

1 PHILLIP L. JAUREGUI (Bar No. JAU-001)
2 CAROLINE H. ALLEN (Bar No. ALL-091)
3 2110 Devereux Cir Ste 100
4 Birmingham, AL 35243
5 Tel: (205) 970-2233, Fax: (205) 278-8522

6 LIFE LEGAL DEFENSE FOUNDATION
7 ALLISON K. ARANDA*
8 P.O. Box 890685
9 Temecula, CA 92589
10 Tel: (951) 541-9327, Fax: (951) 541-2711

11 LIFE LEGAL DEFENSE FOUNDATION
12 CATHERINE W. SHORT*
13 P.O. Box 1313
14 Ojai, CA 93024
15 Tel/Fax: (805) 640-1940

16 Attorneys for Plaintiffs
17 *Applications for admission *pro hac vice* submitted

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF ALABAMA

20 TURN THE HEARTS doing business as)
21 SURVIVORS, a California Non-profit)
22 Corporation, CRISTIANNA CHERF,)
23 JOSEPH JONES, SHARA)
24 GUENGERICH, KORTNEY BLYTHE,)
25 HENRY SHAVER, and TARA SHAVER,)

26 Plaintiffs,

27 vs.

28 CITY OF BIRMINGHAM, OFFICER)
ALLISON (714), in his individual and)
official capacity, OFFICER)
SINGLETARY (2748), in his individual)
and official capacity, OFFICER)
LITTLEHALES (495), in his individual)
and official capacity, SGT. B.C. MILLER,)
in his individual and official capacity,)
OFFICER C. SMITH, in her individual and)
official capacity, OFFICER COOLEY)
(139), in his individual and official)
capacity, OFFICER WALLACE, in his)
individual and official capacity, and)
OFFICER DINSON, in her individual and)
official capacity,)
Defendants.

Case No.: 2:10-CV-01477-LSC

FIRST AMENDED COMPLAINT FOR
DAMAGES AND CIVIL RIGHTS
VIOLATION; DEMAND FOR JURY
TRIAL

- 1. 42 U.S.C. § 1983 (1st and 14th Amendments)
- 2. 42 U.S.C. § 1983 (4th and 14th Amendments)
- 3. 42 U.S.C. § 1983 (1st and 14th Amendments)

1 Come now Plaintiffs Turn the Hearts doing business as Survivors, a California
2 Non-profit Corporation, Cristianna Cherf, Joseph Jones, Shara Guengerich, Kortney
3 Blythe, Henry Shaver, and Tara Shaver, and by and through counsel, and for their
4 Complaint state as follows:

5
6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over this action pursuant to Title 28 U.S.C.
8 §§ 1331 and 1343(3) in that the controversy arises under the United States Constitution
9 and under Title 42 U.S.C. § 1983.

10 2. This Court has authority to grant the requested damages under 28 U.S.C. §
11 1343(a)(4) and award attorneys' fees under 42 U.S.C. § 1988(b).

12 3. Venue is proper in the United States District Court for the Northern District of
13 Alabama under 28 U.S.C. § 1391(b), because the conduct complained of occurred in
14 Jefferson County, Alabama, located in this District.

15
16 **PARTIES**

17 4. Plaintiffs Christianna Cherf ("Cherf"), Joseph Jones ("Jones"), Shara
18 Guengerich ("Guengerich"), Kortney Blythe ("Blythe"), Henry Shaver ("H. Shaver"),
19 and Tara Shaver ("T. Shaver") are pro-life activists and were members of the Campus
20 Life Team for Survivors at the time the events complained of herein occurred.

21 5. Plaintiff TURN THE HEARTS, doing business as Survivors, is a non-profit
22 corporation, duly organized and existing under the laws of the State of California.

