STATE OF MAINE
CUMBERLAND COUNTY SUPERIOR COURT

State of Maine, *Plaintiff,* *v.* John Andrade, Jr., *Defendant.*	CASE NO.: PORSC-CV-25-276 **Justice Darcie McElwee**

Defendant's Response to Plaintiff's Motion for a Preliminary Injunction

Defendant John Andrade Jr., by and through counsel, hereby responds to the Plaintiff's Motion for a Preliminary Injunction. Under the guise of protecting healthcare delivery, the State asks this Court to impose what amounts to an unconstitutional injunctive restriction on core First Amendment activity, the expression of sincerely held religious and other beliefs in the public square. The proposed injunction would represent selective enforcement based on the viewpoint of the speaker. Not satisfied with seeking relief limited to the specific location where alleged violations occurred, the State requests a statewide physical presence prohibition, i.e., a 150-foot buffer zone, extending to *any* of "Planned Parenthood's facilities"—thus including facilities where *no* alleged violations have occurred and where *no* evidence suggests future violations will occur.

This Court should reject the State's request for extraordinary preliminary injunctive relief because the State has failed to provide sufficient evidence of actual

interference with healthcare delivery, has failed to demonstrate a likelihood of success on constitutional grounds, and seeks relief so overbroad as to eviscerate fundamental constitutional protections.

STATEMENT OF FACTS

Mr. John Andrade Jr. is a 42-year-old resident of Brunswick, Maine, who regularly engages in religious expression and counseling activities on public sidewalks outside Planned Parenthood's facility at 443 Congress Street in Portland. These activities stem from his sincere religious beliefs regarding the sanctity of human life and his duty to actively protect life by offering alternatives to women considering abortion. As the U.S. Supreme Court has said, "Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from achieving full equality." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 223–24 (2022). This case does not require this Court to take sides in the abortion debate, but rather to apply the law to the facts here.

For the last several years, Mr. Andrade has engaged in various forms of protected speech, including praying with people, preaching with and without amplification, and playing music with and without amplification. According to the Complaint, Portland Police officers have on various occasions approached Mr. Andrade and requested that he reduce the volume of his speech or amplification.

Many of these instances are beyond the two-year statute of limitations contained in 5 M.R.S. § 4613(2)(C).

The State now seeks a preliminary injunction, not to impose noise volume limitations (something the state or local government would be better suited to do), but to prohibit Mr. Andrade from coming within 150 feet of any Planned Parenthood facility statewide and from engaging in any conduct with intent to interfere with healthcare services at such facilities or to encourage others to do so. This requested relief extends far beyond the alleged problem and far beyond the remedy articulated in the statute the state invokes. Moreover, the scope of the requested injunction goes far beyond the location of the alleged conduct. It would instead effectively create a statewide injunctive restriction on Mr. Andrade's constitutional rights, unconnected to loud noises or even to any noise at all.

STANDARD OF REVIEW

A party seeking a preliminary injunction "must demonstrate that (1) it will suffer irreparable injury if the injunction is not granted; (2) such injury outweighs any harm which granting the injunctive relief would inflict on the other party; (3) it has a likelihood of success on the merits . . . ; and (4) the public interest will not be adversely affected by granting the injunction." *Bangor Historic Track, Inc. v. Dep't of Agric., Food & Rural Res.*, 837 A.2d 129, 132 (Me. 2003). Generally, the second and third elements are not necessarily applicable to injunctions based upon statutes. *State v. Sirois,* 478 A.2d 1117, 1121–22 (Me. 1984).

Any injunction restricting expressive activities must also satisfy the First Amendment and the Maine Constitution, Me. Const. Art. I, § 4.[1] The Court must ask "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest." *Madsen v. Women's Health Center*, 512 U.S. 753, 765 (1994). Moreover, to justify preliminary injunction with "mandatory aspects," the State must "show a clear likelihood of success on the merits, not just a reasonable likelihood." *Department of Environmental Protection v. Emerson*, 563 A.2d 762, 768 (Me. 1989).

ARGUMENT

I. The State's Complaint fails to adequately allege the essential elements required for relief under the Maine Civil Rights Act.

