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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**EUGENE DIVISION**

**FREDERICK PEARSON,**

Case No.: 10-6162-HO

**Plaintiff,**

vs.

**VERIFIED COMPLAINT**  
**Violation of Constitutional Rights**  
**(42 U.S.C. §1983)**  
**NO DEMAND FOR JURY TRIAL**

**CITY OF STAYTON; DONNA ZIMMERMAN**, individually and in her official capacity as Code Enforcement Officer for the City of Stayton; **JOHN DOE**, individually and in his official capacity as Police Officer for the City of Stayton; and **JANE DOE**, individually and in her official capacity as Police Officer for the City of Stayton,

**Defendants.**

600005525

## INTRODUCTION

1. This is a civil rights action regarding the City of Stayton sign ordinance that requires anyone wishing to carry a sign on a public way to obtain a permit and flatly prohibits any sign depicting images of aborted fetuses.

2. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff Frederick Pearson seeks injunctive relief, declaratory relief, and nominal damages against Defendants City of Stayton; Donna Zimmerman, individually and in her official capacity as Code Enforcement Officer for the City of Stayton; John Doe, individually and in his official capacity as Police Officer for the City of Stayton; and Jane Doe, individually and in her official capacity as Police Officer for the City of Stayton.

3. This action is premised on the United States Constitution and concerns the deprivation of Plaintiff's fundamental rights to free speech, due process, and equal protection.

4. Defendants' actions have deprived and will continue to deprive Plaintiff of his fundamental rights as provided in the First and Fourteenth Amendments to the United States Constitution.

5. Each and every act of Defendants alleged herein was committed by Defendants named herein, and each and every act was committed under the color of state law and authority.

## JURISDICTION AND VENUE

6. Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has jurisdiction over Plaintiff's claims. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction over Plaintiff's request for declaratory relief.

7. Pursuant to 28 U.S.C. § 1391(b), venue is proper in District of Oregon, because all claims arise out of this district and Defendants reside in this district.

## PLAINTIFF

8. Plaintiff Frederick Pearson ("Pearson") resides in Independence, Oregon.

## DEFENDANTS

9. Defendant City of Stayton ("Stayton") is a municipal governmental authority, a subdivision of the State of Oregon.

10. Defendant Donna Zimmerman is the Code Enforcement Officer for the City of Stayton. In her official capacity, Ms. Zimmerman is responsible for administrating, interpreting, and enforcing all laws, regulations, and ordinances recorded in the Stayton Municipal Code.

11. Defendant John Doe ("Officer John") is a police officer with the Stayton Police Department. In his official capacity, Officer Doe is charged with enforcing the laws, regulations, and ordinances of Stayton, including those regulations that pertain to expressive activities.

12. Defendant Jane Doe ("Officer Jane") is a police officer with the Stayton Police Department. In her official capacity, Officer Doe is charged with enforcing the laws, regulations, and ordinances of Stayton, including those regulations that pertain to expressive activities.

## STATEMENT OF FACTS

### **Desired Expression of Pearson**

13. Pearson is a professing evangelical Christian. As a tenet of his faith, Pearson believes that a human fetus is a living person made in the image of God. Thus, Pearson believes that abortion is tantamount to murder, morally wrong, against the commands of scripture, and an affront to God.

14. Because of these firmly-held religious beliefs, Pearson is compelled to communicate the immorality and impropriety of abortion to the general public in the hope that

people will stop having abortions and that people will vote to end and/or restrict abortions. Moreover, Pearson wants to inform others, for their own benefit, that abortion is contrary to God's revealed will.

15. Pearson does not seek monetary gain with his expressive activity about abortion. He does not try to sell products or services or ask for money. He does not elicit membership to any organization. Pearson merely wishes for others to be exposed to his beliefs about abortion.

16. Pearson has no intent to physically touch or harass anyone, or encourage violence, or express himself in any way other than in a peaceful manner.

17. At no time has Pearson ever advocated violence against abortion providers or those in favor of abortion. Pearson strenuously opposes use of force to stop abortion.

