

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

CALVIN ZASTROW and
CORRIE ZASTROW,

Plaintiffs,

v.

CITY OF TOLEDO; *et al.*,

Defendants.

Case No. 3:18-cv-01778-JGC

CONSENT JUDGMENT AND ORDER

Plaintiffs Calvin Zastrow and Corrie Zastrow (“Plaintiffs”), by and through their undersigned counsel, and Defendant City of Toledo (“Defendant”), by and through its undersigned counsel (collectively referred to as the “parties”), hereby stipulate to the entry of this Consent Judgment, which includes an Order enjoining the enforcement of any and all code provisions, specifically including the following provisions of the Ohio Revised Code: Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11); and the following provisions of the Toledo Municipal Code: Criminal Trespass (§ 541.05), Disorderly Conduct (§ 509.03), Loitering (§ 509.08), and the Anti-Noise Law (§ 507) (collectively referred to as the “Code Provisions”) as applied to the non-obstructive, expressive activity of pro-life demonstrators, including Plaintiffs, on the public fora adjacent to the Capital Care Network located at 1160 West Sylvania Avenue in Toledo, Ohio pursuant to the terms and conditions set forth below.

1. The parties stipulate and agree that Defendant is enjoined from enforcing the Code Provisions as applied to the non-obstructive, expressive activity of pro-life demonstrators, including Plaintiffs, on the public fora adjacent to the Capital Care Network located at 1160 West Sylvania Avenue in Toledo, Ohio as described further below.

2. The “public fora adjacent to the Capital Care Network located at 1160 West Sylvania Avenue” as set forth herein are the public fora recognized as such under the First Amendment, including the public sidewalks and public medians adjacent to Capital Care Network.

3. The “non-obstructive, expressive activity of pro-life demonstrators” as set forth herein includes activity protected by the First Amendment, including, but not limited to unamplified prayer, preaching, worship, singing worship songs, playing worship songs with instruments such as the acoustic guitar and violin, holding pro-life signs, distributing literature, and engaging passersby with their pro-life message.

4. The parties agree that the term “non-obstructive, expressive activity” means activity protected by the First Amendment that does not physically prevent a pedestrian from using a public sidewalk or other public way or that does not physically impede a vehicle from traveling on a public road or street. This does not mean that the person or persons engaging in the First Amendment activity must be moving all the time. Additionally, the First Amendment activity is not “obstructive” because a pedestrian might have to walk around the person engaging in the expressive activity. It is only “obstructive” when the person engaging in the First Amendment activity physically prevents a pedestrian from using the public sidewalk or prevents a vehicle from entering onto the premises at 1160 West Sylvania Avenue.

5. Defendant shall not enforce or threaten to enforce its Anti-Noise Law, Toledo Municipal Code § 507, to restrict in any way the non-obstructive, expressive activity of pro-life demonstrators set forth herein unless and until (1) it does so by means of properly calibrated decibel meters employed by officers trained in the use of such machines and (2) the noise created by the expressive activity exceeds 90 decibels as measured by the decibel meters.

6. The parties agree that within 30 days of the entry of this Consent Judgment and Order, Defendant shall pay Plaintiffs' counsel, American Freedom Law Center, \$7,500.00 in full satisfaction of attorneys' fees and costs incurred by Plaintiffs in this action.

7. Defendant shall conduct training so as to teach all its law enforcement officers the terms of this Consent Judgment and Order.

8. The parties agree that within 7 days of receipt of payment of the attorneys' fees and costs set forth in paragraph 6 above, Defendant will dismiss its counterclaim and Plaintiffs will file a dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.

WHEREFORE, pursuant to the above stipulation and agreement, the parties hereby request that the Court enter this Consent Judgment and Order as set forth herein and below.

It is so stipulated and agreed this 19th day of March, 2019,

/s/ Robert J. Muise

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Counsel for Defendants

* * * * *

ORDER

Pursuant to the stipulation and agreement of the parties and for good cause shown, it is hereby Ordered that

Defendant is enjoined from enforcing any and all code provisions, specifically including the following provisions of the Ohio Revised Code: Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11); and the following provisions of the Toledo Municipal Code: Criminal Trespass (§ 541.05), Disorderly Conduct (§ 509.03), and Loitering (§ 509.08), and the Anti-Noise Law (§ 507) (collectively referred to as the “Code Provisions”) as applied to the non-obstructive, expressive activity of pro-life demonstrators, including Plaintiffs, on the public fora adjacent to the Capital Care Network located at 1160 West Sylvania Avenue in Toledo, Ohio as set forth in the above stipulation.

Further, Defendant shall not enforce or threaten to enforce its Anti-Noise Law, Toledo Municipal Code § 507, to restrict in any way the non-obstructive, expressive activity of pro-life demonstrators set forth herein unless and until (1) it does so by means of properly calibrated decibel meters employed by officers trained in the use of such machines and (2) the noise created by the expressive activity exceeds 90 decibels as measured by the decibel meters.

Defendant shall conduct training so as to teach all its law enforcement officers the terms of this Consent Judgment and Order.

SO ORDERED.

Dated: 3/19/19

/s/ James G. Carr
James G. Carr
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Consent Judgment and Injunction were served on the attorneys of record by electronic means or U.S. Mail on March 19, 2019.