

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DAVID BENHAM; CITIES4LIFE, INC.;
GLOBAL IMPACT MINISTRIES, INC. D/B/A
LOVE LIFE AND LOVE LIFE CHARLOTTE,

Plaintiffs,

v.

CITY OF CHARLOTTE,
NORTH CAROLINA; MECKLENBURG
COUNTY, NORTH CAROLINA,

Defendants.

Case No. 3:20-cv-00232-GCM

AMENDED COMPLAINT

INTRODUCTION¹

1. Since early 2020, across the nation, state and local governments have taken unprecedented executive and legislative actions in an attempt to protect lives from the coronavirus disease (COVID-19).

2. While many of these efforts were reasonable and even noble, others were troubling and ultimately proved unconstitutional. In several instances, governmental authorities imposed overbroad and improperly tailored restrictions,

¹ Defendants, pursuant to Fed. R. Civ. P. 15(a)(2), consented in writing to the filing of this Amended Complaint.

using COVID-19 as a cover to impermissibly restrict speech and religious exercise the government opposed. These unnecessary measures not only did nothing to protect life and health (and sometimes even endangered both), but also were unconstitutional to boot.

3. One such instance of unconstitutional government overreach occurred outside an abortion facility in Charlotte, North Carolina, known as A Preferred Women's Health of Charlotte.

4. While women in difficult circumstances walked in and out of the abortion facility, individuals associated with two nonprofit organizations—Cities4Life, Inc., and Global Impact Ministries, Inc., d/b/a Love Life—stood on the public sidewalk, praying for and offering hope and tangible support to these women. For years, devoted individuals from these charities have dedicated their time and resources to help those in need.

5. Mindful of both the risks of COVID-19 and the state and local orders put in place to protect health and safety, Cities4Life and Love Life personnel rigorously adhered to all applicable regulations and guidance, including maintaining social distancing (e.g., standing at least six feet apart), and ensuring that hand sanitizer was available for use. In fact, they even used sidewalk chalk to mark and maintain appropriate distances between individuals.

6. At the same time government officials were allowing the abortion clinic to fill up with clients and numerous people to roam the parks and sidewalks for recreation and exercise, these same officials targeted individuals from Cities4Life and Love Life, who were praying on the sidewalk, maintaining a safe distance from one another and others, and helping women interested in the important charitable services they offered.

7. On April 4, 2020, members of the Charlotte-Mecklenburg Police Department (CMPD) arrested or cited the President of Cities4Life, David Benham, and others from Cities4Life and Love Life while they were on public sidewalks exercising their First Amendment rights to speech and religious exercise in the service of others.

8. The authorities stated that the arrests occurred under a Revised Joint Proclamation (“Proclamation”) that the Mecklenburg County Board of Commissioners and the Mayor of the City of Charlotte issued, which prohibited certain gatherings of more than 10 people. By its very terms, however, the Proclamation expressly exempted the activities of Benham, Cities4Life, and Love Life from that 10-person limit.

9. The fact that health and safety concerns underlie COVID-19 restrictions does not permit government officials to selectively enforce municipal regulations, especially when the regulations in question actually permit the activities

involved. Nor can government officials invoke health and safety to prohibit constitutionally protected activities that do not endanger public health or safety. Yet that is exactly what Defendants did when they interfered with Plaintiffs' protected First Amendment activity and unlawfully arrested and/or cited some of the individual members of Cities4Life and Love Life.

10. Government officials subjected David Benham, Cities4Life, and Love Life (collectively, "the Advocates") to unlawful harassment, arrest, citations, and jail — demonstrating hostility toward the Advocates' views and religious beliefs.

11. The Advocates bring this action to protect their ability to exercise their constitutionally protected, life-saving charitable work and to provide critical services to women in need — all while adhering to applicable health-and-safety guidelines.

12. This challenge also seeks redress for violations of David Benham's Fourth Amendment right to be free from unlawful stop, unlawful arrest, and unlawful detention.

13. The City of Charlotte and Mecklenburg County, in enforcing regulations limiting the operation of certain businesses and activities, by and through CMPD, violated David Benham's Fourth Amendment right to be free from unlawful stop, unlawful arrest, and unlawful detention.

PARTIES

14. Plaintiff David Benham is a natural person, a citizen and resident of North Carolina, and the President and Chairman of the Board of Directors of Cities4Life.

15. Plaintiff Cities4Life, Inc., is a religious and charitable nonprofit corporation organized under North Carolina law.

16. When operating in the Charlotte area, Cities4Life, regularly does business as Cities4Life Charlotte.

17. Cities4Life has standing to bring claims on behalf of its members, including its officers, staff, and volunteers, under the principles of third-party standing and organizational standing.

18. Cities4Life's members would have independent standing to raise, on their own behalf, all claims Cities4Life asserts in this action.

19. All interests Cities4Life seeks to protect in this action are relevant to its purposes, and neither the claims it asserts nor the relief it requests requires its members to participate in this lawsuit.

20. Plaintiff Global Impact Ministries, Inc., is a religious and charitable corporation organized under North Carolina law.

21. Global Impact Ministries does business as Love Life and Love Life Charlotte ("Love Life").

22. Love Life has standing to bring claims on behalf of its members, including its officers, staff, and volunteers, under the principles of third-party standing and organizational standing.

23. Love Life's members would have independent standing to raise, on their own behalf, all claims Love Life asserts in this action.

24. All interests Love Life seeks to protect in this action are relevant to its purposes, and neither the claims it asserts nor the relief it requests requires its members to participate in this lawsuit.

25. Defendant City of Charlotte is a municipal corporation organized under North Carolina law and located in Mecklenburg County, North Carolina. It is an entity capable of suing and being sued.

26. Defendant Mecklenburg County is one of 100 counties in North Carolina. *See* N.C.G.S. § 153A-10. It is an entity capable of suing and being sued. N.C.G.S. § 153A-11.

FACTUAL BACKGROUND

David Benham

27. The tragedy of abortion is never far from Benham's heart. He has seen its devastating effects. And he was almost one of its direct victims.

28. In 1975, while Benham and his twin brother were in utero, his father thought abortion was the answer. Despite her difficult circumstances, Benham's

mother thought otherwise. The night she gave birth to Benham and his brother, her husband was passed out from excessive drinking.

29. The transformative power of Jesus Christ is also part of Benham's story. Three months after his birth, Benham's father stepped into a church, became a Christian, and on his walk home decided to become a pastor.

30. Because of the religious conversion and life-changing transformation of his father, Benham grew up witnessing faith in action and the powerful impact it has.

31. Benham's family has been involved in many positive, life-changing activities, but some stand out more than others. One of the highlights was the family's involvement in the conversion of Norma McCorvey—the “Roe” of the infamous *Roe v. Wade* abortion decision—to Christianity. In fact, Benham's father had the privilege of baptizing McCorvey in 1995.

32. Based on Benham's sincerely held religious beliefs, simply believing that abortion is wrong is not enough. In the Bible, Jesus' brother says “If a brother or sister is without clothing and in need of daily food, and one of you says to them, ‘Go in peace, be warmed and be filled,’ and yet you do not give them what is necessary for their body, what use is that?” *James 2:15–16*.

