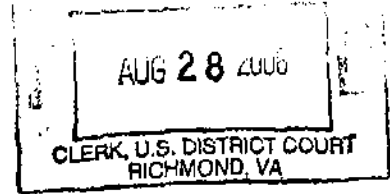


**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**



**CHARLES FREDERICK NEAL and PAUL TROUT,**

**Plaintiffs,**

vs.

**CITY OF RICHMOND, RODNEY D. MONROE,** in his official capacity as Chief of Police for the City of Richmond; **HOWARD S. NOYES,** individually, and in his official capacity as a police officer for the City of Richmond,

**Defendants.**

Case No.: 3:06CV579

**VERIFIED COMPLAINT**

**I. INTRODUCTION**

1. This is a civil rights action brought by Plaintiffs Charles Frederick Neal and Paul Trout seeking injunctive relief, declaratory relief, and damages, pursuant to 42 U.S.C. §§1983 and 1988, against Defendants City of Richmond, Rodney D. Monroe, in his official capacity as Chief of Police of the City of Richmond, and Howard S. Noyes, individually, and in his official capacity as police officer for the City of Richmond.

2. This action is premised on the United States Constitution and involves the denial of Plaintiffs' fundamental rights of free speech, free exercise of religion, and due process by Defendants.

3. The Defendants' actions have already deprived and will continue to deprive Plaintiffs of their paramount rights and guarantees provided under the United States Constitution.

4. Each and every act of Defendants alleged were committed by Defendants, and each

and every one of them were committed under the color of state law and municipal authority.

## **II. JURISDICTION AND VENUE**

5. This Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. §§1331 and 1343. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

6. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. §1391(b), because the claims arise in this district and defendants reside in this district.

## **III. PARTIES**

### **A. Plaintiffs**

7. Plaintiff Charles Frederick Neal ("Mr. Neal") is a resident of New Kent County, Virginia.

8. Plaintiff Paul Trout ("Mr. Trout") is a resident of Chesterfield County, Virginia.

### **B. Defendants**

9. Defendant City of Richmond is a political subdivision of the Commonwealth of Virginia.

10. Defendant Rodney D. Monroe ("Chief Monroe"), in his official capacity of Chief of Police of the City of Richmond, is responsible for the laws of the City of Richmond and the Commonwealth of Virginia. Chief Monroe, in his official capacity as Chief of Police of the City of Richmond, is also responsible for the training, discipline, and supervision of Richmond police officers.

11. Defendant Howard Noyes ("Officer Noyes") is a Richmond police officer and, in his

official capacity, is responsible for the enforcement of the laws of the City of Richmond and the Commonwealth of Virginia.

#### **IV. FACTS**

##### **A. Speech Activities of Plaintiffs**

12. Plaintiffs are Christians, and as a tenet of their faith, sincerely believe they are discharging a religious duty by publicly proclaiming and orally communicating their beliefs, particularly with respect to their beliefs on the topic of abortion.

13. Plaintiffs engage in abortion-related speech to express their views about their faith, to offer information about alternatives to abortion, to object to activities contrary to the tenets of their faith, to associate with others who embrace similar views, to counsel individuals concerning their faith, and to engage in religious activities, such as the singing of hymns, reading and quoting the Bible, preaching and praying.

14. In furtherance of their religious beliefs, as set out above, Plaintiffs wish to convey their message on public sidewalks and ways in the vicinity of Richmond Medical Center for Women (“Clinic”), which is an abortion clinic at the corner of Grove and Boulevard in the City of Richmond.

15. The Clinic is an ideal location for Plaintiffs’ religious speech, since it gives them access to significant numbers of passersby who may be interested in the abortion issue.

16. Per custom, Plaintiffs stand on public ways near the Clinic and peacefully communicate their religiously-based message.

17. Mr. Neal has been engaged in speech activities about his religious beliefs and

alternatives to abortion in public areas since the 1980s, and has no intent to physically touch or harass anyone, or to express himself in any way other than in a peaceful manner.

