STATE OF MICHIGAN
IN OAKLAND COUNTY CIRCUIT COURT

TOWNSHIP OF WEST BLOOMFIELD, Plaintiff, vs. MATTHEW CONNOLLY, WILLIAM GOODMAN, ROBERT KOVALY, MONICA MILLER, and PATRICE WOODWORTH-CRANDALL, Defendants.	Circuit No. 2018-164583-AR District Court Nos. 17WB02957, 17WB02958, 7WB02959, 17WB02960 & 17WB02961 Hon. Denise Langford-Morris

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EMERGENCY MOTION TO STAY EXECUTION ON SENTENCES

Defendants Matthew Connolly, William Goodman, Robert Kovaly, Dr. Monica Miller, and Patrice Woodworth-Crandall (hereinafter "Defendants"), by their attorneys, ask this Court to grant their emergency motion to stay execution on their sentences. Defendants were sentenced to probation that includes draconian conditions that are unreasonable in light of the underlying offense (simple trespass) and that violate Defendants' fundamental rights protected by the United States Constitution. In support of this motion, Defendants state as follows:

1. Following a previously held jury trial, on March 14, 2018, Defendants were sentenced for violating two provisions of the Township of West Bloomfield Ordinance Code: Trespass and Interfering with Police Authority.

2. The offenses arise out of Defendants' simple trespass on the premises of the Western Women's Center ("Women's Center"), an abortion center located in West Bloomfield Township ("Township"). On December 2, 2017, Defendants peacefully entered the Women's Center and handed out red roses to the women in the waiting room. Attached to the roses was a card containing a message of love and presenting options for women to choose life for their babies. A clinic employee called the police. The police arrived and arrested Defendants for the offenses.

3. The gravamen of this case is the commission of a property crime (trespass). It is a 30-day misdemeanor. It is not a felony nor is it a crime of violence. There was no violence. And there was no vandalism nor any property damage whatsoever. Defendants were peaceful throughout. The interference with police authority offense was incidental to the trespass offense as Defendants engaged in "passive resistance," a common tactic employed by civil rights advocates and other peaceful protestors from time immemorial.

4. The lower court sentenced Defendants to a term of probation that includes, *inter alia*, the following restrictive conditions: (1) Defendants may not picket *any* facility that performs abortions, (2) Defendants may not come within *500 feet* of *any* medical facility where abortions are performed throughout the United States, and (3) Defendants may not have *any* contact with each other, including joint meetings and conference calls with their counsel in support of their ongoing appeals in this or any other case.[1]

[1] Defendants Connolly, Goodman, and Miller are currently appealing to the Macomb County

5. Defendant Matthew Connolly is 36 years old. He lived as a Franciscan Brother for several years and is now called to further the pro-life cause and spread the Gospel as a full-time lay volunteer. He accomplishes his religious vocation by, *inter alia*, praying and sidewalk counselling outside of abortion centers throughout the United States. Defendant Connolly keeps a vow of poverty and resides at the St. Stephen's homeless shelter in the St. Paul, Minnesota area.

6. Defendant William Goodman is 48 years old. He holds a Masters of Theological Studies from Ave Maria University, a B.A. in Philosophy from the University of Illinois, with a minor in religious studies, and a professional Certification in Bioethics (with 1 year remaining to complete a Master's Degree in Bioethics) from the National Catholic Bioethics Center in Philadelphia. Defendant Goodman is a full time human rights advocate with an emphasis on pro-life issues. An integral part of his pro-life activities includes counseling, praying, handing out literature, and holding signs on the public sidewalks outside of abortion centers throughout the United States.

7. Defendant Robert Kovaly is 59 years old. He has a B.S. in Education from Bowling Green State University in Ohio. He lives in the Grand Rapids, Michigan area and has maintained regular employment at the post office for his entire adult life. Prior to these offenses, Defendant Kovaly had never been convicted of any crime, had never been arrested, and had never been involved with the criminal justice system. His family, including his children and grandchildren, resides in the area.

Circuit Court a simple trespass conviction from the 41-A District Court. In that case, Defendants were sentenced to two years non-reporting probation with the only conditions that they not commit another offense and that they not enter the premises of the Northland Family Planning Center, the abortion center at issue in that case.

8. Defendant Dr. Monica Miller is 64 years old. She is an associate professor of Theology at Madonna University in Livonia, Michigan and the president of Citizens for a Pro-Life Society, a nonprofit, pro-life group she founded in 1985. As an integral part of her pro-life vocation, Defendant Miller counsels, prays, hands out literature, and holds signs on the public sidewalks outside of abortion centers throughout the United States. Defendant Miller is married with children and has strong ties to the community.

9. Defendant Patrice Woodworth-Crandall is 54 years old. She resides in Winona, Minnesota. She is trained as a teacher with a B.S. in Elementary Education and English from the University of Wisconsin—La Crosse ("UW-La Crosse"). She attended graduate school at UW-La Crosse and at Winona State University for a 317 Reading Certification. She has taught on and off for the last 25 years (minus the past 6 years), mostly as a substitute teacher so that she could give more attention to her home and family. She has three living children, all daughters, and a grandson.

