

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

ANTHONY VERDUGO and CHRISTIAN
FAMILY COALITION

Plaintiffs,

v.

OSCEOLA COUNTY, FLORIDA;
EDWARD A. KILROY, in his official
capacity as Director of the Osceola County
Library System; MICHAEL E.
HARFORD, in his official capacity as
Osceola County Commissioner; JOHN
QUINONES, in his official capacity as
Osceola County Commissioner;
BRANDON ARRINGTON, in his official
capacity as Osceola County Commissioner;
KEN SMITH, in his official capacity as
Osceola County Commissioner; and FRED
HAWKINS, JR., in his official capacity as
Osceola County Commissioner.

Defendants.

Civil Action No.: 6:09-CV-2008-35KRS

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

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 U.S. DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA

FILED

Plaintiffs Anthony Verdugo and the Christian Family Coalition, by and through counsel, make this Complaint against the Defendants and state as follows:

INTRODUCTION

1. This is a civil rights action seeking declaratory and injunctive relief, and damages, against Defendants. Defendants have made a Library meeting room at the Hart Memorial Central Library generally available to the public for a wide array of expressive activity. Yet, they prohibit religious uses of the room. When Plaintiffs requested permission to use the Meeting Room for a seminar on "Is Religion Alive in America," they were denied due to the Defendants' Policy prohibiting religious use of the Meeting Room.

2. Defendants' discriminatory policy, and enforcement thereof, violates Plaintiffs' First Amendment rights of free speech and the free exercise of religion, as well as its Fourteenth Amendment rights of due process and the equal protection of the laws. The policy is also hostile to religion and excessively entangles the Defendants with religion in violation of the First Amendment's Establishment Clause.

JURISDICTION AND VENUE

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

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

5. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the Western District of Michigan because a substantial part of the events or omissions giving rise to the claims arose in this district.

THE PARTIES

6. Plaintiff Anthony Verdugo is a Florida resident, and is the Founder and Executive Director of the Christian Family Coalition. He desires to use the community room to spread religious views concerning current events.

7. Plaintiff Christian Family Coalition is a Florida non-profit organization.

8. Defendant Osceola County is a public body politic and can sue and be sued. Osceola County governs and controls the Osceola Library System.

9. Defendant Michael Harford is an Osceola County Commissioner and is sued in his official capacity.

10. Defendant John Quinones is an Osceola County Commissioner and is sued in his official capacity.

11. Defendant Brandon Arrington is an Osceola County Commissioner and is sued in his official capacity.

12. Defendant Fred Hawkins, Jr., is an Osceola County Commissioner and is sued in his official capacity.

13. Defendant Edward A. Kilroy is the Director of the Osceola Library System, and is sued in his official capacity.

FACTUAL ALLEGATIONS

14. Plaintiff Verdugo is a Christian, and the Executive Director of the Christian Family Coalition.¹

15. Plaintiff Verdugo believes it is his Christian calling to educate the public concerning how Christian principles apply to current events.

¹ Both Verdugo and the Christian Family Coalition will be referred to collectively as "Plaintiffs".

16. Plaintiffs desire to use the public meeting room at the Hart Memorial Central Library, located at 211 E. Dakin Avenue (“Meeting Room”), to hold a seminar entitled, “Is Religion Alive in America?”

17. The purpose of this seminar is to educate the public about how Christian principles apply to current events.

18. Defendants have a policy and practice of permitting persons to use the Meeting Room (“Policy”). The Defendants’ Policy is attached as exhibit A.

19. The Policy states, “Space permitting, rooms are made available to the public to conduct nonprofit, noncommercial, and non-religious functions. Any public use of the rooms must be free of registration and/or admission charges, free of exclusionary criteria, and may not be conducted for solicitation or commercial gain.”

20. The Policy does not allow for religious uses of the Meeting Room.

21. On October 5, 2009, Plaintiffs submitted a letter to the Hart Memorial Central Library, requesting to use the Meeting Room for the seminar. The letter stated,

We would like to reserve a meeting [room] at the Hart Memorial Central Library location, on 211 E. Dakin Avenue, for a seminar on “Is Religion Alive in America?” We would like to hold our seminar sometime between January 2010 and March 2010, preferably on a Tuesday or Wednesday night. The seminar deals with current events and discusses them from a biblical perspective. In doing that, we will read from the Bible, pray, and sing religious songs if that is permitted by your noise policies. For example, we will explore what the Bible has to say about a national health care system or immigration. What do you need from us to reserve the room for this seminar?

22. On or about October 16, 2009, Plaintiffs received a response from the Library rejecting the request to use the room. The response said, “Thank you for your interest in using the Library free Multipurpose Room. Unfortunately, your request is denied due to the Library rules and regulation regarding County Property and Religious Functions....”

23. On information and belief, Defendants have permitted non-religious organizations to use the Meeting Room to talk about current events.

LEGAL ALLEGATIONS

24. All alleged acts of the Defendants, their officers, agents, servants, employees, and persons acting at their behest, were done and continue to be done under the color and pretense of state law.