18. For Pearson, the display of signs while standing on public sidewalks and public ways is an essential means for communicating his message. Signs are an inexpensive and effective way to convey his position on abortion to large numbers of people at the same time. Signs can communicate a message to people nearby or far away, whether they are stationary or moving, and whether they are pedestrians or in vehicles.

19. In using signs, Pearson firmly believes that words alone are insufficient, and there is no substitute for displaying pictures of aborted fetuses. To effectively advocate against abortion, Pearson believes it is imperative to show the actual, physical effects and outcomes of abortion. Pictures of aborted fetuses demonstrate the reality of harm and death associated with abortion and refute the suggestion that abortion merely terminates a pregnancy.

20. Pearson reasons that the display of images of aborted fetuses is by far the most effective way to convey his message on abortion.

**Prohibition on Pearson's Signs**

21. On May 25, 2009, at approximately 3:00 p.m., Pearson went to the corner of Shaff/Fern Ridge Road and 1st Avenue in Stayton to express his religious beliefs about abortion.

22. To express his beliefs about abortion, Pearson brought with him two 4 x 8 foot signs. One sign showed a picture of a 10-week-old aborted fetus alongside an image of a swastika, with the word "HOLOCAUST" written on top of the sign. The sign rhetorically asks if the holocaust is wrong how could abortion be right. The idea is for the audience to compare the Nazi slaughter of the Jews with the current plight of abortion.

23. The other sign contained a picture of a 22-week-old aborted fetus alongside a picture of a fireman carrying a baby who died from the Oklahoma City bombing. This sign rhetorically asks why the death of an infant in connection with the Oklahoma City bombing would be considered "big news" while the killing of unborn babies via abortion is marginalized as a "big deal," since both instances involve the taking of young, innocent life.

24. While standing on the sidewalk at the intersection, Pearson alternated use of both signs. At no time did Pearson ever block pedestrian traffic with his body or his signs.

25. Pearson received a wide variety of responses to his signs. Some responses were positive. One woman honked her horn and gave Pearson a thumbs-up. Other responses were negative. One woman voiced her opinion that signs were against the law and advised that she was going to contact the police about Pearson's signs.

26. Pearson remained at that intersection for approximately two hours. At or about 5:15 p.m., Pearson left the intersection and began walking down the sidewalk parallel to 1st Avenue to get to his car. Pearson was planning on driving home.

27. As he was walking toward his car with his signs, Pearson was approached by two police officers, Officer John Doe and Officer Jane Doe, both with the Stayton police department. Officer John Doe said: "As you probably know, we have been receiving a lot of negative calls about your sign. We are in the process of looking up the ordinance that prohibits you from holding your sign."

28. Officer Jane Doe added: "We have another officer on the way to bring you a copy of the ordinance. Wait until he arrives. You will need a permit that you can get tomorrow." Officer John Doe then took Pearson's driver's license to take information from it.

29. Pearson asked if he could just carry his signs to his vehicle, and get a copy of the ordinance later off the internet. Officer John Doe told Pearson that he could not carry his signs unless he could fold them up so that the signs could not be seen while he was walking. Pearson did not want to fold up his signs because he feared that folding would destroy them. Pearson attempted to call his wife, April Pearson, on his cell phone to see if she could pick the signs up, but Pearson was unable to reach her.

30. Subsequently, a third police officer from Stayton police department came on the scene. This officer gave Pearson a copy of the ordinance that Officers John Doe and Jane Doe referenced as justification for prohibiting his signs, Stayton Municipal Code Chapter 8.04, entitled Nuisances. Under the authority of this ordinance, the police officers confirmed that Pearson could not display his signs. With this understanding, all three police officers left.

31. Pearson then figured out how he could fold up his signs without destroying them; hence, Pearson folded up his signs, returned to his car, and drove home.

32. Stayton Municipal Code Chapter 8.04, entitled Nuisances, is the sign ordinance that serves as the legal basis for barring Pearson's signs. Specifically, Stayton relies on §§ 8.04.010, 8.04.160, and 8.04.180.

