IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NIKKI BRUNI; JULIE COSENTINO; CYNTHIA RINALDI; KATHLEEN LASLOW; and **PATRICK MALLEY,**	)	
Plaintiffs,	)	Case No. 2:14-cv-01197-CB
v.	)	
CITY OF PITTSBURGH; PITTSBURGH CITY COUNCIL; and **WILLIAM PEDUTO,** in his official capacity as Mayor of the City of Pittsburgh,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Through this Motion for Preliminary injunction, Plaintiffs Nikki Bruni, Julie Cosentino, Cynthia Rinaldi, Kathleen Laslow, and Patrick Malley (hereinafter "Plaintiffs") challenge the constitutionality of Defendants' Ordinance, Pittsburgh Code of Ordinances § 623.01 *et seq.* (hereinafter "the Ordinance"), on its face and as applied to Plaintiffs' peaceful expressive activities. The Ordinance creates a fixed anti-speech buffer with a radius of 15 feet (hereinafter "buffer zone") around the entrances to health care facilities. *Id.* at § 623.04. Within these buffer zones, one may not "knowingly congregate, patrol, picket or demonstrate in a zone extending 15 feet from any entrance to the hospital or health care facility." *Id.* "Health care facilities" where these anti-speech zones exist include untold numbers of locations such as buildings with eye doctors, dentists, chiropractors, and various other facilities where the City has not even alleged the existence of problems that it weakly claims exist outside one abortion center downtown. *See id.* at § 623.02.

This motion requests the Court to preliminarily enjoin Defendants from enforcing the Ordinance, in order to prevent the Ordinance from continuing to violate Plaintiffs' and others' free speech rights under the recent Supreme Court decision *McCullen v. Coakley*, 134 S. Ct. 2518 (2014). *McCullen* unanimously overturned a Massachusetts law which created fixed 35-foot buffer zones outside of reproductive health care facilities, finding that the law was an unconstitutional violation of the First Amendment guarantee to freedom of speech. *McCullen* made it clear that free speech cannot be restricted at locations throughout a jurisdiction when only one abortion center is alleged to be the cause of problems; that even at such an abortion center the problems of disturbance and obstruction must be regulated directly without banning speech; and that laws are content based if they allow abortion workers to speak but not pro-life advocates, or if they attempt

to restrict speech because of its "discomfort" or "offense." *Id.* at 2538-39, 2532. This Ordinance fails under these rules set forth in *McCullen*. The Ordinance violates the First Amendment because it is vastly overbroad, and is neither content neutral nor narrowly tailored to serve any government interests. The continued violation of Plaintiffs' and third parties' First Amendment rights constitutes irreparable harm. Yet despite *McCullen*, the Ordinance and Defendants' enforcement thereof persists unabated. Thus, Plaintiffs respectfully request that this Court grant Plaintiffs' motion for preliminary injunction.

FACTUAL BACKGROUND[1]

This action challenges the constitutionality, facially and as applied, with respect to Plaintiffs and the rights of third parties, of the Ordinance, which creates a fixed buffer with a radius of 15 feet (hereinafter "buffer zone") around the entrances to health care facilities. Verified Complaint ("VC") ¶ 1. Within these buffer zones, one may not "knowingly congregate, patrol, picket or demonstrate in a zone extending 15 feet from any entrance to the hospital or health care facility." Ordinance § 623.04.[2] Health care facilities include any "establishment providing therapeutic, preventative, corrective, healing and health-building treatment services on an out-patient basis by physicians, dentists and other practitioners." *Id.* at § 623.02. The Ordinance therefore creates anti-speech zones on the entrances to numerous facilities that provide any health care services, not just abortion facilities, including, hospitals, dentists, eye doctors, chiropractors and countless other locations. VC ¶¶ 2, 23, 63. And because new health care facilities open in a

[1] Plaintiffs rely on the sworn assertions in the accompanying Verified Complaint, which is summarized here.

[2] The Ordinance provides for penalties, with a first offense punishable "by a fine of at least $50 for the first offense; a fine of at least $150 for a second offense within five years; and a fine of $300 for a third offense within five years." Ordinance § 623.05. "For fourth and subsequent offenses within five years the fine shall not be less than $300.00 and/or imprisonment for not less than three days but not more than 30 days." *Id.*

variety of office buildings and zones, the Ordinance continually spawns new anti-speech zones on public sidewalks and ways throughout the City. VC ¶ 2.

