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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

1 Robert J. Muise, Esq.* (Michigan State Bar No. 62849)
2 THOMAS MORE LAW CENTER
3 3475 Plymouth Road, Suite 100
4 Ann Arbor, MI 48105-2550
5 Tel: (734) 827-2001
6 Fax: (734) 998-4778
7 * Subject to admission *pro hac vice*

6 James A. Hayes, Jr., Esq. (California State Bar No. 162860)
7 ASHWORTH, HAYES & MORAN, LLP
8 28202 Cabot Road, Suite 100
9 Laguna Niguel, CA 92677-1247
10 Tel: (949) 347-7900
11 Fax: (949) 347-7911
12 *Counsel for Plaintiffs*

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 CENTER FOR BIO-ETHICAL)
14 REFORM, INC., PAUL KULAS, and)
15 THOMAS PADBERG,)
16 Plaintiffs,)

SACV 03-386

GLT
MLGx

16 v.)

CIVIL ACTION
NO. _____

17)
18 LOS ANGELES COUNTY SHERIFF'S)
19 DEPARTMENT ("LACSD"), LEROY D.)
20 BACA, in his official capacity as Sheriff,)
21 LACSD, XAVIER R. AGUILAR,)
22 individually and in his official capacity as)
23 Sergeant, LACSD, DAVE DESPOT,)
24 individually and in his official capacity as)
25 Deputy, LACSD, MARK DARLING,)
individually and in his official capacity as)
Deputy, LACSD, MARK C. REPCIK,)
individually and in his official capacity as)
Deputy, LACSD, and ART ROBERTS,)

COMPLAINT FOR
DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF
PURSUANT TO
42 U.S.C. § 1983

1 individually and in his official capacity as an)
2 administrative official, Dodson Middle)
3 School,)
4 Defendants.)

5 Plaintiffs, by and through their undersigned attorneys, bring this Complaint
6 against the above-named Defendants, their employees, agents, and successors in
7 office, and in support thereof allege the following upon information and belief:
8

9 **JURISDICTION**

10 1. This action arises under the First, Fourth, and Fourteenth
11 Amendments to the United States Constitution and 42 U.S.C. § 1983.
12 Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and
13 1343(a)(3).
14

15 **INTRODUCTORY STATEMENT**

16 2. This is a case asserting the fundamental constitutional rights of
17 Plaintiffs. Plaintiffs are pro-life advocates who engage in lawful expressive
18 activity in the State of California and elsewhere to protest abortion and to
19 promote respect for human life. This is a civil rights action challenging the acts
20 of Defendants and the constitutionality of California Penal Code § 626.8
21 (hereinafter referred to as "Section 626.8") as applied to Plaintiffs' pro-life
22 activities. (A true and correct copy of Section 626.8 is attached to this Complaint
23 as Exhibit A and is incorporated herein by reference). According to Defendants,
24
25

1 Section 626.8 prohibits Plaintiffs from engaging in their pro-life activities on the
2 public streets adjacent to a public school.

3
4 3. Plaintiffs seek a declaration that Section 626.8, as applied, is
5 unconstitutional and a permanent injunction enjoining its enforcement as applied
6 against Plaintiffs. Plaintiffs seek nominal damages against certain Defendants for
7 the past loss of their constitutional rights. And Plaintiffs seek an award of
8 reasonable costs of litigation, including attorneys' fees and expenses, pursuant to
9 42 U.S.C. § 1988.
10

11 4. Plaintiffs' claims for declaratory and injunctive relief are authorized
12 by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil
13 Procedure, and by the general legal and equitable powers of this Court. Plaintiffs'
14 claim for damages is authorized by 42 U.S.C. § 1983.
15

16 5. Plaintiffs' prayer for relief regarding costs, including reasonable
17 attorneys' fees, is authorized by 42 U.S.C. § 1988.
18

19 6. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part
20 of the events or omissions giving rise to Plaintiffs' claims occurred in this district.
21

22 **PLAINTIFFS**

23 7. Plaintiff Center for Bio-Ethical Reform, Inc. ("CBR"), is a pro-life,
24 California-based, non-profit corporation. It is a section 501(c)(3) organization
25 that is incorporated under the laws of the State of California.

