

CITY OF OVERLAND PARK MUNICIPAL COURT
JOHNSON COUNTY, KANSAS

THE CITY OF OVERLAND PARK,

v.

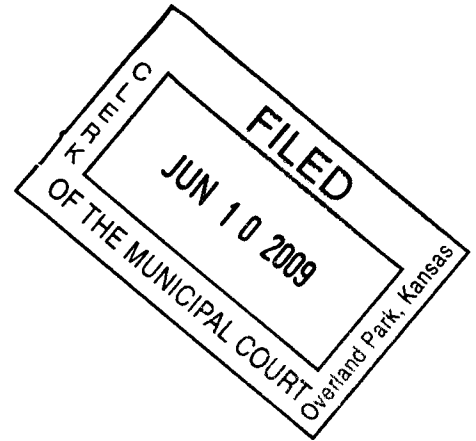
**DEFENDANT'S
MEMORANDUM IN SUPPORT
OF
MOTION TO DISMISS
AND GRANT ALL OTHER
APPROPRIATE RELIEF**

Case No.: CR-2009-0282771

CARRIE M. KAFKA

Dated: June 10, 2009

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I. Introduction

The City of Overland Park (“City”) initiated this matter by arresting Defendant Carrie M. Kafka (“Ms. Kafka”) on March 13, 2009, for violation of O.P.M.C. 11.28.070 by allegedly blocking ingress and egress into the Planned Parenthood abortion clinic (“Planned Parenthood”) at 4401 W. 109th Street. But this arrest, and the City’s accompanying charge, is entirely baseless. First, police records demonstrate that Ms. Kafka never actually violated O.P.M.C. 11.28.070 because, among other things, she was never ordered by a law enforcement officer to cease obstructing ingress and egress and to disperse. Second, the City’s complaint omits an essential element of the charge—intent—and, thus, is fatally defective. Third, the ordinance is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment both on its face and as applied to Ms. Kafka. Accordingly, Ms. Kafka respectfully requests that this court dismiss the City’s charge against her and grant all other appropriate relief pursuant to K.S.A. § 12-4106(b) and § 22-3208(2)-(4).¹

II. Facts²

Ms. Kafka, an employee of the Catholic Diocese of Kansas City-St. Joseph, provides sidewalk counseling for individuals coming to Planned Parenthood seeking an abortion.³ Sidewalk counseling consists of offering pregnant women considering abortion educational material to help them make an informed choice. Exhibit 1, page 6, lines 11-21, Transcript of Officer Hruska’s Statements to Ms. Kafka. This educational material includes information about prenatal development, abortion alternatives such as adoption, and financial and other assistance

¹ Ms. Kafka, through counsel, pled not guilty to the City’s charge on May 22nd. Accordingly, this motion is filed within the 20 days period allowed by K.S.A. § 22-3208(4) for motions to dismiss.

² Because the City’s complaint is brief and conclusory in nature, this memorandum includes facts that are beyond what is recorded in the complaint. These facts are not necessary for Ms. Kafka to prevail on this motion but are included to provide the Court a more complete factual background of the case with facts that will be shown by the evidence at trial.

³ Her time at Planned Parenthood is purely volunteer, and not performed as part of her duties at the Diocese.

for pregnant mothers.⁴ Ms. Kafka does sidewalk counseling out of a sense of religious duty and, with other like-minded individuals, is outside Planned Parenthood almost every Friday and Saturday.

On March 13, 2009, Ms. Kafka was engaging in the same form of peaceful sidewalk counseling that she and others had been offering for over a year. Exhibit 2 at ¶ 5, Affidavit of Jennifer Gordon. She stood on the sidewalk near Planned Parenthood’s north driveway and, when a vehicle turned into the entrance, held up pamphlets for the driver to receive.⁵ *Id.* at ¶ 6. If the driver chose to stop, and most did not, she would step up to the vehicle, hand the pamphlets to the driver, and provide her perspective on abortion, if welcomed by the driver. *Id.* at ¶ 8; Ex. 1, pg. 6, lines 14-15. The conversations generally lasted less than two minutes, and then Ms. Kafka would return to the sidewalk. Ex. 1 at ¶ 20.

If another vehicle attempted to either enter or exit Planned Parenthood during these conversations, Ms. Kafka would encourage the driver with whom she was speaking to move out of the driveway and would return to the sidewalk herself. *Id.* at ¶ 9. At no time did Ms. Kafka or any of her associates attempt to block vehicles entering or exiting Planned Parenthood. Ex. 1, pg. 6, lines 17-18; Ex. 2 at ¶ 10. In fact, Ms. Kafka, as well as many of her associates, have received training to ensure they do not violate laws—like the federal government’s FACE law, 28 U.S.C. § 247—regarding obstruction of access to abortion clinics. Ex. 1, pg. 4, lines 15-17; Ex. 2 at ¶ 11. Also, to avoid charges of criminal trespass, Ms. Kafka always remains on the public sidewalk easement that crosses the driveway when providing pamphlets to drivers who

⁴ The provision of this information is consistent with Kansas public policy. *See* K.S.A. §§ 65-704 (requiring minors be provided with information about abortion alternatives); 65-709 (requiring adults provide informed consent on a number of issues, including abortion alternatives).

⁵ Planned Parenthood also has an east driveway. Neither Ms. Kafka nor any other pro-life advocates were counseling near that driveway on March 13th, and they do not generally conduct their activities at the east driveway, meaning traffic can enter and exit from there without passing Ms. Kafka or her associates. Ex. 1 at ¶ 6. All references to “the driveway” are regarding the north driveway unless otherwise noted.

choose to stop. *Id.* at ¶ 12. The public easement is clearly marked and is distinct from the color of the driveway on one side and the street on the other. *Id.* at ¶ 13.

Police officers have observed Ms. Kafka and her associates engaging in this peaceful conduct for over a year prior to March 13th without incident. Ex. 1, pg. 11, lines 20-21. Ms. Kafka has never received an order to cease her conduct by Overland Park police. *Id.*; Ex. 2 at ¶ 19. And while other pro-life advocates have engaged in similar conduct since March 13th, observing police have never ordered them to stop and have, on at least one occasion, permitted them to continue offering literature to incoming patients. *Id.* at ¶ 30. But on March 13th, Ms. Kafka was arrested for the same peaceful conduct she had been doing for a year and that others have done since.

Because Ms. Kafka and her associates have occasionally faced minor harassment from Planned Parenthood staff, they regularly videotape their actions. *Id.* at ¶ 4. Accordingly, Ms. Kafka has about an hour's worth of video recording the entirety of her actions outside Planned Parenthood before she was arrested. *Id.* at ¶ 4. In the fifty minutes recorded before her arrest, Ms. Kafka only counseled three drivers, each of whom voluntarily stopped. *Id.* at ¶ 20. Her conversations lasted an average of about a minute and a half. *Id.* at ¶ 20. In both instances where a vehicle attempted to enter or exit Planned Parenthood while Ms. Kafka was still counseling, she encouraged the driver stopped in the driveway to move out of the driveway. *Id.* at ¶ 22. At no point did Ms. Kafka ever cross onto Planned Parenthood property. Exhibit 3 at ¶ 7, Supplemental Report of Sergeant Stamer.

Further, Ms. Kafka never obstructed the flow of traffic at all. She only entered the driveway after vehicles voluntarily stopped and took just a couple steps off the sidewalk to reach the driver. *Id.* at ¶ 5 (noting that Ms. Kafka was seen "standing next to the vehicle" of the third

driver); Ex. 2 at ¶ 21. The police report states that it was not Ms. Kafka who obstructed the driveway, but rather the driver who voluntarily stopped to speak with her. Ex. 3 at ¶ 6 (stating that the surveillance video “showed Ms. Kafka stopping the [third driver] in the driveway, which obstructed other vehicles”).⁶

Ms. Kafka was arrested within moments of speaking to the third driver, who had stopped in the driveway for less than fifty seconds. Ex. 2 at ¶ 23. Ms. Kafka herself was in the driveway for less than thirty seconds of that time. *Id.* Overland Park Police Officers Glaser and Stamer initially arrested Ms. Kafka for criminal trespass, but after the arrest determined that Ms. Kafka had never entered onto Planned Parenthood property and so changed the basis for arrest to obstructing ingress and egress. Ex. 3 at ¶ 7.

Several police officers, including the arresting officers, arrived at Planned Parenthood about fifteen minutes before arresting Ms. Kafka but never ordered her to cease her activities and disperse before the arrest. Ex. 2. at ¶¶ 25-26. Also, no Planned Parenthood staff spoke to Ms. Kafka at all on March 13th. *Id.* at ¶ 27.

Ms. Kafka had spoken with Overland Park Police Officer Hruska on the previous Friday, March 6, regarding obstructing ingress and egress on the north driveway. Officer Hruska’s report states that he did not observe any violations of the ordinance, and it does not record that he ordered Ms. Kafka to cease any of her activities or to move on or disperse. Exhibit 4, Hruska March 6 Incident Report.