In enacting the Ordinance, the stated "Intent of Council," § 623.01, is as follows:

> The City Council recognizes that access to Health Care Facilities for the purpose of obtaining medical counseling and treatment is important for residents and visitors to the City. The exercise of a person's right to protest or counsel against certain medical procedures is a First Amendment activity that must be balanced against another person's right to obtain medical counseling and treatment in an unobstructed manner; and The City of Pittsburgh Bureau of Police has been consistently called upon in at least two locations within the City to mediate the disputes between those seeking medical counseling and treatment and those who would counsel against their actions so as to (i) avoid violent confrontations which would lead to criminal charges and (ii) enforce existing City Ordinances which regulate use of public sidewalks and other conduct; Such services require a dedicated and indefinite appropriation of policing services, which is being provided to the neglect of the law enforcement needs of the Zones in which these facilities exist. The City seeks a more efficient and wider deployment of its services which will help also reduce the risk of violence and provide unobstructed access to health care facilities by setting clear guidelines for activity in the immediate vicinity of the entrances to health care facilities; The Council finds that the limited buffer and bubble zones outside of health care facilities established by this chapter will ensure that patients have unimpeded access to medical services while ensuring that the First Amendment rights of demonstrators to communicate their message to their intended audience is not impaired.

Thus, the alleged interests supporting the Ordinance are to "reduce the risk of violence," and to "provide unobstructed access to health care facilities" (or providing "unimpeded access to medical services"). The Ordinance provides no specific instances of obstructive or violent conduct outside of hospitals or health care facilities in Pittsburgh to provide support for the law; the best it can muster is references that the police have been "consistently called upon in at least two locations within the City to mediate disputes between those seeking medical counseling and treatment and those who would counsel against their actions . . . ." *Id.* at 623.01. The Ordinance provides no evidence showing that anti-speech buffer zones are necessary to prevent violence and obstruction, instead of laws prohibiting violence and obstruction.

The Act explicitly provides an exception for "employees or agents of the hospital, medical office or clinic engaged in assisting patients and other persons to enter or exit the hospital, medical office, or clinic." *Id.* at § 623.04.[3] Thus, the exemption for employees extends to abortion clinic escorts who escort patients into the abortion facility, and would include any speech they engage in while they are providing such assistance. VC ¶ 35. Additionally, upon information and belief, the Ordinance is only enforced outside of health care facilities which provide abortions, though, by its terms, the Ordinance creates a buffer zone at every hospital and health care facility in the City. VC ¶ 33.

Plaintiffs regularly engage in peaceful prayer, leafleting, sidewalk counseling, pro-life advocacy, and other expressive activities outside of the Planned Parenthood abortion facility, located at 933 Liberty Avenue. VC ¶ 38. Outside of the facility, a yellow semi-circle demarcates the buffer zone in which the Ordinance prohibits congregating, patrolling, picketing or demonstrating. VC ¶ 41. The Ordinance prohibits Plaintiffs from effectively reaching their intended audience by prohibiting speech within a 15-foot or larger radius of every entrance to a hospital or health care facility in the City. VC ¶ 30. The zones make it more difficult to Plaintiffs to engage in sidewalk counseling, prayer, advocacy, and other expressive activities. VC ¶ 66. No speech activities on the public sidewalks and ways outside Planned Parenthood in recent years have caused a problem preventing access to its entrances, and no speech activities anywhere else in Pittsburgh are even alleged (much less demonstrated) to have caused some kind of problem necessitating the Ordinance. VC ¶ 42.

Defendants are prohibiting the speech of Plaintiffs and others not before this Court in traditional public fora where speech protections are at their highest. The Ordinance is vastly

[3] The Ordinance also provides for an exception for "police and public safety officers, [and] fire and rescue personnel." § 623.04

overbroad and not narrowly tailored, and violates the First Amendment to the United States Constitution on its face with respect to Plaintiffs and others in zones around the City, and as applied to Plaintiffs.[4] Unless this Court grants Plaintiffs injunctive relief, the Plaintiffs' and others' rights to engage in expressive activity will be squelched, causing irreparable harm to their freedom of speech as protected by the First Amendment. The City, however, will suffer no injury from injunctive relief issued against its unjustified attack on free speech. A preliminary injunction will restore robust freedom of speech in Pittsburgh, which has caused no cognizable public or personal harm and has instead yielded great public benefit. Accordingly, this Court should grant preliminary injunctive relief to prevent further irreparable harm to Plaintiffs' and others' constitutional rights.

