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20 MINDY BARLOW and DALIA R. SMITH

21 **UNITED STATES DISTRICT COURT**
22 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

23 **MINDY BARLOW and DALIA R.**
24 **SMITH;**

25 Plaintiff,

26 vs.

27 **SUPERIOR COURT OF CALIFORNIA,**
28 **COUNTY OF SAN DIEGO;**

MICHAEL RODDY, individually and in
his official capacity as the Executive
Officer of the Superior Court of California,
County of San Diego; and **DOES 1**
through 20 inclusive,

Defendants.

) Case No.: 07-CV-1926 LAB (LSP)

) Dept: Courtroom 9

) Judge: Hon. Larry Alan Burns

) **FIRST AMENDED COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF AND NOMINAL DAMAGES**

) Initial Filing Date: October 2, 2007

) Trial Date: None set

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INTRODUCTION

Plaintiffs, Mindy Barlow and Dalia R. Smith, sue Defendants for violating their federal and state constitutional rights by denying them access to court facilities in order to hold a weekly Bible study.

JURISDICTION

1. This civil rights action under 42 U.S.C. § 1983 raises federal claims under the First and Fourteenth Amendments to the United States Constitution and state claims under Article 1, §§ 2, 4, and 7 of the California Constitution.

2. This Court has original jurisdiction over the federal law claims by operation of 28 U.S.C. §§ 1331 and 1343 and has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has authority to issue 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 costs and attorneys’ fees under 42 U.S.C. § 1988(b) and under Cal. C.C.P. §1021.5.

VENUE

4. Under 28 U.S.C. § 1391(b), venue is proper in the United States District Court for the Southern District of California because a substantial part of the events giving rise to the claim occurred within the District.

IDENTIFICATION OF THE PLAINTIFFS

5. Mindy Barlow is a court reporter employed by the Superior Court of California, County of San Diego division. At all times relevant to this action, she has been a resident of La Mesa, San Diego County, California.

6. Dalia R. Smith is a court reporter employed by the Superior Court of California, County of San Diego division. At all times relevant to this action, she has been a resident of Murrieta, Riverside County, California.

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IDENTIFICATION OF THE DEFENDANTS

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2 7. Superior Court of California, County of San Diego is a division of the government
3 of the State of California.

4 8. Michael Roddy is the Executive Officer of the Superior Court of California, County
5 of San Diego and is sued in his individual and official capacity.

6 9. The true names and capacities, whether individual, corporate, partnership, associate
7 or otherwise, of defendants Does 1 through 20 inclusive, and each of them, are unknown to the
8 Plaintiffs who, therefore, sue them by such fictitious names. Plaintiffs will seek leave to amend
9 this Complaint to show the true names and capacities of Does 1 through 20 when they have
10 discovered them. Plaintiffs allege that, at all times mentioned herein, all of the Defendants acted
11 or participated in some manner in the acts alleged herein, and in some way caused and are
12 responsible for Plaintiffs’ damages. All references to the named Defendants shall include, without
13 limitation, Does 1 through 20 inclusive.

FACTUAL ALLEGATIONS

Initial Use of Courthouse Facilities For A Bible Study

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16 10. Sometime during the year 2000, Steve Thunberg, then Executive Director of the
17 Superior Court of California, County of San Diego, gave permission to Dodie Sandoval, a clerk to
18 Judge LaVoy, to hold a Bible study over the lunch hour in an available jury room or courtroom.

19 11. This Bible study met regularly in an available jury room during the lunch hour each
20 week between the year 2000 and April of 2006. Plaintiffs are and were participants of this Bible
21 study.

22 12. Sometime in the month of April, 2006, a Deputy Sheriff informed Plaintiff Barlow
23 that individuals without keycard access were not allowed entrance to the back hallways where the
24 jury rooms are located. Members of the Bible study then inquired about the use of a courtroom,
25 and were informed by Court administration that Court policy did not allow Bible studies in
26 courthouse facilities because of a concern regarding the “separation of church and state.”

27 13. The Bible study has not reconvened in any jury or court room since.

