

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

MICHAEL MARCAVAGE, CAL )  
ZASTROW, MICHAEL MATTIA, CHRIS )  
COATNEY, DENNIS GREEN, and MARK )  
GABRIEL, )

Plaintiffs )

v. )

THE CITY OF DETROIT, MICHIGAN; )  
POLICE SERGEANT FALK, individually )  
and in his official capacity; OFFICER )  
JOHN DOE 1 BADGE NUMBER 296, )  
individually and in his official capacity; )  
and OFFICER JOHN DOE 2, individually )  
and in his official capacity, OFFICER V. )  
SOLOMON, individually and in her )  
official capacity, and CODE )  
ENFORCEMENT OFFICER JOSEPH )  
MAPLES, individually and in his official )  
capacity, )

Defendants )

Case No. \_\_\_\_\_

COMPLAINT

**COMPLAINT**

Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named defendants, their employees, agents, and successors in office to safeguard their rights under the United States Constitution, and in support thereof allege the following:

**PRELIMINARY STATEMENT**

1. This is an action under 42 U.S.C. § 1983 and the United States Constitution challenging the deprivation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution. In

Detroit, on Super Bowl Sunday, February 5, 2006, Plaintiffs sought to portray the plight of unborn children who are denied a most basic right to life as victims of abortion.

2. Defendants prohibited Plaintiffs from carrying certain signs based solely on the content of such signs, seized one of Plaintiffs' signs and stood on it based strictly on its content and threatened to arrest Plaintiffs for the display of signs. The seizure occurred on a traffic island and, upon information and belief, was supervised by SGT Faulk. The "offensive" signs seized by the police showed photographs of an aborted baby and of babies who had not been aborted.
3. Defendants also prohibited Plaintiffs from displaying signs on their vehicle. Ultimately their vehicle as well as its contents (including hand held signs) were impounded for two days on account of the signs on their vehicle.
4. Plaintiffs Michael Marcavage, Cal Zastrow, Michael Mattia, Chris Coatney, Dennis Green and Mark Gabriel are persons who engage in various First Amendment activities such as educating the public about the plight of unborn babies, who are at risk of being aborted, through the use of signs, banners and conversation. They display their signs and photographs because the media has censored the preborn child from the abortion debate. The American press refuses to show the American people what these babies look like who are dying in the womb. Plaintiffs'

goal is to bypass that media blackout by going to the streets and displaying these photographs.

5. Plaintiffs sincerely hold and believe that their purpose in displaying the ramifications of abortion is urgent and that every moment their signs are obstructed, confiscated, removed and silenced another child dies who may not have died had the mother or father understood the truth about abortion.
6. Plaintiffs seek permanent injunctive relief in order to enjoin defendants from stealing signs and from limiting Plaintiffs' speech based on its content as well as nominal and compensatory damages for the frustration of the exercise of their constitutional rights, for the loss of use of the signs, for impounding their vehicle, for the loss of use of the public fora in which thousands of people traversed on their way to the Super Bowl, and for the expenses they incurred in traveling to speak outside the Super Bowl only to have their speech shut down by defendants.

#### **JURISDICTION AND VENUE**

7. This court has jurisdiction under 28 U.S.C. §§1331, 1343(a)(1), 1343(a)(3), 1343(a)(4), 42 U.S.C. §1983, and the First and Fourteenth Amendments to the United States Constitution.
8. Venue for this action properly lies in this Judicial District pursuant to 28 U.S.C. §1391 (b) because defendants resides within this Judicial District, and all or substantially all of the events that give rise to the claims in this action occurred in this District.

