

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**MICHAEL MARCAVAGE and MICHAEL
STOCKWELL**

Plaintiffs,

v.

**CITY OF SYRACUSE, NEW YORK, THE
SYRACUSE POLICE DEPARTMENT,
CHIEF FRANK FOWLER in his official
and individual capacities, DEPUTY
CHIEF JOSEPH CECILE in his official
and individual capacities, LIEUTENANT
RICHARD SHOFF in his official and
individual capacities, SERGEANT
MICHAEL LONG in his official and
individual capacities, OFFICER PAUL
KLUGE, in his official and individual
capacities, and OFFICER JOHN DOE and
OFFICER JAMES DOE, who are
unidentified members of the Syracuse
Police Department, in their official and
individual capacities**

Defendants

Civil Action Number:

COMPLAINT & DEMAND FOR JURY TRIAL

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. PRELIMINARY STATEMENT

1. Plaintiffs seek relief pursuant to 42 U.S.C. § 1983 for redress of the deprivation under color of state law of the fundamental and historical rights secured to them by the First and Fourteenth Amendments to the United States Constitution and the Constitution of the State of New York, Art. I, §§ 3 and 8.

2. Plaintiffs seek a temporary restraining order, preliminary injunctive relief, declaratory judgment, nominal damages as well as compensatory and punitive damages for the actions of Defendants that violated their fundamental constitutional rights.

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 paragraph one (1). 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. This action is also authorized by 42 U.S.C. § 1983, because Defendants are state actors that have 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.

4. Venue is proper in the Northern District of New York, pursuant to 28 U.S.C. § 1391(b), because the claims arose in the district.

III. *IDENTIFICATION OF PARTIES*

5. Plaintiff Michael Marcavage is an adult citizen and is a resident of the Commonwealth of Pennsylvania.

6. Plaintiff Michael Stockwell is an adult citizen and is a resident of the State of New York.

7. Defendant City of Syracuse, New York, is a municipal corporation existing under the laws and Constitution of the State of New York, and is a corporate entity capable of suing and being sued. In all respects set forth in this Complaint, Defendant City acted under color of the law of the State of New York.

8. Defendant Syracuse Police Department is operated and maintained by Defendant City of Syracuse. In all respects set forth in this Complaint, Defendant acted under color of the law of the State of New York.

9. Defendant Chief Frank Fowler is the chief of the Syracuse Police Department. He is sued in his official and individual capacities. In all respects set forth in this Complaint, Defendant Fowler acted under color of the law of the State of New York.

10. Defendant Deputy Chief Joseph Cecile is employed by the Syracuse Police Department. He is being sued in his official and individual capacities. In all respects set forth in this Complaint, Defendant Cecile acted under color of the law of the State of New York.

11. Defendant Lieutenant Richard Shoff is employed by the Syracuse Police Department and oversees the Ordinance Enforcement Division. He is being sued in his official and individual capacities. In all respects set forth in this Complaint, Defendant Shoff acted under color of the law of the State of New York.

12. Defendant Sergeant Michael Long is employed by the Syracuse Police Department and oversees the Licensing Division. He is being sued in his official and individual capacities. In all respects set forth in this Complaint, Defendant Long acted under color of the law of the State of New York.

13. Defendant Paul Kluge is employed by the Syracuse Police Department. He is being sued in his official and individual capacities. In all respects set forth in this Complaint, Defendant Kluge acted under color of the law of the State of New York.

14. Defendant John Doe of the Syracuse Police Department is employed by the Syracuse Police Department. He is being sued in his official and individual capacities. In all

respects set forth in this Complaint, Defendant Doe acted under color of the law of the State of New York.

15. Defendant James Doe of the Syracuse Police Department is employed by the Syracuse Police Department. He is being sued in his official and individual capacities. In all respects set forth in this Complaint, Defendant Doe acted under color of the law of the State of New York.

IV. STATEMENTS OF FACT

16. Plaintiffs are devout Christians and active full-time evangelists.

17. Plaintiffs' sincerely-held religious beliefs compel them to proclaim the Word of God and Gospel of Jesus Christ through the spoken and written word to as many people as possible.

18. As part of Plaintiffs' evangelistic work, Plaintiffs regularly engage in constitutionally-protected activities, such as open-air preaching and the distribution of Gospel literature, on the public streets and sidewalks in cities across America.

19. Plaintiffs often use the aid of amplification in noisy environments in order to communicate effectively.

20. Because of the policies and regulations of Syracuse Municipal Code Section 40-16 (a), (hereinafter "Sound Reproduction Ordinance") and Section 7 (hereinafter "Bill and Sampling Ordinance") of the Syracuse Code of Ordinances, Plaintiffs' constitutional rights to engage in effective free speech activities have suffered, are suffering and will continue to suffer without immediate relief by this court.

