

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

The Life Center, Inc., an Illinois not-)	
for-profit corporation, operating as TLC)	
Pregnancy Services, and on behalf of)	
those women who seek and may seek its)	
reproductive healthcare services and)	CASE NO. _____
their unborn children,)	
)	
Plaintiffs,)	JURY TRIAL DEMANDED
)	
v.)	
)	
CITY OF ELGIN, ILLINOIS,)	
)	
Defendant.)	

**COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT,
AND DAMAGES**

Plaintiffs, The Life Center, Inc., an Illinois not-for-profit corporation, operating as TLC Pregnancy Services (hereafter “TLC”), and the women who seek and may seek its reproductive healthcare information, limited ultrasound services and support and their unborn children, complain against the Defendant CITY OF ELGIN (“City”) as follows:

1. This case is about the ongoing efforts of TLC Pregnancy Services to provide the women of Elgin with *free* pregnancy information, limited ultrasound care, and related services and support for their pregnancies and unborn children, through its mobile ultrasound facility (pictured below) and the City of Elgin’s restrictions on and prohibition of the same within its jurisdiction:



2. Plaintiff TLC was established in 1984 and exists for charitable and religious purposes. Exhibit A, Declaration of TLC's Executive Director Vivian Maly ("Maly Dec.") ¶ 1.

3. TLC is also asserting the rights of the women who seek or may seek TLC's reproductive healthcare information, services and support and the interests of their unborn children as against the City's governmental interference with the women's right to obtain such services and support from the mobile facility, *see Singleton v. Wulff*, 428 U.S. 106, 115 (1976); *see also Doe v. Bolton* 410 U.S. 179, 188-189 (1973).

4. Both state and federal law protect the rights and interests of unborn children against actions of third parties which threaten or impair their rights to life and health. *see Stallman v. Youngquist*, 125 Ill. 2d 267, 275 (Ill. Sup. Ct. 1988)(Unborn children have rights "to begin life with a sound mind and body" which, according to law, are separate and distinct from, though wholly subordinate to, the rights of their mothers); *see also Roe v. Wade*, 410 U.S. 113, 162 (1973)(State has an "important and legitimate interest in protecting the potentiality of life") and

18 U.S.C. § 1841 (Defining the term “unborn child” to mean a “child in utero,” and the term “child in utero” or “child, who is in utero” to mean “a member of the species homo sapiens, at any stage of development, who is carried in the womb”).

5. Defendant City of Elgin is a municipal corporation organized and existing under the statutes and constitution of the State of Illinois that may sue and be sued. The City, through its Mayor and City Council, is responsible for the enactment and enforcement of the ordinance challenged herein, including its enforcement against Plaintiffs.

6. TLC, through its trained medical staff and volunteers operating out of its mobile ultrasound facility, offers women free pregnancy tests, pregnancy information, prenatal vitamins, limited obstetrical ultrasound services, and medical referrals to local healthcare providers. **Exh. A**, Maly Dec. at ¶ 2. *The picture below was taken in the mobile facility and used with the permission of those pictured:*



7. According to the Journal of Ultrasound Medicine, “the value of ultrasound imaging in pregnancy is generally accepted as an indispensable tool of obstetric care,” as the “ultrasound evidence can be of potentially life-saving value to local skilled birth attendants and could in itself have a considerable impact on reducing maternal mortality.” J Ultrasound Med 2009; 28: 1067-1076.

8. Access to limited obstetrical ultrasound care can verify an intrauterine pregnancy, determine viability, and alert the mother to stop the use of any harmful medications, drugs, or alcohol which could negatively affect the pregnancy and the neurologic development of the unborn child.

9. While TLC’s mobile facility was allowed to operate, the ultrasound imaging and related care from TLC’s ultrasound technician and licensed physician lead to several referrals for women to local healthcare providers to provide immediate care for pregnancy related complications which may have otherwise gone undetected or detected too late and threatened the life of the mother and/or her unborn child. **Exh. A**, Maly Dec. at ¶ 3; **Exh. B**, DeFily Dec. at ¶ 2.

10. In addition to free limited obstetrical ultrasounds and pregnancy tests, TLC offers women information on pregnancy care and fetal development and growth, professional referrals, maternity clothes, and baby items; TLC also offers men a mentoring program which encourages them to become responsible and caring fathers. **Exh. A**, Maly Dec. at ¶ 4.

11. Many of the young women who come to TLC’s mobile facility come because they lack the funds or insurance to obtain the tests and ultrasound services

elsewhere and for many reasons need and prefer the accessibility and anonymity the mobile facility provides. *Id.* at ¶ 5.

12. Many young women also come afraid and alone. *Id.* at ¶ 6.

13. For those interested, TLC's volunteers aboard the mobile facility provide a message of hope by sharing the truth of God's love for them and the life they can find in and through Jesus Christ. Bibles and other religious literature are freely distributed. *Id.* at ¶ 7.

14. TLC's mobile ultrasound facility pictured above has been operating since June 2010 and is staffed by Janine DeFily, a Registered Diagnostic Medical Sonographer ("R.D.M.S") and is operated under the supervision of licensed physician Dr. Ronald Winters, who has delivered over 2,000 babies in his over 40 years as a physician in the Elgin area. **Exh. A**, Maly Dec. at ¶ 8; **Exh. B.**, DeFily Dec. at ¶ 1.