## **PARTIES**

### **Plaintiffs**

9. Plaintiff, Michael Marcavage, is an adult individual residing in Lansdowne, Pennsylvania. Mr. Marcavage has engaged in numerous pro-life activities across the country. He displayed the pro-life sign that an officer confiscated and stood on.
10. Plaintiff, Cal Zastrow, is an adult individual residing in Kawkawlin, Michigan. Mr. Zastrow has engaged in numerous pro-life activities. He displayed the pro-life sign that an officer confiscated.
11. Plaintiff, Michael Mattia, is an adult individual residing in Ortonville, Michigan. Mr. Mattia has engaged in numerous pro-life activities. He displayed a pro-life sign and was told to leave or face arrest.
12. Plaintiff, Chris Coatney, is an adult individual residing in Detroit, Michigan. Mr. Coatney has engaged in numerous pro-life activities. He displayed a pro-life sign and was told to leave or face arrest.
13. Plaintiff, Dennis Green, is an adult individual residing in Cumberland, Virginia. Mr. Green has engaged in numerous pro-life activities. He displayed a pro-life sign and was told to leave or face arrest.
14. Plaintiff, Mark Gabriel, is an adult individual residing in Appleton, Wisconsin. Mr. Gabriel has engaged in numerous pro-life activities. He displayed a pro-life sign and was told to leave or face arrest. His vehicle was also impounded on account of the signs on his vehicle.

## **Defendants**

15. Defendants City of Detroit (“the City”) is a Home Rule City organized under the Constitution and laws of the State of Michigan and acts through its agents and employees who exercise all policy forming and legislative functions in the City. At all times relevant to this complaint, the City, its agents and employees were acting under color of state law.
16. Defendant Sergeant Faulk was a police sergeant for the City and was acting under color of state law during all times relevant to this complaint. He is being sued in his official and individual capacity.
17. Defendant Police Officer John Doe, badge number 296, was a police officer with the City and was acting under color of state law during all times relevant to this complaint. He is being sued in his official and individual capacity.
18. Defendant Police Officer John Doe 2 was a police officer for the City and was acting under color of state law during all times relevant to this complaint. He is being sued in his official and individual capacity.
19. Defendant Police Officer V. Solomon was a police officer for the City and was acting under color of state law during all times relevant to this complaint. She is being sued in her official and individual capacity.
20. Defendant Code Enforcement Officer Joseph Maples was employed by the City and was acting under color of state law during all times relevant to this complaint. He is being sued in his official and individual capacity.

### **Factual Allegations—Removing Hand Held Signs on Basis of Content**

21. On Sunday afternoon, February 5, 2006, Plaintiffs arrived at Gratoit Avenue between Madison and Beaubren Streets, in the City of Detroit, in order to exercise their First Amendment rights to engage in the freedom of assembly and free speech during Super Bowl XL festivities.
22. Upon arriving at Gratoit Avenue, Plaintiffs displayed their signs, including a sign with a photograph of an aborted baby on it, and were immediately approached by a female officer.
23. Plaintiffs were approached by officers from the Detroit Police Department who refused to identify themselves or to give their badge numbers. These officers initially instructed Plaintiffs to move to the other side of the street. A second officer arrived and instructed Plaintiffs to stand on an island in the middle of the street further away from the crowd Plaintiffs intended to reach.
24. Several other police officers arrived and approached Plaintiffs instructing them to put down their signs.
25. An unidentified police officer, John Doe 2, grabbed the sign from Plaintiff Zastow's hand. Mr. Zastrow asked the officer "are you stealing my property sir?" The officer replied "Yeah, I'm gonna. Yeah looks like I'm stealing it okay?" When Mr. Zastrow asked the officer for his badge number, he refused to provide it.

