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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

**NATHAN DAVID WILSON, SEAMUS
JAMES WILSON, and RORY DOUGLAS
WILSON,**

Plaintiffs,

v.

**CITY OF MOSCOW, IDAHO; JAY
WATERS**, individually and in his official
capacity as a police officer, City of Moscow
Police Department, City of Moscow, Idaho;
SHAINE GUNDERSON, individually and
in his official capacity as a police officer, City
of Moscow Police Department, City of
Moscow, Idaho; and **MITCH NUNES**,
individually and in his official capacity as a
police officer, City of Moscow Police
Department, City of Moscow, Idaho,

Defendants.

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

SECOND AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Nathan David Wilson, Seamus James Wilson, and Rory Douglas Wilson (collectively referred to as “Plaintiffs”), by and through their undersigned counsel, bring this Second Amended Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege 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, Fourth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants' unlawful actions and selective enforcement of the law that were motivated by Defendants' hostility toward Plaintiffs and their political and religious viewpoints and religious beliefs.

2. Plaintiffs seek a declaration that Defendants' actions violated Plaintiffs' clearly established rights as set forth in this Second Amended Complaint; a declaration that the City Ordinance, as applied to restrict Plaintiffs' speech, violates Plaintiffs' clearly established rights; a declaration that the City Ordinance is an unlawful prior restraint on speech; and a permanent injunction enjoining the future enforcement of the City Ordinance and Defendants' policy and/or practice of targeting Plaintiffs for adverse treatment and retaliatory and selective enforcement of the law based on Plaintiffs' political and religious viewpoints and religious beliefs; and nominal and compensatory damages. Plaintiffs also seek an award of their 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. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

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

6. Plaintiffs' claim for an award of their 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 Plaintiffs' claims occurred in this district.

PLAINTIFFS

8. Plaintiff Nathan David Wilson is an adult citizen of the United States and a resident of Idaho. He is the father of Plaintiffs Rory and Seamus Wilson.

9. Plaintiff Seamus James Wilson is an adult citizen of the United States, a resident of Idaho, and the son of Plaintiff Nathan Wilson.

10. Plaintiff Rory Douglas Wilson is an adult citizen of the United States, a resident of Idaho, and the son of Plaintiff Nathan Wilson.

DEFENDANTS & POLICYMAKING OFFICIALS

11. Defendant City of Moscow (hereinafter referred to as the "City") is a municipal entity organized and existing under the laws of the State of Idaho. It is a municipal corporation with the right to sue and be sued.

12. The City and its officials, including Mia Bautista, Liz Warner, Defendant Jay Waters, Defendant Shaine Gunderson, and Defendant Mitch Nunes (Defendants City of Moscow, Waters, Gunderson, and Nunes are collectively referred to as the "City defendants"), are responsible for creating, adopting, approving, ratifying, and enforcing the acts, ordinances, policies, practices, customs, and/or procedures causing harm to Plaintiffs, as set forth in this Second Amended Complaint.

13. The City, through its officials, including Bautista, Warner, Defendant Waters, Defendant Gunderson, and Defendant Nunes, enforces the challenged City Ordinance, acts, policies, practices, customs, and/or procedures, as set forth in this Second Amended Complaint.

14. The City is responsible for the training and supervision of the City's police officers, including Defendants Waters, Gunderson, and Nunes.

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

16. At all relevant times, Bautista was the City Attorney. As the City Attorney, Bautista possesses final policymaking authority for the City to decide whom to prosecute. She was responsible, on behalf of the City, for the selective enforcement of the City's ordinances and the selective prosecution of Plaintiffs as set forth in this Second Amended Complaint. At all relevant times, Bautista was acting under color of state law and as a decision/policy maker for the City.

17. At all times relevant, Warner was the prosecuting attorney for the City. In that capacity, Warner possessed final policymaking authority for the City to decide whom to prosecute. Accordingly, she was responsible, on behalf of the City, for the selective enforcement of the City's ordinances and the selective prosecution of Plaintiffs as set forth in this Second Amended Complaint. At all relevant times, Warner was acting under color of state law and as a decision/policy maker for the City.

18. Defendants Jay Waters, Shaine Gunderson, and Mitch Nunes are police officers with the City Police Department. At all relevant times, Defendants Waters, Gunderson, and Nunes were acting under color of state law. Defendants Waters, Gunderson, and Nunes are sued individually and in their official capacities.

STATEMENT OF FACTS

19. In 2020, during the COVID-19 pandemic, the City imposed draconian restrictions on fundamental liberties, including, *inter alia*, restrictions on private gatherings and mask mandates. The restrictions were tyrannical and useless.

20. In early September 2020, Plaintiff Rory Wilson was threatened with arrest by City police officers because he was allegedly standing too close to his cousin without a mask. Plaintiff Rory Wilson and his cousin were outdoors at the time.

21. 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 large, conservative, Christian church located in the City. Plaintiffs are members of Christ Church.

22. Members of Christ Church engaged in the Psalm sing to protest the City's draconian COVID-19 lockdown orders, which were issued without public consent while ignoring public input. The Psalm sing protest took place in the outdoor parking lot of the Moscow City Hall.

23. Despite the fact that the City's COVID-19 orders exempted religious activities, City police officers arrived and began making arrests. Charges were filed against the arrested participants, but they were later dropped.