⁶ Counsel for Ms. Kafka has requested to view Planned Parenthood’s security video, which the City currently has as evidence, to determine whether any vehicles were actually obstructed in exiting the driveway. The City is currently attempting to arrange an opportunity to view the video at Planned Parenthood’s premises. But, as established by section III(A), *infra*, resolution of this issue to dismiss the case against Ms. Kafka is unnecessary.

III. Argument

A. With the Facts Viewed in a Light Most Positive to the City, Ms. Kafka Did Not Violate the Ordinance.

In reviewing a motion to dismiss, the court must accept the City's description of the facts as true, along with reasonable inferences from that description. *Lamb v. State*, 33 Kan.App.2d 843, 846 (Ct.App. 2005). But the court is not required to accept the City's "conclusory allegations on the legal effects of the events set out by the [City]." *Id.*

The City's case against Ms. Kafka must fail because, as a matter of law, Ms. Kafka did not violate the ordinance. The City never ordered her to cease her conduct and to disperse, a necessary pre-requisite to a violation of O.P.M.C. § 11.24.070. Also, accepting the City's description of the facts as laid out in the relevant police reports demonstrates that Ms. Kafka never blocked ingress or egress.

1. Ms. Kafka was never ordered to cease obstructing ingress or egress and to disperse or move on.

Obstructing ingress or egress in a manner proscribed by O.P.M.C. § 11.28.070 is not itself sufficient to violate the ordinance. Instead, the ordinance requires an additional step.

When any person causes or commits any of the conditions enumerated in this section, a law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such an order is guilty of a violation of this section.

Thus, a law enforcement officer must order a person obstructing ingress and egress to both cease doing so and to disperse. Until both orders are delivered, no violation of the ordinance occurs.

While the City's complaint against Ms. Kafka makes a conclusory allegation that she was warned to cease her conduct and to disperse, the City's own records demonstrate that allegation to be completely unfounded.⁷

⁷ Ms. Kafka has been charged with "[p]revent[ing] free and uninterrupted ingress, egress, or regress to 4401 W.

Ms. Kafka was not initially arrested for obstructing ingress or egress. Instead, she was arrested for criminal trespass, which does not require orders from a law enforcement officer to both cease obstructing conduct and to move on, but instead only requires that a property owner request a trespasser to leave his property. *See* Ex. 3, ¶¶ 3, 5, 6 (noting that arresting officers arrested Ms. Kafka for criminal trespass and later changed the charge to obstructing ingress and egress); O.P.M.C. § 11.12.030(2) (defining criminal trespass as requiring only an order by the landowner not to enter or to leave). At the time of arrest, then, the arresting officers believed it was only necessary that Ms. Kafka had been warned before commencing arrest. Thus, they failed to issue any sort of order to Ms. Kafka at all before arresting her and instead relied entirely upon two prior warnings Ms. Kafka allegedly received, one by Officer Hruska on March 6th and another by Planned Parenthood staff on March 13th. Neither warning, though, was legally sufficient under the obstructing ingress and egress ordinance.

Officer Hruska's March 6th statements to Ms. Kafka cannot serve as a basis for the City's prosecution of her because Officer Hruska never actually ordered Ms. Kafka to do anything. Officer Hruska's Incident Report does not include any mention of ordering Ms. Kafka to either cease any activity or to disperse, actions that would undoubtedly have been included in his rather short report. Ex. 4. In fact, his report states that "[n]o violations of [O.P.M.C. §] 11.28.070 were observed while I was on the scene." *Id.* Officer Hruska's failure to issue orders to cease obstructing conduct and to disperse makes sense, then, as he could hardly tell Ms. Kafka to stop doing something which she was not doing.

The transcript of Officer Hruska's statements to Ms. Kafka further show that he never ordered Ms. Kafka to cease and to disperse or move on. He never even uttered the words

109th St. Overland Park, Kansas, after a law enforcement officer ordered [her] to stop causing or committing such conditions and to move on or disperse." Exhibit 5, Notice to Appear and Complaint.

“order,” “cease,” “disperse,” or “move on.” Instead, he said, “I’m just explaining to you [Ms. Kafka] the legal perspective on this.” Ex. 1, pg.5, line 15. “Just explaining” a legal perspective is a far cry from issuing orders. Accordingly, Officer Hruska’s March 6th conversation with Ms. Kafka cannot support the City’s charge against Ms. Kafka.

The alleged warning issued by Planned Parenthood staff is also unhelpful to the City. The arresting officers sought confirmation from Planned Parenthood security officer Fitzgerald that she had warned Ms. Kafka not to be in the driveway on March 13th, and cited this to Ms. Kafka as a basis for her arrest.⁸ Ex. 3 at ¶ 4. While Fitzgerald’s warning may have been sufficient to trigger the effect of the criminal trespass ordinance under which Ms. Kafka was originally arrested, the obstructing ingress and egress ordinance specifically requires that the order in question must be delivered by a law enforcement officer. O.P.M.C. § 11.28.070. The Kansas Criminal Procedure statute, K.S.A. § 22-2202(13), defines “law enforcement officer” to mean

any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violations of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of a crime.⁹

A private security officer does not qualify. Accordingly, Fitzgerald’s alleged statement to Ms. Kafka is legally irrelevant to whether Ms. Kafka violated the ordinance.

In sum, conclusory allegations in the Complaint notwithstanding, Ms. Kafka never received an order to cease her activity and disperse from either Officer Hruska on March 6th or the arresting officers on March 13th. Further, the alleged warning she received from Fitzgerald has no legal relevance under O.P.M.C. § 11.28.070. Accordingly, the City failed to issue the

⁸ Ms. Kafka disputes that Fitzgerald ever issued any sort of warning to Ms. Kafka on March 13th, and Ms. Kafka’s video does not include any statements or warnings from any Planned Parenthood personnel, including Fitzgerald. But, for purposes of this motion, whether Fitzgerald issued a warning is immaterial.

⁹ K.S.A. § 12-4408 makes the Kansas Code of Criminal Procedure controlling for the disposition of municipal court motions.

pre-requisite orders under the ordinance and, thus, Ms. Kafka has never violated the ordinance.

2. *Ms. Kafka did not block ingress or egress to Planned Parenthood.*

Video from the scene shows that Ms. Kafka was not preventing ingress or egress from Planned Parenthood at any time. While the driver with whom she was speaking just before her arrest did briefly stop in Planned Parenthood's north driveway, she herself, standing only a couple steps off the sidewalk, was not obstructing the flow of traffic at all. Ex. 2 at ¶ 21. The police report substantiates this, noting that it was not Ms. Kafka who obstructed the driveway, but rather the driver who voluntarily stopped to speak with her. Ex. 3 at ¶ 6. Further, City police have stated that a voluntarily-stopped vehicle in the driveway does not constitute obstruction. Exhibit 1, page 3, lines 10-14 ("If [vehicles] voluntarily stop...that's fine..."). Thus, Ms. Kafka's brief conversations alongside voluntarily-stopped vehicles did not constitute blocking ingress or egress.

B. The Complaint Against Ms. Kafka is Fatally Defective on Its Face.

K.S.A. 22-3201(2) requires that the "complaint...shall be a plain and concise written statement of the essential facts constituting the crime charged." "A complaint that omits a single essential element is fatally defective," *State v. Shofler*, 9 Kan.App.2d 696, 698 (Ct. App. 1984), and should be dismissed for lack of subject matter jurisdiction. *Id.* Since the complaint against Ms. Kafka omits the essential element of intent, it is fatally defective and should be dismissed.

Criminal intent is an "essential element of every crime defined by [the Overland Park] code." O.P.M.C. § 11.04.090. Thus, a charge of obstructing ingress and egress requires that the City allege three elements: (1) that a person intended to obstruct ingress or egress, or was reckless as to that possibility, (2) that the person actually obstructed ingress or egress in violation of the ordinance, and (3) that a law enforcement officer ordered the person to stop obstructing

ingress or egress and to disperse or move on. O.P.M.C. §§ 11.04.090 (Criminal intent); 11.28.070 (Obstructing ingress and egress).

As noted, Ms. Kafka has been charged with “[p]revent[ing] free and uninterrupted ingress, egress, or regress to 4401 W. 109th St. Overland Park, Kansas, after a law enforcement officer ordered [her] to stop causing or committing such conditions and to move on or disperse.” Exhibit 5, Notice to Appear and Complaint. The complaint does not allege that Ms. Kafka intended to obstruct ingress and egress. Since O.P.M.C. § 11.04.090 makes intent an essential element of the charged offense, the complaint is fatally defective. *Shofler* at 698. This fatal defect in the complaint deprives this Court of subject matter jurisdiction and will void any conviction rendered based upon it. *Id.*

The Supreme Court followed this same reasoning in *City of Overland Park v. McBride*, 253 Kan. 774, 776 (1993), where the defendant was charged with possession of marijuana. The court noted that O.P.M.C. § 11.04.090 makes allegation of intent an essential element of complaints for Overland Park ordinance violations, and that failing to so allege created a potential “fundamental defect” in the complaint. *Id.* The court avoided this defect, though, because the word “possession” is defined to include the idea of intent and, accordingly, the complaint in question necessarily incorporated the element of intent and thus avoided the otherwise fatal defect. *Id.* at 778.

