

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL ANTHONY MARCAVAGE,)	Cause Number:
)	
)	
Plaintiff,)	
)	
v.)	
)	
)	
CITY OF PHILADELPHIA, PENNSYLVANIA;)	
SERGEANT WARREN EDWARDS,)	
individually, and in his official capacity as a)	
Philadelphia police officer; OFFICER JOHN)	
DOE , individually, and in his official capacity as)	
a Philadelphia Police Officer; OFFICER JANE)	
DOE , individually, and in her official capacity as)	
a Philadelphia Police Officer,)	
)	
)	
Defendants.)	

COMPLAINT

I. PRELIMINARY STATEMENT

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 to protect the constitutional rights of the Michael Anthony Marcavage (hereinafter "Plaintiff") from the unconstitutional policies, practices and customs of the City of Philadelphia (hereinafter "Defendant"), and its duly appointed and/or elected officials. These policies, as evinced through Defendant's unlawful arrests, harassment, and intimidation, have the effect of frustrating and interfering with the exercise of Plaintiff's constitutionally protected speech activities and free exercise of religion. In particular, in enforcing such policies, Defendant has, in effect, forbidden Plaintiff from expressing his constitutionally

protected religious viewpoint on the public ways in the City of Philadelphia, Pennsylvania, without the constant fear of arrest, sanction or harassment.

2. This action is also brought pursuant to various state laws. Plaintiff seeks a declaratory judgment, preliminary and permanent injunctive relief, nominal damages for actions of Defendants that violated their constitutional rights, and compensatory and punitive damages for other injuries suffered as a result of Defendant's actions.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343 (a)(3), (4), which confer original jurisdiction on federal district courts in suits to redress the deprivation of rights, privileges and immunities as set forth in paragraphs one (1) through two (2). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1367 (a), which confers supplemental jurisdiction over state claims on federal district courts.

4. This action is also authorized by 42 U.S.C. § 1983, because Defendant is a state actor who has abridged Plaintiffs' constitutional rights. The Court may address declaratory relief requested pursuant to 28 U.S.C. § 2201 and 2202 and 42 U.S.C. § 1983.

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

III. IDENTIFICATION OF PARTIES

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

7. Defendant City of Philadelphia, Pennsylvania, is a municipal corporation existing under the laws and Constitution of the State of Pennsylvania, and is a corporate

entity capable of suing and being sued. Defendant City operates and maintains the Philadelphia Police Department, whose officials have relied upon unconstitutional practices, policies and/or customs that is infringing upon Plaintiffs' constitutional and statutory rights.

8. Upon information and belief Defendant Sergeant Warren Edwards is a citizen of the United States and a resident of Pennsylvania. At all times relevant to this complaint he was employed by the Philadelphia Police Department. He is sued both in his individual and official capacities.

9. Upon information and belief, Defendant Officer John Doe is a citizen of the United States and a resident of Pennsylvania. At all times relevant to this complaint he was employed by the Philadelphia Police Department. He is sued both in his individual and official capacities.

10. Upon information and belief, Defendant Officer Jane Doe is a citizen of the United States and a resident of Pennsylvania. At all times relevant to this complaint she was employed by the Philadelphia Police Department. She is sued both in his individual and official capacities.

VI. ALLEGATION OF FACT

11. Plaintiff is a devout Christian who believes that it is his duty to be in God's Will and adhere to the teachings of the Bible. Among those teachings is the Biblical mandate to spread the Gospel of Jesus Christ through evangelism.

12. Included in Plaintiff's evangelistic ministry, is his duty to educate the American populace of the inherent harm caused by the sinful nature of our country. Such sin includes, but not limited to, sexually oriented businesses, homosexuality and abortion.

13. Plaintiff believes that the activities and establishments on South Street, a common point of social gathering and tourism, is not only harmful to those partaking in the activities, but also inflicts harm on all those in the community.

14. Plaintiff also believes that homosexual behavior is inherently sinful and harmful to those partaking in such a lifestyle.

15. Plaintiff further believes that a person can be freed from such harmful consequences if they repent from such a lifestyle and embrace the love of Jesus Christ. Thus, the need for Plaintiff to evangelize at any large public gatherings, such as busy street corners, that provides Plaintiff with an environment to preach the Gospel to as many people as possible.

16. In order to rectify this harm, spread his constitutionally protected message and persuade fellow citizens to the negative side effects of the of the above listed activities, Plaintiff engages in constitutionally protected activities on the public ways of Philadelphia that include, but are not limited to, open-air preaching, distributing Gospel literature, sidewalk ministering/counseling, and the displaying of signs relating to the salvific power of Jesus Christ

17. Because of the unconstitutional policies, practices and customs of Defendant and its duly appointed and/or elected officials, Plaintiff has been denied his rights under the First, Fourth and Fourteenth Amendments of the United States Constitution and has suffered various injuries under the protections bestowed to him by the State of Pennsylvania.

Preaching the Word of God is Disorderly Conduct in Philadelphia

18. On or about October 31, 2002, Plaintiff arrived at the corner of Fourth Street

and South Street, located within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activity commonly referred to as open-air preaching.

19. While Plaintiff was preaching and handing out Gospel literature to those individuals passing by, Officer Melvin Brooks approached Plaintiff and informed Plaintiff that he could not be engaged in such activities.

20. Plaintiff then asked Officer Brooks what specific conduct was causing the disturbance/problem. Officer Brooks responded that "it," i.e. street preaching open-air preaching, was not appropriate.

21. In an attempt to resolve the problem without incident, Plaintiff asked Officer Brooks whether there would be a more "acceptable" place to engage in his constitutionally protected activities.

