

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL MARCAVAGE,)	
JAMES DEFERIO, FAITH DEFERIO)	
CRAIG SCARBERRY,)	
RYAN MURPHY,)	JUDGE: Milton I. Shadur
)	
Plaintiffs,)	MAG. JUDGE: Michael T. Mason
)	
v.)	No. 06 C 3858
)	
)	
THE CITY OF CHICAGO, an)	
Illinois municipal corporation,)	
METROPOLITAN PIER and)	TRIAL BY JURY DEMANDED
EXPOSITION AUTHORITY (MPEA),)	
OFFICER ANDREWS, in his official and)	
individual capacity, OFFICER)	
RODRIGUEZ, in his official and)	
individual capacity, OFFICER)	
GERARDO MADRIGAL, in his official)	
and individual capacity, SERGEANT)	
GERARDO TENYUQUE, in his official)	
and individual capacity, and DEPUTY)	
CHIEF DANIEL DUGAN, in his official)	
and individual capacity,)	
)	
Defendants,)	

**PLAINTIFFS' FIRST AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF AND MONETARY DAMAGES**

COMES NOW the Plaintiffs, MICHAEL MARCAVAGE, JAMES DEFERIO, FAITH DEFERIO, RYAN MURPHY, and CRAIG SCARBERRY (hereinafter "Plaintiffs"), by their undersigned counsel, complain against Defendants, CITY OF CHICAGO, METROPOLITAN PIER AND EXPOSITION AUTHORITY (MPEA), OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL,

SERGEANT GERARDO TENYUQUE, and DEPUTY CHIEF DANIEL DUGAN
(hereinafter “Defendants”) as follows:

NATURE OF THE CASE

1. Plaintiffs seek injunctive relief and damages against Defendants, and their agents, servants and employees and those acting in active concert and with actual notice thereof, from prohibiting Plaintiffs from exercising their free speech and free exercise rights, unlawfully arresting Plaintiffs, and violating the equal protection of the laws as applied to Plaintiffs, under the First, Fourth, and Fourteenth Amendments to the United States Constitution. Plaintiffs intend to return to Chicago on a number of future occasions to engage in constitutionally protected religious and political activities in public settings. An actual controversy exists between the parties involving substantial constitutional issues in that the Defendants have taken actions to violate Plaintiffs’ free speech and free exercise and equal protection rights guaranteed under the First, Fourth, and Fourteenth Amendments to the United States Constitution as well as the Article 1 § 4 of the Illinois Constitution, and the Illinois Religious Freedom Restoration Act, 775 Illinois Compiled Statutes 35/1 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction of this claim under, and by virtue of, Title 28 U.S.C. §§ 1331, 1343, 2201 and 2202. Further, this Court has supplemental jurisdiction under 28 U.S.C §1367.

3. This Court is authorized to grant Plaintiffs’ prayer for relief under Title 42 U.S.C. § 1988, and the Illinois Religious Freedom Restoration Act, 775 Illinois Compiled Statutes 35/1 *et seq.*

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because all of the events giving rise to the claims asserted herein occurred in Cook County, Illinois.

PARTIES

5. Plaintiff, MICHAEL MARCAVAGE, is and was at all times relevant to this cause, an individual and resident of Lansdowne, Pennsylvania. Plaintiff, JAMES DEFERIO, is and was at all times relevant to this cause, an individual and resident of Syracuse, New York. Plaintiff, FAITH DEFERIO, is and was at all times relevant to this cause, an individual and resident of Syracuse, New York. Plaintiff, RYAN MURPHY, is and was at all times relevant to this cause, an individual and resident of Michigan. Plaintiff, CRAIG SCARBERRY, is and was at all times relevant to this cause, an individual and resident of Indiana. Plaintiffs are volunteers for Repent America, a volunteer-based ministry in Philadelphia, PA, which is composed of approximately 10,000 Christians who live across the United States. The goal of Repent America is to proclaim the Gospel of Jesus Christ in the public square.

6. Defendant, CITY OF CHICAGO, is a public body municipal corporation located in Cook County, Illinois, and is established, organized, and authorized pursuant to Illinois Statutes with the authority to sue and be sued and was at all times relevant herein acting within the course and scope of its authority and under color of state law. Defendant, METROPOLITAN PIER AND EXPOSITION AUTHORITY is an Illinois governmental unit that owns Navy Pier and Gateway Park in Chicago. Defendant OFFICER ANDREWS is a Chicago police officer who arrested Plaintiffs JAMES DEFERIO and RYAN MURPHY on Sunday, July 16, 2006. OFFICER RODRIGUEZ is a Chicago police officer who arrested Plaintiffs JAMES DEFERIO and RYAN

MURPHY on Sunday, July 16, 2006. OFFICER GERARDO MADRIGAL is a Chicago police officer who completed the arrest report and was considered the arresting officer of Plaintiff MICHAEL MARCAVAGE on Saturday, July 22, 2006. SERGEANT GERARDO TENYUQUE is a Chicago police officer who arrested Plaintiff MICHAEL MARCAVAGE on Saturday, July 22, 2006. DEPUTY CHIEF DANIEL DUGAN is a Chicago police officer who was working under the direction of the Police Superintendent and the Mayor, having been assigned to handle all the affairs of the “Gay Games.” Defendant DUGAN prompted the arrest of Plaintiff MICHAEL MARCAVAGE on Saturday, July 22, 2006.

