

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

SHARON MAROLF,

Plaintiff,

v.

CITY OF DELTA, WILMA ERVEN, in her official capacity as Culture & Recreation Director
for the city of Delta,

Defendants.

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

Comes now the Plaintiff, by and through counsel, and avers the following:

I. INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983 brought to safeguard the rights of Sharon Marolf, an artist, against censorship by the City of Delta, Colorado. Sharon Marolf is an accomplished, award-winning artist who attempted to display several pieces of artwork in a hallway of the recreational center that the City of Delta has opened up for local area artists to display their art. The City of Delta created a post-hoc policy and removed a painting of the artist's granddaughter simply because the picture incorporated a quote from the Bible into the painting. Because of a subjective and arbitrary determination that plaintiff's expressive activities may potentially cause controversy, Defendants have denied Plaintiff the right to exercise her First Amendment rights at the Bill Heddles Recreation Center, an area routinely made available

to artists for virtually identical expressive activities. The Defendants' ad hoc enforcement and imposition of a heckler's veto on Plaintiff's speech results in classic unlawful viewpoint discrimination. The application of Defendants' policies treats Plaintiff differently than similarly situated speakers. This lawsuit seeks declaratory and injunctive relief to prevent the Defendants from violating the rights of the Plaintiff under the United States Constitution. This Complaint also seeks monetary damages.

II. JURISDICTION AND VENUE

2. This action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. §§ 2201 & 2202, and 42 U.S.C. §§ 1983 & 1988.

3. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

4. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3); the requested damages under 28 U.S.C. § 1343(3); and attorneys' fees under 42 U.S.C. § 1988(b).

5. Venue is proper in the United States District Court for the District of Colorado under 28 U.S.C. § 1391(b), because the events giving rise to the claim occurred within the District and because all parties are residents of the District.

III. IDENTIFICATION OF THE PARTIES

6. Plaintiff Sharon Marolf is and was at all times relevant to the Complaint a resident of the county of Montrose, Colorado.

7. Defendant City of Delta (City) is a city incorporated in the State of Colorado. Among other things, the city operates and maintains a recreation center for the benefit of the public known as the Bill Heddles Recreation Center.

8. Defendant Wilma Erven, upon information and belief, is now, and at all times relevant hereto, the Culture & Recreational Director for the City of Delta, Colorado. Among other things, she is charged with the responsibility for administering and enforcing the City's policy regarding the display of art in city buildings, including the Bill Heddles Recreation Center. This defendant is sued in her official capacity.

IV. STATEMENTS OF FACT

9. The City of Delta maintains and operates the Bill Heddles Recreation Center (Center).

10. The City has allowed members of the public to rent or otherwise use rooms located within the center for a variety of community events, including periodic exhibitions of art sponsored by the Delta Fine Arts (DFA) association.

11. A variety of local citizens have displayed artwork in the hallway of the Center.

12. The DFA is a private association of individual artists that live in Delta County, Colorado and surrounding areas.

13. Plaintiff is an artist and member of DFA.

14. Upon information and belief, DFA has periodically displayed the artwork of member artists at temporary exhibitions in several public buildings within the City of Delta, including City Hall, the public library, the local public hospital, the Center, as well as local privately owned businesses for more than 15 years.

15. Daphna Russell is the head of the Exhibition Committee for the DFA. She has facilitated the public exhibition of the art of members of the DFA for approximately 15 years.

16. Upon information and belief, at no time has the City, or any official employed by the city, provided Ms. Russell with any guidelines pertaining to the art that can be displayed in the Center or any other public building.

17. Ms. Russell has facilitated the display of hundreds of pieces of art in city owned buildings on behalf of the artists associated with DFA.

18. Upon information and belief, the City has never required Ms. Russell to remove a piece of art from a public exhibit of DFA artists' work until the events that gave rise to this suit.

19. The artwork displayed during art shows sponsored by the DFA that were held at the Center and other buildings owned by the City of Delta included the following:

- a. A depiction of hands holding Rosary Beads;
- b. "Christi Rex (Christ in Glory)," an image of Jesus Christ depicted in robes, elevated in front of a cross with His hands lifted towards Heaven and a halo above his head;
- c. Numerous depictions of angels and spiritual beings;
- d. Depictions of Native American culture that incorporate images of spiritual dances, religious symbols, and spirits;
- e. Artwork incorporating lettering and textual context as an integral part of the imagery and artistic expression;
- f. Artwork incorporating inspirational messages;

- g. Artwork in which the subject matter includes children; and
- h. Artwork in which the subject matter is predominately abstract shapes.

