

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Gay-Lesbian-Bisexual-Transgender
Pride/Twin Cities, d/b/a Twin Cities Pride

Plaintiff,

vs.

Minneapolis Park and Recreation Board,

Defendant.

Case No.: _____

COMPLAINT

Plaintiff Gay-Lesbian-Bisexual-Transgender Pride/Twin Cities, d/b/a Twin Cities Pride (“Twin Cities Pride”), for its Complaint against the above-named Defendant, Minneapolis Park and Recreation Board, (“Park Board”), states and alleges as follows:

INTRODUCTION

1. This is an action brought to secure relief for violations of rights guaranteed by the United States Constitution under 42 U.S.C. § 1983, in particular, those rights protected by the First and Fourteenth Amendments. In this lawsuit, Plaintiff seeks injunctive relief, specifically an order requiring the Minneapolis Park and Recreation Board (“the Park Board”) to support and assist Twin Cities Pride in protecting its First Amendment rights within the legal boundaries of Loring Park (including its internal and perimeter pathways) by: (1) prohibiting an anti-gay activist named Brian Johnson (and any other person or organization) from distributing written materials, or tangible objects of any kind outside of an exhibitor or vendor booth authorized by Twin Cities Pride, and (2) prohibiting all signage displayed or carried by anti-gay activist Brian Johnson or any

other organization or person outside of an exhibitor or vendor booth authorized by Twin Cities Pride .

PARTIES

2. Gay-Lesbian-Bisexual-Transgender Pride/Twin Cities, d/b/a Twin Cities Pride (“Twin Cities Pride”) is a Minnesota nonprofit 501(c)(3) organization with its principal place of business in Minneapolis, Minnesota. Twin Cities Pride is a mostly volunteer organization that produces the annual Pride Celebration, including the Pride Festival in Loring Park, in the Twin Cities of Minneapolis and Saint Paul.

3. The Minneapolis Park and Recreation Board (“Park Board”) is an independently-elected, semi-autonomous body, with its principal place of business in Minneapolis, Minnesota. The Park Board is responsible for maintaining and developing the Minneapolis Park system to meet the needs of citizens of Minneapolis.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District and because Defendant is subject to personal jurisdiction in this District.

FACTS

6. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

7. This matter involves the decision of the Park Board to allow an individual with a stridently anti-gay message, Brian Johnson, unlimited permission to distribute literature and display signage anywhere on the permit grounds during the annual Twin Cities Pride Festival in Loring Park. The Park Board's decision is contrary to longstanding practice, common sense, and, most important, the First and Fourteenth Amendments to the United States Constitution.

Twin Cities Pride Celebration

8. The annual Twin Cities Pride Celebration consists of several events, but most notably it includes the two-day Pride Festival, which is traditionally held the last full weekend in June. The Pride Festival has been held in Loring Park for 32 of the 37 years the Pride Festival has been held. This year will be the 38th Pride Festival.

9. The Pride Festival attracts attendees from all around the upper Midwest. Many of these attendees come from rural areas and small towns that have no Pride parade or festival and where they are barraged with daily messages from family, associates, co-workers, churches, and others that homosexuality is sinful, shameful and dangerous.

Park Board Issues Permits for Special Events

10. Each year, Twin Cities Pride applies to the Park Board and receives a special use Permit (the "Permit") to hold the Pride Festival in Loring Park. The Park Board issues the Permit, charges facility fees, requires payment of a percentage of all sales and booth fees, and collects additional fees for the Park Police.

11. In 2009, Twin Cities Pride paid the Park Board over \$36,000 in permit fees, food and beverage sale percentages, and other conditions to lease Loring Park for the duration of the Pride Festival.

12. The Permit allows Twin Cities Pride to use Loring Park and the Loring Park Bandshell for the duration of the Pride Festival. The Permit also allows Twin Cities Pride to set up a beer garden within Loring Park. Twin Cities Pride is responsible for litter removal and cleanup, including the provision of dumpsters and cleanup of portable toilets, at a cost of approximately \$7,000 per year. The Permit allows Twin Cities Pride to bring vehicles into Loring Park to set up tents and to provide and replenish supplies during the Pride Festival. The Permit also requires Twin Cities Pride to pay fees to ensure the presence of the Minneapolis Park Police and to obtain insurance coverage for the entire park. Twin Cities Pride pays for insurance that covers the entire park, including its perimeter walkways, at a cost of approximately \$13,500 per year. Twin Cities Pride also pays for a private security firm to guard the booths overnight during the Festival at a cost of approximately \$5,000 per year.