15. In September 2010, TLC's mobile ultrasound facility began providing the aforementioned *free* reproductive healthcare services, information, and spiritual support in private parking lots in Elgin periodically, such as on certain Tuesday afternoons for approximately four to five hours, with the permission of the property owners. **Exh. A**, Maly Dec. at ¶ 9.

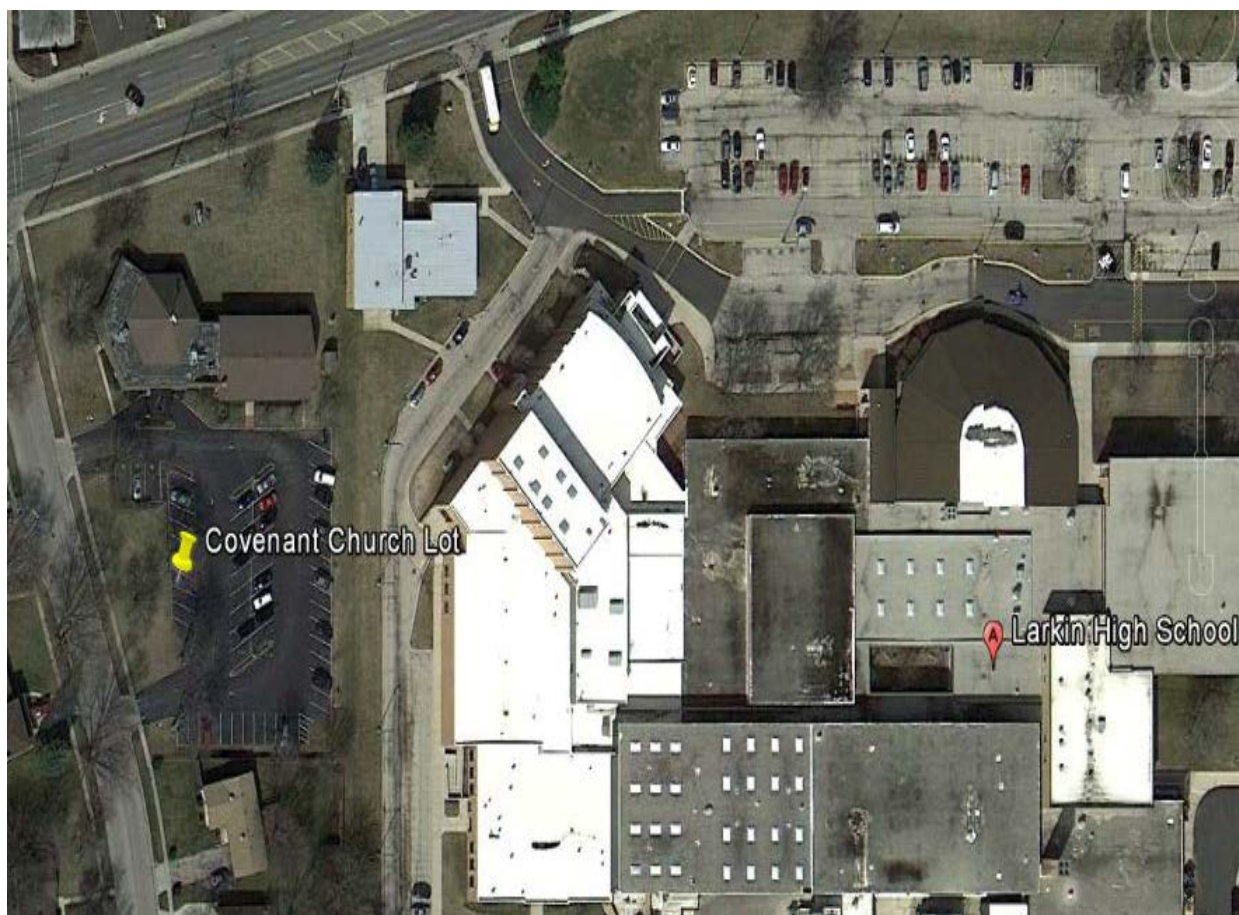
16. The mobile facility does not require any hook ups to land either for electrical, sewer, water, telephone, or other services. **Exh. A**, Maly Dec. at ¶ 10.

17. In order to adequately and reliably serve those seeking the aforementioned reproductive healthcare services, it is critical to TLC and the

women seeking and in need of TLC's services and support that the mobile facility be parked with regularity in certain, clearly visible and accessible locations in Elgin.

Id. at ¶ 11.

18. As pictured in the Google Earth® images below, one of the locations at which TLC had been parking was in the lot of the Evangelical Covenant Church of Elgin (the "Church") at 1565 Larkin Avenue which borders the High School:



Above (Aerial of Church parking lot bordering High School to the West)

Below (Street View from the West of Mobile Facility in Church Lot with School to the East)



Above (Close up of Mobile Facility in Church lot in or about July 2012)

19. Because TLC's primary audience is young women who are or may become pregnant, the Church's parking lot is uniquely situated to provide TLC's mobile facility with the visibility and accessibility necessary to convey TLC's message to the young women attending or coming to and from Elgin Larkin High School. **Exh. A**, Maly Dec. at ¶ 13.

20. The Evangelical Covenant Church of Elgin is an Illinois religious corporation which has sponsored TLC's operation and ministry efforts in Elgin and has permitted TLC's mobile ultrasound facility to park in its lot. In addition, several members of the Church have donated volunteer hours to TLC and the Church supports TLC's holistic mission which is dedicated to reproductive health from a life affirming perspective. *Id.* at ¶ 14.

