

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CITIES4LIFE, INC., a/k/a)
CITIES4LIFE CHARLOTTE, and)
DANIEL PARKS,)

Plaintiffs,)

v.)

COMPLAINT AND
JURY DEMAND

CITY OF CHARLOTTE;)

JENNIFER ROBERTS, in her official)
capacity as Mayor of Charlotte;)

MARCUS D. JONES, in his official)
capacity as City Manager of Charlotte;)

Case No. 3:17-cv-670

CITY OF CHARLOTTE)

DEPARTMENT OF HOUSING AND)
NEIGHBORHOOD SERVICES;)

CITY OF CHARLOTTE DIVISION OF)
CODE ENFORCEMENT;)

BEN KRISE, individually and)
in his official capacity as the City of)

Charlotte Code Enforcement Division)
Manager; MANDY EDWARDS,)

individually and in her official capacity)
as a City of Charlotte Code Enforcement)

Inspector; MARK FOWLER, individually)
and in his official capacity as a City of)

Charlotte Code Enforcement Inspector;)
KIMBERLY T. SAUER, individually)

and in her official capacity as a City of)
Charlotte N&BS Area Supervisor; and)

JANE DOES NOS. 1-3, individually and)
in their official capacities as City of)

Charlotte employees,)

Defendants.)

_____)

Plaintiffs Cities4Life, Inc., and Daniel Parks (collectively, “Plaintiffs”) hereby bring this civil rights action against the defendants named above (collectively, “Defendants”) and allege upon information and belief as follows:

INTRODUCTION

1. In his opinion for the Court in *Police Department of Chicago v. Mosley*, Justice Thurgood Marshall wrote that “above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” 408 U.S. 92, 95 (1972).

2. Contrary to this venerable principle of constitutional law articulated by Justice Marshall in *Mosley*, the Defendants in this case—specifically, the City of Charlotte, its Mayor, and its employees—have used the City Code to violate the First Amendment by restricting Plaintiffs’ use of signs, and therefore their speech, because they object to the content of those signs.

3. Thus, despite their desire to exercise their constitutional rights and speak freely, Plaintiffs have encountered unconstitutional censorship, intimidation, and harassment from Defendants.

4. In seeking to silence free speech, Defendants have violated Plaintiffs’ rights under the First Amendment to the United States Constitution, the Due Process and Equal Protection Clauses of the

Fourteenth Amendment to the United States Constitution, and Sections 1, 14, and 19 of Article I of the North Carolina Constitution.

5. Accordingly, Plaintiffs bring this civil rights action pursuant to the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and the North Carolina Constitution to challenge the constitutionality of Charlotte City Ordinance § 10-212 (hereinafter “City Code § 10-212”), which suppresses and forbids free speech based on its content.

6. The United States Supreme Court has long recognized that public fora have immemorially been held in trust for public use for the purpose of expressing beliefs, communicating thoughts between citizens, and discussing public questions. The Supreme Court has likewise emphasized that public land is the natural and proper place for the dissemination of information and opinion and that a person cannot have his right to free speech in appropriate places abridged simply because that right to speak can be exercised in some other place or because a private entity wants to silence his speech. Public property in the City of Charlotte, North Carolina, is no exception.

7. Defendants, through their enforcement of City Code § 10-212, prohibit speakers from resting their signs on the ground while they are assembled outside of abortion facilities and thereby restrict Plaintiffs’ right to

free speech on significant portions of land. This restriction does not apply to many other types of signs whose content is different from those used by Plaintiffs. Defendants thus unconstitutionally restrict Plaintiffs' rights because of the pro-life messages their signs convey.

8. City Code § 10-212 has further been interpreted and enforced by Defendants so as to arbitrarily forbid and silence speech with which they or others disagree.

9. City Code § 10-212 thereby chills and deprives Plaintiffs of their right to engage in expressive activities guaranteed by the First and Fourteenth Amendments to the United States Constitution and the North Carolina Constitution.

10. Plaintiffs here seek a declaration that Defendants have violated their clearly established constitutional rights as set forth in this complaint; a declaration that City Code § 10-212 violates the United States Constitution, 42 U.S.C. § 1983, and the North Carolina Constitution; a declaration that, through the enforcement and attempted enforcement of City Code § 10-212, Defendants have substantially burdened and unlawfully infringed upon Plaintiffs' rights to free speech, due process, and equal protection in violation of the United States Constitution, 42 U.S.C. § 1983, and the North Carolina Constitution; preliminary and permanent injunctions enjoining the enforcement of City Code § 10-212; and nominal and compensatory damages

for the harm caused by Defendants. Plaintiffs also seek an award of reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law as well as prejudgment and post-judgment interest.

