011		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 7 Notice of Appeal. (tp) (Entered: 04/20/2011)
04/20/2011		Transmission of Notice of Appeal to the District Judge re: 7 Notice of Appeal. (tp) (Entered: 04/20/2011)
05/04/2011		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 2 Complaint, 5 Order of Dismissal, 7 Notice of Appeal filed by Joe A. Gomes, 1 Declaration in Support of I.F.P., 3 MOTION for an Order to grant relief to keep and maintain the plaintiff's name anonymous in the caption heading and case files and use plaintiff's initials as the point of reference in order to secure plaintiff's privacy in accordance wit, 6 Judgment, 4 Pro Se Acknowledgment Letter Mailed USCA Case Number 11-1685, were transmitted to the U.S. Court of Appeals. (tp) (Entered: 05/04/2011)

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Billable Pages:	3	**Cost:**	0.24

General Docket
Court of Appeals, 2nd Circuit

Court of Appeals Docket #: 11-1685
Nature of Suit: 1440 CIVIL RIGHTS-Other
Gomes v. New York Public Library
Appeal From: SDNY (NEW YORK CITY)
Fee Status: IFP Pending in USCA

Docketed: 04/25/2011
Termed: 08/03/2011

Case Type Information:
1) Civil
2) United States
3) -

Originating Court Information:
District: 0208-1 : 11-cv-367
Trial Judge: William H. Pauley, III, U.S. District Judge
Date Filed: 01/11/2011
Date Order/Judgment: 03/09/2011
Date NOA Filed: 04/05/2011

Prior Cases:
None

Current Cases:
None

Panel Assignment: Not available

Party	Counsel
Joe A. Gomes Plaintiff - Appellant	Joe A. Gomes, - Direct: 646-709-5614 [NTC Pro Se] 390 9th Avenue New York, NY 10001

New York Public Library Defendant - Appellee	
Science Industry & Business Library Defendant - Appellee	
City of New York Defendant - Appellee	Michael A. Cardozo, - Direct: 212-788-0800 [COR LD NTC Retained] New York City Law Department 6th Floor 100 Church Street New York, NY 10007

State of New York Defendant - Appellee	Eric T. Schneiderman, Attorney General Direct: 212-416-8882 [COR LD NTC Retained] New York State Office of the Attorney General 120 Broadway New York, NY 10271
United States of America Defendant - Appellee	Katherine Polk Failla, Assistant U.S. Attorney **Terminated:** 05/12/2011 Direct: 212-637-2324 [COR LD NTC US Attorney] United States Attorney's Office, Southern District of New York Room 844 1 Saint Andrew's Plaza New York, NY 10007 Sarah Sheive Normand, Assistant U.S. Attorney [COR LD NTC US Attorney] United States Attorney's Office, Southern District of New York 86 Chambers Street New York, NY 10007
Board of Trustees or Library Trustees of New York Public Library Defendant - Appellee	
Regents of the University of the State of New York Defendant - Appellee	Eric T. Schneiderman, Attorney General Direct: 212-416-8882 [COR LD NTC Retained] (see above)
Paul LeClerc, President and CEO of the Corporation of the New York Public Library Defendant - Appellee	
David Ferriero Defendant - Appellee	
Andrew W. Mellon, Director Defendant - Appellee	
Robert Vanni, Vice President Defendant - Appellee	
James Pisaniello, Vice President of Facility Operations and Security Defendant - Appellee	
Robert Fornabaio, Director of Client Support Service NYPL Defendant - Appellee	
John Doe, Head of Security SIBL	

Party	Counsel
Defendant - Appellee	
Bob Doe, Assistant Security Supervisor SIBL Defendant - Appellee	
Bill Doe Defendant - Appellee	
Steve Doe Defendant - Appellee	
Kristen McDonough Defendant - Appellee	
Joyce Menschel, Director SIBL Defendant - Appellee	
Robert Menschel, Director SIBL Defendant - Appellee	
Alec Doe, library security guard SIBL Defendant - Appellee	
Robert M. Bennett, Chancellor of the Board of Regents of the University of the State of New York Defendant - Appellee	Eric T. Schneiderman, Attorney General Direct: 212-416-8882 [COR LD NTC Retained] (see above)
Richard P. Mills, Commissioner of Education/President of the University of the State of New York Defendant - Appellee	Eric T. Schneiderman, Attorney General Direct: 212-416-8882 [COR LD NTC Retained] (see above)
Janet Welch, State Librarian/Assistant Commissioner of Libraries of the New York State Library Defendant - Appellee	Eric T. Schneiderman, Attorney General Direct: 212-416-8882 [COR LD NTC Retained] (see above)
Catherine C. Marron, Chairperson of the Officers of the Corporation of the New York Public Library Defendant - Appellee	
David Strum, Vice President/Chief Information officer of the New York Public Library Defendant - Appellee	
Michael A. Cardozo, Corporation Counsel of the office of the Corporation Counsel of the City of New York Defendant - Appellee	Michael A. Cardozo, - Direct: 212-788-0800 [COR LD NTC Retained] (see above)
Andrew Cuomo, former Attorney General of the Office of the Attorney General of the State of New York Defendant - Appellee	Eric T. Schneiderman, Attorney General Direct: 212-416-8882 [COR LD NTC Retained] (see above)