33. Benham was once quoted as saying, and still believes today, that “[c]ompassion without action is not true biblical Christianity. It's just feeling sorry

for someone. There's no loving, practical way we can be biblically pro-life and not do something about it." Ted Allen, *Twin brothers help create a new wave in the pro-life movement*, LIBERTY JOURNAL (Oct. 31, 2019).²

34. For more than 20 years, Benham and his wife have served together in the pro-life movement.

35. For Benham, pro-life work is more than charity; it is a Christian duty, an extension of God's command to love one's neighbor.

36. As part of his work on behalf of unborn babies and their families, Benham co-founded Cities4Life, where he serves as its president and chairman of its board of directors. He also works extensively with Love Life.

37. Cities4Life and Love Life are separate entities. Both, however, offer hope and help to women considering abortion—and those suffering regret after ending their child's life in utero.

Cities4Life

38. Cities4Life is a nonprofit, Christian, charitable pro-life ministry, primarily operating in Charlotte, North Carolina.

39. Cities4Life was incorporated in 2013.

40. Since 2013, Cities4Life has regularly provided social services outside Charlotte-area abortion facilities.

² <https://bit.ly/3bd7x7X>

41. Cities4Life encourages individuals to peacefully and prayerfully demonstrate the love of Jesus Christ outside abortion facilities and to pray for any needs that people going in or out of the facilities may share with them.

42. Cities4Life seeks to ensure that women going into abortion clinics are aware of the alternatives to abortion and the social services and other support available to them.

43. In its years of service, Cities4Life has seen hundreds of women who chose abortion and then experienced devastating guilt and grief.

44. Without Cities4Life's presence outside abortion facilities, many women would make permanent and irreversible decisions to end their unborn children's lives.

45. Cities4Life partners with H.E.L.P. Crisis Pregnancy Center to provide a mobile unit outside of abortion facilities, in which women can obtain a free sonogram and learn more about the development of their unborn children.

46. Cities4Life also informs women about, and helps facilitate access to, medical treatments that attempt to reverse the chemical abortion process that women may regret.

47. Specifically, many abortions are not surgical, but instead occur by ingestion of abortion-inducing drugs. Doctors have developed a treatment that is often successful in reversing the effects of an abortion-inducing drug (mifepristone,

or RU-486), by administering doses of progesterone to offset the effects of mifepristone, which is a progesterone antagonist. Data shows that more than 2,000 babies have been saved following this reversal treatment.

48. Time is of the essence for this reversal treatment, which generally must be taken within 72 hours of the first abortion drug, so the presence of Cities4Life outside abortion facilities to consult with women who regret ingesting an abortion-inducing drug is critical.

49. Cities4Life also provides tangible support to women considering abortion.

50. Cities4Life provides various social services to women, including: (i) baby showers delivering tangible material goods (e.g., diapers, baby furniture, bottles, baby clothes, etc.); (ii) groceries; (iii) money for rent, utilities, vehicles, vehicular repair, gas, prenatal care, wedding services, and follow-up ultrasounds to determine a baby's sex; and (iv) maternity clothes.

51. Cities4Life also partners with local churches and Gospel-centered ministries in Charlotte to mobilize their faith into actionable steps to meet the physical and spiritual needs of women considering abortion.

52. For instance, Cities4Life has worked with churches that provide daycare services and secured "scholarships" for women to receive a year of free daycare for their babies if they chose giving birth over abortion.

Love Life

53. Global Impact Ministries, Inc., operating as Love Life and Love Life Charlotte, is a nonprofit, Christian, charitable pro-life ministry.

54. Love Life offers spiritual counseling, prayer, emotional counseling, referrals for medical treatment to attempt to reverse the effects of abortion-inducing drugs, post-abortion counseling, adoption referrals, foster-care training, orphan-certification training, and a network of partnering area churches that provides material resources to women facing unplanned pregnancies, such as baby clothes, strollers, diapers, cribs, breast pumps, baby equipment, and car seats. Love Life also mentors and trains people and churches to support women who choose life and to help provide for such women's physical needs.

55. In its years of service, Love Life has seen hundreds of women experience devastating guilt and grief because of an abortion decision.

56. Without Love Life's presence outside abortion facilities, many women would make permanent and irreversible decisions to end their unborn children's lives.

57. Love Life offers its ministry in a variety of locations, including Charlotte.

58. Love Life's purpose is to unite and mobilize the church to create a culture of love and life that will bring an end to abortion and the orphan crisis.

59. Love Life furthers its mission by providing compassion and hope to young women and men who find themselves facing unplanned pregnancies, and by helping and encouraging them to make life-affirming decisions.

60. Love Life serves as an interface between (i) mothers and fathers who have considered or had an abortion, and (ii) the church and all the services local churches can offer when they are organized and mobilized to assist such individuals.

61. Love Life has partnered with over 300 churches.

62. Love Life works to ensure that mothers who consider abortion, but then choose life, receive essential social services.

63. Love Life also works to make sure that interested parents have access to parenting mentorship and adoption-related services.

64. Love Life also helps women and men experiencing grief, guilt, and regret after an abortion find real hope and understand the forgiveness that Christ offers.

65. To achieve its goals, Love Life hires personnel to work outside abortion facilities alongside Christian sidewalk ministers. If a mother desires, she can speak with a Christian sidewalk minister.

66. Oftentimes, after talking with a sidewalk minister and perhaps also viewing a free sonogram of her child, a woman will decide she wants to give birth instead of ending her child's life through abortion. At that point, those interacting

with her will usually connect her with Love Life personnel who can then determine her needs and either meet them directly or use its church partner network to fulfill them.

67. Additionally, Love Life personnel, along with Christian sidewalk ministers, provide requested counseling to men and women after an abortion. Love Life refers the post-abortive men and women to its church network for ongoing counseling support services.

68. Apart from the ministry and services that Love Life provides near abortion facilities, Love Life has initiated a multi-year campaign to partner with area churches to inform the churches of the needs women and men have when facing an unplanned pregnancy, the methods by which the churches can help, and ways churches and Christians can organize to effectively provide assistance.

69. Since its inception in 2016, Love Life has regularly provided social services outside Charlotte-area abortion facilities and has grown to regularly provide social services outside several other abortion facilities in the State of North Carolina.

70. During the period relevant to the events giving rise to this complaint, Love Life operated its ministry through a staff of approximately 15 individuals working in various roles within the organization, and its network of volunteers, affiliates, and other supporters, primarily from churches across North Carolina.

71. Prior to March 20, 2020, Love Life regularly organized prayer walks whereby members of local churches would walk the approximately half-mile circular road on which the abortion facility (A Preferred Women's Health of Charlotte) is located. Each church prayer walker was required to agree and adhere to a strict code of conduct.

72. That code of conduct limited each volunteer prayer walking participant to prayer only. Prayer walkers agree not to engage abortion-minded mothers or any individuals present advocating for abortion. Prayer walkers do not carry signs and are asked to engage only in silent prayer as they walk.

