

JURISDICTION

2. This action arises under the United States Constitution, the Pennsylvania Constitution, and Pennsylvania statutes.

3. This Court has original jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331, 1343.

4. These claims are properly challenged pursuant to federal law, particularly 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983, 1988.

5. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

6. This Court has authority to grant the requested injunctive and declaratory relief under 28 U.S.C. §§ 1343(a)(3), 2201-2202; the requested damages under 28 U.S.C. §§ 1343(a)(3), 2202; and attorneys' fees and costs under 42 U.S.C. § 1988.

VENUE

7. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) because Defendants reside and have their principal place of business in the District, and a substantial part of the events giving rise to this action occurred within the District.

IDENTIFICATION OF PLAINTIFF

8. Ms. Brown is and was at all times relevant to this Verified Complaint a resident of Indiana Township, Pennsylvania, which is located in the Western District of Pennsylvania.

IDENTIFICATION OF DEFENDANTS

9. Defendant City of Pittsburgh is a municipal corporation existing under the laws and Constitution of the Commonwealth of Pennsylvania and is a corporate entity capable of suing and being sued.

10. Defendant City of Pittsburgh is responsible for enforcing the Ordinance against Ms. Brown and for arresting, detaining, fining, and punishing individuals alleged to have violated the Ordinance within the corporate limits of the City of Pittsburgh.

11. Defendant Pittsburgh City Council is vested with the legislative power of the City of Pittsburgh, and it enacted the challenged Ordinance on or about December 13, 2005.

12. Defendant Bob O'Connor is the Mayor of the City of Pittsburgh and is sued in his official capacity as Mayor.

13. In his official capacity as Mayor, Defendant Bob O'Connor is charged with executing and enforcing the ordinances of the City of Pittsburgh, including the challenged Ordinance.

14. The Mayor's office, through the former Mayor, approved and executed the challenged Ordinance on or about December 23, 2005.

ALLEGATIONS OF FACT

Background and Religious Beliefs

15. Ms. Brown is a local nurse who has worked for many years in emergency departments, where she treated women with serious complications due to surgical abortions they had suffered in the City of Pittsburgh.

16. As a Christian and member of the Catholic Church, Ms. Brown believes in the sanctity of human life and opposes the practice of abortion, which she believes to be the killing of innocent human life.

17. It is a central tenet of the Catholic faith and a sincerely held religious belief of Ms. Brown that human life must be respected and protected absolutely from the moment of conception.

18. It is a central tenet of the Catholic faith and a sincerely held religious belief of Ms. Brown that the embryo must be defended in its integrity, cared for, and healed, as far as possible, like any other human being.

19. Ms. Brown practices and observes her religion by exercising her right of conscience to counsel individuals and engage in other expressive activities outside abortion facilities.

20. Ms. Brown practices and observes her religion by exercising her right to worship God through the dictate of her conscience to serve God in word and deed by counseling individuals and engaging in other expressive activities outside abortion facilities.

Speech and Expressive Activities

21. Due to her professional nursing experience and sincerely held religious beliefs, Ms. Brown goes to abortion facilities in the City of Pittsburgh on a weekly basis to engage in peaceful sidewalk counseling and other expressive activities.

22. While engaged in sidewalk counseling, Ms. Brown warns women about the physical dangers of abortion; informs them of alternatives to abortion; assists women or otherwise makes referrals for assistance with medical, physical, emotional, and spiritual needs; and counsels family members and friends that often accompany women to abortion facilities.

23. Ms. Brown engages in leafleting concerning abortion and pornography and occasionally displays a sign outside abortion facilities.

24. Due to the personal nature of sidewalk counseling, Ms. Brown speaks in a normal conversational tone, which requires her to stand within eight (8) feet of individuals in order to be heard.

25. Ms. Brown does not yell out to individuals or resort to a sound device in order to be heard because she believes that these methods are counter-productive to counseling on a personal level.

26. Ms. Brown has never trespassed or blocked vehicular or pedestrian ingress or egress to an abortion facility.

27. Ms. Brown has never been arrested, charged, or convicted of any criminal offense related to her conduct of sidewalk counseling and other expressive activities outside abortion facilities.