JURISDICTION AND VENUE

11. This Court has federal question jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983. The Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

12. Plaintiffs' state law claims are properly before this Court pursuant to 28 U.S.C. § 1367(a) because they are so related to the claims in the action that are within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

13. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the inherent legal and equitable powers of this Court.

14. Venue is properly laid in the United States District Court for the Western District of North Carolina pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because it is a judicial district in which a defendant resides as well as a

judicial district in which a substantial part of the events or omissions giving rise to these claims occurred.

15. Any and all conditions precedent the bringing of this suit have been satisfied, and Plaintiffs' claims are ripe for review and decision.

16. Additionally, Defendants' prior unconstitutional actions, as described by this complaint, are likely to be repeated through future enforcement of City Code § 10-212 against Plaintiffs and other similarly situated persons and entities.

THE PARTIES

17. Plaintiff Cities4Life, Inc., is a corporation organized under North Carolina law with its principal place of business located in Concord, Cabarrus County, North Carolina. When operating in the Charlotte area, Cities4Life, Inc., is regularly referred to as Cities4Life Charlotte (hereinafter, "Cities4Life"). Cities4Life is a faith-based organization that seeks to engage, strengthen, and support local churches and Christians to proclaim, protect, and provide life for unborn babies in each city across the United States where abortion exists.

18. Cities4Life is an entity capable of bringing a lawsuit, including the instant action.

19. Cities4Life has standing to bring claims on behalf of its members, including its volunteers, under the principles of third party and

organizational standing. Specifically, its members, including its volunteers, would otherwise have standing to sue in their own right, the interests Cities4Life seeks to protect are germane to the organization's purpose, and neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

20. Plaintiff Daniel Parks is natural person and a citizen and resident of Mecklenburg County, North Carolina, who serves as Executive Director of Cities4Life.

21. Defendant City of Charlotte is a municipal corporation organized under North Carolina law and located within Mecklenburg County, North Carolina. It is an entity capable of being sued.

22. The City of Charlotte and its officials are responsible for enforcing the ordinances of the City of Charlotte, including the ordinances at issue in this case.

23. City Code § 10-212 and its enforcement are the moving forces behind the actions that deprived and are depriving Plaintiffs of their fundamental constitutional rights as set forth in this complaint.

24. The City of Charlotte and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs of the City,

including the policies, practices, and procedures of its Code Enforcement personnel as set forth in this complaint.

25. The City of Charlotte and its officials are also responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs that deprived and are depriving Plaintiffs of their fundamental rights. These rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs are the moving force behind actions that deprived and are depriving Plaintiffs of their fundamental constitutional rights as set forth in this complaint.

26. At all relevant times, the City of Charlotte trained, supervised, and employed its Code Enforcement personnel, including Defendants Krise, Edwards, Fowler, Sauer, and Jane Does Nos. 1-3. The acts, policies, practices, customs, and/or procedures of the City of Charlotte and its Code Enforcement personnel are the moving force behind the constitutional violations set forth in this complaint. The deficient training and supervision of these employees, done with deliberate indifference to its known and obvious consequences, was also a moving force behind the actions that deprived and are depriving Plaintiffs of their fundamental constitutional rights as set forth in this complaint.

27. The City of Charlotte approved of and ratified the acts, policies, practices, customs, and/or procedures of its Code Enforcement Division and personnel, including Defendants Krise, Edwards, Fowler, Sauer, and Jane Does Nos. 1-3, that deprived and are depriving Plaintiffs of their fundamental constitutional rights as set forth in this complaint.

28. Defendant Jennifer Roberts is a citizen and resident of Mecklenburg County, North Carolina, and, though recently defeated for reelection, currently serves as Mayor of Charlotte, North Carolina. Additionally, she was Mayor of Charlotte at the time of the actions alleged in this complaint. As Mayor, she is the City of Charlotte's chief executive official and is responsible for setting City policy and for the enforcement and interpretation of the City's ordinances. She is sued in her official capacity only.

29. Upon assuming the office of mayor, Mayor-Elect Vi Lyles will be automatically substituted for Former Mayor Roberts pursuant to Federal Rule of Civil Procedure 25(d).

