

**IN THE FEDERAL DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SUSAN STARTZELL, NANCY MAJOR, )  
JAMES CRUSE, GERALD FENNELL, )  
RANDALL BECKMAN, LINDA )  
BECKMAN, MICHAEL MARCAVAGE, )  
MARK DIENER, DENNIS GREEN, )  
ARLENE ELSHINAWY, and LAUREN )  
MURCH, a minor, by and through her )  
parent and next friend, BEVERLY )  
MURCH, )**

Plaintiffs, )

v. )

**CITY OF PHILADELPHIA, )  
PENNSYLVANIA, LYNNE ABRAHAM, )  
in her official capacity as District )  
Attorney for the City and County of )  
Philadelphia, WILLIAM V. FISHER, )  
JAMES TIANO, and KAREN, )  
SIMMONS )**

Defendants. )

Civil Action No. \_\_\_\_\_

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**VERIFIED COMPLAINT FOR CIVIL RIGHTS VIOLATIONS, TEMPORARY  
RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION,  
DECLARATORY JUDGMENT, AND DAMAGES**

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**I. PRELIMINARY STATEMENT**

1. This is a civil rights action brought pursuant to 42 U.S. C. § 1983 that challenges the constitutionality of the actions of Philadelphia police and other officials that resulted in the arrest, detention, and incarceration of Plaintiffs. Criminal charges, including three felony charges, were leveled against Plaintiffs because they refused to abandon their peaceful Christian evangelism despite being surrounded by an aggressive and disruptive group at a public celebration of homosexuality called Outfest. In other words, Philadelphia police retaliated

against Plaintiffs because they refused to surrender their First Amendment rights to free speech, free assembly, free association, and free exercise of religion. The criminal charges are presently pending in the Municipal Court for the City of Philadelphia, Pennsylvania.

2. Plaintiffs seek temporary, preliminary, and permanent injunctive relief against further prosecution of the pending criminal charges, as well as a declaration that the actions of police violated their constitutional rights. They also seek nominal, actual, and punitive damages against Defendants for the flagrant, willful, and knowing violation of Plaintiffs' First, Fourth, and Fourteenth Amendment rights, as well as the costs of this litigation, including reasonable attorneys' fees.

## **II. JURISDICTION**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, which confers original jurisdiction on federal district courts in all civil actions arising under the laws and Constitution of the United States. The Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

## **III. VENUE**

4. Venue is proper in the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. § 1391(b), because the claims arose in the district.

## **IV. IDENTIFICATION OF PLAINTIFFS**

5. Plaintiff Susan Startzell is a citizen of the United States and a resident of Philadelphia, Pennsylvania.

6. Plaintiff Nancy Major is a citizen of the United States and a resident of Phoenixville, Pennsylvania.

7. Plaintiff James Cruse is a citizen of the United States and a resident of Richmond, Virginia.

8. Plaintiff Gerald Fennell is a citizen of the United States and a resident of Denver, Pennsylvania.

9. Plaintiff Randall Beckman is a citizen of the United States and a resident of Phoenixville, Pennsylvania.

10. Plaintiff Linda Beckman is a citizen of the United States and a resident of Phoenixville, Pennsylvania.

11. Plaintiff Michael Marcavage is a citizen of the United States and a resident of Lansdowne, Pennsylvania.

12. Plaintiff Mark Diener is a citizen of the United States and a resident of Ephrata, Pennsylvania.

13. Plaintiff Dennis Green is a citizen of the United States and a resident of Cumberland, Virginia.

14. Plaintiff Arlene Elshinnawy is a citizen of the United States and a resident of Collegeville, Pennsylvania.

15. Plaintiff Lauren Murch, a minor, is a citizen of the United States and a resident of Brookneal, Virginia.

16. Plaintiff Beverly Murch is a citizen of the United States and a resident of Brookneal, Virginia. She is the mother and legal guardian of Lauren Murch.

## **V. IDENTIFICATION OF DEFENDANTS**

17. Defendant City of Philadelphia, Pennsylvania, is a municipal corporation organized and existing under the laws and Constitution of the Commonwealth of Pennsylvania.

The City operates and maintains the Philadelphia Police Department.

18. Defendant Lynne Abraham, District Attorney for the City and County of Philadelphia, is the chief law enforcement officer for the said City and County. She is sued in her official capacity.

