

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

\_\_\_\_\_  
THE GAY GUARDIAN NEWSPAPER, )  
and RONALD MARCUS, as Editor and )  
Chief of The Gay Guardian, )

)  
)  
Plaintiffs, )

)  
)  
vs. )

)  
OHOOPEE REGIONAL LIBRARY )  
SYSTEM, OHOOPEE REGIONAL )  
BOARD OF LIBRARY TRUSTEES, )  
GAIL EDENFIELD, individually and )  
in her official capacity as Chairperson )  
of the Ohoopee Regional Board of )  
Trustees, and DUSTY GRES, )  
individually and in her official capacity )  
as Director of the Ohoopee Regional )  
Library System, )

)  
)  
Defendants. )  
\_\_\_\_\_)

Civil Action File

No.: \_\_\_\_\_

**VERIFIED COMPLAINT**

COMES NOW THE GAY GUARDIAN and RONALD MARCUS, Plaintiffs, by and  
through counsel, and hereby show this Honorable Court the following:

1.

This is an action brought by *The Gay Guardian* newspaper, which has been barred  
from the Vidalia Public Library because of the gay/lesbian viewpoint of the publication.  
Suit is brought alleging violations of the First and Fourteenth Amendments to the United  
States and Georgia Constitutions. Plaintiffs seek equitable relief and damages.

## JURISDICTION AND VENUE

2.

Jurisdiction of this Court is invoked pursuant to 42 U.S.C. §§ 1983 and 1985, 28 §§ 2201 and 2202, the First and Fourteenth Amendments to the United States Constitution, and 28 U.S.C. §§ 1331, 1337, and 1343.

3.

The violations of Plaintiff's rights alleged herein were committed within Vidalia, Toombs County, Georgia which is located in the Statesboro Division of the United States District Court for the Southern District of Georgia.

## PARTIES

4.

Plaintiff, **THE GAY GUARDIAN**, is a newspaper published in Hagan, Evans County, Georgia.

5.

Plaintiff, **RONALD MARCUS**, in his personal and official capacity as Editor and Chief of the *Gay Guardian* newspaper, is a citizen of Hagan, Evans County, Georgia. During all times relevant to this Complaint, Plaintiff Marcus was the editor and chief of the *Gay Guardian* newspaper.

6.

Defendant, **OHOOPEE REGIONAL BOARD OF LIBRARY TRUSTEES**, pursuant to O.C.G.A. §§ 20-5-41,43 establishes and/or participates in the establishment of the policies of Defendant **OHOOPEE REGIONAL LIBRARY SYSTEM**. They are located in Vidalia, Toombs County, Georgia (?), and subject to the jurisdiction of this Court.

7.

Defendant, **GAIL EDENFIELD**, is the chairman of the Ochoopee Regional Board of Library Trustees. She is sued individually and in her official capacity under federal law. She works in Vidalia, Toombs County, Georgia, and is subject to the jurisdiction of this Court.

8.

Defendant, **DUSTY GRES**, pursuant to O.C.G.A. § 20-5-45 is the director of the Ochoopee Regional Library system. She is sued individually and in her official capacity under federal law. She works in Vidalia, Toombs County, Georgia, and is subject to the jurisdiction of this Court.

9.

The following non-parties may be necessary or indispensable parties to effectuate certain relief as the funding agencies of the Vidalia-Toombs County Library: **BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, THE TOOMBS COUNTY COMMISSION**, and **THE CITY OF VIDALIA**.

## NATURE OF ACTION

12.

The claim on behalf of Plaintiffs *The Gay Guardian* and Marcus is for a declaratory judgment as to Plaintiff's rights, and for a permanent injunction restraining Defendants from unconstitutionally censoring *The Gay Guardian* and from depriving Plaintiffs *The Gay Guardian* and Marcus of their rights under color of law.

13.

This action further seeks compensatory, and nominal damages for Plaintiffs against Defendants.

14.

This action further seeks a declaratory judgment and injunctive relief that the actions of the Defendants in barring the Plaintiffs from a public forum due to the content of their speech was a violation of the United States and Georgia Constitution and in violation of federal and state law.

15.

This action further seeks a declaratory judgment that the Defendants' acts, policies and procedures violated the Plaintiff Marcus's rights as secured under 42 U.S.C. §§ 1981 and 1983, and seeks to enjoin the Defendants, its officers, agents, successors, etc., from the continuation of all discriminatory policies and procedures.

## STATEMENT OF THE FACTS

16.

The *Gay Guardian* is a free bi-monthly publication based in Hagan, Georgia, that has served the gay and lesbian community in South and Central Georgia for over five years.

17.

The *Gay Guardian* addresses political and social “issues that face gays, lesbians, transgender and bisexual individuals in our community today.” Recent *Gay Guardian* articles covered such local issues as harassment and beating of gay and lesbian youth, intolerance exhibited by companies and organizations, and lack of government investigation into hate crimes against lesbian and gay citizens. (A copy of the *Gay Guardian* is attached hereto and incorporated here in as Exhibit A)

18.

