

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JASON STORMS, JIM SODERNA,)
ALEX AND ANA MARIE DOAK,)
ANNE FRANCZEK, TOM A.)
PELKEY, ROBERT P. BREAUD,)
and CANDICE KNAPSCHAEFER,)

Plaintiffs,)
vs.)

CITY OF MILWAUKEE, WISCONSIN,)
Milwaukee Police Department officers,)
SGT. IVORY B. BRITTON, ANDREW)
T. DEPTULA, DALE P. DEVEREAUX,)
RONALD FERRILL, PETER J. GRABER,)
SGT. DAVID LARSON, CHRISTOPHER)
J. KAINE, MICHELLE L. KRUMNOW,)
EDWARD MATEKI, CHERYL)
MCMILLEN, SHAWN J. PECORARO,)
MARK A. PETTKE, SEAN K. RACKLAW,)
SCOTT F. THORNE, RODNEY VIVERETTE,)
THOMAS R. ZEISEMER, JILL DOE and)
JOHN DOE, ONE THROUGH FIVE,)

Defendants.)
_____)

Civil Action No. _____

**VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF,
AND DAMAGES PURSUANT
TO 42 U.S.C. § 1983**

COME NOW Plaintiffs, by and through their undersigned counsel, who for their complaint against Defendants state the following:

I. INTRODUCTION

1. This civil rights action is brought to protect and ensure the well-established constitutional right to engage in free speech in a traditional public forum.

2. By prohibiting Plaintiffs from sharing a religious message on public property near two abortion clinics in Milwaukee, the Defendants have clearly violated the First Amendment.
3. Defendants, as police trainers, officers and agents of the City of Milwaukee, have made the suppression of free assembly, free press, and free speech rights of these plaintiffs and similarly situated persons a custom and policy, as they have repeatedly intimidated and threatened Plaintiffs, and even cited, arrested and jailed them without justification.
4. Defendants' consistent pattern of content discrimination has been motivated by their disagreement with and hostility to the Plaintiffs' social and religious views.
5. Defendants have also repeatedly applied Milwaukee Code of Ordinances Section 244-18.2 (a/k/a "The Snipe Advertising Law") and Section 106-1.1 (disorderly conduct provisions) in an unconstitutional manner to prevent Plaintiffs from assembling and communicating their message on public fora.
6. Plaintiffs, who have in no way threatened any person, impeded access to clinic entrances, disturbed the peace, or violated public morals or safety, hereby challenge the unconstitutional actions of the Defendants.

II. JURISDICTION AND VENUE

7. This action arises under the United States Constitution, particularly the First, Fourth, Fifth and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. §§ 1983 and 1988.
8. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.
9. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.

10. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).
11. This Court is authorized to award the requested damages under 28 U.S.C. § 1343(3).
12. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.
13. Venue is proper under 28 U.S.C. § 1391 in the Eastern District because this claim arose there, because upon information and belief all Defendants reside within the District, and their principal offices are located within the District.

III. IDENTIFICATION OF PARTIES

PLAINTIFFS

14. Plaintiff Jim Soderna is an adult male resident of Milwaukee County, Wisconsin, and a citizen of the United States.
15. Plaintiff Alex Doak is an adult male resident of Milwaukee County, Wisconsin, and a citizen of the United States.
16. Plaintiff Ana Marie Doak is an adult female resident of Milwaukee County, Wisconsin, and a citizen of the United States.
17. Plaintiff Anne Franczek is an adult female resident of Milwaukee County, Wisconsin, and a citizen of the United States.
18. Plaintiff Tom A. Pelkey is an adult male resident of Milwaukee County, Wisconsin, and a citizen of the United States.
19. Plaintiff Robert P. Breaud, R.N., is an adult male resident of Milwaukee County, Wisconsin, and a citizen of the United States.
20. Plaintiff Jason Storms is a traveling evangelist, an adult male resident of Cedarburg, Wisconsin, and a citizen of the United States.

21. Plaintiff Candice Knapschaefer is an adult female resident of Cederburg, Wisconsin, and a citizen of the United States.

DEFENDANTS

22. Defendant City of Milwaukee, Wisconsin is a municipal corporation and political subdivision of the State of Wisconsin. It has enacted, and continues to enforce through its law enforcement officers, the Milwaukee Code of Ordinances, including the chapters applied and challenged herein. The City is authorized to sue and be sued in its own name.

23. Defendant Sgt. Ivory B. Britton is sued individually and in his official capacity. He is a Milwaukee Police Sergeant, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.

24. Defendant Andrew T. Deptula is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.

25. Defendant Dale P. Devereaux is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.

26. Defendant Ronald Ferrill is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.

27. Defendant Peter J. Graber is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.

28. Defendant Sgt. David Larson is sued individually and in his official capacity. He is a Milwaukee Police Sergeant, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
29. Defendant Christopher J. Kaine is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
30. Defendant Michelle L. Krumnow is sued individually and in her official capacity. She is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
31. Defendant Edward Mateki is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
32. Defendant Cheryl McMillen is sued individually and in her official capacity. She is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
33. Defendant Shawn J. Pecoraro is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
34. Defendant Mark A. Pettke is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.

35. Defendant Sean K. Racklaw is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
36. Defendant Scott F. Thorne is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
37. Defendant Tom Rodney Viverette is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
38. Defendant Thomas R. Zeisemer is sued individually and in his official capacity. He is a Milwaukee Police officer, responsible for the enforcement of the Milwaukee Code of Ordinances, including the chapters challenged herein.
39. Defendants Officers Jill Doe, and John Doe, one through five, are not yet specifically identified, but are sued individually and in their official capacities. Each is a Milwaukee Police officer responsible for the training of other Milwaukee Police officers, including those named herein above.

