

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

2010 AUG 12 AM 11:05

ILENE VICK,
Plaintiff,

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

vs.

CIVIL ACTION NO. 2 10 0080

PUTNAM COUNTY; PETER LI, in his
official capacity as Chairperson of the Putnam
County Library Board of Trustees; DANA
BRUMBELOW, individually and in her
official capacity as Director of the Putnam
County Library,

Defendants.

VERIFIED COMPLAINT

Comes now Plaintiff Ilene Vick and avers the following:

INTRODUCTION

1. This is a civil rights action concerning the Putnam County Library meeting room policy that singles out and excludes religious groups and individuals from accessing a meeting room to express their viewpoints. Acting on this written policy, Defendants have denied equal access to the Plaintiff Ilene Vick solely because of the religious viewpoint of her speech. This is a flagrant violation of the First and Fourteenth Amendments to the United States Constitution.

2. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff Ilene Vick seeks injunctive relief, declaratory relief, and nominal damages against Defendants Putnam County; Peter Li, in his official capacity as Chairperson of the Putnam County Library Board of Trustees; and Dana Brumbelow, individually and in her official capacity as Director of the Putnam County Library.

3. This action is premised on the United States Constitution and concerns the deprivation of Plaintiff's fundamental right to free speech, due process, and equal protection.

4. Defendants' actions have deprived and will continue to deprive Plaintiff of her fundamental rights as provided in the First and Fourteenth Amendments to the United States Constitution.

5. Each and every act of Defendants alleged herein was committed by Defendants named herein, and each and every act was committed under the color of state law and authority.

JURISDICTION AND VENUE

6. Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has jurisdiction over Plaintiff's claims. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction over Plaintiff's request for declaratory relief.

7. Pursuant to 28 U.S.C. § 1391(b), venue is proper in Middle District of Tennessee, because all claims arise out of this district and Defendants reside in this district.

PLAINTIFF

8. Plaintiff Ilene Vick ("Vick") resides in Cookeville, Tennessee.

DEFENDANTS

9. Defendant Putnam County is a public entity established, organized, and authorized under and pursuant to the laws of Tennessee, with the authority to sue and be sued in its own name. Putnam County is the entity ultimately responsible for funding and overseeing the Putnam County library system and all branches of the library.

10. Defendant Peter Li ("Li") is Chairperson of the Putnam County Library Board of Trustees. In his official capacity, Li is the Chairperson for the entity that is responsible for establishing general policies and plans for the operation of the Putnam County library system. This Defendant is sued in his official capacity.

11. Defendant Dana Brumbelow (“Brumbelow”) was the Director of the Putnam County Library from November 2009 until June 2010. In her official capacity, during her time as Director, Brumbelow oversaw all aspects of the Putnam County Library. This includes oversight and administration of policies that regulate activities taking place at the Putnam County Library, such as administration of the policy controlling access to the rooms in the Putnam County libraries. This Defendant is sued in her official and individual capacities.

STATEMENT OF FACTS

Desired Speech of Vick

12. Vick is a professing evangelical Christian. As a tenet of her religion, Vick is compelled to share her faith with others.

13. It is Vick’s firm conviction that a person can only be reconciled to God through repentance and faith in Jesus Christ. And only after finding acceptance with God can a person learn to accept themselves and their neighbors.

14. Vick believes all Christians should convey their faith, and the basis for their faith, to others. It is Vick’s understanding that the Bible commands Christians everywhere to “evangelize,” that is, to teach others what Jesus taught, and what the Bible teaches, about faith in Jesus Christ.

15. Vick considers evangelism as the primary way a Christian can love her neighbor.

16. Vick believes it is vitally important for all people, especially Christians, to love their neighbors and treat their neighbors with respect and courtesy. And Vick views modern culture, and its promotion of isolationism and extreme individualism, as a barrier to civil and

respectful discourse. Vick believes too many Christians resort to disrespectful and insensitive evangelism tactics.

17. Vick further believes that a pervasive mindset exists in the culture today that treats religion as a purely private endeavor and acts to separate religious beliefs from public behavior. Vick disagrees with this mindset, and believes people should espouse and act out their religious beliefs in public - as well as private - life.

18. In light of these concerns, Vick is driven to educate others about evangelism, and beneficial ways to interact with others about faith. To accomplish this educational goal, Vick decided to write a book entitled "Personality Based Evangelism." In this book, Vick elaborates on why it is important for people to testify about Jesus Christ in a loving and respectful way. The book also instructs people how to evangelize their faith through loving others, helping others, listening to others, and investing in others' lives.

