



Foundation for Moral Law, Inc.

One Dexter Avenue
Montgomery, AL 36104

Ph: 334.262.1245 • Fax: 334.262.1708

www.morallaw.org

Hon. Roy S. Moore
President

Dr. Rich Hobson
Executive Director

Benjamin D. DuPré
Attorney

Gregory M. Jones
Attorney

April 10, 2008

VIA FACSIMILE AND FIRST-CLASS MAIL

Marjorie Shelly, Library Director
Debra Martin, President, Library Board of Trustees
Pittsford Community Library
24 State Street
Pittsford, NY 14534
Phone: (585) 248-6275
Fax: (585) 248-6259

**Re: Pittsford Community Library's unlawful denial of equal access to
community board by Christian dance studio**

Dear Library Directory Shelly and Board President Martin:

The Foundation for Moral, a national, religious-liberties legal organization, has been contacted by Pittsford, New York residents Sam and Sandy Arena of the Amanda Rose Belmont Dance for Joy Studio and Yahweh Ballet (hereafter "Dance for Joy Studio") regarding their recent attempt to have a poster announcing a May 17, 2008 ballet event displayed in the Community Bulletin Board (hereafter "Bulletin Board") at the Pittsford Community Library (hereafter "Library"). Dance for Joy Studio is a non-profit ballet studio and school located in Rochester, NY, that incorporates Christian values and Bible stories in its dance productions and instruction. The school serves more than 100 students in the greater Rochester area and, as stated on its website, seeks to "bring glory to God and joy to our souls through excellence in Christian dance education and ministry with an emphasis on classical ballet."

Despite the fact that the poster at issue has been displayed at the Penfield, Greece, Irondequoit, and Rochester City libraries, Library Director Marjorie Shelly has denied Dance for Joy Studio access to the Pittsford Library Bulletin Board on the sole ground that the Christian ballet performance scheduled for May 17, 2008—and apparently the ballet studio itself—is too "religious" for the Pittsford Library. As explained in this letter, the Library's arbitrary denial of the dance studio's poster not only violates its own policy for public use of the Bulletin Board, but it constitutes blatant discrimination against religion, which is a violation of New York State law and, according to the U.S. Supreme Court, the United States Constitution.

I. THE LIBRARY BULLETIN BOARD, POLICY, AND DENIAL

As you know, the Pittsford Community Library maintains a wall-mounted glass case called the Community Bulletin Board that is available for the posting of material by the public. According to the relevant library policy dated June 8, 1995, the Bulletin Board “may be used for non-commercial notices pertaining to: a) CULTURAL, b) HEALTH AND SAFETY, or c) EDUCATIONAL interests.” The policy specifically notes that no “[d]isplays, posters, and handouts” will be permitted “for political, commercial or personal employment purposes,” but that “[n]otices of fundraising events and volunteer opportunities to benefit non-profit organizations may be posted.” The policy also makes clear that the “[d]isplay of items or posting of notices does not constitute an endorsement by the Library.” Nowhere does the policy preclude or otherwise mention “religion” or notices pertaining to a “religious” event or organization.

Consistent with the Library’s policy, the Bulletin Board features a variety of information about local events, including dance productions. At the time of the denial of the Dance for Joy Studio’s poster, the Bulletin Board displayed information for, among other things: (1) the Pittsford Community Blood Drive held at St. Louis Church in Pittsford; (2) a speaking event hosted by the Rochester Chapter of the Society for Technical Communication; (3) a conference for the Association of Mathematics Teachers of the Rochester Area; and (4) a speaking event about the prevention and reversal of heart disease hosted by the Rochester Area Vegetarian Society. Additionally, and more relevant hereto, the Library has permitted posters for two upcoming events by the Hochstein School of Dance and Music, and, in the recent past, posters for the Rochester City Ballet’s *Nutcracker* performance and the Garth Fagan Dance Company’s 2007 summer program.