**Types of Participants in the Twin Cities Pride Festival:
(Sponsors, Exhibitors, and Vendors)**

13. The Pride Festival attracts over 200,000 visitors each year and is largely planned, organized, and operated by volunteers.

14. There are three categories of official participants in the Pride Festival. "Sponsors" have the highest level of participation, and receive many benefits such as booth space and advertising, in exchange for substantial financial support of the Pride

Festival. The Pride Festival Exhibitor Guidelines state that an “Exhibitor” or “Vendor” may not attain or advertise “Sponsorship” status simply by renting a booth. That is, sponsors are exhibitors or vendors, but not all exhibitors or vendors are sponsors. “Vendors” sell products or solicit donations and “Exhibitors” do neither, but may display information about their organization or cause and distribute written materials or attractive “freebie” souvenirs to entice attendees.

15. All organizations and individuals with authorized booths are listed in the Twin Cities Pride Annual Report as “Pride Season Supporters.”

16. All Sponsors, Exhibitors, and Vendors must sign and affirm a statement that “The Applicant affirms that they and/or their business/organization do not discriminate in hiring, employment, participation or services rendered based on the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, or Acquired Immune Deficiency Syndrome or HIV status.”

17. To help manage the many Sponsors, Exhibitors, and Vendors, Twin Cities Pride has developed and published a clear set of rules that apply to all official participants who wish to distribute materials, use displays or signs, and conduct sales or other activities at the Festival. Those rules state: “You must limit your activities at the Festival to those you state on your application, which must pertain to your organization/business. You must also limit the conduct of those activities to your booth space(s). Sales or distribution of anything done by walking through the Festival grounds is not permitted.”

18. Booth application fees are a primary source of the revenue that allows Twin Cities Pride to carry out its mission. Under the terms of its Permit, Twin Cities Pride must give 10% of the revenue from food, beverage and other commercial booths to the Park Board.

19. In 2009, Twin Cities Pride approved 562 booths for \$137,158.00 of revenue.

20. In 2010, Twin Cities Pride has approved 391 booths for \$122,875.00 (as of June 17, 2010) for the 2010 Festival.

21. As the vendor application and guidelines state, the booths are charged on a sliding scale. Twin Cities Pride attempts to make the Pride Festival accessible through a booth for any organization that wants to participate and whose message is consistent with the overall message and specific positive theme of the Pride Festival.

22. Limiting distribution of materials and signage regarding a cause or organization to the authorized and assigned booth locations helps prevent littering throughout the Pride Festival grounds. Twin Cities Pride is responsible for cleaning up Loring Park after the Pride Festival.

23. To this end, Twin Cities Pride requires those distributing materials at a booth to be responsible for cleaning up their discarded materials around their booths.

24. Twin Cities Pride reserves the right to charge vendors and exhibitors a cleaning fee of at least \$100 if their booth spaces are left littered, damaged or in bad condition.

25. Further, it is crucial to limit distribution of free materials to certain areas of the Park so that the traffic flow of attendees is as smooth as possible. If vendors or exhibitors are able to stand on the internal or contiguous perimeter Park pathways distributing free materials, the crowds that gather to get a free key chain, disposable pen, informational pamphlet or Bible can impede the arrival and access of other Festival attendees or the staging and delivery of supplies to food and beverage or other vendors.

Brian Johnson's Anti-Gay Message

26. In 2009, Brian Johnson applied to have a booth at the Pride Festival.

27. Twin Cities Pride denied his booth application because when Twin City Pride's 2009 Festival Manager asked Johnson about his opinions regarding GLBT people, Johnson admitted he believed GLBT people were sinful and going to hell. Johnson also refused to abide by the non-discrimination statement.

28. In previous years, Twin Cities Pride received complaints from attendees who felt "ambushed" by Johnson and his family. Many Festival attendees thought they were going to interact with an affirming religious organization and were going to get a free Christian Bible as a result, but instead these attendees were harassed by Johnson and his family, who told them they were going to hell.

