

## NOTICE OF CLAIM

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In the Matter of the Claim of

ROC LOVE WILL END ABORTION,  
ELLEN DUNCAN, DORINA HAYES,  
and DOROTHY HAYES,

Claimants,

v.

THE CITY OF ROCHESTER, JAMES DEMPS, III,  
JOHN DiVINCENZO, JOEL HASPER,  
JEFFREY LaFAVE, II, JEFFREY SCHROEDER,  
DARREL SCHULTZ, \_\_\_\_\_ TROVATO,  
and JANE/JOHN DOEs,

Respondents.

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**PLEASE TAKE NOTICE** that Refermat Hurwitz & Daniel PLLC, as Claimants' Attorneys , hereby make Claim against the City of Rochester, New York ("Respondent" or "City") for claims that include, but may not be limited to, violations of Claimants' rights under the New York State and United States Constitutions, in support of which Claimants state:

1. Claimants' and their counsel's mailing addresses are as follows:

ROC Love Will End Abortion  
1545 East Avenue  
Rochester, New York 14610

John T. Refermat, Esq.  
Refermat Hurwitz & Daniel PLLC  
919 Winton Road South, Suite 314  
Rochester, New York 14618.

Claimants engage in peaceful, sidewalk advocacy for mothers and their children, and provide them with a variety of supports, including information on alternatives to abortion. Planned Parenthood of Rochester (located at 114 University Avenue) and some neighbors in that area, sometimes referred to as "Grove Place," object to Claimants' messages and speech. The Respondents are generally charged with, among other things, enforcing the laws in a lawful,

equal, and constitutional manner, but instead are interpreting and applying the laws selectively, unconstitutionally, and unlawfully, in violation of Claimants' rights, including at the behest of Planned Parenthood and other Grove Place neighbors.

2. The nature of the Claim is for violations of Claimants' rights under the New York State and United States Constitutions (including but not limited to the First and Fourteenth Amendments and discrimination based on religion/Free Exercise violations), and for intentional/negligent infliction of emotional distress.

3. The Claims arose at or around 114 University Avenue in the City of Rochester ("Grove Place" neighborhood), New York, at the following dates, times, and places, and in the following manner:

a. On or about January 22, 2021, Claimant Dorina Hayes erected a memorial on public property in the vicinity to remember the children that she lost to abortion. Dorina's memorial was removed within hours of being placed. Shortly after noon on Sunday, January 31, 2021, Dorina's mother-in-law Dorothy Hayes went to replace it. An angry neighbor came out and went over to the memorial, where Dorothy was also walking. The neighbor yelled at her, and told Dorothy to "move back just a little bit so that car can hit you." As more neighbors came out, Dorothy felt uncomfortable, so she returned to her car and called the police.

When Officer Schultz arrived, he first spoke with the neighbors for a long time, then came over to Dorothy's car. She told him she was glad he was there because she was a bit shaken. Officer Schultz dismissed her concerns, whereupon Dorothy explained that she was by herself and that the neighbors had been very hostile and aggressive toward her. Officer Schultz pointed to the pin Dorothy wears that says, "Do No Harm" and claimed that *she* was the one causing harm. Officer Schultz replied that the neighbors had a point, because the memorial is

“ugly.” Upon information and belief, Respondents have also imposed arbitrary restrictions on how long Claimants can maintain the memorial, although they have allowed other memorials in the City to remain indefinitely, thereby violating Claimants’ rights under the First and Fourteenth Amendments to the United States Constitution, among other things.

b. On February 2, 2021, Dorina and Dorothy returned yet again to replace the memorial. Less than fifteen minutes after they did so, a black pickup truck with two city employees arrived, one of whom was James Demps, III. Mr. Demps walked directly to the memorial, followed by two City policemen: Officers Trovato and Schroeder. Initially, Dorina and Dorothy were very happy to see the police. Dorina identified herself and explained that this was her memorial for her aborted babies. With a box cutter in hand, Mr. Demps pushed Dorina out of the way, touching her breasts and bruising her arm. The officers said he had a right to remove the memorial and did nothing to intervene while Dorina was being pushed around. Dorina told them again that this was her memorial and that she had been told by Officer Madrid and Mr. Sari (sp?) from the City that she had every right to put up the memorial.

