

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

- (1) **Angela F. Miller**, *an individual*;)
- (2) **Donna J. Wilson**, *an individual*;)
- (3) **Jackie A. Whitley**, *an individual*;)
- (4) **Daniel L. Navejas**, *an individual*;)
- (5) **Heather E. Brown**, *an individual*;)
- (6) **James P. Nunamaker**, *an individual*;)
- (7) **Bobby J. Lockhart**, *an individual*;)
- (8) **Audra M. Lockhart**, *an individual*;)
- (9) **Vicki L. Jones**, *an individual*;)
- (10) **Tammie D. Hulse**, *an individual*;)

Plaintiffs,

Case: CIV-20-372-SLP

v.

- (1) **City of Guthrie**,)
- (2) **Steven J. Gentling**, *in his official capacity*)
as Mayor of the City of Guthrie;)
- (3) **Don Sweger**, *in his official capacity as*)
Chief of Police of the City of Guthrie;)
- (4) **Members of the City Council of**)
the City of Guthrie, *in their official capacity*;)
- (5) **William W. Wheeler**, *in his official capacity*)
as City Prosecutor of the City of Guthrie; **and**)
- (6) **Sheri L. Mueller**, *in her official capacity as*)
City Prosecutor of the City of Guthrie,)

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging the City of Guthrie Ordinance No. 3330 (the Ordinance). The Ordinance violates the U.S. Constitution, the Oklahoma Constitution, and Oklahoma law.

2. Plaintiffs seek a declaration that the enforcement of the Ordinance violates the First and Fourteenth Amendments, a temporary and permanent injunction enjoining the enforcement of the Ordinance as set forth in this Complaint, and an award of attorney fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws.

JURISDICTION AND VENUE

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by *Ex parte Young*, 209 U.S. 123 (1908), and by the general legal and equitable powers of this Court.

5. Plaintiffs' claim for an award of their reasonable costs of litigation, including attorneys' fees and expenses, is authorized by 42 U.S.C. § 1988 and other applicable law.

6. Venue is proper under 28 U.S.C. § 1391(b) because the city hall for the City of Guthrie is located in this judicial district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

PARTIES

7. Plaintiffs Angela F. Miller, Donna J. Wilson, Daniel L. Navejas, Heather E. Brown, Bobby J. Lockhart, Audra M. Lockhart, and Tammie D. Hulsey are individuals who reside in Guthrie and are now subjected to an unconstitutional law enacted by the City of Guthrie that prohibits their lawful exercise of freedoms guaranteed by law. The enforcement of the Ordinance creates an irreparable harm on them. These Plaintiffs sue on behalf of themselves as Oklahoma Citizens.

8. Plaintiffs Jackie A. Whitley, Vicki L. Jones, and James P. Nunamaker are individuals who visit and/or conduct business in Guthrie and are now subjected to an unconstitutional law enacted by the City of Guthrie that prohibits their lawful exercise of freedoms guaranteed by law. The enforcement of the Ordinance creates an irreparable harm on them. These Plaintiff sue on behalf of themselves as Oklahoma citizens.

9. Defendant City of Guthrie is a city incorporated in the State of Oklahoma. It is a municipal corporation with the right to sue and be sued.

10. Defendants William W. Wheeler and Sheri L. Mueller are attorneys who serve as the City Prosecutor for the City of Guthrie Municipal Court. They are charged with

prosecuting all crimes brought to the Municipal Court of the City of Guthrie, and it is expected that they will be the people prosecuting all alleged violators of the Ordinance. They are sued in their official capacity only.

11. Defendant Steven J. Gentling is the Mayor of the City of Guthrie. He is sued in his official capacity only.

12. Don Sweger is the Police Chief for the City of Guthrie. He is charged with enforcing Oklahoma law, including the Ordinance. He is sued in his official capacity only.

13. Defendant City Council is a seven-member council elected by the citizens of Guthrie. The City Council unanimously voted in support of the Ordinance on April 6, 2020. The Guthrie News Leader article on this vote is attached as Exhibit 1 and can be found at <https://www.guthrienewsleader.net/news/city-council-unanimously-votes-favor-shelter-place>. They are sued in their official capacity only.

