



# Foundation for Moral Law

ONE DEXTER AVENUE  
MONTGOMERY, ALABAMA 36104  
PH: 334.262.1245 • FAX: 334.262.1708  
[www.morallaw.org](http://www.morallaw.org)

**Hon. Roy S. Moore**  
President

**Dr. Rich Hobson**  
Executive Director

**Benjamin D. DuPré**  
Attorney

**Col. John Eidsmoe**  
Attorney

November 8, 2011

## VIA EMAIL AND FIRST-CLASS MAIL

William Moehle, Town Attorney  
Mark T. Henderson, Chief of Police  
Town of Brighton  
2300 Elmwood Avenue  
Rochester, NY 14618  
[Mark.Henderson@townofbrighton.org](mailto:Mark.Henderson@townofbrighton.org)

**Re: Brighton Police interference with pro-life sidewalk ministry**

Dear Attorney Moehle and Chief Henderson:

The Foundation for Moral Law is a religious-liberties legal organization dedicated to defending constitutional freedoms around the country. We were recently contacted by Reverend Michael Warren of the pro-life ministry Rescue Rochester regarding unwarranted threats by Brighton Police officers to cite Rev. Warren and/or Jerry Crawford for their lawful use of pro-life signs and amplification equipment outside the abortion clinic of Dr. Morris Wortman, at 2020 South Clinton Avenue in the Town of Brighton. Further, we have been in contact with a leader of the pro-life group Bound4Life, who reports that Brighton Police ordered Bound4Life members to produce identifying information on September 26, 2011, for simply praying silently on the public sidewalk outside Dr. Wortman's clinic. As explained below, the Foundation for Moral Law, along with local counsel Kevin G. Johnson, Esq., of Klafehn & Heise PLLC, believe that Brighton police threats and interference have no basis under the Town of Brighton Code or any other legal authority, and are a violation of the federal and state constitutional rights of the members of Rescue Rochester and Bound4Life.

It is our understanding that, based on the meeting you conducted with Rev. Warren, Mr. Crawford, and Mr. Johnson on October 31, 2011, that Brighton is relying on an injunction issued by Judge Richard Arcara that prohibited, among other things, certain practices within a 15-foot "buffer zone" of Dr. Wortman's clinic and the use of amplification equipment thereat. However, as you now know, the 2d Circuit in *Spitzer v. Operation Rescue National, et al.*, 273 F.3d 184 (2d Cir. 2001), vacated the injunction against Rev. Warren, vacated the blanket ban on amplification equipment for all defendants, and remanded the case back to Judge Arcara for additional proceedings.

There appear to have been no additional proceedings regarding that injunction. Thus, any reliance on the vacated injunction by Brighton officials as a pretext to squelch protected speech by Rescue Rochester or any other pro-life sidewalk counselors, protestors, or prayer events is entirely baseless.

Rescue Rochester, as part of its pro-life ministry to the women contemplating abortion and to passersby, communicates its message about babies, life, and abortion through, among other methods, the use of signs and posters. Some of these signs and posters are hand-held, while some are placed on the sidewalk next to where, for instance, Rev. Warren or Mr. Crawford may be standing or speaking to staff or clients going into the clinic. The signs are an inextricable part of Rescue Rochester's pro-life outreach, just as much as trying to verbally persuade women going into Dr. Wortman's clinic to choose life.

In the past, Brighton police officers have told Rev. Warren and Mr. Crawford that they may place their signs on the ground or snow, yet only recently they are being told the opposite, or that they must be holding or touching the signs at all times. In fact, part of the problem is that, even in the recent October 31 meeting, Brighton is unclear about exactly what its position is in regards to Rescue Rochester's signs. If Brighton is simply going to leave the question of sign use to whichever police officer happens to be on duty, then it will be violating the First and Fourteenth Amendment by having an arbitrary and capricious non-policy that gives sole discretion over the expression of free speech in a public forum to various town officials

If, however, Brighton applies its *sign ordinances* to this matter then it also runs the risk of violating the Constitution by employing a vague policy that could prohibit all protest signs everywhere at all times in the town of Brighton. Brighton Code § 207-32E, "Temporary Signs," prohibits all "portable signs," which are defined in Code § 201-5 as "Any temporary freestanding sign which can be disassembled and moved by one person or one which is on wheels and can be trailered or towed from one location to another." If applied to stop Rescue Rochester's use of their signs and posters, then such a ban on *an entire mode of communication* by a group like Rescue Rochester would be overbroad and unconstitutional.

"Time out of mind public streets and sidewalks have been used for public assembly and debate." *Frisby v. Schultz*, 487 U.S. 474, 480 (1988). Ultimately, on a traditional public forum like the public sidewalk, Brighton may not prohibit or arbitrarily regulate Rescue Rochester's use of signs: "The First Amendment protects [one's] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer v. Grant*, 486 U.S. 414, 424 (1988).

