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Victory in the Fifth Circuit For Pro-Lifer Falsely Arrested While Standing Against Abortion Giant Planned Parenthood

HOUSTON, TX—Earlier this week, the Fifth Circuit Court of Appeals [held that two Stafford, Texas police officers were “objectively unreasonable”](#) for arresting a man peacefully sharing his pro-life views outside a Planned Parenthood abortion facility in the Houston area. This is an important victory for the pro-life movement, because the Court’s decision makes clear to the abortion industry and law enforcement that pro-lifers have the right to communicate with—and distribute information to—individuals entering and leaving abortion facilities without fear of being arrested based on false or misleading accusations.

In May 2013, Plaintiff Jonathan Davidson took a few hours out of his day, as he has done for many years, to stand on public property outside an abortion facility. He prays for an end to abortion, witnesses to abortion workers and volunteers, and offers immediate life-affirming solutions to anyone who might be seeking to end an unborn child’s life. This particular day, he stood outside of a Planned Parenthood in Stafford, TX, which is located in a commercial strip center facing U.S. Highway 59. Davidson held a sign towards oncoming traffic that read “Pray to End Abortion,” he shared information with people entering or exiting the parking lot, and he offered coupons for free ultrasounds and pregnancy tests. Apparently aggravated by opposition to their abortion business, a Planned Parenthood employee aggressively approached Davidson and told him to leave. Undeterred, Davidson continued to provide a pro-life witness to those passing by on the busy feeder road and to anyone else nearby. The abortion worker then called the police.

In response to a call about a “protester ... flagging down our patients before they come in the clinic,” two Stafford PD officers arrived. After one officer’s lengthy conversation with Planned Parenthood, they approached Davidson aggressively and asked if he was talking to Planned Parenthood’s customers. He answered “yes” and was then informed that, if he continued, he would be taken to jail. Sensing unreasonable hostility from the officers, Davidson attempted to formally introduce himself, giving his name, and explaining that he was also offering coupons for free ultrasounds and free pregnancy tests.

At that point, despite Davidson having never committed a crime, and the officers having no probable cause to suspect that a crime had been committed, the officers abruptly shifted to requesting identification. The officers asked Davidson for his name, to which he repeatedly responded “Jonathan.” After years of activity in the pro-life movement, Davidson was well

aware of the nefarious tactics used by abortion workers to attempt to dissuade pro-lifers from continuing their life-affirming activities, which often includes providing false allegations to police officers. Knowing that the law did not require him to provide any of his personal information to police officers if he had not committed a crime or been arrested, and not wanting any of this information to be available to Planned Parenthood, he chose not to provide any further personal information. In response, the officers immediately arrested him for “failure to identify” under Texas Penal Code § 38.02.

After being strip-searched, Davidson spent approximately eight hours in jail. After being released on bond, he was then held in limbo waiting to see if Stafford planned to prosecute him. Following months of silence, he retained an attorney who wrote to the City to explain that Davidson had clearly never committed a crime. He also demanded confirmation that Davidson could return to the location to engage in his free speech activities without fear of another false arrest.

Stafford’s attorney confirmed that the City would not prosecute him for the May 2013 arrest, but offered nothing to assure Davidson that he was safe from arrest if he returned to engage in the same legal activities at the same Planned Parenthood. In order to ensure that his constitutional rights would be protected, Davidson filed suit against the arresting officers, the Chief of Police, and the City.

After suit was filed, the officers’ and City’s rationale for the arrest suddenly changed. Although it was never mentioned in the arrest report, the Defendants now claimed that the arrest was justified because they had reason to believe that Davidson had “obstructed” traffic outside the clinic. This was an absurd claim based only on vague allegations made by the abortion worker that Davidson had “delayed” and “inconvenienced” Planned Parenthood’s customers. There was never any allegation that Davidson had actually impeded a single person or vehicle.

“The claim that Davidson was obstructing traffic was nothing more than a litigation tactic by the Defendants to try to justify the arrest,” said Davidson’s attorney Jerad Najvar. “But I’m glad they raised it here, because that exact allegation of obstruction is used frequently by abortion workers to attempt to get rid of pro-lifers outside their facilities. The Fifth Circuit’s decision, however, powerfully reinforces the law that inviting fellow citizens to have a conversation, and passing out cards or leaflets in public, is not a crime.”

Furthermore, the Court also made clear this week that a person cannot be arrested for failing to provide identification to the police unless he has already been “lawfully arrested” for a separate crime. Given that Davidson had not committed a crime and was not under arrest at the time of the questioning, he could not be arrested for “Failure to ID” under Texas Penal Code § 38.02 standing alone. This was a false arrest.

The Court, therefore, held that trial could proceed against the individual officers. With regard to Stafford, while the Court held there was not sufficient evidence to hold the City itself liable *for the May 2013 arrest*, the Court also held that Davidson raised a legitimate First Amendment claim against the City of Stafford based on Stafford’s demonstrated intent to continue applying the statutes in an unconstitutional manner, which has prevented Davidson from returning to the same facility since the arrest.

The case is *Davidson v. City of Stafford, et al.*, No. 16-20217 (5th Cir.). If no appeal is filed, the parties will return to the trial court in Houston for further proceedings.

A link to the Fifth Circuit's opinion is [HERE](#)

*Jerad Najvar practices political and constitutional law and is founder of the [Najvar Law Firm](#) in Houston. He served as co-counsel to Shaun McCutcheon in *McCutcheon v. FEC*, in which the U.S. Supreme Court struck down the federal aggregate contribution limits, and lead counsel in *Catholic Leadership Coalition v. Reisman*, in which the Fifth Circuit Court of Appeals struck down a waiting period on Texas PACs.*

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