20. The DFA has displayed numerous pieces of art created by the Plaintiff in facilities owned by the City, several of which have included Biblical expressions and references. (See Exs. 1, 4, 9, 12, 14, 15, pictures of Plaintiff's artwork that has been displayed in City buildings).

21. Plaintiff's artistic creations have won more than thirty awards at a variety of art shows, including no fewer than ten awards honoring Plaintiff's work as "Best in Show" or taking "first place". (See Exs. 1-15, pictures of Marolf's artwork that received awards, including identification of awards received).

22. Upon information and belief, in 2001, the DFA sponsored an art exhibit that was displayed in the Center for approximately ten days.

23. During the 2001 exhibit, the DFA presented Plaintiff with a "Best in Show" award for a rendering entitled "Courtney and Friends". The rendering was a picture of Plaintiff's granddaughter, Courtney (a different granddaughter than the subject of one of the paintings removed by the City that gives rise to the current action), and a series of teddy bears. Incorporated into the picture was a quote from the book of Psalms, "Children are a heritage from the Lord, a reward from him," a reference that is identical to the quote and reference incorporated into the painting that gives rise to the current action. (Ex. 1, picture of "Courtney and Friends").

24. Upon information and belief, the Center has invited artists associated with DFA to exhibit art on the walls lining a hallway within the Center for approximately five years.

25. The artwork displayed on the Center walls is the individual expression of the artists.

26. Upon information and belief, the head of the Exhibition Committee for the DFA invites artists who are members of DFA to exhibit their artwork on the Center walls.

27. The only limitation placed upon the invited artist by the DFA is a size limit.

28. There are no express restrictions placed on the subject matter of the art displayed.

29. Plaintiff was never made aware of any restrictions on the subject matter of the art displayed.

30. After the artwork has been publicly displayed for several months, the artists typically collect their works to allow new pieces of art to be displayed.

31. Upon information and belief, the DFA maintains a public exhibition at the center year round, periodically including the artwork of various members of DFA.

32. Upon information and belief, the artwork displayed on the Center walls has included numerous spiritual and religious messages and imagery. This includes artwork with displayed titles that incorporated Biblical references giving context to the imagery reflecting the Native American culture, such as images of spiritual dances, religious symbols, and depictions of Native American spirits.

33. On or about February 15, 2006, Plaintiff, at the invitation of DFA, displayed four pieces of artwork in the hallway of the Center.

34. Plaintiff was one of several artists invited to display their artwork.

35. Each piece of art displayed in the hallway of the Center is accompanied by an information card that states the title of the piece, the artist's name and a phone number, a statement that the artist is a member of the DFA, a description of the medium used for the artwork, and whether the artwork is for sale. (*See* Ex. 16, information card used in the display of Plaintiff's artwork in the Center hallway).

36. One of the pieces Plaintiff displayed in February 2006, titled "Big Black Umbrella," is a drawing of Plaintiff's granddaughter holding a large umbrella behind her. Words are incorporated into the backdrop of the drawing. The words include the title of the work, the artist's name, and portions of a quote found at the bottom of the drawing. At the bottom of the drawing are the words, "CHILDREN ARE A HERITAGE FROM THE LORD, A REWARD FROM HIM," and a reference from the Book of Psalms. (*See* Ex. 9, picture of "Big Black Umbrella").

37. One of the pieces Plaintiff displayed in February 2006, titled "Circle/Square," is a contrasting drawing of colored circles and squares juxtaposed with one another. Incorporated into the picture is a Biblical quote and reference that mentions the shape of a circle, "GOD SITS ENTHRONED ABOVE THE CIRCLE OF THE EARTH," and a Biblical quote and reference that mentions the shape of a square, "I SAW THE HOLY CITY, THE NEW JERUSALEM, COMING DOWN OUT OF HEAVEN FROM GOD. THE CITY WAS LAID OUT LIKE A SQUARE." (*See* Ex. 15, picture of "Circle/Square").