STATEMENT OF FACTS

14. On March 15, 2020, Kevin Stitt, Governor of Oklahoma, issued Executive Order 2020-07. He declared an “emergency caused by the impending threat of COVID-19” A true and correct copy of this order is attached to this Complaint as Exhibit 2 and is found at <https://www.sos.ok.gov/documents/executive/1913.pdf>. Governor Stitt declared the order pursuant to power vested in him by Article VI § 2 of the Oklahoma Constitution. He stated that “it is now necessary to provide for the

rendering of mutual assistance among the State and political subdivisions of the State and to cooperate with the Federal government with respect to carrying out emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.”

15. On March 16, 2020, the Mayor of Guthrie declared a state of emergency in Guthrie. A true and correct copy of this proclamation is attached to this Complaint as Exhibit 3 and is found at <http://www.cityofguthrie.com/DocumentCenter/View/4520>. The Mayor issued the emergency declaration pursuant to 63 O.S. § 683.2 and Article II Section 10 of the Guthrie City Charter. It is set to expire on May 12, 2020.

16. On April 1, 2020, Governor Stitt issued the seventh amendment to Executive Order 2020-07. It stated, *inter alia*, that nonessential businesses were to close on March 25, 2020 and were to remain closed until April 30, 2020. A true and correct copy of this order is attached to this Complaint as Exhibit 4 and is found at <https://www.sos.ok.gov/documents/executive/1926.pdf>.

17. On April 6, 2020, the City of Guthrie adopted the Ordinance. A true and correct copy of this document is attached to this Complaint as Exhibit 5 and is found at <http://www.cityofguthrie.com/DocumentCenter/View/4531>. The Ordinance expires on May 6, 2020.

18. A violation of any stipulation or provision of the Ordinance carries a \$100–\$500 fine plus all costs and fees (unless a state statute requires otherwise). The bond

for any offense is \$200 plus all costs and fees.

FIRST CAUSE OF ACTION

The Free Exercise Clause of the First Amendment to the U.S. Constitution

19. Plaintiffs hereby incorporate by reference all stated paragraphs.

20. The First Amendment to the Constitution of the United States protects the “free exercise” of religion. Fundamental to this protection is the right to gather and worship. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts ... [such as the] freedom of worship and assembly.”). The Free Exercise Clause was incorporated against the states in *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

21. As the Supreme Court has noted, “a law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny.” *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993).

22. The Ordinance states the following:

§ 11-122 Shelter in Place

Residents living within the city limits of the City of Guthrie are required to shelter at their place of residence as provided herein:

1. For the purposes of this Ordinance, "residence" includes homes, apartments, condominiums, dormitories, hotels, motels, shared rentals, temporary outdoor shelters, and similar facilities.
2. Persons may leave their residences only for Essential Activities as defined herein, or to go to or to operate Essential Businesses.
 - a. "Essential Activities" shall include:

- i. to engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family, household members, or pets (for example, obtaining medical supplies or medication, visiting a health care professional, obtaining supplies needed to work from home, or perform property maintenance);
 - ii. to obtain necessary services or supplies for themselves, family, household members, or pets or to deliver those services or supplies to others (for example, food and beverage, pet supply, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences;
 - iii. to engage in outdoor activity, provided the individuals, except household members, shall follow social distancing and group size guidelines issued by the CDC (for example, walking, biking, hiking, or running);
 - iv. to perform work at an Essential Business;
 - v. to care for or transport a family member or pet in another household;
 - vi. to move to another residence either in or outside the limits of the City of Guthrie; and
 - vii. to otherwise carry out activities specifically permitted in this Ordinance.
- b. "Essential Businesses" shall mean those businesses identified by the Governor of the State of Oklahoma, or his designee, as critical infrastructure sectors, including critical government workers as defined by the government employer.

