

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MAINE  
PORTLAND DIVISION**

**DANIEL FITZGERALD,** )  
**MARGUERITE FITZGERALD,** in )  
their own right and as next of )  
kin to minor children, **L.M.F.,** and )  
**J.P.F.,** )

Plaintiffs, )

v. )

**Complaint**  
**[42 U.S.C. § 1983]**

**CITY OF PORTLAND, MICHAEL** )  
**F. BRENNAN,** Mayor of the City of )  
Portland, **KEVIN J. DONOGHUE,** Councilor )  
of the City of Portland, **DAVID A.** )  
**MARSHALL,** Councilor of the City of )  
Portland, **EDWARD J. SUSLOVIC,** )  
Councilor of the City of Portland, **CHERYL** )  
**A. LEEMAN,** Councilor of the City of )  
Portland, **JOHN R. COYNE,** Councilor of the )  
City of Portland, **JON C. HINCK,** Councilor )  
of the City of Portland, **NICHOLAS M.** )  
**MAVODONES, JR.,** Councilor of the City of )  
Portland, **JILL C. DUSON,** Councilor of the )  
City of Portland )

Defendants. )

**COMPLAINT FOR CIVIL RIGHTS VIOLATIONS, DECLARATORY  
JUDGMENT, AND INJUNCTIVE RELIEF**

Plaintiffs Daniel and Marguerite Fitzgerald bring this complaint in their own right and on behalf of their minor children, Plaintiffs L.M.F. and J.P.F., by and through their undersigned counsel, together bring this civil rights Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

## **I. PRELIMINARY STATEMENT**

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality, facially and as applied, of City of Portland Ordinance § 17-108-111, which creates a fixed buffer with a radius of 39-feet (hereinafter, “Prohibited Zone”) around the entrances, exits, and driveways of reproductive health care facilities that perform abortions (hereafter, “the Ordinance”).

2. The Ordinance is an unconstitutional regulation designed and intended to ban virtually all citizens from engaging in fundamental rights and liberties on significant portions of public sidewalks and streets adjacent to abortion clinics. It essentially and unlawfully privatizes public ways held in the public trust for use by all citizens.

3. The Ordinance chills and deprives Plaintiffs and third parties from engaging in expressive activities guaranteed by the First and Fourteenth Amendments to the United States Constitution. Preliminary and permanent injunctive relief is warranted.

## **II. JURISDICTION AND VENUE**

4. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 1983. The Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in the District of Maine pursuant to 28 U.S.C. § 1391(b)(1).

## **III. IDENTIFICATION OF PLAINTIFFS**

6. Plaintiff Daniel Fitzgerald is a citizen of the United States and a resident of Shapleigh, Maine. He is a father of seven children, and has never been arrested. Plaintiff Daniel Fitzgerald is the father and legal guardian of Plaintiffs L.M.F. and J.P.F., his minor children. Plaintiff Daniel Fitzgerald is Evangelical and raises his children in the faith. He brings

this action both in his own right and on behalf of Plaintiffs L.M.F. and J.P.F. as their next friend.

7. Plaintiff Marguerite Fitzgerald is a citizen of the United States and a resident of Shapleigh, Maine. She is mother of seven children, and has never been arrested. Plaintiff Marguerite Fitzgerald is the mother and legal guardian of Plaintiffs, L.M.F. and J.P.F., her minor children. Plaintiff Marguerite Fitzgerald is Evangelical and raises her children in the faith. She brings this action both in her own right and on behalf of Plaintiffs L.M.F. and J.P.F. as their next friend.

8. Plaintiff L.M.F. is a minor. Plaintiff L.M.F. is of the Evangelical faith, and has never been arrested.

9. Plaintiff J.P.F. is a minor. Plaintiff J.P.F. is of the Evangelical faith, and has never been arrested.

#### **IV. IDENTIFICATION OF DEFENDANTS**

10. Defendant City of Portland is a municipal entity organized under the laws of the State of Maine. It is a municipal corporation with the right to sue and be sued.