25. As alleged in greater detail below, the Policy, both on its face and as applied to the Plaintiffs, violates the Plaintiffs' constitutional rights.

26. As a direct result of the Defendants' violation of their constitutional rights, as alleged below, Plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

CLAIMS FOR RELIEF

I. First Claim: Violation of the Free Speech Clause of the First Amendment to the United States Constitution.

27. The allegations contained in each preceding paragraph are incorporated herein by reference.

28. The Defendants have intentionally made the Meeting Room generally available to the public for a broad range of private expression.

29. Religious speech, including the speech Plaintiffs intend to engage in during the seminar, is fully protected by the First Amendment.

30. Defendants' Policy, and the enforcement thereof:

- a. Single out religious speech for discriminatory and unfavorable treatment;
- b. Condition access to a generally available public facility based on the content and viewpoint of the applicant's speech;

- c. Restrain constitutionally-protected speech in advance of its expression;
- d. Chill the Plaintiffs' speech and that of other individuals and organizations subject to the Policy;
- e. Were specifically drafted to burden religious expression like that of Plaintiffs.

31. The Defendant has no compelling reason that would justify its prohibition of religious speech in the Meeting Room.

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

II. Second Claim: Violation of the Free Exercise Clause of the First Amendment to the United States Constitution.

33. The allegations contained in each preceding paragraph are incorporated herein by reference.

34. Plaintiffs desire to gather with other Christians to engage in religious expression and activity that is motivated by their sincerely held religious beliefs.

35. Defendants' Policy is neither facially neutral nor generally applicable with respect to religion.

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

37. The Policy and Defendants' enforcement thereof were specifically drafted to burden religious expression and religious exercise.

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

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

III. Third Claim: Violation of the Establishment Clause of the First Amendment to the United States Constitution.

40. The allegations contained in the preceding paragraphs are incorporated herein by reference.

41. The Policy and the Defendants' enforcement thereof are hostile toward religion and favor irreligion over religion.

42. The Policy and the Defendants' enforcement thereof treat the Plaintiffs as second-class citizens of the community because of their protected religious expression, beliefs, and conduct.

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

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

45. Defendants have no compelling interest that justifies its hostility toward religion, or that justifies its excessive entanglement with religion.

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

IV. Fourth Claim: Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

47. The allegations contained in the preceding paragraphs are incorporated herein by reference.

48. The Policy is vague and lack sufficient objective standards to cabin the discretion of government officials, which allows the Policy to be enforced in an *ad hoc* and discriminatory manner.

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

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

V. Fifth Claim: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

51. The allegations contained in the preceding paragraphs are incorporated herein by reference.

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

53. Under the Policy, the Defendants give similarly situated organizations free access to the Meeting Room, but prohibit Plaintiffs the same access solely because of their religious nature, speech, and conduct.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and respectfully request the following relief:

A. Preliminarily and permanently enjoin the Defendants, and their agents, servants, employees, officials, and any other person acting on their behalf, from enforcing the Policy to the extent that it violates the Plaintiffs' constitutional rights;

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

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

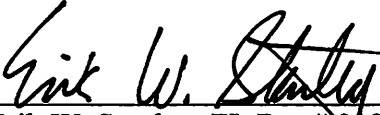
D. Award nominal damages and actual damages in the amount of \$100 to Plaintiffs against the Defendant;

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

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

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

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



Erik W. Stanley, FL Bar # 0183504

Joel L. Oster, FL Bar # 0659746*

Alliance Defense Fund

15192 Rosewood

Leawood, Kansas 66224

Tel: (913) 685-8000

Fax: (913) 685-8001

Email: joster@telladf.org

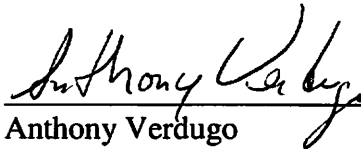
Attorneys for Plaintiff

* Attorney Special Admission Certification pending

VERIFICATION OF COMPLAINT

I, Anthony Verdugo, a citizen of the United States and resident of the State of Florida, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 23rd day of Nov, 2009.



Anthony Verdugo

Welcome to Osceola Library

Book a Room

+ Larger Text | - Smaller Text

Multipurpose Rooms

The primary use of the multi-purpose rooms is for Library and County related events. Space permitting, rooms are made available to the public to conduct nonprofit, noncommercial, and nonreligious functions. Any public use of the rooms must be free of registration and/or admission charges, free of exclusionary criteria, and may not be conducted for solicitation or commercial gain. Functions may not disrupt the use of the Library by others. Persons attending these multi-purpose room functions are subject to the Library Code of Conduct. Additionally, functions will be open to the public.

For more information, please telephone 407.742.8888 Monday through Friday during the hours of 9 a.m. to 5 p.m.

To check room availability, see the Room Request Calendar.



- 211 E Dakin Ave. Kissimmee, FL 34741 | 407.742.8888
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