The statute contains several distinct elements that the State must prove. A defendant must "intentionally mak[e] noise that can be heard within a building" and have made that noise "after having been ordered by a law enforcement officer to cease" and have the specific requisite intent. 5 M.R.S. § 4684-B. The statute requires proof of specific intent either "To jeopardize the health of persons receiving health services within the building; or [] To interfere with the safe and effective delivery of those services within the building." *Id.*

The State's Complaint, Motion, and Memorandum in Support fail to make a sufficient showing to support the requisite elements. As noted above, the State bears a heavy burden to justify infringements on speech. The State cites to no evidence

[1] All Defendant's constitutional arguments in this brief are advanced under both the First Amendment and the Maine Constitution, Me. Const. Art. I, §§ 3, 4.

whatsoever beyond mere allegations in the Complaint, insufficient to constitute the actual evidence requisite for preliminary injunction. These allegations have not been tested or verified through the evidentiary process. *See Napolitano v. Napolitano*, 2016 Me. Bus. & Consumer LEXIS 15, *7–8 (Me. Super. Ct., Cumb. Cty., Oct. 25, 2016). ("[I]n determining whether to issue a preliminary injunction, the court may rely on evidence presented in sworn depositions, affidavits, oral testimony, or a verified complaint. . . . [B]ecause Plaintiff largely relies on the unsworn Referee's Report, Plaintiff has not provided sufficient, proper evidence in order to obtain preliminary injunctive relief.") (citation omitted); *see also Lorello v. Karageorge*, 2011 Me. Super. LEXIS 227, *6 (Me. Super. Ct., Cumb. Cty., Dec. 8, 2011) ("[R]ecord citations are to be to admissible evidence, and not simply to a non-verified complaint."). Plaintiff has presented no affidavits, no exhibits, no filings under oath whatsoever to justify the proposed injunction. No injunction can be justified in the absence of any evidence. Mr. Andrade is unable to prepare his defense with no evidence identified. And the due process problem is exacerbated by the availability of criminal punishment under the statute.

In particular, the State has made no attempt to actually prove that Mr. Andrade had the specific intent required for a statutory violation. Mr. Andrade's presence outside Planned Parenthood stems from his sincere religious beliefs regarding the sanctity of human life and his duty to actively protect life by offering alternatives to women considering abortion. The law requires proof of intent to "jeopardize . . . health" or to "interfere with the safe and effective delivery" of health

services. It is an unsupported slur to attribute to Mr. Andrade such bad faith intent, especially where the sparse facts offered suggest Mr. Andrade's intent is precisely the opposite—to offer information, alternatives, and counseling that might enhance rather than interfere with women's healthcare decision-making. The State's failure adequately to distinguish between intent to counsel or aid and intent to interfere in harmful ways renders its allegations legally and constitutionally insufficient. Intent to identify options and education is not synonymous with an intent to interfere.

The State's Memorandum in Support cites no evidence whatsoever beyond the unverified Complaint—no affidavits from patients, medical staff, or law enforcement; no expert testimony regarding acoustic measurements; no documentation of actual disruption. The State bears the burden of proving that Mr. Andrade's conduct was specifically intended to interfere in prohibited ways with healthcare delivery but has neither identified nor presented any evidence beyond the conclusory allegation that his speech "could be heard within the building." This fails to establish the requisite specific intent.

Speech in public forums is inherently designed to be heard by its intended audience, and the mere fact that it may also be audible to others does not transform protected expression into unlawful interference. The analysis must focus on whether Mr. Andrade's conduct was specifically intended to jeopardize health services or interfere with their "safe and effective" delivery, rather than whether his protected speech happened to be audible within nearby buildings. Mr. Andrade's persistence no more indicates such harmful "intent" than would a union demonstrator's insistence

that a hospital pay fair wages to its workers. The State's allegations thus provide no evidence to sustain the elements required by the statute to satisfy intent.[2]

Likewise, the State has failed to present evidence demonstrating that Mr. Andrade's conduct actually disrupted patient care or compromised healthcare delivery in any measurable way. Without concrete evidence from the individuals allegedly harmed by the defendant, the State relies solely on generalized assertions that audible speech somehow interferes with healthcare delivery. This assumption cannot support an extraordinary prior restraint on constitutionally protected activity.

II. 5 M.R.S. § 4684-B is unconstitutionally vague, both on its face and as-applied.

A vague regulation of expression "raises special First Amendment concerns because of its obvious chilling effect on free speech." *Reno v. American Civil Liberties Union*, 521 U.S. 844, 871–72 (1997). Both 5 M.R.S. § 4684-B on its face, and in its application to Andrade's conduct, creates impermissible vagueness under the First Amendment and in determining what level of sound constitutes unlawful "interference" with healthcare delivery, failing to provide the clear guidance that the Constitution demands when the government regulates protected speech. This Court should not award an injunction based on an unconstitutionally vague law.

