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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

NATHAN DAVID WILSON, *et al.*,

Plaintiffs,

v.

CITY OF MOSCOW, *et al.*,

Defendants.

Case No. 3:22-cv-421-CWD

**PLAINTIFFS' STATEMENT OF MATERIAL FACTS NOT IN DISPUTE IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

1. Defendant City of Moscow ("City") is a municipal entity organized and existing under the laws of the State of Idaho with the right to sue and be sued. (City Supplemental Admis. ["City Admis."] ¶ 1 at Ex. A to Ex. 1 [Muise Decl.]).¹

2. At all times relevant to this litigation, Defendants Jay Waters, Shaine Gunderson, and Mitch Nunes were police officers with the City Police Department and thus acting under color of state law. (City Admis. ¶ 2 at Ex. 1).

3. In 2020, during the COVID-19 pandemic, the City imposed various regulations,

¹ The City's supplemental responses to Plaintiffs' requests for admissions are attached to the declaration of Attorney Muise (Exhibit 1) as Exhibit A.

including restrictions on private gatherings and mask mandates. (City Admis. ¶ 3 at Ex. 1; Rory Wilson Decl. ¶¶ 2, 7, Ex. A, at Ex. 2; Seamus Wilson Decl. ¶¶ 2-6, at Ex. 3).

4. In early September 2020, Plaintiff Rory Wilson, who was outdoors at the time, was threatened with arrest by City police officers because he was allegedly standing too close to his cousin without a mask. (Rory Wilson Decl. ¶¶ 2, 3, Ex. A, at Ex. 2).

5. On or about September 23, 2020, Plaintiffs Rory and Seamus Wilson participated in an outdoor Psalm sing organized by their grandfather, Douglas Wilson, who is the pastor of Christ Church, which is a Christian church located in the City. (City Admis. ¶ 5 at Ex. 1; Rory Wilson Decl. ¶¶ 4, 5 at Ex. 2; Seamus Wilson Decl. ¶¶ 3, 4 at Ex. 3).

6. Plaintiffs are members of Christ Church. (City Admis. ¶ 6 at Ex. 1; Rory Wilson Decl. ¶ 1 at Ex. 2; Seamus Wilson Decl. ¶ 1 at Ex. 3; Nate Wilson Decl. ¶ 1 at Ex. 4).

7. Members of Christ Church engaged in the Psalm sing to protest the City's COVID-19 restrictions. (Rory Wilson Decl. ¶ 5 at Ex. 2; Seamus Wilson Decl. ¶ 4 at Ex. 3; *see also* City Admis. ¶ 7 at Ex. 1).

8. The Psalm sing took place in the outdoor parking lot of the Moscow City Hall. (City Admis. ¶ 8 at Ex. 1; Rory Wilson Decl. ¶ 6 at Ex. 2; Seamus Wilson Decl. ¶ 5 at Ex. 3).

9. Despite the fact that the City's COVID-19 orders exempted religious activities, City police officers arrived at the location of the Psalm sing and began arresting participants of the Psalm sing. (Rory Wilson Decl. ¶ 7 at Ex. 2; Seamus Wilson Decl. ¶ 6 at Ex. 3; City Admis. ¶ 9 at Ex. 1).

10. Charges were filed against the arrested participants of the Psalm sing, but these charges were later dropped. (City Admis. ¶ 10 at Ex. 1).

11. The City established the slogan, "ENFORCED BECAUSE WE CARE," to justify

their COVID-19 restrictions. (Rory Wilson Decl. ¶ 9 at Ex. 2; Nate Wilson Decl. ¶ 8 at Ex. 4; *see also* City Admis. ¶ 12 at Ex. 1).

12. The slogan identified in ¶ 11 above was posted on signs around the City. (City Admis. ¶ 12 at Ex. 1; Rory Wilson Decl. ¶ 9 at Ex. 2; Seamus Wilson Decl. ¶ 8 at Ex. 3).

13. The protest decals posted by Plaintiffs Rory and Seamus Wilson—decals which were made to protest the City’s COVID-19 restrictions—were small (most were 3 inches in size and some were 8 inches), made of vinyl, and were non-damaging; that is, they were the type of decals that could be applied and removed easily without causing any damage or leaving any residue, and they would disintegrate in weather. (Rory Wilson Decl. ¶¶ 10, 11 at Ex. 2; Seamus Wilson Decl. ¶ 9, 10 at Ex. 3; Nate Wilson Decl. ¶¶ 9, 10, 11 at Ex. 4).