IV. STATEMENT OF FACTS

Background: '90s-Era Injunction

40. On April 15, 1993, the Wisconsin Circuit Court for the County of Milwaukee issued an order in *State of Wisconsin, et al v. Missionaries to the Preborn, et al.*, Case No. 92-CV-8195 (hereinafter “the *Missionaries Order*,”) permanently enjoining two unincorporated associations and thirty-eight named individuals, in part, from “congregating, demonstrating, counseling or engaging in any other protest activity within twenty-five

(25) feet” of six named abortion clinics, including Affiliated Medical Services Clinic at 1428 N. Farwell Avenue, and the Planned Parenthood facility at 302 N. Jackson Street in Milwaukee.

41. The *Missionaries* Order also enjoined those thirty-eight named individuals from, among other things, impeding or obstructing access to the abortion clinics, assaulting or photographing patrons, and photographing or recording their vehicle license plate numbers.
42. The *Missionaries* Order did not prohibit the thirty-eight named individual defendants from sidewalk counseling “of a non-threatening nature,” if conducted beyond the established twenty-five foot perimeter.
43. The *Missionaries* Order acknowledged that the Milwaukee Police Department is charged with maintaining public order outside each facility and may enforce “reasonably necessary rules and regulations” to accomplish this end.
44. The *Missionaries* Order required the thirty-eight named individuals to provide at least twenty-four hours’ advance notice to the Milwaukee Police Department of any “demonstrations” scheduled to occur at the six abortion clinic sites, and to give notice of the injunction to all persons who may be acting in concert with them at “demonstrations or similar events at facilities listed [in the Order], which are organized or promoted by the [Missionaries] defendants.”
45. None of the events described in this Complaint constituted a “demonstration” as anticipated by the 1993 *Missionaries* Order.
46. In the case at bar, Jim Soderna is the only Plaintiff who was also included as one of the thirty-eight named individuals in the *Missionaries* Order. He has complied with the

Missionaries Order at all times and in every way, always conducting his peaceful sidewalk counseling efforts while standing alone, and beyond the established twenty-five foot perimeter.

47. *Importantly, none of the other Plaintiffs in the present case are named as a defendant in the 1993 Missionaries case, nor have the Plaintiffs participated in any demonstration or event organized or promoted by any of the thirty-eight named individual Missionaries defendants, nor acted in concert with nor taken direction from any of them.*

The Public Property at Issue

48. The private properties of the Affiliated Medical Services Clinic at 1428 N. Farwell Avenue, and the Planned Parenthood facility at 302 N. Jackson Street in Milwaukee, Wisconsin, are surrounded by public sidewalks and public easements.
49. The public sidewalks at these locations are approximately three times the size of the typical residential Milwaukee sidewalks, and have been at all times relevant hereto open and accessible for use by the general public.
50. Likewise, at all times relevant hereto, the Plaintiffs have never impeded the clinic accesses, nor any ingress or egress, served by these public ways.

Plaintiffs' Use of the Public Property

51. Plaintiffs are all residents and citizens of Wisconsin and professing Christians who hold a sincerely held religious belief in the sanctity of every human life, and a religious-based opposition to abortion.
52. As part of their sincerely held religious beliefs, Plaintiffs desire to share their social and political viewpoint regarding preborn children with others.

53. One way in which Plaintiffs share this viewpoint is by declaring it in public areas, including areas such as the public ways surrounding the Affiliated Medical Services Clinic and the Planned Parenthood facility in Milwaukee, where persons typically are already attuned to the issue.
54. None of the Plaintiffs have any intent to physically touch or harass anyone, or to encourage or condone violence, or to express themselves in any way other than in a peaceful manner.
55. Plaintiffs likewise have not encroached upon the private property of any person or entity during these exercises of their quintessential rights to free assembly, free press and free speech.
56. Plaintiffs desire merely to engage in constitutionally protected expressive activity on the public ways and public sidewalks in Milwaukee, including the public areas surrounding the Affiliated Medical Services Clinic and the Planned Parenthood facility.

Pattern of Police Harassment and Discrimination: Fall 2007 Example

57. On August 17, 2007, Plaintiff Soderna was engaged in his customary activity of standing alone and peacefully holding a sign on the public sidewalk in a non-obstructive manner, at the corner of Farwell Avenue and Ogden, beyond the established twenty-five foot perimeter of the Affiliated Medical Services Clinic.
58. At approximately 1:30 p.m., Defendant Larson approached Mr. Soderna and told him that his activity was unlawful, and cited him under Milwaukee Code of Ordinances § 244-18-2 (a/k/a the “Snipe Advertising Law”) (attached hereto as Exhibit “A”).
59. Plaintiff Soderna retained legal counsel, Catherine Short, who explained in a letter to Milwaukee Police Chief Nanette Haggerty (attached hereto as Exhibit “B”) that the Snipe

Advertising Law obviously did not apply to Mr. Soderna's constitutionally protected speech activities.

