

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

GREGORY OWEN,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF BUFFALO, NEW YORK, DANIEL)
 DERENDA, in his official capacity as Police)
 Commissioner of the Buffalo Police)
 Department, GREGG BLOSAT, individually)
 and in his official capacity as Captain in the)
 Buffalo Police Department, and CHERYL)
 SLOMKA, individually and in her official)
 capacity as Police Officer in the Buffalo Police)
 Department,)
)
 Defendants.)
 _____)

Civil Action No. _____

VERIFIED COMPLAINT

Plaintiff Gregory Owen, by counsel, comes now and avers the following:

INTRODUCTION

1. This is a civil rights claim brought under 42 U.S.C. § 1983, challenging City of Buffalo policy, as enforced by Buffalo Police Department, that empowers the Greater Buffalo Italian Heritage Festival with a heckler’s veto, and functions to ban Gregory Owen from distributing religious literature on public ways in Buffalo during the Sorrento Cheese Italian Heritage Festival.

2. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff Gregory Owen seeks injunctive relief, declaratory relief, and nominal damages against the City of Buffalo, New York, Daniel Derenda, in his official capacity as Police Commissioner of the Buffalo Police Department, Gregg Blosat, individually and in his official capacity as Captain in the Buffalo Police

Department, and Cheryl Slomka, individually and in her official capacity as Police Officer in the Buffalo Police Department.

3. This action is premised on the United States Constitution and concerns Plaintiff Gregory Owen being deprived of his fundamental rights to free speech and due process.

4. Defendants' actions have deprived and will continue to deprive Plaintiff Gregory Owen of his fundamental rights -- as provided in the First and Fourteenth Amendments to the United States Constitution.

5. Each and every act of Defendants alleged herein was committed by Defendants named herein, and under the color of state law and authority.

JURISDICTION AND VENUE

6. This action raises federal questions under the U.S. Constitution, specifically, the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

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 grant the requested injunctive relief under 28 U.S.C. § 1343, the requested declaratory relief under 28 U.S.C. §§ 2201-02, the requested damages under 28 U.S.C. § 1343, and the requested costs and attorneys fees under 42 U.S.C. § 1988.

9. Venue is proper in the Western District of New York under 28 U.S.C. § 1391(b), because all Defendants reside in this district and all actions giving rise to this cause occurred within this district.

PARTIES

10. Plaintiff Gregory Owen ("Owen") is and was at all times relevant to this Verified

Complaint a resident of Lockport, New York.

11. Defendant City of Buffalo (“Buffalo”) is a municipal governmental authority, a subdivision of the State of New York.

12. Defendant Daniel Derenda is sued in his official capacity as Police Commissioner of the Buffalo Police Department. In his official capacity, he is responsible for overseeing and implementing all policies affecting law enforcement.

13. Defendant Gregg Blosat (Captain Blosat) is sued individually and in his official capacity as Captain in the Buffalo Police Department. In his official capacity, Captain Blosat is charged with enforcing Buffalo laws and Buffalo Police Department policies.

14. Defendant Cheryl Slomka (Officer Slomka) is sued individually and in her official capacity as Police Officer in the Buffalo Police Department. In her official capacity, Officer Slomka is charged with enforcing Buffalo laws and Buffalo Police Department policies.

STATEMENT OF FACTS

Owen’s Desired Expression

15. Owen is an evangelical, born-again Christian. In conjunction with his Christian faith and beliefs, Owen strongly desires to share the gospel (good news) of his faith.

16. Owen’s basic message is that we are all sinners, and deserve damnation, but Jesus died for sinners and grants salvation to those who believe in him. Owen believes all can be saved by trusting in Jesus and he yearns for this to happen.

17. For this reason, Owen seeks out opportunities to share his message in public. He frequently goes to public venues, like public sidewalks and ways, and hands out gospel tracts expressing and explaining his Christian beliefs.