18. Mr. Trout has been engaged speech activities about his religious beliefs and alternatives to abortion in public areas for the past several years, and likewise, has no intent to physically touch or harass anyone, or to express himself in any way other than in a peaceful manner.

### **B. Police Officers Work as Security for Abortion Clinic**

19. Pursuant to city policy, Richmond police officers are permitted to work as security guards for private entities when they are off-duty.

20. As security guards, these police officers are paid by the private entities.

21. While providing security off-duty, Richmond police officers are required to wear the official Richmond police uniform and badge, and carry a police-issued firearm.

22. Though these police officers are considered off-duty, they continue to discharge their duty of enforcing the laws of the City of Richmond and the Commonwealth of Virginia. They have the authority to cite and/or arrest individuals for violation of those laws while being paid by the private entity for security services.

23. Officer Noyes has frequently been employed by the Clinic for security while he is off duty.

24. Officer Noyes continues to be employed on occasion by the Clinic for security services.

### **C. November 5, 2004 Arrest**

25. On November 5, 2004, Mr. Neal was engaging in expressive activity at the Clinic,

along with a number of other people.

26. For speech purposes, they positioned themselves on the public sidewalk facing the front of the Clinic.

27. Officer Noyes approached the group and warned them to lower their voices.

28. Mr. Neal and the others with him were speaking, but they were not using any amplification equipment.

29. A few hours later, Mr. Neal moved to the public sidewalk facing the rear of the Clinic, where he had a brief verbal exchange with an unidentified woman.

30. This exchange was observed by Officer Noyes.

31. Approximately fifteen minutes after this exchange occurred, several police cars with the Richmond Police department arrived at the Clinic.

32. When the other police officers arrived, Officer Noyes asked Mr. Neal to produce his driver's license.

33. Mr. Neal asked why he wanted to see the license, and Officer Noyes stated that it was for the investigation of a possible crime.

34. After ten to fifteen minutes had elapsed, another Richmond police officer on the scene called Mr. Neal over and returned his license.

35. Mr. Neal asked the police officer about the results of their investigation.

36. The police officer indicated that Mr. Neal should talk to Officer Noyes.

37. In turn, Mr. Neal asked Officer Noyes about the results of the investigation.

38. Officer Noyes did respond to the inquiry. Instead, Officer Noyes placed Mr. Neal

under arrest.

39. Mr. Neal was handcuffed.

40. As they waited for a police van to come to take Mr. Neal away, Mr. Neal and his companions asked Officer Noyes several times why Mr. Neal was arrested. Officer Noyes ignored these questions and stated they would be answered in court.

41. Mr. Neal was then taken to be arraigned before a magistrate.

42. At the arraignment, Mr. Neal learned that he had been charged with “disorderly conduct” under Va. Code Ann. § 18.2-415 (2006).

43. Mr. Neal was taken to the jail, fingerprinted, photographed, and locked up.

44. Mr. Neal remained in police custody for approximately two hours.

45. Mr. Neal was later released under condition of remaining one thousand (1,000) feet away from Clinic property.

46. Mr. Neal appeared in Richmond General District Court twice regarding that arrest and missed two days of work as a result.

47. The baseless charge was ultimately dismissed.

#### **D. September 2, 2005 Citation**

48. On September 2, 2005, Mr. Neal and several others arrived at the Clinic in the morning for the purpose of communicating their religious message and offering information about abortion alternatives to individuals entering the clinic.

49. Mr. Neal and others positioned themselves on the public sidewalk along the back side of the Clinic.

50. While on the sidewalk, Mr. Neal spoke with a young couple.

51. Officer Noyes suddenly approached Mr. Neal and told him he was being “too loud.”

52. Mr. Neal was barely talking above a normal conversational tone of voice, even though he was competing with the surrounding traffic noise at the intersection of two busy streets.

53. Mr. Neal was not using any type of amplification equipment.

54. Later that day, the Clinic owner, Dr. William Fitzhugh, arrived, and Mr. Neal shared his religious message with him as Dr. Fitzhugh got out of his car and walked into the clinic past Officer Noyes.

