

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

DANIEL W. BURRITT,

Plaintiff,

vs.

NEW YORK STATE DEPARTMENT OF  
TRANSPORTATION; ROBIN DISBRO, in  
her official capacity as Real Estate Specialist  
for the New York State Department of  
Transportation, Region Seven, Watertown,  
New York,

Defendants.

Civil Action No.: \_\_\_\_\_

**PLAINTIFF’S VERIFIED  
COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**JURY DEMAND**

Now comes Plaintiff Daniel W. Burritt, and avers the following:

**I.**

**INTRODUCTION**

1. This is a civil rights action seeking declaratory and injunctive relief against the New York State Department of Transportation (“DOT”) and its employee, Robin Disbro, of the DOT’s Region Seven office in Watertown, New York. Defendants are imposing an unconstitutional policy requiring that Mr. Burritt undergo the burdensome and costly registration process for a tractor trailer on his private property near Gouverneur, New York, because the sides of the trailer contain religious messages. Defendants would exempt Mr. Burritt from this obligation if his trailer instead contained commercial “on-premises” messages. Defendants’ policy violates Plaintiffs’ rights of freedom of speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Plaintiff is in urgent need of injunctive relief by this Court because Defendants have recently threatened to confiscate his trailer and subject him to legal action if he does not cease his speech by June 15, 2008.

## **II.**

### **JURISDICTION AND VENUE**

2. 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, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to 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.

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

## **III.**

### **PARTIES**

4. Plaintiff Daniel W. Burritt lives in Gouverneur, New York, and owns property at 658 U.S. Highway 11, Gouverneur, New York, on which he owns and operates the bridge-building business “Acts II Construction, Inc.: Building Bridges for Jesus.”

5. Defendant New York State Department of Transportation is a state agency created by and existing under the laws of the state of New York.

6. Defendant Robin Disbro is an employee and Real Estate Specialist for the New York State Department of Transportation, in its Region Seven office in Watertown, New York, and is being sued in her official capacity.

#### IV.

#### **STATEMENT OF FACTS**

7. Plaintiff Daniel W. Burritt is a devout Christian owns property on U.S. Route 11 just west of Gouverneur, New York.

8. Mr. Burritt believes he has a religious duty to communicate the truth about Jesus Christ through all aspects of his life, including his work. He regularly shares the Gospel of Jesus Christ to persons he encounters through work, at his office and in the field, and in his personal life, and he intentionally makes himself available for this purpose.

9. From his property Mr. Burritt owns and operates a bridge-building business, which he has named “Acts II Construction, Inc.: Building Bridges for Jesus.”

10. Mr. Burritt owns a tractor trailer that he uses for storage for his business, and on the sides of which he has painted several sentences.

11. Looking at the tractor trailer from the front, the left side reads: “Your Way or God’s Way? Jesus Said ‘I Am the Way the Truth and the Life, No Man Comes to the Father Except by Me.’ Will You Spend Eternity with Jesus? [www.jsm.org](http://www.jsm.org)”. The right side reads, “Sin Has Separated You From God. All Have Sinned and Fall Short of the Glory of God. The Blood of Jesus Cleanses Us from All Sin. Are You Washed in the Blood? [www.jsm.org](http://www.jsm.org)”. On the front side, Mr. Burritt has painted the picture of a cross,

underneath which is written “It Is Finished.”

12. In August of 2007, Mr. Burrirt placed the trailer on his property in the grass on the edge of Route 11, perpendicular to the road with the front facing the road.

13. On May 19, 2008, Mr. Burrirt received a letter, dated May 16, from Defendant Robin Disbro, who is employed in the Real Estate Division of Defendant New York State Department of Transportation (hereinafter “DOT”), Region Seven in Watertown, New York. The May 16 letter is attached to this complaint as Exhibit A.

14. Ms. Disbro informed Mr. Burrirt that his tractor trailer was in violation of New York Highway Law Sections 86 and 88 and 17 NYCRR Part 150. Exh. A.

15. She identified three violations. First, she indicated that the tractor trailer encroached 12 feet onto the public right of way, which extends 60 feet from the center line of this two-lane road, and therefore extends well into the grass abutting Mr. Burrirt’s property. Exh. A.

16. Second, she declared that even if Mr. Burrirt moves his tractor trailer 12 feet, the tractor trailer needed to be registered to obtain a permit under 17 NYCRR Part 150.15(a). Exh. A.

17. Third, she noted that only one sign can be visible from a given direction since the sides of the trailer exceeded 325 square feet, pursuant to 17 NYCRR Part 150.6(d). Exh. A.

18. Ms. Disbro declared that Plaintiff’s tractor trailer is classified in Defendant’s records as an illegal sign, and that until each of the above listed violations has been corrected, either by removing the trailer completely or by obtaining a permit and complying with other State directives before maintaining the trailer on his property visible

from the road, DOT would consider Mr. Burritt's trailer a public nuisance that was subject to removal, and would refer the case to the New York Attorney General for legal action against Mr. Burritt. Exh. A.