Description of Abortion Facilities

28. The abortion facilities in the City of Pittsburgh where Ms. Brown engages in speech are Planned Parenthood/Women's Health Services, Allegheny Reproductive Health Center, and Allegheny Women's Center.

29. Planned Parenthood/Women's Health Services is located along a city street in downtown Pittsburgh with its entrance on a public sidewalk.

30. Local businesses and other establishments, including a restaurant and lounge and a sexually oriented business, are located within a radius of one hundred (100) feet from the entrance door to Planned Parenthood/Women's Health Services.

31. The public sidewalk in front of the entrance to Planned Parenthood/Women's Health Services is less than fifteen (15) feet wide.

32. The Allegheny Reproductive Health Center is located on the second floor of a building situated along two city streets in East Liberty with its entrance on a public sidewalk.

33. Local businesses and establishments, including a child care facility, are located within a radius of one hundred (100) feet from the entrance door to the Allegheny Reproductive Health Center.

34. The Allegheny Women's Center is located on the second floor of the Consad Building and is situated along a city street in East Liberty with the entrance to the building on a public sidewalk.

35. The Consad Building contains the Allegheny Women's Center, along with a pizza shop and other businesses, which are located within one hundred (100) feet from the entrance door to the Allegheny Women's Center.

36. The pizza shop is located within fifteen (15) feet of the entrance to the Consad Building.

37. American Women's Services is an abortion facility that is located on the third floor of the Gateway Towers Executive Office Condominium in the City of Pittsburgh.

38. The front entrance of the Gateway Towers Executive Office Condominium is located under an awning covering a private driveway, and the back entrance to the building is situated along a private plaza area.

History of Ordinance

39. On or about December 13, 2005, the Pittsburgh City Council adopted Ordinance No. 49, Bill No. 2005-1944, supplementing the Pittsburgh Code of Ordinances, Title 6, Conduct, Article I: Regulated Rights and Actions, by adding Chapter 623 entitled, Public Safety at Health Care Facilities. (*See* Exh. 1, Ordinance No. 49, Bill No. 2005-1944.)

40. Upon information and belief, the Mayor's office approved and executed the Ordinance on or about December 23, 2005.

41. Upon information and belief, the effective date of the Ordinance is December 30, 2005.

42. In relevant part, the challenged Ordinance provides as follows:

§ 623.03 EIGHT-FOOT PERSONAL BUBBLE ZONE

No person shall knowingly approach another person within eight feet (8') of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet (100') from any entrance door to a hospital and/or medical office/clinic.

§ 623.04 FIFTEEN-FOOT BUFFER ZONE

No person or persons shall knowingly congregate, patrol, picket or demonstrate in a zone extending fifteen feet (15') from any entrance to the hospital and or health care facility. This section shall not apply to police and public safety officers, fire and rescue personnel, or other emergency workers in the course of their official business, or to authorized security personnel 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.

43. Ms. Brown challenges the constitutionality of §§ 623.03, 623.04, both on their face and as applied to her.

Effect of the Ordinance

44. Prior to enactment of the Ordinance, Ms. Brown engaged in peaceful sidewalk counseling and leafleting with individuals who lined up on the public sidewalk waiting to be admitted to the Allegheny Reproductive Health Center in East Liberty for abortions.

45. The effect of the Ordinance is that Ms. Brown is no longer able to approach for peaceful sidewalk counseling and leafleting those individuals she identifies as about to make the life-altering decision to enter the Allegheny Reproductive Health Center for abortions.

46. Prior to enactment of the Ordinance, Ms. Brown approached within eight (8) feet of individuals regardless of consent within a radius of one hundred (100) feet of the entrance doors to abortion facilities and came within fifteen (15) feet of the entrances to abortion facilities.

47. The effect of the Ordinance is that Ms. Brown is required to stand in front of other businesses and establishments on the same side of the street of abortion facilities or across the street on the public sidewalk by other businesses and establishments in order to engage in expressive activities.

48. The effect of the Ordinance is that Ms. Brown is prohibited from engaging in speech as she did prior to enactment of the Ordinance because she may no longer approach within fifteen (15) feet of the entrances of abortion facilities or approach within eight (8) feet of individuals without obtaining their consent, within a radius of one hundred (100) feet of entrance doors to abortion facilities.

