

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI**

BARBARA BEAVERS; MONICA
CABLE; LAURA KNIGHT; and
PAMELA MILLER

APPELLANT

vs.

Civil Action No. 19-700

CITY OF JACKSON, MISSISSIPPI

APPELLEE

NOTICE OF APPEAL

COME NOW Appellants, Barbara Beavers, Monica Cable, Laura Knight, and Pamela Miller, (collectively “sidewalk advocates”) by and through their undersigned counsel, and file this Notice of Appeal, and in support thereof state as follows:

INTRODUCTION

1. This is a Notice of Appeal pursuant to Miss. Code Ann. § 11-51-75, as amended, July 1, 2018, which requires Appellants to provide a “succinct statement of the reasons, or grounds, for the appeal” and a “written description or designation of record which includes all matters that the appellant desires to be made part of the record.”

2. This Notice of Appeal arises from an ordinance entitled “An Ordinance of the City of Jackson, Mississippi, Prohibiting Certain Activities Near Health Care Facilities,” which was adopted by the Jackson City Council on October 1, 2019 (“the Ordinance”).

3. This Appeal seeks to vindicate the right of pro-life sidewalk advocates to engage in free speech near the only abortion facility located in Mississippi – a right that is protected by the Mississippi Constitution.

PARTIES

4. Appellant Barbara Beavers is an adult resident of Jackson, Hinds County, Mississippi.

5. Appellant Monica Cable is an adult resident of Jackson, Hinds County, Mississippi.

6. Appellant Laura Knight is an adult resident of Florence, Rankin County, Mississippi.

7. Appellant Pamela Miller is an adult resident of Clinton, Hinds County, Mississippi.

8. Appellee, the City of Jackson, Mississippi, (“Jackson”) is a municipal corporation and political subdivision organized under the laws of the State of Mississippi.

JURISDICTION AND VENUE

9. This Court has jurisdiction of the parties and jurisdiction of the subject matter of this proceeding pursuant to Miss. Code Ann. § 11-51-75, as amended.

10. Venue is proper in the First Judicial District of Hinds County, Mississippi, pursuant to Miss. Code Ann. § 11-51-75, as amended, because the City of Jackson is located in Hinds County, Mississippi.

FACTS

APPELLANTS' CHARITABLE WORK AND FREE SPEECH

11. Appellants are unpaid volunteer members of an unincorporated organization known as Sidewalk Advocates for Life – Jackson, Mississippi.

12. Appellants have been trained in the methods of “sidewalk advocacy,” which involves actively encouraging persons patronizing abortion facilities not to have an abortion.

13. Appellants have devoted substantial time and effort to developing their effectiveness as sidewalk advocates.

14. Appellants regularly provide information about alternatives to abortion to individuals patronizing the Jackson Women’s Health Organization, an abortion facility located in Jackson, Mississippi (“the abortion facility”).

15. Appellants also regularly congregate with others near the entrance of the property of the abortion facility, in order to engage in speech.

16. At times, Appellants must shout near the property of the abortion facility, in order to be heard by persons patronizing the abortion facility. This is sometimes made necessary because the abortion facility plays loud music outside of

its building in order to prevent persons patronizing the facility from hearing Appellants' speech.

JACKSON'S ORDINANCE TO SILENCE PRO-LIFE SIDEWALK ADVOCATES

17. On October 1, 2019, the Jackson City Council ("the Council") adopted an ordinance entitled "An Ordinance of the City of Jackson, Mississippi, Prohibiting Certain Activities Near Health Care Facilities" ("the Ordinance").

18. The Ordinance will become effective thirty (30) days after passage and publication.

19. The Ordinance amends the Jackson Code of Ordinances to include a new Article to be codified in Chapter 86 as Article XI (Sections 86-401 through 86-409).

20. The Ordinance prohibits persons from knowingly approaching another person within eight (8) feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred (100) feet from any entrance to the property of a Health Care Facility.

