

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF FLORIDA
NORTHERN DISTRICT**

SAINT FAUSTINA OLD CATHOLIC CHURCH,	:	Case No.
	:	
Plaintiff,	:	Judge:
	:	
-vs-	:	
	:	
CITY OF PENSACOLA; CITY MANAGER AL COBY, in his individual capacity,	:	JURY TRIAL REQUESTED
	:	
Defendants.	:	

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
PRELIMINARY AND PERMANENT INJUNCTIONS, AND DAMAGES**

Plaintiff St. Faustina Old Catholic Church (“Church”), by and through counsel, makes this Complaint against Defendants as follows:

1. This is a civil rights action seeking declaratory judgment, preliminary and permanent injunctive relief, and damages against the City of Pensacola and City Manager Al Coby (collectively, the “City”). The City has a policy regulating access to Plaza Ferdinand VII (the “Park”) that is both unconstitutional on its face and as it has been applied to deny the Church access to the Park.

2. The City’s denial of the Church’s access to the Park violates the Church’s First Amendment rights to free association and speech in a traditional public forum and to free exercise of religion. The City’s action is also a violation of the Church’s Fourteenth Amendment rights to due process and equal protection under law.

JURISDICTION AND VENUE

3. 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 made under color of state law of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1367(a), in that the state law claim raised is so related to the federal claims that it forms part of the same case or controversy; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and 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.

4. Venue is proper in the United States District Court for the Northern District of Florida under 28 U.S.C. § 1391(b), because the events giving rise to the claim occurred within the District and because the Defendants are residents of or located in the District.

PARTIES

5. Plaintiff St. Faustina Old Catholic Church is a non-profit organization that exists for religious, charitable, and educational purposes. The Church is a part of the Diocese of Saint Patrick.

6. Defendant City of Pensacola is the governmental body that owns, regulates, and maintains the Park.

7. Defendant Al Coby is the City Manager for the City of Pensacola. He is the City's final policy maker regarding use of the Park and is sued in his individual capacity. It was pursuant to his direction that the City police denied the Church access to the Park.

FACTS

8. Plaza Ferdinand VII is a public park located in the heart of downtown Pensacola. It has been a public meeting place since before the founding of the United States, originally created as a meeting square by the Spanish government in the 1700s.

9. The City owns, regulates, and maintains the Park and allows it to be used for both general public access and for a wide variety of events, including a February gathering of over 2000 people in a reception for visiting Spanish monarchy.

10. Vendors also use the Park over the Christmas and New Year holidays to sell items, and religious groups use it over the summer months as a meeting location.

11. Nathan Monk is the pastor of Saint Faustina Old Catholic Church and is authorized to act on its behalf.

12. The Church holds a weekly Thursday night Bible study at its building in downtown Pensacola. The study is held for fellowship, study of the Bible, and prayer.

13. Over time, the Bible study members, led by Fr. Monk, decided that they would like to begin meeting at the Park as a part of their meetings for a weekly picnic, returning to their nearby church building afterwards for the formal Bible study.

14. The choice to meet there was based on the Church members' religiously-motivated desire to live out the things they are learning in their Bible studies, particularly by reaching out to their local community.

15. Accordingly, when the Church meets at the Park for a picnic, the Church members offer to share their food with any people who happen to be at the Park.

16. The Church members engage in this conduct to express a message to the public, particularly to needy members of the public, that God loves and values them.

17. The picnics include a short time of prayer and brief religious remarks by Fr. Monk.

18. The Church chose the Park as their meeting location for a variety of reasons. Practically speaking, the Park is the closest public park to the Church's building.

19. Also, as compared to other nearby parks, the Park attracts not only more people as a general rule, it also attracts the types of people who are more likely to appreciate and respond to the Church's outreach, particularly the many individual casual pedestrians who walk through the Park and some of the City's needy from a nearby rescue mission.