Officer Trovato commented to the effect that Mr. Demps was “a little rough around the edges,” but didn’t say anything to Mr. Demps about his behavior. In fact, one of the officers told *Dorina* not to shove Mr. Demps, which shocked Dorina because she was the victim, not the perpetrator of the assault and battery – within full view of the police. Noting that there were memorials all around the city, Dorothy and Dorina asked why theirs was singled out as disallowed. The police said Mr. Demps had the right to remove it, and Mr. Demps initially claimed that he removes them all; he added that the neighbors had complained that the memorial is “ugly,” and that the neighbors shouldn’t have to look at Dorina’s “shrine.” She and Dorothy countered that they see many memorials that have been left alone, whereas theirs do not last 24

hours before being removed. Mr. Demps claimed that Dorina's memorial could stay for two weeks but it could only have flowers, no cross. When Dorina asked "why no cross?" he did not reply. Upon information and belief, Officer LaFave enforced the arbitrary, two-week limit imposed on Dorina's memorial.

c. On February 18, 2021, one of Claimants' sidewalk advocates called the Rochester Police Department ("RPD") to file a report because a neighbor was screaming and swearing at the top of his lungs. Consistent with prior advice from Respondents, the Claimants called 911. Two officers responded to the scene, one of whom was Officer Hasper, but they did not seem to care that the neighbor screamed and swore at Claimants. Rather, they were more concerned that Claimants were standing on the shoulder in the street. The officers conferred with the irate, swearing neighbor and his mother for twice as long as they spoke to Claimants.

When they returned, the police failed to address the neighbors' behavior, but stated that Claimants are not permitted to be in the street on the shoulder. As they were talking, a third RPD vehicle pulled up and Sergeant DiVincenzo exited. Without hearing a word that Claimants had to say, he started yelling at Claimants, who were of course stunned by his conduct. Multiple times, one of the Claimants asked if she could speak. The Sergeant said "no," then continued to yell, adding that "you and your group will be arrested if I get another call that you're doing something wrong." Claimants did *nothing* wrong, but the Sergeant refused to listen, nor did he reprimand the neighbor for screaming and swearing.

d. Periodically and continually since approximately February of 2021, the Respondents herein and other members of the respondent City of Rochester's Police Department have selectively and, upon information and belief, wrongfully sought to prevent Claimants from standing in the shoulder of University Avenue, a public roadway, while exercising their

constitutional rights. Respondents rely on New York Vehicle and Traffic Law §1156 but, upon information and belief, this reliance is improper for the following reasons, among others:

(1) Claimants are not “walking along and upon” the road within the meaning of the statute;

(2) The statute is not intended to prohibit address Claimants’ activities;

(3) Respondents are applying the statute in an unconstitutional manner, *e.g.*, in order to infringe Claimants’ constitutional rights, including in violation of Claimants’ rights to equal protection of the laws. By way of example and not limitation, a protestor was called to the scene in the morning, on or about March 27, 2021 – he was neither called by Claimant, nor is he one of Claimants’ advocates. The protestor made substantial noise in the middle of the street on University Avenue (with vehicles needing to use caution to avoid him) in the presence of at least one Rochester police officer, for nearly five minutes.<sup>1</sup> The officer took no action in response.

e. On the morning of April 12, 2021, Dorothy replaced Dorina’s memorial with two bunches of artificial flowers and a small wooden cross that Dorothy tied with string around the base of the tree. Just before noon, Mr. Demps arrived, photographed the memorial, then removed the cross. When Dorothy asked him why he was taking the cross, Mr. Demps replied that they couldn’t have it, and that he would leave the flowers, but was taking the cross. Mr. Demps stated that the cross could not be on the tree. Dorothy told him that she would take it back and just leave it at the base of the tree, but Mr. Demps refused to return it, and did not respond when Dorothy asked who had called him.

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<sup>1</sup> The identities of Respondents “John and/or Jane Doe(s)” are currently unknown.