1 8. Plaintiff Paul Kulas is an adult resident of the State of California and
2 a citizen of the United States. Plaintiff Kulas is a full-time employee of CBR.

3 9. Plaintiff Thomas Padberg is an adult resident of the State of
4 California and a citizen of the United States. Plaintiff Padberg is a CBR
5 volunteer.

6
7 **DEFENDANTS**

8 10. Defendant Los Angeles County Sheriff's Department ("LACSD") is
9 a public entity capable of being sued. LACSD, through its agents, enforces
10 Section 626.8 throughout the Los Angeles County.

11 11. Defendant Leroy D. Baca is the Sheriff for LACSD. He is
12 responsible for enforcing Section 626.8. At all relevant times, Defendant Baca
13 was an agent, servant, and/or employee of LACSD, acting under color of state
14 law as that phrase is used in 42 U.S.C. § 1983. Defendant Baca is sued in his
15 official capacity only.

16 12. Defendant Xavier R. Aguilar is a Sergeant with LACSD. At all
17 relevant times, Defendant Aguilar was an agent, servant, and/or employee of
18 LACSD, acting under color of state law as that phrase is used in 42 U.S.C. §
19 1983. Defendant Aguilar is sued individually and in his official capacity.

20 13. Defendant Dave Despot is a Deputy with LACSD. At all relevant
21 times, Defendant Despot was an agent, servant, and/or employee of LACSD,
22

1 acting under color of state law as that phrase is used in 42 U.S.C. § 1983.
2 Defendant Despot is sued individually and in his official capacity.

3
4 14. Defendant Mark Darling is a Deputy with LACSD. At all relevant
5 times, Defendant Darling was an agent, servant, and/or employee of LACSD,
6 acting under color of state law as that phrase is used in 42 U.S.C. § 1983.
7 Defendant Darling is sued individually and in his official capacity.

8
9 15. Defendant Mark C. Repcik is a Deputy with LACSD. At all relevant
10 times, Defendant Repcik was an agent, servant, and/or employee of LACSD,
11 acting under color of state law as that phrase is used in 42 U.S.C. § 1983.
12 Defendant Repcik is sued individually and in his official capacity.

13
14 16. Defendant Art Roberts is an administrative official at the Dodson
15 Middle School, a public school located in Los Angeles County, California. At all
16 relevant times, Defendant Roberts was an agent, servant, chief administrative
17 official, designated representative of a chief administrative official, and/or
18 employee of the Dodson Middle School, serving a public function, acting jointly
19 and in a symbiotic relationship with Defendants, and acting under color of state
20 law as that phrase is used in 42 U.S.C. § 1983.
21

22 **STATEMENT OF FACTS**

23
24 17. CBR was established in 1990 as a non-profit public policy and
25 advocacy group to promote prenatal justice and the right to life for the unborn, the

1 disabled, the infirm, the aged, and all vulnerable peoples through education and
2 the development of innovative educational programs. One such educational
3 program is the Reproductive Choice Campaign ("RCC").
4

5 18. The RCC consists of large, colorful pictures depicting graphic
6 images of first-term aborted fetuses displayed on the sides of box body style
7 trucks. The pictures on the sides of the trucks are accurately captioned as to age,
8 in weeks since fertilization. True and accurate photographs of an RCC truck are
9 attached to this Complaint as Exhibits B, C, and D.
10

11 19. Plaintiffs' pictures are not solicitations or commercial speech; they
12 are political speech. The purpose of this educational program is to expose as
13 many people as possible to the reality of abortion, particularly first-term
14 abortions. The RCC demonstrates to onlookers that abortion is a violent act that
15 results in the killing of innocent human life and is, therefore, contrary to the
16 common good. Plaintiffs express their pro-life message by displaying these
17 pictures in public areas throughout the Los Angeles County and elsewhere.
18
19