30. Defendant Marcus D. Jones is, upon information and belief, a citizen and resident of Mecklenburg County, North Carolina, and currently serves as the City Manager of the City of Charlotte. Additionally, he was City Manager at the time of the actions alleged in this complaint. As City Manager, he is a senior executive official of the City of Charlotte and is

responsible for setting City policy and for the enforcement and interpretation of the City's ordinances. He is sued in his official capacity only.

31. Defendant City of Charlotte Department of Housing and Neighborhood Services is an administrative department of the City of Charlotte. Through its Code Enforcement Division, it is responsible for interpreting and enforcing certain municipal ordinances, including the ordinances at issue in this case. It is an entity capable of being sued.

32. Defendant City of Charlotte Division of Code Enforcement is a division of the City of Charlotte's Department of Housing and Neighborhood Services. It is responsible for interpreting and enforcing certain municipal ordinances, including the ordinances at issue in this case. It is an entity capable of being sued.

33. Defendant Ben Krise is, upon information and belief, a citizen and resident of North Carolina and serves as the Code Enforcement Division Manager for the City of Charlotte. In his position, Defendant Krise is responsible for interpreting and enforcing certain municipal ordinances, including the ordinances at issue in this case. He was personally involved in the constitutional deprivations described herein, and he is sued in both his individual and official capacities.

34. Defendant Mandy Edwards is, upon information and belief, a citizen and resident of North Carolina and serves as a Code Inspector in the

City of Charlotte's Division of Code Enforcement. She was personally involved in the constitutional deprivations described herein, and she is sued in both her individual and official capacities.

35. Defendant Mark Fowler is, upon information and belief, a citizen and resident of North Carolina and serves as a Code Inspector in the City of Charlotte's Division of Code Enforcement. He was personally involved in the constitutional deprivations described herein, and he is sued in both his individual and official capacities.

36. Defendant Kimberly T. Sauer is, upon information and belief, a citizen and resident of North Carolina and serves in the City of Charlotte's Division of Code Enforcement as an N&BS Area Supervisor. She was personally involved in the constitutional deprivations described herein, and she is sued in both her individual and official capacities.

37. Defendants Jane Doe Nos. 1-3 are each City of Charlotte employees who, at the times relevant to this complaint, worked in or with the City's Division of Code Enforcement. They were each personally involved in the constitutional deprivations described herein, and each is sued in her individual and official capacities.

38. At all times relevant to this complaint, each of the Defendants was acting under color of state law.

39. Each of the Defendants is subject to suit under 42 U.S.C. § 1983 as well as North Carolina law.

40. None of the Defendants enjoys any lawful immunity from suit for the actions described in this complaint.

FACTS

Cities4Life Seeks to Assemble Peacefully and Help Abortion-Minded Women through the Love of Jesus Christ

41. Daniel Parks is a Christian. He serves as Executive Director of Cities4Life.

42. Cities4Life is a faith-based pro-life ministry with chapters in several cities, including Nashville, Tennessee; Tampa Bay, Florida; Lexington, Kentucky; and Charlotte, North Carolina.

43. Cities4Life is headquartered in the Charlotte metropolitan area—specifically Concord, North Carolina.

44. Cities4Life seeks to unite and support grassroots, Gospel-centered ministries, families, and individuals dedicated to proclaiming the love of Jesus Christ.

45. Cities4Life believes in encouraging gentle Christians to actively live out their faith at local abortion clinics. Its approach is peaceful, prayerful, and non-violent as it seeks to demonstrate the love of Jesus Christ.

46. Cities4Life is not a protest group. It is also not primarily a pro-life fundraising group or political lobby.

47. Instead, Cities4Life provides tangible support to abortion-minded mothers at abortion clinics. In so doing, it seeks to bring real life support by lovingly stepping into the lives of any mother contemplating an abortion with tangible support.

48. More specifically, Cities4Life regularly assembles volunteers and counselors outside of abortion facilities. They represent the love and mercy of God and seek to support those who are proclaiming the Gospel and speaking the Truth in love to mothers, their friends and families, and abortion clinic personnel.

49. Cities4Life volunteers hand out information to women going into abortion clinics to ensure that they are aware of both the alternatives to abortion and the means by which they can obtain tangible help in their difficult situation. Volunteers also pray for any specific immediate needs they encounter in front of abortion centers.

50. A vital aspect of this work involves the use of signs or placards that are large enough to be seen, read, and understood by persons who are entering abortion facilities, which are often some distance away from the locations in which Cities4Life's volunteers are assembled.