The Development of the Court’s “Policy”

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2 14. In May, 2006, Plaintiff Barlow received an email from then Assistant Executive
3 Officer Ray Sorensen (“Sorenson”), again informing her that having the Bible study meet in any
4 court room was contrary to “Court Policy.”

5 15. Upon a search of the Personnel Rules of the Superior Court of California, County of
6 San Diego, Plaintiff Barlow found no policy prohibiting the Bible study from meeting as of May
7 30, 2006.

8 16. On June 2, 2006, Sorensen approached Plaintiff Barlow in her courtroom and
9 informed her that the Legal Department was looking into the issue in depth.

10 17. Several months later, on September 29, 2006, Sorensen emailed Plaintiff Barlow to
11 let her know that the Court was in the process of writing a policy that would cover the issue of
12 “nonbusiness use” of the court facilities. A copy of the Court policy is attached as Exhibit “A”.

13 18. On November 13, 2006, the San Diego Superior Courts adopted Administrative
14 Policy, Use of Court Facilities (“AP”) 4.6.

15 19. Under AP 4.6.II.B, court employees are permitted to use “court facilities”
16 (including “any open room, chambers, or area within a building in which court business is
17 conducted”) for celebrations of “personal milestones commonly celebrated in the workplace such
18 as birthday parties, baby or wedding showers, and retirement celebrations . . .”

19 20. Under AP 4.6.II.C, anyone seeking to use a “court facility” for any other purpose
20 must be granted permission after submitting a written request.

21 21. Under AP 4.6.II.C.1, all such requests are evaluated by the Assistant Executive
22 Officer according to the following factors:

- 23 (a) Protection of the integrity of the judicial process, including public trust and confidence
24 in the impartiality, lack of bias or discrimination, and fairness of the judicial system;
25 (b) Safety and security of the people and property within the courthouse and its perimeter;
26 (c) Whether the program or service advances the administration of justice and is useful to a
27 significant number of litigants;

- 1 (d) Whether the program imposes any potential costs or liability on the court;
- 2 (e) Whether the program or service offered is conducted for profit; and
- 3 (f) Whether constitutional, statutory, or other legal requirements prohibit the court from
- 4 granting use of its facilities.

5 22. Nothing in AP 4.6 actually circumscribes the absolutely “discretionary” (according
6 to 4.6.II.A) approval of the Assistant Executive Officer, as nothing in the evaluative factors will
7 disqualify (or allow) a request of its own accord.

8 **The Court Prohibits the Bible Study under Its Discretionary Policy**

9 23. On or around November 13, 2006, Plaintiff Barlow submitted a written request to
10 hold the Bible study during her lunch hour in an open jury room.

11 24. On January 25, 2007, the then new Assistant Executive Officer, Stephen Cascioppo,
12 summoned Plaintiff Barlow into his office and told her that her request had been denied on the
13 grounds of separation of church and state and AP 4.6.II.C.1(f).

14 25. Former Assistant Executive Officer, Stephen Cascioppo, followed up with a written
15 denial letter dated February 1, 2007, that gave no specific reason, but generally referenced AP 4.6
16 (attached hereto as Exhibit “B”).

17 26. On February 26, 2007, Plaintiff Barlow wrote a letter to Stephen Cascioppo
18 requesting reconsideration of the Administration’s position (attached hereto as Exhibit “C”).

19 27. Stephen Cascioppo responded in a letter dated March 14, 2007 (attached hereto as
20 Exhibit “D”), changing his reasoning as of January 25, 2007, and stating that the reasons for
21 denying the Bible Study use of any courthouse facility (and the reasons against permitting any
22 “religious use of court premises” whatsoever, for that matter) were as follows:

- 23 a. “First, the premises of the court are not public, and the court does not wish to open
- 24 them up generally to public activities. This would be required in order to ensure
- 25 public trust and confidence in the impartiality, lack of bias or discrimination and
- 26 fairness of the judicial system.”

1 34. Plaintiffs are informed and believe that, during the time relevant to this action, the
2 Defendants have allowed members of the public, as well as employees, to participate and hold
3 events within the court facilities.

4 **ALLEGATIONS OF LAW**

5 35. All alleged acts of the Defendants, their officers, agents, servants, employees, or
6 persons acting at their behest or direction, were done and are continuing to be done under the color
7 and pretense of state law, including the statutes, regulations, customs, policies and usages of the
8 State of California.