21. Section 40-16 (a) of the Syracuse Code of Ordinances, entitled "Sound Reproduction," states:

No person shall operate, play or permit the operation of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound:

(a) In such a manner as to create unnecessary noise across a real property boundary, except for activities open to the public and for which a permit has been issued by the administrator pursuant to rules and regulations promulgated by him, or by license issued by the commissioner of licenses.

(The “Sound Reproduction” Ordinance is attached in full as Exhibit A.)

22. The applicable sections of Section 7, “Bill Posting, Signs and Ordinances,” state:

Sec. 7-3. - Persons eligible for license. Licenses hereunder may be granted to any resident of the state of New York or to any corporation organized under the laws thereof, upon compliance with the provisions of this article.

Sec. 7-4. - License application. Application for a license under this article shall be made to the city clerk on a form supplied by him.

Sec. 7-5. - Issuance of license; signature by mayor. Licenses under this article shall be issued by the city clerk and shall be signed by him and by the mayor.

Sec. 7-6. - Bill poster's license; activities permitted. A bill poster's license shall authorize the carrying on of all of the occupations named in section 7-2.

Sec. 7-7. - Bill distribution license; activities permitted. A bill distribution license shall authorize the distribution of bills, circulars, pamphlets, notices and samples, or other articles used to advertise a particular business, exhibition, entertainment, excursion or other matter or thing.

Sec. 7-8. - License fee. The fees for licenses hereunder, which shall be paid to the city clerk on the delivery of the license, shall be:

For a bill poster's license \$50.00

For a bill distribution license:

Per year 35.00

Per month 10.00

Sec. 7-9. - Duration of license. Licenses under this article, unless granted on a monthly basis, shall expire at the end of the calendar year in which granted.

...

Sec. 7-11. - Resident businesses' own direct advertising not affected. Nothing in this article shall be construed to prevent merchants, and other persons who are residents of doing business in the city from distributing bills concerning or

otherwise advertising the businesses in which they are directly engaged.

Sec. 7-12. - Religious and other organizations not affected. Nothing in this article shall be construed to prevent any religious, benevolent, labor or social organization of the city from distributing bills for advertising its meetings, entertainments, excursions or assemblies.

(The “Bill and Sampling” Ordinance is attached in full as Exhibit B)

23. On the afternoon of Monday, April 9, 2012, Plaintiff Michael Stockwell engaged in religious free speech activity on the corner of Salina and Fayette Streets, near the Centro bus hub, which is located in a busy commercial zone in the heart of downtown Syracuse.

24. The area is known to have a constant stream of traffic from city buses, and at peak times, over 20 buses may line up to transport the public to and from the location.

25. Plaintiff Stockwell chose the location in order to reach as many people as possible since many members of the public traverse the area throughout the day to obtain bus transportation.

26. Plaintiff Stockwell utilized a portable amplification device to be heard effectively in the noisy downtown environment, as the sound of passing buses, blaring car stereos, sirens, rumbling motorcycles and noises from other vehicular traffic made it difficult to communicate.

27. At approximately 5:00 p.m., Plaintiff Stockwell was approached by two unidentified police officers with the Syracuse Police Department, cited as Defendants John Doe and James Doe in this Complaint. (See Exhibit C)

28. Both officers stated that he could not use the device without a permit from the City, and ordered Plaintiff to shut it off.

29. At no time did the officers allow Plaintiff Stockwell to lower the volume of the device, nor did they cite that there were any complaints about the volume.

30. The officers threatened Plaintiff Stockwell that the device would be confiscated if he continued to use amplification while engaging in free speech activity.

31. Plaintiff Stockwell complied with the officers' order and stopped using the device.

32. Plaintiff Stockwell and others with him attempted to continue to engage in free speech activities with their bare voice, but as the ambient noise from the bustling downtown city environment made it impossible to communicate effectively, they stopped speaking and departed.

33. Plaintiff Stockwell notified Plaintiff Marcavage that he had been told by police that he could not use amplification without a permit.

34. On Wednesday, April 11, 2012, Plaintiff Stockwell and Plaintiff Marcavage sought to engage in amplified free speech activity together on the streets and sidewalks of the City of Syracuse.

35. Plaintiff Marcavage reviewed the city's noise ordinance. As the wording was vague and did not seem to require a permit for his particular activities, Plaintiff Marcavage called the Syracuse Police Department to obtain clarification. The call was made at approximately 3:14 p.m.

36. Plaintiff Marcavage was informed by Officer Paul Kluge that as per the ordinance, a permit was required, and that if he used amplification without a permit, he would receive a citation.

37. Plaintiff Marcavage disagreed with Officer Kluge, and explained that the ordinance implied that a permit is not required for sounds that are not "unnecessary," and that the aid of amplification was a necessity to communicate effectively in downtown Syracuse.

