

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
(Eastern Division)**

**ANTHONY MIANO and  
NICHOLAS ROLLAND,**

*Plaintiffs,*

v.

**THOMAS MILLER, in his official capacity  
as Attorney General of Iowa; and JANET  
LYNESS, in her official capacity as Johnson  
County Attorney,**

*Defendants.*

**Case 3:18-cv-110**

**PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION**

**ORAL ARGUMENT REQUESTED**

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Pursuant to Rule 65 of the Federal Rules of Civil Procedure, as well as Local Rule 65, Plaintiffs Anthony Miano and Nicholas Rolland respectfully move this Court for a preliminary injunction on the legal question whether Iowa Code § 723.4(2), which makes it a misdemeanor to make “loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof,” is unconstitutional on its face and as applied to Plaintiffs. Plaintiffs request that this Court enjoin the enforcement of § 723.4(2) against them and others not before this Court. In support of this motion, Plaintiffs state as follows:

1. Plaintiffs have filed their verified complaint requesting that this Court declare Iowa Code § 723.4(2) unconstitutional on its face and as applied to Plaintiffs in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs further ask this Court to enjoin Defendants, their officers, agents, servants, and employees, the prosecutors Defendants and their offices supervise, and their successors in office, from the enforcement of § 723.4(2) against Plaintiffs and others not before this Court.

2. Concurrently with the filing of this motion, Plaintiffs filed a supporting memorandum of law. As stated in the memorandum, which is incorporated herein by reference, this case meets the requirements for a preliminary injunction: (1) Plaintiffs are likely to succeed on the merits of this case; (2) they will suffer irreparable harm without the injunction; (3) the injunction will not cause substantial harm to others; and (4) the injunction will not negatively impact the public interest. *See Bank One, N.A. v. Gattau*, 190 F.3d 844, 847 (8th Cir. 1999); *Dataphase Sys. v. C L Sys.*, 640 F.2d 109 (8th Cir. 1981). No bond should be imposed on Plaintiffs.

3. A proposed order granting this motion has been submitted with this motion.

4. Oral argument is requested should this Court determine it will be beneficial to the resolution of this motion.

Accordingly, Plaintiffs respectfully request that this Court grant this motion for a preliminary injunction and provide Plaintiffs with the following relief:

- (1) Declare Iowa Code § 723.4(2) overbroad and vague on its face and as-applied to Plaintiffs;
- (2) Enjoin Defendants, their officers, agents, servants, and employees, the prosecutors Defendants and their offices supervise, and their successors in office, from the enforcement of Iowa Code § 723.4(2) against Plaintiffs and others not before this Court while they are exercising their protected freedoms of speech and expression in the traditional public forums outside abortion clinics in Johnson County, Iowa;
- (3) Direct Defendant Janet Lyness, in her official capacity as Johnson County Attorney, to notify immediately her officers, agents, attorneys, and employees, the prosecutors she and her office supervise, and those acting in concert with them of the Court's order enjoining the enforcement of Iowa Code § 723.4(2); and

(4) Impose no bond on Plaintiffs for the entry of a preliminary injunction.

Dated this 27th day of November 2018.

Respectfully submitted,

/s/Michelle K. Terry

Kenneth R. Munro  
MUNRO LAW OFFICE, P.C.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]

*\*Pro hac vice applications forthcoming*

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2018, a true and correct copy of the foregoing was filed electronically via the Court's ECF system and mailed via First Class Mail to Defendants at the addresses below:

Defendant Thomas Miller  
Attorney General (Department of Justice)  
Hoover State Office Building

[REDACTED]  
[REDACTED]  
[REDACTED]

Defendant Janet Lyness  
Johnson County Attorney  
Johnson County Courthouse

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

/s/ Michelle K. Terry  
Michelle K. Terry  
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*Counsel for Plaintiffs*