§ 11-131 Organized gatherings of 10 or more people on public or private property

Except as provided herein, events, organized gatherings, and social/spiritual gatherings of 10 or more people (*except virtual activities*) on public or private property are prohibited. An "organized gathering" is defined as people coming together at a central point for a meeting, event, sporting activity, or game. "Organized gathering" does not include people in a location independently performing work as part of employment; however employers shall not have meetings of 10 or more. This provision does not include and specifically excludes events and organized gatherings of people in the following locations:

1. Government Office Buildings;

2. Food Banks;
3. Congregate care, including but not limited to nursing homes and assisted living facilities;
4. Medical and Medical Research facilities;
5. Childcare facilities;
6. Day Camps;
7. Media Press Conferences;
8. Blood Drives;
9. Other Disaster Response Activities

23. The City of Guthrie does not deem any sort of spiritual or religious activity to be an “essential activity.” When prohibiting gatherings of ten or more people, the Ordinance specifically identifies “spiritual gatherings” as the type that are prohibited when ten or more people are present. Furthermore, the Ordinance does not list any form of church or place of religious worship to be among the exceptions. This is regardless of any mitigation measures (such as staying in one’s car or keeping a CDC-recommended distance of six feet away from people).

24. Defendants have prohibited any sort of religious services consisting of more than nine people, have threatened criminal penalties for holding such services, and have thus substantially burdened Plaintiffs’ religious exercise.

25. “[T]he minimum requirement of neutrality is that a law not discriminate on its face.” *Id.* at 533. Defendants’ restrictions have specifically and explicitly targeted religious gatherings and are thus not neutral on their face.

26. Relatedly, government action is not generally applicable if its prohibitions substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect. *Id.* at 542-46.

27. Defendants' prohibition church services in the name of an emergency is not generally applicable. There are numerous exceptions to the Ordinance that Defendants are not cracking down on, such as establishments like retail stores, where far more people come into closer contact with less oversight. It is more lawful for a group of ten people to be in a store purchasing food for their dogs than it is for them to be six feet apart at a religious gathering.

28. Laws and government actions that burden religious practice and are either not neutral or not generally applicable must satisfy a compelling governmental interest and be narrowly tailored to achieve that end. *See id.* at 546.

29. Defendants' mandate is not "narrowly tailored" because the ban on religious services is absolute, not accounting for services where the CDC and Oklahoma guidelines are carefully adhered to, and thus satisfy the public health concerns to which the guidelines are directed.

30. Plaintiffs' position on this issue was recently validated by the U.S. Department of Justice and a federal district court in Kansas. *See* ATTORNEY GENERAL WILLIAM P. BARR ISSUES STATEMENT ON RELIGIOUS PRACTICE AND SOCIAL DISTANCING; DEPARTMENT OF JUSTICE FILES STATEMENT OF INTEREST IN

MISSISSIPPI CHURCH CASE, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-issues-statement-religious-practice-and-social-distancing-0> (last visited Apr. 21, 2020); FEDERAL JUDGE BLOCKS KANSAS LIMITS ON RELIGIOUS GATHERINGS, <https://www.nbcnews.com/news/us-news/federal-judge-blocks-kansas-limits-religious-gatherings-n1187186> (last visited Apr. 21, 2020).

31. Requiring Plaintiffs to abstain from its religious gatherings, despite substantial modifications to satisfy the public health interests at stake, violates Plaintiffs’ constitutional right to free exercise of religion.

SECOND CAUSE OF ACTION
The Freedom of Assembly Clause of the First Amendment to the U.S.
Constitution

32. Plaintiffs hereby incorporate by reference all stated paragraphs.

33. The First Amendment of the Constitution protects the “right of the people peaceably to assemble.” The Freedom of Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299 U.S. 353 (1937).

34. “The right of free speech, the right to teach, and the right of assembly are, of course, fundamental rights.” *Whitney v. California*, 274 U.S. 357, 373 (1927). When a government practice restricts fundamental rights, it is subject to “strict scrutiny” and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available. *See e.g., San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16–17 (1973); *Dunn v. Blumstein*, 405 U.S. 330

(1972).

35. By denying Plaintiffs the ability to assembly via a church service (drive-in or otherwise), Defendants are in violation of the Freedom of Assembly Clause. Defendants cannot meet the no-less-restrictive-alternative test. The CDC's social distancing guidelines are appropriate to limit the spread of COVID-19. Imposing more restrictive requirements that target churches is not the least-restrictive means of achieving Defendants' public safety goal.

36. The Ordinance also prohibits freedom of assembly to seek redress of grievances. It is now illegal for any group of ten or more people to peacefully protest something—even if each person is more than six feet apart. This includes any group that seeks to voice their concern over the Ordinance.

