

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 NO.

VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

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**Pro hac vice applications forthcoming*

Counsel for Plaintiffs

Plaintiffs, by and through their counsel, bring this verified complaint against the above-named Defendants, their officers, agents, servants, and employees, the prosecutors the Defendants and their offices supervise, and their successors in office, and, in support thereof, allege the following upon information and belief:

INTRODUCTION

1. Plaintiff Anthony Miano has conducted pro-life outreach on the public sidewalks outside abortion clinics since in or about 2012, and has done so in Iowa since in or about 2016. His First Amendment-protected activities include Bible reading, open-air preaching, sign-holding, literature distribution, and speaking to individuals as they walk to and from the clinics.

2. Plaintiff Miano does not amplify his speech and does not impede individuals from entering or leaving the clinics or from walking on the public sidewalks near the clinics.

3. Plaintiff Nicholas Rolland conducts pro-life outreach on the public sidewalks outside abortion clinics in Iowa. His First Amendment-protected activities include Bible reading, open-air preaching, speaking to individuals as they walk to and from the clinics, literature distribution, and sign-holding.

4. Plaintiff Rolland does not amplify his speech and does not impede individuals from entering or leaving the clinics or from walking on the public sidewalks near the clinics.

5. Plaintiff Miano has been prosecuted and convicted for the misdemeanor violation of Iowa Code § 723.4(2) for conducting his free speech activities outside of the Planned Parenthood Iowa City Health Center in Iowa City, Johnson County, Iowa.

6. Plaintiff Rolland was present with Plaintiff Miano the day Plaintiff Miano was arrested for conducting his free speech activities. Plaintiff Rolland was not cited.

7. Iowa Code § 723.4(2) defines Disorderly Conduct and makes it a misdemeanor to make a “loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.”

8. Besides the time that Plaintiff Miano was arrested under § 723.4(2), he and Plaintiff Rolland have been threatened with enforcement of the statute by law enforcement officers in Johnson County as a result of their free speech activities on the public sidewalks outside abortion clinics.

9. Plaintiff Miano has a reasonable concern that he may be arrested and prosecuted again under this statute as a result of his free speech activities. Plaintiff Rolland also has a reasonable concern that he may be arrested and prosecuted under this statute in light of his free speech activities.

10. Plaintiffs seek to have this Court declare Iowa Code § 723.4(2) unconstitutional as it is overbroad and vague both on its face and as applied to Plaintiffs. Section 723.4(2) impinges the rights of free speech and due process that the United States Constitution guarantees Plaintiffs and others not before this Court.

11. Plaintiffs seek to have this Court permanently enjoin 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 within Iowa and, in particular, within Johnson County.

12. Plaintiffs seek an award of attorneys’ fees and costs associated with this action.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as it arises under the Constitution and laws of the United States and presents a federal question, and pursuant

to 28 U.S.C. § 1343(a)(3)-(4), in that this action seeks to redress the deprivation, under color of State law, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens, and it also seeks to secure equitable and other relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights.

14. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202, by Federal Rules of Civil Procedure 57 and 65, and by the general legal and equitable powers of this Court, which empower this Court to grant the requested relief.

15. This Court has the authority to award Plaintiffs' attorneys' fees and costs associated with this action pursuant to 42 U.S.C. § 1988 and other applicable laws.

16. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and (2).

PARTIES

Plaintiffs

17. Plaintiff Anthony Miano is a United States citizen and a private resident of Scott County, Iowa. Plaintiff Miano conducts his pro-life free speech activities primarily in Johnson County, Iowa.

18. Plaintiff Nicholas Rolland is a United States citizen and a private resident of Scott County, Iowa. Plaintiff Rolland conducts his pro-life free speech activities primarily in Johnson County, Iowa.

Defendants

19. Defendant Thomas Miller is the Attorney General of Iowa and, as such, is the chief law enforcement officer of the State of Iowa. Iowa Code § 13.2(h) provides that the Attorney

General is responsible for supervising all county attorneys in all matters pertaining to the duties of their offices. Defendant Miller is sued in his official capacity.

