

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

ARABIC CHRISTIAN PERSPECTIVE; and  
GEORGE SAIEG,

Plaintiffs,

v.

CITY OF DEARBORN; and RONALD  
HADDAD, in his official capacity as Chief of  
Police, City of Dearborn Police Department,

Defendants.

No. 2:09-cv-12321-PDB-RSW

**FIRST AMENDED  
COMPLAINT**

Demand for Jury Trial

Judge Paul D. Borman

Magistrate Judge Whalen

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Plaintiffs Arabic Christian Perspective (hereinafter "ACP") and George Saieg, by and through their undersigned counsel, bring this First Amended Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

## INTRODUCTION

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants' policy, practice, custom, and/or procedure of restricting Plaintiffs' right to engage in religious speech activity in traditional public fora in the City of Dearborn during the Annual Dearborn Arab International Festival (hereinafter "Free Speech Restriction"). Defendants' Free Speech Restriction prohibited Plaintiffs from distributing their religious materials at no charge to willing recipients on the public sidewalks and within other public places during the 2009 annual festival and relegated them to a fixed, remote location that denied them access to their intended audience and frustrated their efforts to evangelize.

2. The United States Supreme Court has long recognized that all public streets and sidewalks are properly considered traditional public fora. These public fora have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. The Supreme Court has emphasized that the streets and sidewalks are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place. The public streets and sidewalks in the City of Dearborn are no exception.

3. Defendants' Free Speech Restriction favors commercial speech over noncommercial speech and is thereby an impermissible content-based restriction. Moreover, the

Free Speech Restriction is not narrowly tailored to serve a substantial government interest nor does it leave open ample alternatives for Plaintiffs' religious speech.

4. Defendants' selective enforcement of the Free Speech Restriction disfavored Plaintiffs' Christian religious speech and favored other viewpoints, messages, and speech, including commercial speech and solicitations.

5. Plaintiffs seek a declaration that Defendants violated their clearly established constitutional rights as set forth in this First Amended Complaint; a declaration that Defendants' Free Speech Restriction violates the United States Constitution and 42 U.S.C. § 1983 as set forth in this First Amended Complaint; a declaration that through the enforcement and attempted enforcement of Defendants' Free Speech Restriction, Defendants have substantially burdened and unlawfully infringed upon Plaintiffs' rights to religious exercise, religious expression, and expressive association in violation of the United States Constitution and 42 U.S.C. § 1983; a preliminary and permanent injunction enjoining the enforcement of Defendants' Free Speech Restriction as set forth in this First Amended Complaint; and nominal and compensatory damages for the harm caused by Defendants. Plaintiffs also seek an award of reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

#### **JURISDICTION AND VENUE**

6. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the

general legal and equitable powers of this Court. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

#### **PLAINTIFFS**

8. Plaintiff ACP is a nonprofit, religious organization that is incorporated under the laws of the State of California.

9. ACP is a national ministry established for the purpose of proclaiming the Holy Gospel of Jesus Christ to Muslims. As part of its outreach efforts, ACP travels around the country attending and distributing Christian literature at festivals and mosques. ACP members and volunteers are drawn from various church affiliations, cities, and backgrounds. The members and volunteers of ACP have the desire to practice their religious freedom and to follow their religious duty based on the Great Commission.

10. The Great Commission, in Christian tradition, is the instruction of the resurrected Jesus Christ to His disciples that they spread His teachings to all the nations of the world. It has become a tenet in Christian theology, emphasizing mission work, evangelism, and baptism. It has been a primary basis for Christian missionary activity. It is found in the New Testament at Matthew 28:16-20, Mark 16:14-18, Luke 24:44-49, Acts 1:4-8, and John 20:19-23.

11. Plaintiff George Saieg is an adult resident of California and the founder and director of ACP. He is a Christian pastor with a deeply-held religious conviction to evangelize to non-Christians. Evangelizing and handing out religious literature and materials are important aspects of Plaintiff Saieg's religious beliefs and vocation.