Eric T. Schneiderman, current Attorney General of the Office of the Attorney General of the State of New York Defendant - Appellee	Eric T. Schneiderman, Attorney General Direct: 212-416-8882 [COR LD NTC Retained] (see above)
Michael B. Mukasey, former Attorney General of the Office of the Attorney General of the Department of Justice of the United States Defendant - Appellee	Katherine Polk Failla, Assistant U.S. Attorney **Terminated:** 05/12/2011 Direct: 212-637-2324 [COR LD NTC US Attorney] (see above) Sarah Sheive Normand, Assistant U.S. Attorney [COR LD NTC US Attorney] (see above)
Eric H. Holder, Jr., current Attorney General of the Office of the Attorney General of the Department of Justice of the United States Defendant - Appellee	Katherine Polk Failla, Assistant U.S. Attorney **Terminated:** 05/12/2011 Direct: 212-637-2324 [COR LD NTC US Attorney] (see above) Sarah Sheive Normand, Assistant U.S. Attorney [COR LD NTC US Attorney] (see above)
Patrons of the New York Public Library Defendant - Appellee	

Joe A. Gomes,

Plaintiff - Appellant,

v.

New York Public Library, Science Industry & Business Library, City of New York, State of New York, United States of America, Board of Trustees or Library Trustees of New York Public Library, Regents of the University of the State of New York, Paul LeClerc, President and CEO of the Corporation of the New York Public Library, David Ferriero, Andrew W. Mellon, Director, Robert Vanni, Vice President, James Pisaniello, Vice President of Facility Operations and Security, Robert Fornabaio, Director of Client Support Service NYPL, John Doe, Head of Security SIBL, Bob Doe, Assistant Security Supervisor SIBL, Bill Doe, Steve Doe, Kristen McDonough, Joyce Menschel, Director SIBL, Robert Menschel, Director SIBL, Alec Doe, library security guard SIBL, Robert M. Bennett, Chancellor of the Board of Regents of the University of the State of New York, Richard P. Mills, Commissioner of Education/President of the University of the State of New York, Janet Welch, State Librarian/Assistant Commissioner of Libraries of the New York State Library, Catherine C. Marron, Chairperson of the Officers of the Corporation of the New York Public Library, David Strum, Vice President/Chief Information officer of the New York Public Library, Michael A. Cardozo, Corporation Counsel of the office of the Corporation Counsel of the City of New York, Andrew Cuomo, former Attorney General of the Office of the Attorney General of the State of New York, Eric T. Schneiderman, current Attorney General of the Office of the Attorney General of the State of New York, Michael B. Mukasey, former Attorney General of the Office of the Attorney

General of the Department of Justice of the United States, Eric H. Holder, Jr., current Attorney General of the Office of the Attorney General of the Department of Justice of the United States, Patrons of the New York Public Library,

Defendants - Appellees.

04/25/2011	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Joe A. Gomes, FILED. [275574] [11-1685]
04/25/2011	2	MOTION, to proceed in forma pauperis, on behalf of Appellant Joe A. Gomes, FILED. Service date 04/28/2011 by CM/ECF.[275578] [11-1685]
04/28/2011	4	INSTRUCTIONAL FORMS, to Pro Se litigant, SENT.[275580] [11-1685]
05/05/2011	10	ELECTRONIC INDEX, in lieu of record, FILED.[282232] [11-1685]
05/09/2011	11	NOTICE OF APPEARANCE, on behalf of Appellee Robert M. Bennett, Board of Trustees or Library Trustees of New York Public Library, Andrew Cuomo, Richard P. Mills, Regents of the University of the State of New York, Eric T. Schneiderman, State of New York and Janet Welch, FILED. Service date 05/09/2011 by CM/ECF, US mail. [284591] [11-1685]
05/11/2011	12	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Eric H. Holder, Jr., Michael B. Mukasey and United States of America, FILED. Service date 05/11/2011 by CM/ECF, US mail. [287234] [11-1685]
05/12/2011	13	ATTORNEY, Sarah Sheive Normand, [12], in place of attorney Katherine Polk Failla, SUBSTITUTED.[287597] [11-1685]
05/16/2011	14	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Party Joe A. Gomes, FILED. Service date 05/18/2011 by CM/ECF.[293146] [11-1685]
05/16/2011	15	FORM D, on behalf of Appellant Joe A. Gomes, FILED. Service date 05/18/2011 by CM/ECF.[293149] [11-1685]
05/16/2011	16	SCHEDULING NOTIFICATION, on behalf of Appellant Joe A. Gomes, informing Court of proposed due date 08/16/2011, RECEIVED. Service date 05/18/2011 by CM/ECF.[293153] [11-1685]
05/16/2011	17	SUPPLEMENTARY PAPERS TO MOTION [2], on behalf of Appellant Joe A. Gomes, FILED. Service date 05/18/2011 by CM/ECF.[293155][17] [11-1685]
07/06/2011	21	NOTICE, to Appellee Michael A. Cardozo and City of New York , for failure to file an appearance, SENT.[332097] [11-1685]
08/03/2011	24	MOTION ORDER, denying motion to proceed in forma pauperis [2] filed by Appellant Joe A. Gomes, by RAK RR GEL, FILED. [355251][24] [11-1685]
08/03/2011	25	NEW CASE MANAGER, Anna Steglich, ASSIGNED.[355256] [11-1685]
08/03/2011	26	APPEAL, pursuant to court order, dated 08/03/2011, DISPOSED.[355795] [11-1685]
08/19/2011	30	LETTER, Case Status, SENT.[370005] [11-1685]

