

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

PAUL DOBROWOLSKI,

Plaintiff,

v.

CITY OF ANN ARBOR, and JOHN SETO, in his
official capacity as Chief of Police, City of Ann
Arbor,

Defendants.

Case No.

COMPLAINT

[Civil Rights Action under 42
U.S.C. § 1983]

AMERICAN FREEDOM LAW CENTER

Robert J. Muise, Esq. (P62849)

P.O. Box 131098

Ann Arbor, Michigan 48113

rmuise@americanfreedomlawcenter.org

(734) 635-3756

David Yerushalmi, Esq. (Ariz. Bar No. 009616;

DC Bar No. 978179; Cal. Bar No. 132011;

NY Bar No. 4632568)

1901 Pennsylvania Avenue NW

Suite 201

Washington, D.C. 20006

david.yerushalmi@verizon.net

(646) 262-0500

Counsel for Plaintiff

Plaintiff Paul Dobrowolski (“Plaintiff”), by and through his undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

INTRODUCTION

1. 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 and 42 U.S.C. § 1983, challenging the City of Ann Arbor's City Code § 10:60, facially and as applied to Plaintiff's speech.

2. Plaintiff seeks a declaration that Ann Arbor City Code § 10:60 violates his clearly established constitutional rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Ann Arbor City Code § 10:60 as set forth in this Complaint; and a judgment awarding nominal damages. Plaintiff also seeks an award of his reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

JURISDICTION AND VENUE

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiff's claim for damages is authorized under 42 U.S.C. § 1983.

5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

PLAINTIFF

6. Plaintiff is an adult resident of the State of Michigan and a pro-life advocate.

DEFENDANTS

7. Defendant City of Ann Arbor (hereinafter "Ann Arbor" or "City") is a Michigan municipal corporation.

8. Defendant John Seto is the Chief of Police for Ann Arbor. At all relevant times, Defendant Seto was an agent, servant, and/or employee of Ann Arbor, acting under color of state law. As Chief of Police, Defendant Seto is responsible for enforcing—as well as supervising and directing the law enforcement officers who enforce—the codes, laws, ordinances, and regulations of Ann Arbor, including Ann Arbor City Code § 10:60. Defendant Seto is sued in his official capacity only.

STATEMENT OF FACTS

9. Section 10:60 of the Ann Arbor City Code states as follows:

10:60 - Prohibitions for certain purposes.

No person shall park a vehicle upon any street or highway for the principal purpose of:

- (1) Displaying such vehicle for sale;
- (2) Washing, polishing, greasing, or repairing such vehicle, except repairs necessitated by an emergency;
- (3) Displaying advertising;
- (4) Selling merchandise from such vehicle except in a duly established market place, or when so authorized or licensed under Title 7 of this Code.

10. Ann Arbor City Code § 10:60 does not define “advertising,” it does not define “[d]isplaying advertising,” and it does not define “principal purpose.”

11. Plaintiff is a pro-life advocate who engages in peaceful, non-obstructive anti-abortion speech activity on the public sidewalks and public streets outside of a Planned Parenthood abortion facility located on Professional Drive in Ann Arbor, Michigan.

12. As part of his free speech activity, Plaintiff distributes pro-life literature and holds pro-life signs while he is on the public sidewalks, and he displays pro-life signs in the windows

of his vehicle, which he lawfully parks on the public street outside of the Planned Parenthood facility. Plaintiff's vehicle, a Toyota Camry, is fully operational and lawfully registered and licensed.

13. The pro-life signs displayed in the windows of Plaintiff's vehicle include the following: "Ask to See the Ultrasound," "Abortion Hurts Women," and "Free Ultrasound, Family Life Services, 2950 Packard, YPSI, 734-434-3088" (hereinafter "Free Ultrasound Sign"). Plaintiff also displays similar signs in Spanish. True and accurate photographs of Plaintiff's vehicle and sign displays are attached to this Complaint as Exhibit 1.

14. Plaintiff is a chemist at Cayman Chemical, which is located in Ann Arbor, Michigan. Plaintiff has no affiliation—professional or otherwise—with Family Life Services. Plaintiff displays the Free Ultrasound Sign as part of his overall pro-life message.

