

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

DAN MCGHEE,

Plaintiff,

v.

CITY OF WESTLAND; and JOHN
GATTI, individually and in his official
capacity as a police officer, City of
Westland Police Department,

Defendants.

Case No.

COMPLAINT

[42 U.S.C. § 1983]

Plaintiff Dan McGhee (hereinafter referred to as “Plaintiff”), by and through his undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate fundamental rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Section 62-99 of the City of Westland’s Code of Ordinances (hereinafter also referred to as the “City’s Disturbing the Peace Ordinance”), facially and as applied to Plaintiff’s expressive activity.

2. Plaintiff seeks a declaration that Defendants violated his clearly established rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of the City's Disturbing the Peace Ordinance as set forth in this Complaint; and a judgment awarding nominal damages against Defendants for the past loss of Plaintiff's constitutional rights. Plaintiff also seeks an award of his reasonable costs of litigation, including attorneys' fees and expenses.

JURISDICTION AND VENUE

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiff's 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 general legal and equitable powers of this Court.

5. Plaintiff's claim for nominal damages is authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this Court.

6. Plaintiff's claim for an award of his reasonable costs of litigation, including attorneys' fees and expenses, is authorized by 42 U.S.C. § 1988, and other applicable law.

7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

PLAINTIFF

8. Plaintiff Dan McGhee is an adult citizen of the United States. He is the Senior Pastor of the Harvest Bible Church located in Westland, Michigan.

9. Plaintiff is a Christian, and he opposes abortion, which causes the death of an innocent human life, based on his sincerely held religious belief that abortion is an intrinsic evil. Plaintiff engages in expressive religious activity, such as praying, preaching, and witnessing for life outside of facilities where abortions are performed, as part of his religious exercise.

10. As part of his expressive religious activity, Plaintiff would protest abortion by engaging in prayer, preaching, worship, and holding pro-life signs on the public sidewalks surrounding facilities where abortions are performed, including on the public sidewalks and public medians surrounding the Northland Family Planning Center, an abortion facility located on Ford Road in Westland, Michigan (hereinafter referred to as “Northland”).

DEFENDANTS

11. Defendant City of Westland (hereinafter “City”) is a municipal entity organized and existing under the laws of the State of Michigan. It is a municipal corporation with the right to sue and be sued.

12. The City and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the ordinances, policies, practices, customs,

and/or procedures of the City, including the City's Disturbing the Peace Ordinance as set forth in this Complaint.

13. The City, through its police officers, including Defendant Gatti, enforces the City's Disturbing the Peace Ordinance as set forth in this Complaint

14. The City's ordinances, policies, practices, customs, and/or procedures were the moving force behind the constitutional violations set forth in this Complaint.

15. At all relevant times, the City trained, supervised, and employed its police officers, including Defendant Gatti.

16. The City's deficient training and supervision of Defendant Gatti were done with deliberate indifference as to their known or obvious consequences and were a moving force behind the actions that deprived Plaintiff of his fundamental rights as set forth in this Complaint.

17. At all relevant times, Defendant John Gatti was a police officer with the City Police Department. At all relevant times, Defendant Gatti was an agent, servant, and/or employee of the City, acting under color of state law. Defendant Gatti is sued individually and in his official capacity as a police officer for the City Police Department.

STATEMENT OF FACTS

18. The City's Disturbing the Peace Ordinance, Section 62-99 of the City's Code of Ordinances, states as follows:

Sec. 62-99. Unreasonably loud, disturbing or unnecessary noise or disturbances.

(a) It shall be a misdemeanor for any person to create, assist in creating, permit, continue, or permit the continuance of any unreasonably loud, disturbing, or unnecessary noise, which disturbs the comfort, repose, health, peace or safety of others within the limits of the city.

(1) The following acts, among others, are declared to be unreasonably loud, disturbing or unnecessary noises in violation of this section, but said enumeration shall not be deemed to be exclusive:

a. The sounding of any horn or signal device on any automobile, bus, truck, or other vehicle, except as a danger signal, so as to create any loud or harsh sound plainly audible within any dwelling unit or residences, or, so as to be plainly audible within 50 feet or more from such device. This section shall not apply to emergency vehicles or those vehicles emitting a warning sound necessary for the protection of public safety.

b. The playing or operation of any device designed for sound amplification including but not limited to, any radio, television sets, musical instruments, phonograph, or loud speaker, in such a manner or with such volume to be plainly audible, either:

1. in any dwelling unit or resident which is not the source of the sound, or
2. so as to be plainly audible 50 feet or more from such device.

