

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

**JACOB DAGEL,**

Plaintiff,

v.

**DES MOINES AREA COMMUNITY  
COLLEGE; TERRY HARRISON,** Security  
Officer at Des Moines Area Community  
College, in his individual capacity,

Defendants.

Case No. 4:13-cv-170

**VERIFIED COMPLAINT**

Plaintiff Jacob Dagel, by and through counsel, and for its Complaint against the Defendants, hereby states as follows:

**INTRODUCTION**

1. The cornerstone of higher education is the ability of students to participate in the “marketplace of ideas” on campus. That marketplace depends on free and vigorous debate between students – debate that is spontaneous, ubiquitous, and often anonymous – and is carried out through spoken word, flyers, signs, and displays.

2. This case arises from policies and practices of Des Moines Area Community College (“College”) and public officials employed by the College that restrict the expressive rights of students at the College. Instead of encouraging free discourse and debate on campus, the College’s policies and practices restrict student speech and literature distribution to a speech zone, which consists of a table in the student center. Students must obtain a permit to use the speech zone 10 business days in advance of the expected activity, but the College retains unfettered discretion to determine whether student speech may occur at all. These College policies and practices chill protected student speech and disable spontaneous and anonymous speech on campus.

3. When Plaintiff Jacob Dagele, a student at the College, attempted to distribute flyers containing a religious and political message in the outdoor main quad on campus, a College security officer enforced the College's Solicitation and Recruitment Policy and practice against him, stopped him from distributing the flyers, told him that he must distribute flyers only in the designated speech zone inside the student center, and instructed him to secure permission to distribute the flyers 10 business days in advance.

4. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental rights to free speech, due process, and equal protection of law.

5. The aforementioned policies and practices are challenged on their face and as applied to Plaintiff Jacob Dagele.

6. Defendants' policies and practices have deprived and will continue to deprive Plaintiff of his paramount rights and guarantees under the United States Constitution.

7. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and authority.

### **JURISDICTION AND VENUE**

8. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

9. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

10. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; and costs and attorneys fees under 42 U.S.C. § 1988.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because most of the Defendants reside in this district and/or all of the acts described in this Complaint occurred in this district.

**PLAINTIFF**

12. Jacob Dagele is a resident of the State of Iowa and a student at the College's Ankeny campus.

**DEFENDANTS**

13. Des Moines Area Community College is a public corporation and political subdivision of the State of Iowa which may sue and be sued.

14. Defendant Terry Harrison is, and was at all times relevant to this Complaint, a campus security officer at the College.

15. As Security Officer, Mr. Harrison is charged with responsibility for enforcing College policy and practice with respect to student events and activities taking place within public facilities and on public property at the College.

16. Mr. Harrison enforced College policy and practice against Mr. Dagele when he attempted to distribute literature at the College.

**FACTUAL BACKGROUND**

17. Mr. Dagele is a professing evangelical Christian with sincerely-held religious beliefs regarding marriage, morality, politics, and social issues.

18. Mr. Dagele is enrolled in classes at the College's Ankeny campus.

19. On March 28, 2013, Mr. Dagele entered the Ankeny campus to distribute flyers to his fellow students.

20. The flyers contained a message that protested the allocation of College funds to subsidize student tickets and sponsorship of the "Iowa Governor's Conference on Lesbian, Gay, Bisexual, Transgender, and Questioning Youth" (the "Conference"), which took place on April 3, 2013. A copy of the flyer is attached as Exhibit 1 to this Complaint.

21. On information and belief, the Conference included a variety of workshops and speakers who advocate views Mr. Dagele disagrees with.

22. On information and belief, one Conference workshop was entitled, "Who's Afraid of the Big Bad Right Wing?"

23. The Conference website described this workshop as follows: “Learn messages and methods to fight back against propaganda from the extreme right wing, from Fox News and Rush Limbaugh to Bob Vander Plaats and Jan Mickelson. Discover resources to get the most up-to-date information available and work toward a more progressive Iowa.”

24. A speaker from Progress Iowa led the workshop.

25. On information and belief, Progress Iowa is a politically liberal organization that advocates liberal and leftist political viewpoints against conservatives and religious people.