## **DEFENDANTS**

12. Defendant City of Dearborn (hereinafter “City”) is a municipal entity organized and existing under the laws of the State of Michigan. It is a municipal corporation with the right to sue and be sued. The City and its officials are responsible for creating, adopting, and enforcing the rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs of the City, including the Free Speech Restriction, the Festival “Rules & Regulations,” and others related to the Annual Dearborn Arab International Festival.

13. Defendant Ronald Haddad is the chief of police for the City of Dearborn Police Department. As the chief of police, he is responsible for creating, adopting, and enforcing the rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs of the City, including the Free Speech Restriction, the Festival “Rules & Regulations,” and others related to the Annual Dearborn Arab International Festival. Defendant Haddad is sued in his official capacity only.

## **STATEMENT OF FACTS**

### **A. Annual Arab Festival Sponsored by the City.**

14. The City contains one of the most densely populated Muslim communities in the United States. It is estimated that out of 98,000 inhabitants, approximately 30,000 are Muslims. Consequently, the City is an important location for ACP’s Christian outreach efforts.

15. For the past fourteen years, the Annual Dearborn Arab International Festival (“Festival”) was held in the City. The City will continue to hold the Festival in the future.

16. On or about May 4, 2009, the City granted the American Arab Chamber of Commerce and the Arab Community Center for Economic and Social Services (“A.C.C.E.S.S.”)

“permission to conduct the 14th Annual Dearborn Arab International Festival from June 19 through June 21, 2009 subject to all applicable ordinances and the rules and regulations of the Police Department.”

17. The City also authorized “assistance from the Dearborn Police, Fire, Public Works, Building & Safety and Recreation Departments to insure a safety (sic), healthy, fun and successful event.”

18. As in prior years, the 2009 Festival was open to the general public.

19. According to the City, the Festival boundaries for 2009 were as follows: Warren Avenue between Hartwell Street and Kingsley Street; Miller Road between Warren Avenue and Blesser Street. The Festival was mainly held on Warren Avenue, which is a public place. And the eastern barrier was actually placed at Middlepoint Avenue.

20. The Festival occupied the streets; it did not occupy the public sidewalks. The public sidewalks were not part of the Festival.

21. As in prior years, the City closed certain roads for vehicle traffic during the Festival. However, while the roads were closed to vehicular traffic, the adjacent public sidewalks remained open for pedestrian traffic, including pedestrian traffic not associated with the Festival. For example, local commercial establishments along Warren Avenue remained open, and pedestrians visited these establishments for commercial purposes while the Festival was being held.

22. Defendants made special provisions to accommodate the businesses along Warren Avenue to ensure that the public sidewalks remained open for business activity, including commercial speech, which was unrelated to the Festival.

23. Defendants ensured that the public sidewalks, including those immediately adjacent to the Festival, remained open for pedestrians who had no interest in attending the Festival but wanted to patronize the businesses along Warren Avenue instead. This accommodation was made to assist and promote the Warren Avenue businesses. Consequently, the Festival boundaries did not include the adjacent public sidewalks.

24. In addition to the boundaries of the Festival, Defendants also placed barriers on the public streets to restrict vehicular traffic beyond the Festival boundaries. These barriers were placed approximately one block to the north (along Morrow Circle), one block to the south (along Blessner Street), approximately five blocks to the west (along Schaefer Road) and approximately five blocks to the east (along Wyoming Street) of the Festival boundaries (hereinafter referred to as the "Border Area"). A true and accurate photograph taken during the 2009 Festival of the western border at Hartwell Street looking toward the stage at the Festival is attached to this First Amended Complaint as Exhibit 1. A true and accurate photograph taken during the 2009 Festival of the western border at Schaefer Road looking toward Hartwell Street (the western section of the Border Area) is attached to this First Amended Complaint as Exhibit 2.

25. The City police department established a mobile police station in the center of the Festival, and the City employed uniform police officers to enforce the rules, regulations, and restrictions of the Festival, including the Free Speech Restriction. City police officers patrolled the public sidewalks in order to enforce the Free Speech Restriction against Plaintiffs.

**B. Plaintiffs' Free Speech Activity.**

26. Plaintiff Saieg was born and grew up in the Sudan where he never had the basic freedom to share his religious beliefs with others. Plaintiff Saieg praises God for the United States of America and for its Constitution, which guarantees him the right to practice and speak to others about his religious faith, and to gather with others for that purpose, which is part of the mission of ACP.