26. Mr. Zastrow proceeded to ask the officer if they were breaking the law. His response was “Okay, I think it’s unprofessional to show this in front of all these children here.”
27. Detroit police vehicle 055017 arrived and at that point the officers took Plaintiffs’ signs. Mr. Zastrow asked once again if they were breaking a law to which the officer, John Doe 2, responded “Okay, number one, okay, this is something that you shouldn’t show children.”
28. As Michael Marcavage held a sign towards the crowd, the same unidentified officer told him to “Put that sign around. Put that around please.” “Flip it around.”
29. Next, a Detroit police department paddy wagon, identified with a number 5 at the top and also the numbers 046621, arrived.
30. The officer continued to order Mr. Marcavage to “flip your sign around”. Each time Mr. Marcavage and Cal Zastrow asked the unidentified officer for his name or badge number, he refused. The officer took the sign out of Michael Marcavage’s hands and stood on it. He then said “You picked the wrong place and time to do it.”
31. Finally, the Plaintiffs were standing on the island in the middle of the road. The officers took Mr. Marcavage’s sign placing it flat on the ground and would not let him pick it up. The Plaintiffs were surrounded by officers who refused to identify themselves.
32. There were other signs up and down the median displaying messages such as “Jesus Is God” and for the purpose of hawking tickets; however,

the officers made no attempt to approach them about their signs. Officer John Doe 1, identified as Officer 296, stated “part of town belongs to NFL today. This is not acceptable to the NFL. This must stop! This is your only warning. You don’t pack this stuff up...I’m going to ask them to move you.”

33. John Doe 1 (Officer 296) continued to state, “We’re not going to debate. We’re not going to come up with the constitution, abortion, or nothing. Move or you’re going to be moved!”
34. The officer then proceeded to give the Plaintiffs one minute to move. Another officer stated “They’ve already lost 10. They’ve got 50.” The officers proceeded with a count down. “40 seconds...34, 33, 32...29, 28, 27”. Additional comments were made such as “You cannot show these signs,” “Start walking,” and sarcastically, “You can go all the way to the water, then you can show your signs if you’d like.”
35. On February 5, 2006, there was no mob, hostile or otherwise, surrounding Plaintiffs, and Plaintiffs were not seeking to incite a riot.
36. The location from where Plaintiffs were removed was a high traffic area being traveled through by thousands of people going to the Super Bowl.
37. Plaintiffs were situated in an area where their message would be seen by every person entering the stadium to watch the Super Bowl.

**Factual Allegations—Shutting Down Signs on Basis of Content and  
Overbroad Ordinance—Retaliation on Basis of Content**

38. Earlier that day Plaintiff Mark Gabriel was driving his “Truth Van,” a van covered with pictures depicting the violent, destructive truth about abortion, in Detroit.
39. Gabriel pulled over to look at a map and put on his flashers.
40. After looking at the map, he began to try to pull out into traffic.
41. Code Enforcement Officer Joseph Maples walked in front of his van, held up his hand, and approached the driver’s window. Police officers also approached his van.
42. He was told by the code enforcement officer that ordinance 30.5 prohibits mobile advertising within a certain geographical area of the Superbowl during the time of the Superbowl.
43. He was told that the van violated the ordinance because of the abortion pictures.
44. He was told that he would have to go to streets that are “way outside the downtown area.”
45. He was told by Officer V. Solomon, “It’s an order.... We took one yesterday.... We took it for evidence.”
46. A box truck with aborted baby pictures was towed by police order the day before.
47. When Gabriel asserted his constitutional rights, Officer Solomon interrupted, “I know. You quoted all this for us yesterday.”
48. She then asked if Gabriel had a permit from the NFL.

49. She proceeded to say, "You need to exit the vehicle, sir. That sign is against the law."
50. When Gabriel tried to ask to leave the area, Officer Solomon interrupted, "Do what I asked you to do, OK, because now I'm about to write you a ticket for disobeying the lawful order of a police officer."
51. Gabriel noticed another vehicle on the street with goal posts drawn on it and said to the officer, "That van says Super Bowl. That's advertising the Super Bowl." The officer responded, "They have a permit."
52. Gabriel asked, "What do we need to do to get a permit?" The officer responded, "Go to the NFL."
53. Plaintiff Michael Marcavage soon asked, "Is there a Supervising Officer on duty? Yah, we spoke to the Chief of Police's Office on this issue, and I don't understand why you're towing a second truck now."
54. Officer Solomon eventually said, "[T]hey didn't really care if they had the signs," referring to the text signs Gabriel was holding, "but the graphic pictures, they're not gonna allow that."
55. Gabriel clarified, "These signs would have been alright?" Officer Solomon said, "Yah." Gabriel said, "OK," and looked at the signs and read, "Choose life. Abortion kills."
56. Officer Solomon then said, "[T]he NFL said, 'no.' They're not gonna offer any permits."
57. Officer Solomon eventually cited Gabriel for illegally parking.

