

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

DEFEND LIFE, INC., a Maryland	:	Case No.
corporation, and JOHN E. "JACK" AMES,	:	
	:	
Plaintiffs,	:	Judge:
	:	
-vs-	:	
	:	
MONTGOMERY COUNTY, MARYLAND;	:	
MONTGOMERY COUNTY ZONING CODE	:	
INVESTIGATOR FRANK DE LANGE, in	:	
his individual capacity; and MONTGOMERY	:	
COUNTY POLICE OFFICER JOHN DOE,	:	
in his individual capacity,	:	
	:	
Defendants.	:	

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES**

Now come Plaintiffs, by and through counsel, and for their Verified Complaint against Defendants, state as follows.

INTRODUCTION

1. This action arises from Defendants' ban on all picketing signs in Montgomery County. On July 31, 2007, Defendants prohibited Plaintiffs from holding pro-life signs on a public sidewalk on the basis that Defendants interpret state and county law as banning all hand-held signs on all sidewalks or roadsides in Montgomery County (outside of select cities). Defendants threatened to issue \$500 citations against each person holding a sign. This edict drove Plaintiffs from the area and continues to

thwart Plaintiffs' desire to return. Defendants' ban on hand-held signs blatantly violates a time-honored free speech practice under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs seek declaratory judgment, preliminary and permanent injunction, and nominal damages arising out of Defendants' unconstitutional policies and actions. Unless this Court issues immediate equitable relief, Defendants will continue squelching the core First Amendment right to peacefully hold signs in a traditional public forum.

PARTIES

2. Plaintiff Defend Life, Inc. appears herein on behalf of its approximately 60 affiliated volunteers who were denied the freedom of speech in Montgomery County as alleged herein. Defend Life is a non-profit corporation organized under the laws of Maryland. Its headquarters is located in Baltimore County, at 136 Stevenson Lane, Baltimore, Maryland. Defend Life exists to promote the pro-life message throughout Maryland, Washington D.C., and Northern Virginia.

3. Plaintiff John E. "Jack" Ames is the Director of Defend Life, Inc. He is a resident of Baltimore County, in Baltimore, Maryland, and leads Defend Life in its efforts to promote a pro-life message in communities throughout Maryland, Washington D.C., and Northern Virginia.

4. Defendant Montgomery County, Maryland, is a political subdivision of the State of Maryland.

5. Defendant Frank De Lange enforces county and state law as an Investigator in the Zoning section of the Casework Management Division of the Department of Permitting Services of Montgomery County, and is sued in his individual capacity.

6. Defendant Officer John Doe is an officer of the Montgomery County Department of Police, and is sued in his individual capacity. Plaintiffs are not aware of Officer Doe's real name, but a picture of him is attached as Exhibit A.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; and under 28 U.S.C. § 2202, to secure preliminary and injunctive relief and damages.

8. The venue in this action is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 501(4)(a)(ii), in that all of the claims asserted by Plaintiffs arose within this judicial district, all of the parties are Maryland parties, and Plaintiffs reside in the Northern Division of this judicial district.

FACTS

9. The intersection of Rockville Pike, Randolph Road, and Montrose Road in Montgomery County is located generally southeast of the boundaries of the city of Rockville, and is traveled by substantial vehicle traffic.

10. The roads here are six- to eight-lane thoroughfares, and traffic is regulated at the point of their intersection by traffic lights.

11. The streets are bordered by ample and wide pedestrian rights of way, including sidewalks and grassy areas, with parks or commercial properties found further set back from them.

12. This intersection and the public pedestrian areas nearby were chosen by Plaintiffs to promote their pro-life message Montgomery County.

13. Plaintiffs Defend Life, Jack Ames, and their volunteers, in their effort to communicate a pro-life message to the public, often present themselves in traditional public fora in proximity to a roadway or intersection where significant numbers of motorists are likely to appear and come to a stop.

14. Once located in such a vicinity, Plaintiffs hold signs containing pictures and written messages advocating against the practice of abortion and the public policy which promotes and protects this lethal practice.

15. Plaintiffs carry out such activities at various times throughout the year, and also for special weeklong events during the summer.

16. Plaintiffs have accomplished precisely this form of public communication in over 100 towns and cities across in the area over the past seven years.

17. In the past three months alone, Plaintiffs have presented their message in this manner in the Maryland cities of Baltimore, Hanover, Westminster, White Marsh, Frederick, and Hagerstown, to name only a few.