27. During the previous five years (2004 to 2008), ACP members and volunteers, including Plaintiff Saieg, visited the City to express their religious message to persons attending the Festival by evangelizing and distributing their religious materials without charge to persons willing to accept them. During each of these prior years, ACP members and volunteers freely roamed the perimeter of the Festival (i.e., along the public sidewalks adjacent to the Festival), handing out religious literature and discussing their Christian faith.

28. During Plaintiffs' prior visits to the Festival, Festival officials directed Plaintiffs to distribute their religious materials on the public sidewalks adjacent to the Festival borders and not to distribute them within the Festival. Plaintiffs complied with this direction and received approval from City police officers to distribute their religious materials on these public sidewalks.

29. During these prior visits, Plaintiffs never caused any disruption to the Festival with their peaceful, non-obstructive speech activity. Plaintiffs never blocked nor obstructed in any way the pedestrian traffic along the sidewalks adjacent to the Festival. And among the people approached by Plaintiffs during these visits to the Festival, approximately eighty to ninety percent of them willingly accepted Plaintiffs' religious materials. ACP members and volunteers

also visited the homes of Dearborn-area Muslims where they were often cordially invited in for tea or dinner.

30. Plaintiffs planned to visit the 2009 Festival and/or the public areas immediately adjacent to it every day of the event to distribute religious literature and materials and to evangelize those individuals who attended the event and those individuals who were patronizing the business establishments along Warren Avenue that were not part of the Festival. Plaintiffs' materials do not contain solicitations nor do they contain commercial speech; they contain religious messages.

31. Plaintiffs are not "vendors." Their activities do not constitute "political solicitations." Their activities do not endorse a "political candidate" or a "political cause." And Plaintiffs' religious materials are not "political literature or paraphernalia." Plaintiffs distribute their religious materials at no charge to those who are willing to accept them.

32. The distribution of Plaintiffs' religious materials does not require that the recipient stop in order to receive the message that Plaintiffs wish to convey; instead the recipient is free to read and view the message at a later time. Consequently, Plaintiffs' distribution of their religious materials does not entail the same kind of problems presented by face-to-face solicitations or sales. Indeed, one need not ponder the contents of Plaintiffs' religious materials in order mechanically to take them out of the hand of one of the members or volunteers of ACP.

33. Plaintiffs invested in Gospel materials for the Festival, including leaflets, DVDs, various booklets, and books, which were packaged into a bundle and ready to be distributed to willing takers. In all, Plaintiffs prepared 15,000 separate packages at a cost of approximately \$50,000. These packages were to be given away at no cost as part of Plaintiffs' speech activity.

34. Plaintiffs recruited and/or invited over 75 team members, 6 guest speakers, and 11 team leaders to participate in the outreach program during the Festival. The team leaders and speakers held a training program for the team members prior to the start of the Festival. ACP provided the leaders, guest speakers, and some members with airfare, lodging, ground transportation, and food. Additionally, the speakers received an honorarium. The total cost for these expenses was approximately \$29,860.

35. ACP incurred a charge of approximately \$1,200 for the rental of a training facility.

36. ACP's outreach program in the City involves more than six months preparation. In April 2009, for example, Plaintiff Saieg and 3 other members of ACP traveled to Michigan in order to make preparations for their religious activities. This trip cost approximately \$2,000.

**C. Content-Based "Rules & Regulations" & Free Speech Restriction.**

37. According to the 2009 Festival "Rules & Regulations," "No political solicitation of any kind shall be permitted at Festival entrance points or other areas where such activity would impede pedestrian or vehicular traffic," "No political literature or paraphernalia shall be passed out inside anywhere on festival grounds," "Political candidates, or those supporting a political cause, shall not set up any stands, booths tables tents [sic] or podiums," "No sales or solicitation shall be permitted outside designated vendor areas," "No tents, booths, canopies, tent extensions or temporary shelters may be erected without prior approval of the Festival Director," "No political or unrelated advertising signs shall be posted in booths or outside the vendor tents," and "All vendor activities shall be confined to designated rental areas."