38. Upon information and belief, all four of Plaintiff's paintings were on display at the Center for approximately six days.

39. Upon information and belief, on February 20, 2006, Defendant Erven contacted Daphna Russell and indicated that she had received complaints about Plaintiff's paintings "Big Black Umbrella" and "Circle/Square" because of the Biblical references incorporated into the paintings.

40. Upon information and belief, Defendant Erven informed Daphna Russell that she feared displaying Plaintiff's artwork because since incorporated a Christian message, it would allow people from the "other side" to ask for equal representation.

41. Upon information and belief, on or about February 21, 2006, Defendant Erven removed Plaintiff's artwork from display in the hallway of the Center and stored the art so that it could be picked up by Plaintiff.

42. Upon information and belief, On February 27, 2006, Defendant Erven had a meeting with Martha Cannum, the Director of Publicity for DFA, to discuss the reasons Ms. Marolf's works of art were removed from public display. This meeting was also attended by Valerie Doyle, the City Library Manager.

43. Upon information and belief, Martha Cannum inquired about the reason for removing the artwork.

44. Upon information and belief, Defendant Erven responded by stating she believed allowing the paintings to be publicly displayed in a government building would create a violation of the separation between church and state.

45. Upon information and belief, Ms. Cannum asked if it would be acceptable to display pictures of spiritual dances common to Native American culture.

46. Upon information and belief Defendant Erven stated that such a display would be acceptable.

47. Upon information and belief, Defendant Erven has a picture displayed in her office, located in the Center, with a representation of a Native American Spirit. A caption referencing the “Great Spirit” is incorporated into the display.

48. Upon information and belief, Defendant Erven uses her office to meet with members of the public.

49. All other artwork exhibited in the hallway of the Center beginning in February 2006, including two other renderings by the Plaintiff, are still on display at the Center.

50. Upon information and belief, as the Culture & Recreation Director for the City of Delta, Defendant Erven made the final determination to remove Plaintiff’s artwork.

51. Plaintiff, via counsel, sent a letter dated March 22, 2006 to Defendant Erven, informing Defendants as to the legal implications surrounding the removal of Plaintiff’s artwork from display in the Center hallway and requesting the artwork be placed back in the Center hallway. (*See Ex. 17*, letter to Wilma Erven dated March 22, 2006).

52. In a letter dated April 4, 2006, Defendants state, “The policy of the City of Delta is, [sic] our government buildings do not display for public viewing anything with political or religious content.” (*See Ex. 18*, letter to Heather Hacker dated April 4, 2006).

53. In a letter dated April 7, 2006, Defendants, via counsel, refused to display Plaintiff’s artwork in the Center hallway. (*See Ex. 19*, letter to Heather Hacker dated April 7, 2006).

54. The Plaintiff's granddaughter is the subject of the artwork in "Big Black Umbrella," and the Biblical references are a dedicatory statement reflecting the Plaintiff's perspective as to the significance of her granddaughter.

55. Plaintiff's viewpoint regarding the significance of her granddaughter is repeated in other artistic works of the Plaintiff. (*See* Exs. 1, 9, 10, 11, images created by Plaintiff with children as the subject matter).

56. In "Circle/Square," the Plaintiff incorporates the Biblical quotes and references to explain her inspiration and vision of the design.

57. Plaintiff incorporates Biblical quotations and references into much of her artwork as a part of the overall artistic expression of a particular piece. (*See* Exs. 1, 2, 4, 5, 6, 9, 10, 11, 12, 13, 15, images created by Plaintiff that incorporate Biblical quotations and references).

58. Lettering is an integral part of Plaintiff's artwork. (*See* Exs. 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, images created by Plaintiff that incorporate lettering).

59. The faith and religious perspective of the Plaintiff makes up an integral part of the artist's worldview, and is intertwined with her artistic expression. At times, a Scriptural passage will inspire an artistic illustration, while at other times, a relevant passage from the Bible comes to mind as the artistic illustration is taking form.

60. The Defendants' disapproval of Plaintiff's artwork has negatively impacted and chilled Plaintiff's artistic expression.