18. Owen conducts this expressive activity either by himself or as part of a small group of family and/or friends.

19. Owen considers literature distribution an essential means for conveying his gospel message.

20. Owen frequently hands a passersby a tract to take and contemplate later without comment. On some occasions, Owen will engage individuals in conversation.

21. In his attempts to share his faith, Owen does not participate in any type of demonstration. He does not ask for money, nor does he attempt to gather signatures. Neither does he seek to draw a crowd.

22. Owen does not force his literature on anyone. He always conducts himself in a peaceful and non-confrontational manner.

23. Owen also makes an effort to avoid blocking passage ways. He is always willing to step aside and let others pass by him.

24. In handing out gospel tracts, Owen does not litter.

25. Owen desires to distribute his literature on a seven-block portion of Hertel Avenue between Delaware and Colvin Avenues, and accompanying sidewalks and ways, during the Sorrento Cheese Italian Heritage Festival. The festival affords Owen a rare opportunity to share his message with a large number of people that would not otherwise receive it.

Hertel Avenue

26. Hertel Avenue is a public street with adjoining sidewalks on both sides of the street.

27. Hertel Avenue is one of the main business strips in Buffalo. A significant portion

of Hertel Avenue is known as “Little Italy.”

28. The seven-block part of Hertel Avenue between Delaware and Colvin Avenues is considered the heart of “Little Italy.” On this strip there are a large variety of shops, boutiques, and specialty stores, including a chocolate store, a couple of barber shops, a couple of tattoo parlors, a couple of tobacco stores, a couple of grocery stores, a gourmet shop, a meat market, a wedding gown store, a place for musical instrument repair, a place for automobile repair, and several gift shops. There are also numerous Italian restaurants on this specific portion of Hertel Avenue, as well as a Burger King.

Sorrento Cheese Italian Heritage Festival

29. The Sorrento Cheese Italian Heritage Festival (“Italian Festival”) is an annual four-day street festival that takes place on the seven-block portion of Hertel Avenue between Delaware and Colvin Avenues.

30. The Italian Festival is held every year in mid-July, from 11:00 a.m. to 11:00 p.m. on Wednesday through Saturday, and from 11:00 a.m. until 10:00 p.m. on Sunday.

31. There is no admission charged for this event. The Italian Festival is free and open to the public. The seven-block stretch of Hertel Avenue is blocked off for vehicular traffic, but there are no barriers hindering pedestrian access.

32. Celebrating and focusing on Italian heritage and culture, the Italian Festival presents local entertainment, a bocce tournament, the Miss Italian Festival, an Italian Idol contest, cooking demonstrations, a bilingual Italian Mass on Sunday morning, a “bambini” area for children, as well as other culturally-related events.

33. There are also a wide variety of vendors and carnival rides situated on the seven-

block stretch of Hertel Avenue during the four-day event.

34. To conduct the Italian Festival, Buffalo issues a special event permit to the Greater Buffalo Italian Heritage Festival in accordance with Buffalo City Code § 414, *et seq.*

35. Section 414-1 of the Buffalo City Code sets out the legislative intent of the permit process and the allowance for public events on city streets. That section refers to Buffalo finding it beneficial, from time to time, to have city streets temporarily closed and used as sites for ethnic festivals and other public events that are “privately sponsored but open to the public.”

36. Under the authority of § 414, Buffalo determines whether the special event can be conducted as well as the terms and conditions under which an approved event can operate. Thereby, Buffalo retains ultimate control over the public street and issues a non-exclusive permit to the Greater Buffalo Italian Heritage Festival for the Italian Festival.

37. The Greater Buffalo Italian Heritage Festival issues rules and regulations applicable during the Italian Festival to remind vendors that they are guests of the Hertel-North Buffalo neighborhood.