18. On Tuesday, July 31, 2007, Plaintiffs presented themselves in Montgomery County at the intersection of Rockville Pike, Randolph Road, and Montrose Road, and began to present their pro-life message in their customary manner described as follows.

19. The participating individuals stood approximately 20 to 40 feet apart from one another along the sidewalks and public rights of way adjacent to both sides of Rockville Pike and Montrose Roads in the vicinity of the intersection.

20. Each participating individual held a pro-life, anti-abortion sign.

21. About 10 persons were distributed along the approximately 100 to 200 yards of roadside approaching the intersection at each of six roadsides leading to the intersection (not including the approach on Randolph Road east of Rockville Pike).

22. That is to say, the participating individuals were broadly distributed over a vast area, not collected at any single point. The majority of individuals were out of earshot, and many out of sight, of each other.

23. Plaintiffs intended to maintain their positions in the traditional public forums adjacent to these roads so as to present their political and social message in favor of preborn human life to a large number of motorists passing through this intersection.

24. Defendants Frank De Lange and Officer John Doe halted this effort.

Defendants' prohibition on Plaintiffs' speech in a traditional public forum

25. On July 31, 2007, after Plaintiffs took their positions holding their signs on sidewalks and grassy areas around this intersection, two Montgomery County Police Officers (including Officer T. Dolan and a female officer) arrived on the scene.

26. The two officers informed Jack Ames that he and all his co-volunteers holding signs had to take down their signs or face prosecution because each sign failed to have a necessary permit.

27. Mr. Ames told the officers that they were incorrect in requiring permits, and that the persons holding signs were engaging in protected free speech under the United States Constitution.

28. Mr. Ames asked the officers to call a commanding officer to verify whether Plaintiffs had the right to continue holding signs in the pedestrian area.

29. Shortly thereafter, Defendant Officer John Doe arrived on the scene.

30. He approached Mr. Ames and declared that the persons holding signs were violating the law of Montgomery County.

31. Mr. Ames asked Officer Doe which county ordinance they were violating.

32. Officer Doe said that the “permits” section of the Montgomery County ordinances requires that every sign displayed on the side of a public road in Montgomery County (outside the city limits of Rockville) was required to have a permit issued by the County and affixed to the sign.

33. When Mr. Ames asked again for the precise ordinance being referenced, Officer Doe referred him to an unnamed “permitting services officer” of Montgomery County who could provide more information.

34. Mr. Ames reiterated to Officer Doe that Mr. Ames was not aware of the permit requirement and that Plaintiffs considered their sign-holding to be protected free speech activity under the Constitution.

35. Because Plaintiffs had not been aware of the permit requirement, Officer Doe told Mr. Ames he was prepared not to issue citations to them this time, but to allow Plaintiffs to finish their activities that morning.

36. Officer Doe said, however, that Plaintiffs would be required to have the aforementioned permits the next time they engage in such sign-holding activity in Montgomery County.

37. A few minutes later, Defendant Frank De Lange of the Department of Permitting Services arrived on the scene in an extreme state of agitation.

38. De Lange approached the sign-holder standing closest to him and ordered her to remove her sign or face a \$500 citation.

39. Volunteers nearby informed De Lange that he should talk to the volunteers who had already spoken with the police about the matter.

40. De Lange crossed Rockville Pike and approached a sign-holder near Mr. Ames, who Officer Doe approached as well.

41. De Lange angrily declared that Plaintiffs' volunteers were in violation of state law and Montgomery County ordinances and must immediately take down their signs or De Lange would begin issuing \$500 citations to each of them.

42. When informed that the police had already decided to allow Plaintiffs to finish their display for that day, De Lange pointed at himself and yelled "***I*** enforce the zoning code, the police do not enforce the zoning code."

43. De Lange said that the signs were in violation of the zoning code because they were in the public right of way.

44. De Lange did not limit himself to declaring that such signs could be allowed with a permit, but he insisted that "you can't hold signs along the roadway . . . there is no permit" that allows holding a sign in such a public pedestrian right of way along a roadway in the county.

45. De Lange said that the only sign display that could be allowed in such a place would be a display allowed by means of a "limited duration sign permit" for a small number of signs displayed only on the weekend.

46. Moreover De Lange said that signs under such a permit would need to be affixed in the ground—that holding or walking with a sign is not allowed in Montgomery County.

