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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

GRACE J. HENNING  
LACRIS A. STIGGS  
CLERK

**CENTER FOR BIOETHICAL  
REFORM, INC., and GREG  
CUNNINGHAM ,**  
Plaintiffs,  
  
v.  
  
**THE TRUSTEES OF INDIANA  
UNIVERSITY,**  
  
Defendant.

CASE NO. \_\_\_\_\_  
  
**VERIFIED COMPLAINT FOR CIVIL  
RIGHTS VIOLATIONS AND FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

IP00-1420 C T/G

**I. PRELIMINARY STATEMENT**

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiffs seek preliminary and permanent injunctive relief against Defendant for depriving Plaintiffs of their constitutional rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution. Plaintiffs also seek declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 to determine an actual controversy between the parties, and reasonable costs of litigation, including attorney's fees and expenses.

2. This action challenges Defendant's refusal to permit Plaintiffs to exercise their First Amendment rights at Woodburn Academic Plaza ("Woodburn") on the Bloomington campus of Indiana University on the same terms and conditions as other groups and individuals as established by consistent practice and as set forth in Defendant's policies. Plaintiffs, in April 2000, had intended to bring their display, which includes graphic photographs of aborted children, to the Indiana University as part of a four campus tour. Plaintiffs and the two University student groups who sponsored them desired to locate the display at Woodburn

because it is the superior location on campus for reaching the greatest number of students. Defendant denied Plaintiffs' request to locate their display at Woodburn claiming it is a non-designated public forum. Woodburn, however, has been, by policy and consistent practice, dedicated to First Amendment activity. Moreover, Defendant's regulations permit First Amendment activity campus wide, including Woodburn, subject to the requirement that classes are not disturbed and that there is no interference with traffic. Plaintiffs' proposed First Amendment activity at Woodburn would not have disturbed classes nor would it have interfered with traffic. Nevertheless, Defendant insisted that the only area on campus that Plaintiffs would be permitted to locate their display was at a remote and substantially less trafficked location on campus. Defendant threatened to have Plaintiffs and those assisting them "escorted" from Woodburn, and if they resisted, to use the "legal means at the University's disposal to deal with trespassers.

## **II. JURISDICTION**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3)(4), which confer original jurisdiction on federal district courts in suits to redress the deprivation of rights, privileges and immunities as stated herein. The Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

## **III. VENUE**

4. Venue is proper in the United States District Court for the Southern District of Indiana, Indianapolis Division, pursuant to 28 U.S.C. § 1391(b), because the claims arose in the district.

#### IV. IDENTIFICATION OF PLAINTIFFS

5. The Center for Bioethical Reform ("CBR") is a not for profit corporation incorporated in the State of California and is capable of suing and being sued.

6. Gregg Cunningham, Esq., is Executive Director of CBR, a resident of Yorba Linda, California, and a citizen of the United States.

#### V. IDENTIFICATION OF DEFENDANT

7. The Trustees of Indiana University is a body politic created under the laws of the State of Indiana, is capable of suing and being sued, and has the power and duty to govern assembly upon the property of Indiana University.

#### VI. STATEMENT OF FACTS

8. CBR was established in July of 1990 as a non-profit public policy and advocacy group to promote prenatal justice and the right to life for the unborn, the disabled, the infirm, the aged, and all vulnerable peoples through education and the development of cutting edge educational resources.

9. CBR specializes in bio-ethical issues related to elective pregnancy termination, infanticide, assisted suicide/euthanasia, genetic engineering, cloning, embryonic/fetal tissue research, *in vitro* fertilization, etc.

10. Gregg Cunningham, Esq., is Executive Director of CBR (Mr. Cunningham and CBR will hereinafter be referred to collectively as ("CBR")), a former two-term member of the Pennsylvania House of Representatives, served during both the Reagan and Bush administrations in legislative affairs with the U.S. Department of Justice, and also served as an Assistant U.S. Attorney (Special, Los Angeles).