37. Requiring Plaintiffs to abstain from its religious gatherings and peaceful protests, despite modifications to satisfy the public health interests at stake, violates Plaintiffs' Constitutional right to peaceably assemble.

THIRD CAUSE OF ACTION
The Commerce Clause of the U.S. Constitution

38. Plaintiffs hereby incorporate by reference all stated paragraphs.

39. The Ordinance mandates the wearing of cloth face coverings. It states:

§ 11-123 Cloth face coverings
Within the city limits of the City of Guthrie all individuals shall wear a
cloth face covering
when making a public outing for Essential Activities and/or Essential
Work.

1. Do NOT buy medical masks. They're needed on the front lines of the COVID-19 Pandemic.

40. Unlike the free vaccination for Mr. Jacobson in *Jacobson v. Commonwealth of Massachusetts*, the City of Guthrie is not giving out free cloth face coverings to anyone within its city limits. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 12 (1905).

41. The Ordinance applies to the richest and the poorest alike in Guthrie. There is no guarantee that everyone within its city limits has a mask that meets the approval of the City of Guthrie. This section of the Ordinance forces Plaintiffs into commerce. Congress is prohibited from forcing individuals into engage in commerce. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 558 (2012). A municipality should likewise be prohibited from forcing an individual to engage in commerce when all that person wants to do is leave his or her house.

FOURTH CAUSE OF ACTION
The Commerce Clause of the U.S. Constitution

42. Plaintiffs hereby incorporate by reference all stated paragraphs.

43. The Congress of the United States is given the power to regulate commerce among the states. U.S. CONST. art. 1 § 8.

44. The Ordinance mandates the closure of many businesses. It states, in part:

§ 11-127 Establishments without on-premises food service
All private clubs, night clubs, bars, lounges, coffee houses,
breweries, taverns, hooka bars, cigar bars, and vaping lounges

without on-premises food service shall be closed to the public. This does not prohibit the presence of personnel required for the maintenance of the facility or grounds. All other persons are restricted from such places.

§ 11-128 Establishments with on-premises food service

All private clubs, bars, lounges, coffee houses, breweries, and/or taverns with on-premises food service, restaurants, buffets, and/or any type of dine-in service areas such as "food courts" are restricted to providing only take-out or delivery of food and sale of alcohol authorized for sale under state law. Such locations are otherwise closed to the public and persons, other than employees, are restricted from such places for any other purpose. This provision does not include institutional or in-house cafeterias serving residents, employees, childcare facilities, hospitals or congregate care facilities, **including but not limited** nursing homes and assisted living facilities.

§ 11-129 Public Fitness/Entertainment Venues

The following places are closed to the public and all persons, except personnel necessary for maintenance of the facility and grounds, are restricted from such places:

1. Athletic gyms, exercise/fitness facilities, indoor sports facilities, indoor climbing facilities, bowling alleys, skating rinks, trampoline parks, and similar recreational facilities.
2. Movie theaters, live production theaters and/or any form of entertainment venue.
3. Commercial amusement facilities;

§ 11-130 Salons, Spas, Etc.

The following facilities, including non-medical personal care service facilities where services cannot be provided while maintaining six (6) feet distance between persons, are closed to the public and all persons, except personnel necessary for the maintenance of the facility or grounds are restricted from such places. This includes but is not limited to:

1. Salons (hair and nail);
2. Barber shops;
3. Cosmetology facilities;
4. Esthetician facilities;

5. Laser hair removal facilities;
6. Spas;
7. Massage facilities
8. Tattoo parlors;

§ 11-132 Closure except Essential Businesses

All businesses operating or located within the limits of the City of Guthrie, except Essential Businesses, are required to close all facilities located within the City and all persons, except as provided in subsection 1 below, are restricted from such places.

1. Provided that any business may continue to perform essential functions with employees or contractors as necessary to maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits and related functions.
2. For clarity, non-essential businesses may continue operations consisting exclusively of employees or contractors performing activities remotely (i.e. working from home).
3. For Essential Businesses continuing to operate, to the extent possible all businesses shall practice social distancing which may include but is not limited to maintaining six (6) feet between both employees and the general public, off-setting shifts and/or days, and requiring employees to conduct work remotely.
4. Any business owner keeping a non-essential business open in violation this Ordinance shall be subject to the fines and cost contained in Section § 11-136.