STATEMENT OF FACTS

7. Plaintiffs are Christians who regard the Bible as God’s literal authority. In keeping with this sincerely held religious belief, Plaintiffs believe that they are obligated to tell as many other people as they can about what they believe is their individual need to be “born again,” that is, to be reconciled to God. This comes only by believing that Jesus Christ is God, and that Jesus suffered and died on the cross (and was resurrected from the dead subsequently) to pay the penalty for the sins of humanity, particularly those individuals who will believe in him; and who seek healing and forgiveness for and deliverance from their past, present, and future personal sins—“sins” being defined as transgressions of the binding commands of the Bible.

8. Plaintiffs accomplish this purpose primarily through the public distribution of free religious literature (“Gospel tracts”) and one-on-one discussion in the public square.

9. Plaintiffs, for many years, have utilized the distribution of Gospel tracts on public sidewalks (by offering them to individuals passing by) as the primary method in communicating the Gospel message to people.

10. Plaintiffs distribute Gospel tracts in a manner that does not obstruct or block the flow of pedestrian traffic.

11. Plaintiffs intend to return to Chicago on a regular basis in order to distribute literature and preach the Gospel.

12. Gateway Park, at the entrance of Navy Pier, is maintained by Defendants MPEA and CITY of CHICAGO and is a traditional public forum because of the nature of its use (as ways of public thoroughfare).

13. Navy Pier, owned and maintained by Defendant MPEA, is a nonpublic forum containing an amusement park, a meeting and entertainment center, a family and children's area and other features.

14. Defendant MPEA's "Policy for Public Expression at Navy Pier and the Headlands" (attached as Exhibit A), which requires a permit be obtained in order to engage in First Amendment protected activity, is unconstitutional on its face and applied against Plaintiffs.

15. Plaintiffs are willing to comply with the general time, place, and manner restrictions of MPEA's Policy, but the Policy as a whole violates Plaintiff's First Amendment rights because the Policy is overbroad and because the Policy grants excessive discretion to MPEA to deny a permit.

16. On Saturday, July 15, 2006, Plaintiffs distributed Gospel tracts on a public walkway south of McFetridge Avenue near Soldier Field. A police officer told Plaintiffs

that they must leave or be arrested. Another officer informed Plaintiffs that they must stand in designated “free speech zones.”

17. Plaintiffs’ leafleting was not blocking the flow of pedestrian traffic and was not obstructing access to any thoroughfare.

18. The contents of the Gospel tracts Plaintiffs distributed clearly identified the religious expression and free speech interests inherent in Plaintiffs’ activity.

19. The Plaintiffs did not solicit funds while distributing free Gospel tracts.

20. Defendant CITY OF CHICAGO initiated a content-based policy favorable to the views of the Gay Games. The CITY OF CHICAGO sought to promote the Gay Games and to discourage protest or disagreement with the viewpoints and activities expressed and endorsed by the Gay Games. Defendant OFFICER MADRIGAL explained that DEPUTY CHIEF DUGAN did not like Plaintiff and said they were “bad news.” Speaking at Roosevelt University on July 13, 2006 Mayor Daley said, “Gay Games is like a preliminary for the Olympics. It's like a showcase for it.” Daley himself closed the games by parading the Gay Games flag across the outfield of Wrigley Field to the cheers of approximately 25,000 Gay Games supporters. See Exhibit B.

21. On Sunday, July 16, 2006, Plaintiffs were at Navy Pier. As they exited the parking garage, MPEA security guards swarmed around them and informed them they could not be on Navy Pier and told them to cross the street to Gateway Park. The Police arrived almost immediately and directed Plaintiffs to cross the street. One of the police officers on scene, Defendant OFFICER ANDREWS grabbed Plaintiff JAMES DEFERIO’S hand which was holding a video camera, squeezed it hard and pushed it

down. OFFICER ANDREWS informed Plaintiffs that if the camera was turned on it would be confiscated and Plaintiffs would be arrested.

22. Once Plaintiffs moved across the street to Gateway Park, Defendants OFFICER ANDREWS and RODRIGUEZ then cautioned Plaintiffs that they could not be in the park at all.

23. In turn, Plaintiff MICHAEL MARCAVAGE dialed 911 to talk to a supervising officer. When he did so OFFICER ANDREWS grabbed his phone and shut it, handcuffed him behind his back and forced him to sit down on the ground. JAMES DEFERIO had videotaped this and Defendant OFFICER RODRIGUEZ handcuffed him and made him sit down. OFFICER RODRIGUEZ then forced RYAN MURPHY to the ground getting him in a headlock.

24. At this point a female officer arrived and told officers ANDREWS and RODRIGUEZ to let MICHAEL MARCAVAGE out of the handcuffs but to arrest RYAN MURPHY and JAMES DEFERIO. OFFICER ANDREWS ordered MICHAEL MARCAVAGE to hand over the video camera held by JAMES DEFERIO and MARCAVAGE complied. The video camera was later returned without the tape. Repeated attempts to obtain this tape, which contains footage of Defendants' illegal activities, have been ignored by Defendants. As MICHAEL MARCAVAGE was picking up the box containing the Gospel tracts, an officer said "get this s**t out of here. Nobody wants to hear your bulls**t." As OFFICER ANDREWS took JAMES DEFERIO and RYAN MURPHY into custody he said, "we're f***ing going to beat you up."

25. When RYAN MURPHY and JAMES DEFERIO were taken to the 18th precinct, they were told they were charged with criminal trespass. Their requests to call an attorney and water were denied.