08/19/2011	31	MOTION, for reconsideration, on behalf of Appellant Joe A. Gomes, FILED. Service date 08/19/2011 by email.[370387] [11-1685]
09/02/2011	34	LETTER, Case Status, SENT.[381808] [11-1685]

Relevant Filling Dates Establishing the Timeliness of the Appeal

Date	Plaintiff/ Petitioner Number	Federal Court Number	Document	Date
1/11/11	1	1	DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS	1/11/11
1/11/11	2	2	COMPLAINT against New York Public Library and co-defendants	1/11/11
1/11/11	3	3	MOTION for an Order to Grant relief	1/11/11
1/25/11	4	4	Pro Se Acknowledgement Letter Mailed	1/25/11
2/4/11	5		District Court received return mail re: 4 Pro se Acknowledgement Letter. Mail was addressed to J.A.G at 390 Ninth Avenue, New York, NY 10001	2/4/11
3/9/11	6	5	ORDER OF DISMISSAL	3/9/11
3/9/11	7		NOTICE OF CASE ASSIGNMENT - Sua Sponte to Judge Loretta P. Preska	3/9/11
3/9/11	8	6	CIVIL JUDGEMENT: ORDERED, ADJUDGED AND DECREED	3/9/11
3/18/11	9		District Court Received return Mail: Mail addressed to J.A.G	3/18/11
4/5/11	10	7	NOTICE OF APPEAL from 5 Order of Dismissal, 6 Judgement	4/5/11
4/5/11	11		Appeal Remark as to 7 Notice of Appeal filed by Joe A. Gomes	4/5/11
4/5/11	12		IN FORMA PAUPERIS Request filed	4/5/11
4/18/11	13		Letter: Notice of AppealRreceipt Acknowledgement	4/18/11
4/20/11	14		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals (Entered 04/20/2011)	4/20/11
4/20/11	15		Transmission of Notice of Appeal to District Judge re: & Notice of Appeal (Entered 04/20/2011)	4/20/11
5/4/11	16		Appeals record Sent to USCA (Electronic File)	

4/25/11	17	1	NOTICE OF CIVIL APPEAL	4/25/11
4/25/11	18	2	MOTION to proceed In Form Pauperis	4/25/11
4/28/11	19	4	Instructional Forms, to Pro Se Litigant	4/28/11
4/28/11	20		Docketing Notice received by Petitioner	4/28/11
5/4/11	21		Appeal Record Sent to USCA (Electronic File)	5/4/11
5/5/11	22	10	ELECTRONIC INDEX, in lieu of record, FILED	5/5/11
5/9/11	23	11	NOTICE OF APPEARANCE, on behalf of Appellee Robert M. Bennett, Board of Trustees or Library Trustees of New York Public Library, Andrew Cuomo, Richard P. Mills, Regents of the University of the State of New York, Eric T. Schneiderman, State of New York and Janet Welch FILED	5/9/11
5/11/11	24	12	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Eric H. Holder, Jr., Michael B. Muckasey and United States of America, FILED	5/11/11
5/12/11	25	13	ATTORNEY, Sarah Sheive Normand, in place of attorney Katherine Polk	5/12/11
5/16/11	26	14	ACKNOWLEDGEMENT AND NOTICE OF APPEARANCE FORM, ON BEHALF OF JOE A. GOMES	5/16/11
5/16/11	27		Civil Appeal Transcript Information	5/16/11
5/16/11	28	16	PRO SE SCHEDULING NOTIFICATION , on behalf of Appellant Joe A. Gomes	5/16/11
5/16/11	29	17	SUPPLEMENTARY PAPERS TO MOTION, on behalf of Appellant Joe A. Gomes, FILED	5/16/11
5/16/11	30		Final Affidavit, Motion For Forma Pauperis	5/16/11
5/21/11	31		Receipt of Letter: Attorney General State of New York	5/21/11
5/24/11	32		Receipt of Letter: U.S. Attorney's Office	5/24/11
7/6/11	33	21	NOTICE, to Appellee to Michael A. Cardozo and City of New York, for	7/6/11

			failure to file appearance	
8/3/11	34	24	MOTION ORDER, denying motion to proceed in forma pauperis (2) filed by Appellant Joe A. Gomes	8/3/11
8/3/11	35	25	NEW CASE MANAGER, Anna Steglich, ASSIGNED	8/3/11
8/3/11	36	26	appeal, pursuant to court order, dated 08/03/2011, DISPOSED	8/3/11

11-1685-CIVIL

UNITED STATES COURTS OF APPEALS
FOR THE SECOND CIRCUIT

JOE GOMES,

PLAINTIFF-APPELLANT,

V.