19. In conjunction with her writing of the book, Vick also wants to disseminate her ideas via small group discussions. Vick envisions meetings similar to a book club whereby Vick and a small group of individuals would get together and discuss ideas set out in her book, which would spur further discussions about evangelism. Vick anticipates these discussions allowing her to answer any questions about her ideas and lead others to think about the need for evangelism, the proper way to interact with others while evangelizing, and the need to invest in others lives and in communities while evangelizing.

20. Since the meetings would relate to evangelism, the content of meetings concerns religion. The meetings would be educational, civic, and cultural in character. These meetings

would involve Vick teaching about evangelism. These meetings would also address how people should socially interact with others and behave in their communities when they evangelize.

21. Vick's desired meetings would be no different from the discussion of any other book in a typical book club setting. Participants would discuss the ideas in Vick's book, ask questions about those ideas, seek to learn from those ideas, engage in discussions about those ideas, discuss whether those ideas were correct or incorrect, and think about how the ideas discussed should apply to their own lives and communities.

22. To facilitate these meetings, Vick needs a suitable venue. Vick considers the main branch of the Putnam County Library, located in her home town of Cookeville, Tennessee, as the ideal place for the meetings.

Putnam County Library

23. The Putnam County Library was founded in 1939. In addition to the main branch of the Library located in Cookeville, smaller branches are found in Baxter, Algood and Monterey, Tennessee.

24. The Library's mission is to provide free services to all residents and to serve as a center for popular materials. The Library materials reflect a broad diversity of format and opinion.

25. The Library retains approximately 19 employees and volunteers to administer its various branches.

26. The Library has a large variety of religious books within its holdings.

27. The Cookeville branch of the Library has a meeting room that is available for use by outside individuals and organizations.

28. This meeting room inside the Cookeville Library is available during Library business hours on a first-come/first-serve basis.

29. The Library encourages the use of the meeting room for educational, cultural, and community related meetings, programs, and activities.

30. The Library allows a variety of non-profit organizations to use the meeting room.

31. A non-profit group called "Friends of Animals" has used the Library meeting room. The purpose of "Friends of Animals" is to raise public awareness of the increasing numbers of unwanted animals being born in the community and to promote the importance of spaying/neutering pets. This group uses the Library Meeting room to discuss their purpose.

32. Non-profit and civic organizations are allowed to use the meeting room free of charge.

33. An individual or organization seeking to reserve the meeting room need only submit to the Library a completed application that discloses the name of the individual or organization, the date and time requested, and the activity taking place.

First Denial

34. In early part of 2009, Vick wanted to find a place where she could hold her desired book club meeting and discuss the ideas contained in her book. The meeting would be open to the general public. Vick did not want to sell her book during this discussion or charge admission to attend the discussion. She just wanted a central location to discuss the book's message and interact with others about evangelism.

35. Vick determined that the meeting room at the Putman County library in Cookeville would be an ideal place to accomplish these goals because it would be inexpensive

(free), centrally located, and could easily accommodate her potential audience. Vick does not need to accommodate a large crowd but anticipates at least 10-15 people attending the discussion.

36. Vick contacted the Cookeville Library to inquire about use of the meeting room. Vick assumed that Library officials would be excited about hosting a discussion on a book from a local author.

37. Vick spoke with Diane Duncan, the Director of the Library at the time. During their conversation, Vick explained that she was interested in using the Library's meeting room to discuss her book, and asked if the Library had a room available.

38. Duncan confirmed that the Library had a public room available for such meetings, but asked for more information about Vick's book.

39. Vick responded: "It's faith based and it's called 'Personality Based Evangelism.' I'm a Christian writer and I have a couple of other books in the works."

40. Upon hearing this, Duncan informed Vick that she could not use the meeting room. Duncan explained: "Our public room cannot be used for religious purposes. I'm sorry, we can't accommodate you."

41. The conversation ended and Vick left the Library. She was disappointed that she could not use the room due to her religious viewpoint.

Second Denial

42. Later on, in September of 2009, Vick decided to contact the Library again and inquire about use of the room. Vick's desire for the room had not waned and she knew that her

religious speech should not be excluded from the venue. Vick telephoned the Library and asked to speak with Director Duncan, hoping to change her decision about the ban.

43. A Library official explained that Duncan had retired. The official suggested that Vick speak with the Acting Director of the Library, Nicole Pugh, and then connected Vick to Pugh.

44. Vick explained to Pugh that she is “an author of Christian-based books” and wanted to use the public meeting room to discuss her book “Personality Based Evangelism.” Vick also said that she had spoken with Diane Duncan earlier, and Duncan informed that the room could not be used for religious purposes. Vick asked Pugh if the room was still off limits to discussions about her book on evangelism.

45. Pugh responded that Duncan was correct about the room use and that the ban on Vick’s use was still in place. Pugh elaborated: “The only religious purpose the room can be used for is to conduct church business, but not religious instruction.”

