

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PAUL NISLEY,)	
JOSIAH CHAVEZ,)	
DAVID TROYER, and)	
JOLENE TROYER,)	
)	
Plaintiffs,)	Case No.
)	
v.)	
)	
NANCY VAUGHAN, in her official)	
capacity as Mayor of Greensboro,)	
North Carolina, and)	
LIEUTENANT DAN KNOTT, in)	
his official capacity with the)	
Greensboro Police Department,)	
)	
Defendants.)	

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

Plaintiffs, by and through counsel, complain as follows:

INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the actions of Defendants Nancy Vaughan, Mayor of Greensboro, North Carolina, and Lieutenant Dan Knott of the Greensboro Police Department with respect to Plaintiffs’ expressive activities on the public ways of the City. Plaintiffs seek a declaration that the Amended Greensboro Stay Home Order, issued March 30, 2020 and the statewide Stay Home Order, Executive Order 121 (“EO 121”), violate the First and Fourteenth Amendments to the United States Constitution as interpreted and applied by Defendants, a

temporary restraining order, a preliminary injunction, and a permanent injunction prohibiting Defendants from enforcing the Stay Home Order and/or EO 121 against them for their peaceful expressive activities.

2. In addition to declaratory and injunctive relief, Plaintiffs seek nominal damages for the past violations of their First Amendment rights.

3. Plaintiffs are citizens who peacefully exercise their First Amendment rights on the public ways near an abortion clinic known as A Woman's Choice of Greensboro, located at 2425 Randleman Road, Greensboro, North Carolina. Their activities consist primarily in walking and praying on the public ways outside the abortion clinic in order to share alternatives and inform the women going to the clinic of the dangers inherent in abortion.

4. Plaintiffs' purposes include presenting a visible demonstration of Plaintiffs' deeply held religious convictions that innocent lives are being snuffed out inside the clinic and their urgent need to intercede both for the unborn children on their way to death and for the confused and hurting mothers who often feel they have no other choice but to abort their own children. It also serves as a silent witness against those going into the clinic as well as passersby of Plaintiffs' intercession for the babies and their mothers, and thus their presence near the abortion clinic is an integral part of their message.

5. Plaintiffs wish to continue to engage in their peaceful activities without undue interference from Defendants and the Orders.

PLAINTIFFS

6. Paul Nisley is a resident of Mocksville, Davie County, North Carolina. He is a Christian who, since 2017, has regularly joined in pro-life activities conducted in both Charlotte and Greensboro, North Carolina. This includes walking and praying (both silently and aloud) outside facilities that conduct abortions in conjunction with a pro-life organization known as Love Life. During these activities, Love Life's supporters (including him) wear shirts that signify themselves as being affiliated with, and likewise expressing, its pro-life message.

7. Josiah Chavez is a resident of Mocksville, Davie County, North Carolina. For approximately a year, he has regularly joined in pro-life activities outside of the abortion clinic located in Greensboro, North Carolina, including walking and praying (both silently and aloud) outside that facility in conjunction with a pro-life organization known as Love Life. He also wears a Love Life shirt while engaging in this expressive activity.

8. David Troyer is a resident of Mocksville, Davie County, North Carolina, and a pastor of Living Waters Assembly. Since 2017, he and several youth from his church have participated in prayer walks organized by Love Life outside abortion clinics in Greensboro and Charlotte, North Carolina. He, too, wears a Love Life shirt while participating in a prayer walk.

9. Jolene Troyer is a resident of Mocksville, Davie County, North Carolina, and the daughter of David Troyer. For the past few years she has regularly joined in pro-life activities conducted in both Charlotte and Greensboro, North Carolina. This includes

walking and praying (both silently and aloud) in conjunction with Love Life outside facilities that conduct abortions. She also wears a Love Life shirt when walking and praying.

DEFENDANTS

10. Nancy Vaughan is the Mayor of Greensboro, North Carolina. She is sued in her official capacity.

11. Lt. Dan Knott is a Lieutenant with the Greensboro Police Department and was the officer in charge when certain of the Plaintiffs were ordered to leave the area near the abortion clinic on Saturday, March 28. He is sued in his official capacity.

