

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
ALBANY DIVISION

U.S. DISTRICT COURT  
N.D. OF N.Y.  
ORIGINAL FILED

GREG DAVIS,  
Plaintiff

vs.

DONALD C. KATT, in his official capacity as  
President for Ulster County Community  
College, GORDON H. HOWATT, JR.,  
individually and in his official capacity as  
Dean of Administration for Ulster County  
Community College, JEFFREY E.  
STOUTENBERG, individually and in his  
official capacity as Associate Dean of  
Administration for Ulster County Community  
College, and JAMES QUIRK, individually  
and in his official capacity as Associate Dean of  
Student Services for Ulster County Community  
College,  
Defendants

SEP 07 2005

LAWRENCE K. BAERMAN, CLERK  
ALBANY

Civil Case No. ~~05~~ - CV - 1123

GLS / DRH

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

COMES NOW Plaintiff, Greg Davis, and for his cause of action against  
Defendants named herein, avers the following.

**INTRODUCTION**

1. This is a civil rights action brought by Plaintiff Greg Davis, seeking  
injunctive relief, declaratory relief, and damages, pursuant to 42 U.S.C. §§1983 and  
1988, against Defendants Donald C. Katt, in his official capacity as President for Ulster  
County Community College, Gordon H. Howatt, Jr., individually and in his official  
capacity as Dean of Administration for Ulster County Community College, Jeffrey E.  
Stoutenberg, individually and in his official capacity as Associate Dean of Administration

for Ulster County Community College, and James Quirk, individually and in his official capacity as Associate Dean of Student Services for Ulster County Community College.

2. This action is premised on the United States Constitution concerning the denial of Plaintiff Greg Davis' fundamental rights of free speech, free exercise of religion, due process and equal protection by the Defendants named herein.

3. Defendants' actions have deprived and will continue to deprive Plaintiff Greg Davis of his paramount rights and guarantees provided under the United States Constitution.

4. Each and every act of Defendants alleged herein were committed by Defendants, each and every one of them, under the color of state law and authority.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§1331 and 1343. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

6. Venue is proper in the Northern District of New York, pursuant to 28 U.S.C. §1391(b), because the claims arise in this district and Defendants reside in this district.

#### **PLAINTIFF**

7. Plaintiff Greg Davis ("Mr. Davis") is a resident of Indian Lake, Hamilton County, New York.

#### **DEFENDANTS**

8. Defendant Donald C. Katt ("Mr. Katt") is President of Ulster County Community College ("UCCC"). In his official capacity, among other duties, he is

charged with oversight of the administration of UCCC policies, including policies that relate to free speech and expressive activities on the campus of UCCC.

9. Defendant Gordon H. Howatt, Jr. (“Mr. Howatt”) is Dean of Administration for UCCC. In his official capacity, he is charged, among other duties, with the responsibility for the administration and implementation of the regulations for use of the grounds on the campus of UCCC.

10. Defendant Jeffrey E. Stoutenberg (“Mr. Stoutenberg”) is Associate Dean of Administration for UCCC. In his official capacity, among other duties, he is responsible for regulating use of open spaces on the campus of UCCC.

11. Defendant James Quirk (“Mr. Quirk”) is Associate Dean of Student Services for UCCC. In his official capacity, among other duties, he oversees student activity on the campus of UCCC.

### **FACTS**

12. Mr. Davis is a professing Christian and a public speaker for his religious faith. As a tenet of his faith, Mr. Davis publicly communicates and conveys his beliefs and convictions about his religion.

13. In fulfilling this tenet, Mr. Davis travels to public areas where he has access to significant numbers of individuals. On these public ways, Mr. Davis peacefully communicates a message on various topics, including current issues, all from a religious perspective.

14. Mr. Davis desires to share his religious message with students and others found at public universities because of his interest in and concern for college students.

15. Mr. Davis has no intent to physically touch or harass anyone, or encourage violence, or to express himself in any way other than in a peaceful manner. Mr. Davis has no intent to encroach upon the private property of any person or entity, or to engage in speech activities in any area other than public areas.

16. In Mr. Davis' attempt to reach college students with his message, he uses various means of communication. Typically, Mr. Davis engages in public speaking, which he refers to as "preaching." He also hands out religious pamphlets and makes use of signs and banners. On some occasions, Mr. Davis attempts to use symbolic speech. Ideally, Mr. Davis seeks to engage individuals in one-on-one conversations.