11. The City of Portland and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the rules, ordinances, regulations, policies, practices, procedures, and/or customs of the City, including the Ordinance as set forth in this Complaint.

12. The Ordinance was the moving force behind the actions that deprived Plaintiffs of their fundamental constitutional rights as set forth in this Complaint.

13. Defendant Michael F. Brennan is the Mayor for the City of Portland. At all relevant times, he was an agent, servant, and/or employee of the City of Portland, acting under color of state law. As the Mayor of the City of Portland, Defendant Michael F. Brennan supervises the City of Portland's City Council (hereinafter "Council") and holds a voting

position on the Council. Defendant Michael F. Brennan is sued individually and in his official capacity as the Mayor of the City of Portland.

14. Defendant Kevin J. Donoghue is Councilor for the City of Portland's District 1. At all relevant times, he was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant Kevin J. Donoghue is sued individually and in his official capacity as a Councilor of the City of Portland.

15. Defendant David A. Marshall is Councilor for the City of Portland's District 2. At all relevant times, he was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant David A. Marshall is sued individually and in his official capacity as a Councilor of the City of Portland.

16. Defendant Edward J. Suslovic is Councilor for the City of Portland's District 3. At all relevant times, he was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant Edward J. Suslovic is sued individually and in his official capacity as a Councilor of the City of Portland.

17. Defendant Cheryl A. Leeman is Councilor for the City of Portland's District 4. At all relevant times, she was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant Cheryl A. Leeman is sued individually and in her official capacity as a Councilor of the City of Portland.

18. Defendant John R. Coyne is Councilor for the City of Portland's District 5. At all relevant times, he was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant John R. Coyne is sued individually and in his official capacity as a Councilor of the City of Portland.

19. Defendant Jon C. Hinck is Councilor for the City of Portland elected for the City

“at large.” At all relevant times, he was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant Jon C. Hinck is sued individually and in his official capacity as a Councilor of the City of Portland.

20. Defendant Nicholas M. Mavodones, Jr. is Councilor for the City of Portland elected for the City “at large.” At all relevant times, he was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant Nicholas M. Mavodones, Jr. is sued individually and in his official capacity as a Councilor of the City of Portland.

21. Defendant Jill C. Duson is Councilor for the City of Portland elected for the City “at large.” At all relevant times, she was an agent, servant, and/or employee of the City of Portland, acting under color of state law. Defendant Jill C. Duson is sued individually and in her official capacity as a Councilor of the City of Portland.

## **V. ALLEGATIONS OF FACT**

22. The Ordinance was enacted to prohibit and prevent Pro-Life speech in a traditional public forum.

23. The Ordinance was adopted by all named Defendants on a purported emergency basis and became effective on November 18, 2013.

24. On November 18, 2013, pursuant to the City of Portland’s City Charter, Defendants Michael F. Brennan, Kevin J. Donoghue, David A. Marshall, Edward J. Suslovic, Cheryl A. Leeman, John R. Coyne, Jon C. Hinck, Nicholas M. Mavodones, Jr., and Jill C. Duson amended and enacted the Ordinance.

25. The purported emergency enactment was motioned by Defendant Jill C. Duson and seconded by Defendant Kevin J. Donoghue. The motion passed unanimously by the Defendants in a 9-0 vote.

26. The Ordinance was then motioned by Defendant Edward J. Suslovic and seconded by Jill C. Duson. The Ordinance was passed unanimously by the Defendants in a 9-0 vote.

27. The stated underlying purpose for the Ordinance, as set forth in the Ordinance, is that “[a]ccess to Reproductive Health Care Facilities is important for residents and visitors to the City of Portland and is a right that must be protected.” City of Portland Ordinance § 17-108(a)(1).

28. The Ordinance states that “[t]he exercise of a person’s right to protest or counsel against certain medical procedures is a First Amendment activity that must be protected.” City of Portland Ordinance § 17-108(a)(2).