38. Defendants selectively enforced the 2009 Festival “Rules & Regulations” in a manner that favored certain political, commercial, and other speech, including solicitations, over Plaintiffs’ religious expression.

39. For example, some “vendors” with booths inside the Festival were permitted to distribute “political paraphernalia” expressing a political message. One such item was a t-shirt with the Calvin character from the Calvin & Hobbes cartoon urinating on the national flag of the State of Israel. Additionally, local businesses were permitted to sell items and solicit customers outside designated vendor areas. These businesses were not confined to designated rental areas; they were permitted to engage in commercial transactions and commercial speech on the public sidewalks adjacent to the Festival boundaries.

40. In addition to and as an extension of the 2009 Festival “Rules & Regulations,” Defendants created and enforced against Plaintiffs the Free Speech Restriction, which restricted Plaintiffs’ distribution of free religious materials to one fixed location within the Festival, thereby prohibiting Plaintiffs from distributing their free religious materials on the public sidewalks adjacent to the Festival. Defendants also enforced the speech restriction against Plaintiffs in the northern, southern, and western sections of the Border Area, thereby prohibiting Plaintiffs from distributing their free religious materials in these public places as well. The western section of the Border Area was the most densely populated area surrounding the Festival. Consequently, Plaintiffs were denied access to this “audience” for distributing their religious materials.

41. According to Section 14-81 of Chapter 14 of Article IV of the Code of Ordinances for the City (hereinafter “Section 14-81”), “It shall be unlawful for any person to

deposit, place, throw, scatter or cast any commercial handbill in or upon any public place within this city. It shall be unlawful for any person to hand out, distribute or sell any commercial handbill in any public place. It shall **not** be unlawful for any person to hand out or distribute, without charge to the receiver thereof, any **noncommercial handbill in any public place** to any person willing to accept such noncommercial handbill.” (emphasis added).

42. During the Festival, Defendants suspended the protections of Section 14-81 for Plaintiffs by prohibiting them from distributing their religious materials on the public sidewalks adjacent to the Festival and from within certain other public places in the Border Area.

43. During the Festival, commercial establishments were permitted by Defendants to set up tables along the sidewalks to engage in commercial speech and to sell items to pedestrians on the public sidewalks. Defendants did not restrict this commercial speech and activity to a fixed location within the Festival boundaries. True and accurate photographs taken during the 2009 Festival demonstrating these facts are attached to this First Amended Complaint as Exhibit 3.

44. During the Festival, Defendants permitted individuals and groups not associated with Plaintiffs to distribute commercial, political, religious, and other materials on the public sidewalks adjacent to the Festival and in the Border Area. These individuals and groups were not restricted to a fixed location within the Festival. Defendants also permitted individuals and groups not associated with Plaintiffs to distribute commercial, political, religious, and other materials while roaming within the Festival. Defendants did not restrict these individuals and groups to a fixed location. True and accurate photographs taken during the 2009 Festival demonstrating these facts are attached to this First Amended Complaint as Exhibit 4.

45. During the 2009 Festival, Defendants allowed the public sidewalks to be used for and to be blocked by commercial activities, including commercial speech activity. During the Festival, private businesses placed out tables that blocked major sections of the sidewalk, and some of the commercial vendors within the Festival were permitted to block the sidewalk. True and accurate photographs taken during the 2009 Festival demonstrating these facts are attached to this First Amended Complaint as Exhibits 3 and 5.

**D. Plaintiffs' Notification of Their Intent to Distribute Free Religious Materials.**

46. In early June 2009, Plaintiff Saieg telephoned the City Police Department and spoke to Sergeant Jeff Mrowka. Plaintiff's purpose for telephoning the Police Department was to introduce himself and his organization, to inform Defendants of Plaintiffs' peaceful intention to visit the Festival area once again this year to distribute religious literature and evangelize, and to request information concerning the precise location of the event. Sergeant Mrowka said he would call Plaintiff Saieg back with the requested information.

