

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

FILED
 DISTRICT COURT
 DISTRICT OF MARYLAND
 2008 OCT 23 A 10 0
 BY _____

ELIZABETH WALSH and	:	
DEFEND LIFE, INC.,	:	Case No.
	:	
Plaintiffs,	:	Judge:
	:	
-vs-	:	
	:	
CITY OF WESTMINSTER, MARYLAND,	:	
	:	
Defendant.	:	

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

Now come the Plaintiffs, by and through counsel, and for their Verified Complaint against Defendant, state as follows:

INTRODUCTION

1. This action arises from Defendant's requirement that Plaintiffs obtain a permit prior to being able to peacefully assemble and demonstrate on public property in the City of Westminster. On or near June 13, 2008, Plaintiffs contacted Defendant to ensure that their pro-life demonstration, planned for July 30th on the public sidewalks near the corner of Highway 140 and Englar Road in the City of Westminster, would not be in violation of any laws. This planned demonstration was part of Plaintiffs' "Face the Truth" tour, a week-long annual pro-life demonstration at various locations around the state. Defendant informed Plaintiffs that they could not demonstrate at that location without a permit from the city, a permit from the Maryland State Highway Administration, and permission from the owner of a nearby shopping center. By

itself, this litany of requirements chilled Plaintiffs' speech. However, Defendant also contacted Plaintiff Beth Walsh on July 25th and reiterated that no demonstrations could occur within Westminster city limits without a permit. As result of Defendant's actions, Plaintiffs were forced to abandon their plan to demonstrate on the corner of Highway 140 and Englar Road for two hours on July 30, 2008, and instead had to carry on their demonstration at a much less preferable location. Defendant's requirement to obtain a permit prior to peaceful assembly and protest on public property 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 damages arising out of Defendant's unconstitutional policies and actions. Unless this Court issues immediate equitable relief, Defendant will continue squelching the core First Amendment right to peacefully demonstrate in a traditional public forum.

PARTIES

2. Plaintiff Defend Life, Inc. appears herein on behalf of its approximately 26 affiliated volunteers who were denied the freedom of speech in the City of Westminster 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 Elizabeth ("Beth") Walsh was the Director of Defend Life's "Face the Truth" 2008 tour. She is a resident of Baltimore County, in Owings Mills, Maryland, and helps lead Defend Life in its efforts to promote a pro-life message in communities throughout Maryland, Washington D.C., and Northern Virginia.

4. Defendant City of Westminster, Carroll County, Maryland, is a political subdivision of the State of Maryland.

JURISDICTION AND VENUE

5. 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.

6. 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

7. The intersection of Highway 140 and Englar Road is located in the city of Westminster and is travelled by substantial vehicle traffic.

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

9. The streets are bordered by ample and wide pedestrian rights of way, including sidewalks and grassy areas, and the intersection is ringed by shopping centers and businesses.

10. The Plaintiffs chose the public sidewalks on this intersection to promote their pro-life message in the City of Westminster.

11. Plaintiffs, and their volunteers, in an effort to communicate a pro-life message, 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.

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

13. Plaintiffs carry out such activities at various times throughout the year, and also for the annual week-long "Face the Truth" tour during the summer.

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

15. On or near June 13, 2008, Defendants told Plaintiffs that they could not demonstrate at the intersection of Highway 140 and Englar Road without first obtaining a permit from both the Defendants and from the State Highway Administration, and obtaining permission from the nearby shopping center owner.

16. To avoid the hassle and complications of these various permit requirements, and because such efforts would have proven fruitless, Plaintiffs decided to relocate the main part of the demonstration to the nearby intersection of Highway 140 and Sullivan Rd, facing only the westbound traffic.

17. On the morning of July 25th of 2008, five days before the planned protest, Defendant contacted Plaintiffs, by and through the Westminster Police Commander of Field Services, Captain Nancy Yeager.

18. Captain Yeager told Plaintiff Beth Walsh that any demonstrations inside Westminster city limits, if on Maryland State Highway 140, must have a permit from Defendant and from the State Highway Administration.