38. Booths at the Italian Festival are open to both food and non-food vendors. Anyone using a booth must pay a fee, with the cost depending on the size of the booth. Nonprofit organizations and merchants on Hertel Avenue receive a discounted price. Vendors are required to provide proof of insurance. And all vendors must agree to indemnify Buffalo and the Greater Buffalo Italian Heritage Festival for any claims for personal injury or property damage.

39. All vendors must also agree to join and promote the theme of the Italian Festival by decorating their booths with Italian flag colors and making exclusive use of Sorrento Cheese products.

40. During the entirety of the Italian Festival, pedestrians have uninhibited access to the seven-block stretch of Hertel Avenue, adjoining sidewalks and ways. Citizens continue to enjoy the same access to the stores and restaurants located on this portion of Hertel Avenue as they do during other times of the year. Within the festival confines, pedestrians are free to engage in all sorts of communication, including conversation, talking on cell phones, ordering products from vendors, wearing expressive clothing, among other forms of communication.

41. At all times during the Italian Festival, this festival part of Hertel Avenue remains a public thoroughfare and part of the city's transportation grid. Citizens continue to use this portion of Hertel Avenue to reach other parts of the city.

42. The 2012 Italian Festival is scheduled to take place July 12 through July 15.

Banning of Owen's Expression during 2011 Italian Festival

43. On July 16, 2011, Owen, along with his family and a friend, went to the "Little Italy" section of Buffalo where the Italian Festival was taking place. He specifically went to hand out gospel tracts to those individuals attending the Italian Festival.

44. Owen did not apply for a booth for the Italian Festival because he did not want his expression relegated to a booth. Nor could he afford the expense of a booth.

45. Owen did not seek to participate in the Italian Festival or in any of the festival activities because he wanted to communicate a message separate and distinct from the message conveyed by the Italian Festival.

46. Owen did not bring with him any sound amplification devices. He did not wish to engage in any activity that could possibly disrupt the Italian Festival event. He planned to walk up and down Hertel Avenue, and the adjacent sidewalks and ways, and hand out gospel tracts.

47. Upon his arrival to the Italian Festival, Owen observed that individuals were freely walking into and out of the festival and engaging in various forms of expression. He also noticed representatives of U.S. Army handing out recruitment flyers.

48. Walking thru the festival portion of Hertel Avenue, Owen came upon a police officer wearing a K-9 cap and talking to a couple of individuals who had a sign displaying a Christian message. The officer seemed to be indicating to these individuals that they could not convey their Christian message in the Italian Festival. Concerned about this prospect, Owen went over to talk to the police officer about any restriction they might have on Christian messages. He asked this police officer for his name, but the officer informed that he did not have to tell Owen his name. Owen then waited to see how the police officer would handle the situation.

49. After waiting for approximately twenty minutes, and having received no definitive answer from the police officer, Owen decided to carry on with his Christian expression in the festival. Owen believed he had every right to distribute literature on a public street open to the public.

50. In conducting their expressive activity, Owen and his small group did not create any congestion, nor did they harass anyone. They merely handed out tracts to those willing to accept them.

51. The same unidentified K-9 police officer who refused to tell Owen his name started to trail Owen from behind, suggesting to Owen that he should hold off on his expression until the Buffalo police figured out how to deal with his expression.

52. Continuing to walk and hand out tracts, Owen tried to reason with this police

officer, stressing that literature distribution in a public place was not against the law. The police officer retorted that they (the Buffalo police department) are the law.

53. A few minutes later, they walk to where some other police officers were already standing. These police officers had stopped the other two gentlemen with a Christian message and likewise forced Owen and his group to step aside and remain stationary. The police officers wore police uniforms and badges and presented themselves as police officers to Owen and the others.

54. These unidentified police officers informed Owen that he had to stay there while they called and determined whether he would be allowed to hand out tracts.

55. Subsequently, another police officer, Officer Slomka, arrived on the scene. She quickly informed Owen that they could not hand out tracts in the festival and explained that the prohibition was “by our orders.” Owen asked for her name, and she replied: “Slomka, write it down.” Owen advised that he believed the tracts to be free speech; nonplussed, Officer Slomka reiterated that they couldn’t hand out tracts there and had to go outside of the festival area to continue with their expressive activity.