19. Defendant William V. Fisher is a captain for the Philadelphia Police Department. Upon information and belief, he is a resident of Philadelphia, Pennsylvania. He is sued in his personal capacity.

20. Defendant James Tiano is Chief Inspector for the Community Affairs Bureau of the Philadelphia Police Department. Upon information and belief, he is a resident of Philadelphia, Pennsylvania. He is sued in his personal capacity.

21. Defendant Karen Simmons is a legal advisor to the Philadelphia Police Department. Upon information and belief, she is a resident of Philadelphia, Pennsylvania. She is sued in her personal capacity.

## **VI. STATEMENT OF FACTS**

22. Plaintiffs are Christians opposed to the practice of homosexuality on moral and religious grounds. Plaintiffs believe, and their religion teaches, that homosexual conduct is a sin. They further believe that it is their duty to God to warn others about the destructiveness of sin through public proclamation of the gospel of Jesus Christ.

### **General Description of Plaintiffs' Expressive Activities on the Public Ways**

23. Plaintiffs regularly locate themselves on the public ways to peaceably express their message that homosexual conduct is sinful, and to encourage passersby to be set free from sin through faith in Jesus Christ.

24. As part of their ministry, Plaintiffs display signs and offer literature to passersby. Plaintiffs do this in an effort to persuade men and women to abandon the homosexual lifestyle and place their faith in Jesus Christ.

25. In addition to distributing literature and displaying signs, Plaintiffs engage in other peaceful expressive activities on the public ways, including, but not limited to, “open air preaching,” talking individually to people about the Scriptures, praying, singing, playing music, and worshipping their Lord and Savior Jesus Christ.

### **Description of “Outfest”**

26. On October 10, 2004, Philly Pride Presents, Inc. (“Philly Pride”), a private organization, held an event called “Outfest” on the public ways of Philadelphia. Outfest is an annual event in which Philly Pride hosts a block party to celebrate “National Coming Out Day” – a celebration of one’s proclamation of his/her homosexuality.

27. Outfest activities are spread over approximately fifteen (15) city blocks. Outfest is bordered by Walnut Street to the north, Pine Street to the south, 11<sup>th</sup> Street to the east, and Juniper Street to the west. Outfest materials characterize this area as the “GAYborhood.”

28. Outfest is open to the general public. Philly Pride receives \$22,500 yearly from the City of Philadelphia to conduct OutFest. There is no cost of admission to attend Outfest activities, and persons merely walking on the streets are indistinguishable from Outfest participants. All persons are free to move about the public area in which Outfest takes place.

29. Prior to the October 10, 2004 event date, Plaintiff Michael Marcavage requested an application from Philly Pride because he intended to request that Repent America, an unincorporated organization, be given a display booth at Outfest. Mr. Marcavage’s request even for an application was denied.

30. In the October 8, 2004 edition of the Philadelphia Gay News, Attorney Charles Volz, senior adviser to Philly Pride Presents, Inc., was interviewed. Volz stated that members of the Pink Angels would carry large signs alongside Christians to block their access to Outfest participants. Specifically, Volz reportedly stated, “We’ll have a moving pink wall around them. Hopefully, they will be so frustrated, they won’t come again. Talking to a piece of styrofoam is not the same as talking to a crowd of people.”

### **Homosexual Activists Hinder Plaintiffs’ Free Speech**

31. Plaintiffs, wishing to adhere to their Biblical mandate to spread the gospel of Jesus Christ, went to the public ways on which Outfest was hosted in order to proclaim the Christian message of salvation through Jesus Christ.

32. Immediately upon arrival at Outfest on the afternoon of October 10, 2004, Plaintiffs were confronted by Philadelphia police officers and persons calling themselves “Pink Angels.” The Pink Angels are a self-described security force comprised of gay and lesbian persons, transsexuals, *etc.*.

33. Upon seeing Plaintiffs, and in full view of Philadelphia police officers, the Pink Angels locked their arms together in order to create a human wall that blocked passage of the public sidewalk.

34. When Plaintiffs attempted to pass by the Pink Angels so as to enter the fifteen (15) block area in which Outfest was being held, the Pink Angels tightened their grip and refused to move, thereby preventing Plaintiffs from entering.