73. The prayer walks seek God's intervention in the hearts of mothers and fathers so they may choose life. The Bible explicitly states and demonstrates on numerous occasions that prayer is a Christian believer's method to speak with God and that God receives prayer and can answer prayer requests.

74. Effective March 20, 2020, in response to the COVID-19 virus and CDC recommendations, Love Life ceased all organized prayer walks and told any church partners that if Christians desired to prayer walk individually, they must abide by all CDC social-distancing requirements. To fulfill its ongoing nonprofit purposes, Love Life's new policy continued to call for paid Love Life personnel to be present at or near abortion facilities that remained open during the pandemic.

Religious motivation

75. The Advocates' sincerely held religious beliefs motivate all the pro-life efforts of Benham, Cities4Life, and Love Life.

76. The Advocates believe that Jesus' transforming love can free people from hopelessness and fear when facing difficult circumstances, such as unplanned pregnancies and difficult economic circumstances.

77. Many of the individuals the Advocates serve are economically disadvantaged, with limited resources and of the belief that they cannot afford to have and raise a child.

78. The Advocates believe the Bible teaches that God creates each human being in His image and forms babies in their mothers' wombs, such that from the moment of conception every life is precious and has immeasurable value and worth.

79. The Advocates' sincerely held religious belief is that they are called to care for and support women facing difficult decisions related to unplanned pregnancies, and to convey and promote the message that from the moment of conception every human life has value and worth.

80. The Advocates believe that women facing unplanned pregnancies should be respected, encouraged, supported, protected, and provided with emotional, spiritual, and tangible material resources and assistance.

81. Inspired by the love of Jesus, the Advocates carry out their religious and charitable mission by serving and teaching women about their unique value as human beings made in God's image, the unique and precious lives of babies in the womb, the hope and peace that Jesus Christ offers, and the services available to them.

82. The Advocates believe that loving, serving, and counseling women in need encourages them to put their faith in Jesus and to free themselves from unhealthy behaviors, destructive relationships and habits, difficult situations, fears, and hopelessness.

City and County Proclamation

83. On March 24, 2020, the Chairman of the Mecklenburg County Board of Commissioners and the Mayor of the City of Charlotte issued a "Revised Joint Proclamation" governing activities during the COVID-19 pandemic.³

84. A true and correct copy of that Proclamation is attached to this Amended Complaint as Exhibit A.

85. The Proclamation restricted specific activities while expressly permitting certain other activities to continue.

86. The Proclamation specified that people may leave their residences for, among other things, "Essential Activities" and "to operate Essential Businesses."

³ The Proclamation stated that it would be "valid through April 16, 2020," but that it "may be . . . extended." It was later extended until April 29, 2020. *See Stay at Home Order Extended to April 29* (Apr. 16, 2020), <https://bit.ly/2KdoEuB>.

87. The Proclamation even “strongly encouraged” all “Essential Businesses” to “remain open.”

88. The Proclamation instructed that, “[t]o the greatest extent feasible,” Essential Businesses “shall comply with Social Distancing requirements as defined by CDC.”

89. The Proclamation specified that the CDC recommends that people stay at least six feet apart.

90. The Proclamation specified that “[a]ll public and private gatherings of more than 10 people are prohibited, except for the limited purposes permitted by this Proclamation.”

91. Under the Proclamation’s terms, the prohibition on gatherings of more than 10 people did not apply to “Essential Activities.”

92. Under the Proclamation’s terms, the prohibition on gatherings of more than 10 people also did not apply to “Essential Businesses.”

93. The Proclamation listed numerous activities as “Essential Activities.” One “Essential Activity” under the Proclamation was delivering “necessary services or supplies” to others.

94. Under the Proclamation, those “necessary services or supplies” included, “by way of example only and without limitation, groceries and food,

household consumer products, supplies they need to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.”

95. Under the Proclamation, “Essential Activity” also included “engag[ing] 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.”

96. In addition, under the Proclamation, “Essential Activity” included “perform[ing] work providing essential products and services at Essential Businesses or Operations.”

97. Under the Proclamation, there were numerous “Essential Businesses or Operations,” including “non-profit” entities.

98. “Essential Businesses or Operations” under the Proclamation also included “Human Services Operations,” “Organizations that provide charitable and social services,” and “Healthcare and Public Health Operations.”

99. Under the Proclamation, “Human Services Operations” included “businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals . . . or otherwise needy individuals.”

100. The Proclamation specified that “Human Services Operations shall be *construed broadly* to avoid any impacts to the delivery of human services, *broadly defined.*” (emphasis added).

101. The Proclamation specified that “Organizations that provide charitable and social services” include “[b]usinesses and religious and secular nonprofit organizations . . . when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals”

102. The Proclamation provided that “Healthcare and Public Health Operations” included “reproductive health care providers” and “public health entities, including those that . . . communicate public health information.”

103. The Proclamation stated that “Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined.”

104. The Proclamation stated that “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.”

105. The Advocates and their activities qualified as “Essential Activity” under the Proclamation and are comparable to other secular activities deemed essential under the Proclamation.

106. The Advocates and their activities qualified as “Essential Businesses or Operations” under the Proclamation and are comparable to other businesses and operations deemed essential under the Proclamation.

107. The Advocates and their activities qualified as “Human Services Operations” under the Proclamation and are comparable to other human services operations under the Proclamation.

108. The Advocates and their activities qualified as “Organizations that provide charitable and social services” under the Proclamation and are comparable to other charitable and social service organizations under the Proclamation.

109. The Advocates and their activities qualified as “Healthcare and Public Health Operations” under the Proclamation and are comparable to other healthcare and public health operations under the Proclamation.

110. The Advocates regularly washed their hands and ensured the availability of hand sanitizer.

111. The Advocates ensured social distancing as set out in the Proclamation; in fact, they used sidewalk chalk to mark the sidewalk at intervals of at least six feet to rigorously comply with the Proclamation’s requirements in this regard.

112. The Advocates thus complied with all social distancing requirements.

113. At all times the Advocates were in full compliance with the Proclamation.

Arrests and fines targeting disfavored speech and religious exercise

114. In October 2019, David Benham was quoted in an article as saying of his pro-life work: “When we continue to mobilize with love in our hearts, there’s no way our message can be silenced.” Ted Allen, *Twin brothers help create a new wave in the pro-life movement*.⁴

115. But Charlotte authorities attempted to do just that: silence the Advocates’ message through the exercise of raw, arbitrary power, including arrests and fines.

116. Before Defendants arbitrarily and unconstitutionally interfered with Plaintiffs’ constitutional rights, the Advocates had long engaged in their ministry and provided critical services on the sidewalk in the vicinity of A Preferred Women’s Health of Charlotte (“Abortion Facility”), the busiest of Charlotte’s three abortion facilities.