29. The Ordinance states that “[p]ublic sidewalks adjacent to Reproductive Health Care Facilities located in the City of Portland are narrow, measuring between six and eight feet wide. These sidewalks abut busy city streets.” City of Portland Ordinance § 17-108(a)(3).

30. The Ordinance’s stated interest is to help regulate “public health, safety, and welfare,” “promote the free flow of traffic on streets and sidewalks,” and “reduce disputes and potentially violent confrontations.” City of Portland Ordinance § 17-108(b).

31. Without explanation or support, the Ordinance states that “the Council recognizes and seeks to balance both the fundamental right to assemble and to demonstrate on matters of public concern, with the right to seek and obtain reproductive health care services.” City of Portland Ordinance § 17-108(e).

32. The Ordinance then creates a Prohibited Zone where:

No person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility with a radius of 39 feet of any portion of an entrance, exit, or driveway of a reproductive health care facility.

City of Portland Ordinance § 17-110(1).

33. By its plain terms, the Ordinance applies only to reproductive health care facilities that perform abortions. Hospitals in which abortions are performed are excluded from the Ordinance.

34. The Ordinance contains several exemptions so long as the person in the Prohibited Zone does not engage in “counseling or protesting of any sort.” City of Portland Ordinance § 17-109; 17-110(1)(a)-(e).

35. The Ordinance states that it is illegal “to obstruct or interfere with another person’s access to reproductive health care services.” City of Portland Ordinance § 17-108(a)(4). Plaintiffs do not challenge this subsection.

36. Plaintiffs have been peacefully praying and counseling outside the Portland Health Center (hereinafter “Clinic”) located at 443 Congress Street, Portland Maine 04101 for the last sixteen (16) months.

37. The Clinic performs abortions and is considered a reproductive health care facility under Defendants’ Ordinance.

38. Defendants have enforced and continue to enforce all of the requirements of the Ordinance, including the requirement of a 39-foot radius Prohibited Zone surrounding the Clinic.

39. The Prohibited Zone forbids Plaintiffs from entering the public sidewalk or public way in front of the facility and adjacent to facility.

40. The Prohibited Zone extends so far that the Plaintiffs are forced to stand at the end of the street or across the street from the Clinic separated by a busy public thoroughfare.

41. Plaintiffs are faithful Evangelicals motivated to oppose the practice of abortion because of their religious beliefs that abortion is the deliberate destruction of

innocent human life.

42. Plaintiffs peacefully pass out literature and Bible tracts in accordance with their faith and in efforts to counsel women seeking abortions. Prior to the Ordinance, Plaintiffs regularly provided information to women about abortion alternatives, assistance, and support to persons entering and/or exiting the facility.

43. Prior to the Ordinance, Plaintiffs could speak to persons entering and/or exiting the facility counseling willing participants about their choices and about pregnancy options that exist outside of abortion.

44. As part of their ministry and/or peaceful pro-life advocacy, Plaintiffs offered both secular and religious literature to persons approaching the Clinic. Plaintiffs did this in an effort to educate clinic clients and others that alternatives to abortion are available, including adoption and other means of support, including financial and/or emotional support. In addition to distributing literature, one or more Plaintiffs engage in other peaceful expressive activities on the public ways adjacent to reproductive health care facilities including oral advocacy, counseling, and prayer.

45. The Prohibited Zone forbids Plaintiffs from any public sidewalk or public way near the Clinic where Plaintiffs can reach their intended audience, which is persons entering and/or exiting the facility.

46. Plaintiffs desire to orally communicate with Clinic clients and passersby from a distance in which they can speak in a normal conversational tone and make eye contact. Plaintiffs wish to avoid raising their voices or speaking from long distances.

47. Because in most instances Plaintiffs cannot identify Clinic clients until they actually approach the Clinic, Plaintiffs and other pro-life advocates must station themselves on

the public ways near the path of pedestrians and in close proximity to facility entrances and driveways in order to effectively communicate their peaceful message. On many occasions, Clinic clients and/or their companions willingly receive such oral communications.