26. OFFICER RODRIGUEZ was hostile and belligerent and made offensive comments towards JAMES DEFERIO. RODRIGUEZ called DEFERIO a “wuss” and a “p*ssy” and said “nobody wants to hear the f***ing bulls**t you guys are preaching.” At one point RODRIGUEZ grabbed his crotch and said “you don’t have any of these.”

27. After four hours, MURPHY and DEFERIO were released. The officers said that Navy Pier decided not to press charges. The officers returned belongings to Plaintiffs, including the video camera belonging to JAMES DEFERIO. The video tape, which was in the video camera at the time of arrest, was not returned. When Plaintiff asked about the tape, he was told they “did not know anything about a tape.”

28. When Plaintiffs talked with an attorney for the City of Chicago, on Monday, July 17, 2006, they were told they were required to stay in “free speech zones.”

29. Confining Plaintiffs to free speech zones would prevent their ministry objectives because they would be unable to effectively engage in dialogue with the public, as well as be able to freely distribute Gospel literature.

30. Attorney Yvonne LaGrone from the City of Chicago, Office of the Corporation Counsel indicated to Plaintiffs in a phone conversation on Monday July 17, 2006 that she was not aware of any demonstration or free speech zones.

31. On Saturday, July 22, 2006, Plaintiff MICHAEL MARCAVAGE was standing on the public sidewalk on W. Addison Street facing Wrigley Field’s Gate F with a sign stating that his sincerely-held religious belief that marriage is between one man

and one woman. While there, Plaintiff was approached by security officials from the stadium who demanded that he, and the other Plaintiffs, leave the area and go across the street. When Plaintiff explained that he had a right to be on the sidewalk, a police officer arrived and ordered Plaintiff across the street. Plaintiff explained that he would not be able to effectively reach out to the people attending the event from across the street and the police officer left.

32. Plaintiff MARCAVAGE walked on the sidewalk toward Gate D with his video camera. As he walked down the sidewalk, Plaintiff recorded the expressive activities of those around him with his video camera, including a man distributing handouts about a documentary, a person waving a homosexual pride flag, and another man speaking against President Bush. The man speaking against the policies of President Bush had a sign which aided him in his presentation. Directly next to this man was a uniformed female police officer who was purchasing a pro-homosexual t-shirt from a street vendor who was also standing in the area. When she saw Plaintiff with the video camera, she quickly finished the exchange with the vendor and hid the t-shirt behind her back, then moved out of sight. Plaintiff asked the man what he was selling and he told Plaintiff about his pro-homosexual products, along with pricing.

33. Plaintiff was approached by Defendant SERGEANT GERARDO TENEYUQUE who, in a hostile manner told Plaintiff that the sidewalk was not open to the public or free speech, and that Plaintiff needed to go across the street. Plaintiff told him that he had a right to be on the public sidewalk and was not blocking anyone. Defendant Teneyuque then left. However, TENEYUQUE returned and again ordered Plaintiff across the street. Plaintiff again explained that he had a right to be where he

was, but TENYUQUE was unwavering and began to shove Plaintiff by thrusting his chest at Plaintiff and by pushing him. Plaintiff was then arrested and placed in a police car.

34. While in the police car in handcuffs, Plaintiff MARCAVAGE placed a 911 phone call to explain what happened. Plaintiff told the operator that he was arrested for exercising his First Amendment rights. Plaintiff further explained that he was using a video camera to record the exchange between Plaintiff and Defendant officer, but was concerned about its safety since Plaintiffs already had a video tape stolen by police. Plaintiff asked that the supervisor be informed of the situation, and that the video camera and tape be secured, but never did hear from a supervising officer.

35. Plaintiff was taken to the 19th Police District. Plaintiff told all those present in the front desk area that there was a video of what happened, and that he wanted to make sure it was secure. Desk Sergeant Evangelos Hitiris stated that he did not care, and then asked the others present if they cared. Some responded by agreeing that they did not care, while others responded in a sarcastic tone by saying “I care.” Plaintiff was then taken into a room and handcuffed to a metal bench.

36. Plaintiff MARCAVAGE was charged with disorderly conduct. Plaintiff expressed to Defendant SERGEANT TENYUQUE that the charge was simply not true, and that TENYUQUE was concocting a story in an attempt to justify his illegal behavior. Defendant told Plaintiff that he had a complainant, and that Plaintiff had got into an “argument” with this person. Plaintiff told him that this was baseless, and that the video spoke for itself. Plaintiff asked SERGEANT TENYUQUE why he did not arrest the other person since he was supposedly arguing with Plaintiff, and Defendant

responded by saying that he was dealing with one person at a time and that Plaintiff received a warning. During this exchange, Defendant referred to Plaintiff's message as "hate."

37. After SERGEANT TENYUQUE left the room, Plaintiff questioned Defendant OFFICER GERARDO MADRIGAL about the charge, why MADRIGAL was completing the report and why MADRIGAL was considered the "arresting officer" since Plaintiff had no discussion with MADRIGAL prior to Plaintiff's arrest. MADRIGAL said that TENYUQUE was his boss and that he was doing as he had been instructed. OFFICER MADRIGAL expressed his concern about losing his job and that he has a family to care for. When Plaintiff explained that MADRIGAL knew that the charge was baseless, OFFICER MADRIGAL was silent. At one point, OFFICER MADRIGAL asked Plaintiff if he knew Defendant DEPUTY CHIEF DUGAN'S first name. Plaintiff recalled a brief encounter with DEPUTY CHIEF DUGAN during the opening ceremonies of the "Gay Games" at Soldier Field, in which Defendants' officers had interfered and harassed Plaintiffs. OFFICER MADRIGAL told Plaintiff that DUGAN "doesn't like you," and said that Plaintiff is "bad news." OFFICER MADRIGAL explained that the arrest was prompted, at least in part, by DEPUTY CHIEF DUGAN. OFFICER MADRIGAL explained that DEPUTY CHIEF DUGAN was working under the direction and implementing the policies of the Police Superintendent and the Mayor, having been assigned to handle all the affairs of the "Gay Games."