56. Upon being asked whether the prohibition was written down somewhere, Officer Slomka said that they would need to talk to the supervisor. She elaborated that they could go to the other side of the barricades and she would send a supervisor over there to talk them about the restriction.

57. Wondering about the impact of the order, Owen inquired as to whether they would be arrested if they continued to hand out tracts in the festival area, to which, Officer Slomka replied: “Yes.”

58. Owen voiced objection to this stance. Officer Slomka then called for the supervisor to come to the scene. Standing there, waiting on the supervisor, Owen noticed another person handing out literature right there in front of them without restriction. Owen pointed out the differing treatment and suggested that they (his group and the other two gentlemen) were being singled out because they are Christian.

59. While Officer Slomka was waiting on the supervisor to come, Owen tried to hand out gospel tracts again. But Officer Slomka physically prevented Owen from distributing tracts, snatching the tracts out of Owen's hand. She warned Owen: "I'm not playing, if you hand out one more tract, you're going to jail."

60. At that point, another police officer arrived, and backed up Officer Slomka's assertion. Owen tried to explain inequity of the situation to this new police officer. Owen emphasized that the sidewalks were public, the stores in the area were open during the festival, that they were in a public place, and therefore, should be able to engage in free speech in the area.

61. Then, a representative of The Greater Buffalo Italian Heritage Festival, Randy Paul (Paul), comes up and introduces himself. Owen informed Paul that he needed to speak with someone in authority, not a festival organizer. Paul acknowledged that police officers have more authority than him, but he went on to say that the festival organizer had to approve of any materials distributed in the festival area.

62. Paul was asked about the Army flyers that were being handed out in the festival. Paul acknowledged that the Army asked for permission to hand out flyers and The Greater Buffalo Italian Heritage Festival had granted the Army permission to do that. Paul added that

local schools had also asked if they come down to the festival and hand out GED applications, and that they had let the schools conduct that activity as well. But he concluded that there is a limit to what the festival will allow, confirming that Owen does not have their permission to hand out his literature.

63. Owen observed that these decisions appear to turn on the message. Then, another police officer, Officer Ferraro, jumps into the conversation. Officer Ferraro says that while Owen and the others are not breaking the law, the street is not presently a public street.

64. Before Owen could respond to that comment, Captain Blosat, the oft-mentioned supervisor, finally arrived and addressed Owen. Owen tried to point out the public nature of the venue, but Captain Blosat interrupted in mid-sentence, saying: "First of all, the special events permit says they own the street this week." He added that if Owen is doing something not authorized by the permittee (the festival organizer), Owen can and will be ejected.

65. Ordering Owen and the others to leave the premises, Captain Blosat remarked that Owen necessarily disturbs attendees - and disrupts the festival - with his distribution of unsolicited flyers. Captain Blosat reiterated that Owen's literature distribution would interfere with the festival permit.

66. Owen did not want to be arrested. For that reason, he discontinued his expressive activity and left the festival.

67. If not for the ban imposed on his religious literature distribution, and the orders from Captain Blosat, Officer Slomka, and the other police officers, Owen would have continued with his expressive activities on Hertel Avenue and the adjacent public ways during the 2011 Italian Festival.

Continuing Impact on Owen's Expression

68. The ban on Owen's literature distribution continues to chill and deter Owen's religious expression, specifically, future Italian Festivals.

69. The representative for The Greater Buffalo Italian Heritage Festival informed Owen that they do not approve of his literature distribution (despite allowing others to distribute literature), and Buffalo police officers informed Owen that he cannot distribute literature without festival approval, and that they will force him to stop literature distribution under the threat of arrest.

70. The heckler's veto granted to the festival organizer creates a ban on Owen's literature distribution. This ban imposes an intolerable burden on Owen's expression.