14. Some of the protest decals stated, “SOVIET MOSCOW,” and they included a hammer and sickle. (City Admis. ¶ 14 at Ex. 1; Rory Wilson Decl. ¶¶ 13, 14 at Ex. 2; Nate Wilson Decl. ¶¶ 9-14 at Ex. 4).

15. Some of the protest decals bore an image of the hammer and sickle and stated, “SOVIET MOSCOW: ENFORCED BECAUSE WE CARE.” (City Admis. ¶ 15 at Ex. 1; Nate Wilson Decl. ¶ 13 at Ex. 4).

16. Below is a true and accurate picture of a protest decal:



(City Admis. ¶ 16 at Ex. 1; Nate Wilson Decl. ¶ 14 at Ex. 4).

17. On October 6, 2020, Plaintiffs Rory and Seamus Wilson posted protest decals on

City property, particularly at locations where other decals, stickers, and handbills were or have been posted in the past, including locations such as City light poles, parking poles, and signs. (Rory Decl. ¶ 15 at Ex. 2; Seamus Wilson Decl. ¶ 13 at Ex. 3; *see also* City Admis. ¶ 17 at Ex. 1).

18. Plaintiffs Rory and Seamus Wilson engaged in the expressive activity described in ¶ 17 above to protest the City’s COVID-19 restrictions. (Rory Wilson Decl. ¶¶ 16, 47 at Ex. 2; Seamus Wilson Decl. ¶¶ 14, 38 at Ex. 3; *see also* Nate Wilson Decl. ¶ 16 at Ex. 4; City Admis. ¶ 18 at Ex. 1).

19. It was and is a common and widespread custom and practice in the City for individuals and/or organizations to post messages (also referred to as “advertising matter” in Title 10, Chapter 1, Section 22 of the City’s ordinances [“City Ordinance”]), including commercial messages, political messages, and messages on matters of public interest, on poles and other City property throughout the City. (Rory Wilson ¶¶ 17-21 at Ex. 2; Seamus Wilson ¶ 15 at Ex. 3; Nate Wilson Decl. ¶¶ 17-21, 30, 40-44, at Ex. 4; Heather Wilson Decl. ¶¶ 1, 2, 5, 6-10, Ex. A [photos of “advertising matter” posted on City property], at Ex. 5; *see also* City Admis. ¶ 23 [admitting that “advertising matter[]” has been posted on poles on the City “for many years, including before the incident in question”] at Ex. 1).

20. The custom and practice of posting messages (“advertising matter”) described in ¶ 19 above has most often occurred in the City without requiring the individual and/or organization posting the message (“advertising matter”) to obtain permission from any City official prior to posting it. (Rory Wilson Decl. ¶ 18 at Ex. 2; Seamus Wilson Decl. ¶ 16 at Ex. 3; Nate Wilson Decl. ¶¶ 17-21, 30, 40-44 at Ex. 4; *see also* Heather Wilson Decl. ¶¶ 3, 10 at Ex. 5; City Admis. ¶ 31 [admitting “that prior to the incident at issue in this matter, no records exist of any person submitting . . . a written request” to post advertising matter on City property] at Ex. 1).

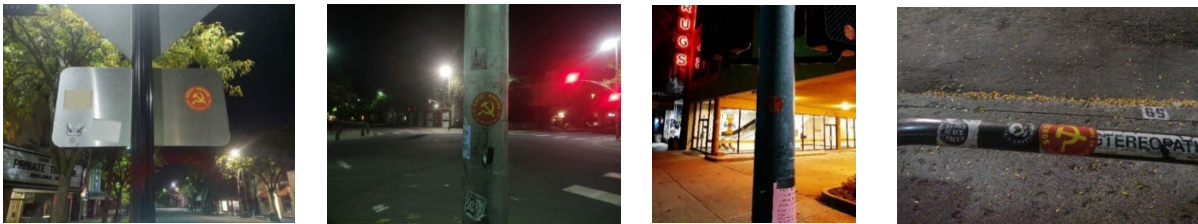
21. Many poles in the City display or have displayed numerous and varied decals and fliers (“advertising matter”) expressing commercial, political, and other public-issue messages. (Rory Wilson Decl. ¶ 19 at Ex. 2; Seamus Wilson ¶ 17 at Ex. 3; Nate Wilson Decl. ¶¶ 17-21, 30, 40-44 at Ex. 4; Heather Wilson Decl. ¶¶ 2-10, Ex. A [photos of “advertising matter” posted on City property] at Ex. 5; *see also* City Admis. ¶ 31 [admitting “that prior to the incident at issue in this matter, no records exist of any person submitting . . . a written request” to post advertising matter on City property], ¶ 21 [admitting “that advertising matter[] has been posted on poles in the City without its permission”] ¶ 23 [admitting that “advertising matter[]” has been posted on poles on the City “for many years, including before the incident in question”] at Ex. 1).

