

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

OVERPASSES FOR AMERICA; and  
VALERIE VILLARREAL,

Plaintiffs,

-v.-

CITY OF DALLAS, TEXAS

Defendant.

**COMPLAINT**

**COMPLAINT**

Plaintiffs Overpasses for America and Valerie Villarreal (hereinafter “Plaintiffs”), by and through undersigned counsel, bring this Complaint against the Defendant City of Dallas, and their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

**INTRODUCTION**

1. First and foremost, this case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 seeking redress for the deprivation of their constitutional rights and violations of law caused by Defendant City of Dallas.

2. This case is about the right of all Americans, not just Americans who hold popular religious and political viewpoints, to exercise free speech and free association within our traditional public fora.

3. Defendant City of Dallas enacted an Amended Ordinance 28-158.1; 29244 (Jan. 22, 2014) which eviscerates Plaintiffs' fundamental rights of free speech and peaceable assembly, making it unlawful and subjecting to fines speech and assembly which takes place on any overpass in the City of Dallas, Texas (hereinafter "free speech ban"), a forum which shares the same protections as a public sidewalk and constitutes a traditional public forum. (*See* Exhibit 1- City of Dallas Free Speech Ban).

4. Plaintiffs Overpasses for America and Valerie Villarreal challenge the constitutionality of the City of Dallas' free speech ban.

5. Through Defendant's enactment and enforcement of the City of Dallas' free speech ban, the Defendant has deprived and continues to deprive Plaintiffs of their paramount rights and guarantees protected by the United States Constitution and actionable under 42 U.S.C. § 1983.

6. Allegations herein relate to the ordinance, actions and practices of those entities, persons, their predecessors and/or successors pertaining to the City of Dallas' free speech ban while acting in the capacity as representatives of the City of Dallas, Texas. All acts alleged herein were committed by Defendant under the color of state law and municipal authority. Plaintiffs seek injunctive relief, declaratory relief, damages and attorney fees pursuant to 42 U.S.C. §§ 1983 and 1988.

#### **JURISDICTION AND VENUE**

7. The 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.

8. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C §§ 2201 and 2202, by Rule 57 and 65 of the Federal Rules of Civil Procedure, and by the general

legal and equitable powers of this court. Plaintiffs' claims for damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this court.

9. Venue is proper in the Northern District of Texas, pursuant to 28 U.S.C. § 1391(b), as the claims arose in this district and all parties reside within the district.

### **PLAINTIFFS**

10. Plaintiff Overpasses for America is a non-partisan grassroots movement consisting of regular American citizens who value the rights of the United States Constitution.

11. Plaintiff Overpasses for America exercise their free speech and free assembly rights to discuss and draw attention to issues in our government and promote positive and honest governmental reform.

12. Plaintiff Overpasses for America spreads the message of limited executive powers in our federal government and of accountability amongst our nation's leaders.

13. Plaintiff Overpasses for America is compelled to spread their message to promote a prosperous America and to preserve our constitutionally-recognized freedoms.

14. Plaintiff Valerie Villarreal is a resident of Plano, Texas, which is a northern suburb of Dallas, Texas.

15. Plaintiff Valerie Villarreal is the Texas State Leader, the regional leader for North Texas, and a member of Overpasses for America, specifically the North Dallas/Collin County Chapter of Overpasses for America.

16. Plaintiff Valerie Villarreal exercises her rights to free speech and free assembly with Plaintiff Overpasses for America.

17. Plaintiffs Overpasses for America and Valerie Villarreal have regularly engaged and wish to continue to engage in lawful, peaceful free speech in the City of Dallas on or around its overpasses.

### **DEFENDANT**

18. Defendant City of Dallas, Texas is a municipal governmental authority and a subdivision of the State of Texas. Defendant City of Dallas, Texas is a municipal corporation with the right to sue and be sued. The City of Dallas, Texas and its officials are responsible for creating, adopting, and enforcing the rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs for the City of Dallas, Texas.