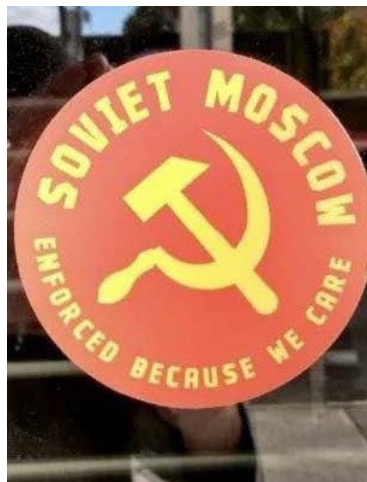
24. The City established a slogan to justify their crackdowns, and City officials posted that slogan on signs around the City. The City's slogan was "ENFORCED BECAUSE WE CARE."

25. Before all charges against the Psalm-sing participants were dropped, Plaintiff Nathan Wilson assisted with creating decals to protest the City's draconian COVID-19 orders and their enforcement, including the arrests made at the Psalm sing because of these orders. Plaintiff

Nathan Wilson and his business partner paid for the decals because his partner's brother was one of the Psalm-sing participants arrested.

26. The decals 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.

27. Some of the decals created stated, "SOVIET MOSCOW," and they included a hammer and sickle. The majority of the decals bore an image of the hammer and sickle and stated, "SOVIET MOSCOW: ENFORCED BECAUSE WE CARE," in protest to the City's draconian and tyrannical COVID-19 orders (collectively referred to as "Soviet Moscow protest decals"). A true and correct copy of a Soviet Moscow protest decal appears below:



28. On or about October 6, 2020, Plaintiffs Rory and Seamus Wilson posted Soviet Moscow protest decals on City property, particularly at locations where other decals, stickers, and handbills were or have been posted in the past. These locations include City light poles, parking poles, and signs. Plaintiffs Rory and Seamus Wilson engaged in this expressive activity to protest the City's tyrannical COVID-19 orders.

29. It is an accepted and routine practice in the small university City to post messages,

specifically including commercial messages, political messages, and messages on matters of public interest, on poles and other City property throughout the City. The City has long permitted this practice and has created a forum for speech by doing so. And the City permitted this practice without requiring the speaker to obtain permission from any City official prior to posting the message.

30. Consequently, many poles in the City display hundreds of various decals and fliers expressing commercial, political, and other public-issue messages. In addition to permitting the use of the poles for expressing various messages, the City permits the posting of thousands of yard signs, lost pet fliers, and handbills with political and other public-issue messages at various public locations on a regular basis. These practices have been intentionally permitted by the City for decades. Below are true and correct pictures of the Soviet Moscow protest decals placed alongside other postings in the City, and these protest decal postings served as a basis for the arrests, citations, and/or prosecutions of Plaintiffs as set forth in this Second Amended Complaint:



31. For example, a paper that circulates in the City twice covered a local man's City-

wide flier-posting campaign to find his missing dog. The “Aspen the lost dog” stories were front page headlines. There were no arrests nor complaints from the City or its officials, including Defendants, for these postings even though the person responsible for posting the fliers was publicly known. Accordingly, it is false to claim that Defendants do not know the identities and/or addresses of persons who post on public property throughout the City.

32. Other examples of permitted postings appear in the images below:



33. For many postings, the identity of the individual responsible for the posting is obvious as the contact information is often included on the posting. Nonetheless, Defendants have not pursued these individuals with citations or prosecutions, and these individuals did not have consent from any City official for these postings. Indeed, there is no procedure for obtaining the

City's consent.

34. On or about 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. Defendant Waters responded in a squad car.

35. Upon the arrival of the defendant police officers, Plaintiffs Rory and Seamus Wilson were walking on the public sidewalk.

36. The police officers summoned the two boys (Seamus was 14 at the time and Rory was 18), and the boys complied and walked to the officers. Plaintiffs Rory and Seamus Wilson were respectful, and they did not attempt to flee.

37. To comply with the "masking" order in effect at the time, Plaintiffs Rory and Seamus Wilson wore hijabs. They chose hijabs as their mandated masks because if they were going to be oppressed, they wanted to look oppressed.

38. Upon the arrival of the defendant police officers, Defendants Gunderson and Nunes forcefully placed Plaintiff Rory Wilson in handcuffs, forced him to the ground, and proceeded to interrogate him. Plaintiff Rory Wilson was not free to leave, and yet the officers did not advise him of his rights required by *Miranda* before interrogating him. Below is a true and correct image of officers placing Plaintiff Rory Wilson in handcuffs while his brother, Plaintiff Seamus Wilson, observes and is interrogated by Defendant Waters:



This image was taken from the police interrogation video that Defendants initially suppressed and failed to timely disclose to Plaintiffs.

39. In consideration of the alleged crime (posting non-damaging, Soviet Moscow protest decals on poles, a practice long permitted by the City); the threat to the officers (none, as Plaintiff Rory Wilson was unarmed, and he was obedient and respectful throughout); the fact that Plaintiff Rory Wilson was not resisting arrest; and in light of the totality of the circumstances; the force used by Defendants Gunderson and Nunes against this youth was excessive.

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 interrogated and threatened with a felony conviction by Defendant Waters. For prolonged periods of time, and in an effort to harass and intimidate the juvenile, Defendant Waters positioned his tactical flashlight directly in Plaintiff Seamus's face. Below are true and correct images of Defendant Waters shining his tactical flashlight directly into Plaintiff Seamus's face during the officer's interrogation:



These images were taken from the police interrogation video that Defendants initially suppressed and failed to timely disclose to Plaintiffs.

41. Plaintiffs Rory and Seamus Wilson were accused of crimes and not free to leave. When the defendant police officers told Plaintiffs Rory and Seamus Wilson that they would be

charged with felony destruction of property, Plaintiffs offered to remove all of the non-damaging decals, but they were told by the officers that it was now too late.