19. Captain Yeager further stated that, even if Plaintiffs applied for a permit to demonstrate on the grassy area at the corner of Highway 140 and Sullivan Rd, she had control over whether permits were granted and would not approve Plaintiffs proposed location because it was "unsafe."

20. When asked to identify the city ordinance which required such a permit and granted Captain Yeager such broad discretion in approving or denying applications for permits, Captain Yeager said she could not because she was not on duty and did not have the information with her.

21. When pressed for specifics, Captain Yeager refused to offer any, repeating that she was off duty.

22. Captain Yeager stated that the Westminster police would enforce the unnamed ordinance and require Plaintiffs to disperse if they attempted to exercise their First Amendment rights within Westminster city limits.

23. Carroll County Police Major Tom Long called Plaintiffs, at the request of the Defendants, and affirmed that a permit from the State Highway Administration was required, if the demonstration was held on Highway 140.

24. After a lengthy and time consuming process of consulting legal counsel, the State Highway Administration, and Carroll County, Plaintiffs discovered that, in fact, there was no permit required, nor had one ever been required, by the State Highway Administration to

demonstrate on public roads like those near the intersection of Highway 140 and Englar Road, or the intersection of Highway 140 and Sullivan Rd.

25. Nonetheless, due to Defendant's permit requirement and stated refusal to grant a permit even if requested, Plaintiffs were forced to choose a location outside city limits, at the intersection of Highway 140 and Sullivan Road, facing westbound traffic. This location provided significantly less visibility to traffic and did not have nearly so many nearby businesses.

26. While six members of the "Face the Truth" tour, including Plaintiff Beth Walsh, did ultimately demonstrate within Westminster briefly, at the corner of Highway 140 and Englar Street, it was under fear of prosecution and heavily abbreviated.

The Relevant Ordinances

27. Defendant referenced Westminster ordinances and state law as the source of its authority to require Plaintiffs to obtain a permit to peacefully demonstrate on public property.

28. The State Highway Administration has confirmed, upon inquiry of counsel, that there is no state law requiring such a permit.

29. Accordingly, the only relevant authority is the Defendant's own ordinances.

30. Defendant did not specify which ordinance necessitates obtaining a permit before exercising First Amendment rights on public property.

31. Only two ordinances appear to possibly apply in this situation.

32. The first is Westminster's permit requirement for picketing, § 109-1.

33. Section 109-1 bans any picketing within city limits, whether on public property or on or near private businesses, unless the picketer first obtains a permit from the Mayor.

34. The ordinance does not define "picketing."

35. However, the ordinance does seem to mean more than mere labor disputes, as § 109-2 distinguishes between picketing for a labor dispute or a strike and “protest or controversy” picketing. Further, Westminster has applied aspects of the picketing regulation to Plaintiff Defend Life in the past. Thus, it appears that Westminster construes “picketing” to mean public demonstrations or protests.

36. The plain language of § 109-1 only allows picketing, even with a permit, in front of “theaters, restaurants, stores, factories or other places of business.” Thus, even with a permit, § 109-1 does not plainly appear to allow picketing on public property.

37. Section 109-2, which outlines the procedure for obtaining a permit, does seem to clarify § 109-1 by saying that a permit will allow picketing at “any place.” However, it also requires that the protestor seek a permit ten business days before engaging in peaceful protest, that the protestor must reveal his name and address to city government, and that the protestor must disclose “the subject of the protest or controversy.”

38. Even upon obtaining individual permits, § 109-4 only allows up to six protestors at a time near entrances and exits of buildings.

39. Only one protestor at a time can stand in front of retail establishments. § 109-4(B)

40. Section 109-5 restricts the actions of protestors, only allowing them to carry signs 2 feet in width and 3 feet in height and restricting the contents of the signs to things which will not “tend[] to any breach of the peace.” This requirement has been applied to Plaintiff Defend Life in the past, forcing Plaintiff Defend Life, by and through its volunteers, to use smaller signs to communicate their message.