48. In order to effectively distribute literature to Clinic clients and other persons entering or exiting reproductive health care facilities, Plaintiffs and other pro-life advocates must stand on public sidewalks and streets near the path of pedestrians so they can proffer literature near the hands of passersby. On many occasions, Clinic clients and/or their companions willingly receive such literature.

49. Plaintiffs and other pro-life advocates have encountered opposition from pro-choice advocates who surround, cluster, yell, make noise, mumble, and/or talk loudly to clinic clients for the purpose of disrupting or drowning out pro-life speech and thwarting Plaintiffs' efforts to distribute literature. When this happens, pro-life advocates cannot be heard or distribute literature unless they are in close proximity to their intended audience.

50. After the enactment of the Ordinance, facility employees and/or agents and other persons sometimes stand idly on the public sidewalks and streets inside the Prohibited Zone including its outermost edge. Sometimes they smoke, drink coffee, or make phone calls and at other times they engage in conversation with each other. They have done this even when Clinic clients were not present.

51. Plaintiffs observed a woman carrying a sign with a "pro-choice" message enter and protest in the Prohibited Zone without being warned or cited.

52. Sometimes persons accompanying women seeking abortions come out of the facility and linger within the area encompassed by the Prohibited Zone to smoke cigarettes, make

phone calls, or stand around for no apparent purpose.

53. Plaintiffs' experience has been that counseling is effective when offered to the recipient in a normal conversational tone and in a friendly and gentle manner. This requires Plaintiffs to stand near the path of pedestrians.

54. Since the Ordinance took effect there have been several occasions when Clinic clients enter the Prohibited Zone and Plaintiffs are unable to navigate around the Prohibited Zone to reach the Clinic clients and thus are unable to effectively communicate their message.

55. Since the Ordinance took effect, traveling on the public sidewalk outside the Clinic has worsened. The City of Portland installed a sign which takes up part of the sidewalk informing pedestrians of the Prohibited Zone. Further, the City of Portland painted a yellow line on part of the public sidewalk to demonstrate the boundary of the Prohibited Zone. The sign and the yellow line painted on the sidewalk have been known to distract pedestrians, endangering public safety and interrupting the flow of normal pedestrian traffic.

56. Further since the Ordinance took effect, a group of people have started congregating in front of the library as people, such as Plaintiffs, are forced to stand in three congested areas.

57. Plaintiffs have engaged in peaceful expressive activities outside the Prohibited Zone and were warned by a City of Portland police officer not to enter the Prohibited Zone. Plaintiffs were told they would be cited upon entry of the Prohibited Zone.

58. Entry into the Prohibited Zone "constitutes a civil offense punishable by a minimum fine of \$100. The City may also seek and the court may order injunctive relief designed to prevent further violations of [the Ordinance]." Portland Ordinance § 17-111(2).

59. Public sidewalks and streets in Maine are used by third parties not before the Court (hereinafter, “third parties”) for non-abortion related peaceful speech or assembly activities such as labor picketing, anti-war and environmental demonstrations, labor organizing, hawking newspapers or magazines, soliciting charitable contributions, circulating petitions, panhandling, and spur-of-the-moment conversations with friends or acquaintances. They also are used for such innocent non-speech activities as simple loitering, waiting for public or private transportation, smoking cigarettes, or simply strolling about without an intended destination.

60. Maine citizens have been using the public streets and sidewalks to debate political, social, and religious issues since well before the Founding of the United States.

61. The Ordinance prevents Plaintiffs and third parties from approaching both willing and unwilling listeners within the Prohibited Zone.

62. The Ordinance severely burdens Plaintiffs’ and third parties’ ability to win the attention of both willing and unwilling listeners and, consequently, from reaching the minds of their intended audience. Some people may have difficulty reading signs or hearing clearly from 39 feet away, or even lesser distances.

63. The Ordinance prevents Plaintiffs and third parties from engaging in oral communications in a normal conversational tone with persons located in certain areas within or without the Prohibited Zone.