38. At 3:36 p.m., Plaintiff Marcavage then spoke extensively with Attorney Aimee Paquette, Assistant Corporation Council, who while allowing Plaintiff to send a letter outlining his concerns according to clearly-established case law, refused to review the manner in which the Syracuse Police Department was unlawfully applying Section 40-16 (a) of the Syracuse Code of Ordinances and refused to have any discussion with police about the matter. Ms. Paquette stated that she does not get involved with any preventative measures regarding the Syracuse Police Department or the constitutionality of its ordinances, and that she only represents the Syracuse Police Department when it is sued after-the-fact.

39. However, according to the City's website:

“The Department of Law, headed by the Corporation Counsel, supervises and directs the legal affairs of the City of Syracuse. The Corporation Counsel provides legal advice to the Mayor, City Departments, and the Common Council, as well as representing City agencies, such as the Planning Commission and the Board of Zoning Appeals.

The Department takes an active role in the City's economic development activities, public works projects, real estate transactions, ordinances, local laws, and all other public undertakings.”(Emphasis added)

40. Plaintiff Marcavage later called Ms. Paquette at 4:51 p.m. to ensure that she had received the letter. Although she acknowledged receipt, Ms. Paquette again refused to look into the matter. She instructed Plaintiff to contact Common Council Public Safety Chair Lance Denno.

41. A letter from Plaintiff Marcavage was then faxed the following morning, Thursday, April 12th, to Common Council Public Safety Chair Lance Denno. Copies were also faxed to Defendant Chief Frank Fowler, as well as Corporation Counsel Mary Ann Doherty and Assistant Corporation Counsel Aimee Paquette.

42. Copies of the letter were also delivered to Lance Denno and Chief Frank Fowler via Certified Mail the following day.
43. Copies of the letter were delivered to Mary Ann Doherty and Aimee Paquette via U.S. Mail.
44. James Gaffey of the Permit Consultation Office was also sent a copy of the letter via email.
45. No written response to the constitutional concerns raised in the letter has been received from any party to date.
46. At 11:28 a.m., Plaintiff Marcavage received a voicemail from Sergeant David Brown in the Syracuse Public Safety Office, confirming that Plaintiff's letter to Chief Fowler was received and that he "hand delivered it to the Chief's Office." He also stated that Chief Fowler would respond when he had an opportunity.
47. At approximately 12:02 p.m., Plaintiff Marcavage received a telephone call from Defendant Deputy Chief Joseph Cecile.
48. Defendant Cecile acknowledged receipt of the letter that was sent to Defendant Chief Frank Fowler. Defendant Fowler refused to directly respond to Plaintiffs' constitutional concerns.
49. Defendant Cecile claimed that a permit is required in order to use amplification for free speech purposes in the City of Syracuse.
50. Plaintiff Marcavage expressed disagreement and explained that as per the ordinance, a permit was not needed if a person's sound was not "unnecessary", and that the usage of amplification was a necessity in the commercial zones of downtown Syracuse.

51. During the forty-minute discussion, Defendant Deputy Chief Cecile remained adamant that the law required a permit and that he would have someone contact Plaintiff Marcavage about the permitting process.
52. Plaintiff Marcavage urged Defendant Deputy Chief Cecile to follow the case decisions cited in the letter and to uphold the Constitution.
53. Plaintiff Marcavage also pressed Defendant Deputy Chief Cecile to speak to counsel about the matter, and Defendant Cecile agreed to do so.
54. Defendant Deputy Chief Joseph Cecile advised Plaintiff Marcavage to contact Sergeant Naylor, who handles special assembly permits.
55. Plaintiff Marcavage then received a return telephone call from Public Safety Chair Lance Denno, who advised Plaintiff that he should follow the directives of the Syracuse Police Department.
56. At approximately 1:41 p.m., Plaintiff Marcavage also spoke with City Clerk John Copanas, who refused to review the matter and sarcastically encouraged Plaintiff to sue the City.
57. Upon contacting Sergeant Naylor as per the instructions of Defendant Cecile, Plaintiff Marcavage was informed that his free speech activities would not fall under a special assembly permit, and was directed to speak with Defendant Sergeant Michael Long in the City's Licensing Department.
58. Sergeant Naylor advised Plaintiff that the Licensing Department also handles the permits for the distribution of printed materials, such as pamphlets and religious material, called a bill and sampling permit.

59. At approximately 3:10 p.m., Plaintiff Marcavage then called the Licensing Department to speak with Defendant Long.

60. Since Sergeant Long was not available, Plaintiff Marcavage pressed to speak with another representative and was transferred to Defendant Lieutenant Richard Shoff.

61. Defendant Shoff informed Plaintiff Marcavage that no permits are issued for the use of amplification because the use of sound reproduction devices “bothers people.”

62. Plaintiff Marcavage understood that Defendant Shoff was thereby enforcing a complete ban against amplification in the city.

63. At approximately 3:55 p.m., Plaintiff Marcavage spoke with Mary Zeimann in the Licensing Department, who works with Sergeant Long, to inquire further.

64. As Ms. Zeimann was not familiar with how the usage of amplification is handled, she explained that she would have to ask Sergeant Long about the matter and have him call Plaintiff Marcavage the following day.