47. When Plaintiff Saieg did not promptly hear back from Sergeant Mrowka, on June 9, 2009, Plaintiff telephoned him again. During that conversation, Sergeant Mrowka asked Plaintiff Saieg to send him an email with the name of his group, contact information, and details about when Plaintiffs planned to be at the Festival. Sergeant Mrowka advised Plaintiff of the Festival's location and stated that ACP's speech activities would now be restricted to a designated corner on the east side of the Festival. Accordingly, Plaintiffs would be denied the right to use the public sidewalks to express their faith by handing out religious materials.

48. Upon being told of the Free Speech Restriction, Plaintiff Saieg informed Sergeant Mrowka that this was unacceptable because ACP members and volunteers were expected to

number more than ninety people, that Plaintiffs had never experienced any problems during past visits to the City and the Festival, that it would be impractical for so many people to be restricted to a single corner of the Festival, and that to be so restricted would prevent Plaintiffs from reaching their intended audience with their religious message. Plaintiff Saieg told Sergeant Mrowka that the purpose of Plaintiffs' outreach mission would be frustrated if they were so restricted by City officials.

49. During this conversation with Sergeant Mrowka, Plaintiff Saieg also informed the officer that ACP members and volunteers had attended the Festival for the past five years without incident, and that he instructs them to observe specific rules regulating their activities. Plaintiff Saieg customarily instructs his members and volunteers, and so instructed them prior to visiting the 2009 Festival, not to distribute religious materials within the Festival, which occupies the street itself, and to remain on the public sidewalks on either side of the street. He also customarily advises them, and so advised them prior to visiting the 2009 Festival, that they should not block any pedestrian traffic along the sidewalks when they are handing out their materials. Plaintiffs have always complied with these simple rules, and there has never been a problem in the past. Consequently, Plaintiffs' speech activity is peaceful and non-obstructive.

50. Sergeant Mrowka responded to Plaintiff Saieg by stating that political parties and protesters are limited to a specific area. Plaintiff told the officer that ACP and its members and volunteers were neither a political party nor protesters.

51. Following this conversation with Sergeant Mrowka, Plaintiff Saieg tried to contact Defendant Haddad via telephone and was referred to Commander Joe Doulette, Sergeant Mrowka's supervisor. Plaintiff Saieg attempted to contact Commander Doulette, but had to

leave him a voicemail message regarding his concerns and objections with the Free Speech Restriction. Commander Doulette did not return Plaintiff's call.

52. After his futile attempts to get Defendants' Free Speech Restriction lifted for Plaintiffs' religious speech, Plaintiff Saieg attempted to get the matter resolved through counsel. Despite these efforts, Defendants refused to lift their Free Speech Restriction, thereby denying Plaintiffs access to the public sidewalks and other public areas within the City for free speech activity.

**E. Plaintiffs Were Denied Access to Their Intended Audience and Denied Ample Alternatives to Communicate Their Religious Message.**

53. During the Festival and pursuant to the Free Speech Restriction, Sergeant Mrowka gave Plaintiffs a choice of two fixed locations. One was near the mobile police station, which was centrally located, and the other was a remote location on the far eastern side of the Festival between two rides. Plaintiffs chose the central location because it would allow them to reach more people and because it was near the police station, which would deter people from disrupting their activities and from making false claims against them. Plaintiffs also did not want to be situated between rides where adults attending the Festival with their children would be unlikely to approach Plaintiffs' booth.

54. Shortly after moving all of their materials to the central location, which was a difficult and time consuming task, Sergeant Mrowka informed Plaintiffs that the City required them to move from the location they had chosen—and that they had gone to significant effort to set up—to the remote eastern location. Plaintiffs complied with this order and moved to the remote location.

55. Plaintiffs were relegated to this remote location in order to minimize the impact of their message.

56. Because the remote eastern location was near the Festival rides, the vast majority of people who came to this location were adults with children.

57. The ability to evangelize Muslims is made more difficult when the adult Muslims are with their children because Muslims are reluctant to have their children receive any materials from Christians.

58. A majority of the people attending the Festival congregated around the stage that was located on the far western side of the Festival to listen to the free concerts. Plaintiffs' eastern location was on the far opposite side of where the stage was located. Consequently, Plaintiffs were unable to reach the majority of the people attending the Festival with their religious materials.