55. A short time later, Officer Noyes approached Mr. Neal again and told that Mr. Neal was being “too loud.”

56. Officer Noyes also asked Mr. Neal if he wanted to go back to court.

57. Mr. Neal then took out his cell phone and told Officer Noyes that he was calling the local precinct to report him for police harassment.

58. Officer Noyes walked away and returned approximately ten minutes later, giving Mr. Neal a citation for “disorderly conduct” under Va. Code Ann. § 18.2-415 (2006).

59. Mr. Neal appeared in Richmond General District Court regarding the citation.

60. The charge was eventually dismissed.

#### **E. January 28, 2006 Citation**

61. On the morning of January 28, 2006, Mr. Trout and several others arrived at the Clinic in the morning for the purpose of communicating their religious message and offering information about abortion alternatives to the people entering the clinic.

62. Mr. Trout and his companions positioned themselves on the public sidewalk facing the back of the clinic, where they could see people walking into the back door of the Clinic.

63. Mr. Trout and his companions were approximately 30-40 feet away from the door of the Clinic.

64. Mr. Trout and his companions began to call out to individuals arriving and entering the Clinic through the back door, asking if they would come and pray with them or if they could talk to them.

65. Mr. Trout and his companions were not using any amplification equipment that day and were speaking only loud enough so that people entering the Clinic could hear and understand them.

66. At approximately 8:30 or 9:00 a.m., Officer Noyes came out of the Clinic and approached Mr. Trout.

67. Officer Noyes told Mr. Trout that he was being “too loud.”

68. Mr. Trout asked Officer Noyes to tell him what noise level constituted “too loud.”

69. Officer Noyes did not respond to Mr. Trout’s question, but instead proceeded to take a picture of Mr. Trout.

70. Not knowing what constituted noise that was “too loud” or why he was being singled out by Officer Noyes, Mr. Trout began to work with a woman in the group at the Clinic to express his message.

71. Mr. Trout advised this woman what to say, and she called out to people entering the clinic rather than him.

72. At around 10:00 a.m., Mr. Trout and the others were getting ready to leave the Clinic. They went around to the front of the Clinic and positioned themselves on the public sidewalk.

73. They began to sing, and Officer Noyes came out of the Clinic and stood nearby observing the group.

74. When the group was finished singing, Mr. Trout began to express his message about alternatives to abortion.

75. As soon as Mr. Trout began speaking, Officer Noyes approached him and told him again that he was being “too loud.”

76. The volume of Mr. Trout’s voice was less than the volume of the group singing together.

77. Mr. Trout told Officer Noyes that he did not know what “too loud” meant.

78. Officer Noyes issued a citation to Mr. Trout for violation of Richmond Ordinance §38-32 (2006), Creation of Loud and Disturbing Noise.

79. Mr. Trout appeared in Richmond General District Court regarding this matter.

80. The charge was eventually dismissed.

#### **F. Laws Applied to Plaintiffs’ Speech**

82. With respect to Mr. Neal, Defendants applied Va. Code Ann. §18.2-415 to his speech activities.

83. Virginia Code Ann. § 18.2-415 reads:

##### **Disorderly conduct in public places**

A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

A. In any street, highway, public building, or while in or on a public conveyance, or public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; or

B. Willfully or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any funeral, memorial service, or meeting of the governing body of any political subdivision of this Commonwealth or a division or agency thereof, or of any school, literary society or place of religious worship, if the disruption (i) prevents or interferes with the orderly conduct of the funeral, memorial service, or meeting or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; or

C. Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption (i) prevents or interferes with the orderly conduct of the operation or activity or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

However, the conduct prohibited under subdivision A, B or C of this section shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this title.

The person in charge of any such building, place, conveyance, meeting, operation or activity may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose.

The governing bodies of counties, cities and towns are authorized to adopt ordinances prohibiting and punishing the acts and conduct prohibited by this section, provided that the punishment fixed therefor shall not exceed that prescribed for a Class 1 misdemeanor. A person violating any provision of this section shall be guilty of a Class 1 misdemeanor.