Sometime after the denial of Dance for Joy Studio’s poster, the Library allowed the posting of a poster announcing a “free meditation lecture” on April 5, 2008, hosted by a group called the Science of Spirituality, “an international, multi-faith nonprofit, dedicated to love, peace, and unity, under the guidance of Sant Rajinder Singh Ji Maharaj.” The poster offered a chance to “[d]iscover an inner source of strength and hope that can guide you to the answers you seek.” The Science of Spirituality’s website (www.sos.org) explains that the organization teaches “the essence of the spiritual teachings of all saints and spiritual Masters from all religions through the ages,” including the belief that “meditation leads the soul back to God.” Though the Science of Spirituality, also known as “Sawan Kirpal Ruhani Mission,” claims to transcend all religions, its activities and teachings—including the meditation lecture on April 5—would certainly fit, one would think, Ms. Shelly’s definition of “religious.”

In order to promote an upcoming performance by the Amanda Rose Belmont Dance for Joy Studio and Yahweh Ballet entitled “New Beginnings,” Sandy Arena went to the Pittsford Library on March 14, 2008, with a poster advertising the performance and explained to a Library employee that she would like the poster displayed in the Bulletin Board. The colorful poster lists the dance studio, the name of the program “New Beginnings,” the date (May 17, 2008), the times and place, a telephone number and website address, and a scripture verse at the bottom

(Revelation 21:5).¹ Director Shelly was apparently unavailable at this time, so the employee agreed to take the poster and told Mrs. Arena that she would be notified. Later that day, Mrs. Arena was notified by phone that her poster would not be displayed at the Library. She then went back to the Library to get an explanation.

At the Library, Mrs. Arena spoke directly with Ms. Shelly, who told her that the poster would not be displayed because the organization was “religious” and not cultural. Ms. Shelly even pointed Mrs. Arena to the dance studio’s website, which she said she had visited earlier, to further demonstrate her point, saying, “Look, you are religious.” Mrs. Arena explained that the organization was not a church, that it was primarily a non-profit ballet and dance company, and that, yes, their approach was from a Christian perspective. Ms. Shelly countered that she would not put up a poster for a church choir event so she would not put up the dance studio’s poster. When Mrs. Arena reiterated that Dance for Joy Studio is a ballet school, Ms. Shelly curtly stated, “I’m sorry it’s not working out for you,” and turned her back to end the conversation.

Mrs. Arena then contacted the Foundation for Moral Law seeking assistance with this unfortunate situation.

II. THE LIBRARY’S DENIAL OF THE DANCE FOR JOY STUDIO POSTER IS NOT CONSISTENT WITH THE LIBRARY’S OWN POLICY AND PRACTICE.

Perhaps the first and most obvious problem with Ms. Shelly’s rejection of the dance studio’s poster is that the poster fits patently within the Library’s own guidelines for use of the Bulletin Board as “a non-commercial notice[] pertaining to: a) CULTURAL . . . or c) EDUCATIONAL interests.” In practice, the Library displays posters for other “cultural” and “educational” events, dance programs by the Garth Fagan Dance Company and the Rochester City Ballet, and even an overtly spiritual and “religious event” by the Science of Spirituality. The Library’s practice, therefore, bars neither posters for ballets nor posters for all “religious” events. According to Ms. Shelly’s arbitrary practice, it appears that only *certain* “religious” events or organizations may be advertised in the Bulletin Board, but not those that are of an overtly Christian nature.

Ms. Shelly’s discrimination against a Christian organization that otherwise complies with the Library policy is spurious, offensive, and entirely unjustified. Her insinuation that Christian ballets are somehow not “cultural” simply because the performing studio is “religious” is supported neither by the policy nor by common sense. As Mrs. Arena pointed out to Ms. Shelly, if the Rochester Philharmonic Orchestra were performing Handel’s *Messiah*—a classical music piece that is inextricably focused on Jesus Christ—would Ms. Shelly likewise prevent an advertising poster for the event at the Pittsford Library because the music is “religious”? Of course not. Nor should Dance for Joy Studio face discriminatory rejection at the Library because it brings to bear a Christian message and viewpoint in its upcoming cultural and educational event.

¹ See poster attached hereto. The scripture at the bottom quotes Revelation 21:5 as follows: “He who was seated on the throne said, ‘I am making everything new!’ Then He said, ‘Write this down, for these words are trustworthy and true.’”