4. The damages sought include, without limitation, monetary damages for: constitutional violations, torts, reimbursement of Claimants' legal fees and expenses, and all accrued interest.

**WHEREFORE**, the Claimants seek damages against Respondent.



Dated: April 16, 2021  
Rochester, New York

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John T. Refermat  
REFERMAT HURWITZ & DANIEL PLLC  
*Attorneys for Claimants*  
919 Winton Road South, Suite 314  
Rochester, New York 14618  
(585) 497-2700

TO: John M. Campolieto, Esq.  
City of Rochester Law Department  
*Attorneys for Respondent City of Rochester*  
30 Church Street  
Rochester, New York 14614

James Demps III  
Neighborhood Service Center Administrator  
923 Genesee Street  
Rochester, New York 14611

Officer John DiVincenzo  
Rochester Police Department  
City Public Safety Building  
185 Exchange Boulevard  
Rochester, New York 14614

Officer Joel Hasper  
Rochester Police Department  
City Public Safety Building  
185 Exchange Boulevard  
Rochester, New York 14614

Officer Jeffrey LaFave, II  
Rochester Police Department  
City Public Safety Building  
185 Exchange Boulevard  
Rochester, New York 14614

Officer Jeffrey Schroeder  
Rochester Police Department  
City Public Safety Building  
185 Exchange Boulevard  
Rochester, New York 14614

Officer Darrel Schultz  
Rochester Police Department  
City Public Safety Building  
185 Exchange Boulevard  
Rochester, New York 14614

Officer \_\_\_\_\_ Trovato  
Rochester Police Department  
City Public Safety Building  
185 Exchange Boulevard  
Rochester, New York 14614

VERIFICATION

STATE OF NEW YORK)  
COUNTY OF MONROE)    ss:

Deponents are Claimants in this matter. They have read the Notice of Claim and know the contents thereof; the same is true to deponents' knowledge except as to matters therein stated to be alleged upon information and belief, and as to such matters, deponents believe it to be true. We certify that all information contained in this Notice is true and correct to the best of our knowledge and belief.

*Ellen Duncan*

\_\_\_\_\_  
**ELLEN DUNCAN**

Sworn to before me this  
  15   day of April, 2021

*David J. Scherer*  
\_\_\_\_\_  
NOTARY PUBLIC

**DAVID JJ SCHERER**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
No. 01SC6348004  
Qualified in Monroe County  
My Commission Expires 09-19-2024



Sworn to before me this  
\_\_\_\_\_ day of April, 2021

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
**DORINA HAYES**

Sworn to before me this  
\_\_\_\_\_ day of April, 2021

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
**DOROTHY HAYES**

**VERIFICATION**

STATE OF NEW YORK)  
COUNTY OF MONROE) ss:

Deponents are Claimants in this matter. They have read the Notice of Claim and know the contents thereof; the same is true to deponents' knowledge except as to matters therein stated to be alleged upon information and belief, and as to such matters, deponents believe it to be true. We certify that all information contained in this Notice is true and correct to the best of our knowledge and belief.

\_\_\_\_\_  
**ELLEN DUNCAN**

Sworn to before me this  
\_\_\_\_ day of April, 2021

\_\_\_\_\_  
NOTARY PUBLIC

*Dorina Hayes*  
\_\_\_\_\_  
**DORINA HAYES**

Sworn to before me this  
12 day of April, 2021

*Barbara E. Buholtz*  
\_\_\_\_\_  
NOTARY PUBLIC

**BARBARA E. BUHOLTZ**  
Notary Public - State of New York  
No. 01BU6360415  
Qualified in Monroe County  
My Commission Expires June 19, 2021

*Dorothy Hayes*  
\_\_\_\_\_  
**DOROTHY HAYES**

Sworn to before me this  
12 day of April, 2021

*Barbara E. Buholtz*  
\_\_\_\_\_  
NOTARY PUBLIC

**BARBARA E. BUHOLTZ**  
Notary Public - State of New York  
No. 01BU6360415  
Qualified in Monroe County  
My Commission Expires June 19, 2021