ARGUMENT

In ruling on a motion for a preliminary injunction, the Third Circuit has held that courts must consider: "(1) the likelihood that the plaintiff will prevail on the merits at final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the injunction is issued; and (4) the public interest." *Merchant & Evans, Inc. v. Roosevelt Bldg. Prods.*, 963 F.2d 628, 632–33 (3d Cir. 1992).

I. Plaintiffs have demonstrated a likelihood of success on the merits.

Since this case is governed by the Supreme Court's recent decision in *McCullen v. Coakley*, which held a similar law unconstitutional, Plaintiffs will clearly prevail on the merits. Under *McCullen*, this law violates Plaintiffs' and others' First Amendment free speech rights because it is overbroad, it is not narrowly tailored, and it is not content neutral.

[4] Plaintiffs' Verified Complaint, in addition to the First Amendment cause of action, raises other constitutional claims. Due to the strength of Plaintiffs' First Amendment claim, this motion focuses on the First Amendment claim only.

A. Plaintiffs' and others' expression is entitled to protection.

Leafleting and education on the public sidewalk is protected by the First Amendment. "Leafleting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at is most protected on sidewalks, a prototypical example of a traditional public forum." *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 377 (1997); *see also McCullen*, 134 S.Ct. at 2536 ("handing out leaflets in the advocacy of a politically controversial viewpoint . . . is the essence of First Amendment expression, no form of speech is entitled to greater constitutional protection.") (internal citations and quotations omitted).

Quiet leafleting, as Plaintiffs seek to do, constitutes the most cherished form of speech under the Constitution. "'[O]ne-on-one communication' is 'the most effective, fundamental, and perhaps economical avenue of political discourse.'" *McCullen,* 134 S.Ct. at 2536 (quoting *Meyer v. Grant*, 486 U. S. 414, 424 (1988)). "When the government makes it more difficult to engage in these modes of communication, it imposes an especially significant First Amendment burden." *Id.* "It is thus no answer to say that petitioners can still be 'seen and heard' by women within the buffer zones," when under the Ordinance they must stop at the edge of the zones and raise their voices if they want to be heard by people in them. *Id.* at 2536. The speech of Plaintiffs is clearly entitled to constitutional protection.

B. The public ways and sidewalk areas are traditional public fora.

Constitutionally permissible regulation of protected speech depends in significant part on the location of the speech. *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). The Ordinance bans certain speech in a "public way or sidewalk area" outside of any hospital or health care facility, and therefore Defendants are prohibiting speech within a traditional public forum, where the

government's ability to restrict expression is at its lowest. Traditional public fora are places such as streets, parks, and sidewalks, which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147. 152 (1969) (internal citations omitted). "Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens," and therefore, this right "must not, in the guise of regulation, be abridged or denied." *Id.* Such traditional public fora "are open for expressive activity regardless of the government's intent." *Ark. Educ. Television Comm'n v. Fobes*, 523 U.S. 666, 678 (1998). The public ways and sidewalk areas implicated in this case are innumerable. They include sidewalks and public areas throughout town because the Ordinance's zones apply outside every "health care facility" including buildings with dentist offices, eye doctors, chiropractors, and countless other locations throughout Pittsburgh. It would be hard to locate many streets in the City without one of these offices.

C. The Ordinance is overbroad.

An ordinance is facially overbroad if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 n.6 (2008). The overbreadth doctrine prohibits laws that "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama*, 377 U.S. 288, 307 (1964). Accordingly, a law is void for overbreadth where it "does not aim specifically at evils within the allowable area of [government] control but . . . sweeps within its ambit other activities that in ordinary circumstances constitute an exercise" of protected rights. *Alabama v. Thornhill*, 310 U.S. 88, 97 (1940).