46. Vick was puzzled by this distinction, and asked: “So, it can be used to discuss church business, but not religious material? That’s kind of strange.”

47. Pugh responded: “Yes, that is correct.” Pugh then offered to send Vick a copy of the Library Room policy.

Library Room Policy

48. Vick received and reviewed a copy of the 2009 Putnam County Library Meeting Room Use Contract, setting out the Library Room Policy. The Library Room Policy explains the requirements that an applicant must meet in order to use the public meeting room in the Putnam County Library. This policy reads in part as follows:

1. Library activities have priority over any outside pre-arranged or regularly scheduled groups or events.
2. Bookings for meeting rooms are to be arranged through the reference librarian no less than 24 hours before the meeting.
3. Meeting rooms are available for public gatherings of a civic, cultural, or educational character. Rooms are **not** available for meetings of social, political, partisan, or religious purposes; for the benefit of private individuals or commercial concerns; for the presentation of one side of controversial matters; or when, in the judgment of the Library Board, disorder may be likely to occur.
4. The rooms may be used by joint committees or associations from more than one church for business, educational, and cultural transactions when no religious services are involved.

49. After reading the Library Room Policy and seeing that it explicitly prohibited use of the meeting room for “religious purposes,” Vick was convinced that she would not be allowed to use the room because of her religious viewpoint absent some change to the policy.

Third Denial

50. As the calendar year for 2009 closed, Vick was hopeful that the Library changed its Library Room Policy with the advent of new year and hiring of new director. On January 4, 2010, Vick contacted the Library once again to see if she could use the meeting room to discuss her book.

51. Vick spoke with the new Director, Dana Brumbelow. Vick explained that she was a local author who recently had her book accepted by a publisher and was looking for a place to hold a meeting about her book. Vick advised Brumbelow of the title of her book, “Personality Based Evangelism.” Vick also explained to Brumbelow that other Library officials had previously told her that she could not use the meeting room for that purpose.

52. Brumbelow responded that she was not sure of the policy, but would talk to her assistant, Nicole Pugh, about the situation.

53. Vick advised that she had already spoken with Pugh, who denied her access to the meeting room because of the religious content of her message and sent her a copy of the 2009 Library Room Policy that serves as basis for the denial. Vick then read Section no. 3 from the Library Room Policy that said “Rooms are not available for meetings of social, political, partisan, or religious purposes.” Vick explained that she was calling to see if anything had changed with the policy.

54. Brumbelow responded that the only thing that had changed with the Library was the naming of her as the Director. Brumbelow also said she would verify the current rules and get back to Vick by telephone. Vick and Brumbelow then ended the conversation.

55. One hour later, Brumbelow called Vick back. Brumbelow explained that the written Library Room Policy was still in place and nothing had changed since Vick discussed the matter with Pugh. Brumbelow confirmed that Vick would not be allowed to use the Library meeting room to discuss her book.

56. As a result of her interaction with Brumbelow, and the continued existence of the Library Room Policy, Vick fully understood that she could not use the Library meeting room because of the religious viewpoint of her proposed meeting. Vick determined that a formal application would be automatically denied because of the requirement against religious messages set out in the Library Room Policy.

57. Since this conversation with Brumbelow, Vick has given up hope that Putnam County will change its Library Room Policy and allow her to use the Library meeting room to discuss her book. Vick attempted to reserve the meeting room on three separate occasions but on each occasion, her attempts were frustrated by the Library Room Policy. Vick has not applied

nor will apply to use the meeting room to discuss her book because any attempt to do so would be futile.

Impact of Library Room Policy

58. Putnam County Library Room Policy and has prevented Vick from expressing her beliefs in the Library meeting room and continues to chill and deter Vick's expression.

59. Vick wants to use the Library meeting room to discuss the ideas in her book, "Personality Based Evangelism," but the Library Room Policy singles out and forbids all religious viewpoints, like Vick's, simply because they are religious. Vick believes that Putnam County is expressing hostility toward her religious viewpoints by singling them out and prohibiting them.

60. While precluding Vick and her expression, Putnam County allows other civic, cultural, and educational meetings to take place in the meeting room. Vick does not understand how discussion of a book concerning a religious view can be singled out and excluded when the meeting room is used to discuss other viewpoints.

61. For fear of her application being denied and/or revoked and for fear of censorship and reprimand, Vick has not attempted to use or even apply to use the Library meeting room since her conversation with Putnam officials in January 2010. If not for the Library Room Policy, and the actions of Defendants, Vick would immediately apply to use the Library meeting room in the Cookeville Library to discuss the message of her book.

62. The fear of censorship and denial severely limits Vick's constitutionally-protected expression in the Putnam County library meeting room.