22. Officer Brooks ignored Plaintiff's inquiry.

23. Plaintiff then volunteered to cross the street to the corner of Fifth and South, an idea agreeable to Officer Brooks.

24. Once Plaintiff relocated across the street he began to engage in his constitutionally protected street preaching activities.

25. On October 31, 2002, Halloween night, loud noise from the local bars and various vehicles was high, drowning out Plaintiff's message. In order to make his message understandable and available to the ears of the public, Plaintiff decided to use sound amplification.

26. Shortly after Plaintiff's use of sound amplification, he was approached by two Philadelphia Police Officers.

27. Another officer informed the Plaintiff that he could not use the sound

amplification because he was in violation of a city ordinance proscribing use of sound amplification specifically on South Street.

28. Plaintiff immediately volunteered to lower the megaphone, but the offer was refused by the police officers. The police officer then reiterated the statement that no sound amplification was permitted on South Street.

29. At this time Plaintiff agreed to stop using the megaphone.

30. Plaintiff, attempted to locate the statute forbidding the use of sound amplification on South Street referred to by police officer.

31. While Plaintiff had others searching for the ordinance, Plaintiff continued to hand out religious tracts Gospel literature and preach without the benefit of his megaphone.

32. On the date of the incident, the City of Philadelphia had no ordinance banning the use of sound amplification.

33. At this point Plaintiff telephoned the Philadelphia Police Department and asked if there was any known ordinance proscribing the use of sound amplification of the public ways of South Street.

34. The operator responded by dispatching a Supervisor to Plaintiff's location.

35. The supervisor dispatched was the same officer who had previously told Plaintiff he was prohibited from using the megaphone.

36. Plaintiff approached the police officer and asked, specifically, which statute bans the use of sound amplification on South Street.

37. The police officer responded by stating he was not going to provide Plaintiff with the information requested.

38. Plaintiff inquired as to why the police officer would not provide the ordinance information and the police officer responded by pointing his finger in Plaintiff's face and stating that if the Plaintiff used the megaphone again, Plaintiff would be arrested immediately.

39. Again, Plaintiff specifically inquired as to what law was being broken.

40. At this time the police officer began to yell and demanded that Plaintiff move because Plaintiff was not permitted to stand on the public sidewalk.

41. The police officer then left the scene.

42. Plaintiff prayed and decided that he was being called to continue his evangelistic ministry.

43. Plaintiff relocated to the original intersection, the corner of Fourth and South, and began to preach with his megaphone.

44. The megaphone was on a low setting and at a comparable noise level with the music emanating from Pomodoro Bar and Pizza, an eatery located directly behind Plaintiff.

45. Immediately after Plaintiff began to engage in the constitutionally protected activity of open-air preaching, three police officers, two female, one male, approached Plaintiff.

46. The male officer grabbed Plaintiff, placed his hands behind his back, handcuffed him, and placed Plaintiff under arrest.

47. Plaintiff was calm, non-argumentative, non-threatening and fully cooperating with the authorities.

48. Despite such cooperation, the police officer pushed and shoved Plaintiff,

literally dragging him to the police cruiser.

49. The officers then took Plaintiff, slammed him up against a storefront window and demanded information and identification.

50. Plaintiff provided his name and address.

51. The Officers then demanded Plaintiff's social security number, which Plaintiff refused to give. This refusal resulted in Plaintiff once again being slammed against the storefront window.

52. After an unsuccessful attempt to obtain Plaintiff's social security number, the Officers threw Plaintiff into the back of their cruiser and took him down for booking and processing.

53. At no time prior to his arrival at the booking station was Plaintiff informed as to what ordinance he had violated and what charges were going to be brought against him.

54. While at the booking station, Plaintiff was continually harassed, intimidated, and mocked because of his religious beliefs.

55. The female officer taking Plaintiff's information threatened Plaintiff that at any time he could be arrested for handing out Gospel literature because in Philadelphia such action is against the law if Plaintiff does not have a permit.

56. Plaintiff has yet to find a statute support such a blatant infringement of one's constitutional rights.

57. When asked what the charging instrument would be, the female officer told Plaintiff that because there is no ordinance specifically addressing sound amplification, he would be charged under Philadelphia's disorderly conduct ordinance. This statement

directly contradicts previous statements by the Philadelphia police Philadelphia had an ordinance specifically proscribing sound amplification on South Street.

58. After processing was completed, Plaintiff was taken to a jail cell in which he was subject to further interrogation.

59. After twelve (12) hours of sitting in jail for exercising his constitutional rights, Plaintiff was released and charged with disorderly conduct.

60. Plaintiff was initially found guilty in Philadelphia Municipal Court, but charges were dismissed on appeal because Plaintiff's conduct was protected by the First Amendment.

Police Muzzle the Gospel Message on March 21, 2003

61. On or about March 21, 2003, Plaintiff arrived at South Street, located within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activity commonly referred to as street preaching open-air preaching.

62. On this particular evening, Plaintiff was accompanied by other Christians, who accompanied Plaintiff to South Street in an effort to assist Plaintiff in his evangelistic ministry.

63. While Plaintiff was preaching and handing out tracks Gospel literature to those individuals passing by, Officer Jane Doe approached Plaintiff and informed that he could not be engaging in such activities.

64. Specifically, Officer Jane Doe targeted the alleged loudness of Plaintiff's speech and threatened that Plaintiff was in violation of Philadelphia Municipal Ordinance § 12-1126.

65. Plaintiff attempted to inquire as to the scope of § 12-1126, but Officer Jane

Doe continually met his inquiries with hostilities and threats of arrest.