60. The Snipe Advertising Law ostensibly prohibits merely the unauthorized placement of printed commercial and political campaign advertising on city-owned property and buildings.
61. Attorney Short further stated in her letter: “According to Sgt. Larson, there had been a ‘meeting’ at which it was decided to cite pro-life picketers . . . under this [Snipe Advertising Law] section. For this reason, Mr. Soderna is concerned that he will be cited again.”
62. Pursuant to Ms. Short’s written request, Chief Haggerty and City Attorney Grant F. Langley promptly caused Mr. Soderna's citation to be dismissed.
63. Nevertheless, Defendants herein continue to repeatedly threaten Plaintiff Soderna and the other Plaintiffs with citations for violation of the Snipe Advertising Law, when no violation of the ordinance has occurred in any way.
64. As an example, Defendants routinely threaten to cite Plaintiffs and other citizens who allow their handheld signs to momentarily touch any portion of any public property such as utility poles, a sidewalk, curb, or gutter.
65. Fearful of the threatened citation or arrest, Plaintiff Soderna and others are impeded and chilled in the exercise of their free speech rights, and have at times been effectively driven out of the public forum.
66. When he tires of holding his sign, Plaintiff Soderna is forced to rest it only upon his toes so it will not touch the ground.

67. Plaintiffs are fearful of Defendants' harassment and intimidation, and they dare not exercise their First Amendment rights to speak on these social issues in these places without other persons nearby to witness the pattern of harassment by police and/or to record said conduct by audio or video.

Pattern of Harassment and Discrimination: 2008 Examples

68. On January 19, 2008, Plaintiff Franczek was engaged in peacefully expressing her religious viewpoint on the sanctity of human life on public property near the Affiliated Medical Services Clinic. Franczek was not a party to the 1993 *Missionaries* case.

69. Defendant Britton sternly commanded Franczek: "Keep moving! Do not to stand in one place or you will be arrested for 'loitering.'" Defendant Britton further threatened: "Keep your sign off the sidewalk or we will arrest you for violating the Snipe Ordinance! Keep it in hand or on your toes!"

70. Fearful of the threatened citation or arrest, Plaintiff Franczek and others have been intimidated and impeded and chilled in the exercise of their free speech rights, and have at times been effectively driven out of the public forum.

71. During the months April thru September 2008, Defendant Britton continued to threaten Plaintiff Soderna and others with citation and arrest for violation of the Snipe Advertising Law.

72. On April 24, 2008, Plaintiffs Alex and Ana Marie Doak were engaged in peacefully expressing their religious viewpoint on the sanctity of human life on public property near the Affiliated Medical Services Clinic. Alex and Ana Marie Doak were not parties to the 1993 *Missionaries* case.

73. Mr. Doak, a Euro/American U.S. National, and Mrs. Doak, a Philippine National, were walking their four-month-old son along with them in a carriage on the public sidewalk, and offering a pamphlet entitled “Spare the Life of Your Child” to receptive passersby.
74. Neither the parents nor the child's stroller at any time blocked access to the Clinic entrances or parking lot.
75. Not long after the Doaks began, three Milwaukee police cars arrived, and multiple police officers surrounded and confronted Mr. and Mrs. Doak. The officers, including four unknown male officers, Defendants John Doe, One through Four, Defendant Graber, Defendant Britton, and Defendant Krumnow, threatened to arrest Mr. and Mrs. Doak for “abuse and neglect” of their child.
76. Plaintiffs show that their child was safe, warm, and in no conceivable way abused or neglected during this event.
77. The seven officers surrounded Alex and Mrs. Doak and their four month old child, then interrogated and intimidated Mrs. Doak, who initially attempted to answer the hostile and rapid-fire questions of the officers.
78. However, when the officers threatened to report Mrs. Doak to the Child Protection Services of Milwaukee County, and suggested she was an illegal alien, Mrs. Doak was intimidated into silence, voluntarily ceased her constitutionally protected speech activity, and retreated to her car.
79. The threats of the officers had their desired effect of silencing Mrs. Doak, who believed the officers would indeed find social workers who shared their hostility to her as a recent immigrant who dared express a disfavored social viewpoint.

80. The officers then turned on Mr. Doak, and cited him for “disorderly conduct” under Chapter 106-1.1 of the Milwaukee Code of Ordinances.
81. In his subsequent defense to the unfounded charge, Mr. Doak pled not guilty and made three separate appearances in Municipal Court. Mr. Doak denied the charge in a sworn affidavit and therein explained to the Municipal Court that the facts did not justify the citation.
82. At his third appearance, the city attorney dismissed the charge against Mr. Doak, partly because no one from the Affiliated Medical Services Clinic or any of the seven Milwaukee police officers appeared to testify against him.
83. The city attorney dismissed the charge against Mr. Doak *without prejudice*, as a means of intimidating Mr. Doak by leaving open the potential of further prosecution in the future for acting in concert with the thirty-eight individuals named in the *Missionaries* Order injunction.
84. Fearful of the threats and intimidation by police, Plaintiffs, Mr. and Mrs. Doak, have been impeded and chilled in the exercise of their free assembly, free press and free speech rights, and have been effectively driven out of the public forum.

Continued Pattern of Police Misconduct

85. Other persons, including the Plaintiffs, were repeatedly threatened and harassed by Defendants in similar fashion in 2008.
86. During this period, Plaintiff Storms and Plaintiff Knapschaefer, who are traveling Christian evangelists, engaged in peacefully expressing their religious viewpoint on the sanctity of human life on public property near the Affiliated Medical Services Clinic. Storms and Knapschaefer were not parties to the 1993 *Missionaries* case.