65. During the discussion, Plaintiff Marcavage stated that he would like to distribute literature later that day and explained that he was informed that a permit is required in order to do so.

66. Ms. Zeimann confirmed to Plaintiff Marcavage that a permit is indeed required for the distribution of printed materials in the city, including religious materials.

67. She also explained that Plaintiff Marcavage could not use amplification nor distribute materials that same day as permits take a minimum of a week to be issued.

68. Ms. Zeimann then faxed a copy of the City’s “Application for Bill and Sample Distribution” to Plaintiff Marcavage. (See Exhibit D.)

69. Plaintiff Marcavage was concerned that the spontaneity and anonymity of his speech would be forfeited if he followed the permitting process.

70. Plaintiff Marcavage was also concerned that the permit application pre-screened whether the individual has ever been convicted of a crime, or was currently facing pending criminal charges, before granting them the right to distribute literature.

71. Plaintiff Marcavage was also concerned that Section 7-3 of the Syracuse Bill and Sampling Ordinance seems to prohibit non-New York State residents from distributing literature in the City.

72. The following morning, Friday, April 13th, at 11:08 a.m. Plaintiff Marcavage received a phone call from Sergeant Michael Long in the City's Licensing Department.

73. Defendant Long identified himself as "the end all" and "an army of one."

74. During the approximately 40-minute discussion, Defendant Long informed Plaintiff Marcavage that the City of Syracuse does not allow the usage of amplification devices, and that a ticket would be issued if one used it.

75. Defendant Long also explained to Plaintiff, "The law, in its own ambiguous, roundabout way, prohibits the use of loudspeakers even though by using the term 'unnecessary'."

76. Defendant Long further explained that the law "gives you so many parameters that you can't possibly fulfill them."

77. When Plaintiff Marcavage inquired how "unnecessary" is defined, Defendant Long replied, "I can pretty much guarantee you that if you pull a bullhorn or a loudspeaker or a sound reproduction [device] out and use it, you'll be unnecessary and you'll be ticketed."

78. Defendant Long also told Plaintiff Marcavage that “If you use one, you’re probably either going to be arrested or told to turn it off because it’s always, always been deemed to be unnecessary.”

79. Defendant Long then explained that the Chief’s Office, City Hall and others agreed with his complete prohibition against the use of amplification as he stated, “Prior to making this phone call, I checked that with the Chief’s Office, and with the City Hall and with my boss, and we all have agreed that, yes, that’s exactly what it would be and what it has always been...”

80. Plaintiff Marcavage noted that Defendants were changing their story from adamantly mandating a sound permit, to claiming that such a permit doesn’t exist, to then barring Plaintiffs amplified free speech activity altogether through threats of citation and arrest.

81. Defendant Long told Plaintiff that if he saw him using an amplification device to engage in free speech activities, “I will definitely give you a ticket, because I’ve taken time out of my very, very, very busy day to explain this to you...”

82. Defendant Long also advised that even one complaint would be cause to shut down amplified free speech activity.

83. Defendant Long explained that the Syracuse Police Department has taken amplification devices away from Right to Life groups and others engaging in expressive activities in the past.

84. Defendant Long stated that he could not give Plaintiff Marcavage permission to use an amplification device to engage in free speech activity, “just like if you called me and asked me to give you a permit to smoke marijuana on the street corner.”

85. Defendant Long conceded that the Syracuse Code of Ordinances needed adjustment and that sound could be regulated more efficiently using a decibel-based system.

However, he simultaneously insisted that the City should change the wording of the ordinance to ban amplification altogether.

86. Plaintiff Marcavage then asked Defendant Long if a permit was required in order to distribute religious material. Defendant Long answered in the affirmative.

87. Defendant Long advised that if the Syracuse Police Department witnessed Plaintiff Marcavage distributing literature without a permit, Defendant Long would be called to the scene and Plaintiff Marcavage would then be asked to leave.

88. When Plaintiff Marcavage inquired what would happen if he continued to distribute literature, Defendant Long advised that Plaintiff would be arrested.

89. Defendant Long had called Plaintiff Marcavage on a recorded line, which contained a pre-announcement that the call would be monitored or recorded. The call was recorded in compliance with the laws of the State of New York and the Commonwealth of Pennsylvania. (See Exhibits E and F)

90. Defendant Long later faxed a copy of the City's noise ordinance to Plaintiff Marcavage.

91. Plaintiff Marcavage had desired to engage in amplified free speech activity and distribute literature in the commercial zones of the city, but was prevented from doing so because of the actions of the Syracuse Police Department. Therefore, he lost valuable opportunities to engage in constitutionally-protected free speech activities.

92. Plaintiffs would like to return to the City of Syracuse to freely engage in constitutionally-protected activities, but cannot do so without the constant looming threat of citation and/or arrest.