(2) For the purpose of this section, a plainly audible sound is any sound of which the information content is unambiguously communicated to the listener such as, but not limited to, understandable spoken speech, or comprehensible musical rhythms.

(b) It shall be a misdemeanor for any person to make or excite any disturbance or contention in any tavern, store, grocery, manufacturing establishment, office or any other business place, or in any street, lane, alley, highway, public building, grounds or park, or at any election or other public meeting where citizens are peaceably and lawfully assembled.

19. On June 24, 2017, Plaintiff and several other pro-life demonstrators, including Mr. Calvin Zastrow, went to the public fora adjacent to Northland to protest abortion, to preach the Gospel, and to convince those who visit and work at Northland, the City police officers who respond to Northland's overzealous complaints about the pro-life demonstrators, and those who are passing by Northland along Ford Road that abortion is an intrinsic evil that results in the murder of an innocent human life and is thus contrary to God's law. Plaintiff and the other pro-life demonstrators want to impact the hearts and minds of those who visit and work at Northland to inspire them to repent and to stop killing unborn babies through abortion.

20. Plaintiff is compelled by his sincerely held religious beliefs to engage in his pro-life speech activity. Plaintiff's pro-life speech activity is a religious exercise for Plaintiff.

21. Northland is located in a commercial district along Ford Road in Westland, Michigan. At this location, Ford Road is a very busy five lane road (two lanes east bound, two lanes west bound, and a center turn lane). The vehicle traffic on this road is very loud, and it can be heard from more than 50 feet away.

Consequently, in order to effectively preach their pro-life Gospel message, Plaintiff and the other pro-lifers must raise their voices to be heard over the traffic and other noise that is customary in a commercial area and that is particular to this area.

22. While at Northland on June 24, 2017, Plaintiff and the other pro-life demonstrators were preaching, singing worship songs, displaying pro-life signs, and handing out Christian literature on the public sidewalk and the public grassy median area adjacent to Northland and Ford Road.

23. Plaintiff's expressive activity on the public fora adjacent to Northland is fully protected by the First Amendment.

24. While Mr. Zastrow was holding a pro-life sign and preaching on the public median next to the sidewalk, Defendant Gatti and Officer Deandre Plear, a City police officer, arrested him for allegedly violating the City's Disturbing the Peace Ordinance. True and accurate pictures of the arrest are attached to this Complaint as Exhibit 1.

25. Plaintiff witnessed the arrest of Mr. Zastrow. He was present on the public sidewalk when the arrest occurred. The arrest was captured on video.

26. Defendant Gatti and Officer Plear placed Mr. Zastrow in handcuffs. Mr. Zastrow was then transported via a police cruiser to the City's police department and held in the City's detention cell until Plaintiff could arrive at the police station and post a \$500 bond to secure Mr. Zastrow's release.

27. According to the City's police report, which was drafted by Defendant Gatti, "Upon arrival [officers] parked their patrol vehicles in the center of the [Northland] facility's parking lot and could immediately could (*sic*) hear a protestor, Calvin Zastrow, yelling from the easement on Ford [Road]. Zastrow could be heard from over 50 [feet] away yelling about babies being murdered. Zastrow's actions were gaining the attention of people passing by and drawing the attention of employees at the location attempting to conduct business. . . . [Defendant Gatti] advised Zastrow that he was being too loud and the yelling had to stop or he could be arrested for disturbing the peace. As [Defendant Gatti] walked away Zastrow accused [him] of trying to intimidate him and continued to yell and stated that [Officer Gatti] was assisting in the murdering of babies. [Defendant Gatti] returned to the parking lot where Zastrow continued to yell quotes of scripture and accusations of murder. [Officer] Plear and [Defendant Gatti] then arrested Zastrow for disturbing the peace." (emphasis added). In other words, Mr. Zastrow was arrested for engaging in his pro-life speech activity.

28. The City charged Mr. Zastrow with violating the City's Disturbing the Peace Ordinance.

29. Immediately following the arrest of Mr. Zastrow, Defendant Gatti approached Plaintiff and another pro-life demonstrator and told them directly that Mr. Zastrow was arrested because he could be heard from more than 50 feet away,

warning Plaintiff and the other pro-life demonstrator that the same could happen to them.