19. Ms. Disbro gave Mr. Burritt 30 days from the date of her letter to comply (until June 15, 2008). Exh. A.

20. The permit requirements that Ms. Disbro identified as applicable to Mr. Burritt's trailer include the following. Part 150.15, "Registration," of 17 NYCRR, requires an annual \$100 fee to cover the two sides of the tractor trailer in Part 150.15(b)(1), and according to part 150.15(a)(4) those fees are nonrefundable after an application for a permit has been filed.

21. Part 150.15(a)(5) requires an additional \$50 fee for applying after the tractor trailer has been placed. Part 150.15(b)(4) requires yet another nonrefundable \$50 fee for inspection.

22. Part 150.15(a)(6) provides that if the sign is ever moved (as occasionally happens with tractor trailers), the permit is null and void; therefore, if Mr. Burritt were to haul the trailer anywhere, even within his own property, he would be required to submit new applications along with applicable fees before he could return it to the same location.

23. Ms. Disbro also added to the requirements of Part 150.15 by declaring that to apply Mr. Burritt must first obtain a permit from the local municipality and attach it to the DOT application. Exh. A.

24. Mr. Burritt's attorney wrote to Ms. Disbro on May 22 to ask that as soon as possible she clarify precisely what part of the regulations required Mr. Burritt's sign to be registered, and why she was interpreting them to contain such a requirement. Mr. Burritt's

May 22 letter is attached to the complaint as Exhibit B.

25. Ms. Disbro responded by mailing a three-sentence letter, which Mr. Burrirt's attorney received on May 27, and which simply contained a print-out of some thirty pages of the entire text of Highway Law Sections 86 and 88 and 17 NYCRR Part 150. Ms. Disbro's May 22/27 letter (without its attachments) is attached to the complaint as Exhibit C.

26. Mr. Burrirt's attorney wrote another letter to Ms. Disbro on May 29, stating that her previous letter failed to specify particular code language and the reasoning behind her interpretation of it, and again asking that she do so promptly because of the 30-day deadline. Mr. Burrirt's May 29 letter is attached to the complaint as Exhibit D.

27. Ms. Disbro responded on June 4, 2008. Ms. Disbro's June 4 letter is attached to the complaint as Exhibit E.

28. Ms. Disbro clarified that Mr. Burrirt could comply with Part 150.6(d) simply by moving the "It Is Finished" sign at the front of the trailer so that it is not visible from the road. Exh. E.

29. Regarding the registration/permit requirements Ms. Disbro specified the following:

certain signs along these controlled routes [including Route 11] are allowed without a permit (such as official signs, on-premise signs and for sale signs) while other signs are permitted subject to the controlling criteria set forth in the laws and regulations and while other signs are prohibited. An on-premise sign for purposes of the regulations is described in 17 NYCRR Part 150.1(dd) as "On-premises sign means . . . a sign advertising activities conducted on the property on which it is located, and which conforms to the provisions of section 150.13 of this Part."

The sign located on Mr. Burrirt's property does not meet the criteria of an on-premise sign . . . . The sign on Mr. Burrirt's property is therefore subject to . . . the registration provisions of 17 NYCRR Part 150.15. . . . In

the event that the sign is not removed or brought into compliance, the Department will forward this matter to the New York State Attorney General's Office and request that office to seek a court order for the removal of this sign.

Exh. E.

30. Part 150.1(b) further states that "advertised activity," which defines the necessary content of an "on-premises" sign, "means the building, enclosure or area where the advertised product is being sold or used, or advertised service rendered, or advertised business is being conducted . . . ."

31. As of the filing of this complaint, Mr. Burrirt has complied with Ms. Disbro's requirement number (1) by moving the tractor trailer back 12 feet farther back on his property, and thus from the public right of way, and he has complied with her requirement number (3) by removing the display that reads "It Is Finished" from the front end of the trailer.

32. Mr. Burrirt has not, however, initiated the costly and burdensome process of seeking DOT registration and sign permit pursuant to Part 150.15.

33. Defendants are violating the clear constitutional edicts of the United States Supreme Court when they treat commercial signs more favorably than non-commercial communications, by requiring DOT registration and a permit for Mr. Burrirt's message-bearing tractor trailer while exempting "on-premises" commercial signs from the onerous permit requirement and its associated fees.

34. Mr. Burrirt fears the unconstitutional prosecution and confiscation that Ms. Disbro has threatened in her letters, and as a result he intends to remove his tractor trailer rather than face these threatened consequences.

35. Defendants will trample upon Mr. Burrirt's rights unless the Court acts

before June 15, 2008 to enjoin both Defendants' policy of discriminating against non-commercial speech while favoring commercial speech, and their threatened enforcement action against him.

V.

**STATEMENTS OF LAW**

36. All of Defendants' acts alleged herein were committed and continue to be committed under the color of state law by Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, including in the design and implementation of the regulations of the New York State Department of Transportation announced, enforced, and threatened by Ms. Disbro.