35. In response to the obstruction caused by the Pink Angels, Mr. Marcavage asked police to order the Pink Angels to grant Plaintiffs access to the public sidewalk.

36. Captain William V. Fisher responded by informing Mr. Marcavage that he was going to instruct the Pink Angels to break the blockade, but warned Mr. Marcavage against any “silliness.”

37. After the blockade was broken up, Mr. Marcavage asked Captain Fisher whether there was a particular location from which Plaintiffs could express their message. Captain Fisher responded that, because Outfest was located on public streets and sidewalks, Plaintiffs could go wherever they wanted. Notwithstanding, Captain Fisher said that wherever Plaintiffs went, police would follow.

38. Plaintiffs then chose a location on the public way from which they would attempt to convey their message. As soon as Plaintiffs began to raise their voices and display their signs, the Pink Angels formed a tight circle around them, thus surrounding Plaintiffs and isolating them from other Outfest attendees. The Pink Angels then began blowing ear-piercing whistles and hollering in loud voices. They also held pink Styrofoam boards that stood approximately ten (10) feet high. These actions prevented Plaintiffs’ message from reaching other Outfest attendees.

39. Mr. Marcavage urged Captain Fisher to take action against the highly intimidating, boisterous, and interfering actions of the Pink Angels, but he refused to do so.

40. Because Plaintiffs were unable to convey an effective message due to the actions of the Pink Angels, they began to sing a Christian song.

41. In response to the singing, the Pink Angels began hollering and whistling louder than before.

#### **Police Respond to Heckler’s Veto by Ordering Plaintiffs to Relocate**

42. The noise generated by the Pink Angels prompted Henry David, the Outfest emcee, to demand that police “move [Plaintiffs] out of my way” because they were “annoying.”

43. Police responded immediately to Henry David’s demand by telling Plaintiffs they had to move.

44. Captain Fisher told Plaintiffs that they had to move because the City’s legal counsel advised him that Plaintiffs could no longer stay at that location.

45. As Captain Fisher began forcibly escorting Plaintiffs to another location, the Pink Angels moved with them, still encircling them, and continuing to hoot, holler, whistle, and hold their tall signs.

46. As the Pink Angels continued to significantly impede Plaintiffs’ passage, Mr. Marcavage complained to Captain Fisher that the Pink Angels were illegally obstructing Plaintiffs passage. Captain Fisher responded by telling Mr. Marcavage to seek injunctive relief in the courts if he felt his rights were violated.

47. As a result of police inaction, the Pink Angels continued to obstruct Plaintiffs’ passage and hinder their expressive activities.

48. At a certain place along the street, Captain Fisher informed Plaintiffs that they could preach at that location because they were far enough away from the Outfest staging area where Henry David was located.

49. Shortly after Plaintiffs began expressing their message at the location approved by Captain Fisher, Philadelphia police legal advisor Karen Simmons informed Mr. Marcavage that Plaintiffs must lower their signs.



50. When Mr. Marcavage asked why, Attorney Simmons responded that Plaintiffs' signs were hampering vendors from conducting their business. All the while, the Pink Angels had Plaintiffs encircled, and were holding large signs.

51. Mr. Marcavage then pointed out to Attorney Simmons that it was the signs of the Pink Angels that were obstructing the vendors. In response, Attorney Simmons stated that the Pink Angels would lower their signs if Plaintiffs lowered theirs first.

52. At this point Chief Inspector James Tiano, liaison between the police department and the Philadelphia homosexual community, made his presence known to Plaintiffs.

#### **Chief Inspector Tiano Orders Plaintiffs to Relocate a Second Time**

53. Chief Inspector Tiano ordered Plaintiffs to relocate to Walnut Street, an area on outside of Outfest.

54. Upon hearing this order, Mr. Marcavage approached Chief Inspector Tiano and asked him to cite the law Plaintiffs were allegedly violating. Chief Inspector Tiano refused to respond. Mr. Marcavage then voiced his concern that the order to relocate along the outer perimeter of Outfest would prevent Plaintiffs from conveying their message to their intended audience.

55. Chief Inspector Tiano did not respond to Mr. Marcavage's concerns.

56. Mr. Marcavage made plain his willingness to cooperate with police short of being driven out of the event.

57. When, after repeated requests, Chief Inspector Tiano refused to inform Plaintiffs of the law they were allegedly violating, Plaintiffs began moving away from the area that Captain Fisher initially had them stop to move to a better location.

