

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ERIC WOLL0D,)
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 Plaintiff,)
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 vs.)
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 CITY OF WILDWOOD, NEW JERSEY,)
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 Defendant.)
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Civil Action No. _____

**VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF,
AND DAMAGES PURSUANT
TO 42 U.S.C. § 1983**

I. INTRODUCTION

1. This civil rights action is brought to challenge the Defendant’s prohibition of Plaintiff, Eric Wollod, and other similarly situated individuals from distributing literature in traditional public forums in Wildwood, New Jersey without a permit or payment of a fee.
2. The actions of Defendant violate well-established constitutional rights to engage in free speech in a traditional public forum.
3. Defendant’s restriction on speech is found in Wildwood City Ordinance § 7-3.4 and other portions of that section, which limits distribution of literature in traditional public forums to certain restricted areas, and only then upon they payment of a fee. A copy of § 7 is attached as Exhibit A and is hereafter referred to as the “Ordinance.”
4. Distribution of literature in a traditional public forum other than those few areas listed in City Ordinance § 7-3.4 is forbidden without a permit.
5. Plaintiff challenges both the application of the Ordinance to Plaintiff’s religious speech, and the Ordinance on its face.

II. JURISDICTION AND VENUE

6. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983 and 1988.
7. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.
8. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.
9. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).
10. This Court is authorized to award the requested damages under 28 U.S.C. § 1343(3).
11. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.
12. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the District of New Jersey because this claim arose there, and because Defendant resides within the District.

III. IDENTIFICATION OF PLAINTIFF

13. Plaintiff Eric Wollod is an adult male resident of Philadelphia, Pennsylvania, and citizen of the United States.

IV. IDENTIFICATION OF DEFENDANT

14. Defendant City of Wildwood, New Jersey, is a civil body politic, organized under New Jersey law. It has enacted, and continues to enforce through its peace officers, Wildwood City Ordinances, including the Ordinance challenged herein, within this Judicial District.

V. STATEMENT OF FACTS

15. Mr. Wollod has lived in Philadelphia, Pennsylvania, for 56 years.
16. Mr. Wollod is a professing Christian.
17. Pursuant to his religious tenets, and based on Biblical teachings of the “Great Commission,” Mr. Wollod desires, and has a sincerely held religious belief, to share his religious beliefs with others.
18. One way in which Mr. Wollod shares his faith is by distributing literature in public areas.
19. Mr. Wollod has no intent to physically touch or harass anyone, or to encourage violence, or to express himself in any way other than in a peaceful manner. Mr. Wollod has no intent to encroach upon the private property of any person or entity, or solicit money or anything of value from those persons he comes into contact with.
20. On June 6, 2008, Mr. Wollod was distributing religious literature at the corner of Pacific and East Baker Avenues in the City of Wildwood, New Jersey,
21. Mr. Wollod was standing on a public sidewalk.
22. This sidewalk is open and accessible to the public.
23. While Mr. Wollod was distributing literature at this location, a City of Wildwood police officer told Mr. Wollod that he could not distribute literature at that location without a permit.
24. The officer acknowledged that the sidewalk was public property.
25. Mr. Wollod eventually complied with the officer’s demand and stopped distributing literature in that location.
26. Upon information and belief, the name of this police officer is Sean Yuhas.

27. Approximately 6 days later, on June 12, 2008, Mr. Wollod went to the Wildwood mayor's office.
28. The mayor's office told Mr. Wollod that distribution of literature in the City is only permitted at five limited areas on the Boardwalk, and even on the Boardwalk, he must first submit a detailed letter to the City to obtain a permit. Mr. Wollod was told that even if he had a permit, he was not allowed to hand out any literature unless a person first requested such literature.
29. On January 5, 2009, Mr. Wollod again went to the mayor's office to see if he could distribute literature within the City. He was then told that distribution of literature within the City is only permitted at four (rather than five) areas on the Boardwalk if he first submits a detailed letter to the City and obtains a permit.
30. The City's permit and fee scheme exempts Jehovah's Witnesses.

VI. ALLEGATIONS OF LAW

31. Each and all of the acts alleged herein were done by Defendant under the color and pretense of local ordinances, regulations, customs, usages, and policies of the City of Wildwood.
32. Defendant enforced the challenged Ordinance pursuant to their policies and practices against the Plaintiff.
33. Defendant's ordinance on its face and as applied to Plaintiff discriminates on the basis of viewpoint by singling out religious speech.

34. The decision to deny Plaintiff access to a traditional public forum is a direct result of laws, policies, practices, customs, and usages officially adopted and promulgated by the City of Wildwood.
35. All of the actions of the Defendant were done in violation of clearly established law.
36. Plaintiff's speech and religious expression are fully protected by the United States Constitution.
37. Concomitantly, denial of access to public fora to engage in protected religious speech is a violation of the First Amendment and the Fourteenth Amendment to the United States Constitution.
38. Unless and until the Defendant's exclusion of the Plaintiff from traditional public forums in the City of Wildwood is enjoined, the Plaintiff will suffer and continue to suffer irreparable harm to his federal constitutional rights.