III. THE LIBRARY’S DENIAL OF THE DANCE FOR JOY STUDIO POSTER BECAUSE IT IS “RELIGIOUS” VIOLATES NEW YORK STATE’S CIVIL RIGHTS LAW.

Under New York State law, the Pittsford Library’s denial of the Dance for Joy Studio poster constitutes an unlawful refusal or withholding of “full and equal accommodations, advantages, facilities and privileges” of a place of public accommodation. Section 40 of New York’s Civil Rights Law provides:

“All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly *refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof. . . on account of race, creed, color or national origin, or that the patronage or custom thereat, of any person belonging to or purporting to be of any particular race, creed, color or national original is unwelcome, objectionable or not acceptable, desired or solicited.*”

N.Y. Civ. Rights Law § 40 (McKinney 2008) (emphasis added). A “place of public accommodation” within the meaning of Section 40 includes “public libraries . . . supported in whole or in part by public funds or by contributions solicited from the general public.” *Id.*

By its terms, Section 40 of the Civil Rights Law applies to the Pittsford Library, the Library Board of Trustees, and all managers and employees of the Library. The Library, through its Director, has denied to the Arenas and the dance studio the “accommodations, advantages, facilities and privileges” of the Library, *i.e.*, the use of the Community Bulletin Board. Despite the fact that the dance studio’s poster was submitted in accordance with the Library’s guidelines, Ms. Shelly candidly denied access to the Bulletin Board *only* because of the dance studio’s Christian creed. Despite the fact that other local ballets and religious events have been recently advertised on the Bulletin Board, Ms. Shelly has arbitrarily created and enforced a new policy that Christian ballet or dance companies “need not apply.” Such a policy of discrimination based on creed is a blatant violation of New York Civil Rights Law § 40.²

III. THE LIBRARY’S DENIAL OF THE DANCE FOR JOY STUDIO POSTER BECAUSE IT IS “RELIGIOUS” RUNS CONTRARY TO THE SUPREME COURT’S INTERPRETATION OF THE FIRST AMENDMENT.

Under the Supreme Court’s interpretation of the Constitution, federal courts would consider the Pittsford Library’s unwritten policy of prohibiting posters by “religious” or

² According to Section 40-d of the Civil Rights Law a violation of Section 40 makes the offender both liable to a fine of up to \$500, payable to the aggrieved person, and guilty of a class A misdemeanor. *See* N.Y. Civ. Rights Law § 40-d (McKinney 2008).

Christian organizations to be a violation of the Free Speech Clause of the First Amendment.³ As recently as 2001, the Supreme Court reiterated its opinion that government entities “must not discriminate against speech on the basis of viewpoint.” *Good News Club v. Milford Central Schools*, 533 U.S. 98, 107 (2001).

A. The *Good News Club* case precludes religious discrimination in a public forum.

In the *Good News Club* case, sponsors of a private Christian organization called Good News Club were denied permission to hold after-school meetings for young children in the cafeteria at the public elementary school in Milford, NY. Although the Milford school system’s public use policy permitted use of school facilities for “instruction” or for “social, civic and recreational meetings and entertainment events,” the school denied Good News Club access to the school simply because the Club wanted to engage in “religious instruction and Bible study.” *Good News Club*, 533 U.S. at 102, 104.

The U.S. Supreme Court in *Good News Club* reaffirmed its earlier opinions⁴ holding that “speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint.” *Id.* at 111-12; *see also id.* at 107-112 (discussing *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995), and *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993)). When the government creates a “limited public forum” it may reserve the forum for certain groups or topics (*see Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995)), but “the restriction *must not discriminate against speech on the basis of viewpoint*, and the restriction must be reasonable in light of the purpose served by the forum.” *Id.* at 106-107 (citations and quotations omitted) (emphasis added). The Good News Club sought to “address a subject otherwise permitted under the rule, the teaching of morals and character, from a religious standpoint,” making the school’s exclusion of the Club “unconstitutional viewpoint discrimination.” *Id.* at 109, 110.

The Court in *Good News Club* also rejected the Milford school system’s argument that the denial of the Club was justified by the fear of violating the Establishment Clause of the First Amendment.⁵ The Court said it “defies logic” for the school to claim that granting equal access

³ The free speech clause of the First Amendment provides: “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend I.