17. During the course of his expression, Mr. Davis encourages dialogue and intellectual discussions on the moral issues of the day.

18. Usually, Mr. Davis will place himself in public areas where college students are already located. He makes no attempt to gather a crowd. Mr. Davis wishes to speak to as many students as possible, but is content to speak to an audience of one if only one person is found in the area.

19. For the purposes of his speech, Mr. Davis requires no certain space or equipment. He only requires an opportunity to be on public property and communicate his message.

20. UCCC is a unit college, part of the State University of New York System ("SUNY").

21. Mr. Davis considers UCCC a uniquely suitable place for his speech because of the open spaces located throughout the campus, the significant number of students that can be found there, and proximity to his residence.

22. On October 10, 2003, Mr. Davis sought to share his religious perspective on the campus of UCCC. Prior to doing so, Mr. Davis spoke with the Associate Dean of Administration for UCCC, Mr. Stoutenberg.

23. Mr. Davis informed Mr. Stoutenberg of his purpose, explaining that he wanted to communicate a religious message to students.

24. Mr. Stoutenberg advised Mr. Davis that there is an application process in the registrar's office for that type of expressive activity. He instructed Mr. Davis to fill out a facility use application.

25. Mr. Davis clarified that he did not want to use any particular facility, but merely wished to speak in an accessible outside space on the campus.

26. Mr. Stoutenberg responded, "Okay. Okay." And then asked Mr. Davis to elaborate on what kind of activity he would be conducting.

27. Mr. Davis informed Mr. Stoutenberg that he would be "preaching."

28. Upon hearing this, Mr. Stoutenberg told Mr. Davis that this expressive activity would be appropriate as long as such did not interfere with the academic environment. Mr. Stoutenberg added that UCCC has a maintenance of order policy.

29. Mr. Davis advised that he did not intend to speak near any classes.

30. Mr. Davis then directed Mr. Stoutenberg's attention to a grassy area in the center of the campus next to the cafeteria where students were congregating and sitting on benches. This is an area that could be seen from Mr. Stoutenberg's office and appeared to Mr. Davis to be an appropriate venue for his speech. Mr. Davis suggested that he use this particular area for his speech purposes.

31. Mr. Stoutenberg indicated that the suggested space would be an appropriate place for Mr. Davis to use for his speech.

32. Mr. Davis reiterated that he did not desire to use any of the facilities, only an open area where students could be found.

33. Mr. Stoutenberg queried: "Okay. You just want to speak to students?"

34. Mr. Davis confirmed that he did just wish to speak to students. Expounding further on his anticipated expression, Mr. Davis explained that he likes to address various topics from a Christian perspective.

35. Mr. Stoutenberg commented: "All right, yeah, it's kind of a free speech issue. My only concern is if it's something that disturbs campus activities, then there could be some difficulties."

36. Mr. Davis assured Mr. Stoutenberg that he did not anticipate anything taking place that could disturb campus activities.

37. Mr. Stoutenberg asked Mr. Davis if he would be speaking alone and without amplification.

38. Mr. Davis assured Mr. Stoutenberg that he would be speaking alone and that he would not be using any amplification, just open-air "preaching," as well as other peaceful forms of expression.

39. Mr. Stoutenberg asked Mr. Davis when he anticipated engaging in his desired expression. Mr. Davis informed that he usually begins around 11:30 a.m., the time he thought students would be getting out of class.

40. Mr. Stoutenberg reiterated that it is a free speech issue and he posed no objection to the expressive activity, as long as it did not interfere with classes. Mr.

Stoutenberg went on to say that they usually ask someone who wishes to conduct expressive activity on the campus to fill out a facility use application.

41. Mr. Davis apprised Mr. Stoutenberg again that he did not wish to fill out an application because he had no intention or interest in using a facility; Mr. Davis only wanted to speak on the open space on the campus.

42. Mr. Stoutenberg told Mr. Davis that he appreciated him coming to his office to provide notice of his activity. Mr. Stoutenberg further advised that he understood Mr. Davis' desire not to fill out a permit application. And Mr. Stoutenberg concluded that Mr. Davis could proceed without filling out an application, as long as his expression did not disturb classes.

43. Mr. Davis asked Mr. Stoutenberg to advise if there was ever any indication that his expression was disturbing classes. If so, Mr. Davis informed that he would gladly move to another area where noise would not be a problem.