11. As part of its educational mission, CBR started the Genocide Awareness Project (GAP), the purpose of which is to make it as difficult as possible for people to continue to maintain that an unborn baby is not a baby and that abortion is not an act of violence which kills that baby. The GAP display is neither a protest nor a demonstration, it is the presentation of a particular viewpoint about abortion. It is not aimed at a particular organization or event. CBR simply takes GAP where large numbers of people gather.

12. GAP involves the outdoor display of lightweight photo panels, six feet tall by thirteen feet wide, with each panel designed to be hand-held by two people. In the alternative, panels can be arrayed in many self-standing, interlocking configurations. The number of panels displayed is varied to create an exhibit whose size and shape conform to the size and shape of the space available at a particular display site.

13. It is CBR's policy to treat everyone who approaches the GAP display with dignity and respect. CBR holds both staff and volunteers to strict rules of conduct when interacting with onlookers. CBR is fully aware that the images displayed are not pleasant. They represent injustice of such magnitude that words alone cannot adequately convey their evil. CBR believes that until injustice is recognized, it cannot be eradicated. To this end, CBR display its signs.

14. By placing abortion images alongside traditionally recognized forms of genocide CBR hopes to expand the context in which people think about abortion. CBR believes that American society has a sad legacy of dehumanizing those who get in our way or have something we want. CBR believes that once a people group, such as unborn children, is dehumanized, it is very easy to justify their mistreatment and destruction.

15. While CBR realizes that each form of genocide differs from the next in terms of

method and motivation, it is fully convinced that there are more than enough similarities to merit the comparisons. GAP is designed to create an open forum for the exchange of ideas while providing the opportunity to explain why abortion is genocide.

16. CBR has brought GAP to major universities approximately twenty times in the past two years and not once has CBR even been accused of violating any law or regulation related to noise, public safety, interference with traffic, disruption of classes, or any other matter.

17. Sponsored by two Indiana University campus groups, in the spring of 2000 CBR readied plans to bring GAP to Defendant's Bloomington campus April 5-7 as part of a tour that included three other Midwestern universities.

18. In early March 2000, student groups co-sponsoring GAP contacted James Gibson, Assistant Dean of Students, to discuss possible locations on campus for the exhibit. Dean Gibson stated that Dunn Meadow was the only location at which the university would permit the GAP display.

19. In correspondence dated March 21, 2000, CBR contacted legal counsel for Defendant to identify and discuss relevant legal and security issues surrounding GAP and invited examination of CBR's Web site.

20. Because student members of the campus groups co-sponsoring GAP advised CBR that there was only a small amount of pedestrian traffic at Dunn Meadow relative to Woodburn, and, as a consequence, few people would pass by the GAP display, and because these students also indicated that other locations on campus, including Woodburn, were frequently used for First Amendment activity and had far more pedestrian traffic than Dunn Meadow, CBR requested of Dean Gibson at an April 3, 2000 meeting that it be permitted to conduct GAP at

Woodburn.

21. Dean Gibson conceded at the April 3<sup>rd</sup> meeting that "substantially more passersby" would see GAP if it were displayed at Woodburn rather than Dunn Meadow.

22. Dean Gibson also conceded that he knew of no public safety concerns fairly raised by the display of GAP at Woodburn if it were located far enough back from the vehicular roadway which passes between the student union and Woodburn areas.

23. In a phone conversation with Kip Drew, Esq., legal counsel for Defendant, Plaintiff Cunningham reminded Ms. Drew of several recent instances of First Amendment activity at Woodburn, whereupon Ms. Drew offered to permit GAP to be displayed on a small scale with a few signs as an adjunct to the full exhibit at Dunn Meadow. Ms. Drew failed to identify any University regulations which justified her actions. Mr. Cunningham, because time was short, was willing to endure a degree of unconstitutional conditions so he counter-offered to use more signs (but not all of them) and to display the signs in a hand-held mobile mode. Ms. Drew seemed to agree but stated that the signs could not be displayed in the grass and would be confined to the sidewalks though no policy required such a limitation.