38. Plaintiff made continuous expressions of concern about the video camera and tape that had been confiscated during his arrest. At one point, after Plaintiff had been in custody approximately five hours, SERGEANT TENYUQUE had OFFICER

MADRIGAL pull the video camera from underneath the table where he was sitting, which appeared to be on his lap. Plaintiff asked if he could see if the tape was still in it. SERGEANT TENEYUQUE opened the camera and showed Plaintiff that the tape was still inside, and then closed the tape door. Plaintiff asked him if the battery could be removed from the back of the video camera, but Defendant refused, and took it out into the hallway. Plaintiff was informed that the video camera was going to be put into inventory, but this was the last time Plaintiff saw it. Overall, this behavior was extremely suspicious since nearly five hours after Plaintiff's arrest, the video camera was still in SERGEANT TENEYUQUE's possession. After being released, the video camera was not returned to Plaintiff despite numerous requests.

39. Later, while Plaintiff was having his picture taken by a police officer, the officer taking the picture began to mock Plaintiff's beliefs and started to pose sarcastic questions about God's existence and about Jesus Christ's death, which continued throughout the booking process. After Plaintiff was allowed to make a phone call, another police officer continued to play off the remarks of the officer who took the photographs, making remarks concerning polygamy and about Jesus being married to Mary Magdalene and having a sexual relationship with her. This officer also told Plaintiff that his friends were gathered outside asking why Plaintiff was being held. The officer told Plaintiff that he responded to them by saying that "it'll be awhile longer because we're doing anal probing." Plaintiff was released at 9:35 p.m.

40. The future chilling of Plaintiffs' rights is an absolute certainty unless and until this Court grants the injunctive relief requested herein.

41. Defendants and/or Defendants' officers/agents did, with the purpose and intent of willfully and knowingly discriminating against Plaintiffs and depriving Plaintiffs of equal protection of the law, freedom of speech and free exercise of religion, order the Plaintiffs to cease distributing the Gospel tracts and carrying signs in violation of Plaintiffs' civil and equal protection rights.

COUNT I
VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH
BY DEFENDANT MPEA:
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

42. Plaintiff hereby reincorporates and adopts each and every allegation in the preceding paragraphs numbered 1 through 41.

43. Defendant MPEA's "Policy for Public Expression" and actions in prohibiting Plaintiffs' ability to pass out tracts on Navy Pier, a nonpublic forum, was a violation of free speech since the Supreme Court has recognized that even in a nonpublic forum, the First Amendment right to distribute leaflets is protected.

44. Defendant MPEA's "Policy" and actions in prohibiting Plaintiffs' from exercising their free speech and free exercise activity in Gateway Park, a traditional public forum, was a violation of Plaintiffs' Constitutionally protected liberties since by "demonstrating in Gateway Park, persons wishing to exercise their First Amendment right of expression can communicate with every single person who enters Navy Pier." *Chicago Acorn v. MPEA*, 150 F.3d 695, 703 (7th Cir. 1998). Any restriction on First Amendment activity within Gateway Park would be an independent violation of the First Amendment. *Id.*

45. Defendant's actions serve as an unconstitutional prior restraint on free speech.

46. Defendant's actions were not the exercise of a permissible time, place, and manner restriction.

47. Defendant's actions are viewpoint and content-based restrictions on speech and allow future viewpoint and content-based restrictions on speech.

48. Defendant's actions are irrational and unreasonable and impose irrational and unjustifiable restrictions on constitutionally protected speech in non-public fora.

49. Defendant's actions unconstitutionally chill and abridge the right of Plaintiff to leaflet which is a right guaranteed by the First Amendment to the United States Constitution.

50. Defendant's "Policy" establishes a permitting scheme which is unconstitutionally broad and violates Plaintiffs' rights to free expression.

51. Defendant's "Policy" establishing a permitting scheme grants excessive discretion to Defendant to deny a permit to those who seek one and thus violates the First Amendment of the United States Constitution.

52. The violation of Plaintiff's constitutional rights has caused, and will continue to cause, Plaintiff and others who wish to distribute Gospel tracts in public fora to suffer hardship and actual and impending irreparable injury.

WHEREFORE, Plaintiffs request judgment as follows:

- A. That this Court issue a permanent injunction restraining Defendant, its officers, agents, employees and all other persons acting in active concert with them or any of them from obstructing or

threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendant to allow the distribution of Plaintiffs' pamphlets with the same degree of protection with all the rights and privileges afforded similarly situated persons;

B. Enter declaratory relief finding that the Navy Pier's permit scheme in its "Policy for Public Expression" violates Plaintiffs' First and Fourteenth Amendment rights;

C. Enter judgment on behalf of Plaintiffs and against Defendant MPEA for monetary damages to be determined at trial;

D. Enter judgment for reasonable attorneys' fees and costs incurred in bringing this action; and

E. Grant such other and further relief as it deems equitable and just.

COUNT II
VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION
BY DEFENDANT MPEA:
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

53. Plaintiff hereby reincorporates and adopts each and every allegation in the preceding paragraphs numbered 1 through 41.