23 6. Defendants Officer Allison ("Allison"), Officer Littlehales ("Littlehales"),
24 Officer Cooley ("Cooley"), Officer Singletary ("Singletary"), Officer C. Smith
25 ("Smith"), Officer Dinson ("Dinson"), Sgt. B.C. Miller ("Miller"), Officer Wallace
26 ("Wallace") are and at all times mentioned herein were, sworn police officers with the
27 Birmingham Police Department ("BPD") and employed by the defendant City of
28 Birmingham ("CITY") and in doing the acts hereinafter described, acted within the

1 course and scope of their authority and employment with the CITY and pursuant to the
2 official policies and customs of the CITY and were the agents of each of the other
3 defendants. They are sued in their individual and official capacities.

4 7. Defendant City of Birmingham (“CITY”) is, and at all times herein mentioned
5 was, a municipal corporation organized and existing under the constitution and laws of
6 the State of Alabama.

7 **GENERAL ALLEGATIONS**

8 8. Plaintiffs Cherf, Jones, Guengerich, Blythe, H. Shaver, and T. Shaver, were
9 participants with “Survivors” at the time the events herein described took place.
10 Survivors is a Christian, pro-life activism organization dedicated to educating high school
11 and college age individuals. The mission begins with training the members of Survivors
12 themselves in tactics and strategies of pro-life activism. This training stresses the need to
13 be ready to take advantage of opportunities for education and witness on short notice.
14 The Survivors pride themselves on carrying this training into practice.

15 9. In the spring of 2009, the Survivors began their semi-annual Campus Life
16 Tour. The Campus Life Tour team typically consists of 8-10 young men and women,
17 traveling throughout the United States with educational displays designed to introduce
18 the abortion debate to high school and college campuses. Through the use of displays,
19 educational literature and intelligent debate, the Survivors challenge students to rethink
20 their position on abortion at hundreds of campuses every year. Their purpose is to inform
21 and persuade concerning a matter of great social, political, and religious interest.

22 10. On February 12, 2009, the plaintiffs and other participants with Survivors went
23 to the vicinity of Parker High School located at 900 4th Street N, Birmingham, Alabama.
24 Plaintiffs arrived outside Parker High School at 3:30 p.m. Blythe parked near the curb on
25 3rd Street and the plaintiffs all exited the vehicle and unloaded their signs and literature
26 that the group was going to hold and hand out. All of the plaintiffs took positions along
27 the public sidewalk. Plaintiffs located themselves so as to convey their message to the
28 students leaving the school, but they did not obstruct or interfere with the free passage of

1 pedestrians or students on the public sidewalk. At no time did any of the plaintiffs raise
2 his or her voice above the level of normal conversation nor did they enter the school
3 grounds.

4 11. The plaintiffs split into two groups. T. Shaver, H. Shaver, Robert Coppock and
5 Blythe stood on the public sidewalk in the vicinity of a gated driveway where students
6 were exiting the school grounds. H. Shaver held signs while Coppock held a sign and
7 handed out literature. T. Shaver videotaped and also handed out literature. Guengerich,
8 Cherf, Lahoci Franco, Jones, and Ashely Hartsell stood about 100 yards away on the
9 public sidewalk near the main exit of the school. Cherf began videotaping once the group
10 was set up on the sidewalk near the front entrance. Jones and Franco held signs while
11 Hartsell and Cherf handed out literature and Guengerich videotaped. All of these
12 activities took place on the public sidewalk.

13 12. Within minutes after the group set up, Ofc. Singletary approached T. Shaver,
14 H. Shaver, Coppock and Blythe and told them they were trespassing on school property.
15 He told them they had to move across the street. He told the individuals that if they did
16 not move across the street, he would arrest them for trespassing. Blythe asked Ofc.
17 Singletary if the sidewalk was public property. Ofc. Singletary replied, "Not right now
18 it's not."

19 13. Next, Ofc. Singletary approached the group who was standing on the public
20 sidewalk near the main exit and told them they were trespassing on school property. He
21 told the group they had to move across the street. According to Ofc. Singletary, the
22 public sidewalk was considered an "extension" of the school grounds.