66. § 12-1126 states “no person, *while driving, parked or in control of any vehicle*, shall operate a radio, tape player, or any other type of sound reproduction device, in any area within the City at a sound level which produces a sound audible at distance greater than twenty-five feet from the location of such radio, tape player, or other sound reproduction device....”

67. At no time during Plaintiff’s open-air preaching activities was Plaintiff driving, parked or in control of any vehicle’s sound system.

68. Hence, Officer Jane Doe, in an attempt to censor Plaintiff’s message, threatened Plaintiff with a citation under an ordinance that was clearly inapplicable.

69. Officer Jane Doe continued by telling Plaintiff he was forbidden from using a megaphone—such activities were subject to arrest.

70. No ordinance was cited to support this assertion.

71. Officer Jane Doe, in a rather loud and boisterous voice, yelled that if she could hear Plaintiff from more than twenty-five (25) feet away, Plaintiff could get a ticket.

72. Officer Jane Doe, at the time, was clearly speaking in a tone of voice clearly audible past twenty-five (25) feet.

73. Shortly after Plaintiff’s dialogue exchange with Officer Jane Doe, Lieutenant Walker arrived on the scene.

74. First, Lt. Walker stated that Plaintiff was creating a disturbance and could not use a megaphone, nor could Plaintiff stand on a chair while he was preaching.

75. After Plaintiff questioned the constitutionality of Lt. Walker’s demands, Lt.

Walker then changed his argument and stated Plaintiff had to move because the street was being blocked by Plaintiff's engaging in constitutionally protected activities.

76. Again Plaintiff questioned such assertions, and again, Lt. Walker modified his reasoning. This time Lt. Walker responded to Plaintiff's First Amendment claims by stating, "you can use your First Amendment rights over there" (pointing to a location off of South Street and with lower foot traffic).

77. Once again Plaintiff questioned Lt. Walker, and once again Lt. Walker changed his reasoning. His new rationale for ejecting Plaintiff from South Street was that there had been complaints by business owners. This was the first time, during a ten (10) minute conversation, that any mention of complaints had arisen. Further, Lt. Walker failed to provide the names of those making the complaints.

78. Fearful of an arrest, Plaintiff was forced to abandon his constitutionally protected activities on South Street.

Plaintiff Arrested for Spreading the Gospel of Jesus Christ on May 29, 2003

79. On or about May 29, 2003, Plaintiff arrived at South Street, located within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activity commonly referred to as open-air preaching.

80. Specifically, Plaintiff was preaching outside of a sexually-oriented business named "Condom Kingdom." Plaintiff believes that the store, and its merchandise, amounts to perversion, and desired to educate the people to harmful effects such businesses have on the surrounding communities and the people in those communities.

81. On this particular evening, Plaintiff was accompanied by other Christians who had come to South Street to assist Plaintiff in his evangelistic ministry.

82. Plaintiff and ministry associate and friend Jason Storms, who was helping Plaintiff in his ministry, would take turns standing on a chair outside Condom Kingdom, preaching the Gospel of Jesus Christ via a megaphone.

83. The megaphone was no louder than the conversations and music emanating from local taverns, or the noise from automobiles passing by. Furthermore, the preaching was no louder than the boisterous yelling that was going on throughout all of South Street.

84. Shortly after Plaintiff's arrival, Sergeant Warren Edwards approached Plaintiff and told him that it is against the law to use a megaphone in Philadelphia after seven (7) o'clock in the evening.

85. This statement clearly contradicted the October 31, 2002, statement by the Philadelphia police that all sound amplification was banned on South Street.

86. Sergeant Edwards then told Plaintiff if the megaphone was used, Plaintiff would be arrested.

87. Plaintiff then informed Sergeant Edwards of a recent case in which Plaintiff had been arrested for using a megaphone on South Street in the City of Philadelphia.

88. The charges against Plaintiff had been dismissed.

89. Sergeant Edwards agreed to read the opinion issued in the case and if Plaintiff would agree not to use the megaphone, scream or obstruct traffic while Sergeant Edwards was reviewing the law. At this time Plaintiff had only used his megaphone on a low setting, but nonetheless agreed to all of Sergeant Edwards demands in order to have him review and understand the law.

90. While Sergeant Edwards was reading the case elsewhere, another Officer

approached Plaintiff in an attempt to convince Plaintiff to leave the Condom Kingdom area. This officer told Plaintiff that because people did not like what he was saying, Plaintiff was allegedly causing unrest, thus causing the police to take action against Plaintiff.

91. This officer explained that while Plaintiff had rights, so did the individuals complaining about Plaintiff's message. The officer argued that it was Plaintiff's constitutionally protected rights that should give way to the rights of those who disagreed with the message.

92. When Sergeant Edwards returned from reading the case, he informed Plaintiff that he had instructions to prevent the use of the megaphone.

93. Furthermore, Sergeant Edwards instructed Plaintiff that he could no longer stand on the chair, nor could he stand in one place.

94. Sergeant Edwards instructed Plaintiff that in order to avoid arrest Plaintiff had to talk in a normal conversational tone on a busy Philadelphia city street and keep moving at all times, or be subject to arrest for disorderly conduct.

95. Understanding that such instructions violated his constitutional rights, and frustrated at the pattern of harassment and intimidation he faced from the Philadelphia Police Department, Plaintiff politely told Sergeant Edwards that he was going to stand in one spot and continue to preach the Gospel without the aid of sound amplification or the use of a chair.

96. Plaintiff was immediately arrested and charged with obstructing a highway and later acquitted when Sergeant Edwards failed to show up for trial.

Philadelphia Police Place Themselves Above the Law on August 15, 2003

97. On or about August 15, 2003, Plaintiff arrived at 202 South 13th Street, located within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activity commonly referred to as open-air preaching.