10. All Defendants are deeply religious and pro-life, and they engage in various activities, including counseling, praying, handing out literature, and holding signs on the public sidewalks outside of abortion centers throughout the United States, as part of their religious exercise.

11. All Defendants have been free on bond since the incident for which they stand convicted. Defendants have complied with all orders of the lower court to appear and have violated no further laws. There is no risk of Defendants fleeing. Defendants would voluntarily surrender themselves if and when required after this matter is concluded should they not succeed on appeal.

12. Defendants filed a Claim of Appeal in this Court on March 23, 2018, have ordered and secured payment for transcripts, which have been ordered on an expedited basis, and will proceed in a timely fashion with post-conviction and appellate action in this case.

13. Defendants' convictions and sentences raise significant and substantial legal and factual issues of merit.

14. Counsel representing Defendants in these post-conviction proceedings and appeal have not yet had an opportunity to examine or review the trial transcript (already ordered) because it is not yet complete.[2] However, substantial legal and factual issues of merit exist in this case based on the lower court's rejection of Defendants' theory of defense, denial of requested *voir dire* questions, various evidentiary rulings, exclusion of jury instructions, and unconstitutional terms of probation.

15. The standards for granting this motion are set forth in *People v Giacalone*, 16 Mich App 352, 167 NW2d 871 (1969), and are as follows: (1) the likelihood that the defendant will appear when required in response to an order of the court; (2) the potential harm to the community from the defendant being at large while the appeal is pending; (3) the substantiality of the grounds for appeal; and (4) the risk to the administration of justice posed by release.

16. Defendants satisfy the *Giacalone* standards as follows: (1) Defendants have demonstrated that they will appear in the future by their appearances at all court hearing dates required by the trial court (*see also* paragraphs 5 through 11); (2) Defendants pose no potential for harm/danger to others and/or to the community; (3) There are significant issues of merit (both legal and factual) in this appeal, including but not limited to the issues arising from the unlawful sentences imposed in this case as forth in this motion and accompanying brief; and (4) There

[2] As noted previously. the transcripts have been ordered on an expedited basis. Defendants have received the sentencing transcripts, which are cited here.

would be no risk to the administration of justice posed by Defendants remaining free on bond, and justice would be served by staying the execution of sentences that violate fundamental constitutional rights.

17. If Defendants are not granted bond immediately and a stay of execution on their sentences, they stand to suffer irreparable harm in the following respects:

a. The lower court's restrictions that prohibit Defendants from picketing or engaging in other *First Amendment protected activities* (*i.e.*, not criminal activity) on the public sidewalks within *500* feet of any medical facility that performs abortions violates Defendants' fundamental constitutional rights, and the U.S. Supreme Court has long held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v Burns*, 427 US 347, 373 (1976).

b. The lower court's no contact provision violates Defendants' right to counsel and full legal representation, as Defendants share the same legal counsel in this and other cases.

18. If Defendants are incarcerated before the appellate process is completed, the critical issues in Defendants' appeal will have been rendered moot. An irreparable injustice/harm will have occurred because of Defendants' incarceration, the loss of their First Amendment rights to freedom of speech, the free exercise of religion, and expressive association, and the infringement on their Sixth Amendment right to full legal representation without court interference. In short, Defendants will have suffered the harms they seek to challenge here.

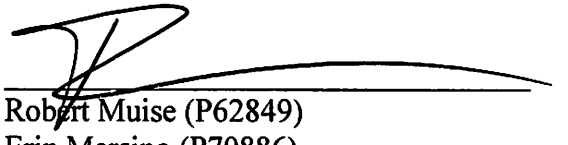
19. The ends of justice would be served by this Court granting Defendants' emergency motion to stay execution on their sentences and to grant bond on appeal with conditions that do not violate Defendants' fundamental rights.

For all the reasons stated above and as set forth in the accompanying brief, Defendants respectfully ask this Court to immediately consider and grant this emergency motion, thereby staying the execution on Defendants' sentences while this case proceeds through the appellate process and granting bond with appropriate conditions that do not violate Defendants' constitutional rights.

Dated: March 27, 2018

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER



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BRIEF IN SUPPORT OF DEFENDANTS' EMERGENCY MOTION TO STAY EXECUTION ON SENTENCES

Defendants, by their attorneys, state in support of their Emergency Motion to Stay Execution on Sentences the following:

RELEVANT FACTUAL BACKGROUND

On December 2, 2017, Defendants peacefully entered the Western Women's Center ("Women's Center" or "Center"), an abortion center located in the Township of West Bloomfield, Michigan ("Township"). While inside the Women's Center, Defendants handed out red roses to the women in the waiting room. Attached to the roses was a card containing a

message of love and presenting options for women to choose life for their babies. A Center employee called the police. When the police arrived, Defendants passively resisted, a technique frequently employed by civil rights activists as a peaceful way of expressing their dissonance with the current state of the law. No one was injured by Defendants, and no property was vandalized or damaged in any way. Defendants were calm and peaceful throughout.

The Township prosecuted Defendants for two ordinance violations: Trespass (30-day misdemeanor) and Interfering with Police Authority (90-day misdemeanor). Following a jury trial, Defendants were found guilty of both offenses.