51. Cities4Life requires each volunteer to sign and adhere to a code of conduct that regulates the behavior of volunteers when assembled and counseling outside of an abortion facility.

52. Requirements of the Cities4Life code of conduct include the following:

- Participants must be peaceful, prayerful, and non-violent.
- Participants must be willing to follow the instructions of Cities4Life's leadership.
- Only one designated counselor at a time may speak to anyone entering or exiting an abortion facility.
- Participants must not be argumentative with patients, clinic personnel, police officers, or others.

53. Cities4Life's volunteers are diverse and come from all races, ethnicities, and socio-economic backgrounds.

54. Plaintiff Daniel Parks has been Executive Director of Cities4Life at all times relevant to this complaint.

55. Mr. Parks has been leading ministry teams on the sidewalks of Charlotte's busiest abortion facility (known as "A Preferred Women's Health of Charlotte") (hereinafter "Abortion Clinic") for over a decade.

*Charlotte City Code § 10-212 and
Anti-Christian Animus in City Government*

56. In many parts of the United States, there have been concerted efforts by state and local governments to silence pro-life voices, especially those based in the Gospel, and to promote the abortion industry at the expense of First Amendment rights.

57. The purpose of these efforts is to deprive women of information regarding the personhood and humanity of their unborn child as well as the fact that there are countless resources available to support pregnant women who choose to carry their child until birth. Cities4Life seeks to equip women with precisely this type of information.

58. The information Cities4Life seeks to provide is protected by the First Amendment to the United States Constitution, as applied to the states and their political subdivisions by the Fourteenth Amendment, and by the North Carolina Constitution.

59. Emblematic of the efforts to suppress constitutionally protected speech are the recent deliberations of the Charlotte City Council concerning Cities4Life's work.

60. Since at least early 2017, members of the Charlotte City Council have been working with pro-abortion groups to develop ways to interfere with and curtail Cities4Life's ministry and free speech.

61. One such proposal designed to target Cities4Life was a ban on parking on the street outside of the Abortion Clinic. Though this proposal has not yet been enacted, the idea is still under active consideration by members of the City Council.

62. After receiving pressure from pro-abortion activists, the City of Charlotte also recently changed its process for issuing sound permits so as to

reduce the chances such a permit will be issued to Cities4Life or similar pro-life religious groups.

63. On August 14, 2017, Defendant Mayor Roberts even posted an inflammatory statement on Facebook falsely alleging that Cities4Life and similar pro-life religious groups have made “an entire city street unsafe day after day, month after month” and intimating that these groups would receive increased scrutiny from Charlotte police and others.

64. Consistent with the sentiment expressed by Defendant Roberts in her Facebook post, Defendants have sought recourse to interpreting existing ordinances in novel and arbitrary ways so as to restrict Cities4Life’s ministry and free speech.

65. City Code § 10-212 is a provision intended to prevent the installation of permanent or semi-permanent signs and flyers in the public right of way.

66. Plaintiffs do not use permanent or semi-permanent signs and flyers during their work outside of abortion facilities.

67. To the contrary, Cities4Life uses signs or placards that are generally held by volunteers. Even when its signs or placards are leaned against something like a vehicle, they are not affixed to the ground or any structure (like a utility pole) in the public right of away, and they are promptly removed once Cities4Life’s activities for the day are concluded.

68. Despite the fact that Plaintiffs' conduct does not fall within the scope of City Code § 10-212, Defendants have issued at least four citations to Mr. Parks on the basis of this ordinance.

69. Nevertheless, City Code § 10-212 is unconstitutional on its face because it constitutes content-based discrimination that cannot satisfy strict scrutiny.

70. Though the first section of City Code § 10-212 purports to state that a person may not “attach, place, paint, write, stamp or paste” materials “within 11 feet of the edge of the pavement of any road, roadway, street, or alley, or within any public rights-of-way,” the latter section of the ordinance is replete with content-based exceptions to this rule.

71. And these exceptions cover not merely signs erected by a governmental or quasi-governmental entity. For example, any person may install “[w]arning signs and no trespassing signs, . . . [s]igns indicating bus stops, taxi stands and similar transportation facilities, . . . [and] [s]igns not exceeding four square feet in area giving information concerning the location or use of accessory off-street parking facilities or loading and unloading facilities.” It is even permissible to erect “a plaque, plate, statue, or monument” so long as the City of Charlotte approves.