64. The Ordinance severely burdens Plaintiffs’ and third parties’ ability to distribute literature to willing recipients located in certain areas within or without the Prohibited Zone.

65. The Ordinance forecloses altogether Plaintiffs’ and third parties’ ability to distribute literature to unwilling recipients located in almost all areas within the Prohibited Zone.

66. The Ordinance prevents Plaintiffs and third persons from standing within the zone near the path of oncoming pedestrians when proffering their material, thereby making it difficult for pedestrians to accept such material.

67. The Ordinance, as applied at the challenged locations, does not allow speakers adequate alternative channels of communication.

68. The Ordinance prevents Plaintiffs and third parties from approaching, in an inoffensive way, persons within the Prohibited Zone for the purpose of offering information with a view to influencing actions that may have an imminent and irreversible consequence.

69. The Ordinance prevents both willing and unwilling listeners from receiving certain oral communications, including pro-life communications, in a normal conversational tone or from a normal conversational distance.

70. The Ordinance prevents willing recipients from easily receiving certain types of literature, including pro-life literature, if they are near Clinic entrances, exits, and driveways.

71. The Ordinance prevents Plaintiffs and third parties from utilizing large portions of public sidewalks and streets adjacent to reproductive health care facilities for any purpose other than reaching a destination other than such facility.

72. The Ordinance by its terms exempts certain classes of individuals from its reach, including health care facility employees and agents, thereby granting them free, unrestricted, and unhindered access to the Prohibited Zone so long as they are not protesting or counseling.

73. The Ordinance by its terms exempts certain classes of individuals from its reach, including health care facility employees and agents, thereby permitting them to freely engage in all manner of expressive activity inside the Prohibited Zone.

74. The Ordinance creates public safety hazards by forcing Plaintiffs and third

parties to stand or walk in portions of the public street occupied by vehicular traffic.

75. The Ordinance creates public safety hazards by decreasing the flow of traffic and creating congestion on those portions of public streets occupied by vehicular traffic and creating congestion on the public sidewalk across the street from the Clinic.

76. The size and location of the Prohibited Zone places a substantial burden on Plaintiffs' ability to orally communicate, leaflet, and display signs toward clinic clients and their companions.

77. The size and location of the Prohibited Zone renders ineffective Plaintiffs' attempts to orally communicate, leaflet, and display signs toward their intended audience.

78. The size and location of the Prohibited Zone virtually eliminates Plaintiffs' ability to leaflet or distribute literature.

79. The legislative record is insufficient to support the draconian measures contained in the Ordinance that severely infringe First Amendment rights and constitutionally protected liberty interests.

80. Since the Ordinance was adopted, Plaintiffs desired to engage in distribution of literature, oral advocacy, and/or prayer on public streets and sidewalks located within a 39-foot radius of entrances, exits, and driveways of reproductive health care facilities but refrained from doing so out of fear of arrest and prosecution for violating the Ordinance.

81. Each of the Plaintiffs has a present and future desire and intention to engage in distribution of literature, oral advocacy, and/or prayer on public streets and sidewalks located within a 39-foot radius of entrances, exits, and driveways of reproductive health care facilities but will refrain from doing so out of fear they will be cited by police for violating the Ordinance.

82. Plaintiffs have no plain, adequate, or complete remedy at law to redress the foregoing violations of their constitutional rights and liberty interests, and this suit for injunction and declaratory judgment is their only means of securing complete and adequate relief. No other remedies would offer Plaintiffs substantial and complete protection from Defendant's unlawful laws, statutes, policies, and practices.

## **VI. ALLEGATIONS OF LAW**

83. The Ordinance alleged herein is enforced or enforceable by Defendants under the color and pretense of the laws, statutes, and policies of the City of Portland, Maine.

84. The loss of First Amendment freedoms for even minimal periods of time unquestionably constitutes irreparable injury.

85. The public ways affected by the Ordinance are quintessential public forums for expressive activities guaranteed by the First and Fourteenth Amendments to the United States Constitution.