42. After detaining the two boys, Defendant Waters called Plaintiff Nathan Wilson to come pick up his sons. When Plaintiff Nathan Wilson arrived, Defendant Waters confronted him, immediately telling Plaintiff Nathan Wilson that he didn't agree with the "messaging" of the decals. Defendant Waters was visibly angry about the messaging. Plaintiff Nathan Wilson told the officer that he wanted to go to his sons, who appeared in distress by their treatment, and Defendant Waters told him, "No, we are not done with them," or words to that effect. Plaintiff Nathan Wilson especially wanted to go to his minor son and could not imagine why a parent would not be allowed to approach.

43. When Defendant Waters asked Plaintiff Nathan Wilson if he had anything to do with producing the decals, Plaintiff Nathan Wilson said, "I'm gonna go ahead and plead the Fifth on that one," or words to that effect, which further angered Defendant Waters.

44. Defendant Waters eventually released the boys from his "custody"—Defendant Waters' language—into the care of Plaintiff Nathan Wilson, and he told Plaintiffs that he would inform the City Attorney's office of the incident.

45. The City later dispatched workers to remove the Soviet Moscow protest decals from the downtown area. The workers only removed the Soviet Moscow protest decals and left every other decal, sticker, or poster in place, including stickers directly insulting Plaintiffs' Christian community. Some of the insulting stickers included messages such as "F**k 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." NSA is a Christian college associated with Christ Church, and Kirkers is a local nickname for members of Christ Church. Below is a true and correct picture showing the

display of an “All Kirkers Are Bastards” sticker posted on a City pole:



46. Some of the insulting stickers that the City workers allowed to remain were placed on the same surfaces/locations as the Soviet Moscow protest decals. The City also allowed other Left-leaning political messages such as “F**k Trump” and “Immigrants Welcome.”

47. Months later (March 2021) and following strong public opposition to the City and its officials for selectively enforcing the City’s laws against Plaintiffs, the City sent street crews out once again to clean the poles. But even then, the City chose to leave stickers attacking Christ Church.

48. Indeed, the discrimination against Plaintiffs and their church was so blatant, 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 currently allowed in the City. These “permitted signs” include, *inter alia*, “F**k 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. Below are true and correct pictures of some of these “permitted signs”:



49. Days after the City dispatched its first group of workers to remove the Soviet Moscow 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. Defendant Waters added that the crime they were being charged with was the crime most commonly committed by posting "lost cat fliers and yard sale signs." More specifically, the officer told Plaintiff Nathan Wilson that they were all charged with a violation of a City ordinance, Title 10, Chapter 1, Section 22 ("City Ordinance"), which generally forbids the placing of a sign or flier or other advertising matter on public or private property without permission. Plaintiff Nathan Wilson asked if City police officers ever handcuffed and interrogated individuals they suspected of having placed a lost cat flier on a pole. Defendant Waters declined to answer.

50. The bases for the charges, and the sole basis for the charges against Plaintiff Nathan Wilson, were the statements Defendants Waters, Gunderson, and Nunes extracted from Plaintiffs Rory and Seamus Wilson while in custody, in violation of the Fifth Amendment. Moreover, Defendant Waters assumed the guilt of Plaintiff Nathan Wilson based on his statement at the scene of the seizure that he (Plaintiff Nathan Wilson) was not willing to answer the officer's questions and was "pleading the Fifth."

51. 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).

(emphasis added).

52. After citations were issued, and throughout the discovery process, the City Police Department and prosecutors (Defendants and City prosecutors) 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. In response to a January 22, 2021 subpoena deadline, Defendants repeated this claim. Later, in March of 2021, the City Police Department “discovered” squad car audio/video of Defendant Waters issuing the citations at Plaintiffs’ home. But Defendants once again formally assured the court, Plaintiffs and their counsel, and the public that no video of the original interrogations existed.

53. One year later, after multiple settlement offers (the City was receiving public pressure due to its discriminatory and selective enforcement of its ordinances against Plaintiffs and the City’s discriminatory and selective treatment of members of Christ Church in general), and while prosecutors were preparing for a suppression hearing, it was discovered that the City Police Department had the video (accurately named and filed) in its possession the entire time. The

evidence log also revealed that City police officers, including Defendant Waters, had viewed the video in the interim.

54. More specifically, when Keith Scholl (Deputy Prosecuting Attorney for Latah County) and Warner 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 the boys were detained so he would have to check the video. Scholl was shocked because the City Police Department was adamant that no such video existed. Scholl immediately notified Plaintiffs' defense counsel, asserting that he (Scholl) "was unaware of this evidence. Warner was present for the meeting and also advised she has not *seen* this footage" (careful phrasing). The log (and testimony) later revealed that all three defendant officers had viewed the video and were fully aware of its existence. Defendant Gunderson later asserted that he believed the existence of the video to have been common knowledge, and that it had been correctly filed and labeled in the City Police Department's system. In other words, the non-existing video was in fact filed right along with the audio/video that had been "discovered" seven months prior.