26. On information and belief, the Conference included two workshops entitled, “For the Bible Tells Me So.”

27. The Conference website described this workshop as follows: “Can the love between two people ever be an abomination? Is the chasm separating gays and lesbians and Christianity too wide to cross? Is the Bible an excuse to hate? Through the experiences of five very normal, very Christian, very American families---including those of former House Majority Leader Richard Gephardt and Episcopal Bishop Gene Robinson—we discover how insightful people of faith handle the realization of having a gay child. FOR THE BIBLE TELLS ME SO offers healing, clarity, and understanding to anyone caught in the crosshairs of scripture and sexual identity. Participants will watch the full documentary and following discuss their viewpoint, emotions, and other thoughts.”

28. Mr. Dager disagrees with the religious and political viewpoints expressed at these and other Conference workshops.

29. Mr. Dager disagrees with the College’s use of state taxpayer money and student tuition and fees to sponsor the Conference and to subsidize free student tickets to the Conference.

30. Mr. Dager desires to communicate his religious and political viewpoints about the Conference and the College’s use of funds to his fellow classmates and instructors at the College.

31. Mr. Dager also desires to communicate his religious and political viewpoints on marriage, morality, homosexuality, and other issues discussed at the Conference.

32. To communicate his views, Mr. Dagele stood in the main campus quad, between Buildings 1, 2, 5, and 6.

33. The College campus is composed of various publicly-accessible buildings and outdoor areas, including streets, sidewalks, open-air quads, and park-like lawns. A copy of the College's Ankeny campus map is attached as Exhibit 2 to this Complaint.

34. Mr. Dagele stood in an area that is wide and open to public ingress and egress.

35. The area resembles a public park and has sidewalks with grass and trees.

36. Shortly after Mr. Dagele began distributing the flyers, College Security Officer Terry Harrison approached him, handed him the College's policy on Solicitation and Recruitment, and ordered him to stop distributing the flyers.

37. Mr. Dagele informed Defendant Harrison of his First Amendment right to distribute flyers on a public college campus.

38. Mr. Dagele then complied with Defendant Harrison's order and ceased distribution of the flyers.

39. Defendant Harrison accompanied Mr. Dagele to the College's Student Activities Office.

40. At the Student Activities Office, Erin Wheat, Student Activities Coordinator, told Mr. Dagele that while he has First Amendment rights on campus, he must comply with the College's Solicitation and Recruitment Policy. A copy of the College's Solicitation and Recruitment Policy is attached as Exhibit 3 to this Complaint.

41. Ms. Wheat told Mr. Dagele that the policy requires students to reserve a table to distribute flyers and that reservation must be made 10 business days in advance.

42. According to the policy, students who want to distribute literature or speak to others on the Ankeny campus must contact the College Student Activities Office at least 10 college business days prior to the requested activity.

43. The College grants permission to speak on a space available basis.

44. During the activity, an individual must possess a copy of the written approval at all times.

45. The policy establishes the lobby of Building 5 on the Ankeny campus as the designated area for distribution of material by approved individuals (hereinafter the “Speech Zone”).

46. Building 5 contains the student center.

47. The area designated for literature distribution in Building 5 is a hallway with a few tables and chairs. The area is not conducive to free flow of pedestrian traffic or effective communication of Mr. Dagele’s views.

48. The policy instructs individuals to stay at the designated tables and chairs and prohibits individuals from speaking to students or offering them literature elsewhere on campus outside the Speech Zone.

49. Individuals found by the College to violate the policy may be denied access to the College’s facilities.

50. The policy contains no guidelines or standards to limit the discretion of College officials in granting, denying, relocating, or restricting requests by students to engage in expressive activity.

51. The policy contains no deadlines or timetables in which College officials must respond to a permit request.

52. On information and belief, the College enforced the Solicitation and Recruitment Policy against the DMACC Campus Fellowship during the fall 2012 semester when that group attempted to distribute religious material on campus.

53. On information and belief, the College has not enforced the Solicitation and Recruitment Policy against students engaged in casual conversation, one-on-one discussions, group discussions, or the sharing of flyers, advertisements, or other documents with friends and peers on campus.