54. Plaintiffs' religious activities are protected by the First and Fourteenth Amendments to the United States Constitution.

55. Defendant MPEA'S actions against Plaintiffs substantially burden Plaintiffs' free exercise of their religious beliefs and practice.

56. Defendant's actions against Plaintiffs are unconstitutional abridgments of Plaintiffs' affirmative right to free exercise of religion protected by the First and Fourteenth Amendments to the United States Constitution.

57. Defendant's actions against Plaintiffs substantially burden Plaintiffs' right to free exercise of religion by granting unfettered discretion to Defendant and its agents to deny Plaintiff's distribution of Gospel tracts.

58. Defendant's actions against Plaintiffs serve as an unconstitutional prior restraint on free exercise.

59. Defendant's "Policy" establishes a permitting scheme which is unconstitutionally broad and violates Plaintiffs' rights to free exercise.

60. Defendant's actions against Plaintiffs are not supported by a compelling interest.

61. The violation of Plaintiffs' constitutional rights has caused, and will continue to cause, Plaintiffs to suffer hardship and actual and impending irreparable injury.

WHEREFORE, Plaintiffs request judgment as follows:

A. That this Court issue a permanent injunction restraining Defendant, its officers, agents, employees and all other persons acting in active concert with them or any of them from obstructing or threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendant to allow the distribution of Plaintiffs' pamphlets with the same degree of protection with all the rights and privileges afforded similarly situated persons;

- B. Enter declaratory relief finding that the Navy Pier's permit scheme in its "Policy for Public Expression" violates Plaintiffs' First and Fourteenth Amendment rights;
- C. Enter judgment on behalf of Plaintiffs and against Defendant MPEA for monetary damages to be determined at trial;
- D. Enter judgment for reasonable attorneys' fees and costs incurred in bringing this action; and
- E. Grant such other and further relief as it deems equitable and just.

**COUNT III
VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION
THE ILLINOIS RELIGIOUS FREEDOM RESTORATION ACT
BY DEFENDANT MPEA**

62. Plaintiffs hereby reincorporate and adopt each and every allegation in the preceding paragraphs numbered 1 through 41.

63. Plaintiffs' religious activities are protected by the Illinois Religious Freedom Restoration Act, 775 Illinois Compiled Statutes 35/1 *et seq.*

64. Defendant's "Policy" and actions against Plaintiffs substantially burden Plaintiffs' free exercise of their religious beliefs and practice.

65. Defendant's "Policy" and actions against Plaintiffs are unconstitutional abridgments of Plaintiffs' affirmative right to free exercise of religion protected by the Illinois Religious Freedom Restoration Act.

66. Defendant's "Policy" and actions against Plaintiffs substantially burden Plaintiffs' right to free exercise of religion by granting unfettered discretion to Defendant and its agents to deny Plaintiffs' right to engage in the distribution of Gospel tracts.

67. Defendant's "Policy" and actions against Plaintiffs serve as an unconstitutional prior restraint on free speech.

68. Defendant's "Policy" and actions against Plaintiffs were not the exercise of permissible time, place, and manner restrictions.

69. Defendant's "Policy" and actions against Plaintiffs are viewpoint and content-based restrictions on speech and allow future viewpoint and content-based restrictions on speech.

70. Defendant's "Policy" and actions against Plaintiffs unconstitutionally chill and abridge the rights of Plaintiffs to leaflet and minister which are rights guaranteed by the Illinois Religious Freedom Restoration Act.

71. Defendant's "Policy" establishes a permitting scheme which is unconstitutionally broad and violates Plaintiffs' rights to free exercise.

72. The violation of Plaintiffs' constitutional rights has caused, and will continue to cause, Plaintiffs to suffer hardship and actual and impending irreparable injury.

WHEREFORE, Plaintiffs request judgment as follows:

A. That this Court issue a permanent injunction restraining Defendant, its officers, agents, employees and all other persons acting in active concert with them or any of them from obstructing or threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendant to allow the distribution of Plaintiffs' pamphlets with the same degree of protection with all the rights and privileges afforded similarly situated persons;

- B. Enter declaratory relief finding that the Navy Pier’s permit scheme in its “Policy for Public Expression” violates Plaintiffs’ First and Fourteenth Amendment rights;
- C. Enter judgment on behalf of Plaintiffs and against Defendant MPEA for monetary damages to be determined at trial;
- D. Enter judgment for reasonable attorneys’ fees and costs incurred in bringing this action; and
- E. Grant such other and further relief as it deems equitable and just.

**COUNT IV
VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH
BY DEFENDANT CITY OF CHICAGO:
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION**

73. Plaintiff hereby reincorporates and adopts each and every allegation in the preceding paragraphs numbered 1 through 41.

74. Plaintiff’s right to freedom of speech is protected under the First Amendment to the United States Constitution.

75. Defendants OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, DEPUTY CHIEF DANIEL DUGAN and CITY OF CHICAGO’S actions in removing Plaintiffs from Gateway Park, a public forum, and from a public sidewalk outside of Wrigley field, also a public forum, clearly violate Plaintiffs’ First Amendment right to free speech.

76. Defendant CITY OF CHICAGO’S establishment of “free speech zones” violates Plaintiffs’ free speech rights.

77. Defendants' actions deprive Plaintiffs of their right to free speech by granting unfettered discretion to Defendant and its agents to deny Plaintiffs their right to distribute Gospel tracts by mingling with the public on public property, carrying signs, speaking with the public, and engaging in public preaching.