The Ordinance must be struck down on its face because of its overbreadth in restricting speech not only of Plaintiffs but of third parties not before the court on sidewalks in countless locations throughout the City where there is no plausible justification for the Ordinance. *McCullen* dealt with a law in Massachusetts that only restricted speech outside of abortion facilities, but it did so outside of all abortion facilities in the state despite there being few, if any, allegations of problems anywhere except one abortion facility in Boston. The Court struck down the law on its face because the law restricted more speech than was necessary to achieve the Commonwealth's alleged interests. Noting that issues only occurred at one clinic once a week, the Court stated that"[f]or a problem shown to arise only once a week in one city at one clinic, creating 35-foot buffer zones at every clinic across the Commonwealth is hardly a narrowly tailored solution." *McCullen*, 134 S.Ct. at 2539. Here, the Ordinance itself only mentions an alleged problems outside of "at least two" health care facilities (presumably abortion facilities), but proceeds to ban speech in zones outside any "health care facility" with an extremely broad definition encompassing countless locations. The free speech of citizens cannot be so cavalierly suppressed.

A law restricting core free speech on traditional public fora is facially unconstitutional and requires injunctive relief due to its overbreadth with respect to the rights of persons not before the Court. Even if the Court deems Plaintiffs' rights not violated by the ordinance, they may obtain injunctive relief for speakers who are not before the Court but who are nevertheless unconstitutionally chilled in their speech. *See Hodgkins v. Peterson*, 355 F.3d1048, 1056 (7th Cir. 2004). Therefore, first of all, a preliminary injunction should issue to facially enjoin the Ordinance due to its overbroad restriction of free speech outside countless locations in Pittsburgh with respect to persons not before the Court.

D. The Ordinance is not narrowly tailored to serve any government interest.

The Ordinance is also facially unconstitutional with respect to Plaintiffs' pro-life speech outside abortion facilties, and unconstitutional as applied to them in the past, due to its failing the narrow tailoring standard set forth in *McCullen*. This case is governed by *McCullen*, which unanimously found a similar law unconstitutional. The law at issue in *McCullen* imposed a fixed buffer zone outside the entrances and driveways of abortion clinics in Massachusetts. 134 S.Ct. at 2526. Finding that the Massachusetts law was content neutral (a standard the Ordinance here fails, as explained below), the Court applied narrow tailoring scrutiny such that imposing such restrictions may only be upheld if "the restrictions 'are justified without reference to the content of the regulated speech . . . are narrowly tailored to serve a significant government interest, and . . . leave ample alternative channels for communication of the information.'" *Id.* at 2529 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

Under *McCullen,* this Ordinance is not narrowly tailored, and therefore violates the First Amendment. The Ordinance fails to satisfy the requirement that the restriction on speech be "narrowly tailored to serve a significant government interest." In order to survive the narrow tailoring inquiry, a content-neutral time, place, or manner restriction must not "burden[] substantially more speech than is necessary to further the government's legitimate interests." *Id.* at 2535 (citing *Ward*, 491 U.S. at 799). The Ordinance restricts vastly more speech than is necessary to further any government interest.

Under *McCullen*, if a state has or could enact laws to further the proffered interests without substantially burdening speech unrelated to those interests, then more speech than is necessary is impermissibly burdened. 134 S.Ct at 2537. Here, the City's alleged interests are in "reduc[ing] the risk of violence and provid[ing] unobstructed access to health care facilities." Ordinance § 623.01.

McCullen made clear that there are several less restrictive options available to the government to serve such interests. *McCullen* insists that if the government wishes to serve the interests of "public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways," the government must "look to less intrusive means of addressing its concerns" without curtailing speech. 134 S.Ct. at 2538. Accordingly, where the government is concerned about obstruction, it can rely on laws that specifically curtail obstruction. *Id.* at 2539. If a government is concerned about "harassment" (as distinct from mere speech, even where it is unwelcome), it could pursue a law focusing on harassment. *Id.* Likewise, if a government is concerned about a "public safety risk created when protestors obstruct driveways," it must simply use laws that prohibit blocking driveways. *Id.* at 2538. The government's "interest in preventing congestion in front of abortion clinics" can be served by "more targeted means," such as ordinances which require crowd dispersal. *Id.* A law such as the Ordinance will also fail narrow tailoring due to the availability of "generic criminal statutes forbidding assault, breach of the peace, trespass, vandalism, and the like." *Id.* Finally, narrow tailoring is further undermined by the availability of "targeted injunctions as alternatives to broad, prophylactic measures." *Id.*