On March 14, 2018, the district court sentenced Defendants to probation (one year for Defendants Connolly, Goodman, Miller, and Woodworth-Crandall and six months for Defendant Kovaly). The sentences of probation include, *inter alia*, provisions that Defendants not "picket any facility that performs abortions," and that Defendants not "appear within 500 feet of medical facility[ies] where abortions are performed."[1] (Ex 1, Defs' Orders of Probation).

During sentencing, Defendants' counsel objected, stating, in relevant part:

> MR. MUISE: . . . . Obviously, each one of these individuals would engage in peaceful, non-obstructive, sidewalk counseling, praying, holding prolife signs and handing out prolife literature on public sidewalks outside of these medical facilities where abortions are performed in traditional public [fora] -- but obviously with these conditions, they are no longer permitted to do so, and we obviously object to those conditions on constitutional grounds.

(Ex 2, *Township v Woodworth-Crandall*, Tr at 21-22).

> MR. MUISE: The -- the no contact provision is hopelessly vague. . . . That part violates the First Amendment right of expressive association, where and medical facilities in which abortions are performed; again, vague, over-broad insofar as it infringes upon their right to peacefully be on the public sidewalks, to -- to pray, to sidewalk counsel, to hold -- to display sign, to distribute literature, all of that is constitutionally-protected activity. There's no rational basis for a simple trespass

[1] The 500-foot restriction does not apply to Defendant Kovaly. (*See* Ex 1, Defs' Orders of Probation).

> to prohibit that sort of activity protected by the -- by the U.S. Constitution. And it's also protected by the Michigan Constitution. The next one, not to harass, intimidate, or picket any gynecological or abortion family service clinic. Aside from being vague as to what harassment, intimidate [mean], the picket goes directly to First Amendment protected activity; we'd object to that.

(Ex 3, *Township v Miller*, Tr at 14-15). The lower court dismissed counsel's arguments and imposed the sentence. (*See id.* at 29-44).

The lower court also ordered, as a condition of probation, that Defendants not have any contact with each other, even if the contact directly pertains to Defendants' post-conviction and appellate legal representation. (Ex 1, Defs' Orders of Probation; Ex 4, *Township v Connolly*, Tr at 15-16). At sentencing, counsel argued that Defendants should at least be allowed contact for the purpose of preparing their legal defense, and the lower court rejected the argument:

> MR. MUISE: And the -- the -- the one issue on the no contact, because obviously we're going to be going through an appeal process, they're going to have to have contact with each other through me certainly in the legal process. I mean I just want to make that clarified.
>
> THE COURT: Well, I mean they can contact you. I don't think they have to contact each other.
>
> MR. MUISE: No, but I often have -- I often have meetings with -- with all of them at one time to talk to them, as opposed to --
>
> THE COURT: Well -- well, you can have meetings individually with them; you don't have to have meetings together, and maybe that's –
>
> MR. MUISE: ***So they can't even meet together for purposes of their -- of a defense?***
>
> THE COURT: ***No -- no they -- no they can't***, and that -- that could be one of the reasons why it may not have been the best idea when we went over this about a potential conflict about you representing all of them, and they waived that conflict. So at this point, no.
>
> MR. MUISE: We obviously would object to that, Your Honor --
>
> THE COURT: Okay.

MR. MUISE: -- on constitutional grounds as well.

(Ex 4, *Township v Connolly*, Tr at 15-16 [emphasis added]). After the sentences were imposed, Defendants motioned for a stay of the sentences. (*See, e.g.*, Ex 3, *Township v Miller*, Tr at 40-41; Ex 5, *Township v Goodman*, Tr at 26). The motion was denied by the lower court. (*Id.* at 26).

Defendants were on bond from December 2, 2017 to March 14, 2018. Defendants never violated any conditions of their bond and appeared at all court appearances as required. (*See* Ex 6, Registers of Actions). No Defendant poses a flight risk.

Defendant Connolly is 36 years old. He lived as a Franciscan Brother for several years and is now called to further the pro-life cause and spread the Gospel as a full-time lay volunteer. He accomplishes his religious vocation by, *inter alia*, praying and sidewalk counselling outside of abortion centers throughout the United States. Defendant Connolly keeps a vow of poverty and resides at the St. Stephen's homeless shelter in the St. Paul, Minnesota area.

Defendant Goodman is 48 years old. He holds a Masters of Theological Studies from Ave Maria University, a B.A. in Philosophy from the University of Illinois, with a minor in religious studies, and a professional Certification in Bioethics (with 1 year remaining to complete a Master's Degree in Bioethics) from the National Catholic Bioethics Center in Philadelphia. Defendant Goodman is a full time human rights advocate with an emphasis on pro-life issues. An integral part of his pro-life activities and vocation includes counseling, praying, handing out literature, and holding signs on the public sidewalks outside of abortion centers throughout the United States.

Defendant Kovaly is 59 years old. He has a B.S. in Education from Bowling Green State University in Ohio. He lives in the Grand Rapids, Michigan area and has maintained regular

employment at the post office for his entire adult life. Prior to these offenses, Defendant Kovaly had never been convicted of any crime, had never been arrested, and had never been involved with the criminal justice system. His family, including his children and grandchildren, resides in the area.