72. As such, City Code § 10-212 regulates signage and thus speech based on its content.

*The City of Charlotte Violates Plaintiffs'
Constitutional Rights on June 29, 2017*

73. Cities4Life has been conducting its sidewalk ministry outside of the Abortion Clinic on Latrobe Drive in Charlotte for over a decade.

74. Even though its methods of speaking have remained largely unchanged for many years, Cities4Life has only recently been the subject of enforcement actions by government officials contending that their conduct is inconsistent with any law.

75. On June 29, 2017, Plaintiffs were peacefully engaged in their activities in the vicinity of the Abortion Clinic at 3220 Latrobe Drive in Charlotte.

76. Defendants Krise and Fowler then arrived and confiscated a canopy belonging to Cities4Life after, upon information and belief, individuals operating the Abortion Clinic called the City to complain.

77. The canopy was not blocking any right of way, and passersby could freely walk underneath the canopy.

78. The canopy was also not affixed permanently or semi-permanently.

79. Accordingly, Cities4Life's use of the canopy was not violating any city ordinance.

80. The City of Charlotte destroyed the canopy shortly after its confiscation.

*The City of Charlotte Violates Plaintiffs'
Constitutional Rights on July 5, 2017*

81. On July 5, 2017, Plaintiffs were again peacefully engaged in their activities in the vicinity of the Abortion Clinic at 3220 Latrobe Drive in Charlotte.

82. At this time, officials of the City of Charlotte's Code Enforcement Division approached and began issuing citations for violation of City Code § 10-212, even though the placards were not in violation of that ordinance.

83. Present on this occasion were Defendants Edwards, Sauer, and Jane Doe No. 1, each of whom participated in and approved of the deprivation of Plaintiffs' constitutional rights.

84. Two citations were issued to Mr. Parks on July 5, 2017, for allegedly violating City Code § 10-212. Both citations were signed by Defendant Edwards.

85. Defendant Sauer explained that one of the citations was being issued because a placard was resting on an individual's shoes without her feet actually being inside her shoes.

86. At this time, City officials also seized placards belonging to Cities4Life and soon thereafter destroyed them.

*The City of Charlotte Violates Plaintiffs'
Constitutional Rights on July 11, 2017*

87. On July 11, 2017, Plaintiffs were again peacefully engaged in their activities in the vicinity of the Abortion Clinic at 3220 Latrobe Drive in Charlotte.

88. Officials from the City of Charlotte's Code Enforcement Division came to the scene and seized two placards that were leaning against a vehicle without any notice.

89. The seized placards were destroyed by the City of Charlotte shortly thereafter.

90. Notably, during this visit, Code Enforcement officials declined to take a sign being used by one volunteer once the volunteer sat on the sign. Code Enforcement officials stated that, since it was no longer being "displayed," there was no violation of any ordinance.

91. Present on this occasion were Defendants Fowler, Sauer, and Jane Doe No. 2, each of whom participated in and approved of the deprivation of Plaintiffs' constitutional rights

92. Upon information and belief, each time officials from the City's Code Enforcement Division responded to harass Plaintiffs in the vicinity of Latrobe Drive, it was in response to complaints made by the Abortion Clinic.

Other Instances of Constitutional Violations

93. On or about August 8, 2017, City of Charlotte Code Enforcement officials seized and later destroyed a placard belonging to an individual associated with Cities4Life while he was engaged in lawful activity in the vicinity of an abortion facility located on Hebron Street in Charlotte.

94. Similarly, on or about August 18, 2017, at the same location, the same individual had two placards seized and destroyed by officials from the City's Code Enforcement Division.

95. Upon information and belief, these City officials were responding to calls made by the owners or operators of the abortion clinic on Hebron Street.

96. On September 16, 2017, both pro-abortion and pro-life groups were present in the area of the Latrobe Drive Abortion Clinic because pro-life groups were scheduled to conduct a prayer march that morning.

97. When the pro-life marchers arrived, they discovered that pro-abortion demonstrators had taped flyers and left signs along the road and right of way. These pro-abortion demonstrators had also placed tables with condoms on them in the middle of the parade route.

98. At approximately 11:30 am, the pro-abortion demonstrators put away their signs. Shortly thereafter, City officials arrived to issue citations to the pro-life volunteers.

99. One officer present from the Code Enforcement Division threatened to give citations for placards that were leaning against a stand. An individual went over to pick up the placards immediately. Upon information and belief, the individual was then issued a citation.

100. Upon information and belief, not a single pro-abortion protestor was reprimanded or cited for their signs or flyers, even though their affixed signs and flyers clearly fell within the scope of the prohibitions set out in City Code § 10-212.