#### **Chief Inspector Tiano Orders Plaintiffs' Unlawful Arrest**

58. As Plaintiffs began moving away from Walnut Street, Chief Inspector Tiano immediately stopped them and placed them under arrest.

59. Captain Fisher and Attorney Simmons approved and/or consented to the arrest of Plaintiffs.

60. All Plaintiffs were then handcuffed by police, herded into a paddy wagon, and taken down to a police station for booking. Plaintiffs were placed under arrest at approximately 1:30 pm on the afternoon of October 10, 2004.

61. Ten of the eleven Plaintiffs were held in police custody for twenty-one (21) hours. Plaintiff Linda Beckman was held in police custody for ten (10) days.

62. Each plaintiff was charged with eight criminal counts, including three felonies (criminal conspiracy, ethnic intimidation, and riot), and five misdemeanors (obstructing a highway, recklessly endangering another person, failure to disperse, disorderly conduct, and possession of an instrument of crime).

63. If convicted on all counts, Plaintiffs face a maximum of forty-seven (47) years in prison.

64. No persons other than Plaintiffs were cited or arrested for conduct arising out of Plaintiffs' First Amendment activities at Outfest.

#### **Police had No Probable Cause to Arrest Plaintiffs**

65. The incident as set forth herein was videotaped by an independent film crew from San Francisco, California. The videotape makes clear that, at all times, Plaintiffs were engaged in peaceful demonstration on the public ways of Philadelphia.

66. At no time on October 10, 2004, did any Plaintiff engage in conduct that reasonably could be considered criminal conspiracy. At all times, Plaintiffs were engaged in the peaceful exercise of well-established First Amendment rights in traditional public fora.

67. At no time on October 10, 2004, did any Plaintiff engage in conduct that reasonably could be considered ethnic intimidation. At all times, Plaintiffs were engaged in the peaceful exercise of well-established First Amendment rights in traditional public fora.

68. At no time on October 10, 2004, did any Plaintiff engage in conduct that reasonably could be considered riot. At all times, Plaintiffs were engaged in the peaceful exercise of well-established First Amendment rights in traditional public fora.

69. At no time on October 10, 2004, did any Plaintiff engage in conduct that reasonably could be considered endangering of another person. At all times, Plaintiffs were engaged in the peaceful exercise of well-established First Amendment rights in traditional public fora.

70. At no time on October 10, 2004, did any Plaintiff engage in conduct that reasonably could be considered disorderly. At all times, Plaintiffs were engaged in the peaceful exercise of well-established First Amendment rights in traditional public fora.

71. At no time on October 10, 2004, did any Plaintiff fail to disperse upon the lawful order of a peace officer. At all times, Plaintiffs were engaged in the peaceful exercise of well-settled First Amendment rights in traditional public fora.

72. At no time on October 10, 2004, did any Plaintiff possess an instrument of crime. At all times, Plaintiffs were engaged in the peaceful exercise of well-settled First Amendment rights in traditional public fora.

73. The actions of Defendants, as alleged herein, were designed and intended to suppress unpopular speech directed toward homosexuals.

74. The actions of Defendants, as alleged herein, were designed and intended to intimidate Plaintiffs, and to discourage them from present and future expressions of unpopular speech directed toward homosexuals.

75. The actions of Defendants, as alleged herein, caused Plaintiffs to feel degraded, humiliated, and embarrassed.

76. As a result of Defendants' unlawful actions, Plaintiffs have suffered battery, false arrest, false imprisonment, humiliation, inconvenience, embarrassment, and loss of reputation in the community.

#### **Police Practice Demonstrates a Pattern of Suppressing Religious Speech**

77. Defendant City of Philadelphia has, on other occasions, suppressed and/or hindered the public proclamation of religious speech.

78. On or about October 31, 2002, Philadelphia police charged Plaintiff Michael Marcavage with disorderly conduct for preaching on the public ways with a sound amplification device. The charges were dismissed on appeal on a finding that Mr. Marcavage's expressive activity was constitutionally protected.