78. Defendants' actions serve as an unconstitutional prior restraint on free speech.

79. Defendants' actions were not the exercise of a permissible time, place, and manner restriction.

80. Defendants' actions are viewpoint and content-based restrictions on speech and foreshadow future viewpoint and content-based restrictions on speech.

81. Defendants' actions unconstitutionally chill and abridge the right of Plaintiffs to leaflet, which is a right guaranteed by the First Amendment to the United States Constitution.

82. The violation of Plaintiff's constitutional rights has caused, and will continue to cause, Plaintiff and others who wish to distribute Gospel tracts and engage in other protected conduct in public fora to suffer hardship and actual and impending irreparable injury.

WHEREFORE, Plaintiffs request judgment as follows:

A. That this Court issue a permanent injunction restraining Defendants, its officers, agents, employees and all other persons acting in active concert with them or any of them from obstructing or threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendants to allow the distribution of

Plaintiffs' pamphlets with the same degree of protection with all the rights and privileges afforded similarly situated persons;

B. Enter judgment on behalf of Plaintiffs and against Defendants CITY OF CHICAGO, OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, and DEPUTY CHIEF DANIEL DUGAN for monetary damages to be determined at trial;

C. Enter judgment for reasonable attorneys' fees and costs incurred in bringing this action; and

D. Grant such other and further relief as it deems equitable and just.

**COUNT V
VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION
BY DEFENDANT CITY OF CHICAGO:
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION**

83. Plaintiff hereby reincorporates and adopts each and every allegation in the preceding paragraphs numbered 1 through 41.

84. Plaintiffs' religious activities are protected by the First and Fourteenth Amendments to the United States Constitution.

85. Defendants OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, DEPUTY CHIEF DANIEL DUGAN and CITY OF CHICAGO'S actions against Plaintiffs substantially burden Plaintiffs' free exercise of their religious beliefs and practice.

86. Defendants' actions against Plaintiffs are unconstitutional abridgments of Plaintiffs' affirmative right to free exercise of religion protected by the First and Fourteenth Amendments to the United States Constitution.

87. Defendants' actions against Plaintiffs substantially burden Plaintiffs' right to free exercise of religion by granting unfettered discretion to Defendant and its agents to deny Plaintiff's distribution of Gospel tracts.

88. Defendants' actions against Plaintiffs serve as an unconstitutional prior restraint on free exercise.

89. Defendants' actions against Plaintiffs are not supported by a compelling or significant state interest.

90. The violation of Plaintiffs' constitutional rights has caused, and will continue to cause, Plaintiffs to suffer hardship and actual and impending irreparable injury.

WHEREFORE, Plaintiffs request judgment as follows:

A. That this Court issue a permanent injunction restraining Defendants, its officers, agents, employees and all other persons acting in active concert with them or any of them from obstructing or threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendants to allow the distribution of Plaintiffs' pamphlets with the same degree of protection with all the rights and privileges afforded similarly situated persons;

B. Enter judgment on behalf of Plaintiffs and against Defendants
CITY OF CHICAGO, OFFICER ANDREWS, OFFICER

RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT
GERARDO TENYUQUE, and DEPUTY CHIEF DANIEL DUGAN

for monetary damages to be determined at trial;

C. Enter judgment for reasonable attorneys' fees and costs
incurred in bringing this action; and

Grant such other and further relief as it deems equitable and just.

COUNT VI
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
AND 42 U.S.C. §1983 BY DEFENDANT CITY OF CHICAGO

91. Plaintiffs hereby reincorporate and adopt each and every allegation in the preceding paragraphs numbered 1 through 41.

92. Plaintiffs' free speech and free exercise rights are protected from arbitrary discrimination under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

93. Plaintiffs' right to freedom of speech and free exercise of religion are fundamental rights protected under the First Amendment to the United States Constitution.

94. Defendants' action against Plaintiffs substantially burden Plaintiffs' constitutional rights in an arbitrary and capricious manner by discriminating among similarly situated persons who are allowed to distribute leaflets and hold signs in the traditional public fora which Defendants maintain.

95. Defendants, state actors, intentionally, willfully and knowingly discriminated against Plaintiffs and deprived Plaintiffs of equal protection of the law, by

denying Plaintiffs the right to distribute religious literature through an unconstitutional prior restraint and viewpoint and/or content-based regulations.

96. Defendants are not uniformly enforcing a regulation on speech, but are targeting Plaintiffs' speech in an arbitrary and capricious manner.

97. Defendants' actions against Plaintiffs constitute a violation of Plaintiffs' right to equal protection because the action fosters viewpoint and content-based decisions by allowing discretionary decisions and permitting other persons and groups to express their speech rights without restraint.

98. Defendants' action against Plaintiffs prohibit Plaintiffs from expressing their free speech rights in an inequitable manner by limiting Plaintiffs' expression to the whim of Defendants' determination as to what type of speech is appropriate in traditional public fora.

99. Defendants' action against Plaintiffs serves as an unconstitutional prior restraint on free speech.

100. Defendants' action against Plaintiffs imposes viewpoint and content-based restrictions on speech and allows future viewpoint and content-based restrictions on speech.

101. Defendants' actions against Plaintiffs unconstitutionally chill and abridge the right of Plaintiffs to leaflet and engage in other free speech activity which are rights guaranteed by the First and Fourteenth Amendments to the United States Constitution.