20 20. Plaintiffs engage in this educational program on the public streets
21 and public ways adjacent to middle schools and high schools throughout Los
22 Angeles County and elsewhere because there are students at these schools who
23 have either had or are contemplating having an abortion without being informed
24 about the truth or reality of abortion and, in many cases, without informing their
25

1 parents of their plans to have an abortion or seeking their parents' consent prior to
2 obtaining an abortion. In some cases, students are excused from class, taken to an
3 abortion facility, receive an abortion, and return to class without parental
4 notification or consent. CBR believes that students who are old enough to have
5 an abortion are old enough to see one.
6

7 21. On or about March 24, 2003, Plaintiffs were traveling the public
8 streets adjacent to the Dodson Middle School in Los Angeles County, California
9 as part of Plaintiffs' RCC activities. Plaintiff Kulas was driving an RCC truck,
10 which displayed the graphic images of aborted babies. Plaintiff Padberg was
11 driving an escort vehicle, a Ford Crown Victoria sedan. Altogether, two vehicles
12 were involved in Plaintiffs' pro-life speech activity on this day.
13
14

15 22. Plaintiffs commenced their pro-life speech activity on the adjacent
16 public streets of the Dodson Middle School at or about 7:30 a.m. Plaintiffs chose
17 this time because it would ensure the greatest exposure for their pictures.
18

19 23. Plaintiffs were driving their vehicles on the public streets adjacent to
20 the Dodson Middle School, circling the area just outside of the school grounds,
21 for approximately thirty minutes when Defendant Darling arrived in his marked
22 police vehicle. Several minutes later, Defendant Repcik arrived in a second
23 marked police vehicle, turned on his flashing lights, and pulled over the Plaintiffs.
24 Both police vehicles pulled up behind the Plaintiffs' vehicles, which had now
25

1 pulled over to the side of the road. School officials at Dodson Middle School and
2 others had made complaints to LACSD, seeking to prevent Plaintiffs from
3 displaying their graphic pictures.
4

5 24. Defendant Darling approached Plaintiff Kulas, who was sitting in the
6 RCC truck, and demanded that he produce his driver's license and exit the
7 vehicle. Plaintiff Kulas asked Defendant Darling why he had been stopped, and
8 Defendant Darling stated, "You are driving this truck around with graphic images
9 and offensive language and scaring the kids," or words to that effect. Plaintiff
10 Kulas surrendered his driver's license and exited his vehicle as requested.
11

12 25. Defendant Repcik approached Plaintiff Padberg and told him that he
13 could charge him with a "sex crime" because displaying the pictures was "child
14 abuse," or words to that effect. Defendant Repcik demanded that Plaintiff
15 Padberg produce his driver's license and exit the vehicle. Plaintiff Padberg
16 complied with the demands.
17

18 26. Defendants Darling and Repcik conferred for several minutes and
19 then called for their Sergeant. At approximately 8:45 a.m., Defendant Aguilar
20 arrived in a marked police vehicle. Defendants Darling, Repcik, and Aguilar
21 conferred for several minutes. Defendant Despot then arrived on the scene in a
22 marked police vehicle. It was clear to Plaintiffs that Defendants were devising a
23 way to charge Plaintiffs with a violation of the law.
24
25

1 27. Defendant Despot approached Plaintiffs and asked them questions
2 about the escort sedan. Defendant Despot took several photographs of the sedan.
3 Defendant Repcik then entered the sedan without requesting or receiving
4 permission to do so. Defendant Repcik began searching the sedan and eventually
5 turned on the vehicle's lights.
6

7 28. Defendants Repcik and Despot scoured the sedan looking for a
8 violation of the law. They could not find one.
9

10 29. Defendant Despot then entered his police vehicle and departed for
11 the Dodson Middle School, returning several minutes later with Defendant
12 Roberts.
13

