

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA** 2010 FEB -4 AM 11: 23

ANTHONY VERDUGO and CHRISTIAN
FAMILY COALITION,

Plaintiffs,

v.

VOLUSIA COUNTY, FLORIDA; and
LUCINDA COLEE, in her official capacity
as Director of the Volusia County Public
Library System,

Defendants.

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

Civil Action No.: 6:10-cv-207-OLC-3SDAB

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

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 New Smyrna Beach Regional 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

SCANNED

Amendment's Establishment Clause. In addition, Defendants' Policy and actions violate Plaintiffs rights under Florida's Religious Freedom Restoration Act of 1998 (Fla. Stat. § 761.01).

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 this court 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 Meeting Room to spread religious views concerning current events.

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

8. Defendant Volusia County, Florida is a public body politic and can sue and be sued. Volusia County governs and controls the Volusia County Public Library System.

9. Defendant Lucinda Colee is sued in her official capacity as the Director of the Volusia County Public Library System, and has the power and authority to permit Plaintiffs to use the Meeting Room.

FACTUAL ALLEGATIONS

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

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

12. Plaintiffs desire to use the public meeting room at the New Smyrna Beach Public Library, located at 1001 S. Dixie Freeway, New Smyrna Beach, Florida (“Meeting Room”), to hold a seminar entitled, “Is Religion Alive in America?”

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

14. Defendants have a policy and practice of permitting persons to use the Meeting Room for various expressive activities (“Policy”).

15. But the Policy does not allow for religious uses of the Meeting Room. The Policy states, “Rooms will not be available for purely social gatherings, religious services or programs involving the use of hazardous or illegal materials.”

16. On October 5, 2009, Plaintiffs submitted a letter to the New Smyrna Beach Regional Library, requesting to use the Meeting Room for the seminar. The letter stated,

We would like to reserve a meeting at the New Smyrna Beach Public Library location, on 1001 S. Dixie Freeway, 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

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

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 in order to reserve the room for this seminar?

17. 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 inquiring about using our Library auditoriums. Unfortunately we will not be able to accommodate your group due to the Volusia County Public Library Meeting Room policy that states Rooms will not be available for purely social gatherings and religious services. I've attached the policy for your review." A copy of Policy is attached as Exhibit A.

18. On information and belief, Defendants have permitted non-religious organizations to use the Meeting Room to talk about current events from a secular viewpoint.

LEGAL ALLEGATIONS

19. 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.

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

21. 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.

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

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

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

25. 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.

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

27. 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.

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

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

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

31. 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.

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

33. 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.

34. 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.

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

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

37. 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.

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

39. 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.

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

41. 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.

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

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

44. 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.

45. 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.

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

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

48. 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.

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

50. 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.

VI. Violation of the Religious Freedom Restoration Act of 1998 FLA. STAT. § 761.01

51. Plaintiffs reallege all matters set forth above.

52. Defendant's Code and actions violate Plaintiffs' right to the free exercise of religion as guaranteed by the Religious Freedom Restoration Act of 1998 (Fla. Stat. § 761.01) ("RFRA")

53. Plaintiffs' religious beliefs are sincerely and deeply held.

54. Defendant's Policy and actions impose a substantial burden on Plaintiff's religious exercise.

55. Defendant's Policy and actions are not in furtherance of a compelling governmental purpose.

56. Defendant's Policy and actions are not the least restrictive means of furthering any governmental interest.

57. Defendant's Policy and actions are not a narrowly tailored restriction on Plaintiffs' free exercise of religion.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

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 and statutory rights;

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

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 and the Florida RFRA;

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

Kevin Theriot, FL Bar # 0136761*

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

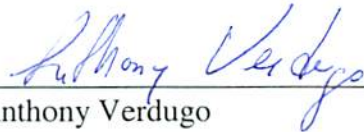
Attorneys for Plaintiff

* Attorney Special Admission Certification to be submitted

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 3rd day of Feb, 2009.



Anthony Verdugo

Exhibit A

Mr. Verdugo,

Thank you for inquiring about using our Library auditoriums. Unfortunately we will not be able to accommodate your group due to the Volusia County Public Library Meeting Room policy that states Rooms will not be available for purely social gatherings and religious services. I've attached the policy for your review.

Please let me know if there is anything else I can help you with in the future.