20. Defendant Janet Lyness is the prosecuting attorney for Johnson County, Iowa, the county in which Plaintiff Miano was arrested and prosecuted under Iowa Code § 723.4(2) and the county in which Plaintiff Miano and Plaintiff Rolland primarily conduct their free speech activities as alleged herein. According to Iowa Code § 331.756(1), Defendant Lyness is responsible for enforcing State laws within Johnson County. Defendant Lyness is sued in her official capacity.

STATEMENT OF CLAIM

21. A genuine case or controversy exists because Plaintiff Miano has been cited and convicted under Iowa Code § 723.4(2) and he and Plaintiff Rolland continue to be subject to future citation under the same statute for the exercise of their constitutionally protected rights to free speech and free expression. Plaintiffs believe that § 723.4(2) has the immediate and ongoing effect of chilling their freedoms of speech and expression, and those of others not before this Court. Defendants, however, enforce the statute despite its unconstitutionality.

FACTS

Statutory Overview

22. Iowa Code § 723.4 defines Disorderly Conduct. Section § 723.4(2) states: “A person commits a simple misdemeanor when the person does any of the following: Makes loud or raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.”

23. The Iowa Code does not define “loud or raucous noise,” “unreasonable distress,” “vicinity,” or “public building.”

24. Disorderly conduct under Iowa Code § 723.4(2) is punishable by fine or imprisonment as it is a public offense as defined in Iowa Code § 701.2.

Factual Overview

25. Plaintiffs Miano and Rolland have regularly exercised their freedoms of speech and expression on the public sidewalks outside the Planned Parenthood Iowa City Health Center and the Emma Goldman Clinic, both in Iowa City, Iowa, in support of their pro-life views as motivated by their sincerely-held religious beliefs. They view their religiously-motivated expression outside abortion clinics as a religious ministry and calling.

26. Plaintiff Miano's ministry consists of free speech activities that include Bible reading, open-air preaching, holding signs or a wooden cross, speaking with individuals as they enter and leave the clinic, and literature distribution.

27. Plaintiff Miano has conducted this type of outreach since 2012, and has done so in Iowa since 2016. Prior to Plaintiff Miano's arrest in 2017, Plaintiff Miano conducted these free speech activities at Iowa abortion clinics up to three times per week. Plaintiff Miano conducted these activities at the Iowa City Health Center up to once per week.

28. Plaintiff Rolland's ministry consists of free speech activities that include speaking with individuals as they enter and leave the clinic, sign holding, Bible reading, open-air preaching, and literature distribution. Plaintiff Rolland conducted these free speech activities up to two times per month prior to Plaintiff Miano's arrest and conviction. After that time, Plaintiff Rolland's activities have been less frequent.

29. Plaintiffs conduct their free speech activities from the public sidewalks adjacent to the clinics and without using a voice amplifier.

30. On or about May 30, 2017, Plaintiff Miano was standing on a public sidewalk adjacent to the Planned Parenthood Iowa City Health Center reading his Bible aloud without amplification. Plaintiff Rolland was nearby displaying a pro-life sign. During that day, both men had been speaking to people going in and out of the clinic.

31. Iowa City Police Officers arrived at the location and told Plaintiff Miano, with Plaintiff Rolland present, that a telephone call had been made to the police station complaining that Plaintiff Miano was causing distress to the occupants of the Planned Parenthood facility.

32. An officer charged Plaintiff Miano with disorderly conduct in violation of Iowa Code § 723.4(2) and presented him with a field citation and release. Plaintiff Miano was given a citation on or about May 30, 2017, at or about 10:05 am, in Iowa City, Iowa, located in Johnson County. Plaintiff Rolland was not cited.

33. Following Plaintiff Miano's release from police custody on or about May 30, 2017, Plaintiffs were warned that continuation of their free speech activities that day might result in further citation or custodial arrest. Plaintiffs continued their activities as planned without further incident.

34. Despite the risk of repeated citation and arrest, Plaintiff Miano continued to return to the Planned Parenthood Iowa City Health Center from time to time to conduct his First Amendment activities in the period from on or about May 31, 2017, to on or about January 9, 2018.

35. A jury trial was held in the Iowa District Court in and for Johnson County on or about January 9, 2018.

36. At his trial on or about January 9, 2018, Plaintiff Miano was found guilty of the misdemeanor charge for disorderly conduct; Plaintiff Miano was fined \$200 and given a 30-day

suspended sentence and one-year probation which included a prohibition on conducting his free speech activities outside of any Planned Parenthood clinic.