71. For fear of arrest, Owen is effectively deterred from returning to the seven-block portion of Hertel Avenue between Delaware and Colvin Avenues and distributing his literature during the Italian Festival. If not for the ban on literature distribution, and the actions of Defendants in enforcing this ban, Owen would return to the 2012 Italian Festival and subsequent Italian Festivals to share his message via literature distribution and conversation.

72. The fear of arrest severely limits Owen's constitutionally-protected expression on a public street, as well as adjoining sidewalks and public ways.

73. Being chilled and deterred from exercising his constitutional rights on the public street, sidewalks and public ways constitutes irreparable harm to Owen.

74. Owen does not have an adequate remedy at law for the loss of his constitutional rights.

FIRST CAUSE OF ACTION

Violation of Freedom of Speech

75. Owen re-alleges and incorporates herein by reference all preceding paragraphs.

76. Owen's religious speech is protected speech under the First Amendment.

77. Owen challenges Defendants' policies and practices including, but not limited to the ban on his religious literature distribution on the seven-block portion of Hertel Avenue and adjoining public ways during the Italian Festival.

78. Defendants' policies and practices, and the enforcement thereof, violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, Owen respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION

Violation of the Due Process

79. Owen re-alleges and incorporates herein by reference all preceding paragraphs.

80. Defendants' policies are vague and lack sufficient objective standards to curtail the discretion of government officials. They allow Defendants ample opportunity to enforce the policies in an *ad hoc*, arbitrary, and discriminatory manner.

81. As a result of these vague restrictions, Owen has been deprived of his right to due process of law.

WHEREFORE, Owen respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Owen respectfully prays for relief in that this Court:

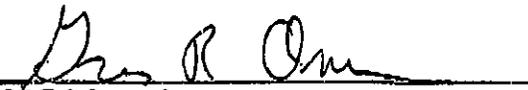
- A. Assume jurisdiction over this action;
- B. Enter a judgment and decree declaring that the actions taken by Defendants in precluding Owen from distributing literature on the seven-block section of Hertel Avenue between Delaware and Colvin Avenues, and adjoining sidewalks and public ways, during the Italian Festival on July 16, 2011, violated Owen's constitutional rights, namely, his right to free speech and due process;
- C. Enter a judgment and decree declaring that the ban imposed on his religious literature distribution is unconstitutional on its face and as applied to Owen's expression because it violates Owen's rights and the rights of third parties not before the Court, as guaranteed under the First and Fourteenth Amendments to the United States Constitution;
- D. Enter a preliminary and permanent injunction enjoining Defendants, their agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from applying the ban on religious literature distribution so as to restrict constitutionally-protected speech of speakers, including Owen and other third parties, on the public ways in Buffalo during the Italian Festival;
- E. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;
- F. Award Owen nominal damages arising from the acts of the Defendants as an important vindication of his constitutional rights;

G. Award Owen his costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

H. Grant such other and further relief as appears to this Court to be equitable and just.

VERIFICATION OF COMPLAINT

I, Gregory Owen, a citizen of the United States and a resident of Lockport, New York, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.



GREGORY OWEN

Respectfully submitted,

<p>s/ Nathan W. Kellum Nathan W. Kellum NDNY Bar Roll# 302459 TN BAR #13482; MS BAR # 8813 CENTER FOR RELIGIOUS EXPRESSION 699 Oakleaf Office Lane, Suite 107 Memphis, TN 38117 (901) 684-5485 telephone (901) 684-5499 – Fax Attorney for Plaintiff Gregory Owen</p>	<p>Jonathan Scruggs NDNY Bar Roll# 515373 TN BAR # 025679 ALLIANCE DEFENSE FUND 699 Oakleaf Office Lane, Suite 107 Memphis, TN 38117 (901) 684-5485 telephone (901) 684-5499 – Fax Attorney for Plaintiff Gregory Owen</p>
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