THE NEW YORK PUBLIC LIBRARY (NYPL) AND THE CITY OF NEW YORK, AND THE STATE OF NEW YORK, AND THE UNITED STATES OF AMERICA, et al,

Defendants – Appellees,

On Appeal from the United States District Court for the Southern District of New York

Appellant Joe Gomes Brief

Joe Gomes, Pro Se
390 9th Avenue, New York, NY 10001
(646) 709-5614 (inactive)
bagoftricks2@yahoo.com (please use email)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/9/2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X

JOE A. GOMES,

Plaintiff,

-against-

THE NEW YORK PUBLIC LIBRARY (NYPL); THE SCIENCE INDUSTRY & BUSINESS LIBRARY (SIBL); THE CITY OF NEW YORK; THE STATE OF NEW YORK; THE UNITED STATES OF AMERICA; THE BOARD OF TRUSTEES OR LIBRARY TRUSTEES OF NEW YORK PUBLIC LIBRARY; THE REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; PAUL LECLERC, PRESIDENT & CEO OF THE CORPORATION OF THE NEW YORK PUBLIC LIBRARY; DAVID FERRIERO, ANDREW W. MELLON DIRECTOR; ROBERT VANNI, VICE PRESIDENT; JAMES PISANIELLO, VICE PRESIDENT OF FACILITY OPERATIONS AND SECURITY; ROBERT FORNABAIO, DIRECTOR OF CLIENT SUPPORT SERVICES (NYPL); JOHN DOE, HEAD OF SECURITY (SIBL); BOB DOE, ASSISTANT SECURITY SUPERVISOR (SIBL); BILL DOE, INFORMATION SERVICES HEAD (EIC) (SIBL); STEVE DOE, TECHNICAL PROCESSING (SIBL); KRISTEN MCDONOUGH, ROBERT AND JOYCE MENSCHEL DIRECTOR (SIBL); ALEC DOE, LIBRARY SECURITY GUARD (SIBL); THE REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; ROBERT M. BENNETT, CHANCELLOR OF THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; RICHARD P. MILLS, COMMISSIONER OF EDUCATION/ PRESIDENT OF THE UNIVERSITY OF THE STATE OF NEW YORK; JANET WELCH, STATE LIBRARIAN/ASSISTANT COMMISSIONER OF LIBRARIES OF THE NEW YORK STATE LIBRARY; CATHERINE C. MARRON, CHAIRPERSON OF THE OFFICERS OF THE OFFICERS OF THE CORPORATION OF THE NEW YORK PUBLIC LIBRARY (NYPL); DAVID STRUM, VICE PRESIDENT/ CHIEF INFORMATION OFFICER OF THE NEW YORK PUBLIC LIBRARY (NYPL); MICHAEL A. CARDOZO, CORPORATION COUNSEL OF THE OFFICE OF THE CORPORATION COUNSEL OF THE CITY OF NEW YORK;

CIVIL JUDGMENT

11 Civ. 0367 (LAP)

JUDGMENT AND APPEAL INSTRUCTIONS MAILED BY PRO SE OFFICE ON 3/9/11

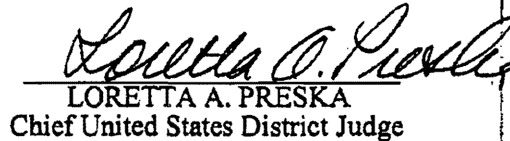
ANDREW CUOMO (FORMER); AND ERIC SCHNEIDERMAN (CURRENT), ATTORNEY GENERAL OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK; MICHAEL B. MUKASEY (FORMER); AND ERIC H. HOLDER, JR. (CURRENT), ATTORNEY GENERAL OF THE OFFICE OF THE ATTORNEY GENERAL OF THE DEPARTMENT OF JUSTICE OF THE UNITED STATES; THE PATRONS OF THE NEW YORK PUBLIC LIBRARY,

Defendant.

---X

Pursuant to the order issued MAR 09 2011 by the Honorable Loretta A. Preska, Chief United States District Judge, dismissing the Complaint, it is,

ORDERED, ADJUDGED AND DECREED: That the Complaint is dismissed. 28 U.S.C. § 1915(e)(2)(B)(ii). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from the Court's Order would not be taken in good faith.



LORETTA A. PRESKA
Chief United States District Judge

Dated: MAR 09 2011
New York, New York

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON__________________.

Comparative Analysis

Wayfield v. Gomes
(Exploring and examining the similarities and differences between the two cases)

In doing a comparative analysis or analogizing the Wayfield case to the case at bar, the Gomes case, an astute individual can clearly observe that although similar in a great many respects with regards to fact and law. The two cases differ on a few key issues with regards to facts, which pus the two cases at opposite ends of two very different and exclusive extremes. Hence, where Wayfield is at the low end of the extreme or the worst-case scenario. Having harassed the library staff and having no state statute to provide the court with guidance in its decision. But, still alleging sufficient facts to establish a claim and prevail on the facts and the merits of the case in a court of law. Gomes, on the other hand, however is at the high-end of the extreme or the best-case scenario. If Wayfield incorporated sufficient facts to establish a claim and to prevail in a court of law then the Gomes case certainly does. Given the fact that he did not harass anyone, in fact the library staff and the security detail harassed him, coupled with the fact that the New York State statute pertaining to libraries establishes his right to use the public library and the Internet thereof. And thus having such a unique distinction of the best-case scenario, it is with out a doubt that the District Court should have decide in Gomes' favor with regards to the culpability and liability of the defendants or government actors as a direct result of their unlawful actions on all of his claims.

The excerpts herein presented show why the District Court of its own volition ruled, sua sponte, in favor of the Wayfield case. Important to note, that the allegations made in the Wayfield case represent a small portion of the allegations with supporting facts presented in the case at bar or the Gomes case. Thus, if the District court, sua sponte, decided in the favor of the Wayfield case, It goes with out saying that the United States District Court for the Southern District of New York should have ruled, sua sponte, in favor of Gomes with regards to the culpability and liability of the defendants or government actors on all his claims established and presented in his complaint.