The relevant word in the City’s charge against Ms. Kafka is “prevent,” as she was charged with “prevent[ing] free and uninterrupted ingress, egress, and regress to [Planned Parenthood].” Ex. 6. Black’s Law Dictionary defines “prevent” as “[t]o hinder or impede.” BLACK’S LAW DICTIONARY 1226 (8th ed. 2004). This definition does not specifically include intent and clearly encompasses non-intentional action. Thus, the City has not alleged that Ms.

Kafka intended to violate the ordinance. Accordingly, the Complaint against her is fatally defective and should be dismissed.

But even if the City had alleged that Ms. Kafka intended to violate the ordinance, the City would be unable to prove that element. Ms. Kafka not only never intended to block ingress or egress, the facts show she went out of her way to assure that access to the clinic remained clear. When other vehicles were either entering or exiting Planned Parenthood's north driveway while she was counseling a stopped driver, she would encourage that driver to move out of the driveway. Ex. 2 at ¶ 22. And she was always careful not to stand in front of vehicles either entering or exiting the driveway. Ex. 1 at page 3, line 21; page 4, lines 15-22. Rather than intending to obstruct traffic, then, Ms. Kafka was taking reasonable measures to ensure traffic was not hindered.

Also, if the City takes the position that a voluntarily-stopped vehicle does in fact constitute an obstruction—and that Ms. Kafka could be responsible for the voluntary actions of another person, a dubious proposition with serious First Amendment implications—Ms. Kafka could still not be charged with *intent* to block. She was told just a week prior to her arrest by Overland Park police that voluntarily stopped vehicles were “fine” under the ordinance. Ex. 1, page 3, lines 10-14. Ms. Kafka could hardly intend to block ingress and egress in a way she was instructed would not be considered blocking.

Thus, not only did the City fail to include an essential element of its case against Ms. Kafka in its complaint against her, but the facts demonstrate that the City could not prove that Ms. Kafka actually committed that essential element.

C. The Ordinance is Unconstitutionally Vague, Both on Its Face and As It Has Been Applied by the City.

A law can violate due process on vagueness grounds for three reasons. First, a law is

unconstitutionally vague if it does not give a person of ordinary intelligence fair warning on how to conform his or her actions to the law. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Second, vague laws give decision makers impermissible discretion “for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Id.* at 108-09. Third, a statute or ordinance is unconstitutionally vague if it has a chilling effect on free speech that leads citizens to “steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.” *Id.* (citation and quotation omitted); *see also Buckley v. Valeo*, 424 U.S. 1, 77 (1976) (“Where First Amendment rights are involved, an even ‘greater degree of specificity’ is required”). The City’s charge against Ms. Kafka should be dismissed because O.P.M.C. § 11.28.070’s language is strikingly—and unconstitutionally—vague in all three of these ways and the City’s enforcement of it has only compounded that vagueness.

1. The language of O.P.M.C. § 11.28.070 is unconstitutionally vague.

O.P.M.C. § 11.28.070 provides that

It shall be illegal for any person to obstruct any public street, public highway, public sidewalk or public building or any other place of public access by hindering or impeding or tend [sic] to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians or to commit in or upon any public street, public highway, public sidewalk or public building or any other place of public access any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street public highway, public sidewalk or public building or any other place of public access, all of which prevents the free and uninterrupted ingress, egress, and regress therein, thereon, and thereto.

A grammatical pretzel, the ordinance’s precise meaning is likely beyond the understanding the drafters who cobbled together this 137-word sentence, much less that of a person of ordinary intelligence who is trying to avoid violating it. How does one “commit...a...*thing*” that “is an obstruction or interference to the free and uninterrupted use of property”? Worse, how can one

be sure that one's conduct in a public street or sidewalk is not *tending* to hinder or impede traffic?

The only answer is that City officials must reveal the actual meaning of the ordinance as they determine it on an ad hoc basis. But this approach has been declared by the Supreme Court to be unconstitutional both as unbridled official discretion and as an impermissible burden on free speech rights. First, because the ordinance employs such broad language in such a convoluted manner, it allows enforcement “on an ad hoc and subjective basis,” with no limits on official discretion to prevent use of the ordinance against disfavored speech. *Grayned* at 108-09. Second, because of the ordinance’s “uncertain meaning[,]” it necessarily creates an environment where citizens are required to “steer far wider of the unlawful zone” to ensure they do not accidentally cross the line. *Id.*; *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964).

These problems with the ordinance are particularly disturbing due to the way they implicate First Amendment rights. Because First Amendment liberties “need breathing space to survive, government may regulate in the area only with narrow specificity.” *Cantwell v. Connecticut*, 310 U.S. 296, 311 (1940). But far from the narrow, specific limits constitutionally required to prevent chilled free speech, the ordinance applies to First Amendment rights precisely where those rights are most protected: public streets and sidewalks. *Perry Educ. Assn v. Perry Local Educators’ Assn.*, 460 U.S. 37, 45 (1983); *Hague v. CIO*, 307 U.S. 496, 515 (1939) (“[T]ime out of mind,” such places “have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”). Worse yet, the City has applied to ordinance to bar literature distribution, which “enjoys the highest level of First Amendment protection.” *Service Employees International Union v. Municipality of Mt. Lebanon*, 446 F.3d 419, 429 (3d Cir. 2006); *see also U.S. v. Kokinda*, 497 U.S. 720, 734 (1990).

Any ordinance to protect free ingress and egress must be narrowly drafted so that it does not interfere with the First Amendment rights of Ms. Kafka or other speakers, and the City has clearly failed to meet that requirement in its own ordinance.

Overland Park officials charged with enforcing the ordinance have demonstrated just how indecipherable and open to ad hoc enforcement the ordinance is. Within the last three months, fully six different—and generally conflicting—official interpretations of the ordinance have been provided to Ms. Kafka and her associates. The baseline interpretation of the ordinance came for over a year prior to Ms. Kafka’s arrest. During this time, Overland Park police observed the kind of conduct for which Ms. Kafka was arrested on March 13th on a weekly basis and were fine with it. Never once did police order a change in the conduct.

The next two interpretations both came at the same time on March 6th, when Officer Hruska attempted to explain the intricacies of the ordinance to Ms. Kafka. He started out by noting the existence of the ordinance and saying that it meant “basically [that] you can’t approach a vehicle while it’s coming through here. You pretty much have to stay on the sidewalk. If they voluntarily stop, that’s fine, but you can’t like put your arms out and say, ‘Stop’ or hold anything out.” Ex. 1, pg. 3, lines 10-15. Ms. Kafka responded that she was careful not to “obstruct [the drivers’] path,” but that the First Amendment should allow her to offer her pamphlets to passing drivers. *Id.* at pg. 3, lines 16-21. Officer Hruska then contradicted himself, saying that it was “fine” to “hold[] out your pamphlet” to vehicles coming through. *Id.* at pg. 5, line 11. When Ms. Kafka pressed for clarification by noting that “lots of officers...have come out here many times and watched what we do” and none of them had interpreted the ordinance as Officer Hruska had, he only responded, “Okay, that’s fine.” *Id.* at pg. 11, line 22. When Officer Hruska left, Ms. Kafka was so confused—both as to how she

could offer pamphlets to vehicles and when she could step out to provide them those pamphlets if they stopped—that she contacted legal counsel for assistance.

A week later, another new interpretation of the ordinance was provided by Overland Park police at Ms. Kafka's arrest. The arresting officers, after observing Ms. Kafka handing pamphlets to a voluntarily-stopped vehicle, told her that she could not do anything to stop vehicles in the driveway of the business and that "she was not allowed in the driveway" at all. Ex. 3 at ¶ 5.

March 14th, the day after Ms. Kafka's arrest, yet another interpretation of the ordinance was provided to counsel for Ms. Kafka by the Overland Park Police Department. Counsel was outside Planned Parenthood to observe the conduct of other pro-life advocates there and help ensure no future arrests took place. Counsel spoke to Overland Park Police Officer Perina, who was there observing the pro-life advocates, about what conduct the ordinance permitted. Officer Perina stated that the ordinance allowed a person to offer pamphlets to drivers from the sidewalk and, if a driver voluntarily stopped, to step off the sidewalk and provide the literature to the driver and then step back to the sidewalk.¹⁰ Of course, this is essentially what Ms. Kafka was doing when she was arrested just the day before.

A month later, on April 18th, associates of Ms. Kafka's were at Planned Parenthood and received a fifth interpretation of the ordinance by Overland Park Police Officer O'Malley. He stated that as long as they did not physically obstruct ingress and egress by standing in front of vehicles, their counseling was unobjectionable. Exhibit 2 at ¶¶ 28-30.