30. More specifically, Defendant Gatti, who was video recorded, admonished and warned Plaintiff and the other pro-life demonstrator standing with Plaintiff as follows: “Stay on the sidewalk and keep moving. That’s the rules. Okay. Not on the grass. Keep the signs in your hand and keep moving. Sidewalk only. Okay. Is there anything you guys don’t understand about that? And screaming and yelling within 50 feet where we can hear you, that is disturbing the peace. That’s what he found out today. He was given a warning and he didn’t abide by it.”

31. A true and accurate photograph of Defendant Gatti giving his verbal warning to Plaintiff and the other pro-life demonstrator is attached to this Complaint as Exhibit 2.

32. Defendant Gatti’s threat to arrest pro-lifers for engaging in their speech activity chilled Plaintiff in the exercise of his expressive religious activity.

33. As a direct result of Mr. Zastrow’s arrest, the existence of the City’s Disturbing the Peace Ordinance, and Defendant Gatti’s threat that Plaintiff would also be subject to arrest for engaging in similar expressive activity, Plaintiff has not returned to Northland for fear that he too will be arrested and subject to prosecution for engaging in his speech activity.

34. Mr. Zastrow was criminally charged with violating the City's Disturbing the Peace Ordinance, which is a misdemeanor. He appeared in the Eighteenth Judicial District Court to answer the criminal charge.

35. On September 6, 2017, the City agreed to dismiss the criminal charge against Mr. Zastrow in exchange for Mr. Zastrow signing an agreement that released the City, its elected officials, officers, and employees of any liability arising from his June 24, 2017 arrest and subsequent criminal charge. In this "Dismissal and Release Agreement of Potential and Disputed Claims," the City expressly disavowed any liability and thus any wrongdoing.

36. The City has no intention of changing or modifying the City's Disturbing the Peace Ordinance, which has a chilling effect on Plaintiff's expressive religious activity.

37. In addition to the chilling effect of the City's Disturbing the Peace Ordinance on Plaintiff's protected speech activity, Defendants have demonstrated that they will selectively enforce this ordinance.

38. On June 24, 2017, the day of Mr. Zastrow's arrest, workers at Northland backed-up a vehicle in the Northland parking lot so that it was located next to where the pro-life demonstrators were engaging in their speech activity, opened all of the doors, and blasted the vehicle's radio in an effort to annoy and silence the pro-life demonstrators. The noise from the radio could be heard well beyond 50 feet.

Following the arrest of Mr. Zastrow, a contemporaneous complaint about this Northland tactic, which was photographed and videotaped, was made to the City of Westland Police Department in person by one of the pro-life demonstrators. The complaint was rejected by Sergeant Timothy Horvath, the desk sergeant.

39. A true and accurate photograph of Northland workers blasting their vehicle radio on June 24, 2017, is attached to this declaration as Exhibit 3.

40. Immediately following the arrest of Mr. Zastrow, City police officers were captured on their vehicle recording devices criticizing and denouncing the pro-life demonstrators, claiming, *inter alia*, that the pro-life demonstrators' arguments against abortion were "illegitimate" and thereby demonstrating Defendants' animus toward the pro-life demonstrators and their message.

41. Due to the City's and its police officer's credible threat to arrest pro-life demonstrators who can be heard beyond 50 feet preaching the Gospel against abortion on public fora outside of Northland, Plaintiff will not return to the public fora outside of Northland to engage in his religious expressive activity, thereby causing him irreparable harm.

FIRST CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

42. Plaintiff hereby incorporates by reference all stated paragraphs.

43. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of his right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

44. Defendants' actions, as set forth in this Complaint, injured Plaintiff in a way likely to chill a person of ordinary firmness from further participation in his free speech activity. Plaintiff's constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

45. Defendants targeted Plaintiff's pro-life speech activity for disfavored treatment as set forth in this Complaint, in violation of the First Amendment.

46. Defendants' animus against Plaintiff's pro-life speech is content and viewpoint based in violation of the First Amendment.

47. The City's Disturbing the Peace Ordinance, facially and as applied to Plaintiff's expressive activity as set forth in this Complaint, violates the First Amendment.

48. The City's Disturbing the Peace Ordinance, facially and as applied to Plaintiff's expressive activity as set forth in this Complaint, is vague and overbroad in violation of the First Amendment.

49. Defendants will seek to enforce the City's Disturbing the Peace Ordinance against Plaintiff's expressive activity in the future.

50. The City's Disturbing the Peace Ordinance and the City's policies and practices with regard to the enforcement of this ordinance were each a moving force behind the violation of Plaintiff's rights protected by the First Amendment as set forth in this Complaint.