Defendant Miller is 64 years old. She is an associate professor of Theology at Madonna University in Livonia, Michigan and the president of Citizens for a Pro-Life Society, a nonprofit, pro-life group she founded in 1985. As an integral part of her pro-life vocation, Defendant Miller counsels, prays, hands out literature, and holds signs on the public sidewalks outside of abortion centers throughout the United States. Defendant Miller is married with children and has strong ties to the community.

Defendant Woodworth-Crandall is 54 years old. She resides in Winona, Minnesota. Defendant Woodworth-Crandall is trained as a teacher with a B.S. in Elementary Education and English from the University of Wisconsin—La Crosse ("UW-La Crosse"). She attended graduate school at UW-La Crosse and at Winona State University for a 317 Reading Certification. She has taught on and off for the last 25 years (minus the past 6 years), mostly as a substitute teacher so that she could give more attention to her home and family. She has three living children, all daughters, and a grandson.

All Defendants are deeply religious and pro-life, and they engage in various activities, including counseling, praying, handing out literature, and holding signs on the public sidewalks outside of abortion centers throughout the United States, as part of their religious exercise. (Ex 2, *Township v Woodworth-Crandall*, Tr at 21-22).

All Defendants have been free on bond since the incident for which they stand convicted. Defendants have complied with all orders of the lower court to appear and have violated no

further laws. There is no risk of Defendants fleeing. Defendants would voluntarily surrender themselves if and when required after this matter is concluded should they not succeed on appeal.

Defendants filed a Claim of Appeal in this Court on Friday, March 23, 2018. In addition to appealing the conditions of probation imposed by the lower court, Defendants are also appealing the lower court's decisions denying Defendants' legal theory, refusing to permit Defendants to present certain relevant facts to the jury, denying Defendants' questions pertaining to juror bias during *voir dire*, and denying Defendants crucial jury instructions. The lower court's decisions and orders during the trial in this case were so extreme and severe that the lower court denied Defendants the ability to obtain a fair and just trial. Consequently, Defendants were wrongfully convicted and have a substantial likelihood of success on appeal. At a minimum, as discussed further below, the sentences imposed upon Defendants are unlawful.

ARGUMENT

I. Factors for Granting Defendants' Motion.

People v Giacalone, 16 Mich App 352, 167 NW2d 871 (1969), requires an appellate court to consider the following factors when weighing whether a bond on appeal or a stay on sentencing should be granted: (1) the likelihood that the defendant will appear when required in response to an order of the court; (2) the potential harm to the community from the defendant being at large while the appeal is pending; (3) the substantiality of the grounds for appeal; and (4) the risk to the administration of justice posed by release. Defendants satisfy all four factors.

Defendants have already demonstrated throughout these proceedings that they will appear in court, as Defendants were on bond to the trial court from December 2, 2017 to March 14,

2018, without incident. Defendants have appeared, and will continue to appear, at all times required by the court. Defendants are not a flight risk.

Context is important here. Defendants have been found guilty of two misdemeanor ordinance violations involving peaceful acts, intending neither bodily harm nor property damage. Neither bodily harm nor property damage occurred. This is not a case where Defendants acted stealthily and sought to flee the police to avoid arrest. Defendants actions were a peaceful, public expression articulating a deep moral objection to abortion, not the judicial system. It is not reasonable to assume that these Defendants would convert their moral and theological objections to abortion into criminal acts of violence.

Accordingly, Defendants pose no potential harm (violence or otherwise) to the community;[2] and there would be no risk to the administration of justice posed by Defendants remaining free in the community with a stay of execution on their sentences. Defendants' filing of this motion and pursuit of this appeal are not for the purpose of delay, but for the purpose of pursuing justice.

While "[p]robation is peculiarly within the province of the sentencing judge," an appellate court should intervene in such matters when a condition of probation amounts to "a violation of some constitutional right of the defendant." *People v Sattler*, 20 Mich App 665, 669-70, 174 NW2d 605, 607 (1969).

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[2] This case involves a simple trespass. There are no alleged violations of the Freedom of Access to Clinic Entrances Act ("FACE"), 42 USC § 248, nor facts to support any such allegations. To violate FACE, a defendant must *intentionally* "injure, intimidate, or interfere" with a person seeking an abortion by "*force or threat of force or by physical obstruction.*" *Id.* (emphasis added). Consequently, cases relied upon by the lower court and the prosecutor where conditions or injunctions were issued following a FACE violation do not apply to a simple trespass. And even then, in cases where a FACE violation was found, appellate courts have routinely reversed conditions that imposed unreasonable restrictions on activity protected by the First Amendment. *See infra* n.6.

The lower court's probationary conditions violate Defendants' constitutional rights in two ways. First, the Free Speech and Free Exercise Clauses of the First Amendment prohibit a court from infringing upon Defendants' right to picket or engage in expressive religious activity on the public sidewalks within 500 feet of a medical facility that performs abortions. Second, the Sixth Amendment prohibits a court from imposing a condition that interferes with Defendants' right to counsel.