9 36. Unless and until the enforcement of the Defendant’s current Policy is enjoined, the
10 Plaintiffs will continue to suffer irreparable harm to their federal and state constitutional rights.

11 37. The irreparable harm to the Plaintiffs’ constitutional rights is a direct result of a
12 policy, ordinance, regulation, or decision officially adopted and promulgated by the Superior Court
13 of California, County of San Diego.

14 **CLAIMS FOR RELIEF**

15 **I. FIRST CLAIM: VIOLATION OF FREE SPEECH RIGHTS UNDER THE FIRST**
16 **AMENDMENT TO THE UNITED STATES CONSTITUTION.**

17 38. The Plaintiffs re-allege and incorporate herein by reference each foregoing
18 paragraph and further allege as follows:

19 39. The Defendants intentionally made court facilities generally available to the public,
20 or a large segment of the public, and to employees for a broad range of expressive conduct that is
21 fully protected by the First Amendment.

22 40. The use of the courthouse facilities for expressive speech and free association for
23 First Amendment purposes is an important government benefit.

24 41. AP 4.6 and Defendants’ enforcement thereof:

- 25 a. singles out religious speech for discriminatory treatment;
- 26 b. conditions access to generally available public facilities on the content of the
27 applicant’s speech;

- c. discriminates against speech on the basis of the speaker’s viewpoint;
- d. fails to articulate sufficiently clear standards and is therefore unconstitutionally vague;
- e. restrains constitutionally-protected speech in advance of its expression, with virtually no guidelines or standards to guide the discretion of courthouse officials charged with enforcing the policy;
- f. fails to provide any time restrictions for approving or denying a request to use court facilities, or guaranteeing an applicant prompt judicial review; and
- g. chills free speech of religious groups and organizations subject to the facility use policies.

42. The Defendants have no compelling reason that would justify their prohibition of Bible study participants from accessing court facilities generally available to the public and court employees solely on the basis of the religious beliefs, speech, and conduct of the Bible study and its participants.

43. The Superior Court of California, County of San Diego’s AP 4.6 and the Defendants’ enforcement thereof therefore violate the Free Speech Clause of the First Amendment to the United States Constitution.

WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth in the prayer for relief.

II. SECOND CLAIM: VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

44. The Plaintiffs re-allege and incorporate herein by reference each foregoing paragraph and further allege as follows:

45. The Defendants’ AP 4.6 is neither facially neutral nor generally applicable in respect to religion.

46. The Defendants’ enforcement of AP 4.6 selectively imposes a burden on access to court facilities generally available to the public and court employees based upon the religious or non-religious nature of the applicant’s beliefs, speech, and conduct.

1 47. The Defendants have no rational or compelling reason to prohibit the Bible study
2 participants, or any other religious organization or group, from having access to court facilities
3 solely on the basis of the group’s religious beliefs, speech, and conduct.

4 48. AP 4.6 and the Defendants’ enforcement thereof therefore violate the Free Exercise
5 Clause of the First Amendment to the United States Constitution as incorporated and applied to the
6 states under the Fourteenth Amendment.

7 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal
8 relief set forth in the prayer for relief.

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10 **III. THIRD CLAIM: VIOLATION OF THE EQUAL PROTECTION CLAUSE OF
11 THE FOURTEENTH AMENDMENT TO THE UNITED STATES
12 CONSTITUTION.**

13 49. The Plaintiffs re-allege and incorporate herein by reference each foregoing
14 paragraph and further allege as follows:

15 50. Under AP 4.6 and generally, Defendants have allowed other groups and
16 organizations to meet and/or hold events in court facilities generally available to the public and
17 court employees, while not allowing the Bible study and its participants, the Plaintiffs, to use court
18 facilities.

19 51. The Defendants’ enforcement of AP 4.6 treats the Church disparately when
20 compared to other similarly-situated non-religious entities.

21 52. Defendants have no rational or compelling reason that would justify their policy
22 prohibiting the Bible study and its participants from accessing court facilities solely on the basis of
23 the religious beliefs, speech, and conduct of the Bible study and its participants.