51. As a direct and proximate result of Defendants' violation of the First Amendment, as set forth in this Complaint, Plaintiff has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

SECOND CLAIM FOR RELIEF

(Free Exercise of Religion—First Amendment)

52. Plaintiff hereby incorporates by reference all stated paragraphs.

53. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of his right to religious exercise in violation of the Free Exercise Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

54. Plaintiff's expressive religious activity as set forth in this Complaint is protected by both the Free Speech Clause and the Free Exercise Clause of the First Amendment.

55. As set forth in this Complaint, Defendants have targeted pro-life demonstrators such as Plaintiff for selective and disfavored treatment because of Plaintiff's expressive religious activity in violation of the Free Exercise Clause of the First Amendment.

56. As set forth in this Complaint, Defendants' adverse actions against Plaintiff and other pro-life demonstrators were designed to intimidate and oppress Plaintiff's pro-life religious expression, which Defendants disfavor, in violation of the Free Exercise Clause of the First Amendment.

57. The City's Disturbing the Peace Ordinance, as applied to Plaintiff's expressive activity as set forth in this Complaint, violates the Free Exercise Clause of the First Amendment.

58. The City's Disturbing the Peace Ordinance and the City's policies and practices with regard to the enforcement of this ordinance were each a moving force behind the violation of Plaintiff's rights protected by the First Amendment as set forth in this Complaint.

59. As a direct and proximate result of Defendants' violation of the First Amendment, as set forth in this Complaint, Plaintiff has suffered irreparable harm,

including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

THIRD CLAIM FOR RELIEF

(Equal Protection—Fourteenth Amendment)

60. Plaintiff hereby incorporates by reference all stated paragraphs.

61. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

62. Defendants' enforcement of the City's Disturbing the Peace Ordinance as set forth in this Complaint violates the Equal Protection Clause of the Fourteenth Amendment.

63. By denying Plaintiff and other pro-life demonstrators access to a public forum to engage in their speech activities, which Defendants disfavor, Defendants have deprived Plaintiff of the equal protection of the law.

64. The City's Disturbing the Peace Ordinance, as applied to Plaintiff's expressive activity, violates the equal protection guarantee of the Fourteenth Amendment.

65. The enforcement of the City's Disturbing the Peace Ordinance against Plaintiff, as set forth in this Complaint, violates Plaintiff's rights protected by the Fourteenth Amendment.

66. The City's Disturbing the Peace Ordinance and the City's policies and practices with regard to the enforcement of this ordinance were each a moving force behind the violation of Plaintiff's rights protected by the Fourteenth Amendment as set forth in this Complaint.

67. As a direct and proximate result of Defendants' violation of the Equal Protection Clause, Plaintiff has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

FOURTH CLAIM FOR RELIEF

(Due Process—Fourteenth Amendment)

68. Plaintiff hereby incorporates by reference all stated paragraphs.

69. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, the City has deprived Plaintiff of the due process of the law guaranteed under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

70. The City's Disturbing the Peace Ordinance, facially and as applied to Plaintiff's expressive activity as set forth in this Complaint, is vague in violation of the Fourteenth Amendment.

71. The City's Disturbing the Peace Ordinance is vague in that it traps the innocent by not providing fair warning.

72. The City's Disturbing the Peace Ordinance lacks explicit standards thereby permitting arbitrary and discriminatory enforcement and thus impermissibly delegating basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

73. The City's Disturbing the Peace Ordinance abuts upon sensitive areas of basic First Amendment freedoms and thereby operates to inhibit the exercise of those freedoms.

74. The vagueness and overbreadth of the City's Disturbing the Peace Ordinance leads citizens such as Plaintiff to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

75. The City's Disturbing the Peace Ordinance was the moving force behind the violation of Plaintiff's rights protected by the Fourteenth Amendment as set forth in this Complaint.

76. As a direct and proximate result of the City's violation of the Due Process Clause, Plaintiff has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court:

A) to declare that Defendants violated Plaintiff's fundamental constitutional rights as set forth in this Complaint;

B) to declare that the City's Disturbing the Peace Ordinance is unconstitutional facially and as applied to Plaintiff's speech and related activities as set forth in this Complaint;

C) to permanently enjoin the City's Disturbing the Peace Ordinance and its application to Plaintiff's speech and related activities as set forth in this Complaint;

D) to award Plaintiff nominal damages;

E) to award Plaintiff his reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

F) to grant such other and further relief as this court should find just and proper.

Respectfully submitted,

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EXHIBIT 1



EXHIBIT 2



EXHIBIT 3