54. It is the College's practice to apply the Solicitation and Recruitment Policy to students on campus.

55. Mr. DageI desires to engage in peaceful expressive activities on campus – including oral communication and literature distribution – that is motivated by his sincerely-held religious beliefs, but he has not done so since March 28, 2013 for fear of punishment.

56. The College's enforcement of the Solicitation and Recruitment Policy against unpermitted flyers burdens Mr. DageI's speech for multiple reasons.

57. Mr. DageI wants to distribute flyers containing religious and political messages while he stands on public ways and open areas on the College's Ankeny campus. Specifically, he wants to distribute the flyers protesting the Conference which he was doing prior to being told to stop by Defendant Harrison.

58. The College's Speech Zone is inadequate for Mr. DageI's speech because he wants to reach a wider audience and there is greater foot traffic outside in the main campus quad.

59. Mr. DageI's messages are further frustrated because he cannot distribute any flyer at the College until he first obtains a permit from the College to access the Speech Zone.

60. The permit requirement, in and of itself, is unduly burdensome as it requires 10 College business days advanced notice.

61. It is repugnant to Mr. DageI that he, as an individual citizen and student at a public community college, must secure governmental permission to distribute flyers, when he feels convicted by his religious faith and political beliefs to speak on campus.

62. Mr. DageI also likes to spread his message about religion and politics in reaction to current events, as he did when he learned of the Conference and immediately created a flyer to distribute on campus.

63. Less than 10 days elapsed between the day Mr. DageI learned of the College subsidizing free tickets to the Conference and the day he attempted to distribute flyers discussing the same.

64. Mr. Dage! requires the ability, like all College students, to speak spontaneously in reaction to news. And yet, the College's Solicitation and Recruitment Policy prohibit such spontaneous speech because it forces Mr. Dage! to obtain a permit prior to speaking.

65. Mr. Dage! is bound to comply with the terms of the College's Solicitation and Recruitment Policy at all times on campus.

66. Mr. Dage! is not distributing flyers about the Conference and other political and religious topics on campus due, in part, to the College's policy.

67. Mr. Dage! is chilled in his ability to discuss the Conference and other political and religious topics on campus due to the College's policy.

68. If not for the College's policy, and the actions of Defendants, Mr. Dage! would immediately return to the open areas of the College campus and distribute flyers that convey his messages about religion, morality, politics, and social issues, including his viewpoints on the Conference.

69. Specifically, Mr. Dage! would distribute his flyers about the Conference that contains religious and political messages and would discuss these topics with his peers and fellow students. Mr. Dage! refrains for fear of arrest or punishment under the College's policy.

70. The fear of arrest or punishment severely limits Mr. Dage!'s constitutionally-protected expression on campus.

#### **ALLEGATIONS OF LAW**

71. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to the Defendants who acted under color of a statute, regulation, custom, or usage of the State of Iowa.

72. Defendants knew or should have known that disallowing Mr. Dage!'s expressive activity on campus without him obtaining prior permission, and restricting his desired speech to 10 business days advance notice and a cramped table in a lobby, the College is violating his constitutional rights.

73. Plaintiff is suffering irreparable harm from the policy and practice of Defendants.

74. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of his rights by Defendants.

75. Unless the conduct of Defendants is enjoined, Plaintiff will continue to suffer irreparable injury.

**FIRST CAUSE OF ACTION**  
**Violation of Plaintiff's First Amendment Right to Freedom of Speech**  
**(42 U.S.C. § 1983)**

76. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–75 of this Complaint.

77. Speech, including written expression, is entitled to comprehensive protection under the First Amendment.

78. Religious and political speech – including the distribution of literature – is also fully protected by the First Amendment.

79. The First Amendment rights of free speech and press extend to campuses of state colleges.

80. The sidewalks and open spaces of the College campus are designated public fora – if not traditional public fora – for speech and expressive activities by students enrolled at the College.

81. The First Amendment's Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits content and viewpoint discrimination in the public forums for student speech and expression on the campus of a public college.

82. A public college's ability to restrict speech – particularly student speech – in a public forum is limited.

83. The First Amendment's Free Speech Clause prohibits censorship of religious and political expression.

84. Under the First Amendment's Free Speech Clause, a prior restraint on citizens' expression is presumptively unconstitutional, unless it (1) does not delegate overly broad licensing discretion to a government official, (2) contains only content and viewpoint neutral reasonable time, place, and manner restrictions, (3) is narrowly tailored to serve a significant governmental interest, and (4) leaves open ample alternative means for communication.