The Complaint alleges repeatedly that Mr. Andrade's voice or amplification "could be heard within the building," but provides no objective standard for

[2] In *State v. Ingalls,* No. CV-15-497, Order on Motion for Preliminary Injunction (Me. Super. Ct., Cumb. Cty., Oct. 4, 2017 (L. Walker, J.), at 1, there was presented evidence that defendant Ingalls would stand on the sidewalk "and direct his message up towards the second floor." *Id.* No such concrete evidence was identified or presented here. In any event, merely trying to be heard is not the same as a specific intent to interfere in harmful ways.

measuring when audible speech crosses the constitutional threshold into unlawful interference. The phrase "could be heard within the building" provides no meaningful guidance, and *no* clarity, about what volume levels are permissible and what levels subject speakers to civil penalties and criminal prosecution. "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 438 (1963). The First Amendment thus demands objective standards that are wholly lacking here. Citizens cannot reasonably determine whether their speech violates the statutory standard without engaging in guesswork.

Even more problematic is the State's failure to define what constitutes "interference" with the safe and effective delivery of health services. The statute requires proof that noise has the intent to "jeopardize the health of persons receiving health services" or "interfere with the safe and effective delivery of those services," but neither the statute nor the State's argument provide any objective criteria for making this determination. 5 M.R.S. § 4684-B. The "interference" standard lacks objective criteria for distinguishing between prohibited interference and mere inconvenience or annoyance. And speech does not lose constitutional protection simply because it is loud enough to hear. The statute provides no guidance about what interference consists of, leaving speakers at risk of *post hoc* assessments.

The State's Complaint suggests that merely being audible indoors renders speech "interference," but this interpretation would criminalize vast categories of protected speech in urban areas near healthcare facilities. Under this standard,

normal conversation on sidewalks, commercial activities, traffic noise, and other routine aspects of urban life, not to mention parades and protests, could all potentially constitute unlawful interference, if they are audible within medical buildings.

This vagueness leaves speakers like Mr. Andrade to guess at what volume level might subject them to civil penalties up to $5,000 per violation and potential criminal prosecution. Vague, sporadic, inconsistent instructions from police officers do not cure the vagueness of this provision's application to Mr. Andrade, they highlight it. The lack of clear standards chills protected speech by creating uncertainty about what conduct remains constitutionally permissible. Indeed, this vague law invites such disparate treatment by impermissibly delegating policy considerations "to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

The Constitution does not tolerate a law "so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008). The statute's vague terms delegate essential policy decisions to law enforcement officers, prosecutors, and judges without providing meaningful guidance for consistent application. This standardless discretion inevitably risks discriminatory enforcement based on officials' disagreement with particular messages rather than neutral application of objective criteria. In contrast, and assuming the interest is compelling, objectively discernable (and clearer) avenues are

available: decibel level restrictions. In other words, there is no need for a statute this vague and arbitrary.

The record in this case demonstrates precisely this kind of arbitrary enforcement, with different police officers making different judgments about when Mr. Andrade's speech crosses the line from permissible to unlawful. Some officers have requested volume reductions while others have demanded complete cessation of amplified speech. Some have focused on music while others have concentrated on vocal projection. Some have accepted Mr. Andrade's compliance while others have returned to issue additional warnings after he resumed audible speech. Others had no concerns with his conduct. The only consistency: *none cited Mr. Andrade for any noise violation.* Moreover, the alleged incidents reflect the expiration of months between interactions with police, with many weeks where no concerns were raised at all. This arbitrary enforcement is anathema to the First Amendment.

III. 5 M.R.S. § 4684-B is unconstitutional in its application due to the requested relief not being narrowly tailored.

Even if 5 M.R.S. § 4684-B could survive facial constitutional challenge, its application to Mr. Andrade's specific conduct violates constitutional requirements for precision and narrow tailoring. Constitutional doctrine requires that speech restrictions be narrowly tailored. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983). When it comes to free speech rights, the Supreme Court has required that an "injunction burden *no more speech than necessary* to serve a significant government interest." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 765 (1994) (emphasis added).