⁴ The Court in *Good News Club* provided this summary of the two cases it relied on:

We are guided in our analysis by two of our prior opinions, *Lamb’s Chapel* and *Rosenberger*. In *Lamb’s Chapel*, we held that a school district violated the Free Speech Clause of the First Amendment when it excluded a private group from presenting films at the school based solely on the films’ discussions of family values from a religious perspective. Likewise, in *Rosenberger*, we held that a university’s refusal to fund a student publication because the publication addressed issues from a religious perspective violated the Free Speech Clause.

533 U.S. at 107.

⁵ The Establishment Clause of the First Amendment provides: “Congress shall make no law respecting an establishment of religion.”

to religious groups would threaten its “neutrality” toward religion. *Good News Club*, 533 U.S. at 114. “The Good News Club *seeks nothing more than to be treated neutrally and given access to speak about the same topics as are other groups.*” *Id.* (emphasis added). Allowing the Club to speak on public property “would ensure neutrality, not threaten it.” *Id.*; *see also Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514 (3rd Cir. 2004) (holding that having school faculty distribute Christian organization’s material in the same manner as other outside groups would not violate Establishment Clause, but that denial is unconstitutional viewpoint discrimination).

B. The Pittsford Library’s denial of equal access to Dance for Joy Studio’s poster would be considered unconstitutional religious discrimination by the courts.

Under any reading of the Supreme Court’s interpretation of the Free Speech Clause, Pittsford Library’s rejection of the Dance for Joy Studio’s poster because it advertises for a “religious” organization amounts to unconstitutional religious viewpoint discrimination. As explained earlier, the Library has established the Bulletin Board as a limited public forum,⁶ available for the public posting of “non-commercial notices pertaining to: a) CULTURAL, b) HEALTH AND SAFETY, or c) EDUCATIONAL interests,” but not “for political, commercial or personal employment purposes.” Pursuant to the policy, the Library has posted material touting various and diverse community events, including local dance and ballet productions and a “Science of Spirituality” meditation lecture.

Having opened its Bulletin Board, by policy and practice, to the printed speech promoting local cultural, dance, and spiritual events, the Library cannot now slam its doors to those organizations who desire to “address a subject otherwise permitted under the rule . . . from a religious standpoint.” *Good News Club*, 533 U.S. at 109; *see Child Evangelism Fellowship*, 386 F.3d at 528. By Ms. Shelly’s own admission, the sole reason for denying the display of the poster at issue is that Dance for Joy Studio is “religious.” Ms. Shelly’s *ad hoc* policy of no “religious organizations” appears to selectively apply only to Christian organizations. But regardless of whether it is anti-Christian bigotry or a more general anti-religious bigotry at work here, the denial of the poster constitutes patent discrimination against Dance for Joy Studio because of its Christian perspective and viewpoint in its dance productions and education.

Moreover, Ms. Shelly’s insistence that a ballet production cannot be a “cultural” event because it is “religious” is a false dichotomy that cannot justify the Library’s viewpoint discrimination. The Supreme Court rejected a similar insinuation by the lower court in *Good News Club*:

We disagree that something that is “quintessentially religious” or “decidedly religious in nature” cannot also be characterized properly as the teaching of morals

⁶ Even if the Library Bulletin Board is a “closed” rather than an “open” forum, the Library “still could not engage in viewpoint discrimination.” *Child Evangelism Fellowship*, 386 F.3d at 526; *see also Lamb’s Chapel*, 508 U.S. at 392-93 (“[c]ontrol over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral”).

and character development from a particular viewpoint. . . . It is apparent that the unstated principle of the Court of Appeals' reasoning is its conclusion that any time religious instruction and prayer are used to discuss morals and character, the discussion is simply not a "pure" discussion of those issues. According to the Court of Appeals, reliance on Christian principles taints moral and character instruction in a way that other foundations for thought or viewpoints do not. We, however, have never reached such a conclusion.