44. Mr. Stoutenberg concurred with Mr. Davis' thoughts on the matter and told Mr. Davis that he could use the same open space in front of the cafeteria where Mr. Davis previously mentioned he would like to speak.

45. At that point, Mr. Davis gave Mr. Stoutenberg his name and left to speak in the open space in front of the cafeteria on campus.

46. Upon reaching the open space by the cafeteria on the campus, Mr. Davis started passing out religious literature to individuals in the vicinity.

47. While in the process of doing this, an unidentified individual affiliated with UCCC approached Mr. Davis and instructed Mr. Davis to cease his efforts in passing out literature.

48. Mr. Davis informed this gentleman of his belief that he has a right to distribute literature in the area.

49. This individual then told Mr. Davis, in a stern manner, that Mr. Davis would not be allowed to conduct such expressive activity on the campus.

50. Mr. Davis stopped his literature distribution in response to this mandate. Mr. Davis advised this gentleman affiliated with UCCC that he would drop the issue for the moment because he was about to preach anyway. Mr. Davis further advised he would deal with the literature issue at a later time.

51. This same gentleman then pointed to Mr. Davis' banner that bears the following statement: "Tired of Sin? Jesus is the Answer," and told Mr. Davis that he could not have his banner in the area either.

52. Mr. Davis disagreed with this contention and informed the gentleman that the banner is part of his right to express his religious beliefs in public. Mr. Davis also informed of his conversation with Mr. Stoutenberg, and suggested to this gentleman that he speak to Mr. Stoutenberg about Mr. Davis' presence and speech.

53. The gentleman left, and subsequently returned with Mr. Stoutenberg.

54. Mr. Stoutenberg told Mr. Davis that he did not have a problem with Mr. Davis speaking, but Mr. Davis would be required to fill out an application if he wanted to "set stuff up."

55. Mr. Davis asked Mr. Stoutenberg what he meant by the phrase "set stuff up."

56. Mr. Stoutenberg referred to Mr. Davis' banner and pulpit and said he must fill out a permit application to "set stuff up."

57. In an effort to alleviate the purported concern, Mr. Davis informed Mr. Stoutenberg that he would take the banner down.

58. Mr. Stoutenberg then pointed to the pulpit and implied that Mr. Davis would be required to take the pulpit down as well.

59. Mr. Davis advised that he would take down the banner at this particular time, but insisted on his right to keep the pulpit.

60. Mr. Davis explained that he keeps items in the pulpit for his expressive purposes, like water, and certain things he likes to use for demonstrative reasons.

61. Mr. Stoutenberg agreed to let Mr. Davis keep the pulpit.

62. Mr. Stoutenberg elaborated that Mr. Davis would not be allowed to pass out any written information unless Mr. Davis filled out a permit for that purpose.

63. Mr. Davis asked if this restriction included passing out of Bibles, and Mr. Stoutenberg replied in the affirmative.

64. While Mr. Stoutenberg was still present, another gentleman, Mr. Quirk, Associate Dean of Student Services for UCCC, approached Mr. Davis and asked if Mr. Davis is a student.

65. Mr. Davis responded that he is not a student at UCCC.

66. Mr. Quirk then asked Mr. Davis if he had a reason to be on campus.

67. Mr. Davis informed Mr. Quirk that he was there to share his Christian viewpoints on various topics.

68. Mr. Quirk told Mr. Davis that this type of expressive activity is prohibited on the campus of UCCC.

69. Mr. Davis explained to Mr. Quirk that there are constitutional rights at stake and told him that he engaged in this sort of expressive activity on college campuses all across the country.

70. Mr. Quirk replied: “You’re not going to do it here.”

71. Mr. Quirk further advised Mr. Davis, that by the authority vested in him, on behalf of UCCC, if Mr. Davis continued to speak, he would be arrested and charged with trespassing.

72. For fear of arrest, Mr. Davis left the campus of UCCC.

73. Subsequently, Mr. Davis filled out an application and submitted it to UCCC for the purpose of engaging in his desired speech, which would include public speaking, literature distribution, the use of signs and banners, symbolic speech and individual conversation on open areas of the campus. Although he continued to believe the application process did not apply to him and his speech for open spaces on the campus, Mr. Davis submitted this application so he could share his Christian message on the campus.