The State grounds this lawsuit in 5 M.R.S. § 4684-B(2)(D), a provision that speaks specifically to "noise that can be heard within a building" coupled with criminal intent. But rather than seek relief tailored to that statutory language, it asks this court to prohibit Mr. Andrade from "coming within 150 feet of Planned Parenthood's facilities, including the facility at 443 Congress Street in Portland, Maine[.]" Plaintiff's Mot. for P.I., p. 1. The disconnect is stark. The statute addresses noise and intent. The requested relief sweeps far beyond both. The State seeks to silence Mr. Andrade, not just at the clinic where alleged conduct occurred, but at facilities across the state where the State has presented no evidence of any alleged statutory violation.[3]

In a traditional public forum, the government may enforce content-neutral time, place, and manner regulations only if they are "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Educ. Ass'n*, 460 U.S. at 45. Narrow tailoring requires that enforcement "promote[] a substantial government interest that would be achieved less effectively absent the regulation," and does not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989) (citation omitted). And as noted above, the *Madsen* case imposes an even *higher* standard against which to measure *injunctive* restrictions on speech. The State's requested relief fails the requirement of

[3] In fact, the language of the proposed injunction is so broad, "coming within 150 feet of Planned Parenthood's facilities," that it could be reasonably read as applying out of this jurisdiction to other localities in other states.

narrowness in multiple respects, imposing restrictions that sweep far more broadly than necessary to address any legitimate governmental concerns while failing to preserve adequate channels for Andrade's protected expression.

The geographic scope of the requested injunction extends far beyond any demonstrated need or constitutional justification. The State seeks to prohibit Mr. Andrade from coming within 150 feet of *any* Planned Parenthood facility statewide, despite evidence of conduct at only *one* location in Portland. This creates a statewide speech restriction based on localized conduct, with no evidence supporting the need for such expansive relief. The requested relief would prohibit Mr. Andrade from exercising his constitutional rights in public forums throughout Maine based solely on one type of conduct alleged to have occurred at a single location. If the State's concerns relate to specific conduct at a specific location, the remedy must be tailored to address that specific harm rather than creating a broad prophylactic rule. "For a problem shown to arise only . . . at one clinic, creating 35-foot buffer zones at every clinic across the Commonwealth is hardly a narrowly tailored solution." *McCullen v. Coakley*, 573 U.S. 464, 493 (2014). The State's absolute prohibition would do exactly what *McCullen* forbids: eliminate Mr. Andrade's ability to engage in peaceful advocacy.

The State does not even allege, let alone identify evidence of, problems at other Planned Parenthood facilities. Not a single complaint, incident report, or allegation is presented. Courts cannot issue injunctions based on hypothetical future

misconduct at locations where a defendant has never set foot. The First Amendment does not permit such end-runs around constitutional protections.

The proposed injunction goes so far as to ask for a prohibition against encouraging or assisting *anyone else* in coming within 150 feet of Planned Parenthood. There is no possible justification for such a broadly prophylactic, unsubstantiated restriction on the right to speak. *NOW v. Operation Rescue*, 37 F.3d 646, 654–58 (DC Cir. 1994) (directing lower court to excise from an injunction the "encouraging" language in light of "more serious First Amendment concerns").

The State has made no showing that less restrictive alternatives would be inadequate to address its stated concerns. The requested relief prohibits not only the specific conduct that the State characterizes as unlawful, but all speech, and even mere presence, near these facilities, regardless of volume, timing, or potential for interference. The State's proposed injunction would prohibit Mr. Andrade from engaging in quiet conversation with willing listeners, distributing literature, silently holding signs, or simply being present in public areas near Planned Parenthood facilities. None of these activities could reasonably be characterized as interfering with healthcare.

Perhaps most telling, this Court has already considered and rejected identical reasoning. In *State v. Ingalls*, No. CV-15-497, Order on Motion for Preliminary Injunction (Me. Super. Ct., Cumb. Cty., Oct. 4, 2017) (L. Walker, J.), Maine sought an injunction parallel to the one it seeks here, and this Court refused:

> [T]he restrictions suggested by the State go further than necessary. Multiple complaints about disruption of medical services have been

> made as a result of Defendant Ingalls' preaching outside of 443 Congress Street. The State has made no allegations that Defendant Ingalls blocked the entrance to the building or impermissibly harassed or threatened individuals as they entered the building. There have been no allegations that Defendant Ingalls' conduct, with the exception of the volume of his voice, was unlawful in any way. Therefore, the court views prohibiting Defendant Ingalls from coming within 50 feet of all Planned Parenthood facilities as an unnecessary burden on his right to free speech in a historically public forum.