The lower court's unconstitutional probationary conditions have already resulted in irreparable harm: the loss of constitutionally protected rights. And compliance with these unlawful conditions is compelled by the potential imposition of a lengthy term of incarceration. Because the lower court's conditions of probation violate Defendants' constitutional rights, this Court should grant this emergency motion to stay, vacate these probationary conditions, and impose a bond during appeal which does not infringe upon Defendants' constitutional freedoms and which is reasonably related to the crime at issue here: a simple trespass at the Women's Center.

II. Defendants' Pro-Life Activities on the Public Sidewalks Outside of Abortion Centers Are Fully Protected by the First Amendment and Cannot Be Restricted by the Trial Court under the Facts of This Case.

There is no question that the lawful activities prohibited by the lower court's probation conditions are fully protected by the First Amendment.

A. Defendants' Pro-Life Activities Are Fully Protected by the First Amendment.

"Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum." *Schenck v Pro-Choice Network of W NY*, 519 US 357, 377 (1997).

Defendants' pro-life activities, which include counseling, praying, handing out literature, and holding signs on public sidewalks outside of abortion centers, are protected by the Free Speech *and* Free Exercise Clauses of the First Amendment. *See, e.g., Capitol Square Rev & Adv Bd v Pinette*, 515 US 753, 760 (1995) ("[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."); *Bd of Educ v Mergens*, 496 US 226, 250 (1990) (O'Connor, J.) (observing that "*private* speech endorsing religion" is protected by "the Free Speech and Free Exercise Clauses").

In *Bible Believers v Wayne County*, 805 F3d 228 (CA6 2015), the Sixth Circuit, sitting *en banc*, stated:

> The right to free exercise of religion includes the right to engage in conduct that is motivated by the religious beliefs held by the individual asserting the claim. . . . The government cannot prohibit an individual from engaging in religious conduct that is protected by the First Amendment. . . .
>
> The Bible Believers' proselytizing at the 2012 Arab International Festival constituted religious conduct, as well as expressive speech-related activity, that was likewise protected by the Free Exercise Clause of the First Amendment. . . . Plaintiff Israel testified that he was required "to try and convert non-believers, and call sinners to repent" due to his sincerely held religious beliefs. We do not question the sincerity of that claim. . . .
>
> Free exercise claims are often considered in tandem with free speech claims and may rely entirely on the same set of facts.

Id. at 255-56.

Thus, we are dealing here with fundamental rights of the highest order. Indeed, rather than serving as a basis for more severe punishment (*see infra*), Defendants' pro-life speech is public issue speech which "occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection." *Connick v Myers*, 461 US 138, 145 (1983) (citations omitted).

B. The Challenged Conditions Unlawfully Restrict Protected Activity in Traditional Public Fora.

The public streets and sidewalks outside of abortion centers throughout the United States are traditional public fora. As stated by the U.S. Supreme Court:

> [O]ur decisions identifying public streets and sidewalks as traditional public fora are not accidental invocations of a 'cliché,' but recognition that "[w]herever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public." No particularized inquiry into the precise nature of a specific street is necessary; all public streets are held in the public trust and are properly considered traditional public fora.

Frisby v Schultz, 487 US 474, 480-81 (1988) (internal citation omitted). Traditional public fora "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v CIO*, 307 US 496, 515 (1939). And there is no exception for public sidewalks adjacent to abortion centers. *McCullen v Coakley*, 134 S Ct 2518, 2529 (2014) (striking down on First Amendment grounds a content-neutral, *35-foot buffer zone* restriction around abortion centers).

Consequently, Defendants' pro-life activities on the public streets and sidewalks adjacent to abortion centers are fully protected by the Free Speech and Free Exercise Clauses of the First Amendment. The lower court's nationwide probation condition forbids this very conduct and subjects Defendants to incarceration for engaging in activity that is fully protected by the First Amendment.[3] This condition of probation is unreasonable as a matter of law.

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[3] As a result of the lower court's restriction, Defendants Connolly, Goodman, Miller, and Woodworth-Crandall are prohibited from engaging in their First Amendment activity for twelve months, which is three times longer than the maximum sentence of incarceration (120 days) that the lower court could impose.

C. The Challenged Conditions, Which Operate as Prior Restraints on First Amendment Activity, Are Unreasonable as a Matter of Law.

The challenged probation conditions unquestionably operate as *prior restraints* on First Amendment activity. *See Alexander v United States*, 509 US 544, 550 (1993) ("The term 'prior restraint' is used to describe administrative and judicial orders *forbidding* certain communications when issued in advance of the time that such communications are to occur.") (internal quotations and citation omitted). And "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc v Sullivan*, 372 US 58, 70 (1963) (collecting cases).

The gravamen of this case is the commission of a property crime (trespass) at the Women's Center located on Orchard Lake Road in the Township. It is a 30-day misdemeanor. It is not a FACE violation. It is not a felony. It is not a crime of violence. There was no violence nor threats of violence. And there was no vandalism nor any property damage whatsoever. Defendants peacefully handed out red roses in the waiting room of the abortion center. Attached to the roses were cards containing a message of love and presenting options for women to choose life for their babies. The interference with police authority offense was incidental to the trespass offense as Defendants engaged in "passive resistance," a common tactic employed by civil rights advocates and other peaceful protestors from time immemorial. There are no victims of any violent, or threatened violent, acts in this case. There is no property damage. There was no force or threat of force used. It was a simple trespass.