49. The effect of the Ordinance is that Ms. Brown is forced to yell out to individuals or resort to amplification in order to communicate her message in a manner audible to those she

seeks to address and eliminates her ability to engage in muted personal conversations with individuals outside abortion facilities.

50. Ms. Brown desires to peacefully counsel individuals and engage in other expressive activities within fifteen (15) feet of the entrances of abortion facilities and approach within eight (8) feet of individuals without obtaining their consent, within a radius of one hundred (100) feet of entrance doors to abortion facilities.

51. Ms. Brown does not desire or intend to physically touch or harass those individuals she seeks to counsel outside abortion facilities in Pittsburgh, but rather to speak to them in a peaceful manner.

52. Ms. Brown does not desire or intend to block or impede ingress or egress to any abortion facility, or encroach upon the private property of any abortion facility.

Enforcement of Ordinance

53. On or about January 28, 2006, without blocking the entrance and while remaining on the public sidewalk, Ms. Brown stood within fifteen (15) feet of the entrance to Planned Parenthood/Women's Health Services so as to engage in peaceful sidewalk counseling and leafleting.

54. At this time, Ms. Brown intended to approach within eight (8) feet of individuals in the public way and sidewalk area without obtaining their consent within a radius of one hundred (100) feet of the entrance door to Planned Parenthood/Women's Health Services, so as to engage in peaceful sidewalk counseling and leafleting.

55. On or about January 28, 2006, while Ms. Brown was so situated, Officer T. Alexander of the Pittsburgh Bureau of Police enforced the Ordinance against Ms. Brown.

56. Officer T. Alexander prohibited Ms. Brown, upon threat of arrest, from engaging in speech within fifteen (15) feet of the entrance to Planned Parenthood/Women's Health Services.

57. Officer T. Alexander prohibited Ms. Brown, upon threat of arrest, from approaching within eight (8) feet of individuals in the public way and sidewalk area without obtaining their consent within a radius of one hundred (100) feet of the entrance door to Planned Parenthood/Women's Health Services to engage in peaceful sidewalk counseling and leafleting concerning abortion.

58. On or about January 28, 2006, Ms. Brown distributed literature opposing pornography as she stood within fifteen (15) feet of the entrance to the abortion facility and as she approached within eight (8) feet of individuals without obtaining their consent in the public way and sidewalk area within a radius of one hundred (100) feet of the entrance door to Planned Parenthood/Women's Health Services.

59. Officer T. Alexander permitted Ms. Brown to distribute literature opposing pornography by approaching within eight (8) feet of individuals without obtaining consent in the public way and sidewalk area within a radius of one hundred (100) feet of the entrance door to Planned Parenthood/Women's Health Services.

60. Ms. Brown complied with Officer T. Alexander's orders and stopped engaging in sidewalk counseling or leafleting about abortion in the restricted areas.

61. Ms. Brown fears that engaging in sidewalk counseling and other expressive activities in the restricted areas outside abortion facilities will subject her to arrest, detention, fine, and punishment under the challenged Ordinance.

62. The threat of arrest, detention, fine, and punishment for violating the Ordinance has caused Ms. Brown to be deterred and chilled in the exercise of fundamental constitutional rights.

63. Due to the threat of arrest, Ms. Brown has ceased coming within fifteen (15) feet of abortion facility entrances to engage in sidewalk counseling and other expressive activities.

64. Due to the threat of arrest, Ms. Brown has ceased approaching within eight (8) feet of individuals without obtaining their consent in the public way and sidewalk area within a radius of one hundred (100) feet of any entrance doors to abortion facilities to engage in sidewalk counseling and other expressive activities.

65. Under the Ordinance, Ms. Brown has suffered, and continues to suffer, irreparable injury to her rights guaranteed by the First and Fourteenth Amendments to the United States Constitution; Article I, §§ 3, 7, 26 of the Pennsylvania Constitution; and the Pennsylvania Religious Freedom Protection Act, 71 PA. STAT. ANN. §§ 2401-2407.