Plaintiff's Appendix at 9. The *Ingalls* court rejected a 50-foot restriction as excessive. Now the State seeks a 150-foot prohibition—three times broader—covering the same conduct at the same location, plus facilities where no conduct has occurred at all. There is no justification for blocking Defendant from even coming near the facility; the Complaint contains one ambiguous, unsupported assertion that there was an allegation made by an unidentified person of an attempt by Mr. Andrade to block the entrance in 2021 resulting in a criminal trespass notice (which presumably did not result in a conviction), without substantiation or support. Complaint ¶ 13, and well outside the statute of limitations in in 5 M.R.S. § 4613(2)(C). This is insufficient to justify removing First Amendment rights altogether or barring physical presence.

Should this Court find some form of relief appropriate, despite the constitutional defects in the State's request, any injunction must be narrowly tailored to address only proven, specific harms, as discussed above. Certainly, the state or local government could consider imposing objective decibel limits regardless of specific intent. After all, sounds that are unsafely loud are unsafely loud regardless of the noisemaker's intent. But the state did not go that route in the statute at issue

here. It chose instead to require a specific intent element, and of course this Court is not authorized to second-guess that judgment.

Finally, any alternative relief this Court might impose must include factual findings of specific intent and actual interference based on sworn evidence, not mere complaint allegations. The State has not provided such a factual predicate for relief here.

IV. Plaintiff's selective enforcement constitutes impermissible viewpoint discrimination.

Viewpoint discrimination is incompatible with the First Amendment. Government regulation of speech is impermissible when it is "an effort to suppress expression merely because public officials oppose the speaker's view." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). "Discrimination against speech because of its message is presumed to be unconstitutional. . . . When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Id.* at 828–29. The State has engaged in viewpoint discrimination in its enforcement of 5 M.R.S. § 4684-B, demonstrating a clear pattern of targeting speakers based on their anti-abortion message rather than any neutral application of noise or healthcare abortion regulations. Plaintiff enforces 5 M.R.S. § 4684-B to persecute pro-life, religious speakers because of the message they convey.

The cases cited by the State, *March v. Mills*, 867 F.3d 46 (1st Cir.), *cert. denied* 584 U.S. 930 (2018); and *State v. Ingalls*, No. CV-15-497, Order on Motion for Preliminary Injunction (Me. Super. Ct., Cumb. Cty., Oct. 4, 2017) (L. Walker, J.),

concern injunctions the State brought against pro-life protesters. Defendant has reviewed the cases discussing 5 M.R.S. § 4684-B and cannot find a single instance where this statute was used in *any* lawsuit brought by the State against anyone who was *not a pro-life protester*. The reported cases on this statute, in other words, evidence a clear pattern of discriminatory enforcement, only targeting pro-life protesters and not pro-abortion protesters at Pregnancy Resource Centers (PRCs) or other speakers generating noise near healthcare facilities.

This pattern of enforcement reveals the State's true motivation: suppressing a particular viewpoint rather than protecting healthcare delivery through neutral application of noise regulations.

The State's Complaint focuses extensively on Mr. Andrade's presence outside Planned Parenthood, his use of amplification for "voice projection," and his persistence in continuing his activities after police warnings. Notably absent from the Complaint is any evidence that the State has pursued similar enforcement actions against other speakers who generate noise near healthcare facilities. A neutral enforcement approach would apply the same standards and characterizations to all speakers generating audible speech near healthcare facilities.

The State's selective enforcement of this Civil Rights Act provision against only pro-life speakers, combined with its failure to pursue similar actions against speakers with opposing viewpoints, establishes the pretextual nature of its claimed neutral enforcement. The practical effect of the State's enforcement pattern is to create a regulatory environment where supporters of abortion services can engage in vocal

advocacy near PRCs, or even Planned Parenthood facilities, without fear of civil rights violations, while opponents of abortion services face the constant threat of significant civil penalties and criminal prosecution for similar activities. This disparate treatment cannot be justified by any legitimate governmental interest in protecting healthcare delivery, as both types of speech are equally audible and equally capable of being heard within healthcare facilities.

V. 5 M.R.S. § 4684-B is unconstitutional on its face.

The First Amendment's protection of free speech is fundamentally violated by 5 M.R.S. § 4684-B, which creates an impermissible content-based restriction on its face that cannot withstand the strict scrutiny required for such restrictions. This statute targets speech on a public street. "Streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely." *Carey v. Brown,* 447 U.S. 455, 460 (1980) (internal quotations and citations omitted). "When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entm't Grp.,* 529 U.S. 803, 806 (2000); *see State v. Janisczak*, 579 A.2d 736, 740 (Me. 1990) ("The Maine Constitution is no less restrictive than the Federal Constitution.").