21. The Ordinance also prohibits any person or persons from knowingly congregating, patrolling, picketing, or demonstrating in a zone extending fifteen (15) feet from the entrance to the property of a Health Care Facility.

22. The Ordinance also prohibits persons from shouting or, by any means, producing any amplified sound within one hundred (100) feet of the property line of a Health Care Facility, provided that the public streets or sidewalks adjacent to such facilities are clearly marked identifying those areas as a “quiet zone.”

23. The Ordinance does not apply to certain categories of persons, including employees and agents of the Health Care Facilities engaged in assisting patients and other persons to enter or exit the premises.

24. Any violation of the Ordinance is a misdemeanor offense and is punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than ninety (90) days, or both.

25. Before the Jackson City Council adopted the Ordinance, Appellants Barbara Beavers, Monica Cable, and Pamela Miller offered public comments to the Council, opposing the ordinance on the grounds that it would violate their right to free speech, among other grounds.

26. Appellant Laura Knight would also have offered public comments to the Council in opposition to the Ordinance, but the Council limited the number of speakers allowed to present public comments about the Ordinance.

INJURY TO APPELLANTS

27. But for the Ordinance, Appellants would engage in more speech.

28. But for the Ordinance, Appellants’ speech would be more effective.

29. The Ordinance has a chilling effect on Appellants' speech.

30. If Appellants were allowed to continue approaching other persons, without first obtaining their consent, near the abortion facility in order to engage in speech, they would continue to do so.

31. If Appellants were allowed to continue congregating with others near the entrance of the property of the abortion facility, in order to engage in speech, they would continue to do so.

32. If Appellants were allowed to continue shouting near the property of the abortion facility, when necessary to be heard by persons patronizing the abortion facility, they would continue to do so, when necessary.

33. If Appellants were allowed to continue engaging in other activities prohibited by the Ordinance, they would continue to do so.

REASONS AND GROUNDS FOR APPEAL

COUNT 1

ARTICLE 3, SECTION 13 OF THE MISSISSIPPI CONSTITUTION –

FREE SPEECH

34. According to Article 3, Section 13 of the Mississippi Constitution, “[t]he freedom of speech and of the press shall be held sacred....”

35. Article 3, Section 13 of the Mississippi Constitution is more protective of the individual's right to freedom of speech than is the First Amendment to the

United States Constitution, since the Mississippi Constitution makes free speech worthy of religious veneration.

36. Appellants' practice of approaching other persons, without first obtaining their consent, near the abortion facility in order to engage in sidewalk advocacy, is free speech protected by Article 3, Section 13 of the Mississippi Constitution.

37. By preventing Appellants from approaching other persons, without first obtaining their consent, near the abortion facility in order to engage in sidewalk advocacy, and by prohibiting other forms of speech, the Ordinance violates Appellants' rights to free speech under Article 3, Sections 13 of the Mississippi Constitution, and the rights of anyone else who would otherwise engage in free speech in a similar way.

38. The Ordinance irreparably harms Appellants by preventing Appellants from engaging in effective sidewalk advocacy.

39. The Ordinance also irreparably harms persons patronizing the abortion facility by denying them access to useful information concerning the alternatives to abortion.

40. The Ordinance is a content-based regulation of speech, as it prevents only certain types of speech.

41. The Ordinance is a speaker-based regulation of speech, as it prohibits certain speakers from engaging in certain types of speech, while allowing others to engage in that same type of speech.

42. The interests being furthered by the Ordinance are not compelling.

43. The Ordinance is not narrowly tailored to a compelling government interest.

44. The Ordinance does not directly or materially advance any compelling government interest.

45. The Ordinance is overly broad and unduly burdensome.

46. Both on its face and as applied to Appellant sidewalk advocates, the Ordinance violates Appellants' right to free speech guaranteed by Article 3, Section 13 of the Mississippi Constitution.