117. The Abortion Facility is located at 3220 Latrobe Drive in Charlotte.

118. On March 28, counsel for Cities4Life and Love Life was present in the vicinity of the Abortion Facility and confirmed with Major Kornberg of CMPD that

⁴ <https://bit.ly/3bd7x7X>.

the activities of Cities4Life and Love Life complied with the Proclamation and the Governor's Executive Order issued on March 27, 2020.

119. Despite this confirmation and the Advocates' full compliance with all applicable rules, the CMPD confronted the Advocates on April 4, 2020, on the sidewalk in the vicinity of the Abortion Facility.

120. Between March 28, 2020, and April 4, 2020, the Proclamation was not revised.

121. Between March 28, 2020, and April 4, 2020, the Advocates did not make any material changes to their operations, which Kornberg had deemed compliant with the Proclamation just a week earlier.

122. Upon information and belief, Defendants predetermined that the CMPD would use the Proclamation to interfere with the Advocates' charitable activities on April 4, 2020, despite the prior confirmation from the CMPD itself to the Advocates' counsel that the Advocates' actions were permissible.

123. Upon information and belief, the Defendants directed the CMPD's change of position and decision to unfairly target the Advocates.

124. More specifically, on March 28, 2020, Julie Eiselt, the Mayor Pro Tem of the City of Charlotte, re-tweeted pictures of the Advocates engaging in their provision of social services and other assistance while maintaining social distancing.

125. Through a series of tweets, Eiselt sent messages to the CMPD through the CMPD's Twitter account asking the CMPD to "please shut this activity down" and then thanking the CMPD "for showing up and hopefully putting an[] end to this."⁵

126. Eiselt further alleged in a tweet that the Advocates are "violating the law" and "should be issued citations if they do not comply with the law."⁶

127. An individual who identified himself in his Twitter profile as a "[p]rofessional storyteller" at WCNC Charlotte, an NBC TV affiliate, responded to a tweet from Eiselt on March 28, 2020, saying "CMPD officer on scene says they are not violating the letter of the stay-at-home order."

128. Upon information and belief, after learning of the CMPD's position, Defendants took action to ensure that the CMPD would change position and no longer allow the Advocates to exercise their First Amendment rights and offer essential services, because of the Defendants' hostility to the Advocates' views and beliefs.

129. Upon information and belief, this pressure from Defendants led to the CMPD taking drastic enforcement action on April 4, 2020. This enforcement

⁵ <https://twitter.com/JulieEiselt/status/1243892522469986304>

⁶ *Id.*

violated both the terms of the Proclamation itself and CMPD's earlier assurances that the Advocates were complying with the Proclamation's requirements.

130. Upon information and belief, numerous CMPD patrol vehicles arrived in the vicinity of the Abortion Facility on April 4, 2020, at 7:30 a.m., when only approximately five people were present in the vicinity.

131. At approximately 11:30 a.m. on April 4, 2020, approximately 10 CMPD patrol vehicles and approximately one dozen CMPD officers were present directly in front of the Abortion Facility, where approximately nine people (excluding police officers) were present (and socially distancing) in the vicinity outside the Abortion Facility.

132. At that time, only three sidewalk ministers were actually in front of the Abortion Facility, and each stood more than ten feet apart from the others.

133. Meanwhile, scores (if not hundreds) of vehicles were in the parking lot of The Home Depot—and scores (if not hundreds) of people were inside that retail location—which sits at one of the intersections that accesses the business park where the Abortion Facility is located.

134. Upon information and belief, not a single CMPD officer was ever present at, or dispatched to, The Home Depot at any time while this massive congregation of people assembled there to shop throughout the day.

135. Upon information and belief, the CMPD did not cite or arrest anyone at The Home Depot for violating the Proclamation.

136. A true and correct image of a portion of the parking lot of that Home Depot location as it appeared at approximately 11:45 a.m. on April 4, 2020, is included below.



137. The CMPD did, however, choose to issue citations to and/or arrest some of the Advocates on April 4, 2020, in the vicinity of the Abortion Facility, despite the Advocates explaining to the officers that they were in full compliance with applicable requirements.

138. Most notably, on April 4, 2020, CMPD unlawfully stopped, arrested, and detained Benham, the President of Cities4Life.

139. The CMPD detained Benham and told him that they were doing so because he was leading a protest and was part of a gathering of more than ten people in violation of the Proclamation.

140. Benham was present at the Abortion Facility to fulfill Cities4Life's charitable purpose to prayerfully protect life and provide assistance to women and men in need.

141. In response to CMPD's characterizations, Benham explained to CMPD's Major Kornberg that he had a right to be present at the Abortion Facility as the board representative of a federally recognized 501(c)(3) charity that offered health and social services to mothers in need.

142. Benham further explained that he was not violating the Proclamation because he was keeping a safe distance by actually standing by himself across the street from the Abortion Facility.

143. Benham was practicing — and had been practicing — social distancing in accordance with the Proclamation the entire morning, before CMPD made contact with him.

144. Notwithstanding Benham's explanation, and the fact that he was in strict compliance with the Proclamation in all respects, the CMPD arrested him, even after Benham demonstrated his compliance and the charitable nature of Cities4Life.

145. The arresting officers told Benham he was being arrested because he was participating in a gathering of more than ten people in contravention of the Proclamation's restrictions.

146. At all times during his interaction with CMPD, Benham remained respectful, calm, and compliant with police instructions.

147. Benham eventually spent four hours in Mecklenburg County Jail.

148. Benham was released by the magistrate on condition that he would abide by the state mandate and the Proclamation.

149. As a result of his arrest, Benham's reputation in the community suffered harm because he was accused of leading a "protest" in the midst of a global pandemic. The media accused Benham of being a belligerent individual who refused to comply with the State's laws. More specifically, his business reputation suffered harm because customers were led to believe, as a result of his unlawful arrest, that he was insensitive to COVID-vulnerable people.

150. Benham and Cities4Life's relationships with their church partners also suffered as a result of his arrest, because the official police report falsely indicated that his interaction with CMPD had been unfriendly and the result of his unlawful behavior.

151. Benham traveled 30 minutes roundtrip on April 4, 2020, to do his charitable work, but Defendants' unconstitutional actions prevented him from

engaging in the work. He thus incurred travel costs for no reason, given Defendants' unconstitutional actions.

152. But for his unlawful arrest, Benham would have been able to complete his charitable work and exercise his protected First Amendment rights. He also would have been able to work on unrelated business ventures after visiting the Abortion Facility. For instance, Defendants prevented him from managing the operations of his real estate company, which he planned to do later that day.

153. Benham suffered anxiety, emotional distress, mental anguish, and sleeplessness from his unlawful detention and arrest.

154. The unlawful detention and harassment caused Benham further harm because he had several planned speaking engagements cancelled, and several customers decided not to use his services as a real estate agent, as a result of his unlawful arrest.

155. Benham seeks damages and other relief in this lawsuit from the Defendants' violation of his First Amendment rights and from his unlawful stop, arrest, and detention. Defendants' unconstitutional treatment prevented Benham from exercising his First Amendment rights and violated his Fourth Amendment right to be free from unlawful stop, arrest, and detention, and these offenses entitle him to nominal and compensatory damages.