Content-based restrictions on free speech are "presumptively invalid" and must endure strict scrutiny review. *R.A.V. v. City of St. Paul,* 505 U.S. 377, 386 (1992). The Statute requires enforcers to make a determination of intent to interfere.

See 5 M.R.S. § 4684-B(2)(D). This necessitates looking at the content of the speech. Specifically, the law applies only to individuals who intentionally make noise that can be heard within a building with the "intent . . . [t]o jeopardize the health of persons receiving health services . . . or . . . interfere with the safe and effective delivery of those services." 5 M.R.S. § 4684-B(2)(D)(1)-(2). The application of the Noise Provision turns both on the mode or method of expression (i.e., the volume) and on the purpose of the noise (i.e., to disrupt). In other words, the Noise Provision regulates noise, in part, by its "function or purpose." *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015). Such a distinction is "drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny." *Id.* Outside a healthcare facility that performs abortions, a pro-life speaker's expressive activity would be treated as "interference" and thus, differently than a pro-choice protester's activity on the same sidewalk, which would apparently be treated as encouragement. The difference in treatment is based on the message. Activity that could very well be much louder would not be considered a violation of the provision, but the lone activity of a street preacher is, because of the content of his message. *On its face,* the law requires the enforcement authorities to consider the content of the message to determine intent.

Because 5 M.R.S. § 4684-B(2)(D) is content-based, it is presumed to be unconstitutional. *R.A.V.*, 505 U.S. at 382. And it cannot survive strict scrutiny. Adequate content-neutral alternatives could achieve the State's asserted interest. For example, the State could limit all noise outside of buildings offering health services if the noise exceeds a certain decibel level.

VI. The Proposed injunction would violate the Free Exercise Clause.

Mr. Andrade's activities also implicate his Free Exercise protections under the First Amendment and the Maine Constitution. Me. Const. Art. I, § 3. The requested injunction would substantially burden Mr. Andrade's sincere religious exercise by prohibiting him from acting on his religious conviction that he has a duty to offer life-affirming alternatives to women considering abortion. The statute's vague terms, content discrimination, and selective enforcement against religious speakers render it neither neutral nor generally applicable, thereby triggering strict scrutiny under the Free Exercise Clause that it cannot satisfy for the reasons discussed above. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

VII. Plaintiff has failed to show that the proposed injunction is in the public interest.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). There is a "heavy presumption against [the] constitutional validity" of any restriction against the right to speech. *Childs v. Ballou*, 148 A.3d 291, 296 (Me. 2016) (*quoting Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 558 (1976)) (quotation marks omitted). Plaintiff cites *State v. Sirois,* 478 A.2d 1117, 1121–22 (Me. 1984), a case involving wastewater and sewage management. That non-speech case does not disturb the presumption in favor of the First Amendment rights in this Court's weighing of injunctive relief.

The public interest weighs decisively against granting the requested injunction. First Amendment freedoms are not merely individual or statutorily

granted rights but essential components of democratic governance that benefit the entire community. The requested injunction would establish a precedent allowing the State to silence unpopular speech in traditional public forums based on unproven allegations of interference. The State has presented no concrete evidence of actual harm to patients or medical procedures—only theoretical concerns about audible speech that would apply equally to traffic noise, construction, or other routine urban sounds.

Religious expression and speech on public issues in public forums represent the core of First Amendment protections. Once speech rights are restricted in a way that stifles communications, the past harm cannot be undone. The chilling effect, moreover, extends beyond Mr. Andrade to others who might wish to engage in similar expressive activity, creating irreparable harm to the constitutional order itself.

In contrast to the clear constitutional harm that would result from granting the requested injunction, the State has presented no specific evidence of actual harm to patients or compromise of medical care arising to the level of something more likely justifiable as a legitimate public interest. The State's concerns remain largely theoretical, based on assumptions about how audible speech might affect healthcare delivery rather than documented instances of actual interference.

CONCLUSION

For the reasons set forward above, this Court should deny the Motion for a Preliminary Injunction.

Respectfully Submitted,

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*Motions for Pro Hac Vice Forthcoming

Dated September 11, 2025