102. The violation of Plaintiffs' constitutional rights has caused, and will continue to cause, Plaintiffs to suffer hardship and actual and impending irreparable injury.

WHEREFORE, Plaintiffs request judgment as follows:

- A. That this Court issue a permanent injunction restraining Defendants, its officers, agents, employees and all other persons acting in active concert with them or any of them from obstructing or threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendants to allow the distribution of Plaintiffs' pamphlets with the same degree of protection with all the rights and privileges afforded similarly situated persons;
- B. Enter judgment on behalf of Plaintiffs and against Defendants CITY OF CHICAGO, OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENEYUQUE, and DEPUTY CHIEF DANIEL DUGAN for monetary damages to be determined at trial;
- C. Enter judgment for reasonable attorneys' fees and costs incurred in bringing this action; and
- D. Grant such other and further relief as it deems equitable and just.

**COUNT VII
VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION
THE ILLINOIS RELIGIOUS FREEDOM RESTORATION ACT
BY DEFENDANT CITY OF CHICAGO**

103. Plaintiffs hereby reincorporate and adopt each and every allegation in the preceding paragraphs numbered 1 through 41.

104. Plaintiffs' religious activities are protected by the Illinois Religious Freedom Restoration Act, 775 Illinois Compiled Statutes 35/1 *et seq.*

105. Defendants' actions against Plaintiffs substantially burden Plaintiffs' free exercise of their religious beliefs and practice.

106. Defendants' actions against Plaintiffs are unconstitutional abridgments of Plaintiffs' affirmative right to free exercise of religion protected by the Illinois Religious Freedom Restoration Act.

107. Defendants' actions against Plaintiffs substantially burden Plaintiffs' right to free exercise of religion by granting unfettered discretion to Defendants and its agents to deny Plaintiffs' right to engage in the distribution of Gospel tracts.

108. Defendants' actions against Plaintiffs serve as an unconstitutional prior restraint on free speech.

109. Defendants' actions against Plaintiffs were not the exercise of permissible time, place, and manner restrictions.

110. Defendants' actions against Plaintiffs are viewpoint and content-based restrictions on speech and allow future viewpoint and content-based restrictions on speech.

111. Defendants' actions against Plaintiffs unconstitutionally chill and abridge the rights of Plaintiffs to leaflet and minister which are rights guaranteed by the Illinois Religious Freedom Restoration Act.

112. The violation of Plaintiffs' constitutional rights has caused, and will continue to cause, Plaintiffs to suffer hardship and actual and impending irreparable injury.

WHEREFORE, Plaintiffs request judgment as follows:

A. That this Court issue a permanent injunction restraining Defendants, its officers, agents, employees and all other persons acting in active concert with them or any of them from obstructing or threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendants to allow the distribution of Plaintiffs' pamphlets with the same degree of protection with all the rights and privileges afforded similarly situated persons;

B. Enter judgment on behalf of Plaintiffs and against Defendants CITY OF CHICAGO, OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, and DEPUTY CHIEF DANIEL DUGAN for monetary damages to be determined at trial;

C. Enter judgment for reasonable attorneys' fees and costs incurred in bringing this action; and

D. Grant such other and further relief as it deems equitable and just.

**COUNT VIII
CIVIL RIGHTS VIOLATION: FOURTH AMENDMENT
BY CITY OF CHICAGO AND OFFICER ANDREWS,
OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL,
SERGEANT GERARDO TENYUQUE, AND
DEPUTY CHIEF DANIEL DUGAN**

113. Plaintiffs hereby reincorporate and adopt each and every allegation in the preceding paragraphs numbered 1 through 41.

114. Plaintiffs James Deferio, Ryan Murphy, and Michael Marcavage were arrested by Officers of the Chicago Police Department while engaging in First

Amendment activity. Specifically the following members of the Chicago Police Defendants were involved in the arrests of Plaintiffs: OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENEYUQUE, and DEPUTY CHIEF DANIEL DUGAN.

115. Plaintiffs James Deferio and Ryan Murphy were arrested in Gateway Park on Sunday, July 16, 2006. OFFICERS ANDREWS and RODRIGUEZ arrested Plaintiffs allegedly for criminal trespass. Because Plaintiffs complied with Defendants' demands to move across the street to Gateway Park and because Plaintiffs were not ordered to leave Gateway Park before they were arrested, Plaintiffs could not have violated the Ordinance on trespassing. Thus, OFFICERS ANDREWS and RODRIGUEZ lacked probable cause to arrest Plaintiffs under the Ordinance. Further, the facts show that OFFICER RODRIGUEZ handcuffed and arrested Plaintiff JAMES DEFERIO only after RODRIGUEZ realized DEFERIO was videotaping the events. These facts indicate that not only was there a lack of probable cause, but Defendants had malicious intentions in arresting Plaintiffs. See Exhibit C.

116. Plaintiff MICHAEL MARCAVAGE on Saturday, July 22, 2006 on a public sidewalk outside of Wrigley field. SERGEANT GERARDO TENEYUQUE arrested Plaintiff for disorderly conduct. Plaintiff was not posing any "imminent threat of violence" as required by the Ordinance. Thus, SERGEANT GERARDO TENEYUQUE, acting under the color of law, lacked probable cause to arrest Plaintiff under the Ordinance. Further, OFFICER GERARDO MADRIGAL filled out the arrest report and was named the arresting officer, though Plaintiff MARCAVAGE had no contact with OFFICER MADRIGAL prior to his arrest. OFFICER MADRIGAL and SERGEANT

GERARDO TENYUQUE concocted a story that Plaintiff had got in an argument with a third party in order to justify Plaintiff's arrest. OFFICER MADRIGAL admitted to Plaintiff that DEPUTY CHIEF DANIEL DUGAN didn't like him and was out to get him. Such actions show not only a lack of probable cause, but malicious intent on the part of Defendants in their actions against Plaintiff.