37. Plaintiff Miano paid the \$200 fine.

38. Before and after Plaintiff Miano's citation on or about May 30, 2017, for violation of Iowa Code § 723.4(2), law enforcement officers have approached him, and at times threatened him and Plaintiff Rolland with enforcement of the statute, as a result of their free speech and expression activities on the public sidewalks outside abortion clinics in Johnson County, including on or about June 22, 2017, August 22, 2017, and November 29, 2017, among other dates.

39. Since Plaintiff Miano's trial and sentencing, Plaintiff Miano has only conducted his free speech activities at the Emma Goldman Clinic in Iowa City, Iowa. In accordance with the terms of his probation, since his sentencing he has not conducted his free speech activities at the Planned Parenthood Iowa City Health Center. Plaintiff Rolland has conducted, with much less frequency, his free speech activities at the Planned Parenthood Iowa City Health Center. He has also conducted his free speech activities at the Emma Goldman Clinic.

40. Plaintiff Miano currently conducts his outreach at the Emma Goldman Clinic once per month, which is less frequently than he would like. Because of his conviction and his fear of further threatened enforcement, arrest, and prosecution under § 723.4(2) as a result of his First Amendment activities, Plaintiff Miano has had to decrease the frequency of his activities.

41. Plaintiff Rolland currently conducts his First Amendment activities at abortion clinics in Iowa up to two times per month. This is a decrease in the number of times he was going before Plaintiff Miano's arrest and conviction as a result of Plaintiff Miano's unavailability at the Planned Parenthood Iowa City Health Center due to his conviction and because of Plaintiff Rolland's fear of future arrest.

42. Iowa Code § 723.4(2) infringes a substantial amount of constitutionally protected speech and expression as it does not provide clear parameters for what speech is prohibited by the criminal code.

43. Iowa Code § 723.4(2) denies fair notice to the public since it does not define the proscribed conduct with sufficient particularity to provide a person of ordinary intelligence with the standard of conduct to which a citizen is held accountable.

44. Plaintiffs are unable to determine whether their speech on any given day and at any given location will violate Iowa Code § 723.4(2).

45. Plaintiffs are further unable to determine what activity is proscribed on the basis that it may cause someone inside a nearby residence or building unreasonable distress, and the current code section provides no clarification.

46. Iowa Code § 723.4(2) does not provide fair notice or warning as to what constitutes “unreasonable distress.”

47. Iowa Code § 723.4(2) does not provide fair notice or warning as to when speech becomes “loud or raucous.”

48. Iowa Code § 723.4(2) does not provide fair notice or warning as to what geographic area constitutes “the vicinity of any residence or public building.”

49. Iowa Code § 723.4(2) does not provide fair notice or warning as to what qualifies as a “public building.”

50. Iowa Code § 723.4(2) vests unbridled discretion in law enforcement officials, including prosecutors, and authorizes or encourages arbitrary, discriminatory, and capricious enforcement of the law against those exercising their protected free speech and expression.

51. All of Plaintiffs' speech and expression occurring on public sidewalks near abortion clinics is fully protected by the First Amendment to the United States Constitution.

52. The public sidewalks near abortion clinics at which Plaintiffs have spoken, and desire to continue to speak, are traditional public forums for free expression, the type of location at which the First Amendment's protection of expression is at its highest.

53. Plaintiffs have been discouraged from continuing or increasing the frequency of their free speech activities due to the ambiguous and unclear wording of Iowa Code § 723.4(2), as they are unable to distinguish between protected speech and prohibited speech under the statute.

54. Iowa Code § 723.4(2) causes a realistic danger of further discouraging Plaintiffs, and others not before this Court, from engaging in the freedoms of speech and expression out of fear of prosecution, thereby causing an impermissible risk of silencing free speech.

55. Iowa Code § 723.4(2) causes a realistic danger that Plaintiffs, and others not before this Court, may be prosecuted for engaging in protected speech and expression, thereby causing an impermissible risk of silencing free speech.