33. Section 8.04.010 is entitled "Definitions" and provides key definitions for terms that appear in Chapter 8 of the code. Section 8.04.160 is entitled "Advertising: Public Property, Prohibition" and §8.04.180 is entitled "Advertising: Public Property, Exceptions." These three sections read in pertinent part:

#### 8.04.010 DEFINITIONS

For the purposes of this title, the following words and phrases mean:

ADVERTISING: Any method, procedure, or substance used to announce, present, or display any fact, opinion, or other information by means of pictures, words, or designs, or otherwise, whether written, printed, painted, or in any other way expressed.

#### 8.04.160 ADVERTISING: PUBLIC PROPERTY, PROHIBITION

Except as otherwise specifically permitted, no person may:

1. Place, display, scatter, or distribute any advertising matter on or across any public street, sidewalk, or other public thoroughfare.

2. Erect, place, or display any structure or device which is used to display advertising matter on or across any public street, sidewalk, or other public thoroughfare.

3. Attach any advertising matter to any tree, pole, or post situated on any public property within the City. (Ord. 711, November, 1992; Ord. 899, October 1, 2007)

#### 8.04.180 ADVERTISING: PUBLIC PROPERTY, EXCEPTIONS

1. The City Administrator may permit any person to display or distribute advertising on City-owned property for meetings or entertainment. If the request is denied, the applicant may appeal to the City Council.

2. The City Council may, upon request, permit any person to erect a sign or device adjacent to any property to display advertising matter pertaining to the business or activity carried on at said premises, and which will extend over or across any portion of a public thoroughfare. Any person desiring such permission shall apply to the City Administrator who shall forward the request to the City Council. If the City Council finds that such sign or device is not likely to endanger any person or property, it may grant the application, dictating the terms and conditions for such erection and use, or it may reject the application.

.....

4. Nothing in Sections 8.04.170 through 8.04.190 of this Chapter shall prohibit the proper display of notices of any election to be held by the federal or state governments or any subdivision thereof, or of notices of judicial sales, or any other notices or advertisements issued or displayed pursuant to law or ordinance.

#### **Parameters of Sign Ordinance**

34. Pearson strongly suspected an arbitrary application of the sign ordinance to his expression, in particular, his signs containing images of aborted fetuses. Therefore, Pearson constructed another 4 x 8 sign that did not contain images of aborted fetuses, but only set out the words "Respect Life." He made this sign to determine the parameters of the sign ordinance.

35. On Saturday, June 20, 2009, at approximately 1:30 p.m., Pearson and his wife went to the corner of Washington and 1st Avenue and displayed the 4 x 8 foot sign stating "Respect Life" to see if police officers would stop him from displaying this sign.

36. Pearson held up his sign for approximately two hours, from 1:30 to 3:30 p.m., that day. During this time frame, Pearson and his wife saw two police officers pass by them on four separate occasions. Though the police officers observed Pearson displaying the "Respect Life" sign, the officers never approached Pearson about it.

37. At approximately 3:30 p.m., Pearson left the area and went directly to the Stayton police station. Upon arrival, Pearson spoke with a police officer, Officer Ariant, and asked her

why he was allowed to carry the "Respect Life" sign, but not allowed to display signs with images of aborted fetuses. Officer Ariant responded: "Well, if a sign is obscene, we won't allow it." Officer Ariant added: "If it's [a sign's] causing a disturbance in the community, we will search out the ordinances for that situation."

38. Pearson also asked Officer Ariant to explain why a sign ordinance purportedly covering advertising prohibited him from carrying signs with aborted-fetus images. Officer Ariant said she did not know the ordinances very well, but advised Pearson to speak with Donna Zimmerman, the code enforcement officer, who, according to Officer Ariant, "knows the ordinances like the back of her hand."