22. In addition to the use of City poles for expressing various messages, individuals and/or organizations have posted numerous yard signs, lost pet fliers, and handbills (“advertising matter”) with political and other public-issue messages at various public locations in the City. (Rory Wilson Decl. ¶ 20 at Ex. 2; Seamus Wilson Decl. ¶ 18 at Ex. 3; Nate Wilson Decl. ¶¶ 17-21, 30, 40-44 at Ex. 4; Heather Wilson Decl. ¶¶ 2-10, Ex. A [photos of “advertising matter” posted on City property], at Ex. 5; *see also* City Admis. ¶ 31 [admitting “that prior to the incident at issue in this matter, no records exist of any person submitting . . . a written request” to post advertising matter on City property], ¶ 22, ¶ 21 [admitting “that advertising matter[] has been posted on poles in the City without its permission”], ¶ 23 [admitting that “advertising matter[]” has been posted on poles on the City “for many years, including before the incident in question”] at Ex. 1).

23. The practices described in ¶¶ 19 through 22 have occurred in the City for decades. (Nate Wilson Decl. ¶ 17 at Ex. 4; Heather Wilson Decl. ¶¶ 1-10, Ex. A [photos of “advertising matter” posted on City property], at Ex. 5; *see also* City Admis. ¶ 23 [admitting that “advertising matter[]” has been posted on poles on the City “for many years, including before the incident in

question”] at Ex. 1).

24. Below are true and correct pictures of Plaintiffs’ protest decals placed alongside other postings (“advertising matter”) in the City, and these were some of the same protest decal postings that served as a basis for the arrests, citations, and/or prosecutions of Plaintiffs:



(Rory Wilson Decl. ¶ 21 at Ex. 2; Seamus Wilson Decl. ¶ 19 at Ex. 3).

25. A paper that circulates in the City, twice covered a local man’s City-wide flier-posting campaign to find his missing dog, referred to as “Aspen the lost dog” stories. (City Admis. ¶ 25 at Ex. 1; Nate Wilson Decl. ¶ 30 at Ex. 4).

26. There were no arrests nor complaints from the City or its officials, including Defendants, for the postings related to Aspen the lost dog referenced in ¶ 25 even though the person responsible for posting the fliers (Jim Mital) was publicly known. (City Admis. ¶ 26 at Ex. 1; Nate Wilson Decl. ¶ 30 at Ex. 4).

27. The below pictures depict postings (“advertising matter”) on City property:



(Heather Wilson Decl. ¶ 9 at Ex. 5).

28. For many postings (“advertising matter”) that have appeared on City property, the identity of the individual responsible for the posting is or was available as the contact information

is often included on the posting. (Nate Wilson Decl. ¶¶ 17-21, 30 at Ex. 4; Heather Wilson Decl. ¶¶ 2-10, Ex. A [photos of “advertising matter” posted on City property] at Ex. 5; City Admis. ¶ 28 [admitting “that the identity of the individual responsible for the posting has sometimes been included on the posting”] at Ex. 1).

29. Aside from Plaintiffs, Defendants have not pursued individuals who posted advertising matter on City property with citations or prosecutions even though the individuals did not have written permission from any City official for posting the advertising matter. (City Admis. ¶ 29 at Ex. 1; *see also id.* ¶ 78; Rory Wilson Decl. ¶¶ 46, 48 at Ex. 2; Nate Wilson Decl. ¶¶ 17, 18, 28, 40-43 at Ex. 4).

30. There is no written procedure with objective criteria for obtaining the City’s consent/written permission to post advertising matter on City property pursuant to Title 10, Chapter 1, Section 22 (“City Ordinance”). (City Admis. ¶ 30 at Ex. 1).

31. There are no records of anyone submitting a written request pursuant to the City Ordinance for the posting of advertising matter on City property pursuant to the City Ordinance nor any records of approvals from the City authorizing the posting of advertising matter pursuant to the City Ordinance. (City Admis. ¶ 31 at Ex. 1).