86. The right to engage in peaceful expressive activity, assembly, and association in quintessential public forums is guaranteed by the Free Speech and Assembly Clauses of the First and Fourteenth Amendments to the United States Constitution.

87. The right to peacefully distribute literature in quintessential public forums is guaranteed by the Free Speech and Free Press Clauses of the First and Fourteenth Amendments to the United States Constitution.

88. The right to engage in peaceful prayer, worship, and religious counseling and outreach in quintessential public forums is guaranteed by the Free Speech and Free Exercise Clauses of the First and Fourteenth Amendments to the United States Constitution.

89. The fact that certain messages may be offensive to some of their recipients does

not deprive them of constitutional protection.

90. The right to receive information is guaranteed by the First and Fourteenth Amendments to the United States Constitution.

91. The Ordinance infringes the rights of willing recipients to receive literature and oral communications and therefore violates the First and Fourteenth Amendments to the United States Constitution.

92. The Ordinance chills and deters fundamental constitutional rights of Plaintiffs and third parties.

**FIRST CAUSE OF ACTION - 42 U.S.C. § 1983  
(Free Speech – Time, Place, Manner)**

93. Plaintiffs hereby incorporate by reference all stated paragraphs.

94. Public streets and sidewalks are quintessential public forums for speech.

95. The government's ability to restrict speech in public forums is very limited.

96. The Ordinance burdens substantially more speech than necessary to achieve a substantial and legitimate government interest.

97. The Ordinance is not a valid time, place, and manner regulation.

98. The Ordinance is not narrowly tailored

99. The Ordinance does not serve a compelling governmental interest.

100. The Ordinance does not leave open ample alternative channels of communication.

101. The audience intended to be reached by peaceful oral advocacy and the distribution of literature cannot be reached nearly as well by non-prohibited means.

102. The Ordinance, as applied, has almost completely foreclosed a unique and important means of communication.

103. The Ordinance, on its face and as applied, is an unconstitutional abridgement of Plaintiffs' affirmative rights to free speech secured by the First and Fourteenth Amendments to the United States Constitution.

104. The existence and enforcement of the Ordinance chills and deprives Plaintiffs of their rights to free speech. Plaintiffs are suffering irreparable harm to their First Amendment rights.

**SECOND CAUSE OF ACTION - 42 U.S.C. § 1983  
(Free Speech – Substantial Overbreadth)**

105. Plaintiffs hereby incorporate by reference all stated paragraphs.

106. Public streets and sidewalks are quintessential public forums for speech.

107. The very existence of the Ordinance may cause others not before the Court to refrain from constitutionally protected speech or expression.

108. The Ordinance is an overly-broad restriction on speech because it sweeps within its ambit a substantial amount of constitutionally protected speech.

109. The Ordinance burdens substantially more speech than is necessary to achieve a compelling and legitimate government interest.

110. The Ordinance on its face is an unconstitutional abridgement of rights to free speech secured by the First and Fourteenth Amendments to the United States Constitution.

111. The existence and enforcement of the Ordinance chills and deprives Plaintiffs and third parties not before the Court of their rights to free speech. Plaintiffs and third parties are suffering irreparable harm to their First Amendment rights.

**THIRD CAUSE OF ACTION - 42 U.S.C. § 1983  
(Free Speech – Prior Restraint)**

112. Plaintiffs hereby incorporate by reference all stated paragraphs.

113. Public streets and sidewalks are quintessential public forums for speech.

114. The government's ability to restrict speech in public forums is very limited.

115. The Ordinance completely bans Plaintiffs and third parties from engaging in any expressive activities within the zone.

116. The Ordinance forecloses Plaintiffs and third parties from orally communicating to persons within the zone from a normal conversational distance.

117. The Ordinance forecloses Plaintiffs and third parties from standing within the zone near the path of oncoming pedestrians and proffering their material.

118. The Ordinance effectively forecloses Plaintiffs' and third parties' ability to orally communicate with both willing and unwilling listeners located within the zone.