JURISDICTION AND VENUE

12. This action raises federal questions under the First and Fourteenth Amendments of the United States Constitution and under federal law, 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgments), as well as 42 U.S.C. §§ 1983, 1988, and 1920.

13. This Court has jurisdiction over these federal claims under 28 U.S.C. §§ 1331 and 1343.

14. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3), the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, the claim for damages under 42 U.S.C. § 1983, and Plaintiffs' prayer for costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and 28 U.S.C. § 1920.

15. Venue is proper in the Middle District of North Carolina pursuant to 28 U.S.C. § 1391, because the claims arose in this District and Defendants are located in this District.

FACTUAL ALLEGATIONS

16. Plaintiffs are individuals who pray, engage in expressive activity, and otherwise exercise their First Amendment rights on the public sidewalks and rights of way outside the abortion clinic in Greensboro and elsewhere. They regularly walk and pray (both silently and aloud) in conjunction with a pro-life organization known as Love Life outside the facilities that conduct abortions. During these activities, they wear shirts that signify themselves as being affiliated with, and likewise expressing, its pro-life message. The shirts typically say either “Love Life” or have a heart shape drawn between the words “We” and “Life.”

17. They walk and pray outside abortion clinics because doing so presents a visible demonstration of their deeply held religious conviction that innocent lives are being ended inside and that there exists an urgent need to intercede both for the unborn children and for the confused and hurting mothers who often feel they have no other choice but to abort.

18. Plaintiffs’ walking and praying also serves as a silent witness against those going into the clinic as well as a message to passersby of their intercession for these babies and their mothers. Thus, Plaintiffs’ presence near the abortion clinic is an integral part of their message.

19. On Monday, March 23, 2020, Guilford County and various cities within the county including Greensboro issued a Stay Home Order in response to the Coronavirus pandemic.

20. The Stay Home Order required “all individuals currently living within Guilford County” to “shelter at their places of residence,” unless engaged in “Essential Activities,” “Essential Government Functions,” or “Essential Business.” (See Exhibit 1, attached, p. 2). The Order was made effective at 5:00 p.m. on March 27, 2020.¹ The Stay Home Order prohibited public and private gatherings of more than ten (10) people, designates certain businesses as “essential” and others “non-essential,” and orders all “non-essential” businesses to close. (*Id.*, pp. 2-3; Amended Order, p. 4). “Reproductive health care providers” are deemed “essential” and expressly permitted to remain open. (Order at p. 4, Amended Order, p. 6, par. 3).

21. Individuals are permitted to leave their homes “for essential activities,” among which is “outdoor activity”:

To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined herein, such as, by way of example and without limitation, walking, hiking, golfing, running, cycling, or using the greenways. Individuals may go to public parks and open outdoor recreation areas. However, playgrounds may increase spread of COVID-19, and therefore shall be closed.

(Order, p. 4, par. 1c, Amended Order p. 6, par. 1c).

22. The Social Distancing Requirements are summarized as follows:

¹ A “Second Revised Proclamation” (herein “Amended Order”) was issued on March 30, 2020 at 7:00 p.m. and made effective immediately. (See Ex. 3). Most of its provisions are the same or similar, such as its allowance for “outdoor activity” as an “essential activity,” the provision governing “Healthcare and Public Health Operations,” and its “Social Distancing Requirements.” Throughout this Complaint, reference may be made to the Order generically, inclusive of both Orders. When there are significant differences, it will be noted.

For purposes of this Proclamation, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

(Ex. 1, p. 9; Ex. 3, p. 13). Violation of the Order constitutes a Class 2 misdemeanor, which carries a fine of up to \$1,000 and a maximum of 60 days in jail.

23. A statewide order, EO 121, became effective at 5:00 p.m. Monday, March 30, 2020. (*See* Ex. 2 attached). EO 121, like the Guilford County Order, similarly imposes a requirement that residents stay home unless engaged in essential activities or limited exceptions. It includes a similar exception for “outdoor activity” and almost identical Social Distancing Requirements. (Ex. 2, p. 3, sec. 1, par. 3, subsec. iii, and p. 8, sec. 2, par. E). EO 121 also contains a Healthcare and Public Health Operations clause similar to Guilford County’s Order. (Ex. 2, p. 5, sec. 2, par. C3).