23 14. While Ofc. Singletary was speaking with the group by the main exit, Parker
24 High School Principal Lewis arrived. Lewis told the group near the gate that this was a
25 black neighborhood school and that the group was disrespecting the students by setting
26 up on the public sidewalk. He also asked the group to move across the street. T. Shaver
27 tried to explain that there were no students across the street and that the group was there
28

1 to speak with and educate students. T. Shaver pointed out that plaintiffs would not be
2 able to reach their intended audience if they moved across the street.

3 15. Ofc. Singletary returned and told Lewis that he had units responding and they
4 would take care of the problem.

5 16. While waiting for the other officers to get to the school, Lewis and Ofc.
6 Singletary continued to speak with the group. Ofc. Singletary told Lewis, “You can ask
7 them to leave.” Ofc. Singletary told the group that Lewis, who was present and watching
8 the interaction, did not want the plaintiffs on school property and that the public sidewalk
9 was school property. Ofc. Singletary said, “You’ve been asked to leave, you won’t leave,
10 that’s trespassing.”

11 17. About five minutes later, Ofcs. Allison, Littlehales, and Cooley pulled up in
12 marked patrol units and approached Franco, who was holding a sign on public property.
13 Ofc. Allison told Franco he was on school property. Ofcs. Allison and Cooley insisted
14 that the public sidewalk was school property and was not available for use by the general
15 public.

16 18. At this point, Blythe told Cherf and Hartsell to go to the plaintiffs van if things
17 got worse and T. Shaver would join them. Cherf handed the camera to Blythe.

18 19. Ofc. Allison told Franco, “This is the last time I’m going to tell you.” Ofc.
19 Littlehales asked Franco, “Are you going to move to the other side of the street?” Franco
20 replied, “No, sir.” Because Franco refused to move off the public sidewalk, Ofcs. Allison
21 and Littlehales grabbed Franco by the arm, dragged him to a police vehicle and put him
22 inside. Ofcs. Littlehales and Allison then approached Jones, who was standing on the
23 public sidewalk and grabbed the back of his shirt and put him inside a police vehicle.
24 They later placed them in handcuffs.

25 20. Without warning Ofc. Allison tapped Guengerich, who was videotaping, on the
26 shoulder and took her to a patrol vehicle and placed her in the rear seat. Moments later
27 Ofc. Allison grabbed Blythe’s arm and said, “You can videotape all day from the back of
28 a squad car.” Ofc. Allison placed Blythe in the car with Guengerich.

1 21. At one point, Ofc. Allison asked Jones if he lived in Birmingham. Jones
2 replied no. Ofc. Allison said, “So you don’t pay taxes in Birmingham?” Jones replied,
3 “Does it matter? So you know that the sidewalk is public property.” Ofc. Allison
4 retorted, “For the citizens of Birmingham it is.”

5 22. Due to the threat of arrest, Hartsell and Cherf went to the van to pack up the
6 literature. Cherf remained near the van waiting for direction from T. Shaver. Hartsell
7 picked up the two signs that Franco had been holding and brought them to the van to be
8 loaded. Hartsell and Cherf loaded the signs in preparation for leaving.

9 23. During this time, T. Shaver saw Ofc. Allison put Franco in a police vehicle. T.
10 Shaver spoke with Blythe who confirmed that Franco and Jones had been arrested. H.
11 Shaver and Coppock decided to stay standing on the public sidewalk holding their signs.

12 24. T. Shaver walked down the sidewalk to collect the signs that had fallen over
13 after Jones and Franco were arrested. Ofc. Allison told T. Shaver that the team members
14 were detained because they refused to disperse. Ofc. Allison claimed that the police gave
15 the group a lawful order to disperse because the group was engaged in disorderly
16 conduct. Ofc. Allison said that the disorderly conduct was based on the fact that the
17 group would not disperse when asked to by the police. Another officer claimed that the
18 group had to have a permit. Ofc. Allison agreed saying, “Yeah, they gotta have a
19 permit.” Ofc. Allison kept repeating, “We gave you a lawful order to disperse.”