93. Plaintiffs have thoroughly exhausted all means of attempting to find resolution with the City of Syracuse, its police department and aforementioned representatives concerning the cited ordinances, and have no other remedy available to regain their constitutional rights than through the immediate intervention of this court through a temporary restraining order and preliminary injunction.

94. Plaintiffs have suffered, are suffering and will continue to suffer irreparable harm from Defendants' profound abuse of the historical, fundamental and long-established rights to the free exercise of religion, freedom of speech and freedom of the press unless this court intervenes in this matter.

V. ALLEGATIONS OF LAW

FIRST CAUSE OF ACTION - 42 USC § 1983

The ordinances, as applied, violate the U.S. Const. Amend. 1 – 42 U.S.C. § 1983

95. Plaintiffs re-allege and incorporate herein the foregoing paragraphs of this Complaint as if repeated verbatim.

96. The First Amendment to the United States Constitution guarantees the free exercise of religion.

97. Plaintiffs' proclamation of their religious beliefs to passersby on a public sidewalk in the City of Syracuse also constitutes the free exercise of religion that is protected by the First Amendment to the United States Constitution.

98. The application of the City of Syracuse's Sound Reproduction Ordinance by Officer John Doe, Officer James Doe, Officer Paul Kluge and Deputy Chief Joseph Cecile to require a permit in order to engage in amplified free speech activity violated Plaintiffs' First Amendment right to free exercise of religion in the following particulars, including but not limited to:

- a. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity did not serve a compelling government interest.
- b. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity was not narrowly tailored.
- c. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity failed to provide reasonable alternative avenues for expression.
- d. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity constituted an invalid prior restraint.
- e. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity infringed upon Plaintiff's right to spontaneous and anonymous speech.

99. The application of the Syracuse Sound Reproduction Ordinance by Lieutenant Richard Shoff and Sergeant Michael Long in placing a complete ban on amplified free speech activity violated Plaintiffs' First Amendment right to the free exercise of religion in the following particulars, including but not limited to:

- a. Defendants' complete ban on engaging in amplified free speech activity did not serve a compelling government interest.
- b. Defendants' complete ban on engaging in amplified free speech activity was not narrowly tailored.
- c. Defendants' complete ban on engaging in amplified free speech activity failed to provide reasonable alternative avenues for Plaintiffs' expression.

100. Defendant Long's application of the City of Syracuse's Bill and Sampling Ordinance to prohibit Plaintiffs from distributing literature without a permit violated Plaintiff's First Amendment right to free exercise of religion in the following particulars, including but not limited to:

- a. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse constituted an invalid prior restraint on freedom of the press.
- b. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse infringed upon Plaintiffs' right to spontaneity and anonymity.
- c. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse did not serve a compelling government interest.
- d. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse was not narrowly tailored.

- e. Defendant Long's requirement of a permit to distribute religious literature failed to provide reasonable alternative avenues for Plaintiff's expression.

101. The First Amendment to the United States Constitution guarantees freedom of speech.

102. Plaintiffs' proclamation of their religious beliefs to passersby on a public sidewalk in the City of Syracuse constitutes free speech and expression that is protected by the First Amendment to the United States Constitution.

103. The public streets and sidewalks of the City of Syracuse constitute traditional public forums.

104. The application of the City of Syracuse's Sound Reproduction Ordinance by Officer John Doe, Officer James Doe, Officer Paul Kluge and Deputy Chief Joseph Cecile to require a permit in order to engage in amplified free speech activity violated Plaintiffs' First Amendment right to free speech in the following particulars, including but not limited to:

- a. Defendant's requirement of obtaining a permit in order to engage in amplified free speech activity did not serve a compelling government interest.
- b. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity was not narrowly tailored.
- c. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity failed to provide reasonable alternative avenues for Plaintiff's expression.

- d. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity constituted an invalid prior restraint.
- e. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity infringed upon Plaintiff's right to engage in anonymous and spontaneous speech.

105. The application of the Syracuse Sound Reproduction Ordinance by Lieutenant Richard Shoff and Sergeant Michael Long in placing a complete ban on amplified free speech activity violated Plaintiffs' First Amendment right to free speech in the following particulars, including but not limited to:

- a. Defendants' complete ban on engaging in amplified free speech activity did not serve a compelling government interest.
- b. Defendants' complete ban on engaging in amplified free speech activity was not narrowly tailored.
- c. Defendants' complete ban on engaging in amplified free speech activity failed to provide reasonable alternative avenues for Plaintiff's expression.

106. The First Amendment to the United States Constitution guarantees freedom of the press.

107. The distribution of non-commercial literature on a public sidewalk constitutes activity protected by the First Amendment.