98. Specifically, Plaintiff was standing outside Woody's Bar.

99. On this particular evening, Plaintiff was accompanied by other Christians who had come to South Street to assist Plaintiff in his evangelistic ministry.

100. Shortly after Plaintiff's arrival, the Philadelphia Police arrived on the scene.

101. Officer John Doe approached Plaintiff and informed him to leave. When Plaintiff inquired as to why he has to leave a public sidewalk, Officer Doe 3 responded to Plaintiff's question by threatening "if I come back here and your still out here you're getting locked up."

102. When asked what statute Plaintiff and the others were violating, Officer Doe 6 responded, "it doesn't matter what statute, it is my statute...."

103. Plaintiff was able to continue engaging in constitutional activities, but had the threat of a possible arrest looming over his head in light of Officer John Doe's threats.

Philadelphia Police Use Threat of Arrest to Intimidate Plaintiff's Pro-Life Activities

104. On or about May 1, 2004, Plaintiff arrived at Planned Parenthood, a known abortion provider, located at 1144 Locust Street within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activities of protesting abortion and ministering to those going to or outside the abortion clinic.

105. Plaintiff assumed a position on the sidewalk and began preaching with the aid of a megaphone.

106. The sound amplification was needed communicate Plaintiff's constitutionally protected message due to the loud noise emanating from the passing automobiles, surrounding establishments, and the pedestrians on the sidewalk.

107. Shortly after arriving at Planned Parenthood and engaging in his constitutionally protected activities, Plaintiff was approached by a uniformed Philadelphia police officer.

108. The officer informed Plaintiff that there had been complaints and subsequently instructed that use of the sound amplification was against the law.

109. Plaintiff inquired as to what law he was specifically violating and the officer responded "it's just noise abatement."

110. The officer further explained that the Plaintiff's activities constituted noise pollution and he would be cited if he did not stop using the sound amplification.

111. After numerous inquiries by the Plaintiff to the original officer and two officers from the Civil Affairs Unit, Plaintiff was able to continue engaging in constitutional activities, but had the threat of a possible citation looming over his head.

No Room at the Inn for the Gospel Message at "Sunday Out"

112. On or about May 4, 2004, the city block of Twelfth (12th) and Locust Street hosted "Sunday Out" what has been dubbed "Philadelphia's favorite and Pennsylvania's largest annual block party...."

113. While Sunday Out is a block party that attracts a large number of homosexuals from the community, the festival is not limited to just homosexuals. Rather, the block party is open to the public, free of charge and takes place on the public streets and sidewalks.

114. On or about May 4, 2004, Plaintiff arrived at the intersection of Twelfth (12th) and Locust, located within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activity commonly referred to as open-air preaching.

115. On this particular afternoon, Plaintiff was accompanied by other Christians who had come to Sunday Out to assist Plaintiff in his evangelistic ministry.

116. Specifically, Plaintiff wanted to distribute literature and converse with citizens at the block party in an effort to communicate the salvific message of Jesus Christ.

117. Upon arriving at the Sunday Out, Plaintiff, and others from his group, entered the block party. Plaintiff began to exercise his constitutional right to free speech and peacefully started to engage in a dialogue with those in attendance.

118. Reactions from the Sunday Out crowd was as expected, for some gathers moved away from Plaintiff, while others remained to watch and listen and others laughed because of his message.

119. Some of the Sunday Out crowd also offered contrary points of views in order to dissuade others from listening to Plaintiff.

120. Shortly thereafter, the police, with Sunday Out event staff by their side, quickly escorted Plaintiff outside the vicinity of the block party.

121. Citing safety concerns, the police forced Plaintiff to the outside perimeters of the block party, despite the fact that all other members of the public were permitted to enter the event.

122. At this time, at least two on-duty police officers were sporting necklaces given out at the public block party which supported the message opposite to that being

advocated by Plaintiff.

123. As Plaintiff was being ejected from the public block party, the police informed Plaintiff that he was not welcomed at “their event,” despite the distinctly public nature of the event.

124. After the police arbitrarily shuffled the Plaintiff and his group from one location to another, the police finally decided on a location that would constitute a “safe environment.”

125. The police called in at least five (5) to ten (10) bicycle officers who positioned their bicycles in a manner which created a makeshift barricade aimed at keeping Plaintiff out of the public block party.

126. After being removed from the public block party, Plaintiff attempted to explain his rights to the Philadelphia Police.

127. Chief Tiano, the supervising officer on duty, announced that “this is as far as you [Plaintiff] are going.”

128. Only when Plaintiff put down his sign, Gospel literature and megaphone, did he manage to cross the makeshift police barricade to reach the outer rim of people at Sunday Out. Police then interfered with Plaintiff’s effort to communicate with those attending Sunday Out.

129. Plaintiff was the only party that initially made it past the police barricade.

130. Another member of Plaintiff’s ministry who was taking video footage was continually prevent from crossing the barricade to video police interaction with Plaintiff.

131. The police arbitrarily denied access to a public street and event.

132. When Plaintiff's camera man attempted to explain to Officer John Doe 4 his constitutional rights, Officer Doe 4 sarcastically responded that "this isn't about the constitution, this is about God's law."

133. While the police at the barricade continued to exclude members of Plaintiff's group from accessing the public block party, Plaintiff was able to stand close to the event as long as he was surrounded by police officers.

134. While Plaintiff was in the event, there was no evidence of an imminent threat to Plaintiff's safety or those in his group.

135. After more than an hour of being harassed by the police department, Plaintiff was able to discuss this matter with Deputy Commissioner who was on the scene.

136. First the Deputy Commissioner informed Plaintiff that he and two other members of his group would be granted access.