The District Court in Wayfield determined, "On final point: Wayfield argues that the suspension of his library privileges is an occurrence important enough to warrant due process protection. He is correct." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Additionally, "plaintiff (Wayfield) falls into the latter class, the already licensed,

have a vested property interest in the license, which forecloses denial without due process. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (Citing, Lowe v. Scott, 959 F.2 323 (1st Cir. 1992) (medical license); Roy v. City of Augusta, 712 F. 2d 1517 (1st Cir. 1983) (license to operate a pool hall); Medina v. Rudman, 545 F.2d 244, 249 (1st Cir. 1976); Wall v. King, 206 F.2d 878, 882 (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. CT. 275) (driver's license).

Consequently, "Wayfield held library privileges, which were suspended. His case falls into the first category – cases in which the plaintiff already holds a license – a category, in which the First Circuit has recognized due process is required." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"Applying this reasoning (Lowe) to the case at bar, Wayfield can make a colorable argument that (1) the deprivation he experienced was one that the state could be expected to anticipate (it does not require a leap of the imagination to think that a patron's library privileges might be suspended (2) the state could have provided a pre deprivation process whether in the form of a warning letter and an opportunity to respond, or hearing before the trustees; and (3) that the state had delegated the library the authority to effect deprivation, so their actions could not be said to be "unauthorized." Wayfield does not directly argue this point." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (See, Estelle v. Gamble, 429 U.S. 97, 106, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976); Nestor Ayala Serrano v. LeBron Gonzales, 909 F. 2d 8, 15, (1st Cir. 1990)

Gomes, however, does argue that his case is analogous to the government actors in Wayfield. And he does argue that the state had delegated the library the authority to effect deprivation. Thus the actions of the library employees cannot be said to be unauthorized, but the unlawful conduct of authorized rogue government actors in the form of the library staff and the library security detail.

"Plaintiff who had allegedly harassed library member denied access to library." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (See, Kreimer v. Bureau of Police, 958 F. 2d 1242, 1264-65 (3rd Cir. 1992); Brinkmiere v. City of Freeport, 1993 U.S. Dist. LEXIS 9255, 1993 WL 248201 (N.D. Ill. 1993)

"The record before the court indicates Wayfield was afforded no deprivation process. This fact combined with the lack of standards or rules governing the suspension of library privileges, leads the court to believe that the risks of

erroneous deprivation are great." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"The library could send a letter to patrons who were threatened with potential suspensions, notifying them of the action pending against them and inviting them to argue their cases, in writing or in person." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"The court determined, using Mathews v. Eldridge, the defendants did not afford Wayfield adequate process. Indeed, it appears from the record in the case, they afforded him no process at all." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"Given the nature and extent of this ruling, it maybe appropriate for the court, sua sponte, to render Summary Judgment to Wayfield as to liability of defendants on his claim." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"Wayfield's claim is that, in depriving him of library access without affording him a hearing, the defendants deprived him of due process of the law under the Fourteenth Amendment to the Constitution." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"Wayfield argues that he has a liberty or property interest in using the public library. He bases this argument on the library's public nature ("public libraries are tax-supported institutions, municipal, public service corporations." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

"...And on his "liberty" inherent in his classification of citizenship in the Commonwealth of Massachusetts." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Rights that Merit Due Process

"Wayfield does not argue that his asserted liberty or property interest in using the library falls into these categories." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Gomes on the other hand, does indeed argue that his asserted liberty or property interest falls into these categories of "fundamental" or "natural" rights. He points

to the right to an Education through personal research study and information and the rights created by other provisions of the constitution," such as the First Amendment right to access a public library as well as the Fifth Amendment right to make use of his 'liberty' and 'property' interest in using a public library in addition to the Fourteenth Amendment due process claim. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146. (Citing, Paul v. Davis, 424 U.S. 693, 708, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976)).

In addition, Gomes also argues that he has a "fundamental" or "natural" right to earn a living, to work, conduct business and engage in his chosen profession." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina, (Citing, Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L. Ed. 2d 796, 77 S. Ct. 752 (1957); Meyer v. Nebraska, 262 U.S. 390, 67 L. ED. 1042, 43 S. Ct. 625 (1923).

"The court, in Raper, analyzed that case (application for a driver's license) to a case in which a driver's license was suspended. The court found "the freedom to make use of one's own property (i.e. a motor vehicle, as a means of getting from place to place...) is a 'liberty,' which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; (Quoting, Wall v. King, 206 F. 2d 878, 882 (1st Cir. 1953), cert. denied, 346 U.S. 915, 98 L. Ed. 411, 74 S. CT. 275.

"Wayfield does not specify whether the right he claims is a "property" or "liberty" right." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Gomes, however, does stipulate that the rights he claims are "property and "liberty" rights. And thus like the right at issue involved in Wall, the right claimed in the case at bar, the Gomes case, as in Raper deserves the protection of due process. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Determining whether the right to access to a public library is recognized by state law as right common to all citizens.