Relief Sought

66. Ms. Brown seeks a declaratory judgment that the Ordinance violates her rights guaranteed by the First and Fourteenth Amendments to the United States Constitution; Article I, §§ 3, 7, 26 of the Pennsylvania Constitution; and the Pennsylvania Religious Freedom Protection Act, 71 PA. STAT. ANN. §§ 2401-2407.

67. Ms. Brown seeks preliminary and permanent injunctive relief to prevent Defendants from enforcing the Ordinance in a manner inconsistent with her constitutional and statutory rights.

68. Ms. Brown seeks nominal damages and attorneys' fees and costs.

69. Unless and until this Court issues declaratory relief, Defendants will continue to enforce the Ordinance through their officers, servants, agents, and employees.

70. Unless and until this Court issues an injunctive order, Defendants will continue to enforce the Ordinance through their officers, servants, agents, and employees.

71. All of the acts of Defendants, their officers, servants, agents, and employees, as alleged herein, were done and are continuing to be done under color and pretense of the statutes, ordinances, regulations, customs, and usages of the City of Pittsburgh and the Commonwealth of Pennsylvania.

FIRST AND SECOND CAUSES OF ACTION
VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH AND OF THE PRESS
UNDER THE FIRST AMENDMENT TO THE U.S. CONSTITUTION AND
UNDER ARTICLE I, § 7 OF THE PENNSYLVANIA CONSTITUTION

72. Ms. Brown realleges the preceding paragraphs and incorporates them herein.

73. The Ordinance is overbroad on its face and as applied because it prohibits speech and expressive activities on any topic in the restricted area.

74. The Ordinance is overbroad on its face and as applied because it prohibits speech and expressive activities on any topic in front of businesses and other establishments that are unrelated to abortion facilities yet within the restricted area.

75. The Ordinance is overbroad on its face and as applied because it prohibits individuals from approaching others without their consent regardless of whether the individual approached intends to enter an abortion facility.

76. Because the Ordinance is an unconstitutionally overbroad restriction on expressive activity, the Ordinance restricts more speech than necessary to achieve any governmental interest.

77. The Ordinance is an unconstitutional content- and viewpoint-based restriction in that it is applied so as to restrict pro-life speech, but permit speech concerning other topics.

78. The Ordinance is discriminatory as applied against Ms. Brown in that Defendants permitted Ms. Brown to engage in speech opposing pornography in traditional public fora, but prohibited her from engaging in speech opposing abortion in the same location.

79. The Ordinance discriminates on its face and as applied against Ms. Brown by prohibiting her from engaging in speech and other expressive activities in traditional public fora based solely upon the pro-life, religious content and viewpoint of her speech.

80. The Ordinance is an unconstitutional content- and viewpoint-based restriction in that it requires government officials to determine what speech is restricted by the Ordinance.

81. The Ordinance imposes an impermissible prior restraint on constitutionally protected speech because it restricts speech in advance of expression in the public way and sidewalk area outside abortion facilities and other businesses and establishments.

82. The Ordinance imposes an impermissible prior restraint on the distribution of printed expression that is unconstitutional on its face and as applied.

83. The Ordinance's ban on free speech activities in the public way and sidewalk area outside abortion facilities imposes an unconstitutional restriction on constitutionally protected speech in traditional public fora.

84. No compelling, substantial, or even legitimate governmental interest exists to justify the Ordinance's restrictions on speech in traditional public fora.

85. The Ordinance is not the least restrictive means to accomplish any permissible purpose sought to be served by Defendants in that the Ordinance restricts substantially more speech than necessary.

86. The Ordinance is not narrowly tailored to Defendants' asserted interest in that the Ordinance restricts speech unrelated to its asserted interest and creates a distance requirement that forces speakers to yell out to individuals or resort to an amplification device to be heard.

87. The Ordinance does not leave open ample alternative channels of communication for Ms. Brown to engage in peaceful sidewalk counseling or other expressive activities.

88. The Ordinance violates Ms. Brown's rights to freedom of speech and of the press on its face and as applied under the First Amendment to the United States Constitution and Article I, § 7 of the Pennsylvania Constitution.