137. She further stated that Plaintiff could use the signs and megaphones, but qualified the statement by adding such action may border on incitement.

138. The Duty Commissioner also concluded that the police could protect only three (3) members of the twelve (12) person group at any one given time.

139. Plaintiff then asked if another member of the group could be permitted access, thus causing four (4) members of the group to be permitted access to the public block party, and the Deputy Commissioner then decided that it was not possible to protect four (4) members of Plaintiff's group.

140. Realizing that the Deputy Commissioner was arbitrarily deciding who was to have access to the block party and who was not, Plaintiff further inquired that if all

megaphones and signs were left at behind the barricade, would it be permissible for all twelve (12) members to enter the event. The Deputy Commissioner then said "yes."

141. At all times during the conversation, the Deputy Commissioner would not state whether Plaintiff's use of signs or megaphones at the event would amount to a violation of the law. Rather, she just stated that she did not want Plaintiff to use such avenues of communication.

142. Also, Plaintiff was not permitted to bring his signs declaring the Gospel message of hope and salvation into the Sunday Out event, other attendees at the event had created, and were permitted to display, their own signs to counter Plaintiff's message. Such signs include, but are not limited to "Religious Bigots Suck" and "Preachers of Intolerance Can Just Go To Hell."

143. Once the Deputy Commissioner gave the green light for Plaintiff's access, he was completely surrounded by at least three to five officers who would block his movements and interfere with his communication with attendees at the event.

144. At one point, Plaintiff attempted to distribute literature to attendees and the police immediately shut him down.

145. Plaintiff was told he was not permitted to hand out literature.

146. Officer Johnson instructed Plaintiff that he was not permitted to step off the sidewalk, despite the fact that street had been closed to through traffic due to the block party and had been opened to pedestrian traffic.

147. In order to prevent Plaintiff's movement, some attendees who disfavored Plaintiff's message formed a wall obstructing Plaintiff's movement.

148. The police did nothing to prevent the obstruction.

149. Plaintiff's rights and First Amendment activities were substantially frustrated and his communicative methods effectively shut down by arbitrary police behavior.

150. At no time during Plaintiff's arrival at Sunday Out until Plaintiff's departure from the public block party was there concrete evidence of an imminent threat or riot.

Philadelphia Police Shut Down Plaintiff's Constitutionally Protected Message Again

151. On or about Sunday, June 13, 2004, PHILLY PRIDE PRESENTS, Inc. held "Philly Priday '04: Pioneers on Parade" ("Priday") in Center City, Pennsylvania to advance lesbian, gay, bisexual, transgender (LGBT) rights through the visibility and awareness of a parade and festival. The parade began at noon, and the festival took place from noon until 6 p.m.

152. Plaintiff and others who assist Plaintiff in the exercise of his constitutionally protected activities attended the event in order to proclaim the Gospel of Jesus Christ through open-air preaching, Scripture banners, which displayed such phrases as, "Trust Jesus," "Know the God of the Bible," and "Repent and Believe the Gospel," literature, and individual conversation.

153. At approximately 12:30 p.m., Plaintiff and his ministry associates arrived to engage in the constitutionally protected activity commonly referred to as street preaching at the corner of Twelfth (12th) and Locust Streets, which was one of the locations where people were gathered to watch the parade. At that time, there were no police officers present.

154. After the parade had ended, Plaintiff attempted to cross the street at the

intersection of Broad and Washington Streets (southbound) in order to get to the sidewalk where those attending the festival were walking, mingling, and entering the festival.

155. At this venue, Plaintiff planned to engage in ministry activities, individual conversation, displaying signs, handing out Gospel literature, and open-air preaching.

156. The police officers, however, began to interfere with Plaintiff's ability to minister to people on the street corner and his ability to cross the street to get to the sidewalk where the festival entrance was located.

157. Moreover, at one time, Chief Tiano, Chief Inspector of the Community Affairs Division, stepped in front of the person to whom Plaintiff was speaking and encouraged the person not to talk with Plaintiff.

158. Having arrived at the corner of Broad and Washington Streets, Plaintiff tried to cross the street in order to converse with those attending the event. Officer Fisher, Commanding Officer of the Civil Affairs Unit in Philadelphia, confronted Plaintiff and would not allow him to cross the street.

159. Officer Fisher and Plaintiff discussed why Plaintiff was not allowed to cross the street onto a public sidewalk, and Defendant Fisher claimed that he was preventing Plaintiff from crossing the street for his own protection. Defendant Fisher concluded, "I can't protect you over there; you have to stay here."

160. Again, Plaintiff explained to Officer Fisher that he desired to be across the street where scores of people were walking down the public sidewalk and street to enter the festival. Moreover, Plaintiff clarified further that his desire was to speak with those attending the event, distribute Gospel literature, and open-air preach outside of the event on the public sidewalk. Defendant Fisher did not respond.

161. Plaintiff again told Officer Fisher that he wanted to cross the street in order to peaceably try to converse with those attending the event. Again, Officer Fisher responded that it was a safety issue: "I have to protect you...my job as a sworn police officer is to protect life and property, and I can't protect your life over there."

162. Plaintiff then asked Officer Fisher whether the event attendees were that violent. Fisher answered that they were. Plaintiff asked again to verify that Officer Fisher was saying that the attendees were so violent that the officers were protecting Marcavage's life, and again Officer Fisher confirmed that those attending the parade and festival were that violent.

163. Plaintiff then asked, "Well, shouldn't they be arrested then?" Officer Fisher responded, "If they commit an act of violence then they will be and I'm going to prevent an act of violence by keeping you here." Plaintiff questioned the officer's response, "There's no visible violence right now, but you're saying you're gonna [sic] protect us from something that could happen?"

