

April 2, 2020

Mr. Charles Watts, City Attorney
300 W. Washington Street #260
Greensboro, North Carolina 27401
VIA EMAIL (charles.watts@greensboro-nc.gov)

RE: Guilford County v. Reeder et al.

Dear Mr. Watts,

Alliance Defending Freedom (ADF) has been retained by Global Impact Ministries, Inc., d/b/a Love Life and Love Life Charlotte, to pursue legal claims arising from the City of Greensboro's unlawful denial of Love Life's constitutional right to freely assemble and pray in a traditional public forum.

By way of introduction, ADF is a not-for-profit, public interest law and educational group. Our organization exists to educate the public and the government about the constitutional rights of citizens, particularly in the context of the expression of religious sentiments. We render assistance to many people in situations similar to the one Love Life and its representatives now face.

This letter sets forth the particular facts of this matter and a discussion of relevant law. After reviewing this letter, you will need to take whatever steps are necessary to ensure that Guilford County and the City of Greensboro do not continue to violate Love Life and its representatives' constitutional rights, in order to avoid a lawsuit.

I. Statement of Relevant Facts

Global Impact Ministries is a North Carolina nonprofit corporation operating under the name Love Life. Love Life unites and mobilizes churches and people of faith to create a culture of love and life to protect the vulnerable, especially orphans and unborn children in the womb. Love Life also ministers to women facing unplanned pregnancies, providing prayer and emotional support as well as tangible material support for women in need and their babies. This ministry is done primarily through free speech and free exercise activities of praying, prayer walking, and sidewalk counseling outside of abortion facilities.

Love Life has chosen public sidewalks outside an abortion clinic called A Woman's Choice in Greensboro as one of its ministry locations. On Saturday, March 28, and again on Monday, March 30, Love Life's president, Justin Reeder, along with a few other representatives of Love Life, met outside A Woman's Choice in order to pray both on public property and on

adjacent private property where Love Life regularly gathers with the property owners' permission. Mindful of the Guilford County Emergency Proclamation ("Emergency Proclamation") dated March 27, 2020, Love Life ensured that, at all times, fewer than 10 individuals were present in its group, that each person was spaced at least 6 feet from any other person, and that they were equipped with sanitizer, as required by the Social Distancing provisions of the Emergency Proclamation.

As a religious nonprofit organization providing charitable and social support services to vulnerable persons, Love Life's activities qualify as "Essential Business" under the terms of the Emergency Proclamation, which permits operations by "[o]rganizations that provide charitable and social services," including "religious and secular nonprofit organizations, . . . when providing . . . social services, and other necessities of life for economically disadvantaged or otherwise needy individuals." Love Life's activities also qualify as "Essential Travel" under the terms of the Emergency Proclamation, which permits "[t]ravel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons."

For similar reasons, Love Life falls under the Emergency Proclamation's definition of "Human Services Operations," which includes "businesses that provide . . . social services, and other necessities of life for economically disadvantaged individuals . . . or otherwise needy individuals." The Emergency Proclamation makes clear that provision of such human services should be permitted to the fullest extent possible: "Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined." Love Life's provision of counseling, prayer, and referrals for material support to women and babies in need certainly falls within the broad definition. Under the Proclamation, "individuals may leave and return to their residence to work for . . . any Human Services Operations."

In addition, Love Life's activities of walking and standing on public grounds are "Essential Activities" as permitted by the Emergency Proclamation, which allows for "outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined herein, such as, by way of example and without limitation, walking, hiking, golfing, running, cycling, or using the greenways[,] . . . go[ing] to public parks and open outdoor recreation areas."

Nevertheless, Love Life representatives Isaiah Burner, Jason Oesterreich, Justin Reeder and Carl Ubinas were issued citations and arrested on March 28 — with Reeder and Oesterreich arrested again on March 30 — and were told by Greensboro Police Department officers Lt. Knott and Sgt. Goodykoontz that they were in violation of the Emergency Proclamation. The citations indicate that Love Life's representatives were arrested for "travel[ing] for a non-essential function[/purpose]."

At the request of Lt. Knott, Love Life's local counsel, Mr. Oesterreich, contacted you in your capacity as City Attorney on March 30. You represented that the City would continue interpreting the Emergency Proclamation to prohibit Love Life's constitutionally protected activities. You also indicated that you had the backing of city officials as to this interpretation, and you further offered your legal opinion that the Emergency Proclamation authorized the City to suspend First Amendment activities for the duration of the emergency.

Later, on April 1, undersigned ADF counsel spoke with you for further clarification. You indicated that, under the Emergency Proclamation, individuals may travel by foot but not by car to engage in outdoor activities. You also asserted that the Emergency Proclamation does not restrict speech and therefore is not narrowly tailored because it in no way addresses speech. You maintained that it is a violation of the Emergency Proclamation for Messrs. Burner, Oesterreich, Reeder, and Ubinas to travel from outside Guilford County in order to walk and pray as representatives of Love Life on the public areas outside A Woman's Choice.