In sum, Ms. Kafka and her associates have received a wide range of different and ultimately contradictory official interpretations regarding the exact meaning of O.P.M.C. §

¹⁰ City Prosecutor Eric Blevins reviewed the ordinance and stated to counsel on May 22nd that it allows Ms. Kafka and her associates to do what Officer Perina outlined.

11.28.070 within a three month period.¹¹

- The ordinance only prohibits physically standing in front of cars entering or exiting Planned Parenthood. (Officer O'Malley)
- The ordinance allows individuals to offer pamphlets from the sidewalk, step into the driveway after vehicles voluntarily stop to provide the pamphlets, and engage in counseling with the driver until another vehicle begins to either enter or exit the driveway. (Conduct which police observed and permitted for over a year)
- The ordinance prevents individuals from entering the driveway while vehicles are driving through; individuals can hold out pamphlets to drivers and drivers can voluntarily stop. (Officer Hruska)
- The ordinance allows individuals to offer pamphlets to drivers and to briefly step into the driveway to provide those pamphlets to any drivers who voluntarily stop. (Officer Perina and City Prosecutor Blevins)
- The ordinance prevents individuals from entering the driveway while vehicles are driving through; no "stop" gestures or attempts to hand out pamphlets, but vehicles can voluntarily stop. (Officer Hruska)
- The ordinance prevents individuals from entering the driveway at all; individuals cannot stop vehicles in the driveway, even by just offering pamphlets to passing vehicles. (Officer Glasser)

In short, the ordinance's vague language has created exactly the kind unbridled discretion the Supreme Court warned against in *Grayned*. Ms. Kafka's First Amendment freedoms have become dependent upon which Overland Park police officer responds to a complaint from

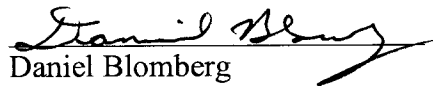
¹¹ Even considering these varied applications of the ordinance, it appears that under the majority of them the conduct for which Ms. Kafka was arrested would be permissible.

Planned Parenthood. This is most clearly shown in the days surrounding Ms. Kafka's arrest, where conduct that was illegal on March 13th per Officer Glaser was legal on March 14th per Officer Perina.

CONCLUSION

The City's charge against Ms. Kafka should be dismissed. Ms. Kafka never actually violated O.P.M.C. 11.28.070 because she was never ordered by a law enforcement officer to cease obstructing ingress and egress and to disperse. Further, because the City's complaint omits an essential element of the charge against Ms. Kafka, it is fatally defective. Finally, the ordinance under which she has been charged is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment both on its face and as applied to Ms. Kafka. Accordingly, Ms. Kafka respectfully requests that this court dismiss the City's charge against her and award all other appropriate relief.

Respectfully submitted,



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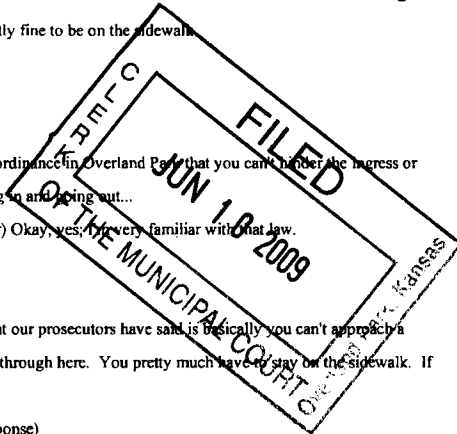
EXHIBIT 1

Page 1

City of Overland Park v Carrie Kafka
Case#: CR-2009-028277
No date or time given for call
Re: Interview with OPPD Officer Hruska and Carrie Kafka and Sabrina (Planned Parenthood-Sabrina)
OH: 4401 W. 109th in reference to an ordinance violation. (No talking then outdoor noises) Hello.
FI: Hello, how are you doing?
OH: How are you? Got some issues?
FI: Yeah; the one young lady in the brown polo talking on the phone right there.
OH: Oh, okay.
FI: Has been stopping folks in the driveway and we've asked her twice not to do it (Police radio in the background) and (laughter) she started screaming at Sabrina, the Director, here at the...
OH: Oh! Okay. Well, alright, how long have they been out there today?
FI: For about an hour and a half.
OH: Hour and a half? Okay.
FI: The ones with the tape on their mouths aren't any problem; but, it's just this one here.
OH: Okay.
FI: And they're out here every Saturday morning; so, "I'll be right there."
Male: Oh! Okay.
OH: Okay.
FI: Yeah, that one and then---

Page 3

1 OH: You guys are perfectly fine to be on the sidewalk.
2 CK: Yep!
3 OH: Not an issue.
4 CK: Yep!
5 OH: Um, but there is an ordinance in Overland Park that you can't hinder the ingress or
6 egress; meaning the going in and going out...
7 CK: (Talking over officer) Okay, yes, I'm very familiar with that law.
8 OH: So...
9 CK: Or ordinance
10 OH: What; basically, what our prosecutors have said is basically you can't approach a
11 vehicle while it's coming through here. You pretty much have to stay on the sidewalk. If
12 they voluntarily stop...
13 CK: A hum (Positive response)
14 PO: ...that's fine; but, you can't like put your arms out and say, "Stop" or hold
15 anything out.
16 CK: We didn't do that.
17 OH: Okay
18 CK: But we do; we offer them information which I would think is our 1st Amendment right
19 to be able to offer them information.
20 OH: Okay
21 CK: And to not obstruct their path.
22 OH: Yeah
23 CK: Going into the building...(Officer talks over F2)
24 OH: So, so basically, you can stand at the edge of the sidewalk here...
25 CK: A hum (Positive response)



Page 2

1 OH: Same group? Same---?
2 FI: Yeah; yeah
3 OH: Okay
4 FI: But, like I said, the red tape they're not a problem.
5 OH: Yeah; okay.
6 FI: But, that young lady there she's trying; and you know she's just nasty and--
7 OH: Okay; alright, I'll go have a chat with them.
8 FI: Alright thank you.
9 OH: Thank you. Hello.
10 CK: Hi
11 OH: How are you?
12 CK: (Inaudible response too low)
13 OH: Good.
14 CK: Good.
15 OH: Alright; I'm Officer Hruska...
16 CK: Hi; (Inaudible name)
17 OH: Nice to meet you.
18 CK: Nice to meet you too.
19 OH: Okay; um, I don't know how long you guys have been coming out here um...
20 CK: A hum (Positive response)
21 PO: ...just kind of give you; you know, I haven't met you before...
22 CK: A hum (Positive response)
23 PO: ...just kind of give you the ground rules of just some of the things you can and
24 can't do.
25 CK: A hum (Positive response)

Page 4

1 OH: pull out your pamphlet...
2 CK: A hum (Positive response)
3 OH: if they voluntarily stop; that's their prerogative...
4 CK: A hum (Positive response)
5 OH: But, you can't step out uh pretty much this is kind of the boundary line okay?
6 CK: A hum (Positive response) I thought that the wording stated; I'd like to see the
7 wording...
8 OH: You would like to see...
9 CK: if you have it.
10 OH: I have it.
11 CK: So...
12 OH: Come on over. (Female talking in the background-inaudibly) You; you're alright with
13 me.
14 I brought it up on my computer.
15 CK: Because we; I mean we go through training to do this.
16 OH: Yeah
17 CK: So we're; we want to make sure that we don't break the law on this.
18 OH: Have a seat and it's all up there for ya.
19 CK: Okay. (Silence) Okay; because I take that to mean that; and I mean obviously it's
20 an issue
21 of wording; but, to obstruct would mean that you are placing your body in a position
22 where they couldn't get passed.
23 OH: Well, see, you're; you're not; because we've had this same situation; you're not
24 the first person that's comes out and protested here; but, kind of how our prosecutor's
25 office has determined it to be is that any stopping of a vehicle...