(Code 1950, §§ 18.1-239, 18.1-240, 18.1-253.1 through 18.1-253.3; 1960, c. 358; 1968, c. 639; 1969, Ex. Sess., c. 2; 1970, c. 374; 1975, cc. 14, 15; 1976, c. 244; 1990, c. 627; 2006, c. 250.)

84. On its face, Va. Code Ann. §18.2-415 has no application to any expression of Mr. Neal since it does not concern either a physical altercation or intoxication.

85. With respect to Mr. Trout, his expression has been restricted pursuant to Richmond Ordinance § 38-32.

86. Richmond Ordinance § 38-32 reads:

**Creation of loud and disturbing noise.**

(a) It shall be unlawful to create or to assist in creating any unreasonably loud and disturbing noise in the city. Noise of such character, intensity and duration as to be detrimental to the life or health of any person or to unreasonably disturb the quiet, comfort or repose of any person is hereby prohibited.

(b) Any person who violates this section shall be deemed to be guilty of a class 2 misdemeanor.

(c) Each day of violation of this section shall constitute a separate offense.

(d) The person operating or controlling a sound source shall be guilty of any violation caused by that source. If that source cannot be determined, any owner, tenant or resident physically present on the property where the violation is occurring is rebuttably presumed to be guilty of the violation.

(Code 1993, § 18-2)

87. There are no definitions for the terms “unreasonably loud,” “disturbing noise” or “unreasonably disturb,” as found in Richmond Ordinance § 38-32.

**G. Continuing Harm**

88. On many other occasions, Officer Noyes has warned Plaintiffs and/or their companions that, under threat of arrest, their constitutionally protected speech is “too loud” in the vicinity of the Clinic.

89. Plaintiffs and their companions have repeatedly asked for clarification on what volume is “too loud.”

90. Each time, Officer Noyes declines to give an answer.

91. Officer Noyes applies no objective standard in determining whether Plaintiffs’ and their companions’ speech rise above a legal level.

92. As a result, Plaintiffs’ constitutionally protected speech is continually chilled by the vague policies.

93. Mr. Neal has noticeably restrained his speech on public ways in the vicinity of the clinic for fear of arrest.

94. Likewise, Mr. Trout has noticeably restrained his speech while on public ways in the vicinity of the Clinic for fear of arrest.

95. Generally, when Richmond police officers are present at the Clinic, Plaintiffs and their companions restrain their speech because of the continual intimidation by Officer Noyes and other officers, as well as the fear of arrest.

96. On or about September 27, 2005, Mr. Neal, through counsel, wrote Chief Monroe and expressed concern about the restrictions on speech as described above.

97. In response, William Joe Hoppe, Senior Assistant City Attorney for the City of Richmond, on October 3, 2005, acknowledged receipt of that letter, but offered no relief whatsoever.

98. To date, Chief Monroe has not issued any relief or further response.

99. Mr. Neal and other citizens regularly involved in speech activities outside the Clinic have filed several formal complaints with the Richmond Police Department against Officer Noyes and other officers.

100. The Richmond Police Department conducted an investigation into these complaints, and while one officer was disciplined, the Department officially found no wrongdoing on behalf of Officer Noyes.

101. The threat of arbitrary enforcement of the “disorderly conduct” statute and “loud and disturbing noise” ordinance by Defendants has severely hindered Plaintiffs from fully engaging in

their constitutionally protected speech and religious activities near the Clinic.

102. The effect of preventing Plaintiffs from exercising their constitutional rights in the public areas adjacent to the Clinic causes irreparable harm to Plaintiffs.

103. Plaintiffs have no adequate remedy of law for the loss of their constitutional rights.

## **V. CAUSES OF ACTION**

104. Va. Code Ann. §18.2-415 (2006) and Richmond Ordinance §38-32 (2006) are unconstitutionally overbroad on their face, and overbroad and discriminatory as construed and applied to the individual speech of Plaintiffs, in violation of Plaintiffs' right to freedom of speech under the First and Fourteenth Amendments to the United States Constitution.