We understand also that Brighton officials are claiming that Rescue Rochester may not use sound amplification, despite the fact that Rescue Rochester has been using a bullhorn to communicate its message for approximately ten (10) years. Brighton Code §

102-3(B)(9) prohibits the operation of a “sound amplifier or similar device which produces, reproduces or amplifies sound so as to produce unreasonable or unnecessary noise at any time, except for activities open to the public or for the public benefit and for which permission has been granted by the Town.” A blanket ban on bullhorns is, by itself, constitutionally problematic. “Although prohibitions foreclosing entire media may be completely free of content or viewpoint discrimination, the danger they pose to the freedom of speech is readily apparent--by eliminating a common means of speaking, such measures can suppress too much speech.” *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994). Even if § 102-3 is applicable to Rescue Rochester, Rev. Warren’s and Mr. Crawford’s speech on the public sidewalk and the amplification of that speech with a bullhorn is neither “unreasonable or unnecessary”; rather, it is the reasonable use of amplification to communicate their pro-life message without shouting or yelling and it is entirely necessary in their attempt to express their pro-life opinions and communicate their message to people in or near the abortion clinic.

Moreover, if Brighton prohibits Rescue Rochester from using a bullhorn, then Rev. Warren and Mr. Crawford would have to raise their voice and shout their speech to be heard, potentially placing them in violation of Brighton Code § 102-3(B)(11):

Shouting. No person shall shout, yell, call, whistle or sing on public streets or in public places in such a manner and for a period of time as to be unreasonable under the circumstances.

Rescue Rochester’s speech is reasonable, but the use of that subjective word in both § 102-3(B)(9) and (11) leaves the application of those provisions open to more arbitrary discretion by Brighton officials. Even if Rescue Rochester needed to get a noise permit from the town, Rev. Warren was told by Brighton officials that, incredibly, *there is no permitting process* for obtaining permission to use a bullhorn, even though the town code indicates that such permission is possible. “[A] law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional.” *Charette v. Town of Oyster Bay*, 159 F.3d 749, 754 (2d Cir. 1998) (quoting *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969)).

Brighton law and policy must be clear and it must protect the rights of free speech by pro-life sidewalk counselors as much as the property rights of abortion doctors. The contradictory and overbroad threats that Brighton is making about Rescue Rochester’s sign use and bullhorn use would give Brighton the “power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers.” *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 759, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). However much Dr. Wortman and officials of Brighton may dislike Rescue Rochester’s message or its speakers, the force of law cannot be used to harass and trap Rescue Rochester into silence.

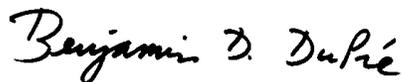
Finally, as if to demonstrate that any pro-life presence on the public sidewalk near Dr. Wortman's clinic is suspect, Brighton police demanded the names and identification of the members of a pro-life prayer group, Bound4Life, that stood quietly praying outside Dr. Wortman's clinic one day in late September of this year. The officer claimed, without justification or explanation, that because the group had a single piece of red tape with the word "LIFE" on it, that their presence was a "protest" that gave the police the right to demand identification. This episode lends further evidence to the notion that Brighton police and officials are creating a legal environment hostile to the expression of pro-life opinions on public sidewalks, discriminating based on the viewpoint of the speaker or, in the case of Bound4Life, the silently praying person. The Supreme Court has repeatedly held, however, that "restrictions based on viewpoint are prohibited" in a traditional public forum. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). See also *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 109-110 (2001); *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 831 (1995).

### DEMAND

Therefore, undersigned counsel for the Foundation for Moral Law, along with Attorney Johnson, demand that the Town of Brighton immediately **cease and desist** from its harassing and unlawful interference with the pro-life ministry speech and activities of Rescue Rochester, Rev. Michael Warren, Gerald Crawford, Bound4Life, and any other persons exercising their constitutional rights to speak against abortion and for life on the public sidewalks and public fora in the Town of Brighton. Mindful that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and in light of the failure of Brighton officials to give definitive answers as to their positions on sign and bullhorn usage at the October 31 meeting, we demand from the Town of Brighton **written assurances by November 22, 2011**, that henceforth pro-life speakers will be allowed to display signs and use amplified equipment in the expression of their protected speech on the public sidewalks near and adjacent to Dr. Wortman's clinic.

Should the Town of Brighton continue to ignore the well-settled constitutional rights of Rescue Rochester and Bound4Life, we will consider additional action and available remedies.

Sincerely,



Benjamin D. DuPré, Esq.  
FOUNDATION FOR MORAL LAW



Kevin G. Johnson, Esq.  
KLAFEHN & HEISE, PLLC  
13 Water Street  
Brockport, NY 14420