79. On or about March 21, 2003, Mr. Marcavage and others were preaching and distributing literature on South Street when they were approached by a Philadelphia police officer who, under threat of arrest, ordered them to cease using sound amplification on the ground that police received complaints from area business owners. Not wanting to be arrested, Mr. Marcavage and his associates abandoned their expressive activities. No existing law prohibited the use of sound amplification.

80. On or about May 29, 2003, Mr. Marcavage and others went to preach on the public ways outside of a sexually-oriented business named "Condom Kingdom." Upon using a sound amplification device, Mr. Marcavage was approached by a Philadelphia police officer, who told him that use of sound amplification after 7:00 p.m. was prohibited. Meanwhile, a second Philadelphia police officer approached Mr. Marcavage and ordered him to leave on the ground that other persons were offended by his message. Mr. Marcavage was then arrested for allegedly obstructing a highway. The charges were later dismissed.

81. On or about August 15, 2003, Mr. Marcavage was preaching on the public ways on South 13<sup>th</sup> Street when he was approached by a Philadelphia police officer, who told him to either leave or face arrest. When Mr. Marcavage asked this officer to cite the law he was allegedly violating, the officer was unable to do so.

82. On or about May 1, 2004, Mr. Marcavage was preaching with sound amplification on the public ways of Locust Street near Planned Parenthood when he was approached by a Philadelphia police officer who told him that use of a megaphone was against the law. When Mr. Marcavage asked this officer to cite the law that prohibited sound amplification, he was unable to do so. Thereafter, two other Philadelphia police officers arrived and informed Mr. Marcavage that his use of sound amplification was "noise pollution."

83. On or about May 4, 2004, Mr. Marcavage and others were preaching, displaying signs, and distributing literature on the public ways at the corner of 12<sup>th</sup> and Locust streets in opposition to "Sunday Out," a block party celebrating homosexuality. Shortly after they arrived, they were approached by Philadelphia police, who escorted Mr. Marcavage and his associates to a location away from block party attendees that rendered Mr. Marcavage's expressive activities ineffective. Police informed Mr. Marcavage that he was relocated because he was "not

welcome” at the block party, despite the public nature of the event. Chief Inspector Tiano supervised the actions of police on this occasion.

84. On or about June 13, 2004, Mr. Marcavage and others went to preach, display signs, and distribute literature on the public ways in Center City during a public festival called “Philly Prideday ’04.” The purpose of the festival was to celebrate gay, lesbian, and transgender lifestyles. As Mr. Marcavage and his colleagues attempted to gain access to the public ways closest to the area in which festival participants celebrated, they were confronted by Philadelphia police, who told them that they had to stand across the street. Capt. Fisher who, along with Chief Inspector Tiano, supervised the actions of police on this occasion, told Mr. Marcavage that he would be arrested for disorderly conduct if he attempted to access the public ways nearest the festival location. Mr. Marcavage’s expressive activities were rendered ineffective by the police action.

85. On October 8, 2004, Mr. Marcavage filed a 42 U.S.C. § 1983 action against the City of Philadelphia for violating his constitutional rights as described in ¶¶ 76-83,

**Plaintiffs Face Irreparable Injury Absent Immediate Injunctive Relief**

86. The actions of Defendants as alleged herein hindered, deterred, and chilled Plaintiffs in the exercise of their First Amendment rights, and their rights to be free from intimidation and harassment.

87. A probable cause hearing is scheduled for December 14, 2004, on the criminal charges lodged against Plaintiffs Startzell, Major, Cruse, Fennell, Randall Beckman, Linda Beckman, Marcavage, Denier, Green, and Elshinnawy. Plaintiffs constitutional rights will be irreparably harmed unless this court enjoins the probable cause hearing.

88. Moreover, Plaintiffs desire to continue to evangelize on the public ways of Philadelphia, but fear citation or arrest if they continue to do so absent preliminary and permanent injunctive relief.

## **VII. ALLEGATIONS OF LAW**

89. All of the acts of Defendants were conducted under the color and pretense of the statutes, ordinances, policies, practices, customs, regulations, and/or usages of City of Philadelphia and/or the Commonwealth of Pennsylvania.

90. Defendant James Tiano, in his capacity as Chief Inspector or through delegation, was a final policymaker for the City of Philadelphia for matters identified in this complaint.

91. The unlawful actions of Defendants, as alleged herein, were taken or ratified by final policy makers for the City of Philadelphia, and thus constitute policies, practices, customs, and usages sufficient to impose municipal liability.