156. At the same time the CMPD was arresting Benham, a woman who had come to the Abortion Facility for an abortion was receiving free services that the Advocates had arranged, including a sonogram. She ultimately decided to choose life for her child instead of obtaining an abortion.

157. Meanwhile, the CMPD also arrested and/or cited at least five representatives of Love Life: Robert Reeder, Joshua Kappes, Katherine Burgess, Isaiah Burner, and Luke Surak.

158. The Advocates, including Benham, incurred costs as a result of the Proclamation and Defendants' unlawful application of it.

159. For instance, an attorney who performs work for the Advocates and another individual associated with the Advocates drove from Greensboro, North Carolina, to the Abortion Facility in Charlotte, on April 4, 2020, after hearing that the CMPD had made arrests. At that time, the attorney communicated with Major Kornberg of the CMPD about the issue.

160. The Advocates are seeking nominal and compensatory damages for costs incurred as a result of the Proclamation and the Defendants' unlawful application of the Proclamation against them which interfered with their speech and religious exercise.

161. The CMPD did not indicate that any arrests or citations resulted from any alleged violation of the Governor's Executive Order.

162. The Advocates, including Benham, were in full compliance with both the Proclamation and the Governor’s Executive Order on April 4, 2020, and at all other relevant times.

163. Upon information and belief, nearby parks had more than 10 people present who were not engaged in essential business under the Proclamation and who were not exercising their First Amendment rights. The activities of these people were comparable to the Advocates’ activities with respect to the COVID risks.

164. The CMPD and Defendants provided no guidance to the Advocates about how they determined which individuals were part of a “gathering” for determining whether a “gathering” exceeded 10 people.

165. On April 11, 2020, Major Kornberg of the CMPD warned the Advocates that the Proclamation would be enforced on April 18, 2020, differently from its enforcement on April 11, 2020.

166. Specifically, the CMPD warned the Advocates that, on April 18, 2020 (and thereafter), if there were fewer than 10 Advocates and other individuals subsequently arrived — whether associated with the Advocates or not — CMPD could conclude that the “gathering” exceeds 10 people and then punish the people originally present, not the newcomers.

167. Under this arbitrary interpretation—which contravened the Proclamation itself and expressly targeted the Advocates for disfavored treatment—

even though the Advocates were permitted to gather in groups of more than 10 (with social distancing) because they were engaging in essential activities and businesses under the Proclamation, if they decided to gather in groups of 10 or fewer the CMPD could still fine or arrest them if pro-abortion individuals (or others) joined the Advocates on the sidewalk.

168. People unassociated with the Advocates frequently used the sidewalk in the vicinity of the Abortion Facility where the Advocates operated.

169. Unfortunately, the desire of local government officials to suppress the Advocates' speech and religious exercise should come as no surprise, even though their willingness to openly and flagrantly violate the Advocates' constitutional rights in this particular instance is remarkable.

170. For years, certain Charlotte government officials have worked to curtail the Advocates' speech, ministry, and religious exercise.

171. Although the Proclamation expired on its own terms on April 29, 2020, Defendants enforced it while it was operative in a manner which caused constitutional injury to Plaintiffs, which warrants redress by this Court.

JURISDICTION AND VENUE

172. This action arises under the United States Constitution—particularly the First, Fourth, and Fourteenth Amendments—and under federal statutory law, particularly 42 U.S.C. § 1983.

173. This Court has subject matter jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

174. This Court has authority to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and to award all appropriate monetary damages, including compensatory and nominal damages, and reasonable attorneys' fees and costs, under 42 U.S.C. § 1988.

175. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) because all events giving rise to the claims detailed here occurred within the Western District of North Carolina and Defendants reside in the Western District of North Carolina.

Allegations of Law

176. At all times relevant to this Complaint, each and every unconstitutional act alleged herein was attributable to Defendants, whose officials acted under color of a statute, regulation, custom, ordinance, or usage of the City of Charlotte and/or Mecklenburg County.

177. The Advocates suffered irreparable harm because of Defendants' actions that violated the Advocates' constitutional rights.

178. The Advocates suffered nominal and compensatory damages because of Defendants' actions that violated Plaintiffs' constitutional and/or common law rights.

179. Defendants deprived the Advocates of their federal constitutional rights through an official policy, custom, or practice, by preventing them from exercising their First Amendment rights, by violating David Benham's Fourth Amendment rights by unlawfully stopping, arresting, and detaining him on April 4, 2020, and by violating the Advocates' Fourteenth Amendment rights to equal protection and due process.

FIRST CAUSE OF ACTION

First Amendment: Free Exercise of Religion

180. The Advocates repeat and reallege each allegation contained in paragraphs 1–179 of this Amended Complaint.

181. The First Amendment to the United States Constitution protects the Advocates' rights to operate, speak, provide charitable services, and pray in accordance with their religious beliefs.

182. The Advocates' sincerely held religious beliefs motivate and require them to speak and act in accordance with biblical moral teachings affirming the value and dignity of life at every stage of development, starting from the moment of conception, and to teach and explain those beliefs to the public and those the Advocates serve.

183. The Defendants violated the Advocates' religious beliefs by forcing them (through arrests and fines as well as threat of such arrests and fines) to refrain

from praying for women facing unplanned pregnancies and for the lives of their unborn babies in the general vicinity of those people in need, and by preventing the Advocates from providing their charitable services according to their religious beliefs.

184. The Defendants violated the Advocates' religious beliefs by forcing them (through arrests and fines as well as threat of such arrests and fines) to refrain from praying and speaking their messages of hope and life and, consequently, from informing others about their religious beliefs and the charitable services that their religious beliefs motivate them to provide.

185. The Proclamation was neither neutral nor generally applicable on its face because it exempted certain secular activities while prohibiting comparable religiously motivated activities, treating certain secular activities more favorably than similar religious activities.

186. Facially and as applied by Defendants, the Proclamation substantially burdened the Advocates' exercise of their sincerely held religious beliefs.

187. The Proclamation was neither neutral nor generally applicable as interpreted and applied by the Defendants because the Defendants' interpretation and application of the Proclamation was based on hostility toward the Advocates' religious beliefs and pro-life viewpoint.

188. The Proclamation was neither neutral nor generally applicable as interpreted and applied by Defendants because the Defendants' interpretation and application of the Proclamation targeted the Advocates' disfavored religious beliefs and religious practices for punishment.

189. Defendants' enforcement of the Proclamation unlawfully interfered with the Advocates' religious expression and practices without any evidence of a compelling need for such an application of the Proclamation and in a way that was not narrowly or even closely tailored. This was evidenced by the fact that while Defendants punished the Advocates for their religious conduct—which the express terms of the Proclamation actually permitted—they allowed virtually identical secular conduct by others to go entirely unmolested, including those merely engaging in physical exercise.

190. The First Amendment protects the Advocates' right to believe and profess the religious doctrines of their choice.

191. The First Amendment prohibits the government from interfering with this right by punishing the profession of a religious belief or imposing special disabilities for stating disfavored religious views.