20 25. T. Shaver walked back to H. Shaver and Coppock. Sgt. Miller had approached
21 H. Shaver and Coppock. Sgt. Miller told H. Shaver and Coppock to go across the street.
22 Sgt. Miller told them it was their last chance to move or they would be arrested. T.
23 Shaver tried to explain to the officers that they were making an unlawful order. Coppock
24 tried to leave, but an officer, whom plaintiffs believe to be Ofc. Wallace, grabbed his
25 hands and pulled them behind his back and handcuffed him.

26 26. H. Shaver declined to move so an officer grabbed H. Shaver’s arm and
27 handcuffed him, searched him, and pushed him into the back of a police vehicle.
28

1 27. Meanwhile, another officer had grabbed T. Shaver and told her to put her
2 hands behind her back and drop the camera. The officers put her in handcuffs, placed all
3 of them under arrest, and turned off the video camera. T. Shaver's handcuffs were so
4 tight that she was nearly crying because of the pain in her wrists.

5 28. The officers who arrested H. Shaver, T. Shaver, and Coppock then
6 immediately pointed to Cherf and Hartsell and said, "Those girls are with them arrest
7 them, too." Two female officers, whom plaintiffs believe to be Ofc. Dinson and Ofc.
8 Smith, approached Cherf and Hartsell, who had been standing near the van waiting to
9 leave, and told them that they were under arrest. Before the arrest, no officer ever asked
10 Cherf or Hartsell to leave and in fact, they were both standing by the van trying to leave,
11 but were unable to because police cars had surrounded the van and prevented them from
12 leaving.

13 29. While the plaintiffs were being held in various police vehicles outside the
14 school, the van, which is owned by and registered to plaintiff Turn the Hearts, was towed
15 away. While towing the van, the police scraped it on the pavement causing visible
16 damage to the bumper. Blythe, Guengerich, and Hartsell could see wires or tubing
17 hanging down from the bumper after the police scraped it on the pavement.

18 30. Ultimately, each of the plaintiffs was placed in a vehicle and taken to the jail.
19 While the officers were taking down the plaintiffs' information, Ofc. Smith asked another
20 officer what they should do with the cameras and if they should keep them with the
21 personal possessions. The officer said not to do so, because the cameras needed to be
22 wiped clean.

23 31. T. Shaver asked Ofc. Smith about the cameras because the booking officers
24 had taken all of their property but not the cameras. Smith told T. Shaver that the police
25 would take the cameras downtown. Smith said that the group could go get them when
26 they were released from jail. No officer gave T. Shaver a receipt for the cameras.

27 32. At approximately 5:00 am, the women were told that they were being released.
28 While they waited the guards taunted them. The officers laughed with each other and

1 joked saying they were going to have an abortion now. Another officer said, “You’re in
2 Alabama now” and said “you’re a bunch of white people, you shouldn’t have expected
3 anything different since when you went to a black high school.” They were released
4 around 7:00 am and charged with criminal trespassing. The men were released at 9:00 am
5 and charged with criminal trespassing.

6 33. Plaintiffs were scheduled to be on the road traveling to their next destination,
7 but were unable to do so because the police had seized their van and their camera
8 equipment and did not return the items when the plaintiffs were released from jail.

9 34. Plaintiffs’ van was released late Friday, February 13, 2009, but the camera
10 equipment was not released until the following Monday, February 16, 2009. While the
11 other plaintiffs went on to their next destination, Blythe stayed behind in Birmingham to
12 try to get the video cameras from police custody. When Blythe finally got the equipment
13 back from the police, one of the SD cards that was used to store the recording of the
14 entire day’s activities at Parker High School was bent and damaged. Once the equipment
15 was returned, Blythe flew to Texas to meet up with the rest of the group. Plaintiff Turn
16 the Hearts paid all expenses incurred in Blythe’s travel to rejoin the plaintiffs.

17 35. In March 2009, plaintiff Turn the Hearts obtained an estimate for the cost of
18 repairs to the damaged van from Moss Brothers Dodge in San Bernardino, California.
19 The entire rear sensor system was damaged along with the exterior bumper and under
20 carriage of the vehicle. The estimated cost to repair the van was \$3,000.00 to \$3,800.00.