108. Defendant Long's application of the City of Syracuse's Bill and Sampling Ordinance to prohibit Plaintiffs from distributing literature without a permit violated Plaintiffs' First Amendment right to freedom of the press in the following particulars, including but not limited to:

- a. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse constituted an invalid prior restraint on freedom of the press.
- b. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse infringed upon Plaintiffs' right to spontaneity and anonymity.
- c. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse did not serve a compelling government interest.
- d. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse was not narrowly tailored.
- e. Defendant Long's requirement of a permit to distribute religious literature failed to provide reasonable alternative avenues for Plaintiff's expression.

109. In adopting and enforcing the Ordinance against Plaintiffs, the Defendants have acted and continue to act under the color of the law of the State of New York.

110. Defendants' enforcement of the Code is in accordance with the official custom, policy and practice of Defendant City of Syracuse.

111. Defendant Chief Frank Fowler failed to act in his supervisory duties as chief of the Syracuse Police Department to preserve Plaintiffs' First Amendment rights.

112. Plaintiffs are entitled to relief under 42 U.S.C. § 1983 for the deprivation of their First Amendment rights caused by defendants.

SECOND CAUSE OF ACTION - 42 USC § 1983

The ordinances, on their face, violate the U.S. Const. Amend. 1 – 42 U.S.C. § 1983

113. Plaintiffs re-allege and incorporate herein the foregoing paragraphs of this Complaint as if repeated verbatim.

114. The Syracuse Sound Reproduction Ordinance, on its face, violates the First Amendment to the United States Constitution in the following particulars, including but not limited to:

- a. Portions of the Ordinance create a chilling effect on expression that is protected by the First Amendment to the United States Constitution.
- b. Portions of the Ordinance are overbroad, allowing for the prohibition of constitutionally protected expression as well expression that may be constitutionally proscribed.

115. The Syracuse Sound Reproduction Ordinance is the official policy of Defendants.

116. The Syracuse Bill and Sampling Ordinance, on its face, violates the First Amendment to the United States Constitution in the following particulars, including but not limited to:

- a. The ordinance creates a chilling effect on expression that is protected by the First Amendment to the United States Constitution.
- b. By placing a prior restraint upon the distribution of literature, the ordinance squelches the spontaneity of printed speech that is protected by the First Amendment to the United States Constitution.
- c. The ordinance violates Plaintiffs' right to the anonymity of speech that is protected by the First Amendment to the United States Constitution

through the requirement of completing and submitting a permit application.

- d. The ordinance does not serve a compelling government interest in barring non-New York State residents from distributing literature.

117. The Syracuse Bill and Sampling Ordinance is the official custom, policy and practice of Defendants.

118. Plaintiffs are entitled to relief under 42 U.S.C. § 1983 for the deprivation of their First Amendment rights caused by defendants.

THIRD CAUSE OF ACTION - 42 USC § 1983

Section 40-16 (a), on its face, violate the U.S. Const. Amend. 14 – 42 U.S.C. § 1983

119. Plaintiffs re-allege and incorporate herein the foregoing paragraphs of this Complaint as if repeated verbatim.

120. The Syracuse Sound Reproduction Ordinance violates the Fourteenth Amendment to the United States Constitution in the following particulars, including but not limited to:

- a. Said portion of the Ordinance is unconstitutionally vague, failing to provide adequate notice as to what expressive conduct is prohibited.
- b. Said portion of Ordinance vests unfettered discretion in City police officers to make decisions concerning enforcement of the ordinance absent sufficient objective guidelines.

121. The Syracuse Sound Reproduction Ordinance is the official custom, policy and practice of the defendants.

122. Plaintiffs are entitled to relief under 42 U.S.C. § 1983 for the deprivation of their Fourteenth Amendment rights caused by Defendants.

FOURTH CAUSE OF ACTION – NY CONST. ART. 1, §3

**The ordinances on their face, and as applied, violate Article 1, § 3 of the New York
Constitution**

123. Plaintiffs re-allege and incorporate the foregoing paragraphs of this Complaint as if repeated verbatim.

124. The Constitution of the State of New York, Art. I, § 3, protects the free exercise of religion.

125. Plaintiff's proclamation of their religious beliefs to passersby on a public sidewalk in the City of Syracuse constitutes speech and expression that is protected by the Constitution of the State of New York, Art. I, § 3.

126. The Syracuse Sound Reproduction Ordinance on its face violates the Constitution of the State of New York, Art. I, § 3 in the following particulars, including, but not limited to:

- a. The Ordinance creates a chilling effect on constitutionally-protected free speech.
- b. The Ordinance is overbroad, allowing for the prohibition of constitutionally protected expression as well expression that may be constitutionally proscribed.

127. The distribution of religious materials on a public sidewalk constitutes activity protected by the Constitution of the State of New York, Art. I, § 3.

128. The Syracuse Bill and Sampling Ordinance on its face violates the Constitution of the State of New York, Art. 1, § 3, in the following particulars, including, but not limited to:

- a. The Ordinance places an unconstitutional prior restraint on freedom of the press.
- b. The Ordinance discourages freedom of the press, while eliminating anonymous and spontaneous speech.
- c. The Ordinance does not serve a compelling government interest.
- d. The Ordinance is not narrowly tailored.
- e. The Ordinance fails to provide reasonable alternative avenues for expression.