24. Unlike the Guilford County Stay Home Order, however, EO 121 contains an express provision designating “religious facilities, entities, groups, [and] gatherings” as “Essential Business or Operations.” (Ex. 2, p. 6, sec. 2, par. C10).

25. On Saturday, March 28, 2020, Plaintiffs Nisley, Chavez, and Jolene Troyer went to the vicinity of the abortion clinic located at 2425 Randleman Road, Greensboro, North Carolina 27406. After initial prayers in a nearby parking lot, they walked with another individual along the public sidewalks to pray in front of the clinic. They prayed for the women at the facility contemplating an abortion, their unborn children, and others touched by the tragedy of abortion.

26. Not long after they began walking, several Greensboro Police Officers moved to stand in their path. The officers, including upon information and belief Defendant Knott, told them that they needed to get back in their cars and go home or they would be arrested. When the group tried to show the officers the exceptions to the Stay Home Order that permitted them to be present, the officers told them they were not going to “debate” them and that they were being commanded to leave.

27. Plaintiffs Nisley, Chavez, and Jolene Troyer and the other individual in their small group complied with the order to leave.

28. While present, Plaintiffs Nisley, Chavez, and Jolene Troyer observed other individuals also out and about (including two individuals who appeared to be homeless), none of whom were obviously praying or expressing a pro-life message. Defendant Knott and his officers did not approach those individuals or order them to leave. The only people whose activities were curtailed by the Greensboro Police while Plaintiffs Nisley, Chavez, and Jolene Troyer were there that day were pro-life people seeking to walk and pray.

29. Plaintiff David Troyer was not present on that Saturday, March 28, but his two daughters were, and so he learned about it right away.

30. Plaintiffs later learned that on that same Saturday, March 28, Love Life leader Justin Reeder and an attorney for Love Life, Jason Oesterreich, were both arrested by the Greensboro Police Department along with a two other Love Life-affiliated individuals in the vicinity of the abortion clinic on Randleman Road. Others affiliated with Love Life were arrested on Monday, March 30, 2020, by the Greensboro Police in the same area.

31. The Greensboro Police Department later put out a press release addressing the arrests. (See Ex. 4, “News Release: Greensboro Police Response to Stay at Home Order Arrests,” dated March 30, 2020) (<https://greensboro101.com/news-release-greensboro-police-response-to-stay-at-home-order-arrests/>). In that statement, the GPD said that it first cited the four individuals arrested on Saturday for “Traveling for a Non-Essential Function.” The statement does not explain why travel to engage in “outdoor activity” – expressly deemed an “Essential Activity” under the Order – was somehow rendered “non-essential.”

32. Due to the threats and the arrests made by the Greensboro Police Department, Plaintiffs are fearful of exercising their constitutionally protected rights and are therefore reluctant and disinclined to return to the area of the Greensboro abortion facility to walk and/or pray for fear of arrest and being charged with a crime.

33. Defendants’ interpretation and application of the Stay Home Order and EO 121 inflicts irreparable injury on the First and Fourteenth Amendment rights of Plaintiffs and others.

34. Unless and until this Court issues injunctive relief, Defendants will continue to enforce the Orders through their officers, servants, agents, and employees, further infringing Plaintiffs’ constitutional rights.

35. All of the acts of Defendants and their officers, servants, agents, and employees, as alleged herein, were done and are continuing to be done under color and

pretense of the statutes, ordinances, regulations, policies, customs, and usages of the City of Greensboro and the State of North Carolina.

FIRST CAUSE OF ACTION
Violation of the Right of Freedom of Speech
Under the First Amendment to the U.S. Constitution

36. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs 1-35 above.

37. The public ways and sidewalks affected by the Stay Home Order and EO 121 are traditional public fora.

38. Plaintiffs' pro-life political and religious speech and expressive activities lie at the core of the First Amendment.