45. Although the City of Guthrie has prohibited those businesses from operating in Oklahoma, there will be an impact on interstate commerce. Each business was engaged in interstate commerce due to their purchasing of goods and services from outside of Oklahoma.

46. Congress has the authority to regulate intrastate commerce so long as it has a

substantial economic effect on interstate commerce. *Wickard v. Filburn*, 317 U.S. 111, 125 (1942). If wheat grown by a farmer and not put into any commerce whatsoever impacts interstate commerce, then surely the widespread mandated closure of businesses also affects interstate commerce. *See id.*

47. Congress has not mandated the closure of any of the above businesses, therefore it is Congress's intent that these businesses remain free to conduct business interstate. The City of Guthrie's prohibition on commerce is in opposition to Congress's current regulation of interstate commerce and is an unlawful usurpation of Congress's regulatory power under the Commerce Clause.

FIFTH CAUSE OF ACTION
The Equal Protection Clause of the Fourteenth Amendment to the U.S.
Constitution

48. Plaintiffs hereby incorporate by reference all stated paragraphs.

49. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of law, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

50. The Ordinance restricts any expressive religious activity of Plaintiffs on any public or private property in Guthrie.

51. The Ordinance provides exceptions for individuals who walk and ride bikes on

public sidewalks throughout the City of Guthrie, but the Ordinance punishes individuals for using the very same public sidewalks for exercising their constitutional rights. By granting exceptions for non-religious conduct but punishing similar religiously-motivated conduct, the Ordinance violates the Equal Protection Clause of the Fourteenth Amendment.

52. The challenged measures lack any rational basis, are arbitrary, capricious, and vague, have no real or substantial relation to the objectives of the Ordinance, and are a palpable invasion of rights secured by fundamental law in violation of the Equal Protection Clause.

53. As a direct and proximate result of Defendants' violation of the equal protection guarantee of the Fourteenth Amendment Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief against all Defendants.

SIXTH CAUSE OF ACTION

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution

54. Plaintiffs hereby incorporate by reference all stated paragraphs.

55. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, Defendants have deprived Plaintiffs of their right to due process in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

56. The challenged measures of the Ordinance lack any rational basis, are

arbitrary, capricious, and vague, have no real or substantial relation to the objectives of the order, and are a palpable invasion of rights secured by fundamental law in violation of the Due Process Clause of the Fourteenth Amendment.

57. Defendants' actions deprived Plaintiffs the of the use and enjoyment of their property without due process in violation of the Fourteenth Amendment.

58. The Due Process Clause of the Fourteenth Amendment protects the right to travel locally through public spaces and roadways.

59. The Ordinance fails intermediate and strict scrutiny because it broadly prohibits Plaintiffs from traveling through public spaces and roadways to a religious place of worship, and yet the Ordinance permits other travel with the same impact and effect of Plaintiffs' forbidden travel, such as traveling to get dog food, in violation of the Fourteenth Amendment. The Ordinance also seemingly bans merely driving by oneself for the sole purpose of nothing more than a leisurely drive.

60. As a direct and proximate result of Defendants' violation of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.

SEVENTH CAUSE OF ACTION
Violation of 11 O.S. § 14-101

61. Plaintiffs hereby incorporate by reference all stated paragraphs.

62. Title 11 Section 14-101 of the Oklahoma Statutes states that a "municipal governing body may enact ordinances, rules and regulations not inconsistent with the

Constitution and laws of Oklahoma for any purpose mentioned in Title 11 of the Oklahoma Statutes or for carrying out their municipal functions.” OKLA. STAT. tit. 11 § 14-101.

63. There is no Oklahoma statute, court ruling, or executive order mandating the wearing of any sort of face mask or covering, so Guthrie’s mandate to wear a face covering is clearly inconsistent with Oklahoma law.