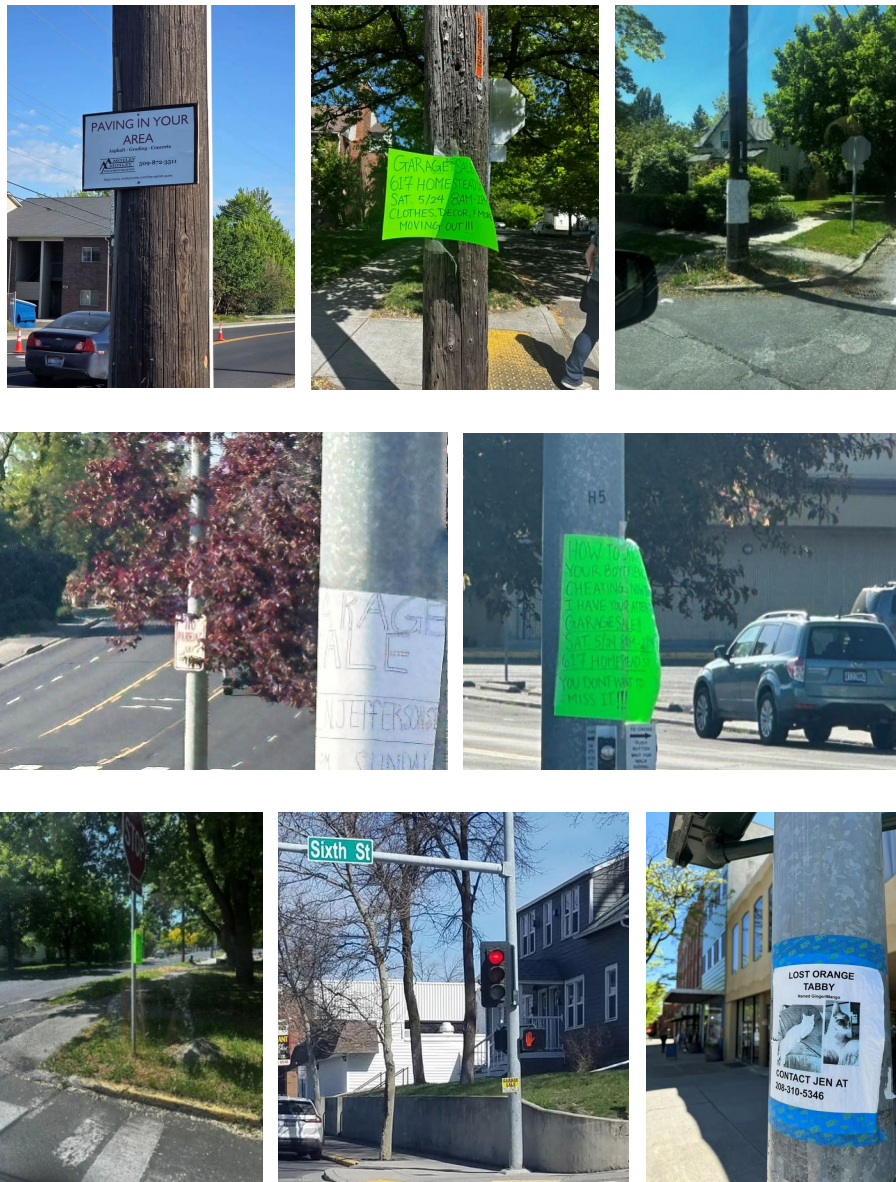
55. The video was eventually disclosed to Plaintiffs. However, no audio was ever provided, thereby enabling the defendant police officers to deny (under oath) what both boys claim they said during the interrogations. During sworn testimony, the officers admitted that no *Miranda* warnings were given, but they also incorrectly testified that a Fourth Amendment seizure/detention did not take place because, per the City's training of the officers, a Fourth Amendment seizure/detention doesn't occur until a suspect is taken to jail and the two boys were not taken to jail; they were eventually released at the scene.

56. City police officers wear microphones, and it is City policy that interactions between officers and private citizens be recorded. Yet, no recordings have been produced of the

seizures and subsequent interrogations of Plaintiffs Rory and Seamus Wilson.

57. Plaintiffs were the only people the City has ever charged with posting without permission in the entire history of the City Ordinance (§ 1-22). Plaintiffs retain that unfortunate and exclusive status despite the fact that signs, fliers, and stickers are openly and regularly placed on City property throughout the City, and such postings continue to date.

58. Some images of recent (2025) postings on City property appear below:





59. The two recent (2025) postings below are also posted on City property, and Defendants have not arrested, cited, or prosecuted the individuals responsible for these postings. The two postings below each have an image of Doug Wilson X-ed out. Doug Wilson is the pastor of Christ Church and Plaintiff Nathan Wilson's father (and the grandfather of Plaintiffs Rory and Seamus Wilson). These postings designate Christ Church a hate group. And they include a QR code to a petition to kick Christ Church's college ministry off campus (along with a host of slanderous accusations against the church and its members, which includes Plaintiffs).



60. Despite the number of postings 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 in a manner similar to how Defendants arrested, cited, and prosecuted Plaintiffs for their postings. Defendants have only enforced the City Ordinance to

punish Plaintiffs, and Defendants did so based on the content and viewpoint of Plaintiffs' speech.

61. The City's bias and prejudice against Plaintiffs, their political and religious views, and their religious beliefs were evidenced by Warner's written exchanges in which she describes Plaintiffs' religious community/family as "religious idiots" and "Christ Church *ssholes," and refers to Plaintiffs' protest actions and religious activity as "bullsh*t." The City's bias and prejudice against Plaintiffs' political views is further evidenced by Defendant Waters' open hostility and opposition to the message conveyed by the Soviet Moscow protest decals.

62. At the request of the City, Bill Thompson, the Latah County Prosecutor, initially agreed to prosecute Plaintiff Seamus Wilson for posting the Soviet Moscow protest decals (the County, and not the City, is responsible for prosecuting juveniles). But when Warner, on behalf of the City, attempted to preemptively extort a civil settlement from Plaintiffs under threat of further criminal prosecution (Warner realized that the City was exposed to civil liability), Thompson/his deputy prosecutor understood what was taking place (*i.e.*, that this was a vindictive and selective prosecution) and promptly offered to drop the charges against Plaintiff Seamus Wilson if he wrote a paper on the importance of civil disobedience. Thompson/his deputy prosecutor made the offer and 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. As a result, Plaintiff Seamus Wilson wrote a paper exploring the hypocrisy and illegality he had witnessed in his *own* prosecution, and the County Prosecutor dropped all charges against him.