63. The impact of chilling and deterring Vick from exercising her constitutional rights in the Putnam County library meeting room constitutes irreparable harm to Vick.

64. Vick does not have an adequate remedy at law for the loss of her constitutional rights.

FIRST CAUSE OF ACTION

Violation of Freedom of Speech

65. Vick's religious speech is protected speech under the First Amendment.

66. Defendants' policy and practices, and enforcement thereof, including, but not limited to the Library Room Policy:

- a. are vague and overbroad;
- b. single out religious speech for discriminatory treatment;
- c. discriminate against speech on the basis of the speaker's viewpoint;
- d. restrain constitutionally-protected speech in advance of its expression, without appropriate guidelines or standards to guide the discretion of officials charged with enforcing the policy;
- e. chill the free speech and free exercise of religion of Vick and of other third party citizens;
- f. creates a designated and/or limited public forum and excludes religious messages solely because of the content of those messages;
- g. allow the exercise of unbridled discretion;
- h. lack narrow tailoring, fail to achieve any legitimate government purpose, and fail to leave open alternative avenues for expression; and

i. are unreasonable.

67. Defendants have no compelling or legitimate reason that can justify their censorship of the religious viewpoints sought to be expressed by Vick.

68. Defendants' policy and practices, and the enforcement thereof, thus violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, Vick respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION

Violation of the Due Process Clause

69. Defendants' policy is vague and lacks sufficient objective standards to curtail the discretion of officials. This allows Defendants ample opportunity to enforce the policies in an *ad hoc*, arbitrary, and discriminatory manner.

70. Defendants have no compelling or legitimate reason that can justify their vague policies.

71. The policy and Defendants' enforcement thereof, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Vick respectfully prays the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

THIRD CAUSE OF ACTION

Violation of the Equal Protection Clause

72. Under their policy, Defendants allow the Putnam County Library meeting room to be used to express messages for civic, cultural, and educational reasons but single out and prohibit use of the room when it involves religious content.

73. Defendants allow similarly-situated organizations to use the Putnam County Library meeting room and to engage in a wide variety of speech and expression in the room, but, through their policy excluding “religious purposes,” Defendants refuse to allow Plaintiff the same access to Library facilities.

74. Defendants’ enforcement of their policy intentionally treats Plaintiff differently from other similarly-situated citizens because of the viewpoint and content of her expression.

75. Defendants have no compelling or legitimate reason that would justify their disparate treatment of Plaintiff.

76. The policy and practice, Defendants’ enforcement thereof, therefore violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Vick respectfully prays the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Vick respectfully prays for relief in that this Court:

- A. Assume jurisdiction over this action;
- B. Enter a judgment and decree declaring that the Putman County Library Room Policy is unconstitutional on its face and as applied to Vick’s desired speech because it violates Vick’s rights and the rights of third parties not before the Court, as guaranteed under the First

and Fourteenth Amendments to the United States Constitution;

C. 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 Putman County Library Room Policy so as to restrict constitutionally-protected speech of speakers, including Vick, who wish to use the Putman County Library meeting room for expressive purposes;

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;

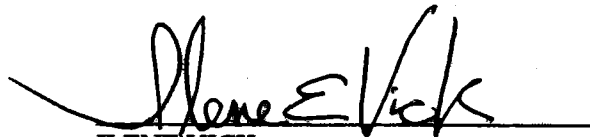
E. That this Court award Plaintiff nominal damages arising from the acts of the Defendants as an important vindication of the constitutional rights;

F. That this Court award Plaintiff his costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

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

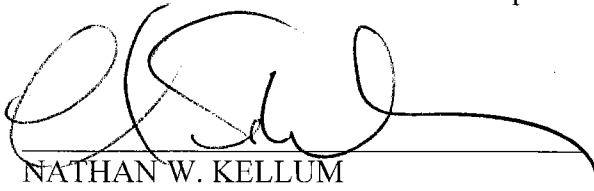
VERIFICATION OF COMPLAINT

I, Ilene Vick, a citizen of the United States and a resident of Putnam county, 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.



ILENE VICK

Respectfully submitted,



NATHAN W. KELLUM
TN BAR #13482; MS BAR # 8813
JONATHAN SCRUGGS
TN Bar # 025679
Alliance Defense Fund
699 Oakleaf Office Lane, Suite 107
Memphis, TN 38117
(901) 684-5485 telephone
(901) 684-5499 – Fax
Email: nkellum@telladf.org
jscruggs@telladf.org

Attorneys for Plaintiff

NATHAN ZALE DOWLEN
TN BAR# 026816
108 Lauren Drive
White House TN 37188
(615) 497-0763 telephone
(888) 840-4269 – Fax
Email: zale@dowlenlaw.com

Attorney for Plaintiff