21. TLC also had permission to park its mobile facility in the highly visible parking lot of J.B.'s Pub & Pietro's Pasta (the assumed name of M.B.A., Inc., an Illinois corporation) just two blocks South of the High School at 297 South McLean Boulevard, Elgin, IL 60123. **Exh. A**, Maly Dec. at ¶ 15, (pictured below):



22. J.B.'s lot is also proximate to the Elgin Community College, the St. Edwards Catholic High School, and two low-income housing complexes—places where many young women who may face unplanned pregnancies attend or reside. *Id.* at ¶ 16.

THE SHUTDOWN

23. On or about the Tuesday afternoon of August 7, 2012, while the mobile facility was parked in J.B.'s lot, Chief of Police Jeffrey Swoboda came aboard the mobile facility and informed TLC's certified ultrasound technician that TLC had to "cease and desist" its activity and provision of free reproductive healthcare services at that location. **Exh. B**, DeFily Dec. at ¶ 3.

24. As an Elgin police officer, the Police Chief's command to cease and desist constituted interference with and/or a threat to interfere with TLC's ability to provide and the women's ability to obtain reproductive healthcare services from TLC's mobile facility.

25. The action of Elgin's Chief of Police was purportedly taken pursuant to and in furtherance of a recently amended Elgin ordinance governing temporary land uses and, based upon records produced by the City of Elgin in response to a freedom of information request, at the behest of City Councilperson Anna Moeller.

26. The Police Chief also informed TLC's volunteer and staff-person that a City Councilperson had driven by and called the mobile facility an "eyesore." **Exh. B**, DeFily Dec. at ¶ 4.

27. For the last few years the City of Elgin had required TLC to apply and pay for a permit to engage in its activity at this location and others throughout Elgin, even at privately owned locations. **Exh. A**, Maly Dec. at ¶ 17.

28. The cost of each temporary use permit was \$190.00. *Id.* at ¶ 18.

29. After the officer had informed TLC to cease and desist its activities, TLC representatives attempted to renew its permit later in August of 2012, as it had done numerous times before. **Exh. A**, Maly Dec. at ¶ 19.

30. However, the Chairman of TLC's Board of Directors, John Juergensmeyer, and TLC's Executive Director, Vivian Maly, were informed by Elgin's Planning Technician Cindy Walden at that time in August 2012, TLC could no longer obtain a permit, because it had parked in Elgin more often than was allowed under the recent amendment to the Elgin Zoning Code provision governing *temporary land uses*. *Id.* at ¶ 20; *see also* excerpts of Zoning Code provisions below and Ordinance #G38-12 at Section 2 which amends Section 19.90.015 of the Elgin Municipal Code attached hereto as **Exhibit C**.

31. After saying she had met with her supervisor, Community Development Director Mr. Mark Mylott, Ms. Walden informed TLC that the City would allow TLC to continue parking at J.B.'s only for the remainder of the Tuesday afternoons in August and no more in 2012 in accordance with the amended ordinance, and thereafter, Elgin would only permit TLC to park in Elgin in four, fifteen-day blocks of time each calendar year at a cost of \$190.00 per permit beginning in 2013. **Exh. A**, Maly Dec. at ¶ 21.

CODE SECTIONS AT ISSUE

32. On June 27, 2012, the City Council of Elgin passed Ordinance No. G38-12 which amended Section 19.90.015 of the Elgin Municipal Code, 1976, entitled “Definitions and Regulations” and further amended the definition of “Use, Temporary” to provide as follows (emphasis supplied):

“USE, TEMPORARY: A ‘land use’ which is established for a fixed period of time with the intent to discontinue such use on the expiration of the time period. A temporary use shall be subject to the following supplementary regulations:

- A. Land Uses Allowed: A temporary use shall be limited to those permitted uses and accessory uses allowed in the zoning district in which the temporary use is to be located, unless specifically authorized otherwise.
- B. Number And Duration: No more than four (4) temporary uses shall be conducted on the same ‘zoning lot’ within a calendar year. No single temporary use shall be established or operate *for more than thirty (30) days*, and *the total number of days for all temporary uses established or operating on the same ‘zoning lot’[SR] within a calendar year shall not exceed sixty (60) days*. More than one temporary use may be established or operate on the same zoning lot at the same time; however, *for each temporary use, one day of establishment or operation of each temporary use is counted against the maximum number of sixty (60) days allowed*. Except as provided for an ‘intermittent temporary use’ [SR], the days temporary use operates or is otherwise open or available to the general public *shall be consecutive, and each such time period shall constitute one of the four (4) allowable temporary uses* within a calendar year.”

33. Because the amendment now required the days of each of the four permitted temporary uses to be consecutive, TLC was limited to four 15-day or two 30-day temporary use permits for each zoning lot per calendar year.

34. Prior to the amendment, TLC had been permitted to operate out of the Church's or J.B.'s lot once a week for the entire calendar year, because the days, taken in the aggregate only amounted to 52 days per zoning lot each year.

35. After the amendment, TLC was limited to only 4 non-consecutive days per year at \$190 per permit.

36. Under the Definitions Section 19.90 of Elgin's Code, defines "land use" as broadly defined as:

"The purpose or type of activity for which *land, or the 'structure' or 'building'* thereon, is designed and intended, or for which it is occupied or maintained." (emphasis supplied).