EXHIBIT 1

Page 5

1 CK: A hum (Positive response)
2 OH: Well, in that spot...
3 CK: Okay; but, I mean they; they either choose to stop or not to stop...
4 OH: Because some people are of the opinion that if you hold up your arm like this
5 they're gonna stop.
6 CK: But, there's plenty of cars that don't.
7 OH: Okay; well, I; I'm just; I'm just explaining to you how it's been worked out in the
8 past.
9 CK: A hum (Positive response)
10 OH: So, the situation is if you're on the sidewalk and they stop voluntarily; and,
11 you're holding your pamphlet out that's fine. But, you cannot make any motion that would
12 infer to them that they are supposed to stop for you. Okay?
13 CK: Okay; well, if I mean if I was holding a stop sign that would be one thing; but, if
14 I'm just offering someone information...
15 OH: Okay; well, I; I'm just explaining to you the legal prospective on this.
16 CK: Yeah
17 OH: And you know it's something you can get a ticket for; so, I'm just kind of
18 explaining to you where kind of the boundaries are...
19 CK: A hum (Positive response)
20 OH: in where you don't get a ticket...
21 CK: A hum (Positive response)
22 PO ...and where you do get a ticket.
23 CK: A hum (Positive response)
24 OH: So, that's just kind of laying it out there for you.
25 CK: A hum (Positive response)

Page 6

1 OH: Okay?
2 CK: Yeah and I guess I find it interesting that um the people that work at Planned
3 Parenthood call themselves "Pro Choice" meaning, you know, do whatever's right for you!
4 OH: Well, I; you...
5 CK: You don't--hold on; can I just finish for just a second? (Chuckling) And all
6 we're doing is offering these people information...
7 OH: And...
8 CK: Hold on; can I finish? Offering these people information on what's going to be
9 taking place with them inside this building. I mean, you can take a copy for yourself if you
10 would like to see what we hand them. I mean, it's nothing that is; that is outside of
11 what we do specific--I mean what they are specifically do inside; inside those walls. And
12 I feel like people have a; have a right and; and if they are truly going to be making
13 an educated choice um that could affect the rest of their life; then, they deserve to
14 know this stuff. And, we just offer it peacefully and there are probably 75% of the cars
15 don't stop.
16 OH: A hum (Positive response)
17 CK: And that's their right; and we never obstruct; you know, the property or try to
18 make them stop. I mean, we are very peacefully offering them information so that they can
19 make an educated decision.
20 OH: Okay
21 CK: So that they don't have any regrets.
22 OH: Okay; and...
23 CK: So...
24 OH: ...and I'm not out here to debate right or wrong's on anything...
25 CK: A hum (Positive response)

Page 7

1 OH: ...like that because that; that's; that's not my job.
2 CK: A hum (Positive response) I just know that it's funny because they; and, I'm sorry
3 I'm interrupting you; I'll let you finish.
4 OH: Well, and it's kind; I'm just kind of here to; to let you know...
5 CK: A hum (Positive response)
6 OH: ...kind of where; where the boundary line has been; has been set by our City Courts.
7 CK: A hum (Positive response)
8 OH: So, you know? And...
9 CK: Right
10 OH: ...I'm sure you are aware that the whole premises is videotaped 24-hours a day;
11 CK: Yes! I know it's right there and I'm actually happy about that.
12 OH: ...so, so anything; so anything is going to be videotaped and you know...
13 CK: Interestingly enough um their; one of their security guards, and I can't remember
14 his name at this time; but, um on a regular base he tells us to get the fuck off the
15 driveway.
16 OH: Okay
17 CK: So (Chuckles)
18 OH: Well
19 CK: And we have never ever said anything remotely close to those things that he on a
20 consistent basis says to us...
21 OH: Okay
22 CK: ...and verbal abuse. And I know that they call and um you know; the cops come and
23 we actually like it when you guys are sitting over there because you know for sure what's
24 going on...
25 OH: Yeah

Page 8

1 CK: ...and we have nothing to hide and have nothing...
2 OH: Yeah
3 CK: ...um...
4 OH: Okay
5 CK: ...we know that we are abiding by the laws and...
6 OH: Okay
7 CK: I know that they do this to intimidate us and it just doesn't work! (Chuckles)
8 OH: Okay
9 CK: So...
10 OH: Alright
11 CK: I appreciate you coming out and...
12 OH: No problem; just kind of...
13 CK: ...letting me know and...
14 OH: ...just kind of letting you know because I'm not sure if anyone had ever spoken
15 with you before.
16 CK: Yeah; we do; we get training on it.
17 OH: Oh! Okay.
18 CK: So, but I had not actually, I mean, I've had the wording explained to me; but, I've
19 never actually (Unison) seen...
20 OH: Seen...
21 CK: ...it in writing
22 OH: ...seen what it actually has; okay.
23 CK: So, yeah, is there a place to...
24 OH: And you; you can go on the C---yeah you can go the City; that's right of the City
25 of Overland Park's website. You can just go on; you can print it off from a home

EXHIBIT 1

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1 computer...
2 CK: A hum (Positive response)
3 OH: ...anything like that; just put in; if you just type; search for the word engross
4 or egress
5 CK: A hum (Positive response)
6 OH: that's the first thing that pops up.
7 CK: Okay
8 OH: So, you can print it off from your home computer.
9 CK: Great.
10 OH: Can I just get a bit of information from you? What's your last name ma'am?
11 CK: Um is there a reason why you need that?
12 OH: I'm required to document anything I do as a police officer. I have to do police
13 reports on everything and I just need a name and some information from you so I know who I
14 just spoke with today.
15 CK: Carrie; C-A-R-R-I-E
16 OH: How do you spell that last name?
17 CK: K-A-F-K-A
18 OH: And what's your middle initial Carrie?
19 CK: M
20 OH: And your birth date?
21 CK: Um, 2/25/1979
22 OH: Okay; a mailing address for you?
23 CK: 446 E. Meyer Boulevard, Kansas City, MO 64131
24 OH: And just a contact phone number for ya.
25 CK: 816-935-3872

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1 F3: ...for her to take that up you know with professionals because I've never heard any
2 such thing as we are not allowed to make jesters. They are planning on handing out
3 condoms on St. Patty's Day in Westport. Are they going to be...
4 OH: Well
5 F3: ...able to make jesters indicating that they want somebody to take the condom from
6 them?
7 OH: I've been doing this eight years; you guys aren't the first group I've dealt with.
8 F3: Oh! I understand that; but...
9 OH: So, I'm; I'm just kind of explaining to you the position that our prosecutors have
10 come to over the course of time of you know...
11 F3: Prosecutor's make laws?
12 OH: We're in charge of interpreting the laws. She read it word for word; other car,
13 she can print you off a copy. She knows how to get a copy of it.
14 CK: You're not allowed to make any jester indicating that you want somebody to take
15 something from you.
16 F3: It doesn't say that.
17 CK: So, leafleting
18 OH: Okay; we're; we're; we're not going to get in an argument out here; I'm just
19 telling you kind of the situation.
20 CK: But, there's lots of officers who have come out here many times and watched what we
21 do and I've never heard anyone say that before.
22 OH: Okay; that's fine.
23 CK: Okay
24 OH: That's fine. Okay, did you have any ques---you; you were having a question before
25 over there that you wanted to ask me?

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1 OH: 3872; okay. Thank you Ms. Kafka. Do you have any questions for me?
2 CK: I do not!
3 OH: Alright; if you have any come up; just feel free to; you can always call the police
4 department if you have any questions that come up.
5 CK: Great
6 OH: Feel free to give us a call or if you; if you want to for; for in the future print
7 that off just any computer; just hop on the internet go to the City of Overland Park's
8 website.
9 CK: Okay, now, are you familiar with um just rules as far as them approaching us when
10 we're on public property and...
11 F3: Can I interrupt really quickly, Carrie?
12 CK: Yes.
13 F3: I just called my lawyer and he would like me to give you his card. And if we could
14 get your name and your badge number, Officer, we would appreciate that.
15 OH: I'll just give you one of my business cards it's got all that on there.
16 F3: Thank you, sir; thank you.
17 OH: Okay (Horn honking)
18 F3: Carrie, do you want me to give this to you?
19 CK: Yes!
20 OH: Oh! We got a (Inaudible word) here?
21 F3: Just because, you know, just with the questions about exactly what we are allowed
22 to do out here and stuff...
23 OH: A hum (Positive response)
24 F3: ...it might be better...
25 OH: And he...

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1 CK: I don't know; did, real quick, I gave him my information so just with; I'll just
2 tell the lawyer...
3 F3: I already did that; yeah.
4 CK: Okay; so that shouldn't be...
5 F3: If there's; yeah but...
6 CK: ...a problem?
7 F3: A hum (Positive response) Well...
8 CK: (chuckles)
9 F3: it's too late now; I guess not. I mean, it's not like he's arresting you.
10 CK: Yeah
11 F3: Obviously, he has no cause to do so; so...
12 CK: Right.
13 OH: Alright.
14 CK: Okay!
15 OH: Okay!
16 CK: Thank you very much
17 OH: Thank you.
18 CK: Have a nice day.
19 OH: You too. (Silence and dispatcher inaudible in the background) It's been a long
20 time. I haven't seen you in quite a while Sabrina.
21 SB: I know it; I know it. I was getting ready to home before they decided they wanted
22 to act up out here today.
23 OH: Yeah, well, I to---you know, I told them the usual spill.
24 SB: I know it, man. I'm not worried about it.
25 OH: Yeah