32. On October 6, 2020, the City Police Department received a call reporting two people placing decals on poles and signs; Defendants Gunderson and Nunes responded to the complaint on foot while Defendant Waters responded in a squad car. (City Admis. ¶ 32 at Ex. 1).

33. Upon the arrival of the defendant police officers identified in ¶ 32 above, Plaintiffs Rory and Seamus Wilson were walking on the public sidewalks on both sides of the street. (Rory Wilson Decl. ¶¶ 22, 23 at Ex. 2; Seamus Wilson Decl. ¶ 20 at Ex. 3).

34. When the defendant police officers approached Plaintiffs Rory and Seamus Wilson

(Seamus was 14 at the time and Rory was 18), Plaintiffs did not attempt to flee. (Rory Wilson Decl. ¶¶ 23, 24 at Ex. 2; Seamus Wilson Decl. ¶¶ 21, 22 at Ex. 3; *see also* City Admis. ¶ 34 [admitting “that Plaintiffs did not attempt to flee”]).

35. Upon the arrival of the defendant police officers, Defendants Gunderson and Nunes asked Plaintiff Rory Wilson for identification and Plaintiff Rory Wilson responded by stating that he thought Idaho was not a stop and identify state, which angered the officers. (Rory Wilson Decl. ¶¶ 29, 30 at Ex. 2; *see also* City Admis. ¶ 35 [admitting “that Rory made a statement to that effect, but lack[ing] sufficient knowledge to admit or deny that was the exact statement Rory made”] at Ex. 1).

36. After Plaintiff Rory Wilson responded as noted above, Defendants Gunderson and Nunes forcefully placed Plaintiff Rory Wilson in handcuffs and proceeded to question him, telling Plaintiff that the officers would not release him unless he answered them. (Rory Wilson Decl. ¶ 30 at Ex. 2).

37. Plaintiff Rory Wilson was not free to leave and the officers did not advise him of his *Miranda* rights before questioning him. (Rory Wilson Decl. ¶ 31 at Ex. 2; *see also* City Admis. ¶ 37 at Ex. 1).

38. Below is a true and correct image of City police officers placing Plaintiff Rory Wilson in handcuffs while his brother, Plaintiff Seamus Wilson, observes and is questioned by Defendant Waters:



(City Admis. ¶ 38 at Ex. 1; Rory Wilson Decl. ¶ 33 at Ex. 2; Seamus Wilson Decl. ¶¶ 27, 29 at Ex.

3).

39. The image identified in ¶ 38 above was taken from City police dash cam video. (City Admis. ¶ 39 [admitting the image was from “dash cam video”] at Ex. 1).

40. While Plaintiff Rory Wilson was being detained by Defendants Gunderson and Nunes, Plaintiff Seamus Wilson was moved away from his brother and placed on the squad car’s brush guard where he was questioned by Defendant Waters. (City Admis. ¶ 40 at Ex. 1; Rory Wilson Decl. ¶ 32 at Ex. 2; Seamus Wilson Decl. ¶¶ 26-29 at Ex. 3).

41. During the questioning identified in ¶ 40 above, Defendant Waters positioned his tactical flashlight directly in Plaintiff Seamus Wilson’s face and told him that he was required by law to answer his questions and that he could detain Plaintiff Seamus Wilson as long as it took for him to talk. (Rory Wilson Decl. ¶¶ 34, 35 at Ex. 2; Seamus Wilson Decl. ¶¶ 30, 31 at Ex. 3; *see also* City Admis. ¶ 41 [admitting that “Officer Waters told Seamus that he was detained and would be held until he was identified”]).

42. The images below are true and correct images of Defendant Waters shining his tactical flashlight directly into Plaintiff Seamus’s face during the officer’s interrogation:



(Rory Wilson Decl. ¶ 35 at Ex. 2; Seamus Wilson Decl. ¶ 31 at Ex. 3; *see also* City Admis ¶ 42 [admitting that “the images are true and correct”] at Ex. 1).

43. The images identified in ¶ 42 above were taken from City police dash cam video. (City Admis. ¶ 43 [admitting the images were from “dash cam video”] at Ex. 1).

44. During the questioning of Plaintiffs Rory and Seamus Wilson, Plaintiffs were accused of crimes (malicious injury to property) and not free to leave. (Rory Wilson Decl. ¶ 36 at Ex. 2; Seamus Wilson Decl. ¶ 32 at Ex. 3; *see also* City Admis. ¶ 44 [admitting that these Plaintiffs “were being investigated for the crime of malicious injury to property”]; *id.* ¶ 37 [admitting that “Plaintiff Rory Wilson was not free to leave”] at Ex. 1).