41. Section 109-5 also requires that protestors constantly “pace to and fro” within a narrow strip of the sidewalk near the curb.

42. Section 109-6 allows permits to be revoked "at any time" by the Mayor for such offenses as "interference in any manner with any person using the area picketed for lawful purpose" or conduct "tending tending to a breach of the public peace."

43. The second ordinance which could apply in this situation is § 109-8, the Parade and Demonstration ordinances.

44. Demonstrations of more than 25 persons within Westminster are prohibited, explicitly including demonstrations on public sidewalks, streets, and any other public places, unless Defendant has first granted a permit. § 109-8

45. Section 109-9 allows exceptions to the permit requirement for parades or demonstrations organized by the U.S. military, any state or governmental organizations, or funeral processions.

46. Section 109-10 outlines stringent standards for granting a permit, including:

- a. Application for a permit must be filed two days before a demonstration, with an exception for exigent circumstances that require less than a 24 hour response time.
- b. The date, time, duration, place, and purpose of the demonstration must be revealed.
- c. The names and addresses of both sponsors and leaders of the demonstration must be disclosed.
- d. Any other information which the City Clerk deems "reasonably necessary" can be required.

47. Section 109-11(11) allows the City Clerk to specify limits on the sizes of signs held by demonstrators. Section 109-11(16) allows the City Clerk to require anything else he

deems "reasonably necessary for the protection of persons or property" of the demonstrators as a condition in the permit.

48. While the City Clerk is not allowed to engage in viewpoint discrimination in making his requirements, pursuant to § 109-11, he can condition or a restrict demonstration activity in any manner he "may consider necessary" consistent with "good government and the health and welfare of the City and its inhabitants and for the preservation of law and order and acceptable traffic conditions." § 109-13(A).

Plaintiffs' chilled speech

49. Plaintiffs desire to return to the sidewalks and pedestrian areas at the intersection of Highway 140 and Englar Road and to other sidewalks in the City of Westminster in the future, to hold signs that communicate their pro-life messages.

50. However, because of Defendant's speech-suppressing policies described herein, Plaintiffs are faced with police action from Defendant if they engage in such speech.

51. 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**

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

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

54. The city ordinances and actions that restrict peaceful public demonstrations within city limits are unconstitutional, facially and as applied to Plaintiffs, under the First and Fourteenth Amendments of the United States Constitutions, because they effectively acted as a ban on core political and social speech in traditional public fora, and for the particular reasons discussed below.

55. Defendant's 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.

56. Defendant's policies and actions against Plaintiffs' speech are unconstitutional prior restraints on speech and afford nearly unbridled enforcement discretion to county officials.

57. Defendant's 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.

58. As a result of the Defendant's 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.

59. As a legal consequence of Defendant's violation of Plaintiffs' First and Fourteenth Amendment rights, as alleged above, Plaintiffs are entitled to recover damages.

**SECOND CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
DUE PROCESS (VAGUENESS)**

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

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

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

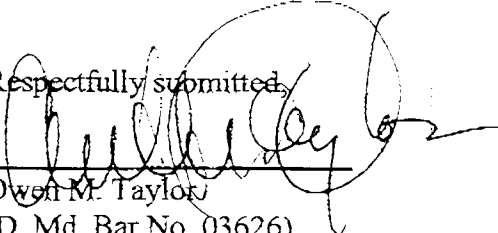
63. As a legal consequence of Defendant's violation of Plaintiffs' Fourteenth Amendment rights, as alleged above, Plaintiffs are entitled to recover damages.

WHEREFORE, Plaintiffs pray for judgment against Defendant 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 Defendant's 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 Defendant from enforcing the unconstitutional policies against Plaintiffs and award damages, nominal and/or compensatory, to Plaintiffs;
- D. Grant Plaintiffs' damages;
- E. 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

F. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,



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 *Pending *pro hac vice* admission.

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 1 day of October, 2008.



Beth Walsh