92. It is the policy, practice, or custom of the City of Philadelphia to exclude Christian evangelism from the public ways of the City.

93. It is the policy, practice, or custom of the City of Philadelphia to suppress peaceful Christian evangelism.

94. It is the policy, practice, or custom of the City of Philadelphia to suppress peaceful expressive activity that disfavors homosexuality.

95. It is the policy, practice, or custom of the City of Philadelphia to favor pro-homosexual speech and disfavor anti-homosexual speech.

96. The City of Philadelphia failed to adequately train its police officers to protect the First Amendment rights of its inhabitants. This lack of adequate training constituted deliberate

indifference to the constitutional rights of Plaintiffs, and is a policy, practice, or custom sufficient to impose municipal liability.

97. The public ways in which Outfest took place are traditional public fora for purposes of speech and other expressive activities protected by the First and Fourteenth Amendments to the United States Constitution.

98. Plaintiffs, as members of the body politic, were similarly situated to other members of the body politic that were granted access to those parts of the public ways from which Plaintiffs were excluded.

99. Sign display and literature distribution are expressive activities protected by the First and Fourteenth Amendments to the United States Constitution.

100. Plaintiffs were similarly situated to the Pink Angels except for the viewpoint expressed. Defendants treated Plaintiffs dissimilarly because of their unpopular viewpoint.

101. Plaintiffs were denied access to traditional public fora on the basis of the unpopular viewpoint of their religious speech.

102. Defendants' suppression of Plaintiffs' peaceful religious speech on the public ways at Outfest, as alleged herein, was an unconstitutional hecklers' veto.

103. Defendants actions, as alleged herein, were made in bad faith, and were designed and intended to retaliate for and to deter Plaintiffs from expressing viewpoints unfavorable toward homosexuality.

104. The actions of Defendants, as alleged herein, constituted unlawful viewpoint discrimination. Plaintiffs' viewpoint was a substantial factor for their arrests.

105. The actions of Defendants, as alleged herein, were made with actual malice and/or constituted willful misconduct.



106. The actions of Defendants, as alleged herein, were conducted in bad faith for the purpose of retaliating for or deterring the exercise of constitutionally protected rights.

107. At all times relevant herein, Plaintiffs' constitutional right to engage in peaceful expressive activity in traditional public fora was clearly established.

108. Plaintiffs have suffered, are suffering, and will continue to suffer irreparable injury to their constitutional rights unless injunctive relief is granted.

109. As a result of Defendants' actions, Plaintiffs have suffered injury to their constitutional rights to be free from false arrest and unreasonable seizure.

110. As a result of Defendants' conduct, Plaintiffs have suffered battery, false arrest, false imprisonment, humiliation, inconvenience, embarrassment, and loss of reputation in the community.

#### **VIII. FIRST CAUSE OF ACTION - 42 U.S.C. § 1983 (Retaliation for Exercise of First Amendment Rights)**

111. Paragraphs 1-110 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

112. The unlawful actions of Defendants, as alleged herein, were made in bad faith and in retaliation for Plaintiffs' peaceful exercise of constitutional rights to free speech, free assembly, free association, and free exercise of religion.

113. The unlawful actions of Defendants, as alleged herein, were made in bad faith and in retaliation for Plaintiff Marcavage's petitioning of the government when he filed a 42 U.S.C. § 1983 action against the City of Philadelphia on October 8, 2004.

114. As a direct and proximate cause of Defendants' bad faith retaliatory actions, Plaintiffs were injured in their rights to free speech, assembly, association, and religion as

guaranteed by the First and Fourteenth Amendments, as well as their right to be free from illegal seizure as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief against all Defendants as set forth below.

**IX. SECOND CAUSE OF ACTION - 42 U.S.C. § 1983  
(Free Exercise/Free Speech/Free Assembly Hybrid)**

115. Paragraphs 1-114 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

116. Plaintiffs' peaceful attempts to proselytize persons attending Outfest were protected by the Free Exercise Clause of the First Amendment.

117. Plaintiffs' peaceful attempts to proselytize persons attending Outfest were protected by the Free Speech Clause of the First Amendment.

118. Plaintiffs' peaceful attempts to proselytize persons attending Outfest were protected by the Free Assembly Clause of the First Amendment.