58. This was despite the fact that they stopped only briefly to look at a map before Officers Maples and Solomon refused to let them move.
59. Despite the fact that they were at their vehicle prepared to leave, and despite the fact that other cars were parked in the area, the police towed the vehicle.
60. Officer Solomon refused to allow Gabriel to get his signs out of the back of the van.
61. Gabriel found that he could not pick up the van where the police told him. After calling the police, they initially said he could pick it up right away. When they found out it was the pro-life van, he was told he would not be able to recover the vehicle until two days later, at the earliest.
62. It cost \$155 to get van out of impound. It cost another \$10 for a jump start because the police left the flashers on. The police also let the window down despite the rain and later snow.

#### **Factual Allegations—Generally**

63. Plaintiffs expended \$1,300 to travel to the event and were frustrated, humiliated and harassed by defendants as they sought to exercise the protected first amendment rights.
64. Reports from the Associated Press indicate that local mobile billboards charged \$2,000 to \$2,500 for the twelve hours of advertising during Super Bowl week.
65. National advertising for the Super Bowl garnered up to \$83,000 per second.

### **ALLEGATIONS OF CHILLING EFFECT**

66. Plaintiffs have been threatened with citation and arrest for engaging in protected First Amendment activities in public fora within the City.
67. Plaintiffs wish to continue to engage in protected First Amendment activities such as displaying their pro-life sign depicting an aborted baby at events around other public fora in the City but fear that the City in the future and in response to their exercise of their protected First Amendment rights in the public fora, will maintain its policy of threats in order to remove their speech from the public fora.
68. Plaintiffs are chilled, frustrated, and deterred in their exercise in First Amendment activities due to the city's policy of threats, citation, arrests, and theft of signs deemed "offensive."

### **ALLEGATIONS OF LAW**

69. All of the acts of the Defendants, their officers, agents, servants, and employees, as alleged herein, were conducted under color and pretense of the statutes, ordinances, regulations, customs, or usages of the City of Detroit Michigan.
70. The lack of adequate training of the City of Detroit police officers in the areas of First Amendment rights and use of traditional public fora, constitutes deliberate indifference to the constitutional rights of Plaintiffs, and is a "policy, custom, or practice" of the City of Detroit for purposes of imposing municipal liability.

71. The exclusion of Plaintiffs' sign based on their moral and religious perspective about abortion constitutes **unconstitutional viewpoint discrimination**. See *Good News Club v. Milford Cent. School*, 533 U.S. 98, 107 (2001); *World Wide Street Preachers' Fellowship v. Owensboro*, 342 F.Supp. 2<sup>nd</sup> 634 (W.D. Ky. 2004).
72. The exclusion of Plaintiffs' signs on the basis of depicting aborted babies was unconstitutional content discrimination.
73. Towing Plaintiffs' vehicle and preventing it from being released for days was on the basis of unconstitutional content discrimination.
74. The public sidewalks, streets and parks where Plaintiffs preach and display signs are traditional public fora for purposes of speech and other expressive activities protected by the First and Fourteenth Amendments.
75. Plaintiffs have suffered irreparable injury, including chill to their First Amendment rights, and continue to suffer ongoing irreparable injury to their constitutional rights because of the existence and threat of future arrests based on their religious beliefs and on the exercise of their protected First Amendment rights.
76. The City's unconstitutional policy and acts are in direct contradiction to numerous United States Supreme Court rulings to include the holding of the United States Supreme Court in *Terminillo v. Chicago*, 337 U.S. 1, 4 (1949), wherein the Supreme Court held, "[F]reedom of speech, though not absolute, is nevertheless protected against censorship or punishment, **unless shown likely to produce a clear and present**

***danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.*** There is no room under our Constitution for a more restrictive view.” (Citations omitted, emphasis added).