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

### **FACTUAL PREDICATE**

#### **Plaintiffs' Free Speech and Free Assembly**

20. Plaintiffs Overpasses for America and Valerie Villarreal hold assemblies to exercise their free speech rights and educate citizens of the Dallas area about governmental practices and political philosophies.

21. Plaintiffs Overpasses for America and Valerie Villarreal reach their intended audiences in the City of Dallas by utilizing the City's overpasses.

22. Overpasses typically consist of a sidewalk with a fence along one or both sides. Many overpasses consist of a public street next to or contiguously adjoining the sidewalk.

23. The sidewalk space of the overpass arches across the width of the highway and is truly used as a public sidewalk.

24. The sidewalk space of the overpass arches across the width of the highway.

25. The sidewalk space of the overpass provides the Plaintiffs with an ideal forum which allows Plaintiffs to reach a large number of individuals in the general public with their message and which allows Plaintiffs to freely associate to discuss their message.

26. Plaintiffs and their many supporters have demonstrated and associated on overpasses of the City of Dallas because there is no similar location that will reach the same audience or the same amount of people.

27. Defendant allows for Plaintiffs' intended audience to receive numerous messages and view various signs including billboards on the highway, transit advertisements such as bus exteriors, mobile and truck side billboards, and alternative advertising such as airborne displays.

28. Plaintiffs have held approximately 75-100 free speech assemblies on overpasses in the City of Dallas and its surrounding areas.

29. Plaintiffs intend to continue to hold peaceful, free speech assemblies in the City of Dallas.

30. Plaintiffs' free speech assemblies have never caused a public safety or traffic safety issue.

31. On March 1, 2014, Plaintiffs held a free speech assembly in the City of Dallas on Northaven overpass at the Dallas North Tollway. This overpass borders a neighborhood street with the posted speed limit of 25 miles per hour.

32. Plaintiffs' free speech assembly gained participation of approximately 15-20 citizens.

33. Plaintiffs typically expect approximately 15-20 citizen participation for all of their free speech assemblies held on overpasses in the Dallas area.

34. Plaintiffs organized the event in cooperation with law enforcement from the Dallas Police Department and with a Director of Homeland Security in Dallas.

35. The free speech assembly was a success and posed no public safety or traffic safety issues.

36. Plaintiffs held signs in compliance with the City of Dallas' ordinances using signs of two sizes: 40 in. by 32 in. or 30 in. by 20 in.

37. Plaintiffs tied no signs to the fencing of the overpass.

38. Plaintiffs again organized to hold a similar assembly to take place in the City of Dallas with 15-20 volunteers on March 15, 2014.

39. Plaintiffs intended to tie no signs to the fencing of the overpass nor use any signs that failed to comply with the City of Dallas' ordinances.

40. Plaintiffs intended on causing no public safety or traffic safety issues, and wished to peacefully assemble, spread their message through peaceful speech, and educate the public.

41. Plaintiffs first contacted the Dallas Police Department and a Director of Homeland Security to inform the City of Dallas of their wishes to hold another free speech assembly.

42. Plaintiffs had advertised their free speech assembly to be held on March 15, 2014 and had posted information about the assembly on facebook.com.

43. Plaintiffs were looking forward to holding the free speech assembly on March 15, 2014 and garnered a positive anticipation for their event.

44. Plaintiffs, however, were informed that they would not be allowed to hold their free speech assembly because the Dallas Police Department was now obligated to enforce the City of Dallas' free speech ban.

#### **City of Dallas' Free Speech Ban**

45. On January 22, 2014, the City of Dallas amended their free speech ban.

46. Prior to amending their free speech ban, City of Dallas Council Members commented that the City of Dallas has recently been sued twice due to infringing upon the free speech rights of its citizens through the enactment of unnecessary ordinances.

47. A Council Member for the City of Dallas commented that the amendment at issue (the free speech ban) was "an ordinance we don't need."

48. A Council Member for the City of Dallas also stated, relying upon information from the Department of Transportation for the State of Texas, that there is no data that there has ever been any safety issue due to free speech assemblies occurring on the City of Dallas' overpasses, let alone even evidence of a single traffic accident due to a free speech assembly in the City of Dallas.