56. While in Johnson County, Plaintiffs are afraid to continue and increase the frequency of their free speech and expression on the public sidewalks outside abortion clinics because they fear prosecution under Iowa Code § 723.4(2). Plaintiffs' fear is increased because this law has already been enforced against Plaintiff Miano for engaging in protected speech and expression and both Plaintiffs have experienced threatened enforcement of the statute for such activities.

57. To avoid prosecution under Iowa Code § 723.4(2), Plaintiffs will have to diminish or alter their constitutionally protected speech and expression while in Johnson County, and in all other counties across Iowa.

58. Owing to Iowa Code § 723.4(2) and its threatened and real enforcement, a substantial loss or impairment of Plaintiffs' freedoms of speech and expression has occurred and will continue to occur, causing Plaintiffs to suffer and continue to suffer irreparable injury.

59. Plaintiffs have no plain, adequate, or complete remedy to redress the wrongs described in this complaint other than by filing this action. Plaintiffs' sincerely-held religious beliefs compel them to engage in their free speech and expressive activities on the public sidewalks outside of abortion clinics even though they fear arrest pursuant to Iowa Code § 723.4(2). To alleviate that fear, they seek declaratory and injunctive relief from this Court so they may engage in their religiously motivated free speech and expression without fear of arrest and prosecution under § 723.4(2).

60. An actual case and controversy exists between the parties.

CAUSES OF ACTION

COUNT ONE (Violation of the Federal Rights of Speech and Expression)

61. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 60 above and incorporate those allegations herein by reference.

62. Iowa Code § 723.4(2) violates the freedoms of speech and expression that are guaranteed by the First Amendment to the United States Constitution, as applied to the States and their political subdivisions through the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983, and thereby deprives individuals of the exercise of those rights while in a traditional public forum.

63. Wherefore, Plaintiffs request the relief set forth below in the prayer for relief.

COUNT TWO
(Violation of the Federal Right to Due Process)

64. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 60 above and incorporate those allegations herein by reference.

65. Iowa Code § 723.4(2) is vague and violates the right to due process that is guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 as it fails to provide adequate notice to enable ordinary citizens to understand what precise conduct it prohibits and it authorizes arbitrary and discriminatory enforcement through its lack of precision.

66. Wherefore, Plaintiffs request the relief set forth below in the prayer for relief.

PRAYER FOR RELIEF

67. Plaintiffs Miano and Rolland respectfully ask that this Court grant them the following relief and enter final judgement against Defendants:

a. Declare that Iowa Code § 723.4(2), on its face and/or as applied to Plaintiffs, violates the freedoms of speech and expression that are protected by the First Amendment to the United States Constitution or, in the alternative, declare that certain provisions of Iowa Code § 723.4(2) violate the freedoms of speech and expression that are protected by the First Amendment and sever those offending portions of the text from the rest of the statute;

b. Declare that Iowa Code § 723.4(2) is impermissibly vague, both facially and as-applied to the Plaintiffs, contrary to the constitutional right to due process guaranteed by the Fourteenth Amendment or, in the alternative, declare that certain provisions of Iowa Code § 723.4(2) violate the right to due process that is guaranteed by the Fourteenth Amendment and sever those offending portions of the text from the rest of the statute;

c. Preliminarily and permanently enjoin Defendants, their officers, agents, employees, and successors in office, the prosecutors Defendants and their offices supervise, and

those acting in concert with them from enforcing Iowa Code § 723.4(2) against Plaintiffs and others not before this Court, through arrest, charge, or prosecution, while they are exercising their protected freedoms of speech and expression within the State of Iowa or, in the alternative, permanently enjoin Defendants, their officers, agents, employees, and successors in office, the prosecutors Defendants and their offices supervise, and those acting in concert with them from enforcing the unconstitutional provisions of Iowa Code § 723.4(2) against Plaintiffs and others not before this Court, through arrest, charge, or prosecution, while they are exercising their protected freedoms of speech and expression within the State of Iowa;

- d. Require Defendants to provide public notice of the unconstitutionality of Iowa Code § 723.4(2) to all law enforcement entities under their supervision;
- e. Award Plaintiffs the costs of this action and reasonable attorneys' fees; and
- f. Award Plaintiffs any other and further relief this Court deems equitable and just.

Dated this ____ day of _____ 2018.

Respectfully submitted,

/s/ _____

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