37. Section 19.90 of the Code further defines "structure" as broadly as:

"*Anything* manufactured, constructed, or composed of parts joined in some definite manner *that requires a location on the ground or that is attached to something that has a location on the ground.* Structures shall include, but shall not be limited to, 'buildings', 'antennas', 'signs', 'fences', and off street 'parking facilities'" (emphasis added).

38. Elgin's Zoning Ordinance at 1.20.020 provides that any person violating any of the provisions or failing to comply with any of the requirements of the ordinance of the City shall be guilty of an offense and shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than a fine of seven hundred fifty dollars (\$750.00) with each day of violation constituting a separate offense.

FURTHER ALLEGATIONS OF FACT

39. TLC, via the law firm of Mauck & Baker, LLC, then wrote to the City of Elgin to confirm TLC's understanding of the facts and that the municipal code section being applied to prohibit TLC's activity all across Elgin was indeed Section

19.90.015, as amended by Ordinance #G38-12, Section 2. See Letter of September 19, 2012 to Elgin attached hereto as Exhibit D.

40. The letter also informed Elgin that, if it intended to regulate TLC's activities as a temporary land use, that its actions would be subject to the provisions of the Religious Land Use And Institutionalized Persons Act, 42 U.S.C 2000cc, et seq. and violated TLC's civil rights as protected by *inter alia* the *First Amendment* of the United States Constitution. *Id.*

41. The letter also informed Elgin that it was inappropriate to regulate TLC's activity in the various private parking lots as a "land use" as the mobile facility is not land nor a fixture to land, nor is it anything but incidental to the actual land uses for which the actual properties are zoned and otherwise used and occupied—further pointing out that thousands of vehicles are parked throughout Elgin on a daily basis for a myriad of purposes and in conjunction with countless activities. *Id.*

42. The letter closed with a request for an accommodation from each provision which is not supported by a compelling government interest and the least restrictive means of furthering that interest in view of its infringement upon TLC's *First Amendment* rights. See *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) ("only the gravest abuses, endangering paramount interests, give occasion for permissible limitation."). *Id.*

43. Elgin responded in a letter dated October 5, 2012, Exh. E, to confirm its position that it intended to prohibit, limit and regulate TLC's mobile ultrasound

facility, without exception or accommodation, as a temporary land use subject to recently amended Section 19.90.015.

44. Over the last two to three years, TLC's mobile facility has provided approximately 200 women with free reproductive healthcare services. **Exh. A**, Maly Dec. at ¶ 22; **Exh. B**, DeFily Dec. at ¶ 7.

45. As a result of Elgin's ordinance and application of the same, TLC is losing opportunities to inform, minister to, and care for the women of Elgin and those women are being seriously burdened in their ability to acquire the free reproductive healthcare information and ultrasound imaging and in their ability to care for themselves during the pregnancy and for their unborn children with each week that passes. **Ex. A**, Maly Dec. at ¶ 23.

46. By application of a facially overbroad provision of its Zoning Code, the City of Elgin has unlawfully restricted, limited, burdened, and denied the TLC's ability to continue providing the women of Elgin with reproductive healthcare services, information, and crisis pregnancy support from its mobile ultrasound facility in furtherance of TLC's religiously motivated mission.

47. To vindicate the Plaintiffs' rights, compensate for the damage that has been done, and avoid further irreparable harm, Plaintiffs seek declaratory and injunctive relief for violation of their constitutional and statutory rights, as well as compensatory and nominal damages.

48. Plaintiffs accordingly challenge, both facially and as-applied to TLC's religious speech activities and the provision of and access to reproductive healthcare

services from the mobile facility, Defendant's Temporary Land Use regulations found in Section 19.90.015 of the Elgin Municipal Code, 1976, as amended.

JURISDICTION AND VENUE

49. The Court has jurisdiction over the federal claims pursuant to 28 U.S.C. 1331 as they arise under the First and Fourteenth Amendments to the Constitution of the United States and under 42 U.S.C § 1983 and under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, et seq. The state law claims are so closely related to the federal claims as to create supplemental jurisdiction under 28 U.S.C. § 1367(a).

50. Venue is proper in this Court because the material events occurred in Elgin, Illinois.

51. This Court is vested with authority to grant the requested declaratory relief by operation of 28 U.S.C. § 2201, et seq., 42 U.S.C. § 2000cc et seq., and 740 ILCS 23/5.

52. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).

53. This Court has authority to issue the requested damages under 28 U.S.C. § 1343(3).

54. This Court is authorized to award costs and attorneys' fees under 42 U.S.C. § 1988(b), the Illinois Civil Rights Act of 2003, 740 ILCS 23/5(c), 42 U.S.C. 2000cc et seq., and 775 ILCS 35/1 et seq..

55. This Court is authorized to grant the “appropriate relief” that Plaintiffs requests under RLUIPA, 42 U.S.C. § 2000cc-2.

56. The Court is authorized under the Free Access to Clinic Entrances Act (“FACE”), 18 U.S.C. §248 (c)(1)(a)-(b) to (c) to provide the Plaintiffs with the civil remedies requested herein, including an award of appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses.

57. Plaintiffs have standing to initiate this action pursuant to FACE, 18 U.S.C. §§ 248 (c)(1).

ALLEGATIONS OF LAW

58. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law, including the ordinances, codes, regulations, customs, policies and usages of the City.

59. Elgin’s decision to restrict and/or deny TLC’s ability to provide the women of Elgin free pregnancy information and ultrasounds also infringes on what the Supreme Court has determined is the women’s rights to be informed and to choose in the context of their own pregnancies. *See Roe v. Wade*, 410 U.S. 113 (1973).