105. The policy of the Defendants in enforcing Va. Code Ann. § 18.2-415 (2006) and Richmond, Va. Code §38-32 (2006), as set out herein, precludes Plaintiffs from furthering a tenet of their religious faith. The policy is unconstitutionally vague, overbroad and discriminatory as construed and applied to the individual speech and religious activity of Plaintiffs, in violation of their right to free exercise of religion under the First and Fourteenth Amendments to the United States Constitution.

106. The policy of the Defendants in enforcing Va. Code Ann. § 18.2-415 (2006) and Richmond, Va. Code §38-32 (2006), as set out herein, fails to adequately notify Plaintiffs that their expressive activity would be in violation of this policy. The policy is unconstitutionally vague, overbroad and discriminatory as construed and applied to the individual speech of Plaintiffs, in violation of their right to due process under the Fourteenth Amendment to the United States Constitution.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Charles Frederick Neal and Paul Trout pray for relief against Defendants City of Richmond, Rodney D. Monroe, individually and in his official capacity as Chief of Police of the City of Richmond, and Howard Noyes, individually and in his official capacity as police officer for the City of Richmond, and respectfully requests that this Court grant the following relief:

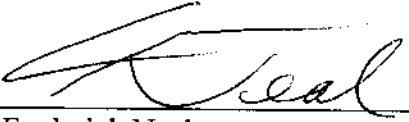
- a. Assume jurisdiction over this action;
- b. Enter a judgment and decree declaring that Defendants' actions were unconstitutional because the acts of Defendants violates Plaintiffs' rights of freedom of speech, free exercise of religion, and due process guaranteed by the First and Fourteenth Amendments to the United States Constitution;
- c. Enter a preliminary and permanent injunction enjoining Defendants, their agents, employees and all persons in active concert or participation with them, or any of them, from applying or enforcing or attempting to apply any ordinance, law or policy prohibiting Plaintiffs' protected religious and speech activities in public places in the vicinity of the Clinic;
- d. Award Plaintiffs compensatory damages in an amount to be determined at trial;
- e. Award Plaintiffs their reasonable costs and expenses in this action, including attorney's fees pursuant to 42 U.S.C. §1988; and
- f. Grant such other and further relief as appears to the Court to be equitable and just.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2006.

**VERIFICATION OF COMPLAINT**

I, Charles Frederick Neal, a citizen of the United States, and a resident of New Kent County, Virginia, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct .

Executed this 19 day of August, 2006.

  
\_\_\_\_\_  
Charles Frederick Neal

**VERIFICATION OF COMPLAINT**

I, Paul Trout, a citizen of the United States, and a resident of Chesterfield County, Virginia, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 11<sup>th</sup> day of AUGUST, 2006.

  
\_\_\_\_\_  
Paul Trout


BENJAMIN BULL (*of counsel*)  
AZ Bar # 009940  
ALLIANCE DEFENSE FUND  
15333 North Pima Road, Suite 165  
Scottsdale, Arizona 85260  
Phone: (480) 444-0020  
Fax: (480) 444-0028

NATHAN W. KELLUM\*  
TN Bar # 13482; MS Bar #8813  
ALLIANCE DEFENSE FUND  
P.O. Box 11159  
Memphis, TN 38111  
Phone: (901) 323-6672  
Fax: (901) 323-6674

Attorneys for Plaintiffs

\* Motion for Admission *Pro Hac Vice* filed  
concurrently with this Complaint

Respectfully submitted,

By:   
STEVE CLAYTON TAYLOR, ESQUIRE  
LAW OFFICES OF STEVE C. TAYLOR, P.C.  
133 Mount Pleasant Road  
Chesapeake, Virginia 23322  
Phone: (757) 482-5705  
Fax: (757) 546-9535  
VA Bar # 31174

Attorney for Plaintiffs