24. On April 4, 2000, Ms. Drew repudiated what Mr. Cunningham had understood to be their agreement. Ms. Drew stated that Woodburn had not been made a designated public forum by policy or by practice, but that Defendant would allow CBR to carry 2 by 3 feet signs on the sidewalks at Woodburn. Ms. Drew further threatened to have Plaintiffs and those assisting them "escorted" from Woodburn if they attempted to set up their display, and if they resisted, to use the "legal means at the University's disposal to deal with trespassers." *See* April 5, 2000

correspondence from Kip Drew, Esq. to Brian Fahling, Esq. (attached hereto as Exhibit A).

25. In an April 4, 2000 email to student members of the campus groups co-sponsoring GAP, Dean Gibson stated that the Woodburn site is inadequate to accommodate the expression of competing points of view because its proximity to classroom buildings makes the potential for class disruption an issue and because its proximity to the street and walkways between classroom buildings makes both pedestrian and vehicular traffic problematic. *See* April 4, 2000 email from James Gibson to Emily Allen and Matthew Nussbaum (attached hereto as Exhibit B).

26. In the same email, and after stating reasons why GAP was being denied access to Woodburn, Dean Gibson stated that CBR could carry signs no larger than 2 ft. by 3 ft. for sidewalk activity at Woodburn during the class-passing periods. CBR does not have 2 ft. by 3 ft. signs and had previously informed Dean Gibson of that fact. No rules or guidelines were identified as authorizing the limitation being placed upon CBR.

27. CBR prepared to seek a TRO from this court on April 5, 2000 to gain access to Woodburn. *See* April 4, 2000 correspondence from Brian Fahling, Esq. to Kip Drew, Esq. (attached hereto as Exhibit C). However, because of Defendant's latent and emphatic representation that Woodburn was a nonpublic forum because it allegedly had not permitted First Amendment activity there, and because CBR was scheduled to be at another University in a few days, the decision was made to abandon the idea of bring GAP to Indiana University until fall 2000.

28. Dunn Meadow and Woodburn are large areas, each consisting of large grassy areas that are frequently used for First Amendment activity of every sort.

29. Pedestrian traffic counts conducted simultaneously at Dunn Meadow and Woodburn between the hours of 10:00 a.m.- 4:00 p.m. on April 19, 20, and 21, 2000, disclosed a total of 5,075 pedestrians at Dunn Meadow and 13,479 pedestrians at Woodburn.

30. Indiana University's 1999-2000 "Pathfinder's Guide To Policies and Guidelines" ("Policies and Guidelines"), under the heading "Campus Demonstration, Picketing and Assembly Ground Policies," sets forth guidelines for First Amendment activity at Dunn Meadow. "Policies and Guidelines" is attached hereto as Exhibit D.

31. The Policies state, "[h]istorically, petitions, assembly, demonstrations and picketing have been used by free people to express their beliefs and to air their grievances . . . . It is the policy of the University to permit such expression of opinion for lawful purposes and not to permit interference with demonstrations by those who disagree with the opinions expressed . . . . Indiana University considers freedom of inquiry and discussion essential to a student's educational development. Thus, the university [sic] recognizes the right of all students to engage in discussion, to exchange thought and opinion, and to speak, write, or publish freely on any subject, in accordance with the guarantees of the federal and state constitutions. This broad principle is a cornerstone of education in a democracy."

32. The policies set forth guidelines for First Amendment Activity in Dunn Meadow.

33. First Amendment gatherings on campus at locations other than Dunn Meadow are permitted subject to the requirement that they not disturb classes or interfere with traffic. It has been the stated policy of Indiana University to permit petitions, assembly, demonstrations, and picketing on campus and not to permit interference by those who disagree with the opinions expressed.