45. When the defendant police officers told Plaintiff Rory Wilson that he would be charged with malicious injury to property, Plaintiff offered to remove all of the non-damaging decals, but he was told by the officers that it was now too late. (Rory Wilson Decl. ¶ 37 at Ex. 2; *see also* City Admis. ¶ 45 [admitting “that after being told that they would be charged with malicious ‘injury’ to property, plaintiffs offered to remove the stickers”] at Ex. 1).

46. After detaining the two boys, Defendant Waters called Plaintiff Nathan Wilson to come pick up his sons, and when Plaintiff Nathan Wilson arrived, Defendant Waters confronted him, stating, “First off, I don’t agree with the messaging,” referring to the protest decals. (Nate Wilson Decl. ¶ 23 at Ex. 4; *see also* Seamus Wilson Decl. ¶ 34 at Ex. 3).

47. Officer Waters also made it clear to Plaintiff Seamus Wilson that he disagreed with the messaging of the stickers. In fact, at one point, Defendant Waters used the expletive “shit” to describe what Plaintiffs Rory and Seamus Wilson were doing. (Seamus Wilson Decl. ¶ 34 at Ex. 3).

48. When Defendant Waters asked Plaintiff Nathan Wilson if he had anything to do with producing the protest decals, Plaintiff Nathan Wilson said, “I’m gonna go ahead and plead the Fifth on that one,” or words to that effect, which angered Defendant Waters. (Nate Wilson Decl. ¶ 24 at Ex. 4; *see also* Seamus Wilson Decl. ¶ 35 at Ex. 3; City Admis. ¶ 47 [admitting that “Nathan Wilson made a statement to that effect,” but denying that Defendant Waters was angered

by it because “Defendants cannot speculate on the subjective feelings of Officer Waters”] at Ex. 1).

49. When Defendant Waters released Plaintiffs Rory and Seamus Wilson from the officers’ custody into the care of Plaintiff Nathan Wilson, he told Plaintiffs that the “report would be forwarded to both the City Prosecutor and Youth Services.” (City Admis. ¶ 48 at Ex. 1).

50. After the incident of October 6, 2020, described above, City police officers texted each other about catching “kids slapping stickers,” noting the “kids” relationship to their grandfather, Douglas Wilson. (City Admis. ¶ 49 at Ex. 1).

51. On October 6, 2020 (*i.e.*, the same day the decals were posted), the City dispatched workers to remove the protest decals from the downtown area, but the workers only removed the protest decals and left other decals, stickers, or posters (“advertising matter”) in place, including stickers directly insulting Plaintiffs’ Christian community. (City Admis. ¶ 50 [admitting, but asserting “that the reason only those stickers were removed was to track staff time for restitution” and that “Defendants removed all remaining stickers and posts at a later date”] at Ex. 1, *but see* Ex. Dixon Decl. ¶¶ 2-8 at Ex. 6; *see also* Nathan Wilson Decl. ¶¶ 43, 44 at Ex. 4; Heather Wilson Decl. ¶¶ 5, 7, 18, Ex. A [photographs of “advertising matter” posted on City property] at Ex. 5).

52. Some of the insulting stickers that remained after City workers removed the protest decals described above included postings with messages such as “Fuck Christ Church,” “All Kirkers Are Bastards” on a little blue cross sticker that imitates and thus mocks the church’s logo, and “NSA GET OUT.” (Heather Wilson Decl. ¶ 8, Ex A [photos of “advertising matter” posted on City property] at Ex. 5; *see also* Nate Wilson Decl. ¶ 44 at Ex. 4).

53. NSA is a Christian college associated with Christ Church, and Kirkers is a local nickname for members of Christ Church. (City Admis. ¶ 52 at Ex. 1; *see also* Nate Wilson Decl.

¶ 44 at Ex. 4).

54. The image below is a true and correct picture showing the display of an “All Kirkers Are Bastards” sticker posted on a pole in the City:



(Nate Wilson Decl. ¶ 44 at Ex. 4; *see also* City Admis. ¶ 53 [admitting that “the sticker says and represents that,” but “cannot admit that the pole is located in the City of Moscow, and do not know who placed that sticker”).

55. According to the police report, Plaintiffs Rory and Seamus Wilson posted 89 protest decals; however, when the City workers went out the next morning to remove them, they only found 17 protest decals to remove. (City Admis. ¶ 56 at Ex. 1).