63. 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. That conviction was affirmed on appeal.

64. The state court's ruling on Plaintiff Rory Wilson's equal protection claim was wrong as a matter of fact and law, and so too was the court's ruling on the prior-restraint issue (neither of which were addressed by the Idaho court of appeals).

65. Regarding the equal protection claim, the state court judge concluded, in relevant part, that "despite the passive enforcement, the Defendant [Plaintiff Rory Wilson] has not shown that the State is prosecuting him, in part, *because* of his protest activities. . . . The State's decision whether to prosecute this case was based upon the Defendant being caught in the act and the number of materials posted on public and private property without prior written approval or consent. The difference between the Defendant's conduct and others who have posted similar signs, notices, stickers, announcements or other advertising matter downtown without being charged, is not the message on the Defendant's stickers, it is that the other individuals either had prior permission or weren't caught in the act." The state court judge rejected Plaintiff Rory Wilson's argument that "he is being prosecuted because 'the City and MPD had quite simply had enough of the messaging coming from the Christian community associated with Christ Church,'" asserting that "[t]his argument is not support (sic) by the record. Nothing in the factual record of this case establish the Defendant is associated with 'Christ Church' or a 'Christian,' let alone establish that this is the sole reason for the prosecution of this defendant."

66. Regarding the state court's ruling on the prior-restraint issue, the judge ruled, in relevant part (and incorrectly), as follows: "The Defendant cites to authority for the position that if a law is subjected to a prior restraint such as obtaining a license, that it is unconstitutional if it doesn't provide 'narrow, objective and definite standards to guide the licensing authority.' However, that is only true when the particular law governs pure speech and not conduct too. It is sufficient for constitutional purposes if the incidental restriction on the First Amendment freedom

is no greater than is essential to the furtherance of the governmental interest. . . . If the ordinance governed pure speech and not conduct, then it would arguably be unconstitutional because it does not set for (sic) a specific process or guidelines to govern obtaining the written approval or consent required. However, the ordinance governs both conduct and speech; therefore, the incidental restriction requiring the poster to obtain permission is minimal and no greater than is essential to further the City of Moscow's interest in promoting the health, safety and welfare of its citizens."

67. In the Attorney General of Idaho's response in opposition to Plaintiff Rory Wilson's petition for writ of certiorari filed in the U.S. Supreme Court, the Attorney General made the following relevant observation: "Selective prosecution is a serious injustice, and the Attorney General is troubled by the thought that Moscow might not have prosecuted Mr. Wilson if his stickers had supported rather than opposed the city's COVID policies. Had the Attorney General been responsible for the charging decision, he suspects he might have made it differently." The Attorney General would have made a different charging decision because the facts overwhelming demonstrate that the arrests, prosecutions, and citations issued in this case were based on the unlawful, selective enforcement of the law as set forth in this Second Amended Complaint.

68. The evidence used against Plaintiff Rory Wilson in his conviction in state court were the statements extracted from him and his brother during the unlawful custodial interrogation.

69. After Plaintiff Rory Wilson's trial and when Plaintiff Nathan Wilson's attorney requested a trial date from the City Prosecutor, the charges against Plaintiff Nathan Wilson were suddenly dropped by the City without explanation.

70. For twenty months, the City pursued the prosecution of Plaintiffs Nathan Wilson, and for eighteen months, the City pursued the prosecution of Plaintiff Seamus Wilson.

71. Defendants' persecution of Plaintiff Nathan Wilson caused him direct financial

injury.

72. Plaintiff Nathan Wilson is an author and producer in two industries dependent on reputation. In Hollywood, moral turpitude clauses in contracts exposed Plaintiff Nathan Wilson's intellectual property to seizure while his prosecution by the City continued.

73. For twenty months and as a direct result of the City's selective prosecution, Plaintiff Nathan Wilson suffered reputational and economic damage. And yet, Plaintiff Nathan Wilson's "crime" was *creating* decals critical of the City—decals which conveyed a political message in protest to the City's draconian COVID-19 orders.

74. On the heels of four seasons of a hit show and during a time when every studio and streamer was ordering more content than ever, Plaintiff Nathan Wilson was unable to put a new show into production with any mainstream outlet for the duration of his prosecution as the prosecution would expose his intellectual property to seizure, causing Plaintiff Nathan Wilson to suffer great economic loss.

75. In fact, when Plaintiff Nathan Wilson was defamed in an article published in the United Kingdom by *The Guardian*, he sought redress through the British legal system. Lawyers for *The Guardian* argued that Plaintiff Nathan Wilson's reputation had already been so irreparably harmed by the fact of his current criminal prosecution in his own City that the defamation and libel by *The Guardian* could do no further damage. In other words, the reputational harm caused by Defendants' actions was evident and well known publicly.

76. As a result of Plaintiff Rory Wilson's prosecution, he was rendered ineligible/disqualified at the final stages of a long application process from receiving a NROTC scholarship to Columbia University despite having a very strong application, thereby causing Plaintiff Rory Wilson to suffer great economic loss.

77. The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. Const. Amend. V.

78. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court adopted prophylactic procedural measures (*Miranda* warnings) to guarantee that a suspect is advised of his Fifth Amendment rights before custodial interrogations. These protections are constitutional in nature.

79. Today, there can be no doubt that the Fifth Amendment privilege against self-incrimination—a constitutional right protected by *Miranda*—is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. Without proper safeguards, the process of in-custody interrogation of persons suspected or accused of a crime contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.