89. Wherefore, Ms. Brown respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

THIRD AND FOURTH CAUSES OF ACTION
VIOLATION OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS
UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION
AND UNDER ARTICLE I, § 26 OF THE PENNSYLVANIA CONSTITUTION

90. Ms. Brown realleges the preceding paragraphs and incorporates them herein.

91. Defendants have violated Ms. Brown's substantive and procedural due process rights by applying the Ordinance contrary to its written terms by solely restricting pro-life speakers in traditional public fora outside abortion facilities.

92. The Ordinance is an unconstitutionally vague restriction on speech on its face and as applied because it fails to adequately advise, notify, or inform persons subject to prosecution under the Ordinance of its requirements, including the requirement as to what subject matter of speech it prohibits.

93. The Ordinance is an unconstitutionally vague restriction on speech on its face and as applied because it fails to provide fair notice and warning to individuals as to whether the

consent requirement applies only to those intending to enter abortion facilities or whether it applies to all individuals within the restricted area.

94. The Ordinance is an irrational and unreasonable policy, which imposes irrational and unreasonable restrictions on the exercise of Ms. Brown's constitutional rights.

95. Defendants have violated Ms. Brown's due process rights by acting arbitrarily, capriciously, unreasonably, and with improper motives by selectively enforcing the Ordinance as to Ms. Brown's speech opposing abortion, but not as to speech opposing pornography.

96. Defendants are impermissibly and arbitrarily targeting Ms. Brown because of her pro-life speech and the exercise of her religion.

97. Defendants do not have a compelling, or even rational, reason to prevent Ms. Brown from engaging in speech and expressive activities, including peacefully approaching women for personal, caring conversations outside abortion facilities.

98. The Ordinance violates Ms. Brown's substantive and procedural due process rights on its face and as applied in violation of the Fourteenth Amendment to the United States Constitution and Article I, § 26 of the Pennsylvania Constitution.

99. Wherefore, Ms. Brown respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

FIFTH AND SIXTH CAUSES OF ACTION
VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION
AND UNDER ARTICLE I, § 26 OF THE PENNSYLVANIA CONSTITUTION

100. Ms. Brown realleges the preceding paragraphs and incorporates them herein.

101. Defendants have applied the Ordinance to deny Ms. Brown's right to engage in speech in the public way and sidewalk area outside abortion facilities even though similarly situated individuals are allowed to engage in speech on other topics in the same location.

102. Defendants permit individuals to engage in speech favorable to abortion by those who compel women to enter the abortion facilities and continue with the abortions.

103. Defendants permit individuals to engage in speech on other topics such as opposition to pornography in the areas restricted by the Ordinance.

104. Defendants have treated Ms. Brown differently than similarly situated persons who do not have a pro-life message based on the content and viewpoint of Ms. Brown's speech, thereby suppressing the exercise of her constitutional rights.

105. Defendants can offer no compelling, or even rational, interest to justify prohibiting Ms. Brown's pro-life speech and expressive activities, while permitting similarly situated individuals to engage in speech on other topics in the public way and sidewalk areas restricted by the Ordinance.

106. The Ordinance constitutes a violation of Ms. Brown's right to equal protection on its face and as applied in violation of the Fourteenth Amendment to the United States Constitution and Article I, § 26 of the Pennsylvania Constitution.

107. Wherefore, Ms. Brown respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

SEVENTH AND EIGHTH CAUSES OF ACTION
VIOLATION OF THE FREE EXERCISE CLAUSE
OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION
AND THE RIGHT TO RELIGIOUS FREEDOM
UNDER ARTICLE I, § 3 OF THE PENNSYLVANIA CONSTITUTION

108. Ms. Brown realleges the preceding paragraphs and incorporates them herein.

109. Defendants have substantially burdened and continue to substantially burden Ms. Brown's right to free exercise of religion by preventing her from engaging in personal, peaceful sidewalk counseling and other expressive activities outside abortion facilities.

110. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance forces her to choose between following her religious beliefs under the threat of arrest and following the Ordinance to the neglect of her religious beliefs.

111. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance significantly constrains and inhibits conduct and expression mandated by Ms. Brown's sincerely held religious beliefs.

112. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance significantly curtails Ms. Brown's ability to express adherence to her religious faith.

113. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance denies Ms. Brown a reasonable opportunity to engage in activities that are fundamental to Ms. Brown's religion.