60. Unless and until enforcement of the provision of the Zoning Code is enjoined, the Plaintiffs will suffer and continue to suffer irreparable injury to their federal and state rights.

61. TLC's religious speech activity of sharing the life giving truth of the ultrasound images and mercies and love of God, in and through its mobile ultrasound facility, is fully protected by the *First* and *Fourteenth Amendments* to the United States Constitution.

62. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivations of their constitutional and civil rights.

63. The Defendant City will suffer no harm if the injunctive relief is granted.

64. The harm to the Plaintiffs far outweighs any harm to the Defendant, and the public interest is benefited when constitutional and civil rights are protected.

I.
FIRST CAUSE OF ACTION –
ELGIN'S TEMPORARY LAND USE REGULATION IS
UNCONSTITUTIONAL AS OVERBROAD AND VAGUE
(FACIAL CHALLENGE)

65. The allegations contained in all preceding paragraphs 1-63 are incorporated here by reference.

66. Section 19.90.015 of the Elgin Municipal Code is facially invalid because it sweeps within its ambit a substantial number of constitutionally protected speech and religious activities. *See Washington State Grange v.*

Washington State Republican Party, 552 U.S. 442, 449, n. 6 (Supreme Court held that in the *First Amendment* context, “a law may be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’”).

67. By defining “land use” to include not only the purpose or type of activity for which land is being used but also (emphasis supplied):

“The purpose or type of activity for which ... the ‘*structure*’ ... thereon, is designed and intended, or for which it is occupied or maintained,”

and by defining “structure” as broadly as:

“*Anything* manufactured, constructed, or composed of parts joined in some definite manner *that requires a location on the ground or that is attached to something that has a location on the ground,*”

Elgin’s “temporary land use” ordinance is unconstitutionally vague and overbroad.

See County of Lake v. The First National Bank of Lake Forest, 386 N.E.2d 394, 398

(Ill. App. Ct. 1979), (Court declared that Lake County’s zoning ordinance, was

“without doubt unconstitutionally vague and overbroad” as it similarly defined

“structure” as “[a]nything constructed, erected, or placed, which requires location in

or on the ground or is attached to something having a location on the ground” and

“would lead to the patently absurd result of requiring the permission of the county

zoning officer before one places anything whatsoever in or on the ground or even

before one paints one’s own house) *aff’d*, 402 N.E.2d 591 (Ill. 1980).

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

II.
SECOND CAUSE OF ACTION –
UNDUE BURDEN ON A WOMAN’S FUNDAMENTAL RIGHT TO
ACQUIRE USEFUL KNOWLEDGE AND CARE FOR HER UNBORN
CHILD UNDER THE UNITED STATES AND
ILLINOIS CONSTITUTIONS
(AS APPLIED CHALLENGE SEEKING INJUNCTIVE RELIEF)

68. The allegations contained in all preceding paragraphs are incorporated here by reference.

69. The Illinois Abortion Law of 1975, 720 ILCS 510/1 provides that Illinois seeks “to assure and protect the woman’s health and the integrity of the woman’s decision whether or not to continue to bear a child, [and] to protect the valid and compelling state interest in the infant and unborn child...”.

70. The United States Supreme Court has held that a woman has a right to be free from governmental interference with her pregnancy.

71. The *Fourteenth Amendment* of the United States Constitution has been read to guarantee women the fundamental right to conceive and care for their children, as well as to acquire useful knowledge. *See Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *see also Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923).

72. As applied, Elgin’s temporary land use regulations place a substantial obstacle in the path of women who have sought or are seeking TLC’s *free* reproductive healthcare information, useful knowledge, services, and support in order to care for their unborn children and make informed healthcare choices in the context of and care for their own pregnancies.

73. One young woman, hereinafter referred to by her initials “B.P.,” had seen TLC’s mobile facility parked several times in Elgin and was aware of the free services and support TLC’s mobile facility offered prior to Elgin’s imposition of its restrictive temporary land use regulations.

74. When B.P. later became pregnant in 2012 and desired and needed access to the *free* services and support offered only by TLC’s mobile facility, the mobile facility was no longer there as a result of Elgin’s ban of TLC’s mobile facility for the remainder of 2012.

75. Unless restrained by this Court, the Defendant City of Elgin will continue to apply, enforce and conduct itself in accordance with the subject code provision which threatens, interferes with, and unduly burdens the rights of the women, like B.P., who seek and may seek the *free* reproductive healthcare information, services and support offered by TLC’s mobile facility.

76. By severely restricting and/or denying the women of Elgin access to the otherwise lawful and free mobile ultrasound service and reproductive healthcare information and support provided uniquely by TLC’s mobile facility, the City of Elgin is unnecessarily placing women and their unborn children at risk of experiencing any of the health problems which may otherwise be detected or prevented via the use of and evidence from limited obstetric ultrasound imaging and related care.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

III.
THIRD CAUSE OF ACTION –
UNDUE BURDEN ON UNBORN CHILD’S FUNDAMENTAL RIGHT
TO BEGIN LIFE WITH A SOUND MIND AND BODY
(AS APPLIED CHALLENGE SEEKING INJUNCTIVE RELIEF)

77. The allegations contained in all preceding paragraphs are incorporated here by reference.

78. The Illinois Abortion Law of 1975 reaffirms the State of Illinois’ longstanding policy that and understanding that “the unborn child is a human being from the time of conception and is, therefore, a legal person for purpose of the child’s right to life and is entitled to the right to life from conception under the laws and Constitution of [Illinois].”