Furthermore, the Ordinance applies to all hospitals and health care facilities in Pittsburgh, despite the Ordinance's proclamation that "at least two locations" within the entire City have caused issues with safety. Ordinance § 623.01. *McCullen* noted that "[f]or a problem shown to arise only once a week in one city at one clinic, creating 35-foot buffer zones at every clinic across the Commonwealth is hardly a narrowly tailored solution." 134 S.Ct. at 2539. The Ordinance references no actual evidence of a problem, but points merely to "at least two" abortion facilities where there are alleged difficulties. The Ordinance, by its own definitions, applies to, *inter alia*, dentist offices, out-patient medical laboratories, urgent care facilities, family practitioners,

hospitals—the list is endless under the City's incredibly broad definition of "health care facility." Imposing anti-speech buffer zones outside of every hospital and health care facility where only "at least two" facilities have caused issues in the past is not a narrowly tailored option.

Finally, the Ordinance makes it more difficult to distribute literature and engage in personal conversations. In *McCullen*, the Court noted the historical importance of such forms of expression, which date back to the founding of the United States, and their particular importance to the sidewalk counselors' message. 134 S.Ct. at 2536 & n. 5. Sidewalk counselors such as Plaintiffs "are not protestors," and their message of support and alternatives to abortion must be conveyed through quiet, compassionate conversations to be effective. *See id.* at 2536. Plaintiffs wish to engage in the same speech as the Plaintiffs in *McCullen*, but are restricted in doing so by the Ordinance. VC ¶¶ 3-4, 44. The speech in which Plaintiffs desire to engage is non-violent, peaceful, and non-obstructive. Defendants cannot therefore serve an interest in public safety by restricting the speech of Plaintiffs.

The Supreme Court gives the City no ability to pursue the interests of reducing violence and obstruction by *restricting speech itself*. It must instead simply ban violence and obstruction. But the City has pursued none of such narrowly tailored options, and has instead opted to create a plethora of anti-speech zones outside of every hospital and health care facility. Thus, no government interest Defendants assert supports the Ordinance is sufficient to justify its attempt to directly target speech as to the alleged "harm" to be remedied. The City cannot demonstrate that the Ordinance is narrowly tailored because it "has not shown that it seriously undertook to address the problem with less intrusive tools readily available to it." *Id.* at 2539. It is not at all clear that Defendants have tried any tools to address the alleged problems outside of health care facilities, even if such problems actually exist. Since the Ordinance substantially burdens the Plaintiffs'

speech while failing to pursue less intrusive means to achieve its interests, the Ordinance is not narrowly tailored, and violates the First Amendment.

E. The Ordinance is a content- and viewpoint-based restriction as applied to Plaintiffs' expressive activities.

The Ordinance is content and viewpoint based on its face, as distinct from the Massachusetts law for reasons explained in *McCullen*. And the Ordinance is applied in a discriminatory manner, based on the content, as well as the viewpoint, of expressive activities of Plaintiffs and others not before this court. It is therefore subject to strict scrutiny, a standard which cannot be met here.

As a general rule, regulations that permit the government to discriminate on the basis of content cannot be tolerated under the First Amendment. *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 118 (1991). "Government regulation of expressive activity is content neutral so long as it is 'justified without reference to the content of the regulated speech.'" *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (internal citations omitted). The Supreme Court has instructed that "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views."*Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972).

The Ordinance is content and viewpoint discriminatory in a variety of ways. First, on its face the Ordinance restricts speech based on its content. *McCullen* explains that a law is content based if "it required 'enforcement authorities' to 'examine the content of the message that is to be conveyed to determine whether' a violation has occurred." 134 S.Ct. at 2531 (internal citations omitted).[5] *McCullen* explained that the Massachusetts law in that case was not content based

[5] Notably, this test for content-based speech was rejected in *Hill v. Colorado*, 530 U.S. 703, 720-24 (2000). But the more recent and unanimous definition set forth in *McCullen* controls.

because it simply banned people from *being* in the buffer zone, regardless of what they were doing. *Id.* Here in contrast, the Ordinance does not ban a single person being in the buffer zone, it only bans congregating, patrolling, picketing, or demonstrating. Ordinance § 623.04. This is a content based restriction under *McCullen*, because police officers must inquire what kinds of expressive activity a person is doing in the zone in order to know if the Ordinance prohibits their speech. Speech that is not picketing, congregating, patrolling or demonstrating is not banned. Therefore the Ordinance is subject to strict scrutiny, which it fails even more miserably than the content-neutral narrow tailoring test whose failure is described above.