*The City of Charlotte Again Violates Plaintiffs'
Constitutional Rights on October 5, 2017*

101. On October 5, 2017, Plaintiffs were again peacefully engaged in their activities on public property in the vicinity of the Abortion Clinic at 3220 Latrobe Drive in Charlotte.

102. Present on this occasion were Defendants Krise and Jane Doe No. 3, each of whom participated in and approved of the deprivation of Plaintiffs' constitutional rights.

103. Upon information and belief, the Abortion Clinic complained to the City, which dispatched officials from its Code Enforcement Division.

104. At this time, Mr. Parks received two more citations for allegedly violating City Code § 10-212.

Necessity for Judicial Intervention

105. Defendants' enforcement of City Code § 10-212 severely burdens Plaintiffs' ability to win the attention of passersby and, consequently, from reaching the minds of their intended audience—abortion vulnerable women and abortion providers.

106. Without the ability to communicate using large signs and placards, Plaintiffs' speech and message are effectively suppressed and silenced.

107. Defendants' enforcement of City Code § 10-212 does not allow Plaintiffs adequate alternative channels of communication.

108. Defendants' selective enforcement and inconsistent, irrational, and ambiguous interpretations of City Code § 10-212 render ineffective Plaintiffs' attempts to communicate because they do not know how to comply with the ordinance.

109. Plaintiffs have a present and future desire and intention to engage in lawful First Amendment activity in front of Charlotte area abortion facilities and use certain means of communication, but they fear being cited by Defendants.

110. As a proximate result of the violations of the federal and state constitutions described in this complaint, Plaintiffs have suffered violations

of their constitutional rights as well as damages, which were reasonably foreseeable.

111. The right to engage in peaceful prayer, worship, and religious counseling and outreach in quintessential public fora is guaranteed by the Free Speech and Free Exercise Clauses of the First Amendment to the United States Constitution, as applied to the states and their political subdivisions by the Fourteenth Amendment.

112. The fact that certain messages may be offensive to some individuals does not deprive such speech of its constitutional protection.

113. Defendants' enforcement of the City Code § 10-212 chills and deters Plaintiffs' exercise of their fundamental constitutional rights.

114. The loss of First Amendment freedoms for even minimal periods of time unquestionably constitutes irreparable injury.

115. Plaintiffs have no plain, adequate, or complete remedy at law to redress the foregoing violations of their constitutional rights and liberty interests, and this suit is their only means of securing complete and adequate relief. No other remedies would offer Plaintiffs substantial and complete protection from Defendants' unlawful conduct.

116. An actual controversy exists between the parties about the legality of Defendants' ordinances and actions as described in this complaint.

117. A declaratory judgment is necessary and appropriate as it would serve a useful purpose in clarifying and settling the legal issues between the parties and thereby afford relief from the uncertainty and controversy giving rise to this proceeding.

118. Similarly, preliminary and permanent injunctions are necessary to prevent future and ongoing violations of Plaintiffs' rights, all of which are reasonably likely to occur absent injunctive relief from this Court.

119. Plaintiffs will suffer significant and irreparable harm unless this Court intervenes.

**COUNT I:
First Amendment to the U.S. Constitution
(Facial Unconstitutionality)**

120. The preceding paragraphs are hereby realleged and incorporated herein by reference.

121. City Code § 10-212 is a content-based restriction on speech.

122. As a content-based restriction on speech, City Code § 10-212 can only be upheld as constitutional if it can satisfy strict scrutiny.

123. City Code § 10-212 does not serve a compelling governmental interest and is not narrowly tailored to serve any such interest.

124. City Code § 10-212 is not the least restrictive means of achieving any governmental interest.

125. Therefore, City Code § 10-212 cannot satisfy strict scrutiny.

126. Moreover, City Code § 10-212 is not a valid time, place, or manner regulation.

127. In addition to the fact that it is not content neutral, City Code § 10-212 is not narrowly tailored to achieve a substantial and legitimate governmental interest, burdens substantially more speech than necessary, and does not leave open ample alternative channels of communication.

128. By reason of City Code § 10-212, which has been created, adopted, and enforced under color of state law, Defendants have deprived and continue to deprive Plaintiffs of their right to engage in free speech in a traditional public forum in violation of the Free Speech Clause of the First Amendment, as applied to the states and their political subdivisions by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

129. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered and will reasonably suffer in the future irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages, both nominal and compensatory.