74. A few weeks later, Mr. Davis received a response to his application in the form of a letter from Mr. Howatt.

75. In said letter, Mr. Howatt apprised Mr. Davis that his application to express his message on the campus of UCCC has been denied outright.

76. In this same letter, Mr. Howatt informed Mr. Davis that UCCC policy precluded his religious speech on campus because his desired expression does not constitute a “cultural,” “educational,” “social,” or “recreational” activity.

77. Pursuant to the speech policy adopted by and enforced by UCCC, that serves to ban religious speech on campus, Mr. Davis is chilled and deterred from communicating his religious message on the campus of UCCC.

78. Mr. Davis fears he will be arrested for engaging in desired speech on the campus of UCCC. This fear of arrest, created by the UCCC policy banning religious speech, severely limits Mr. Davis' constitutionally protected speech and religious practices on the grounds of the campus of UCCC.

79. The impact of chilling and deterring Mr. Davis from exercising his constitutional rights on open accessible areas on the campus of UCCC constitutes irreparable harm to Mr. Davis.

80. Mr. Davis does not have an adequate remedy at law for the loss of his constitutional rights.

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

81. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

82. The Free Speech Clause, as set out in the First Amendment to the United States Constitution, incorporated and made applicable to the states by the Fourteenth Amendment, provides for protection of speech and prohibits censorship of expression.

83. Defendants' policy and practice adversely impacts protected speech by censoring and threatening to censor religious expression on the campus of UCCC.

84. Defendants' policy and practice further act as a prior restraint on Mr. Davis' expression because his speech is stopped in advance of him participating in his desired expression.

85. Defendants' policy and practice that inhibit religious expression imposes an objective burden on individuals, like Mr. Davis, who wish to communicate religious views.

86. Defendants' policy and practice are content-based restrictions premised on the religious nature of the expression.

87. No legitimate state interest exists to justify the ban on Plaintiff's expression.

88. Defendants' policy and practice are not narrowly drawn to accomplish any permissible governmental purpose sought to be achieved by their actions.

89. Defendants' policy and practice act to violate Plaintiff's fundamental right to engage in free speech.

## **SECOND CAUSE OF ACTION**

### **VIOLATION OF FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

90. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

91. The Free Exercise Clause, as set out in the First Amendment to the United States Constitution, incorporated and made applicable to the states through the Fourteenth Amendment, provides for protection of free exercise of religion and prohibits the infringement thereof.

92. Defendants have a constitutional duty to accommodate religious beliefs and the free exercise of religion.

93. Plaintiff, as an essential component of his Christian faith, desires to express his religious viewpoints on the UCCC campus.

94. Defendants' policy and practice of banning religious expression are neither facially neutral nor generally applicable in respect to religion. The policy specifically targets a religious activity in an attempt to curb it.

95. Defendants' policy and practice of banning religious expression selectively imposes a burden on the religious nature of the activity.

96. Defendants have no legitimate reason that could justify banning Plaintiff's religious activity.

97. Defendants' policy and practice act to violate Plaintiff's fundamental right to freely exercise his religion.

### **THIRD CAUSE OF ACTION**

#### **VIOLATION OF ESTABLISHMENT OF RELIGION UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

98. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

99. The Establishment Clause, as set out in the First Amendment to the United States Constitution, incorporated and made applicable to the states by the Fourteenth Amendment, prohibits hostility toward religion.

100. Defendants' policy and practice of banning religious expression are not neutral toward religion, but are invidious and hostile toward religion, specifically demonstrating hostility toward Plaintiff's faith of Christianity.

101. No legitimate state interest exists to justify the hostility toward Plaintiff's religion.

102. Defendants' policy and practice, and enforcement thereof, excessively entangles Defendants and government with religion by requiring university officials to investigate and monitor speech to determine its religious nature.

103. Defendants' policy and practice act to violate Plaintiff's fundamental right to avoid governmental hostility toward his religion.

#### **FOURTH CAUSE OF ACTION**

#### **VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

104. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

105. The Due Process Clause, as set out in the Fourteenth Amendment, and applicable to the states, provides for a fundamental right to due process under the law.

106. Defendants' policy and practice of preventing religious expression on campus fail to adequately advise, notify, or inform individuals that religious activity is prohibited behavior on campus. Plaintiff has every reason to believe that his speech serves a "cultural," "educational," "social," or "recreational" purpose.