EXHIBIT 1

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1 SB: She's uh; she's new to me; but, she's not new to my officers because she; she's
2 coming out here with Jennifer Gordon now. But, Jennifer, who is in the pink, uh is awaiting
3 a trial.
4 OH: Ump.
5 SB: Uh right now (Phone ringing). But, we watched her call Jen because Jen was on the
6 other end and Jen came down here and told her; she would not listen.
7 OH: Yeah
8 SB: Yeah
9 OH: Yeah, I...
10 SB: That she's not going to listen.
11 OH: Yeah; I kind; I kind of get that so...
12 SB: ...because yeah; yeah; yeah; but, you know what you; you; you come out here and
13 you're unbiased and; and that's so much appreciated.
14 OH: Well...
15 SB: You come out here, this is the rule...
16 OH: And that's...
17 SB: ...this is how we handle it; nothing else.
18 OH: ...that's the same thing I do every time I come out here...
19 SB: That's exactly right.
20 OH: ...is explain the...
21 SB: Yeah
22 OH: ...kind of the boundaries that we all have to abide by.
23 SB: Yeah, yeah, uh yeah she uh; but, like I said that's the first time I ever seen her.
24 She screamed bloody murder at me today. (Chuckles)
25 OH: Yeah

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1 SB: I had a young man out here that was on this property, this side, I said, "Young man,
2 you are more than welcome to go out there; but, you cannot engage them from our
3 property. And he said, "You know, I was just feeling so bad I just thought I'd go out there."
4 And he said, "Nah, I better not, my girlfriend's in there; I better not."
5 OH: Well.
6 SB: So, we walked away and she; she just started screaming bloody murder.
7 F1: Stomping her feet; I was like are you cool?
8 SB: I mean, she went bizzerk!
9 OH: Yeah; well, you know.
10 SB: You know this...that's just the way it goes.
11 OH: Yeah; Yeah
12 SB: You know?
13 OH: Yep exactly.
14 SB: And she can scream and jump up and down.
15 OH: Yeah
16 SB: She ain't; she can bust her own blood vessel but...
17 OH: Yeah
18 SB: ...she can jump up and down; but, but, as you can see all the rest of these young
19 people...
20 OH: Yeah, their...
21 SB: Quiet as always...
22 OH: Yeah
23 SB: Civil as always...
24 OH: And you know it's usually just one or two that...
25 SB: Always; yeah; yeah and...

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1 OH: ...to push the envelope to seeing just how far...
2 SB: ...right; and you know it's funny because the rest of 'em out here with Right to
3 Live, Down for Lifer's they were like...
4 OH: Yeah; I; I didn't see, I don't know if he passed away or not; the one guy always
5 wearing like the; like the Gilligan hint John uh what was his name?
6 SB: Don't say anything; don't know where...
7 F1: Cooper
8 OH: Perch Burk; that's that... (All talking at once inaudible)
9 F1: We have the Sheriff out here every Saturday.
10 SB: (Inaudible all talking at once) he ain't going nowhere.
11 OH: See, I'm; I've been on...
12 F1: Unless it's really cold.
13 OH: I've been on evening the past couple of years so I've missed out the Saturday
14 morning...
15 SB: (Inaudible first words) still here. Well, we; we; they just released Thomas from
16 the Federal Detention Center. Uh, we had him locked down for a year. Because I don't
17 know, you not aware then, he hit that door April 1st uh two years ago.
18 OH: Ump!
19 SB: Hit that door; she put him down...
20 OH: God (Sighing)
21 SB: ...put him in handcuffs.
22 OH: Yeah.
23 SB: Yeah; so, he's been sitting in a Federal Detention Center. And like they finally
24 decided that uh he wasn't competent to stand trial; but, we know that.
25 OH: Yeah; he; he; he probably had something to do with that bullet hole that ended up;

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1 when? How many? That's been a couple of years ago now, though.
2 SB: But you know what? You know what? You and I never talked about this situation. Uh,
3 me and some FBI agents we were working; we were working on the archive just in Kansas
4 City Star archive. I don't think it was him.
5 OH: Humph.
6 SB: Uh, we, it took me a minute before I could figure it out. But, I'd been looking; I
7 was looking; something said, "Go to the obituaries." So, I went to obituaries, found
8 this guy saying goodbye to his child or you would assume that it was his child. And then I
9 went the next year and looked and I was like, "Holy shit!" In the next one he's saying,
10 "I'm coming to be with you."
11 OH: Humph
12 SB: And you remember that suicide we had out there?
13 OH: Yeah; that; that guy that was sitting right; I was; yeah, I was one of the first
14 guys out here that; that...
15 SB: We think that it may have well been him.
16 OH: Humph
17 SB: When they went into his apartment he did have some rifles and stuff in; in the
18 house.
19 OH: Yeah; that was; that was a messed up deal. It was written on a napkin; his; his
20 suicide note. It was like; there was just something really odd about it.
21 SB: And, and that's; and that's when I started digging. Uh, the only thing that we
22 could figure out is that his significant other had probably been in here once; maybe twice
23 and it set him off.
24 OH: Ump; yeah.
25 SB: It set him off. The grief was just too much.

EXHIBIT 1

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1 OH: Yeah; yeah.
2 SB: But uh; and I mean, that kind of stuff, never had another problem after.
3 OH: Humph
4 SB: Never had another problem after that; so...
5 OH: Yeah
6 SB: But, uh; yeah uh; you know I was, was I on medical leave or was I on vacation? I
7 was getting ready to leave for Hawaii...
8 FI: A hum (Positive response)
9 SB: ...that same day that he did that out in the parking lot.
10 OH: A huh (Positive response)
11 FI: Yep
12 OH: Alright
13 SB: You gave her a talk real good? She; she talk decently today I think...
14 OH: Yeah, you know, the usual.
15 SB: Same old...
16 OH: The usual kind of argumentative; but, that's not a; I've; after how many years of
17 talking to the...
18 SB: Yeah; yeah
19 OH: ...you just kind of like don't get sucked in. So...
20 SB: That's exactly right. That's exactly right. Everybody's got their opinion.
21 OH: Yep, exactly.
22 SB: We live in America.
23 OH: Yeah
24 SB: I heard her say she was an American.
25 OH: Well...

Page 19

1 FI: No shit man; take care man...you have a great weekend.
2 OH: Alright; you too. You guys take it easy.
3 FI: Alright; take care; alright.
4 OH: (Silence while walking)
5 CK: Can I ask something of you?
6 OH: Yeah
7 CK: Um, can I either get a copy of the ordinance that you showed me or a case or the
8 number? Do you have a copy?
9 OH: Yeah. Well, do you have my business card; I'll write, I'll write it down on the
10 back of that.
11 CK: Well, she took it; but, I'll get another one if that's okay.
12 OH: Oh! Yeah, I can give you another one. (Silence then beeping sounds) Okay and I
13 wrote the website on the back there too...
14 CK: Okay
15 OH: ...with the number...
16 CK: I appreciate that.
17 OH: ...just type in the number and you can print one off from your computer.
18 CK: Okay
19 OH: Alrighty, have a great weekend. (Beeping sound, noises and tape ends).
20
21
22
23
24
25

Page 18

1 SB: Yeah, you're American; so am I. (Laughter)
2 OH: Yeah; we all have our opinion.
3 SB: Yeah, remember what America's; what it's about.
4 OH: Yeah
5 SB: Remember what it's about.
6 OH: Well, I'll let you guys take off here. You're probably guys getting ready wrap up
7 for the day.
8 SB: That's right.
9 OH: Sabrina, it was good seeing you again.
10 SB: Exactly.
11 FI: You back on days?
12 OH: No, I'm still out; I'm terrible on mornings so, I'm still on evening shift so two
13 to ten (2:00-10:00).
14 FI: Why ya'll doing 2:00-10:00 in the City?
15 OH: It's been...
16 SB: Yeah, he's busy.
17 OH: Yeah, we stay, I mean, especially during the summer months it's; it's...
18 SB: It's crazy
19 OH: It's call, to call, to call, and we'll have five or six (5 or 6) sometimes ten
20 fifteen (10-15) calls stacked up.
21 SB: Stacked?
22 OH: Yeah that; just one right after the other so.
23 SB: (Inaudible sentence too low) and you folks get a taste of it.
24 OH: Yeah, keeps me out of trouble though. (Chuckles all around) If I; if I stay busy
25 it means I don't have time to get in trouble myself.

Page 20

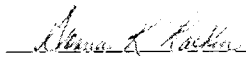
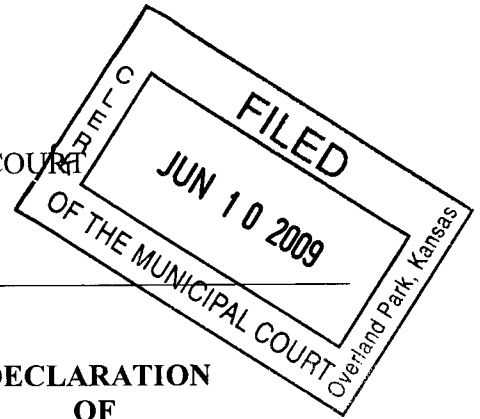
1 CERTIFICATE
2
3 STATE OF MISSOURI
4) ss.
5 COUNTY OF JACKSON
6
7
8 I, DONNA KAY RASKIN, d/b/a Walnut Street Transcription and Business Services do hereby
9 certify that the foregoing pages are a true record of the testimonies given.
10 I further certify that I am not counsel, attorney, or relative of either party, or
11 clerk or stenographer of either party, or of the attorney of either party, or otherwise
12 interested in the event of this suit.
13
14
15
16
17 
18 Donna Kay Raskin
19
20
21 GIVEN, under my hand and notarial seal at my office in said county and state, this 5th
22 day of May, 2009.
23
24
25

EXHIBIT 2

CITY OF OVERLAND PARK MUNICIPAL COURT
JOHNSON COUNTY, KANSAS



THE CITY OF OVERLAND PARK,

v.