VII. FIRST CAUSE OF ACTION – VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE UNITED STATES CONSTITUTION

39. The allegations contained in all preceding paragraphs are incorporated herein by reference.
40. Wildwood City Ordinance § 7 inhibits speech, on its face, and in its application, by prohibiting individuals and small groups from distributing literature in traditional public forums without a permit and/or paying a fee.
41. The property on which Plaintiff expressed his message by distributing literature was public property and a traditional public forum.
42. Defendant's ordinance and application of its ordinances applies to religious speech, while leaving other viewpoints unfettered, and therefore constitutes viewpoint discrimination.

43. Neither the Ordinance nor Defendant's actions serve a compelling governmental interest, nor are they narrowly tailored to achieve such interest.
44. Therefore, the Ordinance is unconstitutional on its face, and as applied, in violation of the Free Speech Clause of the First Amendment of the United States Constitution.

VIII. SECOND CAUSE OF ACTION – VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION UNDER THE UNITED STATES CONSTITUTION

45. The allegations contained in preceding paragraphs are incorporated herein by reference.
46. Plaintiff's desire to share his faith is motivated by his sincerely held religious beliefs.
47. The Bible instructs believers to share the Gospel with others, and Plaintiff relies on the Bible to guide his words and actions.
48. Plaintiff sought, and continues to seek, to discuss issues from a religious perspective and to engage in religious speech through literature distribution on public property.
49. Defendant's Ordinance and practice of requiring the Plaintiff to censor his religious speech in a traditional public forum imposes a burden on the Plaintiff that is not imposed on other individuals.
50. By forcing Plaintiff to obtain a permit and/or pay a fee in order to speak in a traditional public forum, Defendant has imposed a substantial burden on Plaintiff's sincerely-held religious beliefs.
51. The Ordinance is not a neutral law of general applicability.
52. Defendant's actions and practices serve no rational or compelling interest.
53. Defendant's Ordinance and practices therefore violate the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

IX. THIRD CAUSE OF ACTION – VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

- 54. The allegations contained in preceding paragraphs are incorporated herein by reference.
- 55. The Ordinance allows an exception to its permit and fee requirements for Jehovah's Witnesses and other groups and speakers to which Plaintiff does not belong.
- 56. Plaintiff is similarly situated to these other groups in that he does merely wants to engage in protected expression in traditional public forums.
- 57. This differential treatment between similarly situated speakers involves a fundamental right.
- 58. There is no compelling interest for this differential treatment.
- 59. Defendants' Ordinance and practices therefore violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

X. FOURTH CAUSE OF ACTION – THE CITY'S ORDINANCE IS VAGUE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

- 60. The allegations contained in preceding paragraphs are incorporated herein by reference.
- 61. The Ordinance, on its face and as applied to Plaintiff, requires persons of common intelligence to guess its meaning, scope, and application.
- 62. The Ordinance grants city officials unfettered discretion to interpret and apply the law and to penalize Plaintiff.
- 63. The Ordinance allows Defendant to enforce the law in an *ad hoc* and arbitrary manner.
- 64. The Ordinance lacks unambiguous, objective standards to guide Defendants in deciding what activity fits within the laws' scope.

65. Defendant has no government interest sufficient to justify the laws challenged herein, nor to justify the application of those laws to Plaintiff.
66. Defendant has therefore violated the Fourteenth Amendment to the United States Constitution.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests for the following relief:

- A. That this Court issue a preliminary and permanent injunction requiring the Defendant to permit the Plaintiff and other similarly situated individuals to engage in literature distribution in all traditional public forums within the City of Wildwood without having to obtain a permit or pay a fee;
- B. That this Court issue a preliminary and permanent injunction, enjoining the Defendant, its officers, agents, employees, attorneys, and all other persons acting in active concert with them, from enforcing the Ordinance so as to require individuals and small groups to obtain a permit or the payment of a fee in order to distribute literature in traditional public forums;
- C. That this Court enter a Declaratory Judgment declaring those portions Wildwood City Ordinance § 7 requiring individual speakers and small groups to obtain a permit and/or pay a fee before speaking in traditional public forums unconstitutional both on its face and as applied to Plaintiff's speech;
- D. That this Court award Plaintiff nominal and compensatory damages against Defendant;

- E. 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;
- F. That this Court grant such other and further relief as this Court deems equitable and just.
- G. That this Court retain jurisdiction of this matter as necessary to enforce the Court's orders.

Respectfully submitted,

s/ Michael P. Laffey

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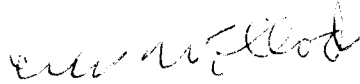
Attorneys for Plaintiff

* Pro Hac Vice Motions submitted herewith

DECLARATION

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that I have read the foregoing Complaint and that the facts stated in it are true and correct.

Executed this 14th day of January, 2009, in Wildwood, New Jersey.



Eric Wollod