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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DON BLYTHE,

Plaintiff,

v.

CITY OF SAN DIEGO,

Defendant.

NO.: '24CV2211 JLS SBC

**COMPLAINT FOR CIVIL RIGHTS
VIOLATION AND INJUNCTIVE
AND DECLARATORY RELIEF;**

1. 42 U.S.C. § 1983

Plaintiff alleges as follows:

1. This is a civil action for declaratory and injunctive relief for violation of the Constitution and laws of the United States. Plaintiff seeks to enforce his right to engage in free speech in the traditional public forum of the public streets and sidewalks.
2. This lawsuit challenges enforcement of City of San Diego Municipal Code §52.1003(c), passed by the City of San Diego, California, and which, as written, interpreted, and enforced by Defendants, prohibits constitutionally protected speech and assembly on public streets and sidewalks.

JURISDICTION

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2 3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343,
3 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988. Venue properly lies in the Southern
4 District of California pursuant to 28 U.S.C. §1391(b) in that defendants have their principal
5 place of business in that district. Each and all of the acts (or threats of acts) alleged herein
6 were done by defendants, or their officers, agents, and employees, under color and pretense of
7 the statutes, Ordinance, regulations, customs and usages of the City of San Diego.

THE PARTIES

8
9 4. Plaintiff Don Blythe is a natural person. Motivated by his moral, religious, and political
10 beliefs, Plaintiff regularly engages in pro-life, anti-abortion speech activities in California. These
11 speech activities include hand-to-hand leafleting, education about abortion, and holding signs with
12 a pro-life, anti-abortion message. All of these activities occur on public sidewalks or other public
13 fora, where he can convey his message to the public. In particular, Plaintiff Blythe often seeks to
14 display and distribute written information and engage in thoughtful discussions with college and
15 high school students. He engages in this free speech activity dozens of times each year, primarily in
16 California.

17 5. Defendant City of San Diego (“City”) is a municipal corporation organized under
18 the laws and Constitution of the State of California, and is a corporate entity capable of suing
19 and being sued. Defendant City maintain and operates the San Diego Police Department
20 which, in the first instance, is responsible for the enforcement of the challenged ordinance
21 and the arrest of any person alleged to have violated it.

OPERATIVE FACTS

22
23 6. On June 11, 2024, the City of San Diego adopted Ordinance No. O-21822 N.S
24 amending Chapter 5, Article 2, Division 10 of the San Diego Municipal Code (§52.1001-
25 §52.1006). One provision of this enactment is §52.1003(c) (herein “the Ordinance”).

26 7. The Ordinance greatly restricts a speaker from engaging in the activity of
27 leafleting, handbilling, displaying a sign, protesting, educating, and counseling in the public
28 right of way or sidewalk if the person speaking is attempting to communicate with a member

1 of the public who is seeking to enter or exit a health care facility, place of worship, or school
2 ground.

3 8. In particular, the Ordinance creates a restricted zone around the categorized
4 institutions which is 100' in radius from the institution's main entrance door or main entrance
5 gate. Inside this restricted zone, a speaker is prohibited from approaching without consent
6 within eight feet of any person entering or exiting the institution in order to engage in the free
7 speech activities noted above.

8 9. Section 52.1003("Establishment of Buffer Zone at Entrances and Exits to Health
9 Care Facilities, Places of Worship, and School Grounds") states as follows:

10 (c) Consent Required. Within a radius of 100 feet of a health care facility, place of
11 worship, or school grounds, unless the person or motor vehicle occupant consents, no
12 person shall:

12 (1) knowingly and willfully approach within eight feet of a person in the public
13 right-of-way or sidewalk area who is seeking to enter or exit a health care facility,
14 place of worship, or school grounds, to:

- 13 (i) pass a leaflet or handbill to that person;
- 14 (ii) display a sign to that person; or
- 15 (iii) engage in oral protest, education, or counseling.

16 (2) knowingly and willfully approach within eight feet of an occupant of a motor
17 vehicle seeking to enter or exit a parking lot, to:

- 16 (i) pass a leaflet or handbill to the motor vehicle occupant;
- 17 (ii) display a sign to the motor vehicle occupant; or
- 18 (iii) engage in oral protest, education, or counseling.

18 10. Plaintiff Blythe intends to engage in free speech activities in the vicinity of high
19 schools in the city of San Diego. In particular, Plaintiff intends to join with others to hold
20 signs, distribute literature, and have conversations with students leaving high school grounds
21 at school dismissal time.