20. Other city parks, like Seville Square, are located in residential neighborhoods less likely to be frequented by either casual pedestrians or needy people.

21. Symbolically, the Park is a central, visible part of the City and the Church believes that their ministry there communicates the importance and societal significance of the people to whom they minister.

22. The Church also believes that the City's eviction of the Church is symbolic of its desire to marginalize it and other ministries like it, pushing them into more invisible parts of the City.

23. While the picnics started out with only a few people in attendance, they have grown to fluctuate between roughly 20 and 30 participants, about half of whom are Church members and half of whom are members of the public from the Park.

24. The Church had been meeting weekly for Thursday-night picnics at the Park for about 10 weeks when the City required the Church to discontinue meeting at the Park.

25. This occurred on or about Thursday, February 26th, 2009, when Pensacola Police Officer Jay told Fr. Monk that City Manager Coby had determined that the Park is a "non-event park" and, accordingly, the Church could no longer hold its picnics there.

26. Officer Jay informed Fr. Monk that the picnics could be moved to two other public parks. One of the parks suggested by the City for the Church's picnics is located in a high-crime area under a highway overpass and the other is nearby a sewage plant.

27. Neither alternative park location is a suitable location for a church picnic.

28. There are no ordinances in the Pensacola Code that declare either the Park or any other City park to be "non-event parks."

29. Officer Jay did not explain what an "event" was and how that differed from other, allowable uses of the Park.

30. Further, Officer Jay did not say that the Church could apply for a permit to use the Park; he just said the Church was not allowed to have access to it.

31. Pursuant to Officer Jay's order, the Church is no longer holding picnics at the Park.

32. In an attempt to resolve this matter quickly and without litigation, the Church sent Defendant Coby a letter through counsel on March 6 explaining that the City's action against the Church was unconstitutional.

33. The letter requested that the City respond by March 18.

34. As of the filing of this Complaint, Defendant Coby has never responded to the Church's request. The letter is attached to this Complaint as Exhibit 1.

35. On March 20th, in a continued attempt to avoid litigation, the Church contacted the City's legal counsel, City Attorney William Wells, and provided him with a copy of the Church's letter to the City.

36. Mr. Wells informed the Church that he had never been consulted regarding the issue and that, if given a reasonable period of time, he would provide the City's final position regarding the Church's request.

37. Three weeks later, on April 9th, Mr. Wells wrote the Church and explained that use of the Park was “heavily restricted” in order to maintain the Park’s grass, and that these restrictions are more strictly enforced during the winter months because of the grass’s increased fragility. Mr. Wells’ correspondence to the Church is attached as Exhibit 2.

38. Mr. Wells attached a Committee Memorandum from a 1987 meeting of the Pensacola City Council, which he identified as the policy the City uses to govern access to the Park. The Committee Memorandum (“Policy”) is attached as Exhibit 3.

39. The Policy was written to address a single use request for the Park and it was approved by the City Council on a “one time trial basis.” Ex. 3 at 4. The City has since adopted the Policy as its official policy for Park access. Ex. 2.

40. The Policy only allows Park access for “limited impact events,” which it defines as “those events which are scheduled for one-half day or less and are projected to attract less than 5,000 participants.”

41. Groups of less than 5,000 accessing the Park are required to pay a non-refundable user fee of \$250 per use and pay bonds of \$500 for clean-up and \$25,000 for damage.

42. While the collected fees are deposited in a Park maintenance fund, there is no finding or statement in the Policy suggesting those fees are reasonably related to actual impact on the Park from a particular Park use.

43. In fact, the Policy does not limit its application to any particular event size under 5,000. Facially, it is just as applicable to one-person events as it is to those of 4,999 people.

44. Also, the Policy does nothing to limit non-event uses of the Park, allowing any number of people to access the Park, and trample on the Park’s grass, as long as they do not “schedule” their Park usage ahead of time.