119. Plaintiffs' peaceful attempts to proselytize persons attending Outfest were protected by the Free Association Clause of the First Amendment.

120. The actions of Defendants, as described herein, were designed and intended to suppress Plaintiffs' religious speech, and to hinder and deter Plaintiffs' attempts to proselytize homosexuals.

121. As a direct and proximate cause of Defendants' actions, Plaintiffs were injured in their rights to free speech, assembly, association, and religion as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief against all Defendants as set forth below.

**X. THIRD CAUSE OF ACTION - 42 U.S.C. § 1983  
(Equal Protection)**

122. Paragraphs 1-121 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

123. With respect to accessing the public ways at Outfest, Plaintiffs were similarly situated to the Pink Angels, except for the viewpoints expressed.

124. Defendants treatment of Plaintiffs was markedly different from the treatment received by the Pink Angels.

125. Defendants permitted the Pink Angels unfettered access to the public ways at Outfest. Plaintiffs were denied such access.

126. Defendants did not interfere with the sign display of the Pink Angels. Defendants ordered Plaintiffs to lower their signs.

127. Defendants allowed the Pink Angels to obstruct the public streets and sidewalks. Plaintiffs were not allowed to access the public area of their choice.

128. Defendants intentionally and impermissibly distinguished between two groups of similarly situated speakers on the basis on the viewpoint expressed in violation of the Equal Protection Clause of the Fourteenth Amendment.

129. As a direct and proximate result of Defendants' actions, Plaintiffs were denied equal protection of the law.

WHEREFORE, Plaintiffs pray for relief against all Defendants as hereinafter set forth in the prayer for relief.

**XI. FOURTH CAUSE OF ACTION - 42 U.S.C. § 1983  
(Unreasonable Seizure)**

130. Paragraphs 1-129 of the complaint are incorporated herein by reference, the same

**X. THIRD CAUSE OF ACTION - 42 U.S.C. § 1983  
(Equal Protection)**

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123. With respect to accessing the public ways at Outfest, Plaintiffs were similarly situated to the Pink Angels, except for the viewpoints expressed.

124. Defendants' treatment of Plaintiffs was markedly different from the treatment received by the Pink Angels.

125. Defendants permitted the Pink Angels unfettered access to the public ways at Outfest. Plaintiffs were denied such access.

126. Defendants did not interfere with the sign display of the Pink Angels. Defendants ordered Plaintiffs to lower their signs.

127. Defendants allowed the Pink Angels to obstruct the public streets and sidewalks. Plaintiffs were not allowed to access the public area of their choice.

128. Defendants intentionally and impermissibly distinguished between two groups of similarly situated speakers on the basis on the viewpoint expressed in violation of the Equal Protection Clause of the Fourteenth Amendment.

129. As a direct and proximate result of Defendants' actions, Plaintiffs were denied equal protection of the law.

WHEREFORE, Plaintiffs pray for relief against all Defendants as hereinafter set forth in the prayer for relief.

**XI. FOURTH CAUSE OF ACTION - 42 U.S.C. § 1983  
(Unreasonable Seizure)**

130. Paragraphs 1-129 of the complaint are incorporated herein by reference, the same

as though pleaded in full.

131. Defendants' actions in arresting, restraining, handcuffing, transporting, and incarcerating Plaintiffs constituted seizures for purposes of the Fourth and Fourteenth Amendments to the United States Constitution.

132. Defendants' actions in arresting, restraining, handcuffing, transporting, and incarcerating Plaintiffs were unreasonable in light of the surrounding circumstances.

133. As a direct and proximate cause of Defendants' actions, Plaintiffs were injured in their constitutional right to be free from unreasonable seizure.

WHEREFORE, Plaintiffs pray for relief against all Defendants as set forth below.

**XII. FIFTH CAUSE OF ACTION - 42 U.S.C. § 1983  
(False Arrest)**

134. Paragraphs 1-133 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

135. The actions of Defendants, as alleged herein, were intended to detain and confine Plaintiffs.

136. Plaintiffs were aware of the detention and confinement, and did not consent to them.

137. The detention and confinement were without probable cause.

138. As a direct and proximate cause of Defendants' actions, Plaintiffs were injured in their Fourth and Fourteenth Amendment rights.