The *Gay Guardian* is available throughout Georgia, as well as, Florida and South Carolina. It has an estimated reader ship of nearly 200,000 persons.

19.

On February 22, 2002 *Gay Guardian* Editor Ronald Marcus (Marcus), accompanied by Brian Mellot (Mellot), delivered approximately twenty copies of the newspaper to the Vidalia-Toombs County Library (hereinafter “library”).

20.

Marcus requested that the copies be placed in the lobby where the library offers free literature from individuals and groups. As many as 30-40 free publications are normally

available in this area. The lobby area for free publications was open to all free publications and constitutes a public forum. The library agreed, pursuant to defendants' policy and practice of allowing free publications, that the *Gay Guardian* could be placed in the lobby area.

21.

Marcus and Mellot returned a few days later to see if additional copies were needed. At that time, there were still copies on display and they left.

22.

On information and belief, after placement of *The Gay Guardian*, the library received a number of phone calls about the publication. In addition, on information and belief, a woman complained to government officials about the publication. An individual that had been criticized previously in the *Gay Guardian* also complained because he was upset by criticism he had received in the publication. However, no citizen filled out a written complaint form at that time. Also, according to library personnel, no children "picked up any" of the copies of the *Gay Guardian* at any time.

23.

On information and belief, on February 25, 2002, Ohoopsee Regional Library System Director Dusty Gres met with Regional Board Chairman Gail Edenfield who determined that the *Gay Guardian* would be excluded (and that all other publications would be excluded as well because of the *Gay Guardian* controversy).

24.

Not knowing that the *Gay Guardian* had been excluded, on March 1, 2002, Marcus and Mellot arrived to replenish the library's supply of the *Gay Guardian*. Upon entering the library, they discovered that all copies of the *Gay Guardian* had been removed. They were told that they could not place any more copies of the *Gay Guardian* in the library because the library now excluded the paper (and all other free publications) due to the gay and lesbian perspective of the paper and complaints about the paper and its perspective. Outraged, Marcus and Mellott then left the library.

25.

Marcus then contacted Vidalia City Police Officer Carlyle because he believed the copies had been illegally taken or destroyed and sought assistance from the authorities.

26.

Marcus and the officer went to the library. There, Officer Carlyle met with the librarian inside and then reported back to Marcus that the librarian had told him that the reason for censorship was "that this was a religious issue, gays versus Christians." She also indicated that she was acting on authority of the mayor and city hall. Finally, the officer also reported that the library believed and claimed that copies of the previous issue had been taken by a member of the public. Officer Carlyle indicated that the matter was civil, not criminal.

27.

Marcus went to city hall, and discussed the issue with the city manager who denied

any involvement with the situation. The city manager said he had and would refer any complaints about the library or publications therein to the library itself.

28.

The *Gay Guardian* is now barred. With the narrow exception of the rare citizen who is already aware of the publication and can track it down on the library's computers, the *Gay Guardian* is no longer accessible at the Vidalia Public Library -- and print copies of the publication are completely unavailable.

### **CLAIMS FOR RELIEF**

29.

The previous paragraphs are incorporated herein for all claims for relief.

30.

The free publication area of the Vidalia Public Library is a traditional public forum or has become so by use and designation.

31.

*The Gay Guardian* was barred from the Vidalia Public Library based upon its content and viewpoint.

32.

The policies, practices and actions of defendants deprived Plaintiffs of their constitutional rights under the First and Fourteenth Amendments of the United States Constitution to free speech, expression, petition, association, equal protection and due process by barring display of *The Gay Guardian* in the Vidalia Public Library based upon

its viewpoint or content and without notice or an opportunity to contest the exclusion.

33.

The policies, practices and actions of defendants deprived Plaintiffs of their constitutional rights under Georgia Constitution Article I, Paragraphs I, II, III, V, VII, IX, and XXV to free speech, expression, petition, conscience, association, equal protection freedom from status-based discrimination and due process by barring display of *The Gay Guardian* in the Vidalia Public Library based upon its viewpoint or content and without notice or an opportunity to contest the exclusion.

#### PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court:

1. Declare that the exclusion of *The Gay Guardian* based on its viewpoint and content and without adequate due process was a violation of the constitutional rights set forth herein;
2. Enjoin defendants from excluding *The Gay Guardian* in violation of Plaintiff's constitutional rights;
3. Grant Plaintiffs nominal and compensatory damages for particularized loss of constitutional rights and economic, reputational and other compensatory damages;
4. Award reasonable attorneys fees, costs and expenses as permitted by law; and

5. Grant such other and further relief as this Court may deem just and appropriate.

DATED: THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2002.

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