21 36. Since the arrest, plaintiff Cherf has attempted to gain employment as a
22 substitute teacher. She too has been unable to gain employment due to the pending
23 criminal charges against her.

24 37. Plaintiffs desire to return to Birmingham, Alabama, and exercise their free
25 speech rights on all public sidewalks, including sidewalks outside Parker High School.
26 Specifically, some of the plaintiffs desire to return to Birmingham, Alabama, during the
27 week of July 19, 2010 to exercise their free speech rights on all public sidewalks,
28 including sidewalks adjacent to the public schools in the city of Birmingham and public

1 sidewalks adjacent to public colleges in the city of Birmingham. While the Survivors’
2 travel to Birmingham has been planned in advance, as are some of their activities
3 while there, the Survivors are instructed to be on the alert for and seek out other
4 educational opportunities while they are there.

5 38. On June 15 and June 22, 2010, the City, through its attorneys, represented to
6 Plaintiffs, through their attorneys, that Plaintiffs’ activities on February 12, 2009,
7 required a permit under Birmingham Ordinance No. 04-99. The City further represented
8 that Plaintiffs’ free speech activity scheduled for July 2010 requires a permit under No.
9 04-99. No 04-99 requires, inter alia, speakers to obtain a permit for demonstrations
10 consisting of two or more persons when held on public streets, sidewalks, or other public
11 property in the City of Birmingham. To obtain a permit, an applicant must apply three
12 days in advance and pay a fee of \$25. No 04-99 also requires permits for “occurrences .
13 . . for the purpose of amusement, education, or entertainment” held on city-owned
14 property, including public parks. Applicants for such permits must apply ten days in
15 advance and pay a fee of \$100.

16 39. As a result of defendants’ actions, plaintiffs have suffered and will continue to
17 suffer extreme hardship and actual and impending irreparable harm in that plaintiffs are
18 informed and believe and thereon allege that, unless enjoined, defendants will continue to
19 deprive plaintiffs of their constitutionally protected right to free speech on the public
20 sidewalks in Birmingham, Alabama, including public sidewalks in front of Parker High
21 School and on any public sidewalk adjacent to a public school in the City of Birmingham,
22 any time plaintiffs attempt to exercise their rights at said locations.

23 **FIRST CAUSE OF ACTION: 42 U.S.C. § 1983 (First and Fourteenth**
24 **Amendments)**
(By All Plaintiffs against All Defendants)

25 40. Plaintiffs incorporate and reallege paragraphs 1 through 39 as though stated
26 herein.

27 41. The acts of defendants described in paragraphs 8 to 39 deprived plaintiffs of
28 their rights of free speech, peaceable assembly, and free exercise of religion as

1 guaranteed by the First and Fourteenth Amendments to the Constitution of the United
2 States.

3 42. The acts of defendants and their officers, agents, servants, and employees,
4 described in paragraphs 8 to 39 were done, or threatened to be done, under color and
5 pretense of the statutes, ordinances, regulations, customs, official policies, official
6 procedures, and usages of the Birmingham Police Department and the City of
7 Birmingham.

8 43. Defendants committed these acts before a large crowd of students and the
9 public. Plaintiffs did not consent to the defendants' acts described herein and found them
10 to be harmful and offensive to their person and dignity.

11 44. As a direct and proximate result of the individual defendants' actions described
12 in this complaint, plaintiffs suffered pain, humiliation, embarrassment, discomfort,
13 mental anguish, fear, anxiety, loss of reputation, loss of earnings and emotional distress.

14 45. Defendants intended to, and did, by their actions, prevent the exercise of
15 plaintiffs' rights of free speech, free exercise of religion, and peaceable assembly as
16 guaranteed by the First and Fourteenth Amendments to the United States Constitution.

17 46. At the time of the deprivations, plaintiffs' rights of free speech, peaceable
18 assembly, and free exercise of religion were clearly established and included the right to
19 engage in the particular expressive activities for which plaintiffs were arrested. Because
20 plaintiffs' rights were clearly established at the time, defendants knew or should have
21 known that their conduct violated important and cherished constitutional rights of the
22 plaintiffs.