In the Wayfield case "neither party has cited any state statute or local law or regulation governing the maintenance and use the library. Nor has the court found any such state statute or local law or regulation would help resolve the issue of

whether plaintiff has a protected liberty or property interest." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; O'NIELL, 545 F. Supp. AT 452, (Quoting, Beitzell v Jeffery, 643 F.2d 870, 874 (1st Cir. 1981)

Gomes however does have a state statute which confers a "liberty' or 'property' right on him to access, enjoy and use the public library and the Internet thereof. He cites the 'Education Law" of the State of New York, C.L.S. Educ. Law SS 253, 260(12), 262 as conferring that "liberty' or "property" right.

In the Wayfield case, "the parties, as noted, have pointed to no such state law or local law." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Gomes has pointed to a state law or local law, which creates the plaintiff's alleged right. He asserts the New York State Education Law, C.L.S. Educ. Law SS 253, 262, which create the right to access, use and enjoy the public library for the receipt of communication and information as well as free or political speech. He further asserts that state law C.L.S. Educ. Law S 260(12) creates and establishes his right to access, use and enjoy the Internet and the Internet-accessible computers for the communication and receipt of information, free or political speech at the public library.

"The court in Medina stated that, "a state-recognized interest might also exist if a right, upon equal terms with others generally, to be licensed so as to engage in a common activity or pursuit... It seems likely that a state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists." David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146; Medina

This excerpt could describe the issuance of a library card (i.e. a New York Public Library "Access" card) and the privileges of using public Libraries, as explained via the prior use doctrine, where the New York Public Library had on numerous prior occasions already-extended library privileges to Gomes to access, use and enjoy the library as well as the State of New York creating and establishing a state-recognized right under C.L.S. Educ. Law SS 253, 260(12), 262 which give Gomes a license to access, use, and enjoy the New York Public Library (NYPL), the Internet and the Internet-accessible computers thereof for the receipt of all communication, information, free or political speech and all other emoluments therein.

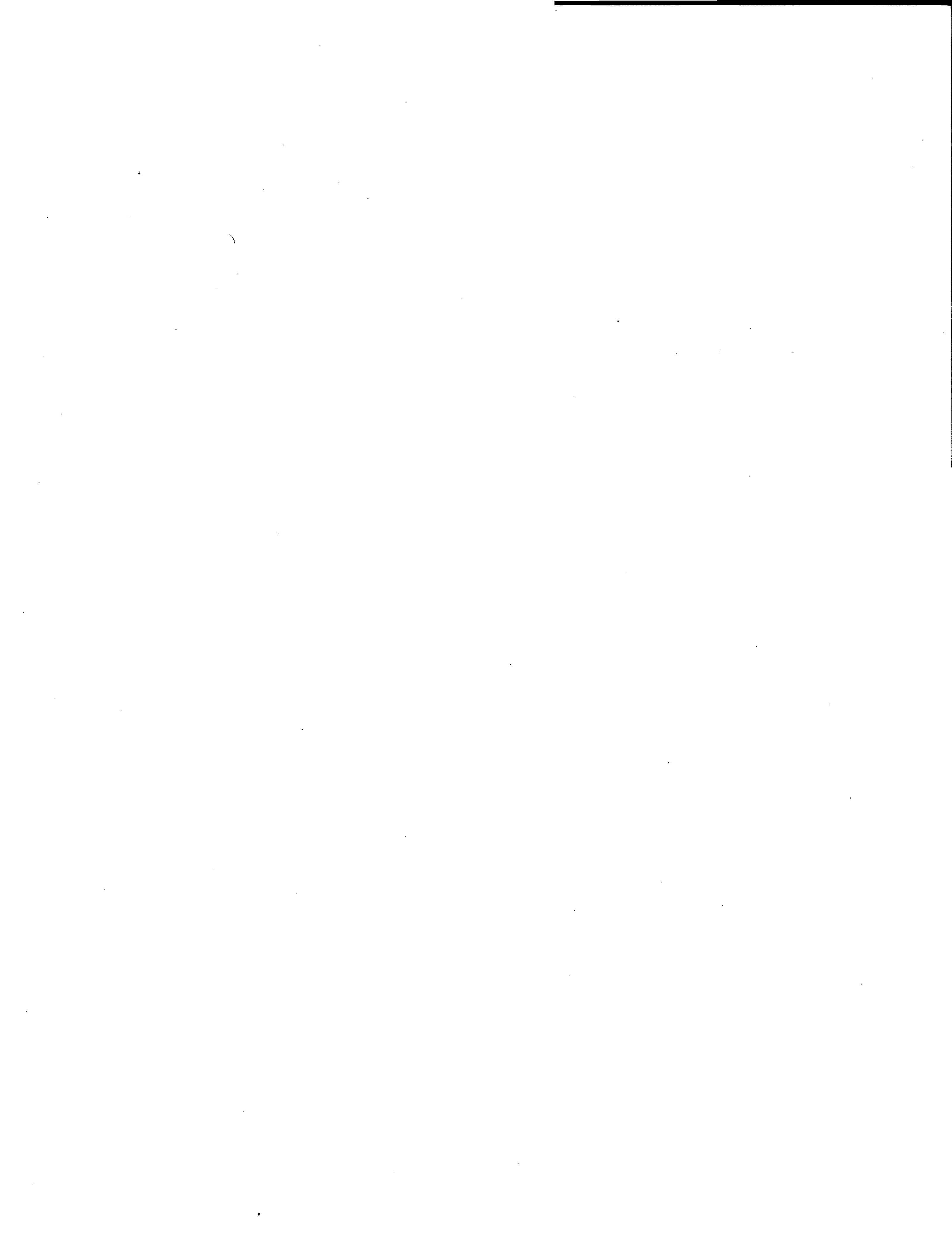
Hence, Gomes has a license via the New York Public Library "Access" card he applied for, was granted and given and via the pre-existing prior use doctrine. He also has a license via the state-recognized status under state law or the 'Education Law' of the state of New York. See C. L. S. Educ. Law SS 253, 260(12), 262. Therefore, not only does Gomes have a license to use the library and the Internet thereof. He also has a state recognized status to access, use and enjoy such library, its internet, its internet-accessible computers for the receipt of all communication, information, free or political speech and all emoluments therein as well as the freedom to associate in a public library or over the Internet via the many Online groups and gatherings, in addition to the rights already established with regards Constitutional Amend I, Amend V, and Amend XIV, all provisions assert under the Civil Rights Act of 1964 and the New York State Constitution SS 8, 9, 11.