192. The Proclamation, facially and as enforced and interpreted by the Defendants, punished the Advocates' profession of their religious beliefs and the provision of social services based on those beliefs.

193. As applied against the Advocates, as well as their representatives and affiliates, the Proclamation suppressed their speech based on their religious beliefs.

194. The Proclamation thus imposed special disabilities on the Advocates due to their profession of disfavored religious beliefs.

195. The Proclamation also violated the Advocates' free exercise rights under the hybrid-rights doctrine because it implicated free exercise rights in conjunction with other constitutional guarantees, like the rights to free speech, expressive association, due process, and equal protection.

196. The Proclamation burdened the Advocates' sincerely held religious beliefs by banning, deterring, and preventing their religiously motivated speech and conduct.

197. The Proclamation served no compelling, significant, legitimate, or even valid interests in a narrowly tailored way.

198. Defendants' policy, custom, and practice of targeting religious people and their unequal interpretation and application of the Proclamation restricted the Advocates' fundamental right to exercise their sincerely held religious beliefs, without any real or substantial relation to the public health crisis on which the Proclamation was based.

199. Defendants' targeted and uneven application of the Proclamation was a pretext for restricting the Advocates' fundamental right to express and act on their sincerely held religious beliefs.

200. Accordingly, facially and as applied to the Advocates, the Proclamation violated the First Amendment right to the free exercise of religion.

201. The Advocates suffered nominal and compensatory damages as a result of this violation. Benham also suffered nominal and compensatory damages as a result of his unlawful stop, arrest, and imprisonment for exercising his religious beliefs.

SECOND CAUSE OF ACTION

First Amendment: Freedom of Speech

202. The Advocates repeat and reallege each allegation contained in paragraphs 1–179 of this Amended Complaint.

203. The First Amendment's Free Speech Clause protects the Advocates' rights to speak, to publish speech, to be free from content-based and viewpoint-based discrimination, to be free from unconstitutional conditions, to be free from laws giving government officials unbridled discretion, and to be free from vague and overbroad laws.

204. The Proclamation, facially and as enforced and interpreted by Defendants, punished the Advocates' speech in a traditional public forum.

205. Application of the Proclamation against the Advocates violated the Free Speech Clause by punishing and suppressing their speech based on content and viewpoint.

206. If not for the Proclamation and Defendants' uneven interpretation and enforcement of the Proclamation, the Advocates and their agents, including their staff, would have continued to engage in unrestricted protected speech, including but not limited to praying, counseling, and speaking their desired messages in accordance with their organizational mission and outreach services.

207. Instead, the Defendants (through arrests and fines as well as threat of such arrests and fines) not only precluded the Advocates from praying and speaking freely about their outreach ministries and services, but they also prevented the Advocates from discussing freely their own religious beliefs in a public location where they were most likely to reach the vulnerable, economically disadvantaged, and needy individuals they desired to charitably serve.

208. Because of Defendants' unlawful actions, the Advocates ceased engaging in certain protected speech to avoid the Defendants' application of their unconstitutional interpretation of the Proclamation, and to avoid incurring further penalties for allegedly violating the Proclamation.

209. Until the time the Proclamation expired, the Advocates suffered ongoing harm because of the Proclamation and Defendants' unconstitutional interpretation and application of it.

210. The Proclamation on its face and as interpreted and applied by Defendants infringed the Advocates' rights under the Free Speech Clause by, among other things, chilling, deterring, and restricting the Advocates' protected speech.

211. The Proclamation and Defendants' application of the Proclamation was overinclusive, regulating activities with no real or substantial relation to the public health crisis that gave rise to the Proclamation.

212. The Proclamation and Defendants' application of the Proclamation was also underinclusive, in that it allowed activities that, under Defendants' faulty theories, actually may have exacerbated the public health crisis and that were less justified than the Advocates' activities.

213. The Proclamation gave Defendants unbounded discretion to interpret provisions of the Proclamation contrary to the plain meaning of the words and to punish disfavored speech on pregnancy, motherhood, sexuality, abortions, unborn life, and other topics of public concern.

214. This unbridled discretion also exacerbated the problem of the Defendants' viewpoint-based discrimination, which resulted in their arresting and

imposing fines on the Advocates while allowing others to gather and to express views that the Defendants deemed acceptable.

215. Because the Proclamation on its face and as interpreted and applied by Defendants violated free-speech principles for all the reasons above, it was required to further a compelling interest in a narrowly tailored way.

216. Punishing the Advocates' speech did not serve any legitimate, rational, substantial, or compelling government interest in a narrowly tailored way, and it had no real or substantial relation to the public health crisis that the Proclamation purported to address.

217. Defendants attempted no alternative, less restrictive means to achieve any compelling or legitimate interest they may have possessed.

218. Accordingly, facially and as applied to the Advocates, the Proclamation violated the First Amendment right to free speech.

219. The Advocates suffered nominal and compensatory damages as a result of this violation.

220. Benham also suffered nominal and compensatory damages as a result of his unlawful stop, arrest, and imprisonment as a result of his exercising his right to free speech.

THIRD CAUSE OF ACTION

Fourteenth Amendment: Procedural Due Process

221. The Advocates repeat and reallege each allegation contained in paragraphs 1–179 of this Amended Complaint.

222. The Due Process Clause of the Fourteenth Amendment guarantees persons the right to due process of law, which includes the right to be free from vague guidelines that grant unbridled discretion to government officials.

223. The vagueness of the Proclamation on its face, the manner in which Defendants interpreted and applied the Proclamation, and the lack of procedural safeguards in the application of Defendants’ misinterpretation of the Proclamation violated the Advocates’ Fourteenth Amendment right to due process.

224. While the Proclamation expressly permitted the Advocates’ activities, Defendants unilaterally determined that the Proclamation did not encompass those activities.

225. The provisions of the Proclamation defining “essential businesses” and “essential activities,” which the Advocates contend applied to them, are therefore vague, and the Proclamation failed to provide fair notice to the Advocates as required by the United States Constitution.

226. For instance, the following terms used in the Proclamation were vague: “necessary services or supplies,” “outdoor activity,” “essential products and

services,” “human services operations,” “social services,” “necessities of life,” “charitable and social services,” “healthcare and public health operations,” “reproductive health care providers,” “public health entities,” and “delivery of healthcare.”

227. The Proclamation was also vague because it did not explain how government officials or individuals were to determine whether there was a “gathering[] of more than 10 people.”

228. These provisions of the Proclamation were therefore vague facially and as applied to the Advocates, and did not provide the Advocates fair notice.

229. CMPD, backed by Defendants, had the power to investigate, interpret, and apply the Proclamation.

230. Defendants had carte blanche to draft, revise, investigate, interpret, and apply the Proclamation.

231. As such, the Proclamation was devoid of procedural safeguards to protect against arbitrary application and to provide the Advocates fair notice. In particular, the broad powers given to CMPD violated the concepts of legal fairness, objectivity, and due process.