49. Despite this information, the City of Dallas passed the amendment and enacted its free speech ban.

50. The City of Dallas' free speech ban threatens Plaintiffs with criminal sanctions and fines up to \$500.00 for exercising their rights to free speech and free assembly.

51. Plaintiffs cannot engage in their desired expressive speech and association without violating or being cited under the City of Dallas' free speech ban.

52. Plaintiffs want to continue to engage in their desired expressive speech and association as they had been doing prior to the enactment of the City of Dallas' free speech ban.

53. The City of Dallas' free speech ban imposes an unconstitutional burden on Plaintiffs' constitutional rights.

54. The City of Dallas' free speech ban is overbroad, vague, and unconstitutional both facially and as applied to Plaintiffs.

55. The City of Dallas' free speech ban does nothing to further public safety interests.

56. Defendant has silenced Plaintiffs' freedom of speech and thwarted Plaintiffs' freedom of assembly to advance their message to their intended audience.

57. The City of Dallas' free speech ban permits billboards and other advertisements which appeal to passengers and drivers on the roadway.

58. The City of Dallas' free speech ban permits signs describing traffic and construction conditions which appeal to passengers and drivers on the roadway.

59. The City of Dallas' free speech ban only serves to silence and foreclose Plaintiffs' speech and association, rendering Plaintiffs unable to reach their intended audience with their message and viewpoint.

60. The City of Dallas' free speech ban deprives Plaintiffs of their fundamental rights protected by the First and Fourteenth Amendments to the United States Constitution.

**FIRST CAUSE OF ACTION**  
**VIOLATIONS OF PLAINTIFFS' RIGHT TO**  
**FREEDOM OF SPEECH**

61. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

62. By reason of the aforementioned, Defendant's free speech ban amended, created, adopted, and enforced under color of state law, has prohibited and continues to prohibit Plaintiffs from exercising their right to engage in free speech in a traditional public forum in violation of the Free Speech Clause 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.

63. Defendant's free speech ban imposes unconstitutional restrictions on Plaintiffs' right to free speech.

### **Unconstitutionally Vague**

64. Defendant's free speech ban does not clearly define the terms "sign," "display," "access road," "lateral lines of the roadway," and "main travel lane."

65. Defendant's free speech ban is unconstitutionally vague because there is no way an ordinary or reasonable person would know how the City of Dallas construes the prohibition in the free speech ban against "conduct that is intended to distract the attention of motorists in a main travel lane of the highway," "carrying, holding, waving, displaying, or otherwise drawing attention to a sign," or "wearing any costume, clothing, attire, or accessory intended to attract or seek the attention of the public."

66. The free speech ban is unconstitutionally vague because there is no way an ordinary or reasonable person would know how the City construes "sign," "display," "access road," "lateral lines of the roadway," or "main travel lane" for purposes of enforcing the free speech ban to restrict and/or outlaw expressive conduct and speech.

67. Since the free speech ban envelops myriad protected speech and expression in failing to define its operable terms, the free speech ban is unconstitutionally vague.

68. Since the free speech ban fails to define its operable terms and explicitly directs and empowers police enforcement, the free speech ban is unconstitutionally vague and chills protected free speech.

### **Unconstitutionally Overbroad**

69. Defendant's free speech ban is not a reasonable time, place and manner restriction.

70. Defendant's free speech ban is not narrowly tailored to serve a significant governmental interest.

71. Defendant's free speech ban does not adequately allow for alternative means of effective exercise of Plaintiffs' free speech rights.

72. Defendant's free speech ban encompasses peaceful free speech that is not threatening, violent, or unsafe.

73. Defendant's free speech ban prevents and deters Plaintiffs from engaging in constitutionally protected speech, thereby inflicting continuing injury to Plaintiffs.

74. As a result of the overbreadth of Defendant's free speech ban, a high probability exists that Defendant will engage in over-enforcement of the free speech ban in a manner which unavoidably criminalizes constitutionally protected activity.