79. The Supreme Court of Illinois has recognized that an unborn child has a “legal right to begin life with a sound mind and body” and may state a cause of action against a third party (not his mother) whose tortious conduct causes harm to the child. *See Stallman v. Youngquist*, 125 Ill. 2d 267, 273 (1988).

80. Unless restrained by this Court, the Defendant City of Elgin will continue to apply, enforce and conduct itself in accordance with the subject code provision which threatens, interferes with, and unduly burdens the fundamental rights of unborn children to begin life with a sound mind and body by hindering the unborn children from receiving the benefits of that flow from their mothers receiving limited obstetrical ultrasounds and support, and by preventing the children’s mothers from seeing images of them, which information might cause the mother to choose to give birth rather than choose abortion.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

IV.
FOURTH CAUSE OF ACTION –
UNLAWFUL INTERFERENCE WITH TLC’S RIGHTS UNDER THE
FREE ACCESS TO CLINIC ENTRANCES ACT, 18 U.S.C. § 248,
INCLUDING THE RIGHT TO PROVIDE AND THE WOMEN’S RIGHT
TO OBTAIN REPRODUCTIVE HEALTHCARE SERVICES
(AS APPLIED CHALLENGE SEEKING INJUNCTIVE RELIEF)

81. The allegations contained in all preceding paragraphs are incorporated here by reference.

82. Unless restrained by this Court, the Defendant City of Elgin will continue to apply, enforce and conduct itself in accordance with the subject code provision which threatens, interferes with, and denies TLC, its staff, and clients who are or have been obtaining or providing free reproductive health services from TLC’s mobile facility.

83. Unless restrained by this Court, the Defendant City of Elgin will continue to apply, enforce and conduct itself in accordance with the subject code provision which threatens, interferes with, and denies TLC, the Church and its members their rights to lawfully exercise their *First Amendment* rights of religious freedom on the Church property in violation of 18 U.S.C. § 248.

84. 18 U.S.C. § 248(c)(2)(B) and (c)(3)(B) authorizes the Plaintiffs to seek temporary, preliminary or permanent injunctive relief from this Court for a violation of FACE and damages for the same.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

V.
FIFTH CAUSE OF ACTION –
VIOLATION OF TLC’S RIGHT TO FREE SPEECH
UNDER THE UNITED STATES CONSTITUTION
(FACIALLY AND AS APPLIED CHALLENGE)

85. The allegations contained in all preceding paragraphs are incorporated here by reference.

86. The *First Amendment* provides that “Congress shall make no law . . . abridging the freedom of speech.” *United States v. Stevens*, 130 S. Ct. 1577, 1584 (2010).

87. TLC’s speech activity and speech are fully protected under the *Free Speech Clause* of the *First Amendment*.

88. Defendant’s Ordinance operates as an impermissible prior restraint on speech.

89. Defendant’s Ordinance and application of the same to TLC’s speech activity are not reasonable time place and manner restrictions and deny TLC the ability to reach its intended audience.

90. Defendant’s Ordinance and actions do not leave open ample alternative channels of communication.

91. TLC has a right to conduct its *First Amendment* speech activities throughout Elgin in any available public fora and on any private property with owner’s consent.

92. Defendant's Ordinance and actions chill TLC's constitutional and statutory rights.

93. The Defendant lacks a compelling interest to justify its Ordinance and application of the same to limit and prohibit TLC's speech activities.

94. Defendant's Ordinance and actions are not narrowly tailored to achieve a compelling interest.

95. The Defendant may not suppress protected speech absent a showing of a clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order.

96. TLC's speech activity does not implicate any threat to public safety, peace, or order.

97. Defendant's Ordinance and actions are not the least restrictive means of achieving a compelling interest.

98. Defendant's Ordinance and application of the same accordingly violate the *Free Speech Clause* of the *First Amendment* to the United States Constitution as incorporated and applied to the states through the *Fourteenth Amendment*.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

VI.
SIXTH CAUSE OF ACTION –
VIOLATION OF TLC'S RIGHT TO FREE SPEECH
UNDER ARTICLE I, SECTION 4 OF THE ILLINOIS CONSTITUTION
(AS APPLIED CHALLENGE)

99. The allegations contained in preceding paragraphs 1-58, 93-105 are incorporated here by reference.

100. Article I, Section 4 of the Illinois Constitution provides that:

“All persons may speak, write and publish freely, being responsible for the abuse of that liberty. ...”

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

VII.
SEVENTH CAUSE OF ACTION –
VIOLATION OF TLC’S RIGHT TO THE FREE EXERCISE OF RELIGION
UNDER THE UNITED STATES CONSTITUTION
(AS APPLIED CHALLENGE)

101. The allegations contained in all preceding paragraphs are incorporated here by reference.

102. TLC’s mobile ultrasound ministry is a religious activity of a religious organization carried out by an active group of concerned Christians committed to providing women who may be facing unplanned pregnancies with free services and information and a message of hope and life affirming support.

103. By application of its temporary land use regulations, Elgin has moved to severely curb if not render TLC’s mobile ministry effectively impracticable at the private lots specifically and in Elgin generally

104. The City’s application of its temporary land use regulation to limit and deny the TLC’s religiously motivated use of its mobile ultrasound facility constitutes an infringement of TLC’s First Amendment hybrid rights of speech and free exercise, in violation of *Employment Div. v. Smith*, 494 U.S. 872, 881 (1990).