87. Accompanied by Plaintiff Breaud and other companions, Plaintiffs Storms and Knapschaefer sometimes engaged in the distribution of pro-life leaflets and singing.
88. These peaceful activities by the Plaintiffs are fully protected by the Constitution; however these Plaintiffs were repeatedly harassed by Defendant Officers Thorne, Racklaw, Deptula and Devereaux, and threatened with arrest for violating the Snipe Advertising Law and disturbing the peace.
89. Fearful of the threatened citation or arrest, Plaintiffs Storms, Knapschaefer, Breaud and their companions have been intimidated and further impeded and chilled in the exercise of their free speech rights, and have at times been effectively driven out of the public forum.
90. On May 6, 2008, Plaintiff Pelkey was engaged in peacefully expressing his religious, pro-life viewpoint on the public sidewalk near the Affiliated Medical Services Clinic. Pelkey was not a party to the 1993 *Missionaries* case.
91. As part of his expression on May 6, 2008, he carried a sign that depicted a drawing of a healthy, ten-week-old, preborn child.
92. Defendant Britton approached Mr. Pelkey and told him that his activity was unlawful, and threatened to arrest him under the Snipe Advertising Law if Mr. Pelkey allowed his sign to even “touch the street or sidewalk.”
93. Mr. Pelkey complied, and kept his sign off the sidewalk, the curb, the gutter, and the street at all times. Nevertheless, Defendant McMillen watched Mr. Pelkey and then arrested, handcuffed and transported him to the city jail, charging him with “disorderly conduct.”

94. In the subsequent criminal proceedings on the matter in Milwaukee Municipal Court, Defendant McMillen filed a report stating, in part, that Mr. Pelkey “was yelling and screaming at people whereby complainant [Affiliated Medical Services Clinic manager, Barbara L. Caravella] could not conduct her business.”
95. Defendant McMillen knew or should have known the report she filed was false because she personally observed Mr. Pelkey's constitutionally protected conduct during this time, and she was aware that the sound of Pelkey’s voice was not disturbing the public peace on the sidewalk nor the conduct of clinic’s business inside or outside of the building.
96. Defendant McMillen used excessive force against Mr. Pelkey in the hand cuffing process, moved him to police booking, and then jailed him.
97. Pelkey was finally released after posting bond in the amount of \$150. He later made three appearances in court, and engaged the undersigned attorney (Mr. Dooley) to move for dismissal.
98. As part of Mr. Pelkey’s defense, his counsel purchased sound testing equipment and moved the Municipal Court for an order allowing sound testing to establish the actual volume levels inside and outside the clinic. Mr. Pelkey’s motion was denied.
99. Thereafter, Mr. Pelkey pleaded innocent, and filed motions for dismissal. They were denied, and Mr. Pelkey insisted upon a trial.
100. On August 28, 2008, Assistant City Attorney Genevieve O'Sullivan Crowley moved the court to dismiss the disorderly conduct charge against Mr. Pelkey without prejudice.
101. When Mr. Pelkey’s counsel urged a dismissal *with* prejudice, the city attorneys refused.

102. Plaintiffs aver the intent and purpose of this refusal was to intimidate Mr. Pelkey and to chill the future exercise of his speech at this location by threatening to recharge him for acts in concert with one of the thirty-eight individuals named in the *Missionaries* Order.
103. During that same period, on May 30, 2008, Plaintiffs Storms, Knapschaefer, Breaud and their companions were engaged in peacefully expressing their religious viewpoint on the sanctity of human life on the public sidewalk near the Affiliated Medical Services Clinic.
104. As part of their expression, they sang Christian hymns, accompanied by a single acoustic guitar, which was played by Mr. Breaud without amplification of any kind.
105. The group was approached and threatened by Defendant Officers Graber and Ferrill, who on that occasion cited Mr. Breaud for disorderly conduct in violation of Section 106.1-1 of the Milwaukee Code of Ordinances.
106. Defendant Graber signed the citation, but knew or should have known the citation he issued was without merit, because he personally observed Mr. Breaud's constitutionally protected conduct during this time, and he was aware that the sound of Breaud's acoustic guitar and the accompanying voices was not disturbing the public peace on the sidewalk nor the conduct of clinic's business inside or outside of the building.
107. On August 28, 2008, after much effort by Mr. Breaud and his attorney, the undersigned Mr. Dooley, to either obtain dismissal or have a trial of the matter, Assistant City Attorney Genevieve O'Sullivan Crowley moved to court to dismiss the disturbing the peace charge without prejudice.
108. When Mr. Breaud requested a dismissal *with* prejudice, the city attorneys refused.
109. Plaintiffs aver the intent and purpose of this refusal was to intimidate Mr. Breaud by threatening to arrest and recharge him at a later date for acts in concert with one of the

thirty-eight individuals named in the *Missionaries Order*, and to chill the future exercise of his speech at this location.

Pattern of Harassment and Discrimination: 2009 Examples

110. On March 25, 2009, Plaintiff Pelkey was engaged in peacefully expressing his religious viewpoint on the sanctity of human life on the public sidewalk near the Planned Parenthood facility at 302 N. Jackson Street in Milwaukee.
111. As part of his expression, he carried a pro-life sign.
112. At one point, while Mr. Pelkey stopped and looked down to answer a call on his cell phone, a woman rushed towards Mr. Pelkey and pushed him backwards over a fire hydrant.
113. Mr. Pelkey's fall caused serious injuries to his head and spine from cervical to lumbar regions, from which he is still suffering.
114. To date, the assailant is known to Plaintiffs only by her first name of "Monica."
115. The assault and battery of Mr. Pelkey was immediately reported and investigated by Defendant Officers Kaine and Mateki, who interviewed four witnesses, including Chris and Dennis Nash, and Francis Dantzmänn.
116. All four witnesses gave consistent reports that prior to the assault Mr. Pelkey had in no way communicated with the assailant, offered her literature, nor even made eye contact with her.
117. Defendants Kaine and Mateki entered the clinic, discovered there was a Planned Parenthood video of the incident, and interviewed "Monica."
118. However, Defendants Kaine and Mateki and their supervisors elected not to view the video or file charges against Mr. Pelkey's assailant.