80. While the failure to give a *Miranda* warning is not, itself, a ground for a § 1983 claim, coercive police questioning, such as that performed without advising a person of his or her *Miranda* rights, as in this case, does violate the Fifth Amendment when the statements are “used” in a “criminal case.” The Ninth Circuit has held that a coerced statement has been “used” in a criminal case when, *inter alia*, it has been relied upon to file formal charges against the declarant or to determine judicially that the prosecution may proceed.

81. Defendants coerced incriminating statements from Plaintiffs Rory and Seamus Wilson without advising them of their rights under *Miranda*, and these statements were used in a criminal case in violation of the Fifth Amendment.

82. Defendant Waters, acting on personal prejudice in reaction to the free speech exercised by Plaintiffs, and with a retaliatory intent, harassed and intimidated Plaintiff Seamus Wilson, failed to give him *Miranda* warnings prior to conducting a custodial interrogation while knowing that Plaintiff Seamus Wilson was not free to leave, suppressed exculpatory evidence, and testified falsely at a suppression hearing, all of which eventually led to the charging/prosecutions of Plaintiffs.

83. More specifically, Defendant Waters falsely testified that he only asked Plaintiff Seamus Wilson for his name, age, and parents' phone number (video shows a much longer interrogation). He also falsely testified that he never swore at Plaintiff Seamus Wilson and never would swear at a minor. In fact, after learning that Plaintiff Seamus Wilson was a minor, Defendant Waters swore at him, threatened to hold him indefinitely, reiterated that he was not free to leave, told him that he had committed a felony and was now required by law to tell him everything if he didn't want to be locked up and held as long as the officer pleased. Defendant Waters also falsely testified that he never told Plaintiff Nathan Wilson that he disagreed with the messaging of the decals. And he falsely testified that the boys never offered to remove the decals (after the boys had been falsely told that placing them on the poles was a felony). It is convenient for Defendants that the audio of the encounter with Plaintiffs is strangely missing.

84. After a disagreement with Plaintiff Nathan Wilson about the messaging of the decals used by Plaintiffs Rory and Seamus Wilson, Defendant Waters falsely accused Plaintiff Nathan Wilson of criminality resulting in the prosecution of Plaintiff Nathan Wilson by the City

and its officials. And when Defendant Waters delivered the citations to Plaintiffs, Defendant Waters confirmed with Plaintiff Nathan Wilson that his (Plaintiff Nathan Wilson's) invoking of his Fifth Amendment right to remain silent was evidence of his guilt. Consequently, Plaintiff Nathan Wilson's exercise of his Fifth Amendment right was relied upon by Defendants to issue, and served as the primary basis for issuing, the formal citation against him.

85. Defendant Waters chose to treat Plaintiffs as criminals despite knowing that they were exercising their right to free speech in a way always allowed by the City and ignored by officers and other City officials before and since, with the sole exception being this case, where Plaintiffs were engaged in political speech critical of the City.

86. Defendant Gunderson, acting on personal prejudice in reaction to the free speech exercised by Plaintiffs and with a retaliatory intent, handcuffed Plaintiff Rory Wilson, forced him to the ground, and conducted a custodial interrogation without providing him his *Miranda* warnings and knowing that Plaintiff Rory Wilson was not free to leave. Defendant Gunderson suppressed exculpatory evidence for almost a year and falsely testified in the pursuit of criminal charges against Plaintiffs for exercising their right to free speech.

87. Defendant Gunderson chose to treat Plaintiffs as criminals despite knowing that they were exercising their right to free speech in a way always allowed by the City and ignored by officers before and since, with the sole exception being this case, where Plaintiffs were engaged in political speech critical of the City.

88. Defendant Nunes, acting on personal prejudice in reaction to the free speech exercised by Plaintiffs and with a retaliatory intent, was involved in the seizure and custodial interrogation of Plaintiff Rory Wilson without providing him *Miranda* warnings and knowing that Plaintiff Rory Wilson was not free to leave. Defendant Nunes suppressed exculpatory evidence

for almost a year, and he provided false testimony in the pursuit of criminal charges against Plaintiffs for exercising their right to free speech.

89. Defendant Nunes chose to treat Plaintiffs as criminals despite knowing that they were exercising their right to free speech in a way always allowed by the City and ignored by officers before and since, with the sole exception being this case, where Plaintiffs were engaged in political speech critical of the City.

90. Defendants Nunes and Gunderson both falsely testified that Plaintiffs Rory and Seamus Wilson did not offer to remove the decals. They also falsely testified that they only handcuffed Plaintiff Rory Wilson because when they began interrogating him, he showed signs that he was going to run, and they feared for their own safety. However, video shows the falsity of this claim, as it shows that Plaintiff Rory Wilson was casual and entirely upright, waiting for the two officers to begin interrogating him. In actuality, Defendant Gunderson was angry, and it was when Plaintiff Rory Wilson declined to show ID, saying, “I thought Idaho was not a stop and identify state?” or words to that effect, that Defendant Gunderson grabbed him, handcuffed him, and forced him to the ground. Plaintiff Rory Wilson showed no signs of fleeing or abandoning his younger brother. Defendant Gunderson told Plaintiff Rory Wilson that he would release him from the handcuffs if he talked.

91. While Plaintiff Rory Wilson was handcuffed, Defendant Gunderson took the boy’s bag (a zipped lunch cooler) and searched it without permission.