15. Plaintiff has lawfully parked his vehicle outside of the Planned Parenthood facility on Professional Dive for more than a year.

16. On May 22, 2012, and again on May 25, 2012, Plaintiff received a notice (it was affixed to his vehicle) pursuant to "Ann Arbor MI Ordinance No. 10:136 Abandoned vehicles," informing Plaintiff that he had 48 hours to move his vehicle or it would be considered abandoned and thus impounded. Plaintiff complied on each occasion and promptly moved his vehicle.

17. On May 29, 2012, Plaintiff received a ticket pursuant to Ann Arbor City Code § 10:60 because of the pro-life signs displayed in his vehicle. Plaintiff's signs allegedly violated the "Displaying advertising" provision of the City code. Plaintiff paid the \$25 fine to avoid further escalation of the fine amount.

18. On May 31, 2012, Plaintiff received another notice pursuant to “Ann Arbor MI Ordinance No. 10:136 Abandoned vehicles.” Plaintiff again complied and promptly moved his vehicle.

19. On June 4, 2012, Plaintiff received another ticket for allegedly violating Ann Arbor City Code § 10:60 because of the pro-life signs displayed in his vehicle. Plaintiff’s pro-life signs allegedly violated the “Displaying advertising” provision of the City code. Plaintiff contested this ticket.

20. During the “formal hearing” on the alleged violation of Ann Arbor City Code § 10:60, the Ann Arbor police officer who issued the ticket testified that she was “directed” to do so by her supervisor.

21. The police officer who issued the ticket also testified during the formal hearing as follows:

Q: So then any time anybody displays anything in their window, it’s a violation of code, would that be correct, officer?

A: Probably, yes.

22. Consequently, the police officer enforcing Ann Arbor City Code § 10:60 considers any sign displayed in the window of a vehicle to be a violation of this code provision.

23. At the conclusion of the hearing, the court found that Plaintiff had violated the City code provision that prohibited “Displaying advertising” by displaying his Free Ultrasound Sign in the window of his vehicle. The court stated that the other pro-life signs did not violate the City code because they were “political speech” and not “advertising,” thereby distinguishing the signs based on their content.

24. The court also noted that Plaintiff “could have stored the signs in any other fashion [in the vehicle]; [he] could have laid them down; [or he] could have put them in the trunk” without violating the City code. Consequently, the signs could be in the parked vehicle; they just could not be in the vehicle in a manner that would allow others to see them.

25. The court concluded, “But you don’t put them up in the window the way these things are with the desire for anything other than that somebody else is going to see them and that that person is going to be influenced by what they see.”

26. Plaintiff was ordered to pay a \$25 fine, which he did.

27. Plaintiff wants to continue to display the Free Ultrasound Sign in his vehicle while it is parked on the public street outside of the Planned Parenthood facility on Professional Drive in Ann Arbor, Michigan, because he believes that this sign helps to prevent abortions, which is the primary purpose for his pro-life speech activity. However, because Plaintiff fears receiving another ticket and having to pay another fine for violating Ann Arbor City Code § 10:60, he has ceased displaying his Free Ultrasound Sign.

28. All of Plaintiff’s pro-life signs, including his Free Ultrasound Sign, constitute political speech and are thus accorded the greatest protection under the First Amendment.

29. None of Plaintiff’s signs, including his Free Ultrasound Sign, expresses a message related solely to the economic interests of Plaintiff and his audience. That is, Plaintiff’s signs are not commercial speech as a matter of law.

30. Ann Arbor City Code § 10:60, facially and as applied to Plaintiff’s signs, is a content-based restriction on speech in a traditional public forum.

31. Ann Arbor does not have a legitimate interest—compelling, substantial, or otherwise—that is advanced by permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign’s message.

32. A speech restriction is content-neutral if it is justified without reference to the content of the regulated speech. Ann Arbor City Code § 10:60 on its face and as applied refers to the content of the speech, making distinctions between speech that is “advertising,” which is prohibited, and speech that is not “advertising,” which is allowed.

33. Ann Arbor City Code § 10:60 does not provide any content-neutral, objective criteria that would guide an officer in the enforcement of this City code.