II. Statement of Relevant Law

A. Prayer is Protected Religious Speech Under the First Amendment.

It is well settled that religious speech is protected by the First Amendment. *See, e.g., Widmar v. Vincent*, 454 U.S. 263, 269 (1981); *Lovell v. City of Griffin*, 303 U.S. 444 (1938). The First Amendment's prohibition on governmental restrictions of free speech applies to State entities via the Fourteenth Amendment's protection of fundamental personal rights and liberties. *Lovell*, 303 U.S. at 450; *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940). To deny this fundamental axiom would be to destroy the very essence of free speech and religious freedom under the First Amendment.

Prayer in a public place is a type of protected religious speech. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 111–12 (2001). Prohibiting such “speech us[ing] a religious viewpoint” in a public forum “constitutes unconstitutional viewpoint discrimination.” *Id.* at 110.

Accordingly, Mr. Reeder and other Love Life representatives have a constitutional right to further their mission through gathering for prayer.

B. Love Life's Constitutional Right to Assemble and Pray Extends to Traditional Public Fora and Private Property.

The First Amendment prohibits restrictions on speech activity in traditional public fora such as public parks and sidewalks. The Supreme Court has repeatedly held that public streets are traditional public fora. As long ago as 1939 the Supreme Court recognized that:

[w]herever the title of streets and parks may rest, they 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. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

Hague v. C.I.O., 307 U.S. 496, 515 (1939) (plurality opinion).

Streets, sidewalks, and parks represent the “quintessential public forums.” *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Publicly owned streets and sidewalks, like the ones where Love Life's representatives were cited and arrested for walking

and praying, are traditional public forum property. *United States v. Grace*, 461 U.S. 171, 177 (1983).

In public fora like the streets and sidewalks surrounding A Woman’s Choice, the First Amendment standard is well established: “The government’s ability to permissibly restrict expressive conduct is very limited[.] The government may enforce reasonable time, place, and manner regulations as long as the restrictions ‘are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.’” *Grace*, 461 U.S. at 177 (quoting *Perry*, 460 U.S. at 45). “[A]n absolute prohibition on a particular type of expression will be upheld only if narrowly drawn to accomplish a compelling governmental interest.” *Grace*, 461 U.S. at 177.

Love Life’s representatives also walked and prayed on private property adjacent to A Woman’s Choice – private property where they frequently speak and have permission to be. A government may not restrict private speech on private property either without satisfying strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 135 S. Ct. 2218, 2225 (2015) (town’s sign ordinance restricting speech “on private property or on a public right of way” subject to strict scrutiny).

Therefore, Mr. Reeder and other Love Life representatives have a constitutional right to engage in prayer on this private property as well as on such public property as the sidewalks, greenways, streets, and curbs outside A Woman’s Choice, and any prohibition on the expressive activity of prayer in these fora would be subject to strict scrutiny. And because the City concedes that the Emergency Proclamation is not narrowly tailored, it fails the strict scrutiny analysis and is therefore unconstitutional both on its face and as applied.

C. A City May Not Suspend First Amendment Activities.

A government entity may not prohibit all First Amendment activity, regardless of the forum, and any such prohibition fails the First Amendment overbreadth doctrine. *Bd. of Airport Comm’rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987) (holding that a city resolution “prohibiting *all* protected expression” in an airport was unconstitutional). As the Supreme Court has put it plainly: “In . . . quintessential public forums, the government may not prohibit all communicative activity.” *Perry*, 460 U.S. at 45.

These First Amendment guarantees are true as to residents as well as nonresidents. As the Fourth Circuit has noted when considering a county’s restriction on a nonresident’s speech, “a state entity cannot exclude a speaker from a traditional public forum altogether unless ‘the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.’” *Warren v. Fairfax Cty.*, 196 F.3d 186, 190 (4th Cir. 1999) (quoting *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998)). Here, as in *Warren*, “the exclusion of non-residents . . . serves no compelling interests and it is not narrowly tailored to achieve the interests that it does serve.” *Id.*

The City's position that it may interpret the Emergency Proclamation to prohibit First Amendment activity is therefore contrary to Supreme Court caselaw and violates the Free Speech Clause.

DEMAND

It is imperative that this situation be corrected immediately to avoid unnecessary litigation in federal court. Please instruct any City of Greensboro officers or employees to discontinue their interference with Love Life's right to engage in assembly, prayer, and other expressive activities on public property, in accordance with the Emergency Proclamation. As you know, the violation of an individual's constitutional rights, even for a moment, results in irreparable injury. *Elrod v. Burns*, 427 U.S. 347 (1976). Consequently, we would appreciate a response from you by the end of business on Friday, April 3, 2020, outlining your position regarding the matters referenced herein, and providing assurance that Love Life's rights will not be infringed in this manner going forward.

Please understand that we will advise Love Life of its right to take immediate legal action against the City of Greensboro if its representatives' First Amendment rights are not immediately restored.

Sincerely,

A handwritten signature in black ink that reads "Denise Harle". The signature is written in a cursive, flowing style.

Denise Harle
Senior Counsel