92. Defendants Nunes and Gunderson testified falsely about their motivation for handcuffing Plaintiff Rory Wilson, and this falsity would have been proven had the audio been produced. The officers also handcuffed Plaintiff Rory Wilson at approximately 19 seconds into their conversation, and this fits Plaintiff Rory Wilson’s description of events, not the description

offered by the officers. In short, the handcuffing was punitive and an intimidation technique to compel Plaintiff Rory Wilson to speak during the interrogation, as was keeping him squatting against a wall when they finally removed the handcuffs. A true and correct picture of Plaintiff Rory Wilson being forced by the officers to squat against the wall appears below:



93. Bautista and Warner, acting on behalf of the City, pursued prosecution of Plaintiffs based on their animus toward Plaintiffs and Plaintiffs' political and religious viewpoints and religious beliefs and the City's retaliatory policy against Christ Church and its members. The City's prosecution of Plaintiffs was selective, retaliatory, invidious, in bad faith, and based on impermissible considerations, including Plaintiffs' religious and political viewpoints, religious beliefs, and Plaintiffs' exercise of their constitutional rights. To that end, Defendants selectively enforced the City Ordinance.

94. The City's enforcement of the City Ordinance against Plaintiffs based on Plaintiffs' political and religious beliefs and viewpoints has and will continue to prevent Plaintiffs from engaging in political and religious speech against the City based on the content and viewpoint of the speech as set forth in this Second Amended Complaint. The City's selective enforcement of the City Ordinance has and will continue to have a chilling effect on Plaintiffs' political and religious speech, specifically including speech critical of the City and its policies.

95. Plaintiffs want to use City property to convey messages critical of the City and its policies similar to how others are permitted to use City property to convey other messages as set

forth in this Second Amended Complaint. However, Plaintiffs are prohibited from doing so by Defendants' (selective) enforcement of the City Ordinance.

**FIRST CLAIM FOR RELIEF
(First Amendment)**

96. Plaintiffs hereby incorporate by reference all stated paragraphs.

97. By reason of the aforementioned acts, ordinances, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their 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.

98. Plaintiffs' First Amendment claim is premised upon three separate and independent legal bases. First, Defendants' disfavored treatment of Plaintiffs (*i.e.*, arrests, issuing citations, and prosecutions as set forth in this Second Amended Complaint) were in retaliation for Plaintiffs' speech and based on the retaliatory policy of the City to target members of Christ Church for disfavored treatment. Second, Defendants' enforcement of the City Ordinance against Plaintiffs was content- and viewpoint-based. And third, the City Ordinance is an unconstitutional prior restraint on speech.

99. Defendants' actions, as set forth in this Second Amended Complaint, injured Plaintiffs in a way likely to chill a person of ordinary firmness from further participation in free speech activity. Plaintiffs' political and religious viewpoints and religious beliefs motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

100. Defendants targeted Plaintiffs for disfavored treatment and harassment because of Plaintiffs' political and religious viewpoints and religious beliefs, as set forth in this Second Amended Complaint, in violation of the First Amendment.

101. The enforcement of the City Ordinance in this case was content- and viewpoint-based and retaliatory in violation of the First Amendment.

102. Defendants' animus against Plaintiffs' political and religious speech is content- and viewpoint-based in violation of the First Amendment.

103. Defendants will seek to selectively enforce the City Ordinance against Plaintiffs' expressive activity in the future, as set forth in this Second Amended Complaint.

104. The City created a forum for speech, including Plaintiffs' speech as set forth in this Second Amended Complaint, and the City is prohibiting speech in this forum based on its content and viewpoint in violation of the First Amendment.

105. The City Ordinance and the City's retaliatory policy and/or practice with regard to the selective enforcement of the ordinance against Plaintiffs were each a moving force behind the violation of Plaintiffs' rights protected by the First Amendment as set forth in this Second Amended Complaint.

106. The City Ordinance is an unlawful prior-restraint on speech.

107. The City Ordinance subjects the exercise of First Amendment freedoms to the prior restraint of a license/permit, without narrow, objective, and definite standards to guide the licensing/permitting authority, in violation of the First Amendment.

108. On its face, the City Ordinance establishes a licensing/permitting scheme whereby any person who desires to post a notice/flyer on City property must first obtain consent from the City. However, the ordinance's fatal flaw is that it does not specify how to obtain such consent, let alone impose any limits upon the officials who would be responsible for enforcing the ordinance's permission-based regime. Indeed, no standards appear anywhere. There are no narrowly drawn limitations. There is no circumscribing of this absolute power. And there is no

substantial interest of the community to be served by this prior restraint on speech. Any such system of prior restraints on expression bears “a heavy presumption against its constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

109. To legitimately (and thus constitutionally) impose a permission-based regime for speech, the City must include procedural safeguards that reduce the danger of suppressing constitutionally protected speech (and prevent content- and viewpoint-based restrictions on the speech). The City Ordinance fails to provide such safeguards, in violation of the First Amendment.

110. Even if the City can regulate sign postings on public property in an effort to preserve esthetic values (or some other government interest), it cannot use a permission-based scheme to achieve its goals without ensuring that the licensor is guided by clearly defined standards. Otherwise, the mere existence of the licensor’s unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused. The City Ordinance fails to provide such safeguards, in violation of the First Amendment.

111. As a direct and proximate result of Defendants’ violation of the First Amendment, as set forth in this Second Amended Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and damages.

SECOND CLAIM FOR RELIEF
(Fourteenth Amendment)

112. Plaintiffs hereby incorporate by reference all stated paragraphs.

113. By reason of the aforementioned acts, ordinances, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived

Plaintiffs 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.

114. Plaintiffs' equal protection claim is premised upon two separate and independent legal bases. First, that Defendants' selective enforcement of the law against Plaintiffs (selectively arresting, citing, and prosecuting Plaintiffs as set forth in this Second Amended Complaint) violates the equal protection guarantee of the Fourteenth Amendment. And second, by denying Plaintiffs access to a forum for speech based on the content and viewpoint of their message (and punishing them for doing so), Defendants violated the equal protection guarantee of the Fourteenth Amendment (in addition to violating the First Amendment).

