

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARY DEVINE,

Plaintiff,

v.

THE CITY OF NEW YORK, a municipal
corporation

Defendant.

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:
: CASE NO. _____
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: Hon. _____
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Plaintiff, Mary Devine, a resident of Yonkers, New York, brings this Complaint against the City of New York, its agents, servants, employees, officers, and successors in office and all those persons in active concert or participation with it, and in support thereof alleges the following on information and belief:

INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of portions of Local Law 24 (2009), titled the “Access to Reproductive Health Care Facilities Act,” N.Y.C. Admin. Code § 8-801 *et seq.* (hereafter “Local Law 24”).
2. By this Complaint, Plaintiff seeks declaratory and injunctive relief, declaring specific sections of Local Law 24 unconstitutional on their face and as applied to Plaintiff, and enjoining the Defendant, and all those in active concert with it, from abridging Plaintiff’s constitutionality protected rights of freedom of speech and assembly, and due process of law guaranteed by the First and Fourteenth Amendments to the United

States Constitution, as well as the New York Constitution, through enforcement of the Ordinance.

JURISDICTION

3. This Court has jurisdiction over Plaintiff's federal claims by operation of 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over Plaintiff's claims for declaratory relief under 28 U.S.C. § 2201-02. This Court has supplemental jurisdiction over Plaintiff's state claims pursuant to 28 U.S.C. § 1367.

VENUE

4. Venue is proper in the U.S. District Court for the Southern District of New York in that the events giving rise to Plaintiff's claims occurred with the district court.

PARTIES

5. Plaintiff, Mary Devine, is a citizen of the United States and a resident of New York.
6. Defendant, City of New York, is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York.

FACTUAL ALLEGATIONS

7. In 2009, the City of New York Council passed Local Law 24 which, in part, restricts freedom of speech and assembly in traditional public fora.
8. Local Law 24 provides, in pertinent part, that “[i]t shall be unlawful for any person . . .to follow and harass another person within 15 feet of the premises of a reproductive health care facility.” N.Y.C. Admin. Code § 8-803(a)(3) (“Prohibition of activities to prevent access to reproductive health care facilities”).

9. The same section provides that any person who violates this provision shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars and six months imprisonment for a first offense. N.Y.C. Admin. Code § 8-803(b).
10. In addition to those penalties, § 8-804 provides that any person whose access to a facility has been interfered with, or the owner of a reproductive facility or the building in which it is located may bring a civil action for injunctive relief, treble damages including for pain and suffering and emotional injuries.
11. Local Law 24 does not contain any definitions of the terms “follow” or “harass.”
12. For approximately the past fifteen years, Plaintiff has engaged in sidewalk counseling and leafletting on the public sidewalk in front of and adjacent to a reproductive health care facility at 2070 East Chester Road, Bronx, New York.
13. Plaintiff’s sidewalk counseling consists of trying to approach women seeking abortions at the facility, engaging them in quiet, private conversations (as much as is possible under the circumstances), and offering them alternatives to abortion as well as other help they may need.
14. It is essential to Plaintiff’s sidewalk counseling efforts that she be able to approach women and accompany them as they walk toward the entrance to the facility so that she might speak with them in a quiet, caring, private, and non-confrontational manner.
15. Having to abruptly stop communication with a woman or girl because she is within 15-feet of the entrance to the facility significantly interferes with Plaintiff’s ability to

communicate by cutting off her ability to continue to quietly converse with women sometimes in the middle of a conversation.

16. At best, Plaintiff has a very limited time in which to identify a woman or girl as a potential patient of the facility, attempt to initiate a conversation with her, listen to her concerns, and offer her help either verbally or through pamphlets.
17. For most of the past 15 years, Plaintiff was able to approach and accompany women within 15 feet of the facility's entrance without interference by law enforcement.
18. However, in recent months, Plaintiff has been advised by more than one officer of the New York City Police Department that she is not permitted to be within 15 feet of the entrance to the facility while engaging in sidewalk counseling and leafleting. Police have told Plaintiff that such conduct amounts to "following and harassing."
19. These officers have specifically referred to Local Law 24 as the basis for this restriction.
20. As a result, Plaintiff is no longer at liberty to engage in sidewalk counseling and leafleting in the manner previously described without placing herself at risk of arrest, substantial monetary fines and incarceration.
21. As a result, Plaintiff can no longer engage in quintessential speech in a traditional public forum without incurring the risk of fines and jail time.
22. Thus, Local Law 24 places a substantial burden on Plaintiff's ability to communicate with persons entering the clinic, which is an essential part of her sidewalk counseling

and also significantly hampers her ability to offer pamphlets, leaflets, and other help to individuals on the public sidewalk.

ALLEGATIONS OF LAW

23. The right to engage in conversations and distribute literature in a traditional public forum, such as the sidewalk in question, is a right clearly established by the First and Fourteenth Amendments to the U.S. Constitution and the Constitution of the State of New York.
24. The application of Local Law 24 to prohibit the exercise of First Amendment rights in a traditional public forum is injurious to Plaintiff and unconstitutionally chills the exercise of her clearly established constitutional rights.
25. Local Law 24 is unconstitutional on its face and as applied because it infringes on clearly established constitutional rights.
26. Local Law 24 is not a narrowly tailored restriction that furthers a significant or compelling governmental interest, does not leave open ample alternative channels of communication, and is not the least restrictive means of furthering a significant or compelling governmental interest.
27. Local Law 24 is significantly overbroad and burdens substantially more speech than is necessary to achieve the City's asserted interests.
28. The undefined terms of Local Law 24, "follow and harass," are unconstitutionally vague on their face and as applied to the speech activities of Plaintiff and therefore violate the Due Process Clause of the Fourteenth Amendment.