61. For example, Plaintiff was asked to provide a piece of art to be displayed at the Delta County Memorial Hospital, a government operated hospital, as a part of a fundraising

event. The theme of the fundraising was a wine tasting. Although the Plaintiff did provide a piece of art, Plaintiff refrained from incorporating a Biblical passage that referred to wine that she originally envisioned for the artwork. (*See* Ex. 8, “Wine Wordings”).

62. If Defendants had not challenged the acceptability of Plaintiff’s art for display in a public building, Plaintiff would not have engaged in self-censorship at the Delta County Memorial Hospital.

63. DFA has invited Plaintiff to continue to provide works of art to be a part of the ongoing exhibition in the hallways of the Center.

64. Plaintiff would like to display a variety of her other artwork, much of which incorporates a Biblical quote or reference to amplify the viewpoint of the Plaintiff; however, Plaintiff is chilled from offering to display those pieces with Biblical quotes and references.

65. Consequently, Plaintiff is continually being deprived of her right to express her religious viewpoint as illustrated in her artwork.

V. STATEMENTS OF LAW

66. Each and all of the acts herein alleged of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color of state law, including the statutes, regulations, customs, policies, and usages of the State of Colorado and the City of Delta.

67. The First Amendment to the United States Constitution protects the right to freedom of speech from governmental infringement.

68. The creation and display of art is an expressive activity protected by the First Amendment.

69. The hallway walls of the Center constitute a designated public forum established by the Defendants to allow for private expression via the display of art.

70. Content-based restrictions in a designated public forum must be narrowly drawn to effectuate a compelling state interest.

71. When the government opens a forum for expression and creates a policy that permits equal access to all viewpoints, the fact that some messages may express a religious viewpoint does not give rise to a compelling governmental interest.

72. Viewpoint-based discrimination is not permissible in any governmental forum of expression.

73. The policy and practice of Defendants regarding access to the forum is unconstitutional on its face and as applied, because it impermissibly restricts Plaintiff's expression, is a prior restraint, grants Defendants unfettered discretion in the restriction of expression, creates a heckler's veto, and is vague and overbroad.

74. The First Amendment protects the right to the free exercise of religion.

75. The Fourteenth Amendment guarantees that life, liberty, and property will not be deprived without due process of law, and that laws will be equally applied.

76. The Free Speech article of the Colorado Constitution offers greater protection to the expression of Colorado citizens than do the speech protections found in the federal Constitution.

77. Each of these constitutional rights and privileges is clearly established and defined.

78. Defendants, therefore, know or should know that restricting Plaintiff's expression violates the state and federal constitutional rights of the Plaintiff.

79. Unless and until the Defendants are enjoined from restricting Plaintiff's speech, Plaintiff will suffer irreparable harm to her federal constitutional rights.

**VI. FIRST CAUSE OF ACTION - VIOLATION OF THE FIRST AMENDMENT
FREE SPEECH CLAUSE**

80. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

81. The City of Delta has opened a forum for public expression to be made in the form of artwork to be displayed on the walls in the hallway of the Bill Heddles Recreation Center.

82. Defendants applied City policies in a manner that constitutes an impermissible content-based and viewpoint-based restriction of constitutionally protected expression because of the anticipated reaction to Plaintiff's speech.

83. Defendants applied City policies in a manner that creates an unconstitutional "heckler's veto" on protected expression.

84. Defendants' application of City policies has chilled the protected expression of Plaintiff.

85. Defendants' application of City policies is not a content-neutral time, place, or manner restriction on expression.

86. Defendants have denied Plaintiff equal rights, equal treatment, and equal access to the Center for her expressive activities, discriminating against Plaintiff on the basis of the content and viewpoint of her speech.

87. Defendants' discriminatory application of City policies constitutes a violation of the First and Fourteenth Amendments.

88. WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

VII. SECOND CAUSE OF ACTION - VIOLATION OF THE FIRST AMENDMENT ESTABLISHMENT OF RELIGION CLAUSE

89. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

90. The Establishment Clause of the First Amendment prohibits government favor of one religion over another, or non-religion over religion.

91. Defendant's practices, customs and/or written policies favor non-religion over religion by refusing to display artwork with overtly religious expression incorporated into the art, in favor of displaying art with no religious content.

92. Defendant's practices, customs and/or written policies favor non-religion over religion through their general hostility towards religion, and in particular, Christianity.