24 53. AP 4.6 and the Defendants’ enforcement thereof therefore violate the Equal
25 Protection Clause of the Fourteenth Amendment to the United States Constitution.

26 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal
27 relief set forth in the prayer for relief.

1 **IV. FOURTH CLAIM: VIOLATION OF THE DUE PROCESS CLAUSE OF THE**
2 **FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

3 54. The Plaintiffs incorporate herein by reference paragraphs 1 through 31 of this
4 Complaint and further allege as follows:

5 55. AP 4.6 is vague and lacks sufficient objective standards to cabin the discretion of
6 the Assistant Executive Officer, which allows Defendants to enforce the policy in an *ad hoc* and
7 discriminatory manner.

8 56. The Defendants have no rational or compelling reason that would justify their
9 policy prohibiting Plaintiffs use of court facilities while allowing other secular groups and
10 organizations to use the court facilities. Further, the Defendants have no rational or compelling
11 reason that would justify their policy prohibiting Plaintiffs use of court facilities where the denial
12 is based solely on the basis of the religious beliefs, speech, and conduct of the Bible study and its
13 participants.

14 57. AP 4.6 and the Defendants' enforcement thereof therefore violate the Due Process
15 Clause of the Fourteenth Amendment to the United States Constitution.

16 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal
17 relief set forth hereinafter in the prayer for relief.

18 **V. FIFTH CLAIM: VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE**
19 **FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.**

20 58. The Plaintiffs re-allege and incorporate herein by reference each foregoing
21 paragraph and further allege as follows:

22 59. AP 4.6 and the Defendants' enforcement thereof are hostile toward religion and
23 favors irreligion over religion.

24 60. AP 4.6 and the Defendants' enforcement thereof treat the Bible study and its
25 participants as second-class citizens of the community because of their protected religious
26 expression, beliefs, and conduct.

1 61. The Defendants’ denial of equal access to an important government benefit in the
2 form of access to this forum conveys a governmental message that the Bible study and its
3 members are outsiders and not full members of the community.

4 62. The Defendants therefore violate the Establishment Clause of the First Amendment
5 to the United States Constitution as incorporated and applied to the states under the Fourteenth
6 Amendment.

7 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal
8 relief set forth hereinafter in the prayer for relief.

9 **VI. SIXTH CLAIM: VIOLATION OF THE FREEDOM OF SPEECH UNDER THE**
10 **CALIFORNIA STATE CONSTITUTION ARTICLE 1, § 2.**

11 63. The Plaintiffs re-allege and incorporate herein by reference each foregoing
12 paragraph and further allege as follows:

13 64. AP 4.6 and the Defendants’ enforcement thereof discriminate against Plaintiffs’
14 free expression of ideas, values, thoughts, viewpoints and opinions by:

- 15 a. singling out religious organizations for discriminatory treatment;
- 16 b. conditioning access to court facilities on the content of the applicant’s
17 expression;
- 18 c. discriminating against speech on the basis of the speaker’s viewpoint;
- 19 d. fails to articulate sufficiently clear standards and is therefore
20 unconstitutionally vague;
- 21 e. restraining constitutionally-protected speech in advance of its expression,
22 with virtually no guidelines or standards to guide the discretion of
23 courthouse officials charged with enforcing the policy;
- 24 f. failing to provide any time restrictions for approving or denying a request to
25 use court facilities, or guaranteeing an applicant prompt judicial review; and
- 26 g. chilling the free speech and free exercise of religion by the Church and other
27 organizations subject to the facility use policies.

1 65. The Defendants have no compelling reason that would justify their prohibition of
2 Plaintiffs from accessing court facilities generally available to the public and court employees
3 solely on the basis of the religious beliefs, speech, and conduct of the Bible study and its
4 participants.

5 66. AP 4.6 and the Defendants' enforcement thereof therefore violate Article 1, § 2 of
6 the California State Constitution.

7 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal
8 relief set forth hereinafter in the prayer for relief.