47. And even this permit, De Lange opined, would not be available for Plaintiffs' sign display, because Rockville Pike (along which they were standing) is a state road where it is prohibited to hold signs on the adjacent sidewalks and pedestrian rights of way.

48. When volunteers for Plaintiffs protested that that the First Amendment protects holding signs on a public sidewalk, De Lange would hear nothing of it.

49. De Lange declared that Plaintiffs had two options: immediately take down their signs, or De Lange would begin issuing \$500 citations to each person holding a sign and let “the judge” decide.

50. De Lange said that he could not tolerate Plaintiffs holding their signs any longer because they were setting a “bad example,” especially with their “proliferation of signs. . . . You just can't do that.”

51. De Lange said he knew his statements about the regulation of signs were correct because he had worked as a zoning code enforcer for over 20 years, and because the Supreme Court had upheld similar regulations.

52. Officer Doe was present during De Lange's edicts and he adopted them as his own.

53. Officer Doe expressed agreement that De Lange held authority to declare and enforce the zoning code in this instance, even over Doe's prior judgment as a police officer.

54. The volunteer to which De Lange was speaking referred De Lange and Officer Doe back over to event organizer Mr. Ames, who was standing a few feet away.

55. De Lange and Officer Doe proceeded together to Mr. Ames, at which time Officer Doe rescinded his previous lenience allowing Plaintiffs to continue holding their signs that day.

56. Officer Doe immediately declared to Mr. Ames that Mr. Ames and Plaintiffs' volunteers were in violation of Montgomery County ordinances, that De Lange was equipped with the authority to issue \$500 citations for said violations, and that Plaintiffs could either "pack up" right away "or we're going to start issuing citations."

57. Because Plaintiffs feared the onerous citations that De Lange and Officer Doe threatened, Plaintiffs left the area immediately.

The Relevant Ordinances and Policies

58. Defendants referenced both state and county law as the sources of their edicts.

59. Defendants did not specify what state statute prohibits Plaintiffs from holding signs on sidewalks and pedestrian public rights of way along state roads such as Rockville Pike.

60. No such statute is apparent.

61. For example, Md. Code., Transp., Title 8, Subtitle 7, governing "outdoor advertising" signs, says no one may "erect" or "maintain" an erected sign near a state highway without a state permit.

62. Plaintiffs do not seek to conduct or participate in any advertising efforts, but merely wish to communicate their viewpoint on an important social issue.

63. Nor do Plaintiffs seek to erect any sign, but instead they desire to hold or carry signs for short periods of time in traditional public fora such as sidewalks.

64. With regard to Montgomery County's laws, Defendants' edicts apparently relied upon Chapter 59, "Zoning," of Montgomery County's Ordinances, which contains regulations on "signs" and "limited duration signs." Relevant excerpts of Articles 59-A and 59-F of Chapter 59 of the Ordinances are attached to this verified complaint as Exhibit B.

65. The chapter does not apply to the cities of “Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg and Washington Grove.” *Id.* Ch. 59-A-1.2.

66. The ordinances define “sign” as any “device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to attract attention or to communicate information.” *Id.* Ch. 59-A-2.1.

67. Article 59-F goes on to define particular types of signs:

- “Sign, permanent” is a “sign that is constructed in a manner and of materials that will withstand long-term display and is intended to be displayed for an indefinite period of time.”
- “Sign, limited duration” is a “non-permanent sign that is displayed . . . within the public right-of-way.”
- “Sign, temporary” is a “sign that is displayed on private property for less than 30 days.”

Id. Ch. 59-F-2.

68. Of these three categories, only “limited duration” applies to hand-held signs on public sidewalks or pedestrian areas next to streets.

69. Various sections of Chapter 59-F indicate that it applies to *erected* signs (affixed or freestanding), rather than to hand-held signs.

70. For example, the aforementioned definition in Ch. 59-A-2.1 discusses “device[s], fixture[s], . . . or structure[s],” Ch. 59-F-3.2 refers to “[t]he structure which supports a sign,” and Ch. 59-F-1.1 refers to the “construction” of signs. *Id.*

71. The stated “purpose” for the sign regulations “is to regulate the size, location, height and construction of all signs **placed** for public view.” *Id.* Ch. 59-F-1.1 (emphasis added).

72. The ordinance does not define “placed.”

73. That word is generally used in other paragraphs to refer to erected signs.

74. For example, the section governing “sign area measurement” refers to “the backdrop or structure against which [the sign] is placed.” *Id.* Ch. 59-F-3.1.