59. It is very difficult to evangelize Muslims from a fixed location without inviting attention to the individuals visiting the booth. Because Islamic law provides for severe penalties, including death, for converting to Christianity, such attention is naturally undesirable to anyone wishing to hear Plaintiffs' religious message. The Muslims who do approach will inevitably be watched by family, neighbors, and friends, subjecting them to possible ridicule, scorn, and punishment. Consequently, Muslims who are interested in Christianity are typically not willing to go to and be seen at a location that is known to be occupied by a Christian organization such as ACP. Plaintiffs experienced this difficulty at the 2009 Festival and were thus denied the ability to adequately distribute their religious materials, to reach their intended audience, and to

accomplish their goal of interacting with and evangelizing large numbers of people attending the Festival.

60. In order to reach their intended audience—Muslims that Plaintiffs seek to inform about and convert to Christianity—with their religious message, it is essential for Plaintiffs to be able distribute their religious materials while walking on the public sidewalks and in other public places where the exchange between the ACP member or volunteer and the person he or she is evangelizing is expected to be more personal and confidential. This method allows the person receiving the religious materials to do so discretely and to take the materials to read or view in private at a later time without being exposed to ridicule, scorn, or punishment, which is likely if the individual was seen receiving materials at the ACP booth.

61. During prior Festivals in which Plaintiffs were permitted to distribute their religious materials on the public sidewalks adjacent to the Festival, Plaintiffs were able to reach significant numbers of people with their religious message. For example, in 2007, Plaintiffs distributed approximately 37,000 packets of religious materials, and in 2008, they distributed approximately 20,000. From the remote location at the 2009 Festival, Plaintiffs were only able to distribute approximately 500 packets of their religious materials, thereby significantly diminishing their ability to express their message and reach their intended audience. This remote location did not provide an ample alternative for Plaintiffs to engage in their religious speech.

62. It was known by the City that Plaintiffs effectively evangelized and converted many Muslims to Christianity during prior Festivals. To avoid any controversies arising from Plaintiffs' religious activity and to minimize the impact of Plaintiffs' speech, Defendants

imposed the Free Speech Restriction against Plaintiffs and relegated them to locations where their speech would be less effective.

**F. Defendants Had No Legitimate Basis for Restricting Plaintiffs' Speech.**

63. In light of Plaintiffs' history of attending the Festival for many years without incident, Defendants had no basis for believing or concluding that Plaintiffs' presence on the public sidewalks adjacent to the Festival for the purpose of handing out religious materials and discussing their Christian faith posed any public safety, crowd control, or security issues or risks to justify restricting Plaintiffs' expressive activity. Also, the public interest would have been best served by granting Plaintiffs free access to the Festival, specifically including free access to the public sidewalks adjacent to the Festival and to the entire Border Area, so that Plaintiffs and those they associate with could have exercised their fundamental rights.

64. Defendants permitted business establishments to engage in commercial activity and speech on the public sidewalks adjacent to the Festival, and they permitted other groups and individuals to distribute materials on the public sidewalks adjacent to the Festival with no evidence of public safety, crowd control, security or other such issues or risks, thereby demonstrating that Defendants' justification for restricting Plaintiffs' religious speech was a sham.

**G. Present and Future Harm Caused by Defendants.**

65. As a direct and proximate result of Defendants' restrictions on Plaintiffs' religious speech activity, Plaintiffs have suffered irreparable harm.

66. Defendants' Free Speech Restriction prevented Plaintiffs and those who associated with Plaintiffs from reaching their intended audience with their religious message.

Additionally, due to the Free Speech Restriction, many ACP volunteers, nearly 25% of them, decided not to travel to the Festival since the restriction greatly limited their ability to effectively evangelize.

67. Plaintiffs will attend future Festivals in order to engage in their speech activities, which include handing out religious materials. However, upon information and belief, Defendants will impose their Free Speech Restriction against Plaintiffs during these future Festivals, thereby requiring injunctive relief to allow Plaintiffs to engage in their First Amendment activity without government interference.