39. Pearson left the police station with the intention of contacting Officer Zimmerman later for clarification.

#### **Clarification of Application of Sign Ordinance**

40. On Monday, June 22, 2009, Pearson telephoned Officer Zimmerman at approximately 1:20 p.m. Pearson asked to schedule a meeting with Officer Zimmerman so he could get clarification on the ordinance and an explanation as to why he could not display his signs with images of aborted fetuses. Officer Zimmerman scheduled a meeting for the upcoming Friday, and mentioned that she would pull relevant information regarding signs in preparation for that meeting.

41. On the scheduled date and time, June 26, 2009, at 8:30 a.m., Pearson and his wife went to the Stayton police station and met with Officer Zimmerman. Pearson brought with him numerous pictures to compare and contrast the types of images and messages that Stayton would

allow on signs. Pearson wanted to clear up any confusion regarding what signs were prohibited in Stayton and what signs were subject to a permit requirement.

42. At the outset of this meeting, Pearson asked Officer Zimmerman if he had to get a permit to hold a sign while standing on a public sidewalk. Officer Zimmerman confirmed that Pearson would be required to get a permit for any sign and could seek one from the city planner.

43. Next, Pearson showed Officer Zimmerman his sign bearing the image of aborted fetus, along with a swastika, and asked if he could display this sign. Officer Zimmerman responded: "When we see a swastika, we immediately think 'Hate' We call it a hate crime. It doesn't matter what words you put around it, the swastika still makes a bad sign. I agree with you, abortion is awful; but you need to do something less offensive."

44. Pearson then showed Officer Zimmerman the sign stating "Respect Life" and asked if that sign was permissible. Officer Zimmerman said the sign was permissible, but advised Pearson that he would still be required to obtain a permit to display that sign. Officer Zimmerman also suggested that Pearson consider another "venue" besides signs to express his message, such as putting a bumper sticker on his car.

45. Pearson did not want to put a bumper sticker on his car; he wanted to display his signs, particularly, signs with aborted-fetus images. Therefore, Pearson asked for the specific law that could inform him about which signs are prohibited in Stayton. Officer Zimmerman referenced the same ordinance specified by the police officers when they stopped Pearson in the first place, Stayton Municipal Code Chapter 8.04.

46. Pearson asked how one could determine if a sign is unacceptable under the sign ordinance, and Officer Zimmerman replied: "Anything offensive, such as cursing, a swastika, or

graphic images would be unacceptable.” Officer Zimmerman pointed to one of Pearson’s signs with an image of an aborted fetus, and said: “Well, this one is obviously offensive.” Officer Zimmerman contrasted that sign to another one of Pearson’s pictures depicting a young girl, remarking: “And this one is adorable.”

47. Pearson commented to Officer Zimmerman that Stayton Municipal Code Chapter 8.04 purportedly regulates advertising and that his signs should not fall under the realm of advertising. But Officer Zimmerman disagreed with Pearson’s assessment: “You are advertising. You have a goal. Your goal is that you never want abortion to happen. You are trying to convince people of it for your own personal benefit.”

48. Pearson followed up and asked who gets to decide which signs are appropriate and which signs are inappropriate. Officer Zimmerman responded: “Both the community and the police department decide which signs you can or can’t hold. The community will put pressure on the city council and the police department not to allow the abortion pictures.”

49. To gain further clarification, Pearson asked what laws applied to his signs. Officer Zimmerman explained: “Check with the city planner about the size of your sign. You cannot be in the public right of way, which is the curb, dirt, and sidewalk. You cannot block the view of traffic, be on public property, be offensive, or be there for a long period of time.”

50. Pearson then asked whether the police department considers both content and size for determining which signs are precluded. Officer Zimmerman replied: “Content, yes. And size, yes. If someone calls us, we will probably ask you to move on. Content has a lot to do with it.”

51. Finally, Pearson inquired as to how Stayton’s sign ordinance, and the application of that ordinance to his signs, could be reconciled with the First Amendment to the U.S.

Constitution. Officer Zimmerman saw no conflict between Stayton's laws and the First Amendment. She responded: "I don't want to squelch your God-given rights in this country. I just don't want you to be offensive."