34. A sampling from newspaper clippings of a few of the First Amendment activities permitted by Defendant in the Woodburn area include:

- |                    |   |
|--------------------|---|
| April 5, 2000      | A mock drunk driving crash complete with two mangled Chevy Novas; seven bloody students with limbs hanging out of the windows; fire trucks; police cars; and paramedics. Approximately 150 people observed as emergency personnel handled the situation as they would any car accident, including cutting the roof off the car and giving the victims medical care. |
| March 6, 7, 2000   | Evangelists preach to students. (This has been a regular occurrence for many years)   |
| March 23, 1999     | Protest by candidates for student government who carried signs, chanted, and conducted a mock trial of the Indiana University Student Association.  |
| April 1999         | Two members of Full Frontal Comedy sing and dance.  |
| October 1998       | Student Group, Citizen's Alliance for the Legalization of Marijuana, set up an information table for two weeks. The group provided information about their efforts to legalize marijuana.   |
| October 18, 1998   | Members of the College Republicans protest political advertisement of 8 <sup>th</sup> District Democratic congressional candidate Gail Riecken who was speaking at Woodburn Hall.   |
| September 22, 1998 | Evangelist, with his children who were holding banners, preaches to students.   |
| November 4, 1997   | More than 50 Indiana University students, faculty and Bloomington residents gathered in memory of Yitzhak Rabin.  |
| October 20, 1997   | Family of evangelists preaches, carries large signs, and hands out literature.  |

*See newspaper articles attached hereto collectively as Exhibit E.*

35. First Amendment activity has also been, by policy and consistent practice, regularly permitted at locations campus wide as well as at Dunn Meadow. Defendant has two registration forms for student organizations seeking permission to hold outdoor events. One form is for "Dunn Meadow," the other form is for "Outdoor Campus Events." *See* Guide to Policies, pp. 28-32. The forms are identical in every respect but two, the "Outdoor Campus Events" form has a line to identify the location of the event and the "Dunn Meadow" form references electricity needs re Indiana Memorial Union.

36. Plaintiffs proposed First Amendment activity at Woodburn would not have disturbed classes nor would it have interfered with traffic. They would like to bring GAP to Indiana University, under the sponsorship of several student groups (IU Students for Life, InterVarsity Christian Fellowship, and Connexion), in October 2000 and set up at Woodburn in order to reach as many students as possible, but fear that Defendant will cite Plaintiffs' staff and student assistants with trespass and/or will have them arrested if they attempt to remain at Woodburn after being told to leave.

37. In the hope of avoiding this litigation, Plaintiffs' student representatives have filed a registration form seeking permission to set up at Woodburn in October 2-3, 2000. Plaintiffs have sent correspondence to Defendant requesting permission from Defendant to set up the GAP display at Woodburn in October 2000, and provided Defendant with a copy of an earlier draft of this complaint, which, Defendant was advised, would be filed if permission was not granted.

38. Defendant continues to insist that CBR will only be permitted to set up the GAP display at Dunn Meadow. Defendant did not give Plaintiffs permission to set up the GAP display at Woodburn.

## **VII. ALLEGATIONS OF LAW**

39. All of the acts of Defendant, its officers, agents, servants, and employees, as alleged herein, were conducted under the color and pretense of the statutes, policies, regulations and customs and usages of Defendant.

40. As a result of Defendant's actions, Plaintiffs have suffered, and continue to suffer, irreparable injury to their constitutional rights and they have been, and continue to be, chilled in the exercise of their First Amendment rights as a result of such actions.