14 30. Defendant Despot escorted Defendant Roberts over to Plaintiffs.
15 Defendant Roberts, who was coached by the Defendant deputies, told Plaintiffs
16 that their pictures were disruptive and that they had to leave the area and not
17 return. Defendant Roberts was willingly working with the other Defendants to
18 achieve the objective of preventing Plaintiffs from displaying their graphic
19 pictures on the public streets adjacent to the Dodson Middle School. Defendant
20 Darling advised Plaintiffs of the content of Section 626.8, reading verbatim
21 portions of this penal code. Defendants told Plaintiffs that they have been
22 informed pursuant to Section 626.8, and they must now leave and not return with
23 their graphic pictures.
24
25

1 31. Because of Defendants' credible threat to enforce Section 626.8,
2 which carries penalties of a fine and imprisonment, Plaintiffs departed the area
3 and will not return to continue their pro-life speech activity.
4

5 32. At no time did Plaintiffs come into any school building or upon any
6 of the school grounds of the Dodson Middle School. Plaintiffs' pro-life speech
7 activity was confined to the public streets adjacent to the Dodson Middle School.
8

9 33. The Defendants detained Plaintiffs for more than one and a half
10 hours before releasing them.

11 **STATUTORY FRAMEWORK OF SECTION 626.8**

12 34. Section 626.8 states, in relevant part: "Any person who comes into
13 any school building or upon any school ground, or street, sidewalk, or public way
14 adjacent thereto, without lawful business thereon, and whose presence or acts
15 interfere with the peaceful conduct of the activities of the school or disrupt the
16 school or its pupils or school activities . . . is guilty of a misdemeanor if he or she
17 does any of the following: (1) Remains there after being asked to leave by the
18 chief administrative official of that school or his or her designated representative,
19 or by . . . [a] sheriff or deputy sheriff (2) reenters or comes upon that place
20 within seven days of being asked to leave by a person specified in paragraph (1)."
21
22
23

24 35. "This section shall not be utilized to impinge upon the lawful
25 exercise of constitutionally protected rights of freedom of speech or assembly."

1 36. “(b) Punishment for violation of this section shall be as follows: (1)
2 Upon a first conviction by a fine of not exceeding five hundred dollars (\$500), by
3 imprisonment in the county jail for a period of not more than six months, or by
4 both the fine and imprisonment.”
5

6 **FIRST CLAIM FOR RELIEF**

7 **(Freedom of Speech)**

8 37. Plaintiffs hereby incorporate by reference all above paragraphs.
9

10 38. By reason of the aforementioned acts and omissions, engaged in
11 under color of state law, Defendants have unconstitutionally deprived Plaintiffs of
12 their freedom of speech rights guaranteed under the First Amendment to the
13 United States Constitution as applied to the states and their political subdivisions
14 under the Fourteenth Amendment, and 42 U.S.C. § 1983, in that by enforcing
15 and/or applying Section 626.8 against Plaintiffs’ pro-life speech activity,
16 Defendants have prevented Plaintiffs from expressing their opposition to abortion
17 in a public forum.
18
19

20 39. By reason of the aforementioned acts and omissions, engaged in
21 under the color of state law, Defendants have also unconstitutionally deprived
22 Plaintiffs of their freedom of speech rights guaranteed to them under the First
23 Amendment to the United States Constitution, as applied to the states and their
24 political subdivisions under the Fourteenth Amendment, and 42 U.S.C. § 1983, in
25

1 that Defendants, through their acts, policies, practices, and/or customs, unlawfully
2 and unreasonably detained and searched Plaintiffs because of their pro-life speech
3 activity.
4

5 40. As a direct and proximate result of Defendants' violation of
6 Plaintiffs' rights, Plaintiffs have suffered direct and irreparable injury, and they
7 are entitled to damages.
8

9 **SECOND CLAIM FOR RELIEF**

10 **(Freedom of Speech Conspiracy)**

11 41. Plaintiffs hereby incorporate by reference all above paragraphs.