93. Defendants' discriminatory application of City policies constitutes a violation of the First and Fourteenth Amendments.

94. WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

VIII. THIRD CAUSE OF ACTION - VIOLATION OF THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

95. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

96. The Equal Protection Clause of the Fourteenth Amendment requires that the States treat equally all persons similarly situated under the law.

97. Defendants allow similarly-situated artists to engage in expressive activities on the walls lining the hallway of the Center.

98. Defendants prohibited Plaintiff's speech on the walls of the hallway of the Center based on its content and viewpoint.

99. Defendants' prohibition impinges on Plaintiff's fundamental right to freedom of expression.

100. Defendants have no compelling government interest to justify their disparate treatment of Plaintiff.

101. Therefore, Defendants' restriction of Plaintiff's speech violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

102. WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

IX. FOURTH CAUSE OF ACTION - VIOLATION OF THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE

103. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

104. By acting in accordance to their practices and customs, and failing to have any objective standards where by to determine what artwork is acceptable for display, Defendant City has given unfettered discretion to Defendant Erven to suppress the exercise of constitutional rights in violation of Plaintiff's right to due process as guaranteed by the Fourteenth Amendment.

105. Defendant's policies prohibiting the display of Plaintiff's artwork fail to adequately advise, notify or inform artists who are subject to City censorship of what constitutes permissible or impermissible content, therefore they are unconstitutionally vague on their face and as applied, in violation of the due process guarantee of the Fourteenth Amendment.

106. WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

X. FIFTH CAUSE OF ACTION - VIOLATION OF THE FREE SPEECH ARTICLE OF THE COLORADO CONSTITUTION

107. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

108. The City of Delta has opened a forum for public expression to be made in the form of artwork displayed on the walls in the hallway of the Bill Heddles Recreation Center.

109. Defendants applied City policies in a manner that constitutes an impermissible content-based and viewpoint-based restriction of constitutionally protected expression because of the anticipated reaction to Plaintiff's speech.

110. Defendants applied City policies in a manner that creates an unconstitutional "heckler's veto" on protected expression.

111. Defendants' application of City policies has chilled the protected expression of Plaintiff.

112. Defendants' application of City policies is not a content-neutral time, place, or manner restriction on expression.

113. Defendants have denied Plaintiff equal rights, equal treatment, and equal access to the Center for her expressive activities, discriminating against Plaintiff on the basis of the content and viewpoint of her speech.

114. Defendants' discriminatory application of City policies constitutes a violation of Art. 2 § 10 of the Colorado Constitution.

115. WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That this Court preserve the status quo during the pendency of this litigation by preliminarily enjoining the Defendants, their agents, servants, employees, officials or any other person acting in concert with them or on their behalf, and prohibiting them from taking any action to remove, close, or otherwise alter the current display and procedures relating to the display of artwork on the hallway walls of the Bill Heddles Recreational Center and other public buildings owned by the City of Delta, except as necessary to accommodate Plaintiff's speech;

B. That this Court preliminarily and permanently enjoin the Defendants, their agents, servants, employees, officials, or any other person acting in concert with them or on their behalf, from discriminating against Plaintiff based upon the content or viewpoint of her speech, or based

upon the “controversy” or potential disruption that reactions to her speech may produce;

C. That this Court issue a declaratory judgment declaring the conduct of Defendants and application of Defendants’ policy to prevent the Plaintiff from placing her artwork on the walls of the Bill Heddles Recreational Center in the same manner as other artists, to be unconstitutional in all respects under the First and Fourteenth Amendments;

D. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

E. Grant Plaintiff an award of damages against the Defendants in an amount deemed appropriate by this Court;

F. Grant Plaintiff’s reasonable costs and expenses of this action, including attorneys’ fees, in accordance with 42 U.S.C. § 1988;

G. Grant such other and further relief as this Court deems just and proper; and

H. Retain jurisdiction of this matter for the purpose of enforcing this Court’s order.

Respectfully submitted this 26th day of May, 2006.

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VERIFICATION

I, Sharon Marolf, a citizen of the United States and a resident of the State of Colorado, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and Damages and declare under the penalty of perjury under the laws of the state of Colorado that the forgoing is true and correct.

Dated this 25th day of May, 2006

s/ Sharon Marolf
Sharon Marolf