**COUNT II:
First Amendment to the U.S. Constitution
(Unconstitutional as Applied)**

130. The preceding paragraphs are hereby realleged and incorporated herein by reference.

131. City Code § 10-212 is also unconstitutional as applied.

132. Signs and placards are a traditional and indispensable part of public demonstrations.

133. Plaintiffs require the use of signs and placards to communicate their message to individuals who are not in close proximity to them during their activities.

134. Furthermore, showing vivid and easily understood words and images is an important part of Cities4Life's ministry because such words and images affect how abortion is understood, including by those women who are entering a clinic to obtain an abortion.

135. As a result, Plaintiffs need to utilize signs and placards of sufficient size that their message can be communicated and understood across the street from where they are assembled.

136. By prohibiting Plaintiffs from temporarily resting signs and placards on the ground during their lawful use of property, even when the sign or placard is also being held in someone's hand, Plaintiffs are deprived of necessary channels for communication.

137. Furthermore, as alleged above, Defendants have chosen to apply City Code § 10-212 to Plaintiffs' conduct, even though Plaintiffs' conduct does not fall within the ambit of City Code § 10-212 as enacted by the Charlotte City Council.

138. Defendants' enforcement of City Code § 10-212 against Plaintiffs is based on constitutionally invidious motives, including the desire to silence speech with which Defendants disagree and anti-Christian animus.

139. Therefore, City Code § 10-212 is unconstitutional as applied to Plaintiffs.

140. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered and will reasonably suffer in the future irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages, both nominal and compensatory.

**COUNT III:
Due Process and Equal Protection Clauses of the
Fourteenth Amendment to the U.S. Constitution
(Absence of Due Process of Law and
Intentional Religious Discrimination)**

141. The preceding paragraphs are hereby realleged and incorporated herein by reference.

142. Plaintiffs possess a constitutionally protectable liberty interest in their right to speak freely, and Defendants have deprived them of this right.

Moreover, Defendants' actions fall so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency.

143. Defendants have deprived Plaintiffs of their rights under the guise of City Code § 10-212, even though City Code § 10-212 as enacted by the Charlotte City Council does not proscribe or otherwise regulate the conduct at issue.

144. Defendants' actions with respect to the interpretation and enforcement of City Code § 10-212 have been without basis in law and have been undertaken in an arbitrary and capricious manner.

145. Furthermore, motivated by anti-Christian animus, Defendants have used City Code § 10-212 to target and discriminate against Plaintiffs because of their Christian faith, thereby depriving them of the equal protection of the laws.

146. Upon information and belief, Defendants have not used City Code § 10-212 to silence the speech of non-Christian on the issue of abortion, even though occasions for application of City Code § 10-212 to such speech have occurred.

147. Accordingly, Defendants have violated, and threaten to violate in the future, Plaintiffs' federally-protected rights to due process and equal protection of the law.

148. As a direct and proximate result of Defendants' violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment, Plaintiffs have suffered and will reasonably suffer in the future irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages, both nominal and compensatory.

**COUNT IV:
North Carolina Constitution – Article I, Section 1
(Violation of the Rights of All Persons Clause)**

149. The preceding paragraphs are hereby realleged and incorporated herein by reference.

150. Article I, Section 1, of the North Carolina Constitution states: “We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.”

151. The North Carolina Supreme Court has explained that, for a law to pass scrutiny under Article I, Section 1, of the North Carolina Constitution as a legitimate exercise of police power, it “must have a rational, real, or substantial relation to the public health, morals, order, or safety, or the general welfare. In brief, it must be reasonably necessary to promote the

accomplishment of a public good, or to prevent the infliction of a public harm.” *State v. Ballance*, 229 N.C. 764, 769-70, 51 S.E.2d 731, 735 (1949).

152. Rather than constitute a legitimate exercise of police power, City Code § 10-212 seeks to suppress speech based on its content.

153. Additionally, both as written and as interpreted and enforced by Defendants, City Code § 10-212 lacks a rational, real, or substantial relation to public health, morals, order, or safety, or the general welfare. It draws distinctions that are irrational and that are not reasonably necessary to promote a public good or prevent a public harm.

154. As such, both on its face and as applied to Plaintiffs, City Code § 10-212 is unconstitutional.

155. As a direct and proximate result of Defendants’ violation of the Article I, Section 1, of the North Carolina Constitution, Plaintiffs have suffered and will reasonably suffer in the future irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages, both nominal and compensatory.