The authority for probation is set forth in MCL 771.3. The statute specifically allows a trial court judge to impose certain conditions, such as requiring a defendant complete community service, pay court costs, participate in certain programs, be subject to monitoring, and abstain from future illegal conduct. However, the statute does not license a trial court judge to impose

draconian and unreasonable restrictions on a defendant's rights protected by the First Amendment, particularly when the underlying offense is a simple trespass. "Although the sentencing judge is accorded wide discretion, the exercise of that judgment is ***not*** unfettered: ***the conditions imposed upon the probationer must bear a logical relationship to rehabilitation.***" *People v Branson*, 138 Mich App 455, 458, 360 NW2d 614, 616 (1984) (citing *People v Higgins*, 22 Mich App 479; 177 NW2d 716 (1970); *People v Johnson*, 92 Mich App 766; 285 NW2d 453 (1979)) (emphasis added).[4] And they must not unlawfully impinge upon a defendant's constitutional rights. *See Sattler*, 20 Mich. App. at 669-70, 174 N.W.2d at 607 ("[A]n appellate court should not interfere in probation matters ***absent*** a showing of a violation or abuse of statutory authority ***or violation of some constitutional right of the defendant.***") (emphasis added).

Therefore, while the trial court is within its authority to impose a condition on Defendants to not enter the premises of the location that gave rise to their trespass conviction (a condition that bears a logical relationship to the underlying offense), the trial court is without authority to impose a condition, unrelated to illegal trespass, that directly violates Defendants' lawful rights under the First Amendment. The lower court's probationary conditions amount to a *nationwide* injunction prohibiting Defendants from engaging in their First Amendment activity on public sidewalks outside of *every* abortion clinic in the United States. This condition is extreme and not logically related to thwarting illegal trespassing activity. Instead, the condition

[4] In *State v Tavone*, 446 A2d 741 (RI 1982), the defendant was convicted of presenting an obscene motion picture and received a two-year prison sentence. Pending his appeal, the defendant was released on bail. As a condition of his bail, the trial court forbade the defendant from exhibiting any X-rated motion pictures. The Rhode Island Supreme Court vacated the condition because it failed to see the relationship between the defendant's abstention from showing X-rated movies and assurance of his subsequent appearances as well as his submission to the court's judgment. *Id.* at 742.

unreasonably and unlawfully seeks to silence Defendants' pro-life message and prevent them from engaging in lawful, *constitutionally protected* activities.

D. Case Law Does Not Support the Trial Court's Restrictions upon Defendants' First Amendment Rights.

During sentencing, the trial court set forth its rationale for imposing its burdensome restrictions on Defendants' First Amendment freedoms. Upon close inspection, the court's rationale is faulty in the extreme. To begin, the trial court noted that any condition that impinges upon a constitutional freedom must be "narrowly tailored" and "directly related to the rehabilitation of the defendant and to the protection of the public," (Ex 3, *Township v Miller*, Tr at 33), yet the court failed to heed its own admonition.

Indeed, there is no comparison between the simple trespass at the Women's Center in this case and a trespass onto military property housing dangerous weapons. (Ex 3, *Township v Miller*, Tr at 34 [stating, without citation, that "[c]ourts have upheld a probation condition prohibiting Trident weapon system protestors from coming within 250 feet of a naval submarine base"]). Unlike a military installation with armed sentries and dangerous military equipment, including weapons, there is nothing inherently dangerous about an abortion center (aside from the harm that Defendants sought to prevent).

The trial court's citation to *United States v Bird*, 124 F3d 667 (CA 5 1997),[5] similarly fails to support the onerous restrictions imposed in this simple trespass case. As a condition of supervised release *for violating FACE*, the district court in *Bird* ordered the defendant to "stay at least one thousand feet from abortion clinics, specifically the America's Women Clinic in Houston." *Bird*, 1997 U.S. App. LEXIS 33988, at *2-3. The Fifth Circuit upheld the condition,

[5] The court's amended opinion is found at *United States v Bird*, No. 95-20792, 1997 US App LEXIS 33988, (CA5 Sept 24, 1997).

specifically finding that "Bird's conviction *for violent activity under the Act* constitutes a sufficient governmental interest to justify a temporary limitation on Bird's First Amendment rights." *Id.* at *51 (emphasis added). There is no such violent activity at issue here. *None*.

Similarly, the case cited by the trial court, *United States v Turner*, 44 F3d 900 (CA10 1995), to support its condition that Defendants not "harass, intimidate or picket any facility that performs abortion" is not applicable. The defendant in *Turner* was convicted of violating 18 USC § 1509. Section 1509 provides as follows:

> Whoever, *by threats or force*, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both.

18 USC § 1509 (emphasis added). The defendant was also indicted for assault on a federal officer in violation of 18 U.S.C. 111, but that charge was eventually dropped. In light of the facts of that case, the Tenth Circuit upheld as a condition of the defendant's probation that she not "harass, intimidate or picket *in front of* any gynecological or abortion family planning services center." *Id.* at 903 (emphasis added). Notably, there was no onerous 500-foot restriction in *Turner*, despite the fact that the case involved "threats or force."