47. Unless the Jackson City Council's decision to adopt the Ordinance is reversed, Appellants will continue to suffer irreparable harm.

COUNT 2

ARTICLE 3, SECTION 11 OF THE MISSISSIPPI CONSTITUTION –

PEACEABLE ASSEMBLAGE

48. According to Article 3, Section 11 of the Mississippi Constitution, “[t]he right of the people peaceably to assemble ... shall never be impaired.”

49. Appellants' practice of congregating with others near the entrance of the property of the abortion facility, in order to engage in speech, is a peaceable assemblage protected by Article 3, Section 11 of the Mississippi Constitution.

50. By preventing Appellants from congregating, patrolling, picketing, or demonstrating in a zone extending fifteen (15) feet from the entrance to the property of a Health Care Facility, the Ordinance violates Appellants' rights to peaceable assemblage under Article 3, Sections 11 of the Mississippi Constitution, and the rights of anyone else who would otherwise engage in peaceable assemblage in a similar way.

51. The Ordinance irreparably harms Appellants by preventing Appellants from engaging in effective peaceable assemblies near the abortion facility.

52. The interests being furthered by the Ordinance are not compelling.

53. The Ordinance is not narrowly tailored to a compelling government interest.

54. The Ordinance does not directly or materially advance any compelling government interest.

55. The Ordinance is overly extensive and unduly burdensome.

56. Both on its face and as applied to Appellant sidewalk advocates, the Ordinance violates Appellants' right to peaceable assemblage, under Article 3, Section 11 of the Mississippi Constitution.

COUNT 3

ARTICLE 3, SECTION 14 OF THE MISSISSIPPI CONSTITUTION –

DUE PROCESS

57. According to Article 3, Section 14 of the Mississippi Constitution, “[n]o person shall be deprived of life, liberty, or property except by due process of law.”

58. Article 3, Section 14 of the Mississippi Constitution protects individuals from vague or indefinite criminal statutes.

59. Many of the terms used in the Ordinance, including terms describing prohibited behavior, are not defined by the Ordinance.

60. The Ordinance does not give persons of ordinary intelligence fair notice of the conduct which is prohibited.

61. People of common intelligence must guess at the meaning of the Ordinance, and would differ as to its proper application.

62. The Ordinance irreparably harms Appellants, by creating a chilling effect on their speech and conduct based on the fact that Appellants do not have fair notice of the conduct prohibited by the Ordinance.

63. Both on its face and as applied to Appellant sidewalk advocates, the Ordinance violates Appellants’ right to due process protected by Article 3, Section 14 of the Mississippi Constitution.

COUNT 4

ARTICLE 3, SECTION 14 OF THE MISSISSIPPI CONSTITUTION –

EQUAL PROTECTION

64. Article 3, Section 14 of the Mississippi Constitution contains guarantees of equal protection of the laws.

65. By prohibiting certain speakers from engaging in certain types of speech, while allowing other similarly situated speakers, such as abortion facility employees or agents, to engage in that same type of speech, the Ordinance violates Appellants' right to equal protection of the laws.

66. The interests being furthered by the unequal treatment of the Ordinance are not legitimate, substantial, or compelling.

67. The unequal treatment of the Ordinance is not rationally related or appropriately tailored to a legitimate, substantial, or compelling government interest.

68. The unequal treatment of the Ordinance does not directly or materially advance any legitimate, substantial, or compelling government interest.

69. The unequal treatment of the Ordinance irreparably harms Appellants, by preventing them from engaging in effective sidewalk advocacy, while allowing others to engage in speech with persons patronizing abortion facilities.

70. Both on its face and as applied to Appellant sidewalk advocates, the Ordinance violates Appellants' right to equal protection of the laws, as guaranteed by Article 3, Section 14 of the Mississippi Constitution.