75. “Placement” is used throughout the “permanent sign” section, which cannot apply to hand-held signs. *Id.* Ch. 59-F-4.

76. Plaintiffs do not wish to “place” signs in any sense relating to erecting a sign (affixed or freestanding), but they simply desire to hold signs to communicate free speech messages in traditional public fora.

77. Chapter 59-F-5 governs “limited duration signs,” which is the type of signs that Defendants claimed Plaintiffs were using or attempting to use. *Id.*

78. Several sections of the “limited duration sign” regulations imply that such signs are erected rather than hand-held.

79. For example, Chapter 59-F-5.1 specifies that “[t]he sign must not be constructed in a manner that requires a building or electrical permit,” and that a person seeking a permit submit “a drawing of the site or a schematic of the area showing the proposed location of the sign in relation to nearby buildings and streets.” *Id.*

80. Chapter 59-F-5.2 applying to limited duration signs on private property exclusively refers to signs being “erected.” *Id.*

81. Defendants apparently applied Chapter 59-F-5.3 against Plaintiffs, “Requirements for Limited Duration Sign in the Public Right-of-Way.” *Id.*

82. Chapter 59-F-5.3 begins by declaring that “A permit application must be filed for each sign to be placed in the public right- of-way.” *Id.*

83. The permit requirements in this section show that, if hand-held signs count as “placed” limited duration signs, the ordinance totally bans hand-held signs from public sidewalks and pedestrian areas next to streets in Montgomery County (outside of select cities to which the code does not apply).

84. In contrast, if hand-held signs do not count as “placed” signs under the sign regulations of the zoning code, Defendants acted lawlessly in issuing their edicts against Plaintiffs and in banning hand-held signs in public pedestrian rights of way in Montgomery County (outside of select cities to which the code does not apply).

85. Chapter 59-F-5.3(d), *id.*, prohibits any such sign that is “placed”:

- without “its own means of support which is affixed to the ground;”
- on “a sidewalk”;
- less than “50 feet from any driveway, entrance, traffic control sign, and traffic control signal”;
- less than “100 feet from a street intersection”; or
- higher than “30 inches above the ground.”

86. Even if these and other requirements are met, “[t]he signs must be erected either only on (1) weekends and National Holidays; or (2) for fourteen consecutive days during any six-month period.” *Id.* Ch. 59-F-5.3(e).

87. Chapter 59-F-8.1, *id.*, lists several signs which are exempt from the aforementioned requirements, including:

- “[a] flag which is displayed on a flagpole”;
- “[a] sign that is cut into the masonry surface or constructed of bronze or other material and made an integral part of the structure like a cornerstone, memorial, plaque or historical marker”; and
- “[a]ny adornments or seasonal decorations.”

88. Hand-held signs such as used by Plaintiffs do not fall within any of this section's exempted categories.

89. Defendant Montgomery County publishes a document on its website entitled "Information About Political Campaign Signs," revised in July 2006 ("the political sign policy"). It is attached to this verified complaint as Exhibit C.

90. Defendants' political sign policy is an official interpretation of Chapter 59-F and its application to "political campaign signs."

91. The political sign policy declares that "The purpose of the Sign Ordinance, Article 59-F of the Montgomery County Code, is to regulate the size, location, height, and construction of **all signs placed for public view.**" *Id.* at 1 (emphasis added).

92. The political sign policy declares that any "political campaign sign" that is "located . . . in the public right-of-way" constitutes a "limited duration sign," *id.*, and "each sign to be placed in the public right-of-way requires a limited duration sign permit." *Id.* at 2.

93. The political sign policy then summarizes several requirements that are listed in Chapter 59-F-5.3(d) for limited duration sign permits, and says that permits are to be obtained from the Montgomery County Department of Permitting Services. *Id.*

94. Among the requirements for a limited duration sign and permit, the political sign policy declares, "[t]he sign . . . must be affixed to the ground (**holding or waving a sign is not allowed**)." *Id.* at 2 (emphasis added).

95. According to the political sign policy, "[s]igns in the public right-of-way unless placed in accordance with limited duration sign requirements" are prohibited. *Id.* at 3.

96. The website for the Department of Permitting Services, attached as Exhibit D, declares that “[t]he total fee for each limited duration sign permit located in DPS zones is \$34.10. . . . The total fee for each limited duration sign located in MNCPPC zones is \$55.00.”