## **VIII. FIRST CAUSE OF ACTION (Free Speech)**

41. Paragraphs 1-40 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

42. Defendant's refusal to allow Plaintiffs access to Woodburn is an unconstitutional abridgement, as applied and administratively construed, of the Plaintiffs' affirmative rights to freedom of speech as secured by the First Amendment to the United States Constitution:

a. There is no compelling governmental interest sufficient to justify Defendant's refusal to permit Plaintiffs access to Woodburn for the purpose of exercising their First Amendment rights as described herein.

b. The refusal to allow Plaintiffs to exercise their First Amendment rights at Woodburn as described herein is not reasonable in light of the purpose served by that forum, which, as a result of Defendant's policy and consistent practice has been dedicated to First Amendment activity.

c. Defendant's refusal to permit Plaintiffs access to Woodburn to exercise

their First Amendment rights as described herein is arbitrary, capricious, and invidious, and as such is inherently inconsistent with a valid time, place, and manner regulation.

d. Defendant's refusal to permit Plaintiffs access to Woodburn to exercise their First Amendment rights as described herein is not a content-neutral decision nor is it narrowly tailored to serve a significant or substantial governmental interest.

e. Defendant's refusal to permit Plaintiffs access to Woodburn to exercise their First Amendment rights as described herein does not leave open ample alternatives for communication.

f. Defendant's refusal to permit Plaintiffs access to Woodburn to exercise their First Amendment rights as described herein constitutes impermissible viewpoint discrimination.

g. Defendant's refusal to permit Plaintiffs access to Woodburn to exercise their First Amendment rights as described herein is an impermissible prior restraint.

### **IX. SECOND CAUSE OF ACTION (Due Process-Procedural Safeguards)**

43. Paragraphs 1-42 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

44. Defendant's policies, as administratively construed and applied, grant unfettered discretion to University officials in determining who will be permitted to exercise their First Amendment rights on campus and, therefore, abridge Plaintiffs' right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

45. Defendant's policies, as administratively construed and applied, fail to provide for

prompt administrative and/or judicial review for those who are denied permission to access fora on campus and, therefore, unconstitutionally abridge the right of Plaintiffs to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief against Defendant as hereinafter set forth in the prayer for relief.

#### **X. PRAYER FOR RELIEF**

Plaintiffs respectfully pray that the Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendant's policy, as administratively construed and applied, is unconstitutional for the reasons set forth herein;
- c. Enter a Judgment and Decree declaring Defendant's refusal to permit Plaintiffs to exercise their First Amendment rights at Woodburn to be an unconstitutional abridgement of their rights to free speech and due process of law as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States;
- d. Grant a preliminary and permanent injunction prohibiting Defendants from denying Plaintiffs the right to exercise their First Amendment rights, as described herein, at Woodburn and other campus locations;
- e. Award Plaintiffs the costs and expenses of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and
- g. Grant such other and further relief as this court deems necessary and proper.

Respectfully submitted,



By: \_\_\_\_\_

Brian Fahling

Washington State Bar No. 18894

(Pending admission Pro Hac Vice)

Stephen M. Crampton

Mississippi Bar No. 9952

(Pending admission Pro Hac Vice)

Michael DePrimo

Mississippi Bar No. 10813

(Pending admission Pro Hac Vice)

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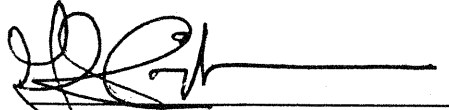
(662) 680-3886

ATTORNEYS FOR PLAINTIFFS

**VERIFICATION OF COMPLAINT**

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 6<sup>th</sup> day of SEPT, 2000.

A handwritten signature in black ink, appearing to read 'Gregg Cunningham', is written over a horizontal line.

GREGG CUNNINGHAM

## INDEX TO EXHIBITS

- Exhibit A: April 5, 2000 correspondence from Kip Drew, Esq. to Brian Fahling, Esq.
- Exhibit B: April 4, 2000 e-mail from James Gibson to Emily Allen and Matthew Nussbaum
- Exhibit C: April 4, 2000 correspondence from Brian Fahling, Esq. to Kip Drew, Esq.
- Exhibit D: Indiana University's 1999-2000 "Pathfinder Guide to Policies and Guidelines"
- Exhibit E: Newspaper articles containing information about First Amendment activity at Woodburn as Set Forth in ¶34 of the Verified Complaint