56. In March 2021, the City sent street crews out once again to clean the poles, but even then, the City workers did not remove postings (“advertising matter”) that were critical of Christ Church. (Dixon Decl. ¶¶ 4-8 at Ex. 6).

57. In response to the City’s removal actions that targeted only certain messages, locals started a “Permitted Signs of Moscow, Idaho” Facebook group, where public members of the group can post pictures of stickers, flyers, and other signs (“advertising matter”) that were currently posted in the City. (Heather Wilson Decl. ¶ 5 at Ex. 5; Dixon Decl. ¶¶ 1, 2, 3 at Ex.6).

58. “[A]dvertising matter” that remained posted on City property following the City’s removal actions described above included messages stating, “Fuck Christ Church,” “Obey the Cult” (with an image of Plaintiff Nathan Wilson’s father, the pastor of Christ Church), and the “All Kirkers Are Bastards,” sticker. (Heather Wilson Decl. ¶¶ 3, 6, Ex. A, at Ex. 5; *see also* Dixon

Decl. ¶¶ 7, 8 at Ex. 6).

59. Below are true and correct pictures of some of the “advertising matter” that is described above: most of these postings are also included in Exhibit A to the Heather Wilson Declaration at Exhibit 5.



(Heather Wilson Decl. ¶ 8, Ex. A, at Ex. 5; *see also* Rory Wilson Decl. ¶ 49 at Ex. 2; Seamus Wilson Decl. ¶ 40 at Ex. 3).

60. Days after the City dispatched its first group of workers to remove the protest decals, Defendant Waters delivered citations to Plaintiffs' home, and told Plaintiff Nathan Wilson that both of his sons were being charged with 13 misdemeanors each and that he was being charged as an accessory. (City Admis. ¶ 61 at Ex. 1).

61. When Defendant Waters was delivering the citations to Plaintiffs, Defendant Waters stated that the crime they were being charged with was the crime most commonly committed by posting "yard sale signs." (Nate Wilson Decl. ¶ 28 at Ex. 4; *see also* City Admis. ¶ 62 at Ex. 1).

62. When Defendant Waters was delivering the citations to Plaintiffs, he told Plaintiff Nathan Wilson that Plaintiffs were all charged with a violation of the City Ordinance, which generally forbids the placing of a sign or flier or other "advertising matter" on public or private property without written permission. (City Admis. ¶ 63 at Ex. 1).

63. When Defendant Waters was delivering the citations to Plaintiffs, Plaintiff Nathan Wilson asked him if City police officers ever handcuffed and interrogated individuals they suspected of having placed a lost cat flier on a pole and that Defendant Waters declined to answer. (Nate Wilson Decl. ¶ 29 at Ex. 4).

64. Title 10, Chapter 1, Section 22 ("City Ordinance") states as follows:

Sec. 1-22. No Posting on Fences or Buildings or Poles.

A. No person shall post, paint, tack, tape or otherwise attach or cause to be attached, any notice, sign, announcement, or other advertising matter to any fence, wall, building, tree, bridge, awning, post, apparatus or other property not belonging to said person without first obtaining the consent of the owner or lessee of such property or their agent(s) or representative(s). No person shall post, paint, tack, tape or otherwise attach or cause to be attached any notice, sign, announcement, or other advertising matter to any telephone or electric pole within the City.

B. No notice, sign, announcement, or other advertising matter shall be posted on public property or public right-of-way without prior approval, in writing, from the governmental entity owning or controlling such public property or public right-

of-way. This provision shall not apply to property or areas which have been otherwise specifically approved for posting of notices, signs, announcements, or other advertising or similar matter by the City or property owner or their agent(s) or representative(s).

(City Admis. ¶ 65 at Ex. 1).

65. After citations were issued, and throughout the discovery process, the City Police Department and City prosecutors, who were working on behalf of the City, repeatedly represented to the courts, Plaintiffs and their counsel, and to the public that no video of the interrogations of Plaintiffs Rory and Seamus Wilson existed. (Rory Wilson Decl. ¶ 39 at Ex. 2; Nate Wilson Decl. ¶ 31 at Ex. 4; City Admis. ¶ 66 [admitting, but asserting that “there is only one city prosecutor”] at Ex. 1).