Plaintiffs’ chilled speech

97. Plaintiffs desire to return to the sidewalks and pedestrian areas at the intersection of Rockville Pike, Randolph Road, and Montrose Road in Montgomery County on November ***, 2007, and on other dates and to other sidewalks in Montgomery County in the future, to hold signs that communicate their pro-life messages.

98. However, because of Defendants’ speech-suppressing policies, practices, and threats described herein, Plaintiffs are faced with citations and stiff monetary penalties from Defendants if they engage in such speech.

99. As a result of their fear of prosecution by Defendants, Plaintiffs have previously and continue to self-censor to avoid this unhappy eventuality.

**FIRST CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREEDOM OF SPEECH
(42 U.S.C. § 1983)**

100. Plaintiffs hereby incorporate by reference all foregoing allegations as if set forth fully herein.

101. All acts alleged herein of the Defendants, and their members, officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law.

102. Whether state and county laws actually restrict hand-held signs in the way that Defendants interpret and applied those laws against Plaintiffs, or alternatively whether Defendants' interpretation and application of the laws are incorrect but constitute the governing policy in Montgomery County, said laws or policy are unconstitutional, facially and as applied to Plaintiffs, under the First and Fourteenth Amendments of the United States Constitutions, because they ban core political and social speech (holding signs) in traditional public fora, and for the particular reasons discussed below.

103. Defendants' policies and actions against Plaintiffs' speech are not narrowly tailored to serve a compelling state interest, and are not permissible regulations of the time, place, or manner of speech.

104. Defendants' policies and actions against Plaintiffs' speech are unconstitutional prior restraints on speech, afford unbridled enforcement discretion to county officials, and do not contain the procedural safeguards necessary for a speech-related permit scheme.

105. Defendants' policies and actions against Plaintiffs' speech are unconstitutionally overbroad and have a substantial chilling effect on the free speech rights of Plaintiffs and others not before the Court.

106. As a result of the Defendants' past and present refusal to allow Plaintiffs to exercise their political and social speech rights on a sidewalk in the county, Plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

107. As a legal consequence of Defendants' violation of Plaintiff's First and Fourteenth Amendment rights, as alleged above, each Plaintiff is entitled to recover nominal damages of one dollar.

**SECOND CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
DUE PROCESS (VAGUENESS)
(42 U.S.C. § 1983)**

108. Plaintiffs hereby incorporate by reference all foregoing allegations as if set forth fully herein.

109. Defendants' policies and actions against Plaintiffs' speech are unconstitutionally vague, in they neither define sufficiently the standards utilized in governing citizens' speech in public fora, nor do they protect against arbitrary and discriminatory enforcement.

110. As a result of the Defendants' policies and actions, Plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

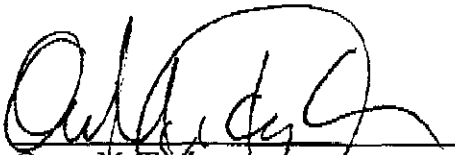
111. As a legal consequence of Defendants' violation of Plaintiff's Fourteenth Amendment rights, as alleged above, each Plaintiff is entitled to recover nominal damages of one dollar.

WHEREFORE, Plaintiffs pray for judgment against Defendants and that the Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;

- B. Pursuant to 28 U.S.C. §2201, declare that the Defendants' laws, policies and practices, as alleged above, violate the First and Fourteenth Amendments to the United States Constitution;
- C. Pursuant to 28 U.S.C. §2202, Fed. R. Civ. P. 65, and 42 U.S.C. §1983, preliminarily and permanently enjoin Defendants from enforcing the unconstitutional policies against Plaintiffs and award nominal damages to Plaintiffs;
- D. Pursuant to 42 U.S.C. §1988 and other applicable law, award Plaintiffs their costs and expenses incurred in bringing this action, including their reasonable attorneys' fees; and
- E. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,



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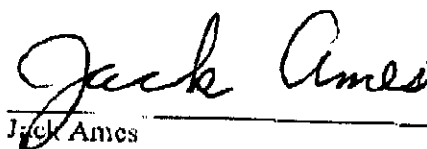
VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Jack Ames, declare the following:

1. I have personal knowledge of the matters alleged in the Complaint.
2. The allegations contained herein are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of October, 2007.



Jack Ames