Thus, Gomes alleged right to access, use and enjoy the library and the Internet as well as the internet-accessible computers thereof can be explained on such grounds of possessing a library granted license or a library granted prior use license or on the existence of state-recognized status or license as well as on the ground that the right to an education, work, conduct business, engage in one's chosen profession and pursue an ordinary occupation is, by itself, a fundamental 'liberty' and 'property' interest. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

Hence, "it seems more likely that the library access is intended to be "open to all persons who meet prescribed standards" (e.g. residency and minimum age) than that it is "treated as discretionary" by a supervisory board" or in the case at bar, the Gomes case by the defendants or rogue government actors in the form of the library staff and the library security detail. David Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146.

One final note of last importance: The afore prescribed residency standard invoked by the District Court in the Wayfield case has no relevance in the case at bar or the Gomes case. Because the Education Law of the State of New York, C.L.S. Educ. Law SS 253, 262 permits library privileges to be extended outsiders. It is a well-known and established fact that the New York Public Library (NYPL) extends library privileges and computer and Internet use to outsiders such as the many tourists who visit the library on a daily basis. Thus, the residency requirement becomes null and void via the doctrine of prior use. Further, the minimum age requirement does no apply to the plaintiff. Besides, Gomes has a 'liberty' right to access, use and enjoy the public library, the Internet and the Internet-accessible computers thereof for receipt of all communication, information, free or political

speech and all emoluments therein on equal terms with others in the community inherent in his classification of inhabitant with in the citizenry of the State and City of New York and the United states of America.



Cases to support Governments involvement knowledge and liability.

"Useful to note the special relationship existing between the city and library which, when brought to its attention by the city, PERB had to recognize. It starts from the history of library's inception." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463

"By a series of legislative enactments, three separate private trusts established to provide library services to the City of New York for the free use of all its people were incorporated; the enactments authorized the trusts to accept bequests from John Jacob Astor, James Lennox and Samuel J. Tildon. The "New York Free Circulating Library," an entity of the city itself, was also established by statute, and at a later date, again by statute, all were merged into one. Under the law, the city was authorized to erect the main library building and to enter into an agreement with the library permitting its use and occupation for as long as was free. The same agreement also provided the city should supply funds for its maintenance and operation. New York City's Mayor was granted power to appoint and remove the library's trustees. Thereafter, Andrew Carnegie's offer to pay for erection of branch libraries led to further legislation authorizing the city to acquire library sites by gift, purchase or condemnation and to maintain the buildings after their construction; that legislation also provided that "amounts required for such maintenance shall constitute a city charge to be provided for in the annual budget and a tax levy of said city." (L 1901, Ch. 580, S3). New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463

"In applying for city funds, the library is subject to the same controls applicable to conventional city departments. It must supply performance standards to justify the number of employee hours for which it seeks reimbursement. It submits its budget through the department of Parks, Recreation and Cultural Affairs and defends it, in the same fashion as other city budget items, at hearings before the city budget director. During that process, budget cuts are imposed on the library as on other agencies and they directly affect employee levels and salaries." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463,

"The non-salary terms and conditions negotiated between the union and the city are incorporated in the employees' contract with the library. The payroll of the library must be certified to the city so it may keep tabs on whether the salary and

benefit programs are lived up to. Since, the library extends the benefits won by its city–paid employees in their negotiations to the small number of its employees paid by other governmental or private funds, the labor relations with the city set the pattern for all. The library is even subject to the city's "hiring freeze" in it's filling of vacant positions and promotion of library employees. Shift differentials, meal allowances and overtime are determined similarly. The city pays for the library's employees' contributions to the welfare fund." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463,

"It is manifest then the city's involvement in the library's employee relations added up to a very high, well-nigh complete, incidence of control over the terms and conditions of employment and to an equal degree of integration of the library's employee relations program into that of the city as a whole. Those are the classic factors considered in determinations of joint employer-ship, and while cases are not binding, there is no reason why, in a conceptual context, they could not be highly persuasive." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463, See, NLRB v. Greyhound Corp., 368 F. 2d 778; Boire v. Greyhound Corp., 376 U.S. 473; NLRB v. Jewell Smokeless Corp., 435 F. 2d 1270; Herbert Harvey, Inc. v. NLRB, 385 f. 2d 684; NLRB v. Gibraltar Ind., 307 F.2d 428.