WHEREFORE, Plaintiffs pray for relief against all Defendants as set forth below.

**XIII. SIXTH CAUSE OF ACTION - Supplemental State Claim  
(Battery)**

139. Paragraphs 1-138 of the Complaint are incorporated herein by reference, the same

as though pleaded in full.

140. Defendants Fisher, Tiano, and Simmons ordered, consented, and/or agreed to the physical restraining and handcuffing of Plaintiffs without Plaintiffs' consent. Such restraining and handcuffing constituted harmful and offensive bodily contact.

141. As a direct and proximate cause of the intentional conduct of Defendants Fisher, Tiano, and Simmons in ordering, consenting, and/or agreeing to Plaintiffs' arrest, Plaintiffs were battered. Further, the actions of Defendants Fisher, Tiano, and Simmons caused Plaintiffs to be humiliated and embarrassed; to feel degraded and inferior; and to feel that other people would regard them with aversion or dislike.

WHEREFORE, Plaintiffs pray for relief against Defendants Fisher, Tiano, and Simmons as set forth below.

#### **XIV. SEVENTH CAUSE OF ACTION - Supplemental State Claim (False Imprisonment)**

142. Paragraphs 1-141 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

143. Defendants Fisher, Tiano, and Simmons ordered, consented, and/or agreed to Plaintiffs' arrest, physical restraint, handcuffing, transporting to jail, and incarceration. Plaintiffs were physically restrained, handcuffed, transported to jail, and incarcerated without their consent and against their will.

144. Defendants' actions in confining Plaintiffs were unlawful.

145. As a direct and proximate cause of the intentional conduct of Defendants Fisher, Tiano, and Simmons in ordering, consenting, and/or agreeing to Plaintiffs' confinement, Plaintiffs were falsely imprisoned. Further, the actions of Defendants Fisher, Tiano, and

Simmons caused Plaintiffs to be humiliated and embarrassed; to feel degraded and inferior; and to feel that other people would regard them with aversion or dislike.

WHEREFORE, Plaintiffs pray for relief against Defendants Fisher, Tiano, and Simmons as set forth below.

**XV. EIGHTH CAUSE OF ACTION - Supplemental State Claim  
(Concert of Action)**

146. Paragraphs 1-145 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

147. Defendants Fisher, Tiano, and Simmons, as alleged herein, acted together and/or by common design to deny Plaintiffs their civil and constitutional rights.

148. Defendants Fisher, Tiano, and Simmons, as alleged herein, acted together and/or by common design to cause Plaintiffs to arrested, physically restrained, handcuffed, transported to jail, and incarcerated.

149. The actions of Fisher, Tiano, and Simmons constituted concert of action.

150. As a direct and proximate cause of this concert of action, Plaintiffs were denied their civil and constitutional rights, and were subjected to battery, false imprisonment, and false arrest.

WHEREFORE, Plaintiffs pray for relief against Defendants Fisher, Tiano, and Simmons as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendants' actions as herein described violated Plaintiffs' rights

under the First, Fourth, and Fourteenth Amendments to the United States Constitution;

c. Enter an order enjoining the City of Philadelphia and District Attorney Lynne Abraham from prosecuting Plaintiffs on criminal charges stemming from Plaintiffs' constitutionally protected activities;

d. Award Plaintiffs nominal and compensatory damages against the City of Philadelphia for the violation of Plaintiffs' constitutional rights;

e. Award Plaintiffs nominal, compensatory, and punitive damages against Defendants Fisher, Tiano, and Simmons for the willful violation of Plaintiffs' clearly established constitutional rights;

f. Award Plaintiffs compensatory and punitive damages against Defendants Fisher, Tiano, and Simmons for the torts of battery, false imprisonment, and concert of action, and for humiliation stemming therefrom;

g. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988; and

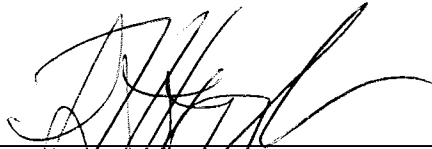
h. Grant such other and further relief to which Plaintiffs may be entitled, or as this Court deems necessary and proper.



FOR THE PLAINTIFFS,

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Michael J. DePrimo, CT Bar #402211  
Pending admission *pro hac vice*  
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