119. On April 1, 2009, upon her return to the areas outside the clinic, “Monica” stated to Plaintiff Anne Franczek and Mr. Joe Kugelman: “I don’t play when someone makes me mad, the other guy singing, that made me mad too. The police were on my side, they didn’t give me a ticket. They [pointing to the Planned Parenthood building] were on my side too. They knew I was being harassed.”
120. Despite multiple requests, Defendants Kaine and Mateki refused to arrest “Monica.”

Conspiracy to Violate Plaintiffs’ First Amendment Rights

121. At various times relevant herein, certain Defendants, including Defendant Sgt. Ivory Britton, have agreed to the requests of leaders of the Affiliated Medical Services Clinic and the Planned Parenthood facility, and conspired to harass and intimidate the Plaintiffs and to chill their free expression near those locations.
122. While Defendants are responsible for the just enforcement of the Milwaukee Code of Ordinances, they have abused that responsibility to show favoritism and cooperation with the clinic owners and hostility to the Plaintiffs.
123. As a result of this conspiracy, Defendants have aggressively intimidated, arrested and prosecuted Plaintiffs, but turned a blind eye to those who assault and harass the Plaintiffs.
124. Accordingly, by this conspiracy, Defendants deprived Plaintiffs of the equal protection of the laws and of the equal privileges and immunities under the laws, based upon Defendants’ class-based animus and Plaintiffs’ religious beliefs.

Ongoing and Current Threats

125. Fearful of further threats, hostility, citation and arrest by Defendants, the Plaintiffs to this action have each been intimidated, impeded and chilled in the exercise of their free speech rights, and have at times been effectively driven out of the public fora at issue.

126. Other similarly situated persons have been driven from the forum by Defendants as well. For example, after one elderly man was recently arrested and fined for trespass simply because he allegedly extended his head too close to a doorway of the Affiliated Medical Clinic to read the small print on the clinic window posters, the man was so intimidated that he never again returned to the public forum.
127. By their repeated and ongoing acts of intimidation, harassment and discrimination, Defendants have clearly shown a pattern and policy of violations of the Plaintiffs' well-established constitutional rights.
128. The City has never produced a single witness in prosecution of any of the above described cases brought against any of the individual Plaintiffs.
129. Upon information and belief, the City's refusal to dismiss the unfounded charges against Plaintiffs Soderna, Doak, Pelkey, and Breaud *with* prejudice is to serve as another form of intimidation against these individuals and to squelch their free speech.
130. Defendants have repeatedly implied to Plaintiffs that they may be charged as *acting in concert with* some or all of named defendants permanently enjoined from abortion clinic demonstrations in the 1993 *Missionaries* case, even though Defendants know or should know that the Plaintiffs here are not acting in concert with or taking direction in any way from the *Missionaries* case defendants.
131. Plaintiff Soderna, the only plaintiff in the case at bar who was also a defendant in the *Missionaries* case, strictly complies at all times with the specific terms of the *Missionaries* Order, and engages only in individual prayer, alone at all times, in the vicinity of these abortion clinics.

The Ordinances at Issue: Sign Restrictions

132. The ordinances challenged herein are Milwaukee Code of Ordinances Section 244-18.2 (a/k/a “The Snipe Advertising Law”), which is ostensibly applied in conjunction with Chapter 295 (zoning).
133. Milwaukee Code of Ordinances Section 244-18.2 reads as follows (emphasis added):
- “SNIPE ADVERTISING PROHIBITED. It shall be unlawful to place, erect, paint, paste, print, nail, tack, or otherwise fasten or maintain any **snipe advertising** or deface any exterior wall or surface of any building, board, barrel, box, case, railing, pole, post, tree, barricade, material, dock, pile, or structure of any kind with advertising or notice of any kind.”
134. The punishment for “Snipe advertising,” as recorded in Section 244-18.7, is a fine of not less than \$25.00 and not more than \$500.00, together with costs and disbursements of prosecution, and imprisonment for up to thirty days if not paid.
135. The Milwaukee Code of Ordinances does not define the terms “*Snipe*” or “*snipe advertising*.”
136. The Milwaukee Code of Ordinances does not include any guidelines or criteria for citizens or public officials to understand what speech may be considered and prohibited as “snipe advertising.”
137. The Snipe Advertising Law is purportedly applied by Defendants in conjunction with Milwaukee Code of Ordinances Chapter 295, entitled “Zoning.”
138. Milwaukee Code of Ordinances Section 200-08 provides definitions which are generally applicable to the City’s zoning provisions in Chapter 295. Among these, is the definition provided by Section 200-08.84 (attached hereto as Exhibit “C”) for “*Sign*,” which reads in relevant part (emphasis added):
- “SIGN means any structure, device or display that is arranged, intended or designed as an announcement, declaration, demonstration, illustration, indication, symbol, insignia,

banner or emblem **and which is used for advertisement, identification or promotion** when placed so as to be seen from out of doors by the general public. ‘Sign, includes not only display area but also structural supports, uprights, bracing, framework and trim. ...Where used elsewhere in chs. 244 and 295, ‘sign’ includes both on-premise and off-premise signs.’”

139. The Milwaukee Code of Ordinances does not define the terms “*advertisement*,” “*identification*,” or “*promotion*,” and does not include any guidelines or criteria for citizens or public officials to understand what these terms may mean in this context.