**DECLARATION
OF
JENNIFER GORDON**

CARRIE M. KAFKA

Case No.: CR-2009-0282771

1. My name is Jennifer Gordon. I am over 18 years of age and have personal knowledge of all the facts set forth herein.
2. I reside in Overland Park, Kansas.
3. I participate in and help lead the weekly peaceful sidewalk counseling outside of Planned Parenthood's abortion clinic at 4401 W. 109th Street in Overland Park.
4. Because of minor harassment from Planned Parenthood staff in the past, we regularly videotape our conduct outside Planned Parenthood. We have video of all the sidewalk counseling conducted on March 13.
5. Ms. Kafka has been a participant in the sidewalk counseling outside Planned Parenthood with me for over a year.
6. As a part of our activities, we offer information pamphlets to individuals coming to Planned Parenthood, generally to drivers entering the north driveway.
7. When Ms. Kafka or I offer pamphlets to drivers, we stand on the public sidewalk near the driveway and hold out the pamphlets to the driver.
8. Most drivers do not choose to stop to receive our pamphlets. However, when a vehicle does stop to get a pamphlet, one of us steps up to the side of the vehicle, provides a pamphlet, and answers the driver's questions either until the driver desires to move on or

EXHIBIT 2

until another vehicle begins to either enter or exit the driveway.

9. If another vehicle approaches the driveway, whoever is talking to the driver encourages that person to pull out of the driveway.
10. Neither Ms. Kafka nor I ever block vehicles or attempt to block vehicles entering or exiting Planned Parenthood.
11. Both of us have received training to avoid blocking access to abortion clinic facilities, in part to prevent liability under laws like the federal government's FACE law.
12. We also always remain on the public sidewalk easement running across the driveway when counseling stopped drivers and do not enter onto Planned Parenthood's property.
13. The public sidewalk easement is clearly marked and distinct from either the driveway on one side or the street on the other.
14. I was with Carrie Kafka for the entirety of her time outside Planned Parenthood on the day she was arrested, March 13, 2009.
15. I was in close proximity to Ms. Kafka and observed everything leading up to her arrest and heard all of the conversation between Ms. Kafka and the arresting officers.
16. Ms. Kafka was the only person to engage in counseling with drivers that day.
17. She observed all of the normal protocols I described above in counseling drivers.
18. She and I, and others like us, have engaged in this same peaceful conduct for over a year under police observation without any police correction.
19. While we have been occasionally shouted at by Planned Parenthood staff, we had never received an order from a police officer to alter our conduct before March 13.
20. Ms. Kafka only spoke with three drivers on March 13th, for an average of about a minute and a half apiece.

EXHIBIT 2

21. Ms. Kafka never blocked access to the clinic and only took a couple steps off the sidewalk to provide pamphlets to stopped vehicles requesting them.
22. In both instances that Ms. Kafka was speaking to a stopped driver and another vehicle pulled up, she encouraged the stopped driver to pull out of the driveway.
23. The third driver Ms. Kafka counseled, after which she was immediately arrested, was in the driveway for less than one minute. Ms. Kafka was standing alongside that vehicle in the driveway for less than half that time; the remainder of the time, she was standing on the sidewalk.
24. Two vehicles exited Planned Parenthood shortly after the third driver pulled out of the driveway.
25. Several police officers, including the arresting officers, arrived at Planned Parenthood about fifteen minutes before Ms. Kafka was arrested.
26. None of them ever ordered Ms. Kafka to cease her activities and to move on.
27. Further, no Planned Parenthood staff spoke to Ms. Kafka at all on March 13th.
28. About a month after the arrest, on April 18th, Officer O'Malley approached another sidewalk counselor and me outside of Planned Parenthood.
29. The conduct that he observed us engaging in was substantially the same conduct for which Ms. Kafka had been arrested on March 13.
30. Officer O'Malley simply told us we could not physically obstruct ingress and egress by standing in front of vehicles entering or exiting the driveway and allowed us to continue our conduct unhindered.
31. We have continued to engage in substantially the same conduct ever since under periodic police observation, and we have never been instructed to alter our behavior.

EXHIBIT 2

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to K.S.A. § 53-601(a)(1), I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Executed on June 4, 2009.

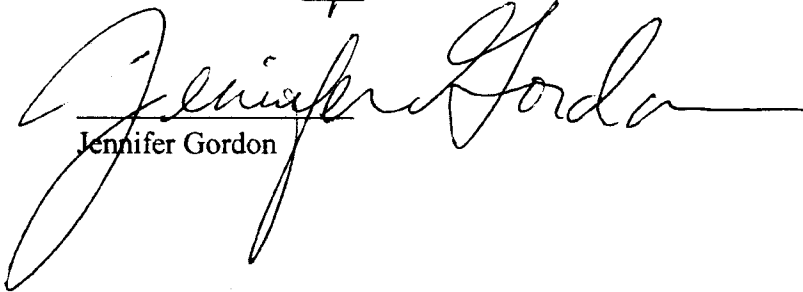

Jennifer Gordon

EXHIBIT 3

SUPPLEMENTAL REPORT

Agency: OPPD

DC# 2009004854

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Investigator: *Stamer, Russell W* 621

Date / Time: 04/02/2009 00:00:00

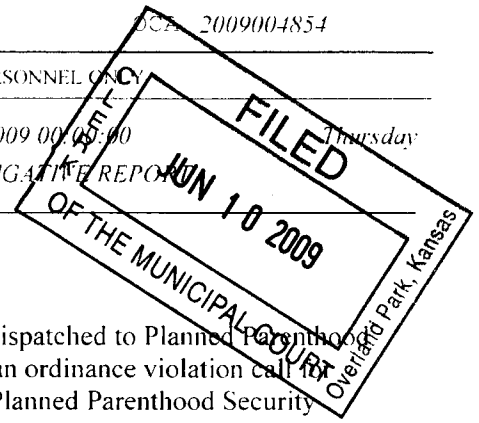
Thursday

Contact:

Reference: INVESTIGATIVE REPORT

April 2nd, 2009 - Thursday
2009 - 004854

Daniel Blomberg



On Friday, March 13th, 2009 Officer J. Glaser, Officer J. Dawkins and I were dispatched to Planned Parenthood located at 4401 W. 109th Street, Overland Park, Kansas 66211, in reference to an ordinance violation call for service. Upon my arrival I contacted Officer J. Dawkins, Officer J. Glaser and Planned Parenthood Security Officer T. Fitzpatrick.

Officer Glaser advised me that upon his arrival he was contacted by Security Officer Trish Fitzpatrick who stated that there was a white female that had been standing in the driveway of the business blocking the driveway to the business. He said that the female had been warned previously about blocking the driveway. It was believed that the warning occurred between one to two weeks prior to this incident. I was further advised that the officers were unable to locate the report in the "I-Leads" reporting system. While I was standing with Officer Glaser and Officer Dawkins, Security Officer Fitzpatrick confirmed that she warned the female who was later identified as Ms. Carrie Marie Kafka, (WF/02-25-1979), about stopping vehicles. Security Officer Fitzpatrick identified the female as the one who I observed as wearing a light colored sweater. Security Officer Fitzpatrick stated that she called the police about the situation approximately one week ago. I advised them that I would be right back and explained to them that I would be contacting Lt. Chappell about the incident.

Contact was made with Lt. Chappell and I explained the situation to him. I further advised him that it looked as though we were going to making an arrest for criminal trespass and asked him if he wanted to respond to the scene. I further advised him that the security officer admitted to warning the individual approximately one week ago and stated she called the police to the scene. I further advised him that the officers were unable to locate a report on the initial incident. Lt. Chappell confirmed that Officer Hruska responded to the call and he believed a report was written about the incident. An attempt to contact Officer Hruska to have him respond to the scene was made; however I learned that he was in the process of handling a shoplifting arrest and could not respond to my location.

While speaking with Lt. Chappell, Officer Glaser advised me that Ms. Kafka "was doing it right now". He indicated that Ms. Kafka was stopping a vehicle which was entering the property. I advised Officer Glaser to go get her. I explained to Lt. Chappell that I would call him right back. I then exited my police vehicle and begin walking northbound in the parking lot toward Ms. Kafka's position. I noticed she had a white vehicle stopped in the driveway of the business which blocked a vehicle attempting to enter the business' property via the northwest driveway. I further noted it also stopped a vehicle attempting to exit the parking lot via the same driveway. As I walked toward Ms. Kafka I asked Security Officer Fitzpatrick if Ms. Kafka had been warned today and she replied yes.