Furthermore, the Ordinance is content and viewpoint based because it exempts facility employees who escort clinic patients into the abortion facility, and by that exemption, exempts their speech. Such employees are able to engage in pro-abortion advocacy, either by, *inter alia*, engaging in speech supportive of abortion, or encouraging women to enter the clinic in order to continue with the abortion procedure. In a previous case involving the Ordinance, the Western District of Pennsylvania ordered that the City ban clinic escorts from picketing and demonstrating. VC ¶ 37. However, the City has failed to amend or otherwise change the Ordinance to reflect this court order. *Id.* Instead, the law continues to allow speech and advocacy by escorts to patients of the abortion facilities. VC ¶ 38. Plaintiffs have observed such clinic escorts engaging in pro-abortion speech and conduct within the confines of the zone, and the escorts have not been charged with a violation of the Ordinance. *See* VC ¶¶ 44, 51, 55. Accordingly, the Ordinance is applied in a viewpoint discriminatory manner under *McCullen*. *McCullen* explained that because the Massachusetts law banned being present in the zones, its exception for abortion clinic employees only allowed them to physically escort women in the scope of their employment, not to engage in advocacy to them during the escorting process. 134 S.Ct. at 2533-34. But the Court noted that if a

law were to allow clinic employees to speak in buffer zones, it would be viewpoint based. *Id.* at 2534 & n.4. Here, the Ordinance allows being in the zone but not speaking, and its exception for abortion clinic employees does not say they cannot speak—it exempts them entirely if they are assisting patients. Therefore this Ordinance exempts the abortion clinic employees' advocacy in the buffer zones while they are assisting patients. As *McCullen* noted, such an exception cannot be tolerated under the Constitution.

Additionally, the Ordinance is content and viewpoint discriminatory as applied. While the Ordinance, by its terms, applies at *every* hospital and health care facility in the City, it is apparently only enforced outside of abortion facilities in response to speech opposing abortion. Accordingly, the Ordinance is only applied in order to restrict speech related to the topic of abortion. The government commits unconstitutional discrimination when it violates the language of its own law to systematically target speech restrictions against one group—pro-lifers outside abortion facilities—while looking the other way at illegal speech at countless other locations.

McCullen dealt with a content-neutral law, and was therefore subject to intermediate scrutiny, a lower standard of review not applicable to content-discriminatory laws such as the Ordinance. The Ordinance, as explained above, cannot meet intermediate scrutiny. The Ordinance cannot survive strict scrutiny, because it is not narrowly tailored to serve *any* interest (much less a compelling interest), and is therefore a violation of Plaintiffs' First Amendment rights.

II. Plaintiffs meet all remaining preliminary injunction factors.

Plaintiffs and others not before the Court have been irreparably harmed by the enforcement of the Ordinance, and will continue to be harmed in the absence of injunctive relief. VC ¶¶ 5, 77. Any loss of constitutional rights is presumed to be irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The Ordinance prohibits Plaintiffs and others from exercising their First Amendment free speech rights on the public sidewalks and ways within the buffer zones. Thus,

Plaintiffs and third parties will be irreparably harmed by the loss of their First Amendment if a preliminary injunction is not granted.

Plaintiffs' and other citizens' hardships if the injunction is not granted far outweighs the City's if the injunction is granted. The City will suffer little, if any, harm if an injunction is issued. In *McCullen*, the Court noted that restrictions on sidewalk counselors' ability to have personal conversations and leaflet "impose an especially significant First Amendment burden." 134 S.Ct. at 2536. If the Ordinance remains in effect, Plaintiffs will be unable to engage in exactly this type of speech. Likewise, free speech all over Pittsburgh will be restricted in locations where the City has never shown an iota of evidence of a problem. Defendants will not suffer any hardship if the injunction is granted. The government has other means available to further its proffered interests in public safety, and little or no evidence of a present problem in the first place. Thus, the balance of equities weighs in favor of Plaintiffs.

An injunction is unquestionably in the public interest. "The constitutional guarantee of free speech 'serves significant societal interests' wholly apart from the speaker's interest in self-expression. . . . By protecting those who wish to enter the marketplace of ideas from government attack, the First Amendment protects the public's interest in receiving information." *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 8 (1986). Indeed, "neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law." *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' motion for preliminary injunction.

Respectfully submitted this 5th day of September, 2014.

s/ Lawrence G. Paladin, Jr.

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