68. As a direct consequence of Defendants' Free Speech Restriction, Plaintiffs had to purchase a tent, table, and chairs in order to establish their booth for distributing their religious materials. Persons seeking to distribute materials at the Festival must pay fees and incur additional costs to do so. Upon information and belief, Plaintiffs will be charged such fees and will incur such costs during future visits.

69. Because Defendants' Free Speech Restriction substantially limited Plaintiffs' ability to distribute their religious materials, Plaintiffs were left with a large surplus of materials. Consequently, Plaintiffs were required to rent space to store the leftover materials. A true and accurate photograph of the leftover materials is attached to this First Amended Complaint as Exhibit 6.

70. An estimated 300,000 people annually attend the Festival. Defendants expected the 2009 Festival to be the largest Festival to date. As a result of Defendants' Free Speech Restriction, ACP and its members and many volunteers, who travelled from around the country at their own expense, suffered irreparable harm by not being able to fully participate in ACP's

outreach mission. Many of the volunteers have limited financial resources and have been deprived of their opportunity to evangelize at great personal cost.

71. Defendants' Free Speech Restriction deprived Plaintiffs and those who associate with them of their fundamental rights protected by the First and Fourteenth Amendments to the United States Constitution.

### **FIRST CLAIM FOR RELIEF**

#### **Freedom of Speech—First Amendment (42 U.S.C. § 1983)**

72. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

73. By reason of the aforementioned Free Speech Restriction, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to engage in religious expression in traditional public fora in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

74. By favoring commercial speech over private religious speech, Defendants' Free Speech Restriction is content based in violation of the Free Speech Clause of the First Amendment.

75. Defendants' Free Speech Restriction is not narrowly tailored to serve a significant government interest nor does it leave open ample alternatives for Plaintiffs to meaningfully and effectively express their religious message in violation of the Free Speech Clause of the First Amendment.

76. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

### **SECOND CLAIM FOR RELIEF**

#### **Freedom of Expressive Association—First Amendment (42 U.S.C. § 1983)**

77. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

78. By reason of the aforementioned Free Speech Restriction, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to expressive association guaranteed by the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

79. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

### **THIRD CLAIM FOR RELIEF**

#### **Free Exercise—First Amendment (42 U.S.C. § 1983)**

80. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

81. By reason of the aforementioned Free Speech Restriction, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to religious exercise in violation of the Free Exercise Clause of the First Amendment as applied to the states

and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

82. Defendants' Free Speech Restriction targets Plaintiffs for disfavored treatment because they are Christian and because they seek to convert Muslims to Christianity.

83. As a direct and proximate result of Defendants' violation of the Free Exercise Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

#### **FOURTH CLAIM FOR RELIEF**

##### **Equal Protection—Fourteenth Amendment (42 U.S.C. § 1983)**

84. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

85. By reason of the aforementioned Free Speech Restriction, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 by denying Plaintiffs access to a traditional public forum to engage in religious speech activities while permitting others to use this forum for commercial activities, including commercial speech, thereby denying the use of this forum to those whose expressive activities Defendants find unacceptable.

86. Defendants also find Plaintiffs' religious speech activities unacceptable because Plaintiffs are Christian and they seek to convert Muslims to Christianity.

87. By favoring commercial speech over private religious speech, Defendants' Free Speech Restriction violates the equal protection guarantee of the Fourteenth Amendment.

88. As a direct and proximate result of Defendants' violation of the Equal Protection Clause, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court:

A) to declare that Defendants' Free Speech Restriction violates the First and Fourteenth Amendments to the United States Constitution as set forth in this First Amended Complaint;

B) to preliminarily and permanently enjoin Defendants' Free Speech Restriction and its application to Plaintiffs' speech and expressive activities as set forth in this First Amended Complaint;

C) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

D) to grant such other and further relief as this Court should find just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Robert J. Muise  
Robert J. Muise, Esq. (P62849)

THE BECKER LAW FIRM

William J. Becker, Jr., Esq.\*  
*\*Subject to admission*

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2009, a copy of the foregoing FIRST AMENDED COMPLAINT with index of exhibits and exhibits was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: none.

THOMAS MORE LAW CENTER

/s/ Robert J. Muise  
Robert J. Muise, Esq. (P62849)