12 42. By reason of the aforementioned acts and omissions, and policies,
13 practices, and/or customs, engaged in under the color of state law Defendants
14 have conspired to unconstitutionally deprive Plaintiffs of their right to freedom of
15 speech guaranteed under the First Amendment to the United States Constitution
16 as applied to the states and their political subdivisions under the Fourteenth
17 Amendment, and 42 U.S.C. § 1983, in that Defendants agreed to and engaged in
18 overt acts that prevented Plaintiffs from expressing their opposition to abortion in
19 a public forum.
20
21

22 43. As a direct and proximate result of Defendants' violation of
23 Plaintiffs' rights, Plaintiffs have suffered direct and irreparable injury, and they
24 are entitled to damages.
25

1 **THIRD CLAIM FOR RELIEF**

2 **(Unlawful Search and Seizure)**

3 44. Plaintiffs hereby incorporate by reference all above paragraphs.

4
5 45. By reason of the aforementioned acts and omissions, and policies,
6 practices, and/or customs, engaged in under the color of state law, Defendant
7 Repcik unconstitutionally searched Plaintiffs' vehicle and Defendants Aguilar,
8 Despot, Darling, and Repcik unconstitutionally seized Plaintiffs' persons,
9 vehicles, and other property, without a warrant, without probable cause that a
10 crime had been, was being, or would be committed, and without valid consent,
11 and thus deprived Plaintiffs of their rights to be free of unreasonable police
12 searches and seizures, to be free of warrantless searches and seizures, and to be
13 free of searches and seizures without probable cause, which are guaranteed to
14 them under the Fourth Amendment to the United States Constitution, as applied
15 to the states and their political subdivisions under the Fourteenth Amendment,
16 and 42 U.S.C. § 1983.
17
18
19

20 46. As a direct and proximate result of Defendants' violation of
21 Plaintiffs' rights, Plaintiffs have suffered direct and irreparable injury, and they
22 are entitled to damages.
23

24 **WHEREFORE**, Plaintiffs ask this Court:
25

1 A) to enjoin Defendants, their employees, agents, and successors in
2 office from enforcing Section 626.8 as applied against Plaintiffs' pro-life speech
3 activity as described herein;
4

5 B) to enter judgment declaring that the application of Section 626.8 to
6 Plaintiffs' pro-life speech activity as described herein violates Plaintiffs'
7 constitutional rights;
8

9 C) to award Plaintiffs nominal damages against Defendants Aguilar,
10 Despot, Darling, Repcik, and Roberts in their individual capacities for the past
11 loss of Plaintiffs' constitutional rights;
12

13 D) to award Plaintiffs their reasonable attorneys' fees, costs, and
14 expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

15 E) to grant such other and further relief as this Court should find just
16 and proper.
17

18 Respectfully submitted this 11th day of April, 2003.

19 THOMAS MORE LAW CENTER

20 By: Robert J. Muise
21 Robert J. Muise*

22 *Subject to admission *pro hac vice*

23 ASHWORTH, HAYES & MORAN, LLP

24 By: James A. Hayes, Jr.
25 James A. Hayes, Jr., Esq.
Counsel for Plaintiffs

§ 626.8. Disruptive presence at schools; specified sex offenders; offenses; punishment; notification

(a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of the school or disrupt the school or its pupils or school activities, or any specified sex offender who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, unless the person is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief administrative officer of that school, is guilty of a misdemeanor if he or she does any of the following:

(1) Remains there after being asked to leave by the chief administrative official of that school or his or her designated representative, or by a person employed as a member of a security or police department of a school district pursuant to Section 39670 of the Education Code, or a city police officer, or sheriff or deputy sheriff, or a Department of the California Highway Patrol peace officer.

(2) Reenters or comes upon that place within seven days of being asked to leave by a person specified in paragraph (1).

(3) Has otherwise established a continued pattern of unauthorized entry.