Linda Dahlquist

Linda Dahlquist
New Smyrna Beach Regional Library
1001 S. Dixie Freeway
New Smyrna Beach, Fl 32168
386-424-2910 x125

SECTION: B. ADMINISTRATION

POLICY TITLE: 2. USE OF MEETING ROOMS

EFFECTIVE DATE: JULY 1991

REVISED DATE: JANUARY 1999

POLICY:

1. Meeting rooms in the Volusia County Public Library System are available to the public with certain restrictions.
2. The meeting room is assigned in order of receipt of application. First priority is given to library sponsored activities. Second priority is given to library co-sponsored activities.
3. Any person signing an application is responsible for monitoring the conduct of all guests and informing them of the rules by which they must abide. This person should make himself/herself known to the manager of the facility. If for any reason the person who signs an application cannot be present the entire time of the activity, he/she must appoint someone else to be responsible.
4. Rooms will not be available for purely social gatherings, religious services or programs involving the use of hazardous or illegal materials.
5. Smoking is not permitted in the building, including foyers and covered drop-off areas. (See F.S.386.201)
6. Recurring reservations may be accepted for up to twelve months as the schedule permits. It may be necessary to limit the frequency of meetings within the twelve month reservation period. An updated application must be completed at least annually.
7. The Library retains the right to cancel a reservation for a meeting room. Whenever possible, at least twenty-four hours notice will be given if a reservation is to be canceled. Groups holding reservations are requested to notify the library of cancellation at the earliest possible date in order to free the meeting room

for other groups. The Library reserves the right to change accommodations as necessary.

8. In making a room available, the Library does not necessarily endorse the purpose and policies of the group using the room.

9. Attendance must not exceed that limit established for each meeting room by the Fire Marshall.

10. Youth groups (through grade 12) desiring to use the meeting room must make arrangements through an adult advisor who will be responsible for the group and will be in attendance at the group's meeting for its duration.

11. Collections may not be taken, donations may not be solicited, dues may not be collected, and in accordance with our policy of confidentiality, attendance lists can only be voluntary.

12. All programs must be open to the public. "Open to the public" means that anyone walking into any

meeting held in the library will be able to remain and cannot be asked to leave unless such person's behavior becomes disruptive to the conduct of the program or meeting.

ia county Public Library Policy and Procedure Manual

Volusia county Public Library Policy and Procedure

Manual

13. For security reasons, in some branches, meetings can be held only during regular library hours and the

meeting room must be vacated 15 minutes before closing time. Exceptions can be made for government sponsored programs.

14. For-profit organizations are charged for the use of the room. Fees must be paid in full before meeting is

held. Fees are:

Size of room Fee Florida Sales Tax Total fee

Small \$18.78 \$1.22 \$20.00

Medium \$37.55 \$2.45 \$40.00

Large \$56.33 + \$3.67 tax = \$60.00

All after-hours use \$112.67 \$7.33 \$120.00

Liability insurance is available. Contact County of Volusia Risk Management department for fees.

15. No alcoholic beverages may be consumed on library property unless special permits have been obtained

and proof of liability insurance covering the County of Volusia has been provided.

16. Equipment, supplies or personal belongings of a group may not be stored or left in the library.

17. Parents are responsible for children at all times. If parents do not control children, both may be asked to

leave. Groups must accept responsibility to monitor this.

18. Some audio-visual equipment may be reserved by groups depending on the availability of the desired

equipment and if the group can demonstrate the ability to operate the equipment properly. Set up, operation

and return of equipment is the responsibility of the group.

19. All groups are responsible for setup and return of all furniture to its original arrangement and for leaving the room in a neat orderly, undamaged condition.

20. All food served to the public must meet County of Volusia Health Department certification standards.

Groups are responsible for clean-up.

21. Replacement costs, repair of damages and/or cleanup charges will be charged to the group at cost.

22. Violation of any of the above rules as determined by the Regional librarian will result in written

notice of cancellation of the group's future meeting privileges as well as a financial assessment for damages incurred.

PROCEDURE:

1. Persons making application for use of the meeting room should apply in person at the library so that the required application form can be completed. The reservation form will be confirmed, if approved, by the head librarian or their designated representative.

2. All groups will notify a library staff member of their arrival and departure.

New Smyrna Beach Regional Library Hours

Sunday 1-5

M-Th 9-7

F & S 9-5