129. The application of the City of Syracuse's Sound Reproduction Ordinance by Officer John Doe, Officer James Doe, Officer Paul Kluge and Deputy Chief Joseph Cecile to require a permit in order to engage in amplified free speech activity violated the Constitution of the State of New York, Art. I, § 3, in the following particulars, including but not limited to:

- a. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity did not serve a compelling government interest.
- b. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity failed to provide reasonable alternative avenues for expression.
- c. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity constituted an invalid prior restraint on speech.

- d. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity infringed upon Plaintiff's right to engage in anonymous and spontaneous speech.

130. The application of the Syracuse Sound Reproduction Ordinance by Lieutenant Richard Shoff and Sergeant Michael Long in placing a complete ban on amplified free speech activity violated the Constitution of the State of New York, Art. I, § 3, in the following particulars, including but not limited to:

- a. Defendants' complete ban on engaging in amplified free speech activity did not serve a compelling government interest.
- b. Defendants' complete ban on engaging in amplified free speech activity was not narrowly tailored.
- c. Defendants' complete ban on engaging in amplified free speech activity failed to provide reasonable alternative avenues for Plaintiff's expression.

131. Defendant Long's application of the City of Syracuse's Bill and Sampling Ordinance to prohibit Plaintiffs from distributing literature without a permit violated Plaintiffs' right to freedom of the press under the Constitution of the State of New York, Art. I, § 3, in the following particulars, including but not limited to:

- a. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse constituted an invalid prior restraint on freedom of the press.
- b. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse infringed upon Plaintiffs' right to spontaneity and anonymity.

- c. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse did not serve a compelling government interest.
- d. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse was not narrowly tailored.
- e. Defendant Long's requirement of a permit to distribute religious literature failed to provide reasonable alternative avenues for Plaintiff's expression.

132. Defendant Long's enforcement of the Code is in accordance with the official custom, policy and practice of Defendant City of Syracuse.

133. Defendant Chief Frank Fowler failed to act in his supervisory duties as chief of the Syracuse Police Department to preserve Plaintiffs' First Amendment rights.

134. Plaintiffs are entitled to declaratory and injunctive relief for violation of their rights under the NY State Constitution.

FIFTH CAUSE OF ACTION – NY CONST. ART. I, §8

The ordinances on their face, and as applied, violate Article 1, § 8 of the New York Constitution

135. Plaintiffs re-allege and incorporate the foregoing paragraphs of this Complaint if repeated verbatim.

136. The Constitution of the State of New York, Art. I, § 8 protects freedom of speech.

137. Plaintiffs' proclamation of their religious beliefs to passersby on a public sidewalk in the City of Syracuse constitutes free speech and expression that is protected by The Constitution of the State of New York, Art. I, § 8.

138. The public streets and sidewalks of the City of Syracuse constitute traditional public forums.

139. The Syracuse Sound Reproduction Ordinance on its face violates The Constitution of the State of New York, Art. I, § 8 in the following particulars, including, but not limited to:

- a. The Ordinance creates a chilling effect on constitutionally-protected free speech.
- b. The Ordinance is overbroad, allowing for the prohibition of constitutionally protected expression as well expression that may be constitutionally proscribed.

140. The Constitution of the State of New York, Art. I, § 8 protects freedom of the press.

141. The distribution of religious materials on a public sidewalk constitutes freedom of the press protected by the Constitution of the State of New York, Art. I, § 8.

142. The Syracuse Bill and Sampling Ordinance on its face violates the Constitution of the State of New York, Art. 1, § 8 in the following particulars, including, but not limited to:

- a. The Ordinance places an unconstitutional prior restraint on freedom of the press.
- b. The Ordinance discourages freedom of the press, while eliminating anonymous and spontaneous speech.
- c. The Ordinance does not serve a compelling government interest.
- d. The Ordinance is not narrowly tailored.

- e. The Ordinance fails to provide reasonable alternative avenues for expression.

143. The application of the City of Syracuse's Sound Reproduction Ordinance by Officer John Doe, Officer James Doe, Officer Paul Kluge and Deputy Chief Joseph Cecile to require a permit in order to engage in amplified free speech activity violated his right to free speech under the Constitution of the State of New York, Art. I, § 8, in the following particulars, including but not limited to:

- a. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity was not the least restrictive means of furthering a compelling government interest.
- b. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity failed to provide reasonable alternative avenues for expression.
- c. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity constituted an invalid prior restraint on speech.
- d. Defendants' requirement of obtaining a permit in order to engage in amplified free speech activity infringed upon Plaintiffs' right to engage in anonymous and spontaneous speech.