This section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

(b) Punishment for violation of this section shall be as follows:

(1) Upon a first conviction by a fine of not exceeding five hundred dollars (\$500), by imprisonment in the county jail for a period of not more than six months, or by both the fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both imprisonment and a fine of not exceeding five hundred dollars (\$500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both imprisonment and a fine of not exceeding five hundred dollars (\$500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(c) As used in this section, the following definitions govern the meaning of the following words and phrases:

(1) "Specified sex offender" means any person required to register pursuant to Section 290, who has been convicted of a violation of Section 220, 261, 266, 267, 272, 288, or 289, or of subdivision (c), (d), or (f) of Section 286, or of subdivision (c), (d), or (f) of Section 288a, or of an attempt to commit any of these offenses.

(2) "Lawful business" means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

(3) "Continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and his or her presence or acts interfered with the peaceful conduct of the activities of the school or disrupted the school or its pupils or school activities, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(4) In the case of a specified sex offender, "continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(5) "School" means any preschool or school having any of grades kindergarten through 12.

(d) When a person is directed to leave pursuant to paragraph (1) of subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the place within seven days he or she will be guilty of a crime.

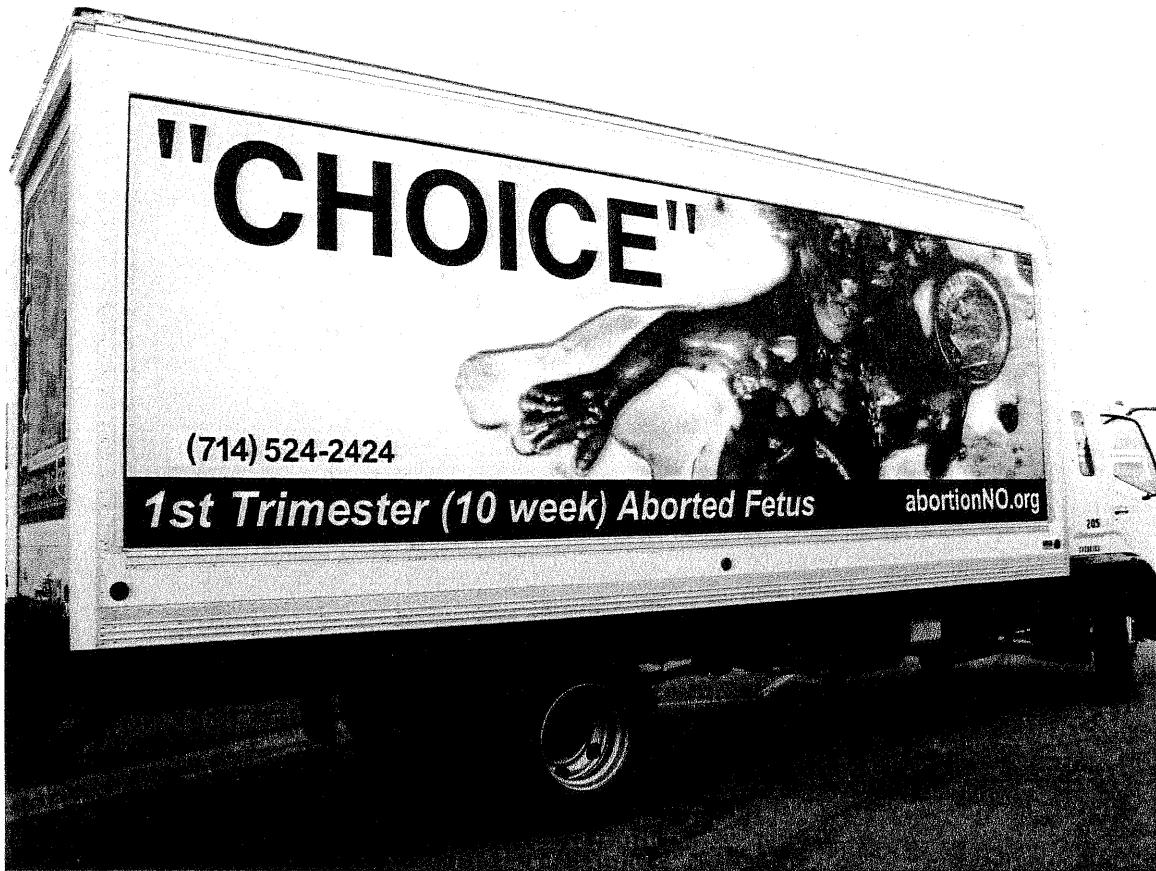


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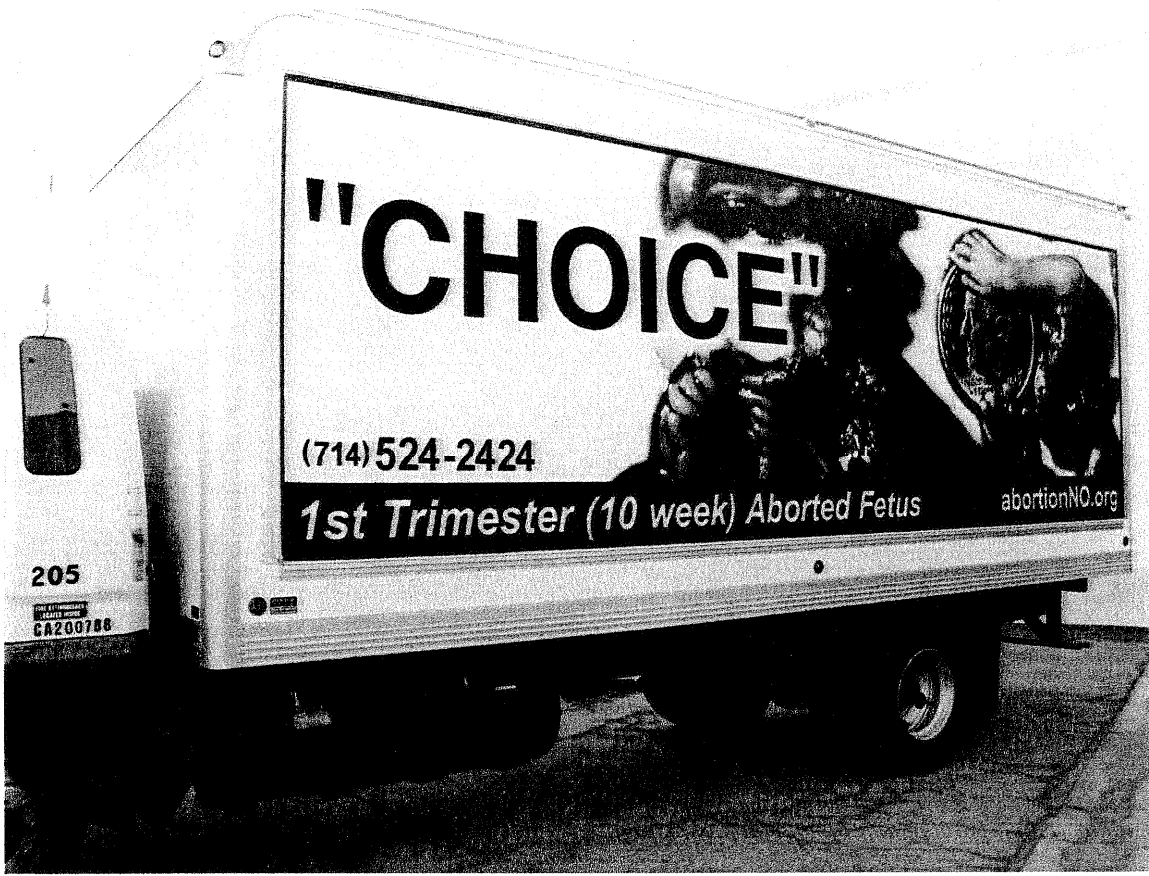


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