232. The Proclamation, facially and as interpreted and applied by Defendants, did not serve any compelling, significant, legitimate, or even valid

interest in a narrowly tailored way, because its application to the Advocates bore no real or substantial relation to the public health crisis underlying the Proclamation.

233. Accordingly, facially and as applied to the Advocates, the Proclamation's vagueness, Defendants' arbitrary interpretation of the Proclamation's language, and the facial lack of procedural safeguards that enabled their misinterpretation, violated the Advocates' Fourteenth Amendment right to due process.

234. The Advocates suffered nominal and compensatory damages as a result of this violation.

FOURTH CAUSE OF ACTION

First Amendment: Freedom of Expressive Association

235. The Advocates repeat and reallege each allegation contained in paragraphs 1–179 of this Amended Complaint.

236. The First Amendment protects the right of people to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.

237. The First Amendment prohibits the government from banning people from associating with others in an expressive association.

238. The Advocates are expressive associations because people with likeminded beliefs, including those staff and volunteers in the organizations, join

together to express their religious beliefs about God's creation of life, pregnancy, and motherhood in an effort to assist and serve women and their children in the Charlotte area.

239. The volunteers and staff associated with the Advocates advance the position that women deserve dignity, respect, and truth when seeking information and counsel about their pregnancy. Forcing the Advocates to refrain from this advocacy (through arrests and fines as well as threat of such arrests and fines) undermined their ability to collectively advocate their beliefs-based position, to freely associate, and to reach the women they seek to assist.

240. The Advocates likewise engaged in expressive association when their staff and volunteers prayed together or near one another, while abiding by the Proclamation's edicts (including social distancing). The Defendants forced the Advocates to refrain from this collective prayer (through arrests and fines as well as threat of such arrests and fines), which undermined the Advocates' ability to freely associate with the volunteers, supporters, and women they seek to assist.

241. The Advocates also engage in expressive association when their staff and volunteers partner with each other and with women seeking information and counsel, when they teach certain biblical values and lessons, and when they provide emotional, spiritual, and material support.

242. In offering free services to those who seek the Advocates' services, the Advocates expressively associate with those women for the purpose of communicating desired messages to those individuals and furthering their mission.

243. One of the reasons that the Advocates associate with women considering abortion is to convey messages consistent with their religious beliefs about God's sovereign creation of life and God's ability to offer hope, peace, and love in all circumstances.

244. When the Advocates help a woman understand facts about the baby in her womb and become equipped to welcome her baby into the world, they associate with that person, who then becomes an ongoing, living example who communicates the Advocates' views to friends, co-workers, and others.

245. It is common for people to learn about the services that the Advocates provide from women who have used the Advocates' services.

246. When people learn that the Advocates assisted a woman facing an unplanned pregnancy, people believe that the services the Advocates provided are consistent with the Advocates' religious beliefs.

247. By preventing the Advocates from praying and speaking freely, Defendants forbade the Advocates from expressively associating in a way that communicated messages to women and to the community that were consistent with the Advocates' desired messages.

248. Because the Proclamation infringed on the Advocates' expressive association rights, it was required to further a compelling interest in a narrowly tailored way.

249. As applied to the Advocates, the Proclamation prevented the Advocates from expressively associating with and thereby conveying messages to the women and the community the Advocates sought to serve.

250. As applied to the Advocates, the Proclamation did not further any legitimate, rational, substantial, or compelling interest and had no real or substantial relation to the public health crisis underlying the Proclamation.

251. Defendants had alternative, less restrictive means to achieve any compelling interest they might have possessed—means that would not have forced the Advocates to abandon their freedom of expressive association (e.g., permitting the Advocates to associate in accordance with the Proclamation's social distancing requirements, which the Advocates already were following).

252. Accordingly, facially and as applied to the Advocates, the Proclamation violated the Advocates' right to expressive association protected by the Free Speech Clause of the First Amendment.

253. The Advocates suffered nominal and compensatory damages as a result of this violation.

FIFTH CAUSE OF ACTION

Fourteenth Amendment: Equal Protection Clause

254. The Advocates repeat and reallege each allegation contained in paragraphs 1–179 of this Amended Complaint.

255. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees the Advocates equal protection of the laws and prohibits Defendants from treating the Advocates differently from similarly situated persons and organizations.

256. The government may not treat some individuals or entities disparately as compared to similarly situated persons with respect to the exercise and enjoyment of a fundamental right.

257. The Proclamation permitted individuals to be outdoors walking for exercise while maintaining social distancing—even when more than 10 individuals were in the same general vicinity, like a park or street.

258. Defendants applied the Proclamation to prohibit the Advocates from being in the same public places and in the same manner (maintaining social distancing) as other individuals if the Advocates were doing so with the purpose of engaging in prayer and religious speech.

259. Defendants interpreted and applied the Proclamation to exempt other organizations providing services—whether charitable or for-profit—but did not

interpret and apply it to exempt the Advocates, who were providing similar or identical services.

260. For instance, Defendants allowed establishments providing groceries to remain open and to welcome more than 10 customers in an enclosed store, but Defendants prohibited the Advocates from meeting with people in the open air on a public sidewalk to help them obtain groceries.

261. Similarly, Defendants allowed entities that provided funds to needy individuals to continue to operate, but punished the Advocates for offering financial help to those struggling to afford basic necessities.

262. Likewise, Defendants allowed entities to provide chemical abortions to women to terminate the lives of their unborn children but did not allow the Advocates to provide information to women about medical services available to seek to reverse the effects of abortion-inducing drugs and save the lives of their unborn children.

263. The Defendants' interpretation and application of the Proclamation therefore treated the Advocates, as well as their staff and volunteers, differently from, and worse than, other persons who engaged in effectively the same activity as expressly permitted under the Proclamation.

264. Defendants treated the Advocates differently from other entities and activities exempted under the Proclamation simply because Defendants did not like

and disagreed with the viewpoint, beliefs, mission, or nature of the Advocates' charitable social services.

265. Therefore, in its interpretation and application of the Proclamation, Defendants treated similarly situated persons differently based upon a fundamental right.

266. Defendants lacked a rational or compelling state interest for such disparate treatment of the Advocates because prohibiting prayer and religious speech when walking, while at the same time permitting walking in the same location and manner by those who are not praying or engaging in religious speech, bore no real or substantial relation to the public health crisis underlying the Proclamation.

267. Defendants' disparate treatment of the Advocates was not narrowly tailored because prohibiting the Advocates from praying or speaking in traditional public fora is not the least restrictive means of advancing any compelling or even legitimate interest the government might have had regarding the public health crisis.

268. Defendants lacked a rational, let alone compelling, state interest for such disparate treatment of the Advocates because prohibiting them from providing charitable social services near abortion facilities, while at the same time permitting other organizations to provide charitable social services, bore no real or substantial relation to the public health crisis underlying the Proclamation.

269. Defendants' disparate treatment of the Advocates was not narrowly tailored because prohibiting the Advocates from providing charitable social services to women near abortion facilities was not the least restrictive means of advancing any compelling or even legitimate interest the government might have had regarding the public health crisis.