66. In response to a January 22, 2021 subpoena deadline, City prosecutors, who were working on behalf of the City, repeated the claim that no video of the interrogations of Plaintiffs Rory and Seamus Wilson existed. (Rory Wilson Decl. ¶ 40 at Ex. 2; City Admis. ¶ 67 [admitting, but asserting that “there is only one city prosecutor”] at Ex. 1)

67. After citations were issued, and throughout the discovery process, the City Police Department and City attorneys repeatedly represented to the courts, Plaintiffs, Plaintiffs’ defense counsel, and the public that no video of the interrogations of Seamus and Rory existed. (Rory Wilson Decl. ¶ 39 at Ex. 2; Nate Wilson Decl. ¶¶ 31, 32 at Ex. 4).

68. In 2021, it was discovered that the City Police Department had the video of the original interrogations of Plaintiffs Rory and Seamus Wilson in its possession the entire time. (Rory Wilson Decl. ¶ 42 at Ex. 2; Nate Wilson Decl. ¶ 33 at Ex. 4).

69. The City Police Department’s evidence log revealed that City police officers, including Defendant Waters, had viewed the video of the original interrogations of Plaintiffs Rory and Seamus Wilson prior to the “discovery” identified in ¶ 69. (City Admis. ¶ 70 at Ex. 1).

70. When Keith Scholl (Deputy Prosecuting Attorney for Latah County) and Liz Warner (City Prosecuting Attorney) were preparing Defendant Gunderson to testify at a suppression hearing held in October 2021, Defendant Gunderson stated that he was unable to answer a question about the night Plaintiffs Rory and Seamus Wilson were detained so he would have to check the interrogation video. (City Admis. ¶ 71 at Ex. 1).

71. The City Police Department evidence log (and testimony) later revealed that at least two of the defendant police officers (Defendants Waters and Gunderson) had viewed the interrogation video of Plaintiffs Rory and Seamus Wilson and were thus aware of its existence. (City Admis. ¶ 73 at Ex. 1).

72. Defendant Gunderson later asserted that he believed the existence of the interrogation video of Plaintiffs Rory and Seamus Wilson to have been common knowledge, and that it had been correctly filed and labeled in the City Police Department's system. (City Admis. ¶ 74 at Ex. 1).

73. The dash cam video of Plaintiffs Rory and Seamus Wilson was eventually disclosed to Plaintiffs; however, no audio was ever provided, thereby preventing the parties from using it in court proceedings to challenge testimony. (City Admis. ¶ 75 [admitting "no audio of the interview exists, and that therefore the non-existent audio could not be used by any party in court"] at Ex. 1).

74. No audio recordings have been produced by the City or anyone working on behalf of the City of the seizures and subsequent questioning of Plaintiffs Rory and Seamus Wilson on October 6, 2020. (City Admis. ¶ 77 [admitting that "[v]ideo recordings have been produced. But audio recordings have not been produced because they do not exist"] at Ex. 1; Rory Wilson Decl. ¶ 45 at Ex. 2; Nate Wilson Decl. ¶ 39 at Ex. 4).

75. Plaintiffs were the only people ever charged with posting “advertising matter” without permission in the entire history of the City Ordinance. (City Admis ¶ 78 at Ex. 1; Rory Wilson Decl. ¶ 46 at Ex. 2; Seamus Wilson Decl. ¶¶ 37, 39 at Ex. 3; Nate Wilson Decl. ¶ 40 at Ex. 4).

76. Plaintiffs retain the status as the only individuals charged and/or prosecuted for violating the City Ordinance despite the fact that signs, fliers, and stickers (“advertising matter”) are openly and regularly placed on City property throughout the City, and such postings continue to date. (Rory Wilson Decl. ¶¶ 48, 49 at Ex. 2; Nate Wilson Decl. ¶ 40 at Ex. 4; *see also* City Admis. ¶ 79 [admitting that “Plaintiffs are the only individuals to-date that have been charged or prosecuted for this violation,” but “deny the remaining inferences and allegations”] at Ex. 1, *but see* Heather Wilson Decl. ¶¶ 2-10, Ex. A [photos demonstrating the open and regular practice of posting “advertising matter” throughout the City] at Ex. 5).

77. The below images depict recent (2025 and 2026) postings of advertising matter on property in the City:



(2025)



(2026)

(Heather Wilson Decl. ¶¶ 4, 9 at Ex. 5).

78. The two postings (“advertising matter”) below are or have been posted on poles in the City and Defendants have not arrested, cited, or prosecuted the individuals responsible for these postings:



(Heather Wilson Decl. ¶¶ 6, 8, Ex. A, at Ex. 5).