64. The Ordinance is inconsistent with the following provisions of the Oklahoma Constitution:

a. "Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights." OKLA. CONST. art. I, § 2.

b. "All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry." OKLA. CONST. art. II, § 2.

c. "The people have the right peaceably to assemble for their own good, and to apply to those invested with the powers of government for redress of grievances by petition, address, or remonstrance." OKLA. CONST. art. II, § 3.

d. "Every person may freely speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed

to restrain or abridge the liberty of speech or of the press." OKLA. CONST. art. II, § 22.

e. "All citizens of this state shall have a right to hunt, fish, trap, and harvest game and fish, subject only to reasonable regulation as prescribed by the Legislature and the Wildlife Conservation Commission." OKLA. CONST. art. II, § 36. The Ordinance is unclear whether it prohibits hunting. Fishing is listed as a permissible activity.

65. The Ordinance violates the following Oklahoma statutes:

f. "[N]o governmental entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability." OKLA. STAT. tit. 51, § 253.

g. " [N]either the Governor nor any official of a municipal or state entity shall prohibit or suspend the sale, ownership, possession, transportation, carrying, transfer and storage of firearms, ammunition and ammunition accessories during a declared state of emergency, that are otherwise legal under state law." *Id.* tit. 21, § 1321.4(B). The Ordinance is unclear whether it prohibits traveling to purchase a firearm.

66. The Ordinance is unconstitutional, as its language is imprecise, ambiguous, and vague—which will inevitably result in selective and arbitrary enforcement of the Ordinance. This violates both the Due Process Clause and the equal protection

guarantee of the Oklahoma and U.S. Constitutions. “A ‘statute which . . . forbids . . . an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process law.’” *Hayes v. Municipal Court of Oklahoma City*, 1971 OK CR, 487 P.2d 974, 976. Further, “[w]e must hold a statute to mean what it plainly expresses and cannot resort to interpretive devices to create a different meaning.” *Newlun v. State*, 2015 OK CR, 348 P.3d 209.

67. It is also unfair to the law enforcement officers having to guess what is or is not a violation or guess what the Mayor would think about the person’s reasoning to venture out into public. This places the officers in jeopardy of committing civil rights violations with each and every seizure they make pursuant to the Ordinance.

68. Oklahoma law provides: “Legislation which is ambiguous, imprecise and vague ‘does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat.’” *Hayes*, 487 P.2d at 976.

69. Furthermore, it is “fundamental” that laws “must be drawn in language sufficient to apprise the public of exactly what conduct is forbidden.” *Id.*

70. Additionally, it is well established that “a penal statute must be sufficiently definite so that a person of ordinary understanding will be able to know what acts are forbidden and when he has committed an offense.” *Ex parte Westellison*, 38 Okl.Cr.

207, 259 P. 873 (1927).

71. The imprecise, ambiguous, and vague language of the Ordinance further violates the equal protection guarantee within Article II, Section 7 of the Oklahoma Constitution, as has been recognized by the Oklahoma Supreme Court and the Oklahoma Court of Criminal Appeals, in that enforcement of the Ordinance will be inevitably arbitrary and subjective. *See Fair School Finance Council of Oklahoma, Inc. v. State of Oklahoma et al.*, 1987 OK 114, 746 P.2d 1135, 1148; *Hendricks v. Jones*, 2013 OK 71, 349 P.3d 531, 534.

72. As stated by the U.S. Supreme Court:

Those generally implicated by the imprecise terms of the ordinance—poor people, nonconformists, dissenters, idlers—may be required to comport themselves according to the life style deemed appropriate by the [city] police and the courts. Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for ‘harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.’
Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972).

73. The Ordinance unnecessarily infringes upon fundamental constitutional rights without being narrowly tailored to address the harm it seeks to prevent. Its language is overbroad, overreaching of the State's police powers, unconstitutional, and void on its face.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

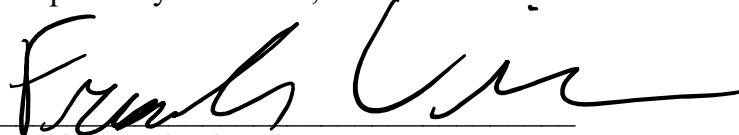
A. to declare that Defendants violated Plaintiffs' fundamental constitutional rights as set forth in this Complaint;

B. to enjoin Defendants' enforcement of Ordinance No. 3330, specifically sections 11-122, 11-123, 11-124, 11-125, 11-127, 11-128, 11-129, 11-130, 11-131, 11-132, and 11-136;

C. to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and

D. to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,



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