23 47. In acting as alleged in this complaint, the individual defendants acted
24 knowingly, willfully, and maliciously, and with oppression and reckless and callous
25 disregard for plaintiffs' constitutionally protected rights, so as to justify an award of
26 exemplary and punitive damages.

27 48. Unless enjoined by this Court, defendants will continue to infringe plaintiffs'
28 constitutionally protected rights and thereby cause irreparable injury, as damages alone

1 cannot fully compensate plaintiffs from the ensuing harm. This threat of injury from
2 continuing violations requires injunctive relief.

3 **SECOND CAUSE OF ACTION: 42 U.S.C. § 1983 (Fourth and Fourteenth**
4 **Amendments)**
5 **(By All Plaintiffs against All Defendants)**

6 49. Plaintiffs incorporate and reallege paragraphs 1 through 48 as though stated
7 herein.

8 50. On February 12, 2009, plaintiffs were peacefully exercising their free speech
9 rights along a public sidewalk adjacent to Parker High School. When plaintiffs did not
10 move across the street, as requested by defendants, the defendants collectively decided to
11 arrest plaintiffs. Defendants handcuffed each plaintiff and escorted each of them to a
12 police vehicle, pursuant to their collaborative decision to arrest plaintiffs.

13 51. Plaintiffs verbally professed their innocence, but otherwise did not attempt to
14 flee or physically resist the detention in any manner whatsoever.

15 52. There was no warrant to search or warrant for the arrest of plaintiffs on
16 February 12, 2009. The arrest and search of each plaintiff by defendants was without
17 reasonable grounds for said defendants to believe plaintiffs had committed an offense and
18 defendants knew they were without reasonable suspicion to detain or probable cause to
19 arrest or probable cause to search plaintiffs.

20 53. As a direct and proximate result of the actions and omissions of defendants,
21 plaintiffs were denied their constitutional right to be secure in their persons against
22 unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the
23 United States Constitution.

24 54. At the time of the deprivations, plaintiffs' rights to be free from unreasonable
25 search and seizure were clearly established and included the right to engage in the
26 particular expressive activities for which plaintiffs were arrested and threatened with
27 arrest. Because plaintiffs' rights were clearly established at the time, defendants knew or
28 should have known that their conduct violated important and cherished constitutional
rights of the plaintiffs.

1 55. The acts of defendants and their officers, agents, servants, and employees,
2 described in paragraphs 8 to 39 were done, or threatened to be done, under color and
3 pretense of the statutes, ordinances, regulations, customs, official policies, official
4 procedures, and usages of the Birmingham Police Department and the City of
5 Birmingham.

6 56. Defendants committed these acts before a large crowd of students and the
7 public. Plaintiffs did not consent to the defendants' acts described herein and found them
8 to be harmful and offensive to their person and dignity.

9 57. As a direct and proximate result of the individual defendants' actions,
10 described in this complaint, plaintiffs have suffered pain, humiliation, embarrassment,
11 discomfort, mental anguish, fear, anxiety, loss of reputation, loss of earnings and
12 emotional distress.

13 58. In acting as alleged in this complaint, the individual defendants acted
14 knowingly, willfully, and maliciously, and with oppression and reckless and callous
15 disregard for plaintiffs' constitutionally protected rights, so as to justify an award of
16 exemplary and punitive damages.

17 59. Unless enjoined by this Court, defendants will continue to infringe plaintiffs'
18 constitutionally protected rights and thereby cause irreparable injury, as damages alone
19 cannot fully compensate plaintiffs for the ensuing harm. This threat of injury from
20 continuing violations requires injunctive relief.

21 **THIRD CAUSE OF ACTION : 42 U.S.C. 1983 (First and Fourteenth Amendments)**
22 **(Against Defendant City of Birmingham)**

23 60. Plaintiffs incorporate and reallege paragraphs 8 through 59 as if fully restated here.