39. Defendants' interpretation and application of the Stay Home Order and EO 121 impose an unconstitutional restriction on constitutionally protected speech in traditional public fora.

40. Defendants' interpretation and application of the Stay Home Order and EO 121 are discriminatory as applied because they prohibit Plaintiffs from engaging in speech and other expressive activities in traditional public fora based solely upon the pro-life content and viewpoint of their speech.

41. No compelling, substantial, or even legitimate governmental interest exists to justify Defendants' restrictions on Plaintiffs' speech in traditional public fora especially in view of Plaintiffs' compliance with the Social Distancing Requirements in the Orders.

42. Defendants' interpretation and application of the Stay Home Order and EO 121 to prohibit Plaintiffs' speech and expressive activities are not the least restrictive means to accomplish any permissible purpose sought to be served by the Orders, and as applied the Orders restrict substantially more speech than necessary.

43. As interpreted and applied by Defendants, the Orders are not valid time, place, and manner restrictions on speech.

44. As interpreted and applied by Defendants, the Orders are not narrowly tailored to serve any asserted government interest.

45. As interpreted and applied by Defendants, the Orders fail to provide ample alternative avenues of communication for Plaintiffs to reach their intended audience.

46. Defendants' interpretation and application of the Orders are arbitrary and standardless and unsupported by the plain language of the Orders, which deem "outdoor activity" to be an "essential activity" and which only bar gatherings of more than ten people.

47. The Orders as interpreted and applied by Defendants violate Plaintiffs' rights to freedom of speech under the First Amendment to the United States Constitution.

48. Plaintiffs have no adequate remedy at law for the violation of their federal constitutional rights.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

SECOND CAUSE OF ACTION
Violation of the Free Exercise Clause under the First and Fourteenth
Amendments to the U.S. Constitution

49. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs 1-48 above.

50. Plaintiffs have sincerely held religious beliefs which compel them to communicate their views on abortion to others and to engage in expressive activity to that end.

51. Plaintiffs' religious activities are protected by the Free Exercise Clause of the First Amendment to the United States Constitution.

52. As interpreted and applied by Defendants, the Orders substantially burden Plaintiffs' free exercise of their religious beliefs.

53. As interpreted and applied by Defendants, the Orders are not supported by a compelling governmental interest and are not narrowly tailored in furtherance of any legitimate governmental interest.

54. As interpreted and applied by Defendants, the Orders are not neutral rules of general applicability.

55. As interpreted and applied by Defendants, the Orders are irrational and unreasonable and impose unreasonable restrictions on Plaintiffs' constitutionally protected free exercise of religion.

56. Defendants' interpretation and application of the Orders evince active hostility to and invidious discrimination against the free exercise of religion and are entirely unmoored from the plain language of the Orders.

57. As a direct and proximate result of Defendants' actions, policies, practices, and customs as alleged herein, Plaintiffs have suffered and will continue to suffer irreparable harm.

58. Plaintiffs have no adequate remedy at law to protect their fundamental constitutional right to the free exercise of religion.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that judgment be entered in their favor and that relief be granted against Defendants as follows:

- A. That this Court assume jurisdiction over this action;
- B. That the Court enter a Temporary Restraining Order restraining Defendants from enforcing the Orders against Plaintiffs for their constitutionally protected speech and expressive activities outside A Woman's Choice of Greensboro;
- C. That the Court enter a Preliminary Injunction continuing to restrain Defendants from enforcing the Orders against Plaintiffs for their constitutionally protected speech and expressive activities outside A Woman's Choice of Greensboro;

D. That the Court enter a Permanent Injunction continuing to restrain Defendants from enforcing the Orders against Plaintiffs for their constitutionally protected speech and expressive activities outside A Woman's Choice of Greensboro;

E. That the Court declare the Orders as interpreted and applied by Defendants unconstitutional because they violate the rights of Plaintiffs and others not before the court to the freedoms of speech and of the free exercise of religion, which are guaranteed to Plaintiffs and others under the United States Constitution;

F. Award Plaintiffs nominal damages;

G. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees and costs; and

H. Grant such other and further relief as this Court deems just and proper.

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