164. Plaintiff asked Officer Fisher if he could stand on the opposite side of the street, on the sidewalk, but Officer Fisher would not allow him to, commenting that if Plaintiff did not like his decision he could call the American Civil Liberties Union.

165. Officer Fisher continued, "You're going to settle for what I'm giving you here... I know what you want. You're going to stand – You're gonna stand here. That's it. No more debate. That's it. If you don't like that, you can leave."

166. Plaintiff then tried to exercise his constitutionally protected right and began to cross the street. Officer Fisher grabbed his arm and pulled him back onto the corner, threatening to arrest Plaintiff for disorderly conduct.

167. Plaintiff pointed out that disorderly conduct is a citable offense, not one for which he could be arrested. Officer Fisher countered that a citation would take Plaintiff to the police station, where they would "lock [him] up" for six (6) hours until the event was over. He said that would "solve[] the problem."

168. Officer Fisher again stated that it was a public safety issue and that Plaintiff was endangering himself. In response, Plaintiff pointed out that there was no visible danger; to which Officer Fisher replied that he was going to make sure there was no visible danger because he was in charge and the event was going to stay non-violent.

169. Plaintiff then verified that Officer Fisher was not going to allow him to cross the street and that if Marcavage did, Officer Fisher would arrest him for disorderly conduct. Officer Fisher concluded, "You put your foot out in that street and you're arrested."

170. During and after this extended debate, Plaintiff had a number of officers forming a ring around him.

171. Plaintiff was told by Sergeant Craig Smith that there were 16 Civil Affairs officers and two (2) regular division officers at the corner, "protecting" Plaintiff.

172. A short while later, Chief Tiano came to stand next to Officer Fisher.

173. By that time, a paddy wagon had arrived at the corner, on which Plaintiff and the officers were standing, and was positioned with its doors opened widely, prepared to hold anyone arrested. Officer Fisher then threatened, "If you go on the other side of the street, you'll be in that wagon" and pointed to the vehicle.

174. Plaintiff began to ask Chief Tiano similar questions about crossing the street in order to converse with festival attendees, and he responded that Plaintiff was

within "sight and sound" distance, insinuating that their unconstitutional actions against Plaintiff were lawful.

175. Chief Tiano further commented that Plaintiff was a "protestor" and should stay on this side of the street, while the festival attendees, who were supporters and participators, were on that side of the street.

176. Plaintiff then asked them both whether he could go across the street to the other public sidewalk if he put away the signs, at which time Chief Tiano walked away. Officer Fisher did not respond.

177. Another Civil Affairs officer then came to stand with Officer Fisher. Plaintiff asked them both why the paddy wagon was present. The officer answered that it was present in case the police had any arrests. Plaintiff then asked whether the police were going to arrest any of the festival attendees for public lewdness. Both officers ignored his question. Soon after, the officer left Officer Fisher's side.

178. Plaintiff then asked Officer Fisher whether he could leave the signs behind and cross the street; again, Officer Fisher avoided a direct response to the question by responding with a comment about public safety.

179. Plaintiff expressed to Officer Fisher that he was not trying to be unsafe, and that it was not unreasonable for Plaintiff to be on the same side of the street as the individuals to whom he wanted to minister. Officer Fisher concluded, "I guess we're just gonna [sic] have to agree to disagree."

180. Again, Plaintiff asked Officer Fisher whether there was an applicable law, adding "Because if [I am] are in violation of the law, certainly [I]'ll obey whatever the law is, but [I] have reason to believe that there is no law or ordinance that would prohibit

[me] from crossing the street.” Officer Fisher refused to answer the question by remaining silent.

181. Throughout this incident, the officers allowed other people access to the street and the sidewalk without inquiring about their intent for being present on the sidewalk.

The Fear of Arrest Constantly Looms Over the Exercise of Plaintiff's Rights

182. Based upon experience, information and belief, if Plaintiff engages in the peaceful exercise of his constitutional rights as described in this Complaint, the City of Philadelphia Police Department will arrest him, or threaten to arrest him for disorderly conduct, obstruction or potentially any other charging instrument the Police can utilize to muzzle Plaintiff's message, regardless of applicability.

183. Plaintiff desires and intends to continue to exercise his constitutional rights to effective free speech and free exercise of his religion by preaching on the public ways of the City of Philadelphia. Moreover, in order to be effective in his preaching, Plaintiff intends to use a sound amplification device, when necessary, to disseminate his message. However, Plaintiff's fundamental constitutional rights are being violated by the Defendants because their acts are deterring his free exercise rights of speech and religion, and chilling the rights of third parties not before this Court.

184. Plaintiff has no plain, adequate, or complete remedy at law to redress these recurring violations of his constitutional rights, and this suit for injunctive relief, a declaratory judgment and damages for past actual injuries is his only means of securing complete and adequate relief. No other remedies would offer Plaintiff substantial and complete protection from continuation of Defendants unlawful and unconstitutional acts,

policies, and practices.

ALLEGATIONS OF LAW

185. All of the acts of Defendants, their officers, agents, servants, and employees, as alleged herein, were conducted by Defendants, not as individuals, but under color and pretense of the statutes, ordinances, regulations, customs, and usages of the City of Philadelphia and/or the State of Pennsylvania.

186. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable injury to his constitutional rights by the past practices of harassment, intimidation and arrests and threatened future enforcement of the said practices. Moreover, Plaintiff is suffering, and will continue to suffer, irreparable injury to his constitutional rights of free speech and religion by threat of enforcement of the aforementioned practices against his expressive activities.

187. The Philadelphia police personnel are inadequately trained in the substantive and procedural requirements of the First Amendment to the United States Constitution, and the rights protected therein.