24 61. Ordinance 04-99 is an unconstitutional abridgment on its face, and as applied or
25 threatened to be applied, of the plaintiffs' affirmative rights to freedom of speech under the
26 United States Constitution, First and Fourteenth Amendments.

27 62. Ordinance 04-99, on its face and as applied or threatened to be applied, is an
28 unconstitutionally overbroad restriction on expressive activity.

1 63. Ordinance 04-99, on its face and as applied or threatened to be applied, is an
2 unconstitutionally vague restriction on expressive activity.

3 64. Ordinance 04-99 on its face and as applied or threatened to be applied, is a content-
4 based restriction on speech.

5 65. Ordinance 04-99, on its face and as applied or threatened to be applied, does not serve
6 a significant governmental interest.

7 66. Ordinance 04-99, on its face and as applied or threatened to be applied, does not leave
8 open ample alternative channels of communication.

9 67. Ordinance 04-99, on its face and as applied or threatened to be applied, is neither
10 narrowly tailored to accomplish any permissible governmental purpose sought to be served by
11 the legislation.

12 68. Ordinance 04-99 fails to adequately advise, notify, or inform persons threatened with
13 possible prosecution for violation of their requirements. Therefore, the Ordinance is
14 unconstitutionally vague, on its face and as applied or threatened to be applied, in violation of the
15 due process guarantee of the Fourteenth Amendment to the United States Constitution.

16 69. The Ordinance is an irrational and unreasonable statute, imposing unjustifiable
17 restrictions on the exercise of protected constitutional rights. Because the Ordinance is irrational
18 and unreasonable, its application violates the due process guarantee of the Fourteenth
19 Amendment to the United States Constitution.

20
21 WHEREFORE, each plaintiff prays that this Court:

- 22 1. Issue a preliminary and permanent injunction against the Defendants, their
23 agents, servants, employees, officials, or any other person acting in concert
24 with them or on their behalf, enjoining them from interfering with plaintiffs'
25 lawful speech on the public sidewalks or public right-of-ways in Birmingham,
26 Alabama, including public sidewalks in the vicinity of Parker High School;
- 27 2. Issue a preliminary and permanent injunction against the Defendants, their
28 agents, servants, employees, officials, or any other person acting in concert

- 1 with them or on their behalf, enjoining them from enforcing Birmingham
2 Ordinance 04-99 against Plaintiffs or persons acting with Plaintiffs;
- 3 3. Declare that the conduct of Defendants is unconstitutional both facially and as
4 applied to Plaintiffs under the First and Fourteenth Amendments;
- 5 4. Declare that by arresting and causing the arrests of plaintiffs on February 12,
6 2009, and by ejecting and causing the ejection from the public sidewalk or
7 public right-of-way in the vicinity of Parker High School based on their free
8 speech activity, defendants violated the plaintiffs' rights under the First,
9 Fourth, and Fourteenth Amendments to the United States Constitution and
10 Article I, §§ 3, 4, and 5 of the Alabama Constitution;
- 11 5. Enter judgment against the defendants;
- 12 6. Award general damages to each plaintiff in no less than the following amounts:
13 \$50,000 to each plaintiff;
- 14 7. Award special damages to each plaintiff according to proof;
- 15 8. Award exemplary and punitive damages to each plaintiff as the court deems
16 just and proper;
- 17 9. Award costs, interest and attorneys' fees pursuant to 42 U.S.C. § 1988 et seq.,
18 and other pertinent federal law;
- 19 10. Grant such other and further relief as the court deems just and proper.

20
21 Dated: June 24, 2010

JAUREGUI & LINDSEY, LLC

22
23 

24 PHILLIP L. JAUREGUI (JAU-001)
25 CAROLINE H. ALLEN (ALL-091)
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

In the event that a question of fact must be resolved, the plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: June 24, 2010

JAUREGUI & LINDSEY, LLC



PHILLIP L. JAUREGUI (JAU-001)
CAROLINE H. ALLEN (ALL-091)
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28