37. Unless and until the enforcement of Defendants' policies and practices identified herein is enjoined, Plaintiff will suffer irreparable harm to his constitutional rights.

VI.

**CAUSE OF ACTION  
VIOLATION OF FREEDOM OF SPEECH CLAUSE  
OF THE UNITED STATES CONSTITUTION  
(42 U.S.C. § 1983)**

38. Plaintiff repeats and realleges the preceding paragraphs.

39. By policy and practice, Defendants allow commercial "on-premises" signs on private property in controlled areas such as U.S. Route 11 to exist without having to submit to the permit and registration requirements of 17 NYCRR Part 150, as well as those additional requirements required by Ms. Disbro, but they refuse to give this waiver to noncommercial religious signs and specifically Mr. Burritt's tractor trailer, on the basis that it is not an "on-premises" sign.

40. Defendants engage in content-based discrimination in violation of the First and Fourteenth Amendments to the United States Constitution by allowing—without costs and other regulatory obligations—“on-premises” advertising of products, services, or business, while imposing such costs and regulatory burdens on those with signs containing noncommercial religious messages, such as are found on Mr. Burritt’s tractor trailer. Defendants have discriminated against Plaintiff because of the noncommercial religious content of the exhortations on his tractor trailer.

41. Defendants’ regulations, and their application of them to Mr. Burritt, constitute impermissible content-based censorship of religious speech, in violation of his rights guaranteed by the free speech clause of the First Amendment of the United States Constitution.

## **VII.**

### **INJURY**

42. As a direct result of Defendants’ violation of Plaintiff’s rights as alleged herein, he has suffered irreparable injury to his constitutional rights.

## **VIII.**

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendants for the following relief:

#### **A. Injunctive Relief**

Plaintiff does not have an adequate remedy at law, and the urgency of this case requires that for relief to be accorded the Court should dispense with the notice of motion requirement of Local Rule 7.1(b). Therefore, Plaintiff seeks injunctive relief against

Defendants, ordering them and their personnel, agents and all those acting in concert with them to do the following:

1. Appear on or before June 13, 2008, and to show cause why a temporary restraining order and preliminary injunction pursuant to Federal Rule of Civil Procedure 65 should not be immediately issued;

2. Immediately retract their requirement that Plaintiff register and obtain a sign permit for his tractor trailer under New York Highway Law Sections 86 and 88 and 17 NYCRR Part 150;

3. Refrain from classifying or continuing to classify Plaintiff's tractor trailer in Defendant's records as an illegal sign or as a public nuisance subject to removal;

4. Refrain from confiscating or otherwise removing Mr. Burritt's tractor trailer for his failure to register it or obtain a sign permit from the State.

B. Declaratory Relief

Plaintiff further requests the following declaratory relief:

1. Declare that Defendants engaged in content discrimination against Plaintiff in violation of the Free Speech Clause of the First Amendment of the United States Constitution and the rights of Mr. Burritt under 42 U.S.C. §1983.

2. Declare that New York Highway Law Sections 86 and 88, and 17 NYCRR Part 150, and other policies described by Defendant Disbro, on their face and as applied against Mr. Burritt as described above, disfavor noncommercial speech while more favorably treating on-premises commercial speech, in violation of the Free Speech Clause of the First Amendment of the United States

Constitution and the rights of Mr. Burritt under 42 U.S.C. §1983.

C. Nature of Relief

Plaintiff asks that the injunctive and declaratory relief come in the forms of an order to show cause, a temporary restraining order, preliminary and permanent relief.

D. Attorneys' Fees and Other Relief

Plaintiff seeks reasonable attorneys' fees, as provided for by 42 U.S.C. §1988, and Plaintiff's costs, and such other and further relief as the Court may deem just and right.

**XI.**

**JURY DEMAND**

Plaintiff hereby requests a trial by jury for all issues so triable in conformity with Rule 38(b) of the Federal Rules of Civil Procedure.

Respectfully submitted this 10th Day of June, 2008,

Daniel W. Burritt

By Attorneys for Plaintiff:

s/ Matthew S. Bowman  
Jeffrey A. Shafer (513236)  
Matthew S. Bowman (514227)  
ALLIANCE DEFENSE FUND  
801 G Street, N.W., Suite 509  
Washington, DC 20001  
Phone: (202) 637-4610  
Facsimile: (202) 347-3622  
Email: jshafer@telladf.org  
mbowman@telladf.org

Benjamin W. Bull (of counsel)  
ALLIANCE DEFENSE FUND  
15333 N. Pima Road, Suite 165  
Scottsdale, AZ 85260  
Phone: (480) 444-0020  
Facsimile: (480) 444-0028  
Email: bbull@telladf.org

**VERIFICATION**

On this 9th day of June, 2008, I, Daniel W. Burritt, 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.

A handwritten signature in black ink, appearing to read 'DWBurritt', written over a horizontal line.

Daniel W. Burritt