29. Plaintiff, through counsel, has attempted to obtain from Defendant adequate assurances that Local Law 24 does not prohibit Plaintiff from sidewalk counseling and leafleting as described above, but Defendant has not responded.
30. Plaintiff has no plain, adequate, or complete remedy to redress the wrongs described in this Complaint other than by filing this action.

CAUSES OF ACTION

COUNT I – 42 U.S.C. § 1983

(Free Speech)

31. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 30, above, and incorporates those allegations herein by reference.
32. Local Law 24 provides, in pertinent part, that “[i]t shall be unlawful for any person . . . to follow and harass another person within 15 feet of the premises of a reproductive health care facility.” N.Y.C. Admin. Code § 8-803(a)(3) (“follow and harass provision”).
33. Public streets and sidewalks are quintessential public forums for speech.
34. The government’s ability to restrict speech in public forums is very limited.
35. Local Law 24, including its “follow and harass” provision, burdens substantially more speech than necessary to achieve a substantial and legitimate government interest.
36. Local Law 24, including its “follow and harass” provision, is not a valid time, place, and manner regulation.
37. Local Law 24, including its “follow and harass” provision, is not narrowly tailored.

38. Local Law 24, including its “follow and harass” provision, does not serve a significant government interest.
39. Local Law 24, including its “follow and harass” provision, does not leave open ample alternative avenues of communication.
40. Local Law 24, including its “follow and harass” provision, is significantly overbroad, on its face and as applied, and burdens substantially more speech than is necessary to achieve the City’s asserted interests.
41. Local Law 24, including its “follow and harass” provision, on its face and as applied, is an unconstitutional abridgement of Plaintiffs’ affirmative rights to free speech secured by the First and Fourteenth Amendments to the United States Constitution as protected by 42 U.S.C. § 1983.

WHEREFORE, Plaintiff requests relief as set forth below in the Prayer for Relief.

COUNT II – 42 U.S.C. § 1983

(Due Process – Vagueness)

42. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 30, above, and incorporates those allegations herein by reference.
43. Local Law 24 provides, in pertinent part, that “[i]t shall be unlawful for any person . . . to follow and harass another person within 15 feet of the premises of a reproductive health care facility.” N.Y.C. Admin. Code § 8-803(a)(3) (“follow and harass provision”).
44. The “follow and harass” provision does not give fair notice to citizens.

45. The “follow and harass” provision does not provide minimal standards to guide law enforcement.
46. The “follow and harass” provision necessarily entrusts lawmaking to the moment-to-moment judgment of police officers applying and enforcing it.
47. The “follow and harass” provision authorizes and encourages arbitrary and discriminatory enforcement.
48. The “follow and harass” provision is impermissibly vague because it fails to establish standards for the police that are sufficient to guard against the arbitrary and discriminatory suppression of First Amendment rights.
49. Local Law 24, including its “follow and harass” provision, on its face and as applied, is an unconstitutional abridgement of Plaintiffs’ and third parties’ affirmative rights in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff requests relief as set forth below in the Prayer for Relief.

COUNT III – N.Y. State Constitution

(Free Speech)

50. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 30, above, and incorporates those allegations herein by reference.
51. Art. I, § 8 of the New York Constitution provides that “no law shall be passed to restrain or abridge the liberty of speech.”
52. Local Law 24 unconstitutionally restrains and abridges Plaintiff’s liberty of speech.

WHEREFORE, Plaintiff requests relief as set forth below in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- A. A declaratory judgment that Local Law 24, including N.Y.C. Admin. Code § 8-803(a)(3), is unconstitutional on its face, as violating the federally protected right of free speech.
- B. A declaratory judgment that Local Law 24, including N.Y.C. Admin. Code § 8-803(a)(3), is unconstitutional on its face, as violating due process.
- C. A declaratory judgment that Local Law 24, including N.Y.C. Admin. Code § 8-803(a)(3), is unconstitutional on its face, as violating the free speech provision of the New York State Constitution.
- D. Entry of a preliminary injunction barring Defendant and all persons in active concert with it from enforcing Local Law 24, including N.Y.C. Admin. Code § 8-803(a)(3), against Plaintiff and all others.
- E. Entry of a permanent injunction barring Defendant and all persons in active concert with it from enforcing Local Law 24, including N.Y.C. Admin. Code § 8-803(a)(3), against Plaintiff and all others.
- F. Reasonable attorney's fees and costs as allowable under 42 U.S.C. § 1988 and other applicable statutes;
- G. Any and further relief the Court deems just.

Respectfully submitted on this 2nd day of March 2018.

/s/ Francis J. Manion

Francis J. Manion*

Lead Attorney

Geoffrey R. Surtees*

AMERICAN CENTER FOR LAW & JUSTICE

[REDACTED]


Counsel for Plaintiffs

* *Pro hac vice applications filed herewith*

VERIFICATION OF COMPLAINT

I, Mary Devine, hereby declare under penalty of perjury that the factual statements contained in the foregoing Complaint are known by me to be true and correct.

Executed in New York, New York on February 14, 2018.



Mary Devine

(The declaration electronically filed with the Court bears the scanned original signature of Mary Devine. The original declaration, bearing the original signature, is being retained by her counsel in this action and is available for review on request by the Court and counsel for Defendant.)