"Ergo, PERB's conclusion the city was in fact a joint employer is not only well founded but unavoidable. That it is statutorily authorized is equally clear." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463,

"The factors tending toward the establishment of a public function demonstrate the uniqueness of the library-city relationship and its effect in devolving the status of joint employer on the city." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463.

"The statutory definitions of "public employers" found in the Taylor law do not include the library; technically it is, unlike the city, neither a public benefit corporation nor an agency exercising governmental power (See Civil Service law, S 201, Subd. 6, par (a)), although it in some ways approaches being either or both of these things." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463

"The employees must also be public; the statute authorizes the government applying 'shall be deemed to be a joint public employer of public employees.'" (Emphasis added). New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463,

"I find that a persuasive reason to hold, where employees relationships are so dominated by government control and influence as in this case, the special nature of government employment." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463

"The genesis of PERB's determination, PERB's authority to determine appropriate units for bargaining purposes under section 207 includes the question of who is proper employer for a given unit of employees. Once the city applied for reconsideration of the jurisdictional question, the issue was met head on." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463,

"The employees themselves. For all practical purposes, they are now already city employees." New York Public Library v. New York Public Employee, 37 N.Y.2d 752, 337N.E.2d 136; 374 N.Y.S.2d; 1975 N.Y. LEXIS 2178, 90 L.R.R.M 2463

"Does not mean it (a public library) cannot also be a municipal corporation. Public Libraries clearly serve public functions at public expense." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999)

"The District Court examined the close fiscal ties between WCPHS and Washington County to conclude the two entities were so closely interconnected as to be virtually indistinguishable; the county was the real party in interest. The same is true herein." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999)

"The law is unclear insofar as public libraries are concerned, we are persuaded a public library is a variety corporation" Margaret M. Bovich v. East Meadow Public Library, 16 A.D. 3d 11, 789 N.Y.S 2d 511, 2005 N.Y. App. Div. Lexis 1354

"The Supreme Court determined the library was indeed a public corporation." Margaret M. Bovich v. East Meadow Public Library, 16 A.D. 3d 11; 789 N.Y.S 2d 511, 2005 N.Y. App. Div. Lexis 1354

"So too is the library a variety of Municipal Corporation." Bovich v. East Meadow, AD2d 315,691 NYS2d 546 (1999) (Cf. Sarmine v. Mohawk Val. Gen. Hosp., 75 AD2d 1012, 429 NYS2d 134 (1980))

"Library was a creation of, and was funded by, the district, and as such, was a "municipal corporation through its inherent link to the District," and was like the district." Margaret M. Bovich v. East Meadow Public Library, 16 A.D. 3d 11; 789 N.Y.S 2d 511, 2005 N.Y. App. Div. Lexis 1354.

"The Brooklyn Public Library, a corporation chartered by legislative act." Joseph LaMarca v The Brooklyn Public Library, The City of New York, 256 A.D. 954, 10 N.Y.S. 2d 129, 1939 N.Y. App. Div. Lexis 5606

"Authorized the city, through its Board of Estimate and Apportionment, to enter into a contract, for the building and maintenance of new libraries and for maintenance of existing libraries." The Brooklyn Public Library v The City of New York, 250 N.Y. 495, 166 N.E. 1179, 1929 LEXIS 907.

"Whole tenor and spirit of the contract is to the effect the new corporation, Brooklyn Public Library, and for the purpose of making the property a part of the free public library system of the City of New York." The Brooklyn Public Library v City of New York, 250 N.Y. 495, 166 N.E. 1179, 1929 LEXIS 907.

"The Brooklyn Public Library become an instrumentality for carrying out of the plan for building up and maintaining that system." The Brooklyn Public Library v City of New York, 250 N.Y. 495, 166 N.E. 1179 1929, LEXIS 907. It was an integral part thereof.

"City had the obligation of maintaining its own libraries, the title to which rested in the city." The Brooklyn Public Library v City of New York, 250 N.Y. 495, 166 N.E. 1179, 1929 LEXIS 907. It is an integral part thereof.

"The beneficial use of the same became a part of the free public library system entitled to financial support of the city." The Brooklyn Public Library v. City of New York, 250 N.Y. 495, 166 N.E. 1179, 1929 LEXIS 907.

"The contract (June 1903) as including various auxiliary and enabling statutes, the city, envisaged the survival or devolution into it (The Brooklyn Public Library) powers of self-control possessed by the merged organizations, including the right

to appoint the library staff and to fix compensation thereof. The city agreed to appropriate in its annual budget such sums as might be requisite for maintenance and administration of the library." In Matter of the Application of the Brooklyn Public Library for a Preemptory Writ of Mandamus Directed to Charles L. Craig, as Comptroller of the City of New York; 201 A.D. 722; 194 N.Y.S. 715; 1922 N.Y. App. Div. LEXIS 6399.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:

Joe A. Gomes v.

New York Public

Library, et al.,

CERTIFICATE OF SERVICE
Docket Number: 11-1685-CV

I, Joe A. Gomes (name), hereby certify under penalty of perjury that on ______ (date), I served a copy of ______

______ (list all documents)

by (select all applicable)*

- [ ] United States Mail
- [ ] Federal Express
- [ ] Overnight Mail
- [ ] Facsimile
- [ ] E-mail
- [ ] Hand delivery

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