140. Milwaukee Code of Ordinances Section 295-201 provides additional definitions which are applicable to the City’s zoning provisions in Chapter 295. Among these, is the definition provided by Section 295-201.589 for “*Political Sign*,” which reads:

“SIGN, POLITICAL means a sign which is intended to advertise support of, or opposition to a candidate for public office or a referendum question, or a sign intended to convey a non-commercial social or political message.”

141. The zoning chapter’s sign regulations (Section 295-407) *specifically allows*—as it must under the federal and state constitutions—the use of “Political Signs” like the ones carried and reasonably utilized by the Plaintiffs in this case.

142. Milwaukee Code of Ordinances Section 295-407.8 (attached hereto as Exhibit “D”) reads, in relevant part, as follows:

“EXCEPTIONS. Notwithstanding any other provisions of this chapter, the following signs are permitted if they meet the standards specified in this subsection:

* * *

d. Political signs, provided that in the case of an election for office or a referendum, such sign is removed within 30 days of the end of the election campaign period, as defined in s. 12.04(1)(a), Wis. Stats.”

143. Because Plaintiffs have at all relevant times herein carried and displayed only signs “intended to convey a non-commercial social or political message” regarding abortion

and the sanctity of human life, their signs were at all times lawful and permissible pursuant to the U.S. Constitution *and* Milwaukee Code of Ordinances Section 295-407.8.

144. Accordingly, Milwaukee Code of Ordinances Section 244-18.2 and Section 200-08.84 are vague and unconstitutional facially, and as applied to the Plaintiffs and other persons.

The Ordinances at Issue: Disorderly Conduct

145. The other ordinance challenged herein is Milwaukee Code of Ordinances Section 106-1.1. (Attached hereto as Exhibit “E.”)

146. Milwaukee Code of Ordinances Section 106-1.1 is entitled “Disorderly Conduct,” and reads as follows (emphasis added):

“PROHIBITED. It shall be unlawful for any person to engage, in a public or private place, in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.”

147. The punishment for “disorderly conduct,” as recorded in Section 106-1.2, is a fine of not more than \$500.00, and imprisonment for up to twenty days if not paid.

148. The Milwaukee Code of Ordinances does not define the term “*violent.*”

149. The Milwaukee Code of Ordinances does not define the term “*abusive.*”

150. The Milwaukee Code of Ordinances does not define the term “*indecent.*”

151. The Milwaukee Code of Ordinances does not define the term “*profane.*”

152. The Milwaukee Code of Ordinances does not define the term “*boisterous.*”

153. The Milwaukee Code of Ordinances does not define the term “*unreasonably loud.*”

154. The Milwaukee Code of Ordinances does not define the term “*otherwise disorderly conduct.*”

155. The Milwaukee Code of Ordinances does not define the term “*disturbance.*”

156. The Milwaukee Code of Ordinances does not include any guidelines or objective criteria for citizens or public officials to understand what particular speech may be considered as “disorderly,” “disturbing,” “unreasonably loud,” etc.
157. Accordingly, Milwaukee Code of Ordinances Section 106-1.1 is vague and unconstitutional facially, and as applied to the Plaintiffs and other persons.

VI. ALLEGATIONS OF LAW

158. Each and all of the acts alleged herein were done by Defendants under the color and pretense of local ordinances, regulations, customs, usages, and policies of the City of Milwaukee.
159. Defendants have enforced the challenged ordinances against the Plaintiffs pursuant to their policies and practices.
160. The decisions to deny Plaintiffs access to these traditional public fora are a direct result of laws, policies, practices, customs, and usages officially adopted and promulgated by the City of Milwaukee and each Defendant.
161. All of the actions of the Defendants were done in violation of clearly established law.
162. Plaintiffs’ speech and religious expression were and are fully protected by the United States Constitution.
163. Concomitantly, denial of access to public fora to engage in protected religious speech is a violation of the First Amendment and the Fourteenth Amendment to the United States Constitution.
164. Unless and until the Defendants’ exclusion of the Plaintiffs from the public sidewalks and easements at issue is enjoined, the Plaintiffs will suffer and continue to suffer irreparable harm to their federal constitutional rights.

VII. FIRST CAUSE OF ACTION:
VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH
UNDER THE UNITED STATES CONSTITUTION

165. The allegations contained in all preceding paragraphs are incorporated herein by reference.
166. Milwaukee Code of Ordinances Sections 244-18.2 and Section 200-08.84 inhibit speech, on their face, and in their application, by prohibiting speech on the public ways in the form of signage and placards bearing non-commercial social, political and/or religious messages.
167. Sections 244-18.2 and Section 200-08.84 allow police officers to prohibit such speech and viewpoints that merely annoy or offend some people, creating an illegal heckler's veto.
168. Sections 244-18.2 and Section 200-08.84 allow police officers unfettered discretion in judging what constitutes "snipe advertising" and/or prohibited "advertisement," "identification" or "promotion."
169. Sections 244-18.2 and Section 200-08.84 provide unconstitutional prior restraints on speech, afford unbridled discretion to police officers, and do not contain procedural safeguards necessary under the Constitution, relevant statutes, and long-standing case law.
170. In application, Defendant Larson arbitrarily applied this provision to Mr. Soderna while he was attempting to engage in protected speech.
171. In application, Defendant Britton arbitrarily applied this provision to Ms. Franczek while she was attempting to engage in protected speech.