45. Finally, the Policy is completely silent on the application process for permits to use the Park.

46. There is no description in the Policy of the advance notice applicants must give the City, no limitation on the time period for City officials to respond to applications, and no objective and narrow standards limiting official discretion in the award of permits to use the Park.

47. The Church has never held any of its picnics on the grass or conducted any other activities on the grass; instead, its picnics were held on park benches located in the large concreted area at the center of the Park.

48. Since several concrete sidewalks all around the Park lead to this central meeting location, Church members never were required to walk on the grass to access the picnics.

49. Further, Officer Jay never mentioned concerns about the grass when ordering the Church not to meet in the Park, and there are no Park signs warning users not to walk on the grass.

STATEMENTS OF LAW

50. All of the City's acts alleged herein were committed and continue to be committed under the color of state law by the City, its officers, agents, servants, employees, or persons acting at its behest or direction.

51. The Church has suffered and is suffering irreparable harm to its First and Fourteenth Amendment rights as result of being discriminatorily barred from accessing the Park, a traditional public forum.

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**FIRST CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREEDOM OF SPEECH**

52. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

53. Religious speech, including the Church's, is protected by the Free Speech Clause of the First Amendment.

54. The Park has been available for public use for centuries and, as a public park, is the quintessential example of a traditional public forum.

55. The City has and continues to keep the Park generally available to the public for a wide variety of free speech activities.

56. The City's Policy is an impermissible prior restraint on the Church's desired religiously expressive use of the Park.

57. The Policy fails to include many of the constitutionally required safeguards for a permit scheme. Most egregiously, it has no limit on official discretion on whether to award a permit at all.

58. The Church's experience trying to use the Park demonstrates the broad latitude City officials have in regulating use of the Park under the Policy.

59. For instance, Officer Jay, speaking on behalf of Defendant Coby, simply stated that the Park was a "non-event" park and the Church could not use it; he never said that the Church could apply for a permit to use the Park. In fact, the City, even in providing the Church a copy of its Policy for Park use, has still not stated the Church could apply for Park use; it has simply said that the Church can use other City parks. Ex. 2.

60. Also, Mr. Wells stated that the Policy is more strictly enforced at certain times of the year. Ex. 2.

61. The Policy is not narrowly tailored to serve its purported governmental interest in protecting grass as it is both underinclusive and overinclusive. It is underinclusive because it does not prohibit other Park use activities that have at least as much impact on Park grass as do the Church's picnics, and it is overinclusive because it prohibits uses of the Park that have no impact on Park grass.

62. The Policy's substantial fee and bond requirements are entirely unrelated to actual costs or impacts generated by actual use of the Park. This is particularly clear since the same fees and bonds are imposed for events attracting 4,999 people as for events attracting one person.

63. The City's enforcement of its Policy against the Church discriminatorily restrains constitutionally protected speech.

64. The City's Policy has a substantial chilling effect on the free speech rights of the Church and others not before this Court.

65. As such, the City's policy, and its enforcement of that policy against the Church, violates the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to state and local governments through the Fourteenth Amendment.

**SECOND CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREEDOM OF ASSOCIATION**

66. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

67. The Church desires to gather together with its members to share their food and their religious faith with those members of the community who happen to be visiting the Park.

68. This desire is motivated by the Church's religious beliefs, particularly its belief that all members of the community are important to God and deserve both respect and kindness.

69. The City's action has prevented the Church and its members from being able to associate with members of the community in the Park.

70. Accordingly, the City's action has violated the implied First Amendment right to associate for the purpose of engaging in protected First Amendment activities like expression and the free exercise of religion.

71. The City has no compelling reason that justifies infringing the Church's right to free association in a generally available public facility.

72. As such, the City's policy, and enforcement of it against the Church, violates the right of free association protected by the First Amendment to the United States Constitution, made applicable to state and local governments through the Fourteenth Amendment.