52. Having received full explanation of how the Stayton sign ordinance applied to his signs, Pearson and his wife ended their conversation with Officer Zimmerman and left the police station.

#### **Confirmation of Application of Sign Ordinance**

53. Following this conversation with Officer Zimmerman, Pearson evaluated the sign ordinance further, and remained convinced that the prohibition on his signs containing aborted-fetus images was invalid.

54. To erase any doubt about the matter, Pearson followed up with Officer Zimmerman about his signs with images of aborted fetuses, and expressed his concerns about the application of the sign ordinance to his speech. Officer Zimmerman reiterated her comments during their prior conversation at the police station. Officer Zimmerman confirmed that a permit would be required for any sign, that Pearson could not secure a permit for "offensive" signs, and that Stayton considered his signs with images of aborted fetuses "offensive." Officer Zimmerman further confirmed that her stated positions represented the official policy of the City of Stayton. Officer Zimmerman emphasized that she was the official who could best answer questions about the ordinance, how it applied, and what signs were regulated and proscribed under the ordinance.

55. As a result of this conversation, as well as previous conversations with city officials and police officers, Pearson understood that Stayton prohibited the signs he wanted to display on public ways.

56. Though he was confused about the precise scope of the city's methodology, Pearson knew that he could not display any sign in Stayton without a permit because of Stayton Municipal Code §§ 8.04.010, 8.04.160, and 8.04.180. Pearson also knew that he could not display his signs with images of aborted fetuses, whether he sought a permit or not, because these signs were deemed offensive and illegal.

**Impact of Sign Ordinance on Pearson**

57. Stayton's enforcement of its sign ordinance against unpermitted signs and offensive signs burdens Pearson's speech for multiple reasons.

58. Pearson wants to hold up signs displaying images of aborted fetuses as an individual and in small groups while he stands on public ways in Stayton. Specifically, he wants to hold up the 4 x 8 foot signs he used before and he also wants to display other signs of all sizes (1 x 1, 2 x 2, 1 x 3, 4 x 4, 4 x 6) that contain similar images of aborted fetuses to advocate against abortion.

59. Pearson's message is further frustrated because he cannot display any sign in Stayton until he first obtains a permit from the City of Stayton. The permit requirement, in and of itself, is unduly burdensome. It is repugnant to Pearson that he, as an individual citizen, must secure governmental permission to display a sign against abortion, when he feels convicted by his religious faith to do so. Moreover, Pearson likes to spread his message about abortion in reaction to current events about abortion. This need requires Pearson to be able to speak

spontaneously in reaction to the news. And yet, Stayton's sign ordinance prohibits such spontaneous speech because they force Pearson to obtain a permit prior to speaking.

60. For Pearson, it is necessary to display images of aborted fetuses to adequately communicate his message. But Pearson is not free to display these images anywhere in Stayton because officials deem the content and viewpoint of these images to be offensive. Under Stayton's sign ordinance, any offensive image is prohibited and images of aborted fetuses are automatically deemed offensive.

61. Pearson is also unable to determine what content on signs is prohibited in Stayton, apart from the images of aborted fetuses, which are clearly prohibited. Pearson cannot anticipate which images will be deemed offensive by Stayton officials and by citizens. Pearson can find no clear standards that guide the discretion of Stayton officials when they make the determination whether a sign is prohibited or allowed.

62. If not for Stayton's sign ordinance, and the actions of Defendants, Pearson would immediately return to the public ways in Stayton and display signs that convey his messages against abortion. Specifically, Pearson would display signs of various sizes that contain images of aborted fetuses. Pearson refrains for fear of arrest.

63. The fear of arrest severely limits Pearson's constitutionally-protected expression on the public ways in Stayton.

64. The impact of chilling and deterring Pearson from exercising his constitutional rights in Stayton constitutes irreparable harm to Pearson.