9 **VII. SEVENTH CLAIM: VIOLATION OF THE RIGHT TO FREE EXERCISE OF**
10 **RELIGION UNDER THE CALIFORNIA STATE CONSTITUTION, ARTICLE**
11 **1, §4.**

12 67. The Plaintiffs re-allege and incorporate herein by reference each foregoing
13 paragraph and further allege as follows:

14 68. Pursuant to the California State Constitution, Article 1, § 4, the free exercise of
15 religion is a guaranteed right and shall not be subject to discrimination or preference by the
16 government.

17 69. AP 4.6, as interpreted and enforced by the Defendants, substantially burdens the
18 Bible study participants' free exercise of religion because it:

- 19 a. singles out religious groups and organizations for discriminatory treatment;
- 20 b. conditions access to court facilities on whether the applicant intends to
engage in religious speech; and
- 21 c. discriminates against the Plaintiffs on the basis of their viewpoint on civic,
22 moral, social, and other matters.

23 70. The Defendants have no rational or compelling reason that would justify their
24 policy prohibiting Plaintiffs access to court facilities.

25 71. AP 4.6 and the Defendants' enforcement thereof therefore violate the guarantee to
26 the free exercise of religion under the California State Constitution, Article 1, §4.

27 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal
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1 relief set forth hereinafter in the prayer for relief.

2
3 **VIII. EIGHTH CLAIM: VIOLATION OF THE RIGHT OF DUE PROCESS OF LAW**
4 **AND EQUAL PROTECTION UNDER THE LAW UNDER THE CALIFORNIA**
5 **STATE CONSTITUTION, ARTICLE 1, §7.**

6 72. The Plaintiffs re-allege and incorporate herein by reference each foregoing
7 paragraph and further allege as follows:

8 73. AP 4.6 is vague and lacks sufficient objective standards to cabin the discretion of
9 City officials, which allows the Defendants to enforce the policy in an *ad hoc* and discriminatory
10 manner.

11 74. The Defendants have no rational or compelling reason that would justify their
12 policy prohibiting Plaintiffs use of court facilities while allowing other secular groups or
13 organizations to use the court facilities. Further, the Defendants have no rational or compelling
14 reason that would justify their policy prohibiting Plaintiffs use of court facilities where the denial
15 is based solely on the basis of the religious beliefs, speech, and conduct of the Bible study and its
16 participants.

17 75. AP 4.6 and the Defendants’ enforcement thereof therefore violate the California
18 State Constitution, Article 1, §7.

19 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable and legal
20 relief set forth hereinafter in the prayer for relief.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully request the following relief:

- 23 a. That this Court permanently enjoin the enforcement of AP 4.6 to the extent that it
- 24 discriminates on the religious content or viewpoint of speech;
- 25 b. That this Court enjoin the enforcement of AP 4.6 to the extent that it prohibits
- 26 Plaintiffs from using the jury room for a Bible study;
- 27 c. That this Court enter a declaratory judgment stating that AP 4.6 is facially
- 28 unconstitutional and violates the Plaintiffs’ rights as guaranteed under the First and

1 Fourteenth Amendments to the United States Constitution and Article 1, §§ 2, 4 and
2 7 of the California State Constitution;

3 d. If AP 4.6 is not declared facially unconstitutional, that this Court enter a declaratory
4 judgment stating that AP 4.6, as applied to the Plaintiffs, is unconstitutional and
5 violates the Plaintiffs' rights guaranteed under the First and Fourteenth
6 Amendments to the United States Constitution and Article 1, §§ 2, 4 and 7 of the
7 California State Constitution;

8 e. Grant Plaintiffs an award of nominal damages against the defendants;

9 f. That this Court award the Plaintiffs' costs and expenses of this action, including a
10 reasonable attorneys fee award, in accordance with 42 U.S.C. § 1988, Cal. C.C.P. §
11 1021.5 and other applicable law;

12 g. That this Court grant such other and further relief as the Court deems equitable,
13 just, and proper;

14 h. That this Court adjudge, decree and declare the rights and other legal relations of
15 the parties to the subject matter here in controversy, in order that such declarations
16 shall have the force and effect of final judgment; and

17 i. That this Court retain jurisdiction of this matter as necessary to enforce the Court's
18 orders.

19 DATED: November 6, 2007

ADVOCATES FOR FAITH AND FREEDOM

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