**THIRD CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREE EXERCISE OF RELIGION**

73. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

74. The Church desires to gather with its members and others at the Park to engage in religious expression and activity that is motivated by its sincerely-held religious beliefs.

75. The Park is a traditional public forum and the City has intentionally and continuously made it available to the public for a wide variety of activities.

76. The City's Policy, and its enforcement of it against the Church, selectively burdens the Church's religious exercise by restricting its access to a generally available public facility.

77. The City's enforcement of its Policy has not been neutral and generally applicable, as it has discriminatorily enforced its policy against the Church, allowing continued general public access to the Park while denying the Church that same level of access.

78. The City has no compelling reason that justifies denying the Church equal access to a generally available public facility.

79. As such, the City's policy, and enforcement of it against the Church, violates the Free Exercise Clause of the First Amendment to the United States Constitution, made applicable to state and local governments through the Fourteenth Amendment.

**FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
DUE PROCESS**

80. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

81. The City's Policy, on its face and as applied to the Church, requires persons of common intelligence to guess its meaning, scope, and application.

82. The Policy lacks any objective standards to cabin the discretion of City officials and employees charged with enforcing them.

83. The Policy allows the City to enforce it in an *ad hoc* and discriminatory manner.

84. The City has no compelling reason that justifies its refusal to grant the Church equal access to the Park.

85. As such, the City's policy, and its enforcement against the Church, violates the Due Process Clause of the Fourteenth Amendment.

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**FIFTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
EQUAL PROTECTION**

86. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

87. The Equal Protection Clause of the Fourteenth Amendment requires the government to treat similarly-situated persons equally.

88. The City's enforcement of the Policy gives similarly-situated organizations access to the Park while denying equal access to the Church.

89. By the treating the Church in a discriminatory manner, the City has intruded on the Church's fundamental constitutional rights.

90. The City has no compelling reason that justifies its discrimination against the Church.

91. As such, the City's Policy, and its enforcement against the Church, violates the Due Process Clause of the Fourteenth Amendment.

**SIXTH CAUSE OF ACTION
VIOLATION OF THE FLORIDA RELIGIOUS FREEDOM RESTORATION ACT
F.S.A. § 761**

92. The Church hereby incorporates all foregoing allegations as if set forth fully herein.

93. The City's Policy and its enforcement of it preventing the Church from meeting in the Park to engage in religious activities substantially burdens the free exercise of the Church's religion.

94. The City's reason for preventing the Church from meeting in the Park—protection of the Park grass—is not a compelling interest.

95. The City's means of protecting Park grass is not the least restrictive means to further that interest.

96. As such, the City's Policy, and its enforcement against the Church, violates the Florida Religious Freedom Restoration Act.

WHEREFORE, Plaintiff prays for judgment against the City and that the Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter and claims in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;
- B. Pursuant to 28 U.S.C. §2201, declare that the City's laws, policies and practices, as alleged above, violate the First and Fourteenth Amendments to the United States Constitution;
- C. Pursuant to 28 U.S.C. §2202, Fed. R. Civ. P. 65, and 42 U.S.C. §1983, preliminarily and permanently enjoin the City from enforcing its unconstitutional policies and practices against the Church and others similarly situated;
- D. Pursuant to 42 U.S.C. §1988, F.S.A. §761.04, and other applicable law, award the Church its costs and expenses incurred in bringing this action, including its reasonable attorneys' fees;
- E. Award the Church compensatory and/or nominal damages for the damages suffered in violation of federal law in an amount to be determined by a jury; and
- F. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted this 23rd day of April, 2009,

/s/ Erik Stanley

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**Pro hac vice application pending*

VERIFICATION

On this the 21st day of April, 2009, I, Nathan Monk, pursuant to 28 U.S.C. § 1746, declare that I have read the foregoing Verified Complaint, and the same is true to my own knowledge. With respect to matters of law, I have relied upon the advice of counsel.



Nathan Monk