270. Accordingly, facially and as applied to the Advocates, the Proclamation and Defendants' implementation and enforcement of the Proclamation violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

271. The Advocates suffered nominal and compensatory damages as a result of this violation.

SIXTH CAUSE OF ACTION

Fourth Amendment: Unlawful Stop on behalf of David Benham

272. The Advocates repeat and reallege each allegation contained in paragraphs 1–179 of this Amended Complaint.

273. Defendants had an unconstitutional policy, custom, practice, and interpretation of the Proclamation that excluded, targeted, and silenced Benham. This unconstitutional policy, custom, practice, and interpretation of the Proclamation manifested deliberate indifference to Benham's constitutional rights.

274. The Fourth Amendment to the United States Constitution protects Benham from brief investigatory stops when there is no reasonable suspicion based on articulable facts that unlawful activity is occurring.

275. Defendants violated Benham's Fourth Amendment rights when CMPD officers, authorized by and pursuant to Defendants' unconstitutional policy to exclude, target, and silence the Advocates and their individual members, conducted unlawful stops on April 4, 2020, because there was no reasonable suspicion based on articulable facts that Benham was engaging in illegal activity.

276. CMPD officers could not have had a reasonable suspicion that Benham was violating the Proclamation because he was performing "essential services" as defined under the Proclamation.

277. CMPD officers did not have articulable facts to show that Benham was engaging in illegal activity when he was providing essential services and acting in compliance with CDC recommendations for social distancing and sanitation, as well as the Proclamation's Social Distancing Requirements.

278. Instead, because of Defendants' unconstitutional policy and custom to exclude, target, and silence Benham under the Proclamation, CMPD officers unlawfully stopped Benham on April 4, 2020.

279. The only authority that CMPD officers cited as supporting this unlawful stop was Defendants' unconstitutional policy, custom, and practice to exclude,

target, and silence Benham based on the religious content and motivation of his speech and conduct.

280. Because Benham was lawfully engaging in and attempting to provide essential services outside the Abortion Facility, CMPD officers could not have made a reasonable inference that Benham was engaging in illegal activity.

281. Accordingly, Defendants violated Benham's Fourth Amendment right to be free from an unlawful stop.

282. Benham suffered nominal and compensatory damages as a result of Defendants' violation of his Fourth Amendment right.

SEVENTH CAUSE OF ACTION

Fourth Amendment: Unlawful Arrest and Detention on behalf of David Benham

283. The Advocates repeat and reallege each allegation contained in paragraphs 1–179 of this Amended Complaint.

284. The Fourth Amendment to the United States Constitution protects Benham from unlawful arrest, without either a warrant or probable cause, and from unlawful detention.

285. A municipality is liable for a violation of the Fourth Amendment if the municipality causes a deprivation of federal constitutional rights through an official policy or custom.

286. Defendants violated Benham's Fourth Amendment rights by unconstitutionally excluding, targeting, and silencing him by authorizing CMPD officers to arrest him without warrants and without probable cause, and to unlawfully imprison him thereafter.

287. Defendants accordingly deprived Benham of his Fourth Amendment rights to be free from unlawful arrest and detention through their policy, custom, and practice to target and unconstitutionally enforce the Proclamation against the Advocates.

288. The municipal decision of Defendants to enforce the Proclamation against the Advocates by excluding them from the exceptions to the Proclamation for essential services, essential activities, and essential businesses and operations, and by targeting, silencing, and unlawfully arresting Benham reflects deliberate indifference to the risk that Fourth Amendment violations would follow Defendants' decision.

289. The policy and custom of Defendants to exclude, target, and silence the Advocates by not considering them to be providing essential services, to be essential businesses or operations, or to be undertaking essential activities (along with Defendants' refusal to recognize the other exceptions which the Advocates qualified for under the Proclamation's own terms) is fairly attributable to Defendants because (1) CMPD officers stated that they were acting pursuant to guidance from

Defendants' policy and (2) CMPD officers indicated that they would punish the Advocates for the activities of individuals not even associated with the Advocates in deciding whether the Proclamation's ten-person limit had been reached, while they indicated they would not do the same if the roles were reversed.

290. The unconstitutional policy and custom of Defendants in interpreting the Proclamation to exclude, target, and silence the Advocates was the driving force behind CMPD officers' unlawful arrest of Benham on April 4, 2020.

291. Accordingly, Defendants violated Benham's Fourth Amendment rights by adopting an unconstitutional interpretation, policy, custom, and practice to exclude, target, and silence the Advocates (which included Benham) that authorized CMPD officers to unlawfully arrest Benham in violation of the Fourth Amendment.

292. CMPD officers could not have had a reasonable belief that a violation of the law occurred because Benham's actions were not prohibited by law. The only reason that CMPD officers arrested Benham was because Defendants had an unconstitutional policy, custom, and practice to exclude, target, and silence the Advocates pursuant to their faulty interpretation of the Proclamation.

293. CMPD officers' warrantless arrest of Benham was impermissible because there was no probable cause that Benham had committed, was committing, or was about to commit an offense.

294. CMPD officers arrested Benham solely because of Defendants' unconstitutional policy, custom, and practice to exclude, target, and silence the Advocates under the Proclamation.

295. Accordingly, Defendants violated Benham's Fourth Amendment rights by enforcing an unconstitutional policy to exclude, target, and silence the Advocates which they then used as a pretext to justify permitting CMPD to unlawfully arrest Benham.

296. Benham suffered nominal and compensatory damages from Defendants' violation of his Fourth Amendment rights.

PRAYER FOR RELIEF

The Advocates respectfully request that this Court enter judgment against Defendants and provide the Advocates with the following relief:

(A) A declaration that Defendants violated the rights of all Plaintiffs under the First Amendment to the United States Constitution;

(B) A declaration that Defendants violated the rights of Benham under the Fourth Amendment to the United States Constitution to be free from unlawful stop, unlawful arrest, and unlawful detention in the form of imprisonment;

(C) A declaration that Defendants violated the rights of all Plaintiffs under the Fourteenth Amendment to the United States Constitution to have equal protection and due process under the law;

(D) That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter in controversy here so that these declarations shall have the force and effect of a final judgment;

(E) That this Court award all appropriate damages, including compensatory and nominal, for the Defendants' violation of the Advocates' constitutional and statutory rights, including those pertaining to David Benham individually as a result of his unlawful stop, arrest, and detention;

(F) That this Court retain jurisdiction of this matter for the purpose of enforcing its orders and that it adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter in this controversy so that these declarations shall have the force and effect of a final judgment;

(G) That this Court award the Advocates the costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988; and

(H) That this Court grant any other relief that it deems equitable and just in the circumstances.

Dated this 23rd day of August, 2021.

Respectfully submitted,

s/ Scott W. Gaylord

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**Special Admission*

CERTIFICATE OF SERVICE

I hereby certify on August 23, 2021, the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send a copy to attorneys for all parties in the above-captioned matter.

Dated this 23rd day of August, 2021.

s/ Scott W. Gaylord
Scott W. Gaylord