172. In application, Defendant McMillen arbitrarily applied this provision to Mr. Pelkey while he was attempting to engage in protected speech.
173. In application, Defendants Thorne, Racklaw, Deptula, and Devereaux arbitrarily applied this provision to Mr. Breaud, Mr. Storms, and Ms Knapschaefer while they were attempting to engage in protected speech.
174. The property on which each of these Plaintiffs expressed their message was public property and a traditional public forum.
175. Defendants silenced each Plaintiff's speech upon threat of citation or arrest, and/or actual citation or arrest, because of the content of each Plaintiff's message.
176. Neither the challenged ordinances nor Defendants' actions served a compelling governmental interest, nor were they narrowly tailored to achieve any such interest.
177. Therefore, Milwaukee Code of Ordinances Sections 244-18.2 and Section 200-08.84 are unconstitutional on their face, and as applied, in violation of the free speech clause of the First Amendment of the United States Constitution.
178. Milwaukee Code of Ordinances Section 106-1.1 inhibits speech, on its face, and in its application, by prohibiting speech on the public ways that would foreseeably "disturb" people through any words or conduct that may be deemed "violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise..."
179. This provision ostensibly allows police officers to prohibit speech that disturbs the public. But as applied, it prohibits speech that merely annoys or offends some people, creating an illegal heckler's veto.

180. This provision supplies police officers with unfettered discretion in judging what constitutes “provoking a disturbance” and what constitutes speech that is “violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly.”
181. Section 106-1.1 provides unconstitutional prior restraints on speech, affords unbridled discretion to police officers, and does not contain procedural safeguards necessary under the Constitution, relevant statutes, and long-standing case law.
182. In application, Defendant McMillen arbitrarily applied this provision to Mr. Pelkey while he was attempting to engage in protected speech.
183. In application, Defendants Graber, Britton, Krumnow, “Jill Doe,” and “John Does,” one through four, arbitrarily applied this provision to Mr. and Mrs. Doak while they were attempting to engage in protected speech.
184. In application, Defendants Thorne, Racklaw, Deptula, and Devereaux arbitrarily applied this provision to Mr. Breaud, Mr. Storms, and Ms Knapschaefer while they were attempting to engage in protected speech.
185. The property on which each of these Plaintiffs expressed their message was public property and a traditional public forum.
186. Defendants silenced each Plaintiff’s speech upon threat of citation or arrest, and/or actual citation or arrest, because of the content of each Plaintiff’s message.
187. Defendants’ threats of arrests, charges of disorderly conduct, and incarcerations as described in this Complaint were and are used as means to silence Plaintiffs’ rights of free speech and assembly.
188. Neither the challenged ordinances nor Defendants’ actions served a compelling governmental interest, nor were they narrowly tailored to achieve any such interest.

189. The Defendants' ordinances and related policies and practices against Plaintiffs' rights of free speech and assembly are unconstitutionally vague and overbroad and have a chilling effect on the exercise of free speech and assembly of the Plaintiffs and others.
190. As a result of the Defendants' past and present refusals to allow Plaintiffs to exercise their free speech and free exercise of religion in traditional public fora, Plaintiffs have suffered personal injury, loss of productive time, embarrassment, and are suffering continuing threat of irreparable harm for which there is no adequate remedy at law.
191. Therefore, Milwaukee Code of Ordinances Section 106-1.1 is unconstitutional on its face, and as applied, in violation of the free speech clause of the First Amendment of the United States Constitution.

VIII. SECOND CAUSE OF ACTION:
VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION
UNDER THE UNITED STATES CONSTITUTION

192. The allegations contained in preceding paragraphs are incorporated herein by reference.
193. Plaintiffs' desire to share their viewpoint on the sanctity of human life is motivated by their sincerely held religious beliefs.
194. The Bible instructs that all people are made in God's image and that each person's life has inestimable value. Plaintiffs believe they have a biblical obligation to advocate on behalf of unborn children who cannot speak for themselves.
195. Plaintiffs sought, and continue to seek, to discuss the life issue from their religious perspective and to engage in religious speech through sharing their views on public property and by holding and carrying signs conveying their religious message.

196. Defendants' ordinances, policies and practices requiring the Plaintiffs to censor and/or silence their religious speech in traditional public fora impose a burden on the Plaintiffs that is not imposed on other individuals.
197. By forcing Plaintiffs to choose between abandoning their religious beliefs in order to gain access to speech in the traditional public fora, or abiding by their religious beliefs only to be arrested and prosecuted, Defendants have imposed a substantial burden on Plaintiffs' sincerely held religious beliefs.
198. Defendants' challenged actions, policies and practices serve no rational or compelling interest.
199. Defendants' ordinances, policies and practices therefore violate the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

IX. THIRD CAUSE OF ACTION:
VIOLATION OF DUE PROCESS AND EQUAL PROTECTION
UNDER THE UNITED STATES CONSTITUTION

200. The allegations contained in all preceding paragraphs are realleged and incorporated herein by reference.
201. Milwaukee Code of Ordinances Sections 106-1.1, 200-08.84, and 244-18.2 are unconstitutionally vague on their face. These ordinance sections contain undefined terms that fail to provide any discernable meaning. As a result, individuals of common intelligence must guess at the meaning and differ as to its application.
202. The terms "disturb," "violent," "abusive," "indecent," "profane," "boisterous," "unreasonably loud," or "otherwise disorderly" are all unconstitutionally vague on their face.