119. The Ordinance effectively forecloses Plaintiffs' and third parties' ability to distribute literature to both willing and unwilling recipients located within the zone.

120. The Ordinance severely burdens Plaintiffs' and third parties' ability to effectively display signs.

121. The Ordinance does not leave open ample alternative avenues of communication.

122. The Ordinance burdens substantially more speech than is necessary to achieve a substantial and legitimate government interest.

123. The Ordinance, on its face and as applied, is an unconstitutional abridgement of Plaintiffs' affirmative rights to be free from impermissible prior restraint in violation of the First and Fourteenth Amendments to the United States Constitution.

124. The existence and enforcement of the Ordinance chills and deprives Plaintiffs and third parties of their rights to free speech. Plaintiffs and third parties are suffering irreparable harm to their First Amendment rights.

**FOURTH CAUSE OF ACTION - 42 U.S.C. § 1983  
(Free Speech –Viewpoint Discrimination)**

125. Plaintiffs incorporate by reference all stated paragraphs.

126. The Ordinance is a content-based restriction on speech.

127. The Ordinance does not serve a compelling government interest.

128. The Ordinance is not the least restrictive means of achieving the State’s asserted interest.

129. The Ordinance, on its face and as applied, is an unconstitutional abridgement of Plaintiffs’ affirmative rights to free speech secured by the First and Fourteenth Amendments to the United States Constitution.

130. The existence and enforcement of the Ordinance chills and deprives Plaintiffs and third parties of their rights to free speech. Plaintiffs and third parties are suffering irreparable harm to their First Amendment rights.

**FIFTH CAUSE OF ACTION - 42 U.S.C. § 1983  
(Due Process - Vagueness)**

131. Plaintiffs hereby incorporate by reference all stated paragraphs.

132. Public streets and sidewalks are quintessential public forums for speech.

133. Public streets and sidewalks are held in the public trust for use by all law-abiding citizens.

134. The Ordinance excludes from its reach “[p]ersons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such facility.” City of Portland Ordinance § 17-110 (d).

135. The Ordinance does not give fair notice to citizens.

136. The Ordinance does not provide minimal standards to guide law enforcement.

137. Whether a person is using a public sidewalk “solely” for the purpose of reaching a destination other than a reproductive health care facility cannot be known by a law enforcement officer.

138. Because a police officer cannot know with certainty whether a person is using a public sidewalk or street “solely” for the purpose of reaching a destination other than a reproductive health care facility, the Ordinance necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat.

139. Because a police officer cannot know with certainty whether a person is using a public sidewalk or street “solely” for the purpose of reaching a destination other than a reproductive health care facility, the Ordinance authorizes and encourages arbitrary and discriminatory enforcement.

140. The Ordinance is impermissibly vague because it fails to establish standards for the police that are sufficient to guard against the arbitrary and discriminatory suppression of First Amendment rights.

141. The Ordinance is impermissibly vague because it fails to establish standards for the police that are sufficient to guard against arbitrary deprivation of liberty interests.

142. The Ordinance, on its face and as applied, is an unconstitutional abridgement of Plaintiffs’ and third parties’ affirmative rights in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully ask that the Court:

- a. Assume jurisdiction over this action;
- b. Declare that the Defendants violated Plaintiffs’ fundamental constitutional

rights as set forth in this Complaint;

c. Declare that City of Portland Ordinance § 17-108-111 is unconstitutional on its face;

d. Declare that City of Portland Ordinance § 17-108-111 is unconstitutional as applied to Plaintiffs' expressive activities at the above-referenced locations;

e. Enter preliminary and permanent injunctions enjoining Defendants from enforcing City of Portland Ordinance § 17-108-111;

f. Award Plaintiffs nominal damages against Defendants for all 42 U.S.C. § 1981 claims as set forth in this Complaint;

g. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and

h. Grant such other and further relief as the Court finds just and proper.

Respectfully submitted,

/s/ Stephen C. Whiting  
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