29. Despite having been denied a booth permit, on June 27, 2009, Johnson and two members of his family came to Loring Park and attempted to distribute materials outside of a booth, in clear violation of the Twin Cities.

30. The Minneapolis Police Department asked Johnson and his party to move their boxes of materials, including Bibles, off of Festival grounds to the opposite city

sidewalk, where they would be free to distribute the materials and interact with Festival attendees off the permitted grounds. Johnson refused to do so.

31. Johnson was arrested and ejected from Loring Park by the Minneapolis Police Department for trespassing and refusing to follow instructions.

**The Park Board Allows Brian Johnson Special Access to Distribute
Materials at the 2010 Pride Festival.**

32. On April 5, 2010, Brian Johnson, through his counsel the Alliance Defense Fund (“ADF”), sent a letter to the Park Board. ADF threatened the Park Board with litigation unless it allowed Mr. Johnson to enter the Twin Cities Pride Festival grounds to distribute materials.

33. In addition, Mr. Johnson again applied to Twin Cities Pride to obtain an exhibitor booth for the 2010 Festival. Twin Cities Pride again denied his booth application because of his history of disruption, and because his anti-gay opinion was antithetical to the Pride Festival’s purpose and message.

34. Despite the fact that Twin Cities Pride had previously denied Mr. Johnson’s booth application, and despite knowledge of his arrest the prior year, on April 26, 2010, the Park Board’s attorney wrote to ADF assuring them that the Park Board “**will not** prevent Brain Johnson [sic] from entering Loring Park or its perimeter sidewalks on June 26th and June 27th 2010 during the Minneapolis Pride Festival (“Festival”) to distribute literature, display signs, and speak to members of the public.”

35. Even though Twin Cities Pride expressly excluded Johnson as an exhibitor at the Pride Festival, the Park Board intends to force Twin Cities Pride to allow Mr.

Johnson to distribute materials of any kind, including materials condemning homosexuality, as well as to display signs of any kind in Loring Park and outside of any assigned and authorized booth space.

COUNT ONE

DEPRIVATION OF CIVIL RIGHTS UNDER COLOR OF LAW, 42 U.S.C. § 1983; VIOLATION OF PLAINTIFF'S FIRST AMENDMENT RIGHT TO FREE SPEECH, PETITION, AND ASSEMBLY

36. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

37. Defendant is a person under 42 U.S.C. § 1983.

38. Plaintiff has a constitutionally protected right to define and limit the content of its actual and symbolic speech.

39. Defendant Minneapolis Parks and Recreation Board is a political subdivision of the State of Minnesota. The Park Board acted under color of law in authorizing Brian Johnson to distribute materials and use signs or displays outside of authorized and assigned booths during the Pride Festival on Twin Cities Pride's permit grounds.

40. Defendant's action constitutes a violation of Plaintiff's right to free speech, petition, and assembly guaranteed by the First Amendment to the United States Constitution.

41. As the result of Defendant's action to allow Mr. Johnson to express his views as part of the Pride Festival, Plaintiff faces an actual and concrete threat of imminent future violation of its First Amendment free speech, assembly, and petition

rights with respect to the Pride Festival it intends to conduct on June 26 and 27, 2010, as incorporated and applied to the states through the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court award the following relief:

1. A temporary restraining order and a preliminary injunction ordering Defendant to support and assist Twin Cities Pride in protecting its First Amendment rights within the legal boundaries of Loring Park (including its internal and perimeter pathways) by:
 - (a) prohibiting any person or organization from distributing written materials or tangible objects outside of an authorized exhibitor or vendor booth in the area and for the times during which Twin Cities Pride has a permit to operate the Twin Cities Pride Festival; and
 - (b) prohibiting all signage not authorized by Twin Cities Pride that is displayed or carried by any person or organization outside of an authorized exhibitor or vendor booth in the area and for the times during which Twin Cities Pride has a permit to operate the Twin Cities Pride Festival.
2. A monetary award to Twin Cities Pride in the amount of its costs of suit, including attorney's fees, pursuant to 42 U.S.C. §§ 1983 and 1988; and

3. Any such other and further relief the Court deems just and proper.

DATED: June 23, 2010

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: /s/ Amy E. Slusser
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