22 11. For example, Plaintiff, along with others, intends to stand outside Patrick Henry
23 High School, 6702 Wandermere Drive, San Diego. Plaintiff and his associates intend to
24 station themselves on the public right of way at the school exits and, without obstructing
25 passage, approach within 8 feet of students as they leave school grounds and walk onto the
26 public sidewalk. Those exits include two along Wandermere Drive and a third on Park Ridge
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1 Road. In engaging in this activity, Plaintiff will likely take some steps toward students and/or
2 extend an arm to pass a leaflet to students when they are within 8 feet.

3 12. The Ordinance prohibits Plaintiff from engaging in this activity unless he has first
4 gained the consent of each student whom he is approaching and to whom he is offering
5 leaflets. Obtaining consent is an unrealistic requirement for distributing literature to multiple
6 people arriving in waves and leaves Plaintiff unable to engage in the critical literature
7 distribution aspect of his free speech activity. Plaintiff is concerned that, if he fails to abide
8 by the Ordinance, he will be arrested for engaging in this free speech activity while outside
9 high schools in the city of San Diego.

10 **FIRST CAUSE OF ACTION**
11 **(VIOLATION OF 42 U.S.C. § 1983)**

12 12. Plaintiff incorporates by reference all preceding paragraphs as if fully restated
13 here.

14 13. The law passed by defendant deprives Plaintiff of his free speech rights under the
15 First and Fourteenth Amendments of the Constitution of the United States.

16 14. The Ordinance is an unconstitutional abridgment on its face, and as applied or
17 threatened to be applied, of the Plaintiff's affirmative right to freedom of speech under the
18 United States Constitution, Amendments I and XIV.

19 15. The Ordinance on its face and as applied or threatened to be applied, is an
20 unconstitutionally overbroad restriction on expressive activity.

21 16. The Ordinance on its face and as applied or threatened to be applied, is an
22 unconstitutional content-based restriction on expressive activity.

23 17. The Ordinance on its face and as applied or threatened to be applied, is an
24 unconstitutionally vague restriction on expressive activity.

25 18. The Ordinance on its face and as applied or threatened to be applied, does not
26 serve a significant governmental interest.
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1 19. The Ordinance on its face and as applied or threatened to be applied, does not
2 leave open ample alternative channels of communication.

3 20. The Ordinance on its face and as applied or threatened to be applied, is not the
4 least restrictive means to accomplish any permissible governmental purpose sought to be
5 served by the legislation.

6 21. The Ordinance violates the Equal Protection Clause of the Fourteenth
7 Amendment to the United States Constitution and similar guarantees in the California State
8 Constitution by denying Plaintiff's free speech rights allowed to others in similar situations.

9
10 WHEREFORE, Plaintiff prays that this Court:

11 (a) Enter judgment against the Defendant;

12 (b) Enter a declaratory judgment declaring the Ordinance passed by of the Defendant
13 to be a violation of Plaintiff's constitutional rights to freedom of speech;

14 (c) Issue a declaratory judgment declaring that City of San Diego Municipal Code
15 §52.1003(c) is unconstitutional on its face;

16 (d) Issue a declaratory judgment declaring that City of San Diego Municipal Code
17 §52.1003(c) is unconstitutional as enforced and as applied to Plaintiff's activity;

18 (e) Issue a temporary restraining order, and a preliminary and permanent injunction
19 enjoining defendant, its agents, servants, employees, officers and the San Diego Police
20 Department from enforcing City of San Diego Municipal Code §52.1003(c) with reference to
21 Plaintiff and all others seeking to engage in constitutionally protected speech in or around
22 educational institutions;

23 (f) Award Plaintiff damages;

24 (g) Award Plaintiff costs, reasonable attorneys' fees, and interest for this action
25 pursuant to 42 U.S.C. §1988; and,
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(g) Order such other and further relief as the Court deems just and proper under the circumstances.

Dated: 11/25/2024



MICHAEL MILLEN, ESQ.
ATTORNEY FOR PLAINTIFF

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial in this action.

Dated: 11/25/2024



MICHAEL MILLEN, ESQ.
ATTORNEY FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Don Blythe

(b) County of Residence of First Listed Plaintiff San Joaquin County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Millen, 119 Calle Marguerita, Los Gatos, CA
95032, (408) 871-2777; Catherine Short, LLDF, PO Box
1313. Ojai, CA 93024 (707) 337-6880

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'24CV2211 JLS SBC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC §1983

Brief description of cause:

Lawsuit seeking declaration that City Muni. Code 52.1003 is unconstitutional

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ **nominal**

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Lopez

DOCKET NUMBER 24-cv-01577-LL-SBC

DATE

11/25/2024

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____