533 U.S. at 111. Dance for Joy Studio is pleased to offer a dance school and studio that seeks to "bring glory to God" through its "Christian dance education and ministry with an emphasis on classical ballet." The Library has no reasonable or legal grounds for denigrating Christian ballet as somehow "tainted" or less "pure" than other ballet productions that do not offer an overtly religious viewpoint. All the more egregious is the Library's unstated practice that a spiritual mysticism lecture is a permissible religious event under the Bulletin Board policy, but Dance for Joy Studio's Christian dance production is not.

Nor would the courts countenance the "separation of church and state" excuse, should the Library be so inclined to raise it. The Bulletin Board policy plainly states that the "[d]isplay of items or posting of notices does not constitute an endorsement by the Library." Unless the Library wishes to admit that it endorses the mystical practices and essentially "religious" beliefs of the "Science of Spirituality" organization, allowing the display of the Dance for Joy Studio poster on the same terms as other notices would not be considered by anyone to be an endorsement thereof by the Library. Like the Good News Club in Milford, Dance for Joy Studio "seeks nothing more than to be treated neutrally and given access to speak about the same topics as are other groups" at the Pittsford Library. *See id.* at 114. By its express discrimination against the Dance for Joy Studio, the Library is demonstrating *hostility* toward religion in general and Christianity in particular.

IV. CONCLUSION AND DEMAND

Therefore, the Pittsford Library, through Director Marjorie Shelly's arbitrary, anti-religious policy of excluding Dance for Joy Studio's poster from the Bulletin Board, has violated its own Bulletin Board use policy, New York State's Civil Rights Law prohibiting the denial of access to public facilities on the basis of creed, and U.S. Supreme Court opinions forbidding discrimination against religious viewpoints. Because the upcoming Dance for Joy Studio production is scheduled for May 17, 2008, this important matter must be rectified expeditiously.

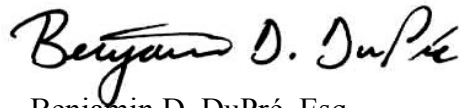
We therefore demand that, **by April 18, 2008**, the Pittsford Library permit Dance for Joy Studio to display in the Library Community Bulletin Board its poster announcing the May 17, 2008 "New Beginnings" dance production. The Pittsford Community Library claims on its website that its mission is "to meet the informational, education, cultural and recreational needs of the community with collections, programs, technology, services and staff in a welcoming environment." <http://www.townofpittsford.com/home-libraryport> (last visited April 8, 2008). Unless the "welcoming environment" of the Library staff and services—including the Bulletin Board—is immediately extended to Christian organizations like Dance for Joy Studio on a fair

and equal basis, the Pittsford Library's anti-religious discrimination will continue to expose it to legal recrimination. Should the Library fail to cease and desist its unlawful discrimination by April 18, 2008, the Foundation for Moral Law will consider further legal recourse, including a civil lawsuit and injunction under 42 U.S.C. § 1983 and referral of this matter to the New York State and United States Attorneys General.⁷

Please contact our office if you have any questions.

Sincerely,

FOUNDATION FOR MORAL LAW



Benjamin D. DuPré, Esq.
Legal Counsel



Gregory M. Jones, Esq.
Legal Counsel

Enclosure

cc: Sam and Sandy Arena

⁷ For example, the Library should be aware that federal law gives the U.S. Attorney General the authority to investigate complaints by someone "deprived of or threatened with the loss of his right to equal protection of the laws, on account of his race, color, *religion*, or national origin, *by being denied equal utilization of any public facility . . . of any State or subdivision thereof.*" 42 U.S.C.A. § 2000b (civil actions by the Attorney General) (emphasis added).

Amanda Rose Belmont Dance For Joy Studio
& Yahweh Ballet

Present

New Beginnings

Saturday May 17, 2008

2 p.m.— Lower School Performance

6 p.m.— Upper School Performance
featuring

The Yahweh Ballet

and

“The Dance of Mary Magdalene”

Located At:

The Finney School
2070 Five Mile Line Road
Penfield, NY 14526

For Tickets—

(585) 442-7196

www.dfjballet.com

He who was seated on the throne said,

“I am making everything new!”

Then He said, “Write this down, for these words are trustworthy and true.”

Revelations 21:5