188. It is the policy, practice, or custom of the City of Philadelphia to deny Plaintiff the free exercise of his First Amendment rights, and when Plaintiff challenges this unconstitutional policy, he is either arrested or threatened with arrest.

189. It is the policy, practice, or custom of the City of Philadelphia to use force to intimidate citizens who challenge the unconstitutional policies of Defendants.

190. It is the policy, practice, or custom of the City of Philadelphia to use unnecessary and unlawful force to intimidate citizens who wish to express viewpoints favorable to Christianity or consistent with the Bible.

191. It is the policy, practice, or custom of the City of Philadelphia to use unnecessary and unlawful force to intimidate citizens who wish to express viewpoints critical of homosexual conduct.

192. By presence of repetition, these practices, unconstitutional in nature, have clearly been established as policy by the City of Philadelphia, and its agents.

193. The practices of the Defendants have shown that they will waste no time arresting Plaintiff, throwing him in jail for hours upon end, just to remove him from the public ways of Philadelphia, specifically South Street.

194. The practice of the Defendants' responses to Plaintiff's First Amendment concerns have been arbitrary in nature.

195. Plaintiff's expressive activities on the date alleged herein were constitutionally protected. Plaintiff was denied access to the public right of way on the basis of the content of his speech.

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

197. Defendants Warren Edwards, John Doe and Jane Doe, knew or should have known the law pertaining to the exercise of one's constitutional rights and nevertheless disregarded the law.

198. Plaintiff was similarly situated to other individuals that were granted access to those parts of the public rights of way from which Marcavage was excluded.

199. As a result of Defendants' conduct, Plaintiff has suffered injury to his constitutional rights to be free from false arrest, unreasonable seizure, and unreasonable force, as well as his constitutional guarantees to substantive and procedural due process

of law.

200. As a result of Defendants' conduct and conspiratorial actions, Plaintiff has suffered false arrest, false imprisonment, humiliation, inconvenience, embarrassment, and loss of reputation in the community.

**FIRST CAUSE OF ACTION – 42 U.S.C. § 1983
(Free Speech)**

201. Paragraphs 1-199 of the Complaint are incorporated herein by reference, the same as pleaded in full.

202. Defendant's habitual practice of harassing and/or arresting Plaintiff for preaching the Gospel of Jesus Christ on the public ways of Philadelphia constitutes an unconstitutional abridgement of Plaintiff's affirmative rights to freedom of speech secured by the First and Fourteenth amendment to the United States Constitution.

203. Defendant's habitual practice of harassing and/or arresting Plaintiff for using a megaphone to preach the Gospel of Jesus Christ on the public ways of Philadelphia denies Plaintiff the right to engage in effective speech in areas where voice amplification is essential to adequately convey an oral message.

204. Defendant's habitual practice of harassing and/or arresting Plaintiff for using a megaphone to preach the Gospel of Jesus Christ on the public ways of Philadelphia constitutes a total ban on voice amplification.

205. As a direct and proximate result of Defendant's actions in habitually harassing and arresting Plaintiff, Plaintiff has been deprived of his right to free speech, and the free speech rights of third parties not before this Court have been chilled.

206. The actions of Defendants Warren Edwards, John Doe and Jane Doe, as heretofore alleged, were motivated by bias, bad faith and improper motive.

207. As a direct and proximate cause of Defendants Warren Edwards, John Doe and Jane Doe's bias, bad faith or improper motive, Plaintiff was denied his freedom of speech, as guaranteed by the First Amendment of the United States Constitution.

WHEREFORE, Plaintiff prays for the relief set forth below.

**SECOND CAUSE OF ACTION – 42 U.S.C. § 1983
(Free Exercise)**

208. Paragraphs 1 through 207 of the Complaint are incorporated herein by reference, the same as pleaded in full.

209. Defendant's habitual practice of harassing and/or arresting Plaintiff for preaching the Gospel of Jesus Christ on the public ways of Philadelphia unconstitutionally infringes on Plaintiff's right to free exercise of religion, in violation of the First and Fourteenth amendments to the United States Constitution.

210. As a direct and proximate result of Defendant's actions in habitually harassing and arresting Plaintiff, Plaintiff has been deprived of his right to free exercise of religion, been incarcerated for the exercise of such rights, and the free exercise rights of third parties not before this Court have been chilled.

208. The actions of Defendants Warren Edwards, John Doe and Jane Doe, as heretofore alleged, were motivated by bias, bad faith and improper motive.

211. As a direct and proximate cause of Defendants Warren Edwards, John Doe and Jane Doe's bias, bad faith or improper motive, Plaintiff was denied his right to the free exercise of religion, as guaranteed by the First Amendment of the United States Constitution.

WHEREFORE, Plaintiff prays for the relief set forth below.

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

212. Paragraphs 1-211 of the Complaint are incorporated herein by reference, the same as though plead in full.

213. Plaintiff is a devout Christian who believes it is his obligation to spread the salvific message of Jesus Christ. Plaintiff has been denied the opportunity to spread this message at two homosexual events due to the very fact that his message is contrary to the message that homosexual activity is normal and acceptable behavior. Plaintiff's communicative activities that took place on May 4, 2004, did not materially differ from the homosexual and pro-homosexual activists at the Sunday Out event, yet Plaintiff was still denied the equal opportunity to carry signs and move freely throughout the event. Nonetheless, the Defendant denied Plaintiff the opportunity while simultaneously permitting those conveying a message opposite to that of Plaintiff.

214. The actions of the Defendant, as alleged herein, are unconstitutional abridgements of Plaintiffs' affirmative right to equal protection as secured by the Fourteenth Amendment to the United States Constitution.