114. The application and enforcement of the Ordinance to Ms. Brown's pro-life speech evidences a discriminatory intent because it has been enforced to prohibit Ms. Brown's pro-life speech outside abortion facilities, but to permit speech on other topics in the same location.

115. Ms. Brown's free exercise of religion is being penalized by the Defendants' discriminatory treatment of Ms. Brown through the prohibition of her speech and expressive activities.

116. The Ordinance is not neutral or generally applicable because individuals that do not have a pro-life message are permitted to engage in speech in the restricted area.

117. Ms. Brown's religious exercise and activities are being singled out and targeted for disparate treatment through the denial of the ability to engage in peaceful pro-life speech.

118. Defendants do not have a compelling, or even rational, governmental interest that could justify the restriction on Ms. Brown's peaceful speech and expressive activities.

119. The Ordinance is not the least restrictive means of furthering any interest that Defendants seek to secure.

120. The Ordinance constitutes a violation both facially and as applied to Ms. Brown's right to free exercise of religion under the First Amendment to the United States Constitution and the right to religious freedom under Article I, § 3 of the Pennsylvania Constitution.

121. Wherefore, Ms. Brown respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

NINTH CAUSE OF ACTION
VIOLATION OF THE RELIGIOUS FREEDOM PROTECTION ACT
71 PA. STAT. ANN. §§ 2401-2407

122. Ms. Brown realleges the preceding paragraphs and incorporates them herein.

123. Defendants have substantially burdened and continue to substantially burden Ms. Brown's right to the free exercise of religion by preventing her from engaging in personal, peaceful sidewalk counseling and other expressive activities outside abortion facilities.

124. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance forces her to choose between following her religious beliefs under the threat of arrest and following the Ordinance to the neglect of her religious beliefs.

125. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance significantly constrains and inhibits conduct and expression mandated by Ms. Brown's sincerely held religious beliefs.

126. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance significantly curtails Ms. Brown's ability to express adherence to her religious faith.

127. The Ordinance substantially burdens and conflicts with Ms. Brown's sincerely held religious beliefs in that the Ordinance denies Ms. Brown a reasonable opportunity to engage in activities that are fundamental to Ms. Brown's religion.

128. Defendants' imminent intent to continue to enforce the Ordinance threatens to substantially burden Ms. Brown's right to the free exercise of religion.

129. Defendants do not have a compelling, or even rational, governmental interest that could justify the restriction on Ms. Brown's peaceful speech and expressive activities.

130. The Ordinance is not the least restrictive means of furthering any interest that Defendants seek to secure.

131. The Ordinance violates the Pennsylvania Religious Freedom Protection Act, 71 PA. STAT. ANN. §§ 2401-2407, on its face and as applied to Ms. Brown.

132. Wherefore, Ms. Brown respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Ms. Brown respectfully prays for judgment against Defendants as follows:

A. Declare §§ 623.03, 623.04 of Pittsburgh Code Ordinance No. 49, Bill No. 2005-1944, unconstitutional on their face because they violate Ms. Brown's rights to freedom of speech, freedom of the press, free exercise of religion, and the rights to due process and equal protection, which are guaranteed to Ms. Brown and others under the United States Constitution, the Pennsylvania Constitution, and Pennsylvania statutes;

B. Declare §§ 623.03, 623.04 of Pittsburgh Code Ordinance No. 49, Bill No. 2005-1944, unconstitutional as applied to the speech and expressive activities of Ms. Brown, described in this Verified Complaint, because they violate Ms. Brown's rights to freedom of speech, freedom of the press, free exercise of religion, and the rights to due process and equal protection, which are guaranteed to Ms. Brown and others under the United States Constitution, the Pennsylvania Constitution, and Pennsylvania statutes;

C. Enjoin the Defendants, their agents, servants, employees, and officers from enforcing §§ 623.03, 623.04 of Pittsburgh Code Ordinance No. 49, Bill No. 2005-1944 against Ms. Brown for her participation in the speech and expressive activities described in this Verified Complaint;

D. Grant to Ms. Brown an award of nominal damages;

E. Grant to Ms. Brown an award of her costs of litigation, including reasonable attorneys' fees and costs; and

F. Grant such other and further relief as this Court deems just and proper.

Submitted this 24th day of March, 2006, by:

/s/ Lawrence G. Paladin, Jr.
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ATTORNEYS FOR PLAINTIFF

**Pro hac vice* admission pending

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that the facts alleged therein are true and correct.