85. Unbridled discretion to discriminate against speech based on its content or viewpoint violates the First Amendment regardless of whether that discretion has ever been unconstitutionally applied in practice.

86. The First Amendment's Free Speech Clause guarantees a citizen the right to express his views anonymously and spontaneously.

87. Defendants' Solicitation and Recruitment Policy and their practice of restricting student speech and literature distribution to the Speech Zone violate the First Amendment facially and as applied because they are a prior restraint on speech in areas of campus that are traditional or designated public fora for College students.

88. Defendants' Solicitation and Recruitment Policy and their practice of restricting student speech and literature distribution to the Speech Zone violate the First Amendment facially and as applied because they grant College officials unbridled discretion to discriminate against speech based on its content or viewpoint.

89. Defendants' Solicitation and Recruitment Policy and associated practices that require students to submit an application for approval at least 10 business days in advance of a proposed expressive activity and the limitation on the location of that activity to a small table on campus, are unconstitutional "time," "place," and "manner" restrictions that violate Plaintiff's and other students' right to freedom of speech and expression.

90. Defendants' Solicitation and Recruitment Policy and associated practices provide no guidelines or standards to limit the discretion of College officials in granting, denying, relocating, or restricting requests by students to engage in expressive activity.

91. Defendants' Solicitation and Recruitment Policy and associated practices require students to submit any literature they wish to distribute with Defendants and then delegate authority to Defendants to determine where students may distribute that literature, thus giving Defendants unbridled discretionary power to limit student speech in advance of such expression on campus and to do so based on the content and viewpoint of the speech.

92. These grants of unbridled discretion to College officials violate the First Amendment because they create a system in which speech is reviewed without any standards, thus giving students no way to prove that a denial, restriction, or relocation of their speech was based on unconstitutional considerations.

93. The First Amendment's prohibition against content and viewpoint discrimination requires Defendants to provide adequate safeguards to protect against the improper exclusion, restriction, or relocation of student speech based on its content or viewpoint.

94. Because Defendants have failed to establish neutral criteria governing the granting, denial, or relocation of student speech applications (including requests to use campus facilities and to distribute literature), there is a substantial risk that College officials will engage in content and viewpoint discrimination when addressing those applications.

95. Defendants exercised the unbridled discretion granted them under these Speech Zone policies and practices when they decided to deny Plaintiff use of the main quad and to prevent Plaintiff from distributing literature in the main quad.

96. Defendants' Solicitation and Recruitment Policy and associated practices do not contain any definite time period in which College officials must grant or deny students' requests to distribute literature.

97. Defendants' Solicitation and Recruitment Policy and associated practices that require prior approval to speak prohibit students from anonymously communicating with passersby via literature distribution.

98. Defendants' Solicitation and Recruitment Policy and associated practices that require 10 days advanced notice to speak prohibit spontaneous student expression.

99. Defendants' Solicitation and Recruitment Policy and associated practices are neither reasonable nor valid time, place, and manner restrictions on speech because they are not content-neutral, they are not narrowly tailored to serve a significant government interest, and they do not leave open ample alternative channels of communication.

100. Defendants' Solicitation and Recruitment Policy and associated practices are also overbroad because they prohibit and restrict protected expression.

101. Defendants' Solicitation and Recruitment Policy and associated practices unconstitutionally censor or restrict all private student speech (including, but not limited to, literature distribution) that occurs outside the Speech Zone that Defendants, in their unbridled discretion, designate, and they require students to register all expressive activities with Defendants in advance.

102. The overbreadth of Defendants' policies and related practices chills the speech of students not before the Court who seek to engage in private expression (including literature distribution) in the open, outdoor area of campus.

103. Defendants' Solicitation and Recruitment Policy and associated practices chill, deter, and restrict Plaintiff from freely expressing his religious and political beliefs.

104. Defendants' Solicitation and Recruitment Policy and associated practices violate Plaintiffs' right to free speech as guaranteed by the First Amendment to the United States Constitution.

105. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm. He is entitled to an award of monetary damages and equitable relief.

106. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his First Amendment right to freedom of speech and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

**SECOND CAUSE OF ACTION**

**Violation of Plaintiff's Fourteenth Amendment Right to Due Process of Law**  
**(42 U.S.C. § 1983)**

107. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–75 of this Complaint.

108. The Fourteenth Amendment to the United States Constitution guarantees Plaintiff the right to due process of law and prohibits Defendants from promulgating and employing vague standards that allow for viewpoint discrimination in Defendants' handling of Plaintiff's literature distribution.

109. The government may not regulate speech based on policies that permit arbitrary, discriminatory, and overzealous enforcement.

110. The government may not regulate speech based on policies that cause persons of common intelligence to guess at their meaning and differ as to their application.

111. Defendants' Solicitation and Recruitment Policy and associated practices contain no criteria to guide administrators when deciding whether to grant, deny, relocate, or restrict student speech (including literature distribution) on campus.

112. Defendants' Solicitation and Recruitment Policy and associated practices are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants.

113. The lack of criteria, factors, or standards in Defendants' Solicitation and Recruitment Policy and associated practices renders these policies and practices unconstitutionally vague and in violation of Plaintiff's right to due process of law under the Fourteenth Amendment.

114. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm. He is entitled to an award of monetary damages and equitable relief.

115. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his Fourteenth Amendment right to due process of law and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

**THIRD CAUSE OF ACTION**

**Violation of Plaintiff's Fourteenth Amendment Right to Equal Protection of the Law**  
**(42 U.S.C. § 1983)**

116. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–75 of this Complaint.

117. The Fourteenth Amendment to the United States Constitution guarantees Plaintiff the equal protection of the laws, which prohibits Defendants from treating Plaintiff differently than similarly situated students.

118. The government may not treat someone disparately as compared to similarly situated persons when such disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis.

119. Plaintiff is similarly situated to other students at the College.

120. Defendants allowed other students to engage in speech and distribute literature, but denied the same to Plaintiff.

121. Defendants treated Plaintiff disparately when compared to similarly situated students by denying Plaintiff the ability to distribute his flyers.

122. Defendants' Solicitation and Recruitment Policy and associated practices violate various fundamental rights of Plaintiff, such as its freedom of speech and due process of law.

123. When government regulations, like Defendants' Solicitation and Recruitment Policy and associated practices challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

124. Defendants' Solicitation and Recruitment Policy and associated practices have also been applied to discriminate intentionally against Plaintiff's rights to freedom of speech and due process of law.

125. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiff.

126. Defendants' Solicitation and Recruitment Policy and associated practices are not narrowly tailored as applied to Plaintiff because Plaintiff's speech does not implicate any of the interests Defendants' might have.

127. Defendants have applied the Solicitation and Recruitment Policy and associated practices to Plaintiff in a discriminatory and unequal manner, allowing other students to speak freely and distribute literature when Defendants say Plaintiff cannot do the same, in violation of Plaintiff's right to equal protection of the laws under the Fourteenth Amendment.

128. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm. He is entitled to an award of monetary damages and equitable relief.

129. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his Fourteenth Amendment right to equal protection of law and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants and provide Plaintiff with the following relief:

- (A) A declaratory judgment that the Defendants' Solicitation and Recruitment Policy and associated practices, facially and as-applied, violate Plaintiff's rights under the First Amendment;

- (B) A declaratory judgment that the Defendants' Solicitation and Recruitment Policy and associated practices, facially and as-applied, violate Plaintiff's rights under the Fourteenth Amendment;
- (C) A declaratory judgment that the Defendants' restriction of Plaintiff's distribution of literature violated Plaintiff's rights under the First and Fourteenth Amendments;
- (D) A preliminary and permanent injunction prohibiting the Defendants, their agents, officials, servants, employees, and any other persons acting in their behalf from enforcing the Solicitation and Recruitment Policy and associated practices challenged in this Complaint;
- (E) Compensatory and nominal damages for the violation of Plaintiff's First and Fourteenth Amendment rights;
- (F) Plaintiff's reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- (G) All other further relief to which Plaintiff may be entitled.

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Respectfully submitted this 15th day of April, 2013,

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\*Motion for *Pro Hac Vice* admission  
forthcoming

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