144. The application of the Syracuse Sound Reproduction Ordinance by Lieutenant Richard Shoff and Sergeant Michael Long in placing a complete ban on amplified free speech activity violated Plaintiffs' right to free speech under the Constitution of the State of New York Art. I, § 8 in the following particulars, including but not limited to:

- a. Defendants' complete ban on engaging in amplified free speech activity did not serve a compelling government interest.
- b. Defendant complete ban on engaging in amplified free speech activity was not narrowly tailored.
- c. Defendants' complete ban on engaging in amplified free speech activity failed to provide reasonable alternative avenues for expression.

145. Defendant Long's application of the City of Syracuse's Bill and Sampling ordinance to prohibit Plaintiffs from distributing literature without a permit violated Plaintiffs' right to freedom of the press under the Constitution of the State of New York, Art. I, § 8 in the following particulars, including but not limited to:

- a. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse constituted an invalid prior restraint on freedom of the press.
- b. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse infringed upon Plaintiffs' right to spontaneity and anonymity.
- c. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse did not serve a compelling government interest.
- d. Defendant Long's requirement of a permit to distribute religious literature on the streets and sidewalks of the City of Syracuse was not narrowly tailored.

- e. Defendant Long's requirement of a permit to distribute religious literature failed to provide reasonable alternative avenues for expression.

146. Defendants' enforcement of the Code is in accordance with the official custom, policy and practice of Defendant City of Syracuse.

147. Defendant Chief Frank Fowler failed to act in his supervisory duties as chief of the Syracuse Police Department to preserve Plaintiffs' rights.

148. Plaintiffs are entitled to relief for the deprivation of their rights caused by Defendants.

SIXTH CAUSE OF ACTION – 42 U.S.C. § 1985 (3)

Conspiracy

149. Plaintiffs re-allege and incorporate the foregoing paragraphs of this Complaint if repeated verbatim.

150. Plaintiffs assert that Defendants conspired to systematically frustrate Plaintiffs' constitutionally-protected rights to engage in amplified free speech activity out of fear of noise complaints, and thereby abused their authority by bullying Plaintiffs to submit to their unconstitutional demands under threats of citation and arrest.

151. As a result of Defendants' actions, Plaintiffs were denied the right to engage in constitutionally-protected speech.

SEVENTH CAUSE OF ACTION

Injunctive Relief

152. Plaintiffs re-allege and incorporate the foregoing paragraphs of this Complaint if repeated verbatim.

153. The actual and threatened enforcement of the ordinances have prevented and will prevent Plaintiffs from exercising their rights to free exercise of religion, freedom of speech and freedom of the press under the Constitutions of the United States and New York.

154. The restriction on Plaintiffs' exercise of their constitutional rights constitutes irreparable harm.

155. Plaintiffs request that Defendants be enjoined from enforcing the ordinances.

EIGHTH CAUSE OF ACTION - 28 USC §§ 2201-2202

Declaratory Judgment Under 28 USC §§ 2201-2202

156. Plaintiffs re-allege and incorporate the foregoing paragraphs of this Complaint if repeated verbatim.

157. There presently exists between Plaintiffs and Defendants an actual, justiciable controversy over whether Plaintiffs may use an amplification device to express their sincerely-held religious beliefs on the public streets and sidewalks of the City of Syracuse and distribute religious materials without a license, and whether the applicable ordinances are unconstitutional on their face.

158. The Court should declare the respective rights and liabilities of Plaintiffs and Defendants regarding Plaintiffs' right to engage in constitutionally-protected expression and the constitutionality of the ordinances.

159. A judgment should be entered under 28 U.S.C. § 2201 declaring said ordinances unconstitutional on their face and/or as applied to Plaintiffs, and that Plaintiffs have the right to express their sincerely-held religious beliefs using an amplification device on the public streets and sidewalks of the City of Syracuse under circumstances including, but

not limited to, those described herein, and that Plaintiffs may distribute religious materials without a permit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- a. Assume jurisdiction over this action;
- b. That a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring Section 40-16 (a) of the Syracuse Code of Ordinances as being unconstitutional on its face and as applied to Plaintiffs under the First and Fourteenth Amendments to the United States Constitution;
- c. That a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring Section 7 of the Syracuse Code of Ordinances as being unconstitutional on its face and as applied to Plaintiffs under the First Amendment to the United States Constitution;
- d. That a temporary restraining order and preliminary injunction be entered forbidding the Defendants, their officers and agents from enforcing the ordinances against Plaintiffs;
- e. That this Court award Plaintiffs nominal, compensatory and punitive damages in an amount to be determined at trial;
- f. That if Plaintiffs should decide to hire counsel during the course of this legal challenge, that Defendants pay Plaintiffs attorney's fees pursuant to 42 U.S.C. § 1983, together with the costs of this litigation; and
- g. That this Court grants such other relief as is deemed just and proper.

Demand for Jury Trial

As pursuant to the Federal Rules of Civil Procedure, I request a jury trial in this action of all issues deemed proper of a trial by jury.

Respectfully submitted,

Date: _____

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