115. Selective prosecution claims are premised upon the denial of equal protection. Accordingly, Defendants' prosecution of Plaintiffs deprived Plaintiffs of the equal protection guarantee of the Fourteenth Amendment.

116. Defendants' enforcement of the City Ordinance as set forth in this Second Amended Complaint violates the Equal Protection Clause of the Fourteenth Amendment.

117. By denying Plaintiffs access to a forum to engage in free speech based on the content and viewpoint of their speech, which Defendants disfavor, Defendants have deprived Plaintiffs of the equal protection of the law in violation of the Fourteenth Amendment (in addition to violating the First Amendment).

118. As set forth in this Second Amended Complaint, Defendants have targeted Plaintiffs for selective and disfavored treatment because of Plaintiffs' political and religious viewpoints and religious beliefs in violation of the equal protection guarantee of the Fourteenth Amendment.

119. Defendants' prosecution of Plaintiffs was selective, retaliatory, invidious, in bad faith, and based on impermissible considerations, including Plaintiffs' religion and the exercise of their constitutional rights.

120. As set forth in this Second Amended Complaint, Defendants' adverse actions against Plaintiffs were designed to intimidate, oppress, and punish Plaintiffs and similarly situated individuals who share Plaintiffs' political and religious viewpoints, which Defendants disfavor, in violation of the equal protection guarantee of the Fourteenth Amendment.

121. The enforcement of the City Ordinance against Plaintiffs, as set forth in this Second Amended Complaint, violates Plaintiffs' rights protected by the Fourteenth Amendment, including Plaintiffs' right to be free from selective enforcement of the law based on impermissible considerations.

122. The City Ordinance and the City's policy and/or practice of targeting Plaintiffs because of Plaintiffs' political and religious viewpoints and religious beliefs were each a moving force behind the violation of Plaintiffs' rights protected by the Fourteenth Amendment, as set forth in this Second Amended Complaint.

123. As a direct and proximate result of Defendants' violation of the Equal Protection Clause and Defendants' selective enforcement of the City Ordinance, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to prospective declaratory and injunctive relief. Plaintiffs Nathan and Seamus Wilson are entitled to damages in addition to declaratory and injunctive relief.

**THIRD CLAIM FOR RELIEF
(Fifth Amendment)**

124. Plaintiffs hereby incorporate by reference all stated paragraphs.

125. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, the City and Defendants Waters, Gunderson, and Nunes have deprived Plaintiffs of their right against self-incrimination protected by the Fifth 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.

126. As set forth in this Second Amended Complaint, Defendants Waters, Gunderson, and Nunes engaged in a coercive custodial interrogation of Plaintiffs Rory and Seamus Wilson without advising Plaintiffs of their *Miranda* rights, and the coerced statements were used by the City in a criminal case in violation of the Fifth Amendment.

127. As set forth in this Second Amended Complaint, the City relied upon Plaintiff Nathan Wilson's exercise of his Fifth Amendment right against self-incrimination to issue a formal citation against him in violation of the Fifth Amendment.

128. The City's acts, policies, practices, customs, and/or procedures, and its failure to adequately train and supervise its police officers, including Defendants Waters, Gunderson, and Nunes, were each a moving force behind the constitutional violations and a proximate cause for the harm caused to Plaintiffs.

129. As a direct and proximate result of Defendants' violation of the Fifth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and damages.

**FOURTH CLAIM FOR RELIEF
(Fourth Amendment)**

130. Plaintiffs hereby incorporate by reference all stated paragraphs.

131. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, the City and Defendants

Gunderson and Nunes deprived Plaintiff Rory Wilson of his rights protected by the Fourth 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.

132. The Fourth Amendment protects against unreasonable seizures, including the use of unnecessary and unreasonable force to accomplish the seizure.

133. Accordingly, the Fourth Amendment prohibits officers from using excessive and, therefore, constitutionally unreasonable force in the course of a seizure.

134. Excessive force claims are analyzed under the Fourth Amendment's "objective reasonableness" standard. This requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.

135. As a result of the type and amount of force used against Plaintiff Rory Wilson when he was seized by City police officers assessed against the limited government interests at stake (*i.e.*, the "crime" was plainly not severe, Plaintiff posed no immediate threat to the safety of the officers or others, and Plaintiff was not actively resisting arrest or attempting to evade arrest by flight) and in light of the totality of the circumstances as set forth in this Second Amended Complaint, the force employed by Defendants against Plaintiff Rory Wilson was not constitutionally reasonable, in violation of the Fourth Amendment.

136. Defendants Gunderson and Nunes used force against Plaintiff Rory Wilson to harass him and in retaliation to Plaintiff Rory Wilson's speech critical of the City.

137. As a direct and proximate result of Defendants' violation of the Fourth Amendment, Plaintiff Rory Wilson has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A) to declare that Defendants violated Plaintiffs' fundamental constitutional rights as set forth in this Second Amended Complaint;

B) to declare that the City Ordinance, facially and as applied to Plaintiffs' expressive activity as set forth in this Second Amended Complaint, violates the First and Fourteenth Amendments;

C) to permanently enjoin the City Ordinance as set forth in this Second Amended Complaint;

D) to permanently enjoin Defendants' policy and/or practice of selectively enforcing the City Ordinance and targeting Plaintiffs and other similarly situated persons based on their political and religious viewpoints and religious beliefs as set forth in this Second Amended Complaint;

E) to award Plaintiffs nominal and compensatory damages as set forth in this Second Amended Complaint;

F) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

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

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2025, 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.