117. Plaintiffs Fourth Amendment rights were violated because Plaintiffs were targeted for expressing their viewpoint while others expressing an opposing viewpoint were left alone.

118. As a result, Defendants have deprived Plaintiffs of their right to be free from unlawful search and seizure and arrest, search, and detention as those rights are secured by the Fourth Amendment to the United States Constitution, as made applicable to the States through the Fourteenth Amendment to the United States Constitution.

119. As a direct and proximate result of the matters herein alleged, Plaintiffs have suffered monetary damages, including but not limited to, emotional trauma, humiliation and insult, physical discomfort, anguish, and loss of freedom.

120. Plaintiffs have suffered irreparable injury by Defendants' actions and will continue to suffer irreparable injury in the absence of injunctive relief.

121. The balance of harms weighs in favor of Plaintiff, and against Defendant, as the issuance of injunctive relief will not adversely affect the public interest.

WHEREFORE, Plaintiffs request judgment as follows:

- A. That this Court issue a permanent injunction restraining Defendant CITY OF CHICAGO, its officers, agents, employees and all other persons acting in active concert with them or any of them

from obstructing or threatening to obstruct Plaintiffs from exercising their constitutionally protected rights, and directing Defendants to allow the distribution of Plaintiffs' pamphlets and free speech activities with the same degree of protection with all the rights and privileges afforded similarly situated persons;

B. Enter judgment for punitive damages against OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, and DEPUTY CHIEF DANIEL DUGAN in their individual capacities, for maliciously arresting and seeking to encroach on Plaintiffs' constitutional freedoms;

C. Enter judgment for reasonable attorneys' fees and costs incurred in bringing this action; and

D. Grant such other and further relief as it deems equitable and just.

**COUNT IX
COMMON LAW TORT OF CONVERSION
AGAINST DEFENDANTS OFFICER ANDREWS,
OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL,
SERGEANT GERARDO TENYUQUE, and
DEPUTY CHIEF DANIEL DUGAN
IN THEIR INDIVIDUAL CAPACITIES**

122. Plaintiffs hereby reincorporate and adopt each and every allegation in the preceding paragraphs numbered 1 through 41.

123. Defendants OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, and DEPUTY

CHIEF DANIEL DUGAN violated Plaintiffs right to possession of their video tapes by seriously interfering with their possession of the tapes by retaining them with the intent of retaining them so Plaintiffs would not have access to their contents.

WHEREFORE, Plaintiffs request judgment as follows:

A. That this Court issue a permanent injunction restraining Defendants OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, and DEPUTY CHIEF DANIEL DUGAN in their individual capacities, to return the video tapes taken by them when Plaintiffs were arrested;

B. Enter judgment for damages against OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENYUQUE, and DEPUTY CHIEF DANIEL DUGAN in their individual capacities, for the taking of the tapes;

C. Grant such other and further relief as it deems equitable and just.

**COUNT X
SPOLOATION OF EVIDENCE
AGAINST DEFENDANTS OFFICER ANDREWS,
OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL,
SERGEANT GERARDO TENYUQUE, and
DEPUTY CHIEF DANIEL DUGAN,
IN THEIR INDIVIDUAL CAPACITIES**

124. Plaintiffs hereby reincorporate and adopt each and every allegation in the preceding paragraphs numbered 1 through 41.

125. Defendants OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENEYUQUE, and DEPUTY CHIEF DANIEL DUGAN violated Plaintiffs rights by interfering with by destroying or permanently concealing the tapes that would expose Defendants' illegal acts.

126. Defendants have a duty to preserve the property of Plaintiffs when Defendants take Plaintiffs into custody. Here, because the video tapes have not been returned after reasonable requests, Defendants have violated that duty.

WHEREFORE, Plaintiffs request judgment as follows:

A. That this Court issue a permanent injunction restraining Defendants OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENEYUQUE, and DEPUTY CHIEF DANIEL DUGAN in their individual capacities, to return the video tapes taken by them when Plaintiffs were arrested;

B. Enter judgment for damages against OFFICER ANDREWS, OFFICER RODRIGUEZ, OFFICER GERARDO MADRIGAL, SERGEANT GERARDO TENEYUQUE, and DEPUTY CHIEF DANIEL DUGAN in their individual capacities, for the taking of the tapes;

C. Grant such other and further relief as it deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiffs request trial by Jury of all issues so triable.

Respectfully submitted this 8th day of August, 2006.

s/ Andy Norman

Andy Norman
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Chicago, Illinois 60602
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CERTIFICATE OF SERVICE

I, Andy R. Norman, an attorney, certify that on August 8, 2006, I caused a copy of the foregoing Plaintiff's *Amended Complaint* to be served on the person identified below by electronic transmission through this court's electronic casefiling system.

Daniel G. Hildebrand
Mayer, Brown, Rowe & Maw, LLP
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Chicago, IL 60606
Attorney for Metropolitan Pier and Exposition Authority
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And further state that I shall comply with Local Rule 5.5 as to the following attorneys who are not Filing Users by serving the foregoing material by Messenger Delivery or United States Mail on August 8, 2006.

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