**COUNT V:
North Carolina Constitution – Article I, Section 14
(Violation of the Free Speech Clause)**

156. The preceding paragraphs are hereby realleged and incorporated herein by reference.

157. Article I, Section 14, of the North Carolina Constitution states: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.”

158. City Code § 10-212 seeks to restrict and censor speech based on its content, which therefore subjects it to strict scrutiny.

159. As described above, the restrictions of City Code § 10-212 fail to satisfy strict scrutiny.

160. The restrictions of City Code § 10-212, as interpreted by Defendants applied to Plaintiffs, also deprive Plaintiffs of an effective means of communicating with their intended audience.

161. Defendants’ enforcement of City Code § 10-212 against Plaintiffs is based on constitutionally invidious motives, including the desire to silence speech with which Defendants disagree and anti-Christian animus.

162. As such, both on its face and as applied to Plaintiffs, City Code § 10-212 is unconstitutional.

163. As a direct and proximate result of Defendants’ violation of the Article I, Section 14, of the North Carolina Constitution, Plaintiffs have suffered and will reasonably suffer in the future irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages, both nominal and compensatory.

COUNT VI:
North Carolina Constitution – Article I, Section 19
(Violation of the Law of the Land and
Equal Protection Clauses)

164. The preceding paragraphs are hereby realleged and incorporated herein by reference.

165. Article I, Section 19, of the North Carolina Constitution states:

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

166. Generally referred to as the “law of the land” and “equal protection” clauses, these provisions ensure both procedural and substantive due process of law and prohibit invidious discrimination by the government, including discrimination based on religion.

167. Plaintiffs possess a constitutionally protectable liberty interest in their right to speak freely, and Defendants have deprived them of this right. Moreover, Defendants’ actions fall so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency.

168. Defendants have deprived Plaintiffs of their rights under the guise of City Code § 10-212, even though City Code § 10-212 as enacted by

the Charlotte City Council does not proscribe or otherwise regulate the conduct at issue.

169. Defendants' actions with respect to enforcement of City Code § 10-212 have no foundation in reason and constitute the mere arbitrary or irrational exercise of power having no substantial relation to public health, morals, safety, or welfare, as properly understood.

170. Furthermore, motivated by anti-Christian animus, Defendants have used City Code § 10-212 to target and discriminate against Plaintiffs because of their Christian faith, thereby depriving them of the equal protection of the laws and discriminating against them because of their religion.

171. Upon information and belief, Defendants have not used City Code § 10-212 to silence the speech of non-Christian on the issue of abortion, even though occasions for application of City Code § 10-212 to such speech have occurred.

172. Accordingly, Defendants have violated, and threaten to violate in the future, the law of the land and equal protection clauses of the North Carolina Constitution.

173. As a direct and proximate result of Defendants' violation of the Article I, Section 19, of the North Carolina Constitution, Plaintiffs have suffered and will reasonably suffer in the future irreparable harm, including

the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages, both nominal and compensatory.

WHEREFORE, Plaintiffs Cities4Life and Daniel Parks respectfully pray that this Court grant the following relief:

1. Assume jurisdiction over this action;
2. Grant a trial by jury on all issues so triable;
3. Declare that each of the Defendants is violating and threatens to further violate Plaintiffs' clearly-established and fundamental constitutional rights, as set forth in this complaint;
4. Declare that Charlotte City Ordinance § 10-212 is both facially unconstitutional and unconstitutional as applied to Plaintiffs;
5. Declare that Defendants have substantially burdened, unlawfully infringed upon, and violated Plaintiffs' rights under the First and Fourteenth Amendments and the North Carolina Constitution.
6. Enter a preliminary injunction as soon as practicable enjoining Defendants (and the other entities and persons set forth in Federal Rule of Civil Procedure 65(d)(2)) from enforcing Charlotte City Ordinance § 10-212;
7. Enter a permanent injunction enjoining Defendants (and the other entities and persons set forth in Federal Rule of Civil

Procedure 65(d)(2)) from enforcing Charlotte City Ordinance § 10-212;

8. Award Plaintiffs nominal and compensatory damages for each of the claims set forth in this complaint;
9. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and as otherwise provided by law;
10. Tax costs of this action against Defendants;
11. Award Plaintiffs prejudgment and post-judgment interest; and
12. Grant Plaintiffs such other and further relief as this Court may deem just and proper.

Respectfully submitted, this the 17th day of November, 2017.

THOMAS MORE LAW CENTER

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