Finally, the court justifies its broad restriction on Defendants' First Amendment activity by asserting:

> Though the restriction prohibits probationer from approaching within 500 feet of health clinics, the limitation does not prevent probationer or probationers from going door-to door conveying her views, writing their legislatures, protesting on the National Mall, serving as a high-ranking official in a prolife organization, attending meetings or distributing leaflets personally, through the mail, or via publication.

(Ex 3, *Township v Miller*, Tr at 35). However, the U.S. Supreme Court has held that "the streets are natural and proper places for the dissemination of information and opinion, and one is not to

have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v NJ*, 308 US 147, 163 (1939); *Am.-Arab Anti-Discrimination Comm v City of Dearborn*, 418 F3d 600, 605 (CA6 2005) ("Constitutional concerns are heightened further where, as here, the [challenged ordinance] restricts the public's use of streets and sidewalks for political speech."); *Perry Educ Ass'n v Perry Local Educators*, 460 US 37, 55 (1983) (stating that "[i]n a public forum . . . all parties have a constitutional right of access and the State must demonstrate compelling reasons for restricting access to a single class of speakers").

In the final analysis, Defendants were unreasonably punished because they are pro-life. More specifically, Defendants were punished because of their deeply held religious conviction that abortion is an intrinsic evil. While the trial court stated throughout the trial that this case had *nothing* to do with abortion, its sentencing proved otherwise. During sentencing, the court stated that "this courtroom will not become a legislative hearing room on the pros and cons of abortion," (Ex 3, *Township v Miller*, Tr at 39), yet that is precisely what it became when the court sentenced Defendants. The court admitted as much: "Given the Defendant's strongly-held convictions regarding abortion, it is not implausible to speculate that if Defendant were permitted to protest at clinics, Defendant might not be able to restrict her activities within the lawful perimeters." (*Id.* at 37-38).

In sum, Defendants challenge anyone to find a case involving a simple trespass ordinance violation (*i.e.*, a case that did not involve violence, threats of violence, or some other physical force, obstruction, or danger to society) where such draconian restrictions were imposed upon a

defendant. None exists,[6] nor should this Court allow the onerous conditions in this case to exist following its careful examination and scrutiny.

III. The Lower Court's Condition of Probation Ordering that Defendants Have No Contact with Each Other, Even on Matters Concerning Their Legal Defense, Interferes with Defendants' Sixth Amendment Right to Counsel.[7]

A defendant's constitutionally protected right to counsel continues through the appellate process. *Halbert v Mich*, 545 US 605, 606-07 (2005). A defendant's right to counsel encompasses "(1) the qualified right to be represented by counsel of one's choice, and (2) the right to a defense conducted by an attorney who is free of conflicts of interest." *Wheat v United States*, 486 US 153, 157 (1988).

Defendants seek to avail themselves to the post-conviction proceedings and appellate review of their cases. The lower court, however, wishes to interfere with Defendants' legal representation by prohibiting Defendants from having any contact with each other, including when necessary for their legal defense. (Ex 4, *Township v Connolly*, Tr at 15-16).

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[6] For example, in *United States v Dinwiddie*, 76 F3d 913, 918-19 (CA8 1996), upon finding a violation of FACE, the district court imposed a 500-foot buffer zone, but it had exceptions for "legitimate personal activity," including carrying signs and distributing literature—activity protected by the First Amendment. Despite these exceptions, the Eight Circuit struck down portions of the injunction because they impermissibly burdened free speech. *Id.* at 927-28. As another example, in *Madsen v Women's Health Ctr*, 512 US 753, 774 (1994), the U.S. Supreme Court invalidated an injunction's requirement that, within 300 feet of an abortion center, protestors refrain from physically approaching any person seeking services at the center, explaining that "absent evidence that the protestor's speech is independently proscribable (*i.e.*, fighting words or threats) or is so infused with violence as to be indistinguishable from a threat of physical harm, this provision cannot stand."

[7] This provision also violates Defendants' First Amendment right to expressive association. (Ex 3, *Township v Miller*, Tr at 14-15 [stating objection]); *Healy v James*, 408 US 169, 181 (1972) ("Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs."); *Roberts v US Jaycees*, 468 US 609, 622 (1984) ("An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.") (citations omitted); *NAACP v Ala*, 357 US 449, 460 (1958) ("Effective advocacy . . . is undeniably enhanced by group association . . . .").