203. The terms “snipe advertising,” and “advertisement,” “identification,” or “promotion” are all unconstitutionally vague on their face.
204. The challenged ordinance sections do not adequately notify persons of what expression is prohibited or of what speech constitutes a crime.
205. Furthermore, Defendants have applied the challenged ordinance sections in an *ad hoc* and arbitrary manner against Plaintiffs and their religious speech by criminalizing speech that they or others considered “unreasonably loud” or “disturbing” or “disorderly” or in some way a “snipe advertisement” or “promotion.”
206. Milwaukee Code of Ordinances Sections 106-1.1, 200-08.84, and 244-18.2 on their face, and as applied, are violative of the due process clause and equal protection clauses of the Fourteenth Amendment to the United States Constitution.
207. Defendants’ policies against Plaintiffs’ press, speech, and assembly rights are unconstitutionally vague, and they neither define sufficiently the standard for governing press, speech, and assembly in the public forum, nor do they protect against arbitrary and discriminatory enforcement.
208. As a result of the Defendants’ policies and actions, Plaintiffs have suffered violations of their Fourteenth Amendment rights and are suffering irreparable harm for which there is no adequate remedy at law.
209. Plaintiffs are entitled to recover damages and equitable relief for the violation of these rights.

X. FOURTH CAUSE OF ACTION:
VIOLATION OF THE PROTECTION AGAINST
UNREASONABLE SEIZURE OF PERSONS UNDER
THE FOURTH AMENDMENT OF UNITED STATES CONSTITUTION

210. The allegations contained in all preceding paragraphs are realleged and incorporated herein by reference.
211. To silence Plaintiffs' rights of free speech and assembly, Defendants intentionally and unreasonably threatened Plaintiffs Soderna, Franczek, Pelkey, and Doak, and intentionally and unreasonably arrested and incarcerated Plaintiff Pelkey.
212. These actions by Defendants violated the rights of Plaintiffs protected by the Fourth Amendment to the United States Constitution.
213. The named defendant police officers and others whose identities are not yet known intentionally acted to embarrass and inflict physical pain on Plaintiff Pelkey.
214. As a result of unlawful arrest and threats, the Plaintiffs suffered other damages including but not limited to physical injury, embarrassment, economic loss, loss of reputation, and mental anguish.
215. Plaintiffs are entitled to recover damages and equitable relief for the violation of these rights.

XI. FIFTH CAUSE OF ACTION:
CONSPIRACY TO DEPRIVE PLAINTIFFS OF EQUAL PROTECTION
UNDER 42 U.S.C. § 1985

216. The allegations contained in all preceding paragraphs are realleged and incorporated herein by reference.
217. Certain Defendants, including Defendant Sgt. Ivory Britton and those under his command, have agreed to the requests of leaders of the Affiliated Medical Services Clinic and the Planned Parenthood facility, and conspired to harass and intimidate the Plaintiffs and to chill their free expression near those locations.

218. As a result of this conspiracy, Defendants have aggressively intimidated, arrested and prosecuted Plaintiffs, but turned a blind eye to those who assault and harass the Plaintiffs.
219. By this conspiracy, Defendants deprived Plaintiffs of the equal protection of the laws and of the equal privileges and immunities under the laws, based upon Defendants' class-based animus and Plaintiffs' religious beliefs.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. That this Court issue a preliminary and permanent injunction requiring the Defendants to permit the Plaintiffs to engage in their proposed speech activities on public sidewalks and easements within the City of Milwaukee, including the traditional public fora in areas nearby abortion clinics;
- B. That this Court issue a preliminary and permanent injunction enjoining the Defendants, their officers, agents, employees, attorneys, and all other persons acting in active concert with them, from enforcing Milwaukee Code of Ordinances Sections 106-1.1, 200-08.84, and 244-18.2, both facially as construed to apply to constitutionally protected speech, and as applied to Plaintiffs' religious speech;
- C. That this Court issue a preliminary and permanent injunction enjoining the Defendants, their officers, agents, employees, attorneys, and all other persons acting in active concert with them, from conspiring together to violate Plaintiffs' rights to equal protection of the laws;

- D. That this Court issue a declaratory judgment declaring Milwaukee Code of Ordinances Sections 106-1.1, 200-08.84, and 244-18.2 unconstitutional both on their face and as applied to Plaintiffs' religious speech;
- E. That this Court enter an order requiring Defendant City of Milwaukee's municipal attorney to expunge from the Plaintiffs' records all charges filed against them under Milwaukee Code of Ordinances Sections 106-1.1, 200-08.84, and 244-18.2, and requiring Defendant City of Milwaukee to file written proofs of said expungements;
- F. That this Court issue an order requiring Defendants to provide qualified training and instruction regarding the proper policing of speech demonstrations and events to the Defendant officers and others who may be hereafter assigned to duty at any abortion clinic in the City of Milwaukee;
- G. That this Court issue an order requiring Defendants to provide qualified training and instruction regarding the constitutional rights of civil rights advocates, and the proper policing of speech demonstrations and events, to the Defendant officers and others who may be hereafter assigned to duty at any abortion clinic in the City of Milwaukee;
- H. That this Court award Plaintiffs nominal and compensatory damages against Defendants for damages arising from their acts and for their willful and deliberate violation of Plaintiffs' clearly established constitutional rights;
- I. That this Court award Plaintiffs their costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988, and other law;
- J. That this Court grant other and further relief as this Court deems equitable and just; and
- K. That this Court retain jurisdiction as necessary to enforce the Court's orders.

Respectfully submitted this ___ day of October, 2009.

ATTORNEYS FOR PLAINTIFFS

/s/ J. Michael Johnson

J. Michael Johnson

Lead Counsel

ALLIANCE DEFENSE FUND

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