65. Pearson does not have an adequate remedy at law for the loss of his constitutional rights.

**FIRST CAUSE OF ACTION**

**Violation of Freedom of Speech**

66. Pearson's religious speech is protected speech under the First Amendment.
67. Defendants' laws and practices, and enforcement thereof, including, but not limited to §§ 8.04.010, 8.04.160, and 8.04.180
- a. are vague and overbroad;
  - b. single out pro-life speech for discriminatory treatment;
  - c. discriminate against speech because of its content;
  - d. discriminate against speech on the basis of the speaker's viewpoint;
  - e. restrain constitutionally-protected speech in advance of its expression, without appropriate guidelines or standards to guide the discretion of officials charged with enforcing the law;
  - f. chill the free speech and free exercise of religion of Pearson and of other third-party citizens;
  - g. allow the exercise of unbridled discretion;
  - h. create a content-based heckler's veto that allow Pearson to be silenced because of hostile audiences;
  - i. lack narrow tailoring, fail to achieve any legitimate government purpose, and fail to leave open alternative avenues for expression; and
  - j. are unreasonable.
68. Defendants have no compelling or legitimate reason that can justify their censorship of the viewpoints sought to be expressed by Pearson.

69. Defendants' laws and practices, and the enforcement thereof, thus violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, Pearson respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

### **SECOND CAUSE OF ACTION**

#### **Violation of the Due Process Clause**

70. Defendants' laws are vague and lack sufficient objective standards to curtail the discretion of officials. This allows Defendants ample opportunity to enforce the laws in an *ad hoc*, arbitrary, and discriminatory manner.

71. Defendants have no compelling or legitimate reason that can justify their vague policies.

72. The laws, and Defendants' enforcement thereof, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Pearson respectfully prays the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

### **THIRD CAUSE OF ACTION**

#### **Violation of the Equal Protection Clause**

73. Under their laws, Defendants grant permits for signs with messages in Stayton, but single out and do not allow signs with certain pro-life messages in Stayton.

74. Defendants' enforcement of their laws and policies intentionally treats Plaintiff differently from other similarly-situated citizens based on the viewpoint and content of their expression.

75. Defendants have no compelling or legitimate reason that would justify their disparate treatment of Plaintiff.

76. The laws and policies, and Defendants' enforcement thereof, therefore violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Pearson respectfully prays the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Pearson respectfully prays for relief in that this Court:

A. Assume jurisdiction over this action;

B. Enter a judgment and decree declaring all laws and policies, including but not limited to §8.04.010, §8.04.160, and §8.04.180, that restrict Pearson or other speakers from displaying constitutionally-protected messages and images on open public ways in Stayton to be unconstitutional on their face and as applied to Pearson's desired speech (displaying signs with images of aborted fetuses) because it violates Pearson's rights and the rights of third parties not before the Court, as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

C. Enter a preliminary and permanent injunction enjoining defendants, their agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from applying §8.04.010, §8.04.160, and §8.04.180 or any other law or policy that

restricts Pearson or other speakers from displaying constitutionally-protected messages and images on open public ways in Stayton;

D. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment:

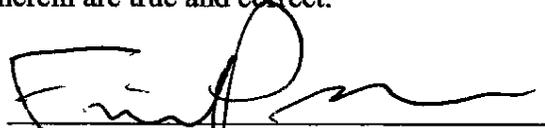
E. That this Court award Plaintiff nominal damages arising from the acts of the Defendants as an important vindication of the constitutional rights;

F. That this Court award Plaintiff his costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

G. Grant such other and further relief as appears to this Court to be equitable and just.

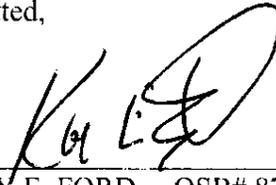
**VERIFICATION OF COMPLAINT**

I, Frederick Pearson, a citizen of the United States and a resident of Independence, Oregon, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.



FREDERICK PEARSON

Respectfully submitted,



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\* Motion for Admission *pro hac vice*  
filed concurrently