### **Unconstitutional As Applied**

75. Plaintiffs planned to engage in constitutionally protected speech on a public sidewalk when they were told that they were forbidden from holding their free speech assembly due to Defendant's free speech ban.

76. Plaintiffs were specifically informed that their planned free speech assembly could not take place due to Defendant's free speech ban.

77. Plaintiffs were directly threatened with criminal prosecution and sanctions for their constitutionally protected free speech due to Defendant's free speech ban.

78. Plaintiffs' free speech assemblies have never caused a public nuisance, disturbed the peace, nor created either a public safety or traffic safety risk.

79. Defendant permits an abundance of commercial speech and non-political speech in varying forms near overpasses where Plaintiffs wish to hold their free speech assemblies.

80. Defendant's free speech ban is content-based, targeting the political speech and message of Plaintiffs.

81. Plaintiffs reasonably fear that if they were to hold another free speech assembly on an overpass in the City of Dallas, Plaintiffs would be arrested and/or criminally charged under Defendant's free speech ban.

82. As a direct and proximate result of the Defendant's free speech ban, Plaintiffs are chilled and deterred from exercising their constitutionally protected free speech rights.

83. As a direct and proximate result of the Defendant's free speech ban, Plaintiffs have suffered, and continue to suffer irreparable harm.

84. Plaintiffs seek a declaration from this Court that Defendant's free speech ban is constitutionally invalid either on its face as it is vague and overbroad, or as it has been unlawfully applied to Plaintiffs' peaceful free speech activities.

85. Plaintiffs seek preliminary and permanent injunctive relief against the enforcement of Defendant's free speech ban so that they can return to engaging in peaceful, constitutionally protected speech in a traditional public forum in the City of Dallas without fear of criminal citation, penalties, and/or arrest.

**SECOND CAUSE OF ACTION**  
**VIOLATIONS OF PLAINTIFFS' RIGHT**  
**TO PEACEABLE ASSEMBLY**

86. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

87. By reason of the aforementioned, Defendant's free speech ban has prohibited and continues to prohibit Plaintiffs from engaging in peaceable assembly guaranteed by 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.

88. The actions and laws of Defendant through Defendant's free speech ban as stated herein poses unconstitutional restrictions on Plaintiffs' right to peaceable assembly.

89. Plaintiffs seek to join with others to share their free speech message on and near overpasses in the City of Dallas. For fear of arrest, Plaintiffs have refrained from participating in such assemblies.

90. As a direct and proximate result of Defendant's free speech ban, Plaintiffs are chilled and deterred from exercising their right to peaceable assembly.

91. As a direct and proximate result of Defendant's free speech ban, Plaintiffs have suffered, and continue to suffer irreparable harm.

92. Plaintiffs seek a declaration from this Court that Defendant's free speech ban is constitutionally invalid as it denies Plaintiffs of their freedom of assembly.

93. Plaintiffs seek preliminary and permanent injunctive relief against enforcement of Defendant's free speech ban so that they can return to engaging in peaceful, constitutionally protected assembly in a traditional public forum in the City of Dallas without fear of criminal citation, penalties, and/or arrest.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Overpasses for America and Valerie Villarreal respectfully petition this Honorable Court to:

A. Assume jurisdiction over this matter;

B. Enter a judgment and decree declaring Defendant's free speech ban unconstitutionally denies Plaintiffs of their rights to free speech and free association as described above;

C. Enter a preliminary and permanent injunction enjoining Defendant from applying and enforcing their unconstitutional free speech ban against Plaintiffs as described above;

D. Award Plaintiffs monetary damages to compensate them for their present and continuing loss of free speech assembly in the City of Dallas, and for all other actual injuries Plaintiffs have suffered as a result of Defendant's conduct with respect to their free speech ban;

E. Award Plaintiffs nominal damages as set forth in this Complaint;

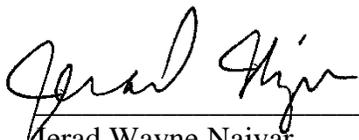
F. Award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and

G. Grant any such further relief as the 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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