34. Ann Arbor City Code § 10:60 reaches beyond purely commercial speech to regulate fully protected speech, including protected speech that is inextricably intertwined with commercial speech.

35. The plain language of Ann Arbor City Code § 10:60 does not limit the scope of the regulated activity to purely commercial expression.

FIRST CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

36. Plaintiff hereby incorporates by reference all stated paragraphs.

37. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60 under color of state law, Defendants have deprived Plaintiff of his right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

38. Ann Arbor City Code § 10:60, facially and as applied to Plaintiff's pro-life signs displayed in his vehicle, including his Free Ultrasound Sign, violates Plaintiff's right to freedom of speech protected by the First Amendment.

39. Plaintiff's pro-life signs, including his Free Ultrasound Sign, are political speech.

40. Plaintiff's pro-life signs are not misleading.

41. Ann Arbor does not have a legitimate interest—compelling, substantial, or otherwise—that is directly and materially advanced by the enforcement of Ann Arbor City Code § 10:60 as set forth in this Complaint.

42. There is no legitimate governmental interest that is advanced by permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign's message.

43. Ann Arbor City Code § 10:60 is not a reasonable, content-neutral restriction on the time, place, and manner of protected speech.

44. Ann Arbor City Code § 10:60 is not narrowly tailored to serve a significant governmental interest.

45. Ann Arbor City Code § 10:60 is not the least restrictive means of furthering a compelling governmental interest.

46. Ann Arbor City Code § 10:60 is a content-based restriction on Plaintiff's speech in a traditional public forum in violation of the First Amendment.

47. Ann Arbor City Code § 10:60 is vague and overbroad in violation of the First Amendment.

48. Ann Arbor City Code § 10:60 is overbroad because it reaches beyond purely commercial speech to regulate fully protected speech, including protected speech that is inextricably intertwined with commercial speech.

49. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

SECOND CLAIM FOR RELIEF

(Vagueness—Fourteenth Amendment)

50. Plaintiff hereby incorporates by reference all stated paragraphs.

51. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60 under color of state law, Defendants have deprived Plaintiff of the due process of law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

52. Ann Arbor City Code § 10:60 lacks any objective standards or proper safeguards, is overbroad, and is selectively enforced, thereby operating to deprive Plaintiff of his right to due process of law protected by the Fourteenth Amendment.

53. Ann Arbor City Code § 10:60 is unconstitutionally vague because it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly.

54. Ann Arbor City Code § 10:60 is unconstitutionally vague and thereby permits arbitrary and discriminatory enforcement because it does not provide explicit standards for those who apply them. Consequently, Ann Arbor City Code § 10:60 impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

55. Ann Arbor City Code § 10:60 is unconstitutionally vague in that it abuts upon sensitive areas of basic First Amendment freedoms and operates to inhibit the exercise of those freedoms, thereby leading citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

56. There is no rational basis for permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign's message.

57. As a direct and proximate result of Defendants' violation of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

THIRD CLAIM FOR RELIEF

(Equal Protection—Fourteenth Amendment)

58. Plaintiff hereby incorporates by reference all stated paragraphs.

59. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60 under color of state law, Defendants have deprived Plaintiff of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

60. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60, Defendants have prevented Plaintiff from expressing a political message in a traditional public forum based on the content of the message in violation of the Equal Protection Clause of the Fourteenth Amendment.

61. Ann Arbor City Code § 10:60 is not narrowly tailored to serve a significant governmental interest.

62. Ann Arbor City Code § 10:60 is not the least restrictive means of furthering a compelling governmental interest.

63. Defendants' disparate treatment of protected speech in a traditional public forum is not justified by any legitimate governmental interest.

64. There is no legitimate governmental interest that is advanced by permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign's message.

65. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this court:

A) to declare that Ann Arbor City Code § 10:60, facially and as applied, violates Plaintiff's fundamental constitutional rights as set forth in this Complaint;

B) to permanently enjoin Ann Arbor City Code § 10:60 and its application to Plaintiff's speech and related activities as set forth in this Complaint;

C) to award Plaintiff nominal damages;

D) to award Plaintiff his reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

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

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

/s/ David Yerushalmi

David Yerushalmi, Esq.

EXHIBIT 1