105. The City cannot show that its temporary land use regulations and their application to TLC's mobile facility are supported by "a compelling interest that cannot be served by less restrictive means."

106. Defendant's Ordinance therefore violates the *Free Exercise Clause* of the *First Amendment* to the United States Constitution as incorporated and applied to the states through the *Fourteenth Amendment*.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

VIII.
EIGHTH CAUSE OF ACTION –
VIOLATION OF TLC'S RIGHT TO THE FREE EXERCISE OF RELIGION
UNDER ARTICLE I, SECTION 3 OF THE ILLINOIS CONSTITUTION
(AS APPLIED CHALLENGE)

107. The allegations contained in all preceding paragraphs are incorporated here by reference.

108. Article I, Section 3 of the Illinois Constitution provides in relevant part that:

"The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; ..."

109. Defendant's enforcement of the Zoning Code against TLC's mobile ultrasound ministry hinders and ultimately prohibits TLC's religious activities and profession because it forces TLC to limit and ultimately completely forego its mobile ultrasound ministry and religious profession at the critical and desired locations of the Church's lot and J.B.'s.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

IX.
NINTH CAUSE OF ACTION –
VIOLATION OF RLUIPA
UNREASONABLE LIMITATION PROVISION
(AS APPLIED CHALLENGE)

110. The allegations contained in all preceding paragraphs are incorporated here by reference.

111. Section 2000cc (b)(3)(B) of RLUIPA provides (emphasis added):

(3) Exclusions and limits.

No government shall impose or implement a land use regulation that ...

(B) unreasonably limits religious assemblies, institutions, or *structures* within a jurisdiction.

112. Defendant's Ordinance is an unreasonable limitation of TLC's mobile ultrasound facility within Elgin's jurisdiction.

113. The unreasonable limitation burdens the TLC's right to be free in the exercise of its religious activity.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

X.
TENTH CAUSE OF ACTION – VIOLATION OF RLUIPA
SUBSTANTIAL BURDEN PROVISION
(AS APPLIED CHALLENGE)

114. The allegations contained in all preceding paragraphs are incorporated here by reference.

115. Section 2000cc (a)(1) of RLUIPA provides (emphasis supplied):

(1) General rule.

No government shall impose or implement a land use regulation that imposes *a substantial burden on the religious exercise of a person*, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

116. The substantial burden on the religious exercise of TLC affects, or removal of that substantial burden would affect, commerce among the several states.

117. RLUIPA defines the phrase “religious exercise” to include “the use, building, or conversion of real property for the purpose of religious exercise...,” 42 U.S.C. § 2000cc-5(7)(B).

118. The Seventh Circuit has held that, in the context of RLUIPA, a land use regulation imposes a “substantial burden” on religious exercise if it creates any undue delay, uncertainty, and expense for a person or institution in their religious use of real property within the regulated jurisdiction. *See Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005).

119. Defendant’s Ordinance and actions have caused and continue to cause TLC and the Church delay, uncertainty, and expense in the exercise of their religiously motivated activities sufficient to constitute a substantial burden in the RLUIPA context.

120. Defendant will be unable to demonstrate that preventing the TLC's mobile ultrasound facility from parking in private lots or limiting TLC to only four days and permits a year will be the narrowest alternative to achieving any governmental interest, let alone a compelling interest.

121. Defendant will be unable to demonstrate that preventing the Church from hosting TLC's mobile ultrasound facility or limiting the Church to hosting TLC only four fifteen, consecutive day periods a year will be the narrowest alternative to achieving any governmental interest, let alone a compelling interest.

122. Defendant's Ordinance, as applied in denying TLC's mobile ultrasound facility and the Church's hosting of the same, therefore violates the substantial burden provision of RLUIPA.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

XI.
ELEVENTH CAUSE OF ACTION –
VIOLATION OF TLC'S RIGHTS UNDER THE ILLINOIS RELIGIOUS
FREEDOM RESTORATION ACT, 775 ILCS 35/1 et seq., ("IRFRA")
(AS APPLIED CHALLENGE)

123. The allegations contained in all preceding paragraphs are incorporated here by reference.

124. The City's conduct constitutes an infringement of TLC's *First Amendment* rights to the free exercise of religion as contemplated by IRFRA.

125. Section 15 of the Illinois Religious Freedom Restoration Act of 1998 ("IRFRA"), 775 ILCS 35/15, provides:

Free exercise of religion protected. Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

126. 775 ILCS 35/20 of IRFRA provides that a claim may be raised under IRFRA in this case:

Judicial relief. If a person's exercise of religion has been burdened in violation of this Act, that person may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against a government. A party who prevails in an action to enforce this Act against a government is entitled to recover attorney's fees and costs incurred in maintaining the claim or defense.

127. The City's ordinance and application of the same substantially burdens the free exercise of religion of TLC.

128. The City has no compelling interest, enforced by the least restrictive means under its Zoning Code.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

XII.
TWELFTH CAUSE OF ACTION –
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(AS APPLIED CHALLENGE)

129. The allegations contained in all preceding paragraphs are incorporated here by reference.

130. Upon information received through a freedom of information request to the City of Elgin, which turned up no other temporary use permits, and belief, the

City of Elgin does not and has not required every vehicle—recreational or otherwise—to apply and pay for a permit in order to park in private lots around Elgin, be it for a ministry or charitable *or even commercial* purpose.