77. The threats by various Detroit police officers that Plaintiffs’ sign (which constitutes speech) that some found offensive was punishable as a crime, were an unconstitutional attempt to shut down Plaintiffs’ speech and in direct opposition to the United States Supreme Court’s holding that, “The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker’s opinion that gives offense, that consequence is a reason for according it constitutional protection.” *Simon & Schuster, Inc. v Members of New York State Crime Victims Bd.* 502 U.S. 105, 116 L.Ed.2d 476 (1991) (editing marks and citations omitted).
78. The threats by the unidentified officers of the Detroit Police Department that Plaintiffs’ sign was inflammatory and that the Plaintiffs would be viewed as inciting any violence were an unconstitutional attempt to shut down Plaintiffs’ speech and in direct opposition to *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 120 L.Ed.2d 101 (1992)(“Speech cannot be...punished or banned simply because it might offend a hostile mob”) and *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 112 S.Ct. 501 (1991) (“The fact that society may find speech offensive is not a sufficient reason for suppressing it”).

79. The actions of defendants are outrageous and entitle plaintiffs to punitive damages against the officers in their individual capacities for the gross violation of their constitutional rights.

**FIRST CAUSE OF ACTION**  
**Violation of Free Exercise Clause**

*42 U.S.C. § 1983; First and Fourteenth Amendments to the U.S. Constitution*

80. Plaintiffs hereby reallege all matters set forth in the preceding paragraphs of this Complaint and incorporate them herein.

81. Worshiping God, meeting and fellowshiping with other Christians, giving encouragement, upholding the value of life and evangelizing and sharing the Gospel message are central tenets of Christianity and sincerely held religious beliefs of Plaintiffs.

82. Plaintiffs engaged in the display of pro-life signs and banners in the City of Detroit, in exercise of these religious beliefs.

83. Defendants' actions targeted and were intended to chill, restrict, and inhibit Plaintiffs from exercising their religion in this way.

84. Defendants' actions thus constitute a violation of Plaintiffs' rights under the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

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

**SECOND CAUSE OF ACTION**  
**Violation of Right To Free Speech**

*42 U.S.C. § 1983; First and Fourteenth Amendments to the U.S. Constitution*

85. Plaintiffs hereby reallege all matters set forth in the preceding paragraphs of this Complaint and incorporate them herein.
86. Plaintiffs' preaching, display of banners and signs, and handing out of literature is expressive speech.
87. Defendants' actions chill, deter, punish and restrict Plaintiffs from engaging in expressive speech.
88. Defendants' actions are overbroad because they sweep within their prohibition protected First Amendment expression.
89. Defendants has no compelling interest that would justify prohibiting Plaintiffs from engaging in expressive speech in this way.
90. Defendants' actions thus constitute a violation of Plaintiffs' rights under the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

- A. That this Court declare that the actions by the City and its agents and employees violated the First Amendment rights of Plaintiffs;

B. That this Court permanently enjoin Defendants from prohibiting Plaintiffs from displaying pro-life signs in the public fora of the City of Detroit and restraining Defendants from threatening Plaintiffs with penalties for displaying pro-life signs in the public fora of the City of Detroit;

C. That this Court issue a permanent injunction restraining Defendants from confiscating Plaintiffs' signs;

D. That this Court award Plaintiffs compensatory damages for the violation of their constitutional rights;

E. That this Court award Plaintiffs compensatory damages for the loss they experienced in communicating their message to the thousands of people attending the Super Bowl;

F. That this Court award Plaintiffs compensatory damages for travel expenses;

G. That this Court award Plaintiffs punitive damages against defendants in their individual capacities;

H. That this Court award Plaintiffs' costs and expenses of this action, including reasonable attorneys fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and,

I. That this Court grant such other and further relief as the Court deems equitable, just, and proper.

Dated: November 13, 2006

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