79. Despite the number of postings (“advertising matter”) on City property, including very recent postings as evidenced in the paragraphs above, Defendants have not arrested, cited, or prosecuted the individuals who made these postings (“advertising matter”) in a manner similar to how Defendants arrested, cited, and prosecuted Plaintiffs for their postings critical of the City. (City Admis. ¶ 82 [admitting that “no one other than Plaintiff’s (sic) have been prosecuted for violating the ordinance, but deny[ing] that any individuals have engaged in conduct remotely similar to Plaintiff’s (sic) conduct”] at Ex. 1; *see also* Nate Wilson Decl. ¶¶ 17, 18, 40, 42, 43 at Ex. 4; Heather Wilson Decl. ¶¶ 8, 10, Ex. A [photos of numerous postings, including numerous postings of a pro-abortion flyer throughout the City] at Ex. 5).

80. Defendants have only enforced the City Ordinance by way of citations and

prosecutions against Plaintiffs. (City Admis. ¶ 83 at Ex. 1).

81. When Liz Warner reached out to a City official to determine the normal permitting process for the posting of signs or fliers (“advertising matter”), she was informed by Mr. Michael Ray, the City Planner, that the City did not enforce the City Ordinance and so no permitting process existed. (City Admis. ¶ 84 at Ex. 1; Muise Decl. ¶ 3, Ex. B [email exchange] at Ex. 1).

82. Liz Warner engaged in written exchanges in which she describes Plaintiffs’ religious community/family as “religious idiots” and “Christ Church assholes,” and refers to Plaintiffs’ protest actions and religious activity as “bullshit.” (City Admis. ¶ 85 at Ex. 1; *see also* Nate Wilson Decl. ¶ 45 at Ex. 4).

83. At the request of the City, Bill Thompson, the Latah County Prosecutor, initially agreed to prosecute Plaintiff Seamus Wilson for posting the protest decals, but when Liz Warner, on behalf of the City, attempted to preemptively obtain a civil settlement from Plaintiffs under threat of further criminal prosecution, Thompson/his deputy prosecutor promptly offered to dismiss/drop the charges against Plaintiff Seamus Wilson if Seamus wrote a paper on the importance of civil disobedience. (Seamus Wilson Decl. ¶ 41 at Ex. 3).

84. When Bill Thompson/his deputy prosecutor made the offer to dismiss/drop charges as identified above, Thompson/his deputy prosecutor expressly affirmed with Plaintiffs and the assigned judge that by accepting the offer and agreeing to write the paper, Plaintiff Seamus Wilson was not waiving any future civil claims, including any such claims against the City. (Seamus Wilson Decl. ¶ 41 at Ex. 3).

85. Plaintiff Seamus Wilson wrote a paper exploring the hypocrisy and illegality he had witnessed in his own prosecution, and the County Prosecutor dismissed/dropped all charges against him pursuant to the agreement identified above. (Seamus Wilson Decl. ¶ 41, Ex. A [“civil

disobedience” paper], at Ex. 3; *see also* City Admis. ¶ 88 [admitting “that Seamus Wilson wrote a paper, but cannot or (sic) admit or deny his intentions in writing the paper”] at Ex. 1).

86. In May of 2022 and following a trial in Magistrate Court in the City, Plaintiff Rory Wilson was found guilty of one count of placing a sign or flier on a pole without permission in violation of the City Ordinance. (City Admis. ¶ 89 at Ex. 1).

87. Part of the evidence used against Plaintiff Rory Wilson in his conviction in state court were the statements obtained from him and his brother, Plaintiff Seamus Wilson, during the custodial interrogation identified above. (City Admis. ¶ 90 at Ex. 1).

88. For approximately twenty months, the City pursued the prosecution of Plaintiff Nathan Wilson. (City Admis. ¶ 92 at Ex. 1).

89. For approximately eighteen months, the County, based on the referral by the City, pursued the prosecution of Plaintiff Seamus Wilson. (Seamus Wilson Decl. ¶ 42 at Ex. 3; Nate Wilson Decl. ¶ 46 at Ex. 4).

90. The week of Plaintiff Rory Wilson’s trial for violating the City Ordinance, protestors posted dozens of pro-abortion flyers/posters throughout the City; yet, no one was punished or prosecuted for this wide-spread posting. (Heather Wilson Decl. ¶ 10 at Ex. 5; *see also* City Admis. ¶ 78 at Ex. 1).

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2026, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

/s/Robert J. Muise
Robert J. Muise, Esq.