131. For example, Elgin’s code defines a “RECREATIONAL VEHICLE” as: “A portable vehicle structure without a permanent foundation, which can be towed, hauled, or driven, and which is primarily designed as a temporary living accommodation for recreational, camping, and travel use, including, but not limited to, trailers, campers, camping trailers, and self-propelled motor homes; or "recreational vehicle" shall mean a motorized or a nonmotorized vehicle used primarily for recreational purposes, including, but not limited to, boats, watercraft, snowmobiles, and vehicles with three (3) or more wheels, such as all-terrain vehicles; including trailers, cases or boxes used for transporting recreational vehicles, whether occupied by such vehicles or not. No recreational vehicle shall be considered a "mobile home dwelling" [SR] or a "dwelling" [SR] of any type.”

132. Section 11.60.130 of the Elgin Municipal Code provides that a person may park a mobile recreational vehicle on any public street on any day for up to two hours at a time and may park for *up to twelve hours* at a time if it is being used for the actual and continuous loading or unloading of goods or merchandise. The Chief of Police even has the authority to permit the parking of a recreational vehicle for up to seventy-two (72) hours at time.

133. TLC’s free speech and free exercise rights are protected from arbitrary discrimination under the *Equal Protection Clause* of the *Fourteenth Amendment* to the United States Constitution.

134. TLC’s mobile ultrasound facility is a converted recreational vehicle and only differs from a recreational vehicle in terms of its purpose and interior which is designed not as a temporary living accommodation for recreational, camping, and/or

travel use, but rather for the purpose of providing and facilitating TLC's reproductive healthcare services and religious mission and activity.

135. Upon information and belief, Elgin has allowed other mobile facilities to operate in Elgin without a permit.

136. Specifically, upon information and belief, Elgin has allowed the Elgin Lions Club to conduct free hearing and diabetic retinopathy screenings from the mobile units of the Lions of Illinois Foundation at locations in Elgin without a temporary use permit.

137. Specifically, upon information and belief, Elgin has allowed Loyola Medicine to operate its mobile ultrasound facility to conduct periodic HealthFair screenings in Elgin without a temporary use permit. See Chicago Tribune advertisement from December 2, 2012 attached as Exh. F showing December 15th mobile ultrasound screening and the HealthFair website:

<https://hip.healthfair.com/Scheduling/Online/LocationAndAppointmentSlot?Radius=25&ZipCode=60123> showing a February 15, 2013 mobile ultrasound event.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the **PRAYER FOR RELIEF** below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

- A. Enter a declaratory judgment that Section 19.90.015 of the Elgin Municipal Code, as amended, is facially invalid as unconstitutionally overbroad and/or vague; and

B. Enter a declaratory judgment that the City of Elgin has exceeded its authority in treating TLC's mobile ultrasound facility as a temporary land use;

C. Enter a declaratory judgment that Section 19.90.015 of the Elgin Municipal Code as applied to TLC's mobile ultrasound ministry violates the *First* and *Fourteenth Amendments* of the United States Constitution and/or the Illinois Constitution;

D. Enter a declaratory judgment that Section 19.90.015 of the Elgin Municipal Code as applied to TLC's mobile ultrasound ministry constitutes an impermissible substantial burden under Section 2000cc (a)(1) of RLUIPA and/or the Illinois Religious Freedom Restoration Act, on TLC's free exercise;

E. Enter a declaratory judgment that Section 19.90.015 of the Elgin Municipal Code as applied to TLC's mobile ultrasound ministry constitutes an unreasonable limitation under Section 2000cc (b)(3)(B) of RLUIPA;

F. Enter a declaratory judgment that Section 19.90.015 of the Elgin Municipal Code as applied to TLC violates the *Equal Protection Clause* of the *Fourteenth Amendment* of the United States Constitution;

G. Enter a declaratory judgment that Section 19.90.015 of the Elgin Municipal Code is facially invalid, and as applied, infringes on TLC's and the Church's hybrid rights to free exercise and free speech under the *First Amendment* and Illinois Constitution;

H. Enter a preliminary and permanent injunction enjoining the City of Elgin from enforcing or threatening to enforce Section 19.90.015 of the Elgin Municipal Code against TLC in its use and parking of its mobile ultrasound facility in private lots and public ways throughout the City of Elgin, including specifically the Church's and J.B.'s lot;

I. Enter a preliminary and permanent injunction enjoining the City of Elgin from enforcing or threatening to enforce Section 19.90.015 in any way that would threaten or interfere with the rights of women, and interests of their unborn children, who seek or may seek the free reproductive health services and support offered via TLC's mobile ultrasound facility and hosted by the Church and J.B.'s;

J. Enter judgment on behalf of the Plaintiffs against the City of Elgin for all damages to which they are entitled, specifically including, but not limited to:

(1) the losses suffered as a result of the delay, uncertainty and expense caused by Elgin's ordinance and application of the same;

(2) for Plaintiffs' lost enjoyment of their rights; and

(3) for all the permit fees TLC has paid to the City of Elgin.

K. Award attorney fees, expenses and costs to the Plaintiffs pursuant to 42 U.S.C. § 1988(b); 740 ILCS 23/5(c); 42 U.S.C. 2000cc et seq.; 775 ILCS 35/1 et seq.; or any other laws set forth herein which authorize the recovery of fees, expenses, and costs.

L. Grant other just relief.

Respectfully submitted this 7th day of March, 2013.

/s/ JOHN W. MAUCK

JOHN W. MAUCK

IL BAR NO. 1797328

/s/ NOEL W. STERETT

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