215. As a direct and proximate result of Defendants' actions, and the customs, practices, and policies of the City of Philadelphia, Plaintiff is being deprived of its right to equal protection of the laws. Plaintiff has suffered, is suffering, and will continue to suffer irreparable harm as a direct result of Defendants' conduct.

216. The actions of Defendants Warren Edwards, John Doe and Jane Doe, as heretofore alleged, were motivated by bias, bad faith and improper motive.

217. As a direct and proximate cause of Defendants Warren Edwards, John Doe and Jane Doe's bias, bad faith or improper motive, Plaintiff was denied his right to equal

protection.

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

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

218. Paragraphs 1 through 217 of the Complaint are incorporated herein by reference, the same as pleaded in full.

219. Defendant's actions in physically restraining, handcuffing, transporting, and placing Plaintiff in a jail cell for merely exercising his constitutionally protected rights constituted a seizure for purposes of the Fourth and Fourteenth Amendments.

220. Defendant's actions in physically restraining, handcuffing, transporting, and placing Plaintiff in a jail cell for merely exercising his constitutionally protected rights were unreasonable in light of the circumstances.

221. As a direct and proximate cause of Defendant's actions, Plaintiff was injured in his constitutional right to be free from unreasonable seizure.

222. The actions of Defendants Warren Edwards, John Doe and Jane Doe, as heretofore alleged, were motivated by bias, bad faith and improper motive.

223. As a direct and proximate cause of Defendants Warren Edwards, John Doe and Jane Doe's bias, bad faith or improper motive, Plaintiff was denied his freedom from an unreasonable seizure, as guaranteed by the Fourth Amendment of the United States Constitution

WHEREFORE, Plaintiff prays for the relief set forth below.

**FIFTH CAUSE OF ACTION – 42 U.S.C. § 1983
(Unreasonable Force)**

224. Paragraphs 1 through 223 of the Complaint are incorporated herein by reference, the same as pleaded in full.

225. Defendant's actions in physically restraining, pushing, dragging, and forcibly slamming Plaintiff against a storefront window for merely exercising his constitutionally protected rights were objectively unreasonable in light of the facts and circumstances confronting them.

226. As a direct and proximate cause of Defendant's actions, Plaintiff was injured in his constitutional rights to be free from the use of excessive force, as guaranteed by the Fourth and Fourteenth Amendments.

227. The actions of Defendants Warren Edwards, John Doe and Jane Doe, as heretofore alleged, were motivated by bias, bad faith and improper motive.

228. As a direct and proximate cause of Defendants Warren Edwards, John Doe and Jane Doe's bias, bad faith or improper motive, Plaintiff was denied his right to be free from unreasonable force.

WHEREFORE, Plaintiff prays for the relief set forth below.

**SIXTH CAUSE OF ACTION – 42 U.S.C. § 1983
(False Arrest)**

229. Paragraphs 1 through 228 of the Complaint are incorporated herein by reference, the same as pleaded in full.

230. The actions of Defendants as heretofore alleged were intended to detain and confine Plaintiff, thus removing both he and his constitutionally protected message from the streets of Philadelphia.

231. Plaintiff was aware of the detention and confinement, and did not consent to them.

232. The detention and confinement were without probable cause.

233. As a direct and proximate cause of Defendant's actions, Plaintiff's Fourth and Fourteenth Amendment rights were violated.

234. The actions of Defendants Warren Edwards, John Doe and Jane Doe, as heretofore alleged, were motivated by bias, bad faith and improper motive.

235. As a direct and proximate cause of Defendants Warren Edwards, John Doe and Jane Doe's bias, bad faith or improper motive, Plaintiff was denied his right to be free from a false arrest.

WHEREFORE, Plaintiff prays for the relief set forth below.

**SEVENTH CAUSE OF ACTION – Supplemental State Claim
(False Imprisonment)**

236. Paragraphs 1 through 235 of the Complaint are incorporated herein by reference, the same as pleaded in full.

237. Defendant's actions in physically restraining, handcuffing, transporting, and placing Plaintiff in a jail cell, in each and every instance, were against the wishes of the Plaintiff and without probable cause to justify such an arrest.

238. Defendant's actions in physically restraining, handcuffing, transporting, and placing Plaintiff in a jail cell were unlawful.

239. As a direct and proximate result of Defendant's intentional conduct, Plaintiff was falsely imprisoned. Further, the actions of Defendant's caused Plaintiff to be publicly humiliated and embarrassed for merely preaching the Gospel of Jesus Christ.

240. The actions of Defendants Warren Edwards, John Doe and Jane Doe, as

heretofore alleged, were motivated by bias, bad faith and improper motive.

241. As a direct and proximate cause of Defendants Warren Edwards, John Doe and Jane Doe's bias, bad faith or improper motive, Plaintiff was denied his right to be free from a false arrest.

WHEREFORE, Plaintiff prays for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendant's actions as herein described violated Plaintiff's rights under the First, Fourth, and Fourteenth Amendments;
- c. Enter a preliminary and permanent injunction enjoining Defendant from applying Philadelphia's Disorderly Conduct and Obstruction statutes, as well as any other applicable statute, to Plaintiff's peaceful preaching on the public ways.
- d. Award nominal, compensatory, and punitive damages for the violation of Plaintiff's civil and constitutional rights, and the intentional torts committed by Defendants;
- e. Award Plaintiff his costs of litigation, including reasonable attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988; and,
- f. Grant such other and further relief to which Plaintiff may be entitled, or as this Court deems necessary and proper.

Respectfully submitted,

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Joseph R. Murray, II, NJ Bar # 03418-2002
Pending admission *pro hac vice*
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