Defendants were on bond without any such "no contact" provision from December 2, 2017 to March 14, 2018. At their arraignment, Defendants elected to share the same counsel, who is providing their legal defense *pro bono*—Defendants cannot afford counsel. The lower court did not have a "no contact" provision in place when Defendants waived any conflict,[8] and the court never saw need for this "no contact" provision at all of the pre-trials, the trial, and the post-trial sentencing hearing. It was not until imposing the conditions of probation at sentencing that the court imposed this "no contact" provision. As noted throughout, this case involves a simple trespass—an ordinance violation. It does not involve a crime of violence, nor was there any property damage or vandalism associated with the trespass. Indeed, there was no charge of a criminal conspiracy. In short, there is no basis for the "no contact' provision and certainly no basis for imposing it in a way that adversely impacts Defendants' right to legal counsel. The court dismissed Defendants' objections, claiming that months prior and with no knowledge that such a "no contact" provision would ever be created and imposed by the court, Defendants waived any conflicts associated with joint representation. However, the waiver was made because there were no known nor anticipated conflicts that would arise as a result of the joint representation. There was a common set of facts and common defenses. There was no conflict. Now, however, the lower court created undue interference by imposing this unreasonable restriction.

The lower court has the duty to ascertain whether separate counsel is necessary. *Holloway v Ark.* 435 US 475, 482 (1978). The lower court, however, never presented Defendants with any indication that its counsel would have to fracture its representation by communicating with each Defendant separately based on a later-imposed probation condition.

[8] Technically, the court's condition does not create a "conflict" *per se*. Rather, it causes interference with Defendants' right to counsel.

The lower court never presented Defendants with the possibility that they would not be allowed to share their thoughts and concerns pertaining to their legal defense with each other through counsel during the appellate process. Indeed, the lower court's condition of probation impairs defense counsel, as defense counsel now has to spend an inordinate amount of time communicating with each of the five Defendants separately. For example, instead of having one email conversation pertaining to an appellate issue, defense counsel now has to create and balance five different conversations pertaining to the same issue. Instead of placing one conference call where Defendants can freely discuss the appeal, defense counsel has to place five or more calls to discuss the same material, and then place follow up calls with each Defendant to discuss questions and issues that arise during the separate calls. Meanwhile, each Defendant does not get the benefit of hearing the actual conversation and contemporaneously contributing to it or asking questions. Requiring the "no contact" provisions handicaps Defendants' legal representation on appeal, as now Defendants' counsel is tied up with its communications with Defendants instead of having the time to focus on the legal arguments and advocacy of their cases. Further, Defendants do not have access to the communications of their co-Defendants, so they do not have access to certain matters that might give rise to additional concerns or even potential conflicts of interest in their cases. Defendants never anticipated that the lower court would create such a complication. In sum, the lower court has interfered with Defendants' constitutional right to appellate counsel, and the "no contact" provision must be lifted (or, at a minimum stayed) to preserve Defendants' constitutional right to legal representation.

IV. The Challenged Conditions Cause Substantial and Irreparable Harm, and They Are Not in the Public Interest.

A judicial order that substantially deprives a person of his fundamental First Amendment freedoms, as in this case, causes substantial harm not only to the person deprived of his freedoms

but to the general public as well, particularly if the deprivation is permitted to persist by a reviewing court. *See, e.g., Stromberg v Cal*, 283 US 359, 369 (1931) (observing that "free political discussion" is "essential to the security of the Republic" and "a fundamental principle of our constitutional system"); *NAACP v Button*, 371 US 415, 433 (1963) (observing that our First Amendment "freedoms are delicate and vulnerable, as well as supremely precious in our society").

Indeed, not only is this harm substantial, it is irreparable. The U.S. Supreme Court has long held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v Burns*, 427 US 347, 373 (1976); *Newsome v Norris*, 888 F2d 371, 378 (CA6 1989) ("The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.") (citing *Elrod*).

As noted by the Sixth Circuit, "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc v Mich Liquor Control Comm'n*, 23 F3d 1071, 1079 (CA6 1994). Accordingly, "the public as a whole has a significant interest in ensuring equal protection of the laws and protection of First Amendment liberties." *Dayton Area Visually Impaired Persons, Inc. v Fisher*, 70 F3d 1474, 1490 (CA6 1995). Thus, the public as a whole has a significant interest in this Court's response to these burdensome conditions, which violate the First and Sixth Amendments.

The moment the trial court imposed these unconstitutional probationary conditions, which operates as prior restraints on *constitutionally protected activity* (they are not restraints on *unlawful* activity), Defendants were substantially and irreparably harmed, and this harm will

continue absent immediate relief from this Court. By vacating these unlawful conditions, the Court will be promoting the public interest.

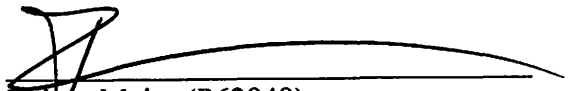
CONCLUSION

The interests of justice, fairness, and due process require that Defendants' emergency motion to stay execution on their sentences and request for bond on appeal be granted immediately without delay. The challenged conditions of Defendants' probation should be immediately vacated by this Court in order to prevent further irreparable harm to Defendants' constitutional rights. The Court should then place Defendants on bond with conditions that do not violate their fundamental rights in this simple trespass case.

Dated: March 27, 2018

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER



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PROOF OF SERVICE

I certify that I served a copy of the foregoing on the attorney of record below by Federal Express, overnight delivery.

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I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: March 27, 2018.

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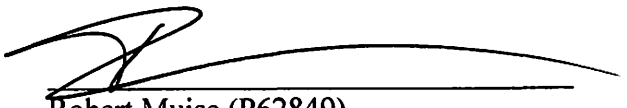

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