COUNT 5

ADOPTION OF THE ORDINANCE WAS BEYOND THE COUNCIL'S POWER, WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND WAS ARBITRARY AND CAPRICIOUS

71. While the Jackson City Council has the authority to promulgate and enforce ordinances regarding municipal affairs, this power is not absolute. The Jackson City Council does not have the power to adopt ordinances that are inconsistent with the Mississippi Constitution or Mississippi statutes. The Ordinance is inconsistent with the Mississippi Constitution and state statutes, and was thus beyond the scope or power granted to the Jackson City Council by statute.

72. The decision of the Jackson City Council to adopt the Ordinance was not supported by substantial evidence, as demonstrated by the public comments made to the Council, and other portions of the record of appeal.

73. The decision of the Jackson City Council to adopt the Ordinance was arbitrary and capricious, as demonstrated by the public comments made to the Council, and other portions of the record of appeal.

DESIGNATION OF RECORD

74. The written description of the designation of record is as follows:

- a. The agenda of the September 17, 2019, meeting of the Jackson City Council;
- b. The agenda packet of the September 17, 2019, meeting of the Jackson City Council;
- c. The minutes of the September 17, 2019, meeting of the Jackson City Council;
- d. The video recording of the September 17, 2019, meeting of the Jackson City Council;
- e. Any transcript of the September 17, 2019, meeting of the Jackson City Council;
- f. The agenda of the September 26, 2019, meeting of the Jackson City Council;
- g. The agenda packet of the September 26, 2019, meeting of the Jackson City Council;
- h. The city clerk's registration of persons who desired to address the council during the public comment portion of the September 26, 2019, meeting of the Jackson City Council;
- i. The minutes of the September 26, 2019, meeting of the Jackson City Council;
- j. The video recording of the September 26, 2019, meeting of the Jackson City Council;
- k. Any transcript of the September 26, 2019, meeting of the Jackson City Council;
- l. The agenda of the October 1, 2019, meeting of the Jackson City Council;
- m. The agenda packet of the October 1, 2019, meeting of the Jackson City Council;
- n. The city clerk's registration of persons who desired to address the council during the public comment portion of the October 1, 2019, meeting of the Jackson City Council;
- o. The minutes of the October 1, 2019, meeting of the Jackson City Council;

- p. The video recording of the October 1, 2019, meeting of the Jackson City Council;
- q. Any transcript of the October 1, 2019, meeting of the Jackson City Council;
- r. A copy of the final Ordinance, as adopted by the Jackson City Council.
- s. Any publication of the Ordinance;
- t. Any other records of the Jackson City Council related to the Ordinance.

75. Pursuant to Miss. Code Ann. § 11-51-75, as amended, July 1, 2018, Appellants would state they currently have none of the above-described documents or transcripts in their possession.

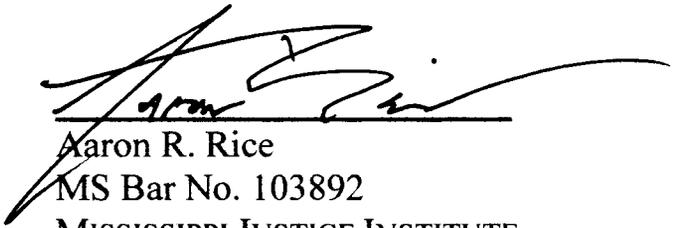
76. Appellants certify that upon filing, a copy of this Notice of Appeal, including its written designation of the record and its list of all documents in Appellants' possession, will be delivered to the city clerk of the City of Jackson.

REQUEST FOR RELIEF

WHEREFORE, Appellants respectfully request the following relief:

- A. An entry of an order establishing a briefing schedule, pursuant to Miss. Code Ann. § 11-51-75.
- B. An entry of an order establishing a hearing date for the parties to appear and present oral argument, pursuant to Miss. Code Ann. § 11-51-75.
- C. An order reversing the Council's decision to adopt the Ordinance.
- D. Any other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED, this the 11th day of October, 2019.

A handwritten signature in black ink, appearing to read 'Aaron R. Rice', is written over a horizontal line.

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