Executed this 23rd day of March, 2006 in Pittsburgh, PA.


Mary Kathryn Brown

Exhibit 1



Ordinance No. 49
City of Pittsburgh
Text File

510 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Introduced:	11/29/05	Bill No:	2005-1944
Committee:	Public Safety Services Committee	Status:	Passed Finally

SPONSORED BY: DOUGLAS SHIELDS; WILLIAM PEDUTO; JIM MOTZNIK AND SALA UDIN

Ordinance supplementing the Pittsburgh Code of Ordinances, Title 6, Conduct, Article I: Regulated Rights and Actions, by adding a new Chapter at 623 "Public Safety at Health Care Facilities," to allow for unimpeded access to hospitals and/or health care facilities and providing penalties for violations of this ordinance.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Pittsburgh Code of Ordinances, Title 6, Conduct, Article I: Regulated Rights and Actions, is hereby supplemented by adding a new Chapter at 623 "Public Safety at Health Care Facilities," as follows:

CHAPTER 623: PUBLIC SAFETY AT HEALTH CARE FACILITIES

§ 623.01 INTENT OF COUNCIL

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 Ordinance 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.

§ 623.02 DEFINITIONS

Hospital means an institution that: 1. Offers services beyond those required for room, board, personal services and general nursing care; and, 2. Offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and, 3. Regularly makes available clinical laboratory services, diagnostic x-ray services, and treatment facilities for surgery or obstetrical treatment of similar extent. Hospitals may include offices for medical and dental personnel, central facilities such as pharmacies, medical laboratories and other related uses.

Medical Office/Clinic means an establishment providing therapeutic, preventative, corrective, healing and health-building treatment services on an out-patient basis by physicians, dentists and other practitioners. Typical uses include medical and dental offices and clinics and out-patient medical laboratories.

§ 623.03 EIGHT-FOOT PERSONAL BUBBLE ZONE

No person shall knowingly approach another person within eight feet (8') of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet (100') from any entrance door to a hospital and/or medical office/clinic.

§ 623.04. FIFTEEN-FOOT BUFFER ZONE

No person or persons shall knowingly congregate, patrol, picket or demonstrate in a zone extending fifteen feet (15') from any entrance to the hospital and or health care facility. This section shall not apply to police and public safety officers, fire and rescue personnel, or other emergency workers in the course of their official business, or to authorized security personnel 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.

§ 623.05 PENALTY

Any person, firm, or corporation who pleads guilty or *nolo contendere*, or is convicted of violating of this section shall be guilty of a summary offense and punished by a fine of at least fifty dollars (\$50.00) for the first offense; a fine of at least one hundred fifty dollars (\$150.00) for a second offense within five (5) years; and a fine of three hundred dollars (\$300.00) for a third offense within

five (5) years.

For fourth and subsequent offenses within five (5) years the fine shall not be less than three hundred dollars (\$300.00) and/or imprisonment for not less than three (3) days but not more than thirty (30) days.

No part of the minimum fine may be suspended or discharged, except upon proof and a finding of indigence by the court. Indigent defendants may pay fines imposed under this section by participation in a court designated community service program, crediting the commensurate dollar amount of each hour of community service toward payment of the minimum fine owed.

623.06 SEVERABILITY

The provisions of this ordinance are severable. If any portion of this Chapter is held invalid, unenforceable, or unconstitutional by any court of competent jurisdiction, it shall not affect the validity of the remaining portions of this Chapter, which shall be given full force and effect.

623.07 EFFECTIVE DATE

This Ordinance shall become effective immediately upon the signature of the Mayor, or ten days after the City Clerk provides this ordinance to the mayor for signature.

Finally, that any Ordinance or Resolution or part thereof conflicting with the provisions of this Ordinance, is hereby repealed so far as the same affects this Ordinance.

Effective Date: 12/30/05

Passed in Council: 12/19/05

Approved: 12/23/05

Recorded in R.B. 79 page 424
in City Clerk's Office.