



April 8, 2020

Mr. Patrick Baker
City Attorney
600 East 4th Street
Charlotte, North Carolina, 28202
VIA EMAIL (tejones@charlottenc.gov)

RE: North Carolina v. David Benham; Cities4Life; Love Life

Dear Mr. Baker,

Alliance Defending Freedom (ADF) has been retained by David Benham, Cities4Life, Inc., and Global Impact Ministries, Inc., d/b/a Love Life and Love Life Charlotte, to pursue legal claims arising from the City of Charlotte's unlawful denial of their constitutional right to freely assemble, speak, 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 my clients 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 the City of Charlotte does not continue to violate constitutional rights of my clients in order to avoid a lawsuit.

I. Statement of Relevant Facts

David Benham is the President of Cities4Life—a nonprofit charitable religious organization. It provides counseling to expectant mothers near abortion clinics in a peaceful, prayerful, and non-violent way. In addition to counseling, Cities4Life provides social services to expectant mothers including: (i) tangible material goods during baby showers (i.e., diapers, baby furniture, bottles, baby clothes, etc.); (ii) groceries; (iii) money for rent, utilities, vehicles, vehicular repair,

gas, prenatal care and follow up ultrasounds to determine baby gender, wedding services; and (iv) maternity clothes. Cities4Life also partners with local churches and Gospel-centered ministries in Charlotte to mobilize their faith into actionable steps to meet the physical and spiritual needs of abortion-minded mothers at abortion clinics and throughout the greater Charlotte area. For instance, Cities4Life works with local churches that provide daycare and secured numerous “scholarships” by which a mother that chooses life may enroll her child in day care and receive such care at no cost for a year.

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. While Cities4Life primarily operates in Charlotte, Love Life operates in Charlotte, Greensboro, Raleigh, and New York City.

Mr. Benham, Cities4Life, and Love Life have chosen public sidewalks outside an abortion facility called A Preferred Women’s Health Center in Charlotte as one of their service/ministry locations. Cities4Life has regularly provided social services outside abortion facilities since its formation in 2013. Love Life has regularly provided social services outside abortion facilities since its inception in 2016. While Cities4Life and Love Life both operate outside of abortion facilities, they are entirely separate entities. Each have unique purposes and provides separate social services.

On Saturday, April 4, Mr. Benham, along with a few other representatives of Cities4Life, met outside the clinic in order to counsel, speak, and pray on the public sidewalk and provide expectant mothers with social services they may need. The previous Saturday, March 28, counsel for Cities4Life and Love Life was present at the Center. He confirmed with the ranking police officer, Major Kornberg, that the activities of Cities4Life and Love Life were in compliance with the Governor’s Executive Order issued on March 27, 2020 (“Order”), and the Joint Proclamation of

the Mecklenburg County Board of Commissioners and Mayor of The City of Charlotte (“Proclamation”) issued March 24, 2020. On March 27 and April 4, each person was spaced at least 6 feet from any other person, and hand sanitizer was readily available, in full compliance with the Social Distancing provisions of the Order and Proclamation.

As religious nonprofit organizations providing charitable and social support services to vulnerable persons, my clients’ activities qualify as “Essential Business” under the terms of the Proclamation and Order. This permits operations by “Organizations 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.”

For similar reasons, Cities4Life and Love Life fall under the Order’s and 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 Order and Proclamation make 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.” The provision of counseling, prayer, and material support to women and babies in need certainly falls within the broad definition.

As Essential Businesses, Cities4Life and Love Life are “strongly encouraged to remain open” and are not subject to the prohibition on gatherings of more than 10 people. The Order and Proclamation both exempt Essential Businesses to allow them to continue providing much needed free services to the community.

In addition, activities of walking and standing on a public sidewalk are “Essential Activities” as permitted by the Proclamation, which allow 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.” The Order contains a similar provision in Section 1(3)(iii).

Nevertheless, Mr. Benham and representatives of Love Life (Robert Reeder, Joshua Kappes, Katherine Burgess, Isaiah Burner, and Luke Surak) were issued citations and/or arrested on April 4. The citations indicate they were arrested for participating in a gathering of more than ten people as prohibited by the Proclamation. Several of the Conditions of Release Orders indicate they were cited for violating the same provision in the Governor's Executive Order.

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, my clients have a constitutional right to further their mission through gathering for prayer, counseling, and other forms of speech.

B. The Constitutional Right to Assemble and Pray Extends to Traditional Public Fora.

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 my clients were cited and arrested for speaking, are traditional public forum property. *United States v. Grace*, 461 U.S. 171, 177 (1983).

In public fora like the streets and sidewalks, the First Amendment standard is well established: “The government’s ability to permissibly restrict expressive conduct is very limited[.] [T]he 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.

Mr. Benham, Cities4Life, and Love Life have a constitutional right to engage in religious speech on the sidewalks, greenways, streets, and curbs outside A Preferred Women’s Health Center. Any prohibition on this expressive activity in these fora is subject to strict scrutiny. The City’s application of the Proclamation and Order to my clients even though they are exempted under the provisions described above indicates their citation and arrest for being part of a gathering of more than 10 is arbitrary and a pretext for discrimination based on protected speech.

DEMAND

It is imperative that this situation be corrected immediately to avoid unnecessary litigation in federal court. Please instruct any City of Charlotte officers or employees to drop all criminal charges pending against my clients and discontinue their interference with their right to engage in assembly, prayer, counseling, and other expressive activities on public property. 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 10, 2020, outlining your position regarding the matters referenced herein, and providing assurance that my clients' rights will not be infringed in this manner going forward.

Please understand that I will advise Mr. Benham, Cities4Life, and Love Life of their right to take immediate legal action against the City of Charlotte if their First Amendment rights are not immediately restored.

Respectfully Submitted,



Kevin Theriot,
Counsel for David Benham; Cities4Life; Love Life