107. Because Defendants' policy and practice of preventing religious expression fail to adequately advise, notify, or inform individuals of the prohibition, they are unconstitutionally vague on their face and as applied to Plaintiff's religious activities.

108. Defendants' policy and practice of providing university officials unbridled discretion to halt expression on campus pursuant to vague and overly broad terminology, permits these officials undue opportunity to prevent religious expression and activities on the basis of viewpoint.

109. Defendants' articulated policy preventing religious expression on campus are vaguely worded and lack sufficient objective standards to limit the discretion of university administrators, which allows the policies to be enforced in an *ad hoc* and discriminatory manner.

110. Defendants' policy and practice act to violate Plaintiff's fundamental right to due process.

### **FIFTH CAUSE OF ACTION**

#### **VIOLATION OF EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

111. Plaintiff hereby incorporates and re-alleges all preceding paragraphs.

112. The Equal Protection Clause, as set out in the Fourteenth Amendment to the United States Constitution, provides for a right to be treated equally under the law.

113. Under their policy and practice, Defendants allow other similarly situated individuals to express themselves in various ways on the campus of UCCC.

114. Defendants allow other individuals to engage in expressive activity, deducing that such activity is "cultural," "educational," "social," or "recreational." Yet, speech expressing a religious viewpoint is excluded.

115. Defendants treat Plaintiff disparately when compared to similarly situated non-students by banning only religious activity on the campus of UCCC.

116. Defendants' policy and Defendants' enforcement thereof treat Plaintiff as a second-class citizen of the community because of his religious faith.

117. Defendants have no legitimate reason that could justify the banning of religious expression, while permitting similar expressive activities on campus of UCCC.

118. Defendants' policy and practice act to violate Plaintiff's fundamental right to equal protection.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Greg Davis respectfully prays for relief, in that this Court:

- A. Assume jurisdiction over this action;
- B. Enter a judgment and decree declaring that the campus policy of UCCC pertaining to expression on open areas of the campus of UCCC, only permitting "cultural," "educational," "social," or "recreational" activities on campus as determined by UCCC, that serves to ban religious expression, is unconstitutional on its face, and as applied to the Plaintiff, because it violates the right of freedom of speech, free exercise of religion, rights of due process and, rights of equal protection, all guaranteed to the Plaintiff and others by the United States Constitution and operation of federal laws;
- C. Enter a judgment and decree declaring Defendants' actions in applying campus speech policy described herein to open accessible ways on the campus of UCCC as unconstitutional on its face, and as applied to the Plaintiff, under the United States Constitution because the policy of Defendants violate rights of freedom of speech, free

exercise of religion, due process and equal protection, as guaranteed by the United States Constitution and operation of federal laws;

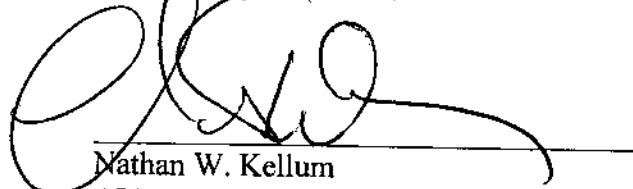
D. Enter a preliminary and permanent injunction enjoining Defendants, their agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from applying the campus policy restricting constitutionally protected religious speech on open public areas on the campus of UCCC;

E. Award Plaintiff Greg Davis an award of actual and/or nominal damages in an amount to be deemed appropriate by this Court;

F. Grant to Plaintiff Greg Davis an award for his costs for litigation, including reasonable attorney's fees and expenses pursuant to 42 U.S.C. § 1988; and

G. Grant such other and further relief as appears to this Court to be equitable and just.

Respectfully submitted,



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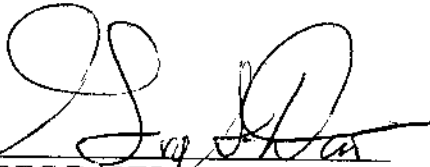
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**VERIFICATION OF COMPLAINT**

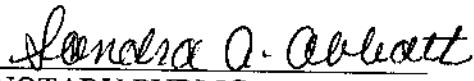
I, Greg Davis, a citizen of the United States, and a resident of NEW YORK, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.

Date: 6-23, 2005.

  
GREG DAVIS

Sworn to and subscribed before me this the 23<sup>rd</sup> day of June, 2005, 2005.

My Commission expires: 12/5/08

  
NOTARY PUBLIC  
Wayne County  
Indiana