As I approached Ms. Kafka, she was standing next to the vehicle in the driveway of the business. I explained to her that she could not stop vehicles in the driveway of the business. I further advised her that she had been warned about criminal trespass she was not allowed to on the driveway and she was supposed to be on the sidewalk. Ms. Kafka then stated they had a call into the Overland Park Police Department. I explained to her that we were from the Overland Park Police Department to which she replied that she knew. She then stated that there was some confusion as to what officers had explained to her in the past and that her attorney had a call into the officer who talked to her last Friday (later identified as March 6th, 2009). I again explained to her that she could not be on their driveway and that she needed to be on the sidewalk. I explained to her that she could not be stopping vehicles in the driveway of the business. I asked her if she had her ID with her and she replied that it was in her car which was parked nearby. I then asked her if she had been warned to not be on the driveway

EXHIBIT 3**SUPPLEMENTAL REPORT**Agency: *OPPD*

OCA 2009004854

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

and she replied that she had nothing further to say. At that time she was placed under arrest and handcuffed without incident by Officer Glaser. Ms. Kafka identified some property on the ground as belonging to her at which time I collected the property and carried it Officer Glaser's vehicle. As I followed Officer Glaser and Ms. Kafka to Officer's Glaser's vehicle I was contacted by Lt. Chappell who confirmed that Officer Hruska completed a report and the female that was contacted was Ms. Kafka. I advised him that we had Ms. Kafka in custody. Once she was secured in his vehicle I returned toward my vehicle where I contacted Lt. Chappell. He again confirmed that a report was completed and it was filed under report # 2009-004371. Lt. Chappell explained to me that the report had a good narrative and began reading the narrative to me. I was further advised that Ms. Kafka was warned about the obstructing the ingress and egress of vehicles at the business. (violation of section 11.28.70 OPMC). It was further reported that the warning was recorded. I then asked about the possibility of Criminal Trespass. We discussed the situation and determined it was best to determine if Ms. Kafka entered the property of the business on the south side of the sidewalk if the sidewalk extended across the driveway.

A check of the surveillance video was conducted and it showed Ms. Kafka stopping the vehicle in the driveway, which obstructed other vehicles from entering and exiting the property. Ms. Kafka did not appear to cross onto the property belonging to Planned Parenthood and stayed on the north side of the furthest southern point of the sidewalk. Based on that fact, it was determined the best charge in this case was obstructing the ingress and egress of vehicle traffic to and from the business. Lt. T. Chappell contacted an unidentified member of the Overland Park's Prosecutor's Office and they agreed the best charged in this case was obstructing ingress and egress of vehicle traffic into or out of the business, (violation of section 11.28.070 OPMC). Security Officer Fitzpatrick gave me the original video tape. Contact was made with Officer Dawkins who completed a NTA for the obstruction charge. The NTA was presented to Security Officer Fitzpatrick who swore to the complaint, charging Ms. Kafka with violation of obstructing the ingress and egress of vehicles entering and leaving the property (11.28.070 OPMC). The video tape was turned over to Officer Dawkins. Officer Dawkins then responded to the Sanders Station to contact Officer Glaser and provide him with the signed NTA and the video tape.

It should be noted that due to the fact there were an additional 12 to 15 protesters present at the facility, I had an additional officer respond to my location. A short time later I was joined by Officer T. Otero and her partner, (Officer in Training), Officer Elliott. The remaining protesters left a short time later at which time we cleared the scene.

Nothing Further.

Sergeant R.W. Stamer # 621
TAC Division



Exhibit 4

Incident / Investigation Report

Overland Park Police Department

OCA: 2009-004371

Status Codes I = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found U = Unknown												
D R U G S	Status	Quantity	Type Measure			Suspected Drug Type						
						<i>David Blomberg</i>						
O F F E N D E R	Offender(s) Suspected of Using <input type="checkbox"/> Drugs <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer		Offender 1 Age: Race: Sex:			Offender 2 Age: Race: Sex:			Offender 3 Age: Race: Sex:			Primary Offender Resident Status Resident Non-Resident Unknown
				Offender 4 Age: Race: Sex:			Offender 5 Age: Race: Sex:			Offender 6 Age: Race: Sex:		
S U S P E C T	Name (L, F M) AKA					Home Address					Home Phone	
	Occupation				Business Address					Business Phone		
	DOB. / Age		Race	Sex	Hgt	Wgt	Build	Hair Color		Eye Color		
							Hair Style	Hair Length		Glasses		
	Scars, Marks, Tattoos, or other distinguishing features (i.e. limp, foreign accent, voice characteristics)											
	Hat		Shirt/Blouse			Coat/Suit				Socks		
	Jacket		Tie/Scarf			Pants/Dress/Skirt				Shoes		
	Was Suspect Armed?		Type of Weapon					Direction of Travel			Mode of Travel	
	VYR	Make	Model	Style/Doors	Color	Lic/Lis	Vin					
	Suspect Hate / Bias Motivated: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					Type:						
W I T N E S S	Name (Last, First, Middle)					D.O.B.	Age	Race	Sex			
	Home Address					Home Phone		Employer			Phone	
N A R R T I V E	09-4371											
	On 3/6/09, I was dispatched to 4401 W 109th Street, Planned Parenthood, in reference to an ordinance violation. The reporting party was security Officer Fitzpatrick. She advised that protestors were stopping vehicles in the drive of the clinic. When I arrived on scene I made contact with Officer Fitzpatrick and Security Director Sabrina Williams. Officer Fitzpatrick pointed out the protestor that was approaching vehicles.											
	I made contact with the protestor, Ms. Carrie Kafka, who advised that she was <u>not</u> stopping any vehicles, but just handing out leaflets. I advised her that under OPMC 11.28.070, she could not obstruct the ingress or egress of vehicles entering the property. Ms. Kafka was shown the ordinance and also provided information on how to obtain a copy of it.											
	Along with Ms. Kafka were about 10 to 12 protestors in their upper teen s. They all had red tape over there mouth and were not causing a problem. Ms. Williams advised she believed they were with a											

Exhibit 4

Incident / Investigation Report

Overland Park Police Department

OCA: 2009-004371

Officer's Narrative (continued)

group called "Bound for Life".

No violations of 11.28.070 were observed while I was on scene.

Audio of my contact with all involved parties was attached to this report.

Nothing further,

Officer Keith Hruska #828

Daniel Blomberg

EXHIBIT 5

IN THE MUNICIPAL COURT OF THE CITY OF OVERLAND PARK

12400 FOSTER, OVERLAND PARK, KANSAS 66213

address and location of Court

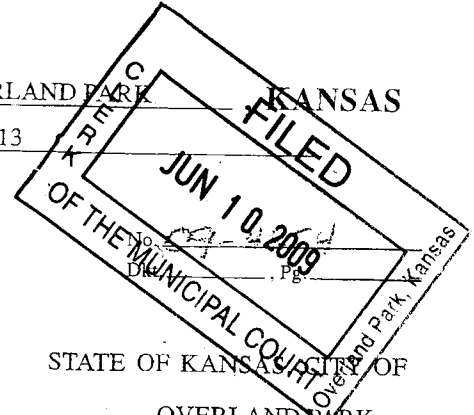
THE CITY OF OVERLAND PARK

vs.

Carrie M Kalka w/4 02-25-79 Accused Person

1111 E. Myer Blvd 64131 Address

Kansas City, Mo



STATE OF KANSAS CITY OF

OVERLAND PARK

AND COUNTY OF

JOHNSON

NOTICE TO APPEAR

containing copy of complaint

TO THE ABOVE NAMED ACCUSED PERSON

WHEREAS, complaint in writing under oath is made by

I Tosh Fitzpatrick
a copy of the charge being as follows:

That on or about the 13 day of March, 2009, the said Carrie M Kalka, within the corporate limits of the above named City and State did then and there in violation of the ordinances of said City unlawfully.

A) Prevent free and uninterrupted ingress, egress and regress to 4401 W109 St, Overland Park, Kansas. After a law enforcement officer ordered that person to stop causing or committing such conditions and to move on or disperse

Ordinance violated: 11.28.070

YOU ARE HEREBY SUMMONED to appear in person on the 14 day of April, 2009, at 1:00 P.M. in this Court to answer to said complaint. IF YOU FAIL TO APPEAR A WARRANT WILL BE ISSUED FOR YOUR ARREST.

Dated, signed, and issued this 3/13/09 day of _____, 20____.

Glaser # 874

Judge - Clerk - City Attorney - Law Enforcement Officer

I agree to appear in said Court at the above shown time and place.

Accused person

Counts A through A attached

RETURN

Rec'd this Notice 3/13/09, 20____
and on 3/13/09, 20____
served the same on the within named

Carrie Kalka

(Check applicable service)

- by delivering a copy to him personally.
- by leaving a copy with _____

_____, a person of suitable age and discretion then residing at accused person's dwelling house or usual place of abode.

- by mailing a copy to his last known address as follows:

(If not found, so state above, when notice returned.)

X Glaser # 874
Officer - Clerk of Court