

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

BRYAN CONWELL,

Plaintiff,

V.

CITY OF BENSON, MINNESOTA,

Defendant.

Case No. 26-cv-03367-DWF-SGE

FIRST AMENDED COMPLAINT

INTRODUCTION

1. Bryan Conwell stood at a public park at a community event that was free and open to the public, held a constitutionally protected sign, and spoke only to people who approached him. For that, the City of Benson (the “City”) cited him for the crime of trespass. In doing so, the City violated the First and Fourteenth Amendments to the United States Constitution.

2. Mr. Conwell is an open-air preacher and abortion abolitionist who believes the Christian Gospel alone can change the hearts of men and is the power of God for salvation. His method of evangelism is among the oldest and most peaceable known to a free society. He stands in a public place, holds a sign bearing his convictions, and waits, speaking only with those who approach him. He blocks no one, threatens no one, and sells nothing. He asks only to be left alone to speak.

3. But the City would not leave him alone. When Mr. Conwell attended the Benson Farmers' Market, which is held at the City's Railroad Park, the Market's organizer

demanded that he register as a vendor and pay a vendor fee pursuant to City Council's grant to the Farmers' Market of the "exclusive use" of the property. When Mr. Conwell declined, explaining that he was not selling anything and would not pay for the right to speak, the City sent its police, who gave Mr. Conwell a citation for violating Minnesota's trespass law. When Mr. Conwell returned to the Market the next week, the police cited him again.

4. Separately, when Mr. Conwell has sought to use a sound amplifier in connection with his First Amendment expression, which he seeks to do at places other than the Farmers' Market, City officials have told him he needs a permit. But the City has denied him a permit that would authorize him to use his sound amplifier—telling him that there is no permitting process in place—even though there is such a process and the City allows others to use sound amplification in connection with their expression.

5. This case is about the price a local government may put on the freedom of speech. The right to stand peacefully on public property and speak one's conscience does not depend on registering and paying a fee, nor may the government confer unfettered discretion on individuals to decide what speech comes in and what speech stays out.

6. Mr. Conwell brings this action under 42 U.S.C. § 1983 to vindicate his rights, and the rights of all who would peacefully speak in the City.

JURISDICTION AND VENUE

7. This action arises under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and 28 U.S.C. §§ 2201 and 2202.

8. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1)–(2) because

the City resides in this district and a substantial part of the events giving rise to Mr. Conwell's claims have occurred, are occurring, and will occur within this judicial district.

THE PARTIES

10. Plaintiff Bryan Conwell is a resident of Swift County, Minnesota. Mr. Conwell, a veteran of the United States Marine Corps, is the Founder of Equal Protection Minnesota, a non-profit ministry dedicated to the Gospel of Jesus Christ and the abolition of abortion in Minnesota.

11. Defendant City of Benson, Minnesota is a municipal corporation organized under the laws of the State of Minnesota and located in Swift County, Minnesota.

12. The City owns and controls Railroad Park, the real property on which the Benson Farmers' Market takes place. The City authorizes the Farmers' Market to use Railroad Park on certain terms and conditions set by City policy and custom as set forth in more detail herein.

13. The City employs the officers of the Benson Police Department, who enforce state law, the Benson Code of Ordinances, and City policies and customs. At all times alleged herein, Benson Police officers were on duty, in uniform, acting pursuant to the power granted them by state law and the Benson Code of Ordinances, and engaging in state action under color of state law.

14. The Benson City Council is a policymaker for the City. *See* Benson Code of Ordinance § 2.01. At all times alleged herein, City Council was acting pursuant to the power endowed upon it by state law and the Benson Code of Ordinances and engaging in state action under color of state law.

FACTUAL ALLEGATIONS

Mr. Conwell's Protected First Amendment activity

15. Mr. Conwell is a Christian. He holds the religious belief that he is called to publicly proclaim his faith in Jesus Christ and to advocate for the protection of preborn human life.

16. Mr. Conwell is also an abortion abolitionist. Abolitionism, as Mr. Conwell understands and practices it, holds as a matter of religious conviction that human life begins at conception and that the preborn are entitled to the same legal protection as any other person. Abolitionists are distinct from the mainstream pro-life movement in that they call for the immediate and complete end of abortion. Mr. Conwell's advocacy reflects this conviction.

17. Mr. Conwell's religious exercise and expressive activity include open-air preaching, displaying signs bearing religious and abolitionist messages, distributing literature, and speaking with members of the public in public places.

18. Mr. Conwell conducts this activity through, and as part of, a religious ministry known as Equal Protection Minnesota, which is dedicated to preaching the Christian Gospel and to advocacy for the legal protection of preborn human life.

19. The messages Mr. Conwell communicates, including his opposition to abortion and his religious message, are expressive activity protected by the First Amendment to the United States Constitution.

20. Mr. Conwell engages in his expressive activity peacefully and without interfering with the rights of others.

21. Broadly speaking, Mr. Conwell typically engages in two types of expressive activity. First, Mr. Conwell sometimes chooses to express his message by standing in a fixed location while holding a sign and waiting for members of the public to approach him. In these discussions, Mr. Conwell maintains an even tone of voice and engages respectfully with members of the public.

22. Second, Mr. Conwell sometimes uses an amplification device to preach his message. When using an amplifier, Mr. Conwell maintains an even tone of voice and speaks passionately but respectfully. He does not use the amplifier to drown out other amplification or to harass or disturb anyone. Mr. Conwell's purpose in using an amplification device is to allow his voice to be heard over ambient background noise and to reach a larger audience.

23. Mr. Conwell does not follow, harass, or obstruct anyone, including, but not limited to, persons who do not wish to speak with him, nor does he use threatening or abusive language or engage in disorderly, obstructive, or unlawful conduct.

24. Mr. Conwell's purpose in engaging in his expressive activity is to communicate his religious and moral convictions to members of the public and to persuade others peacefully.

25. Mr. Conwell's purpose is not simply to display a sign where it might be seen from a distance. He wants to speak with people who choose to approach him, ask him questions, or otherwise indicate receptivity to communicating with him. Those personal conversations are an important part of how Mr. Conwell expresses and communicates his views. When someone approaches him, he can listen to that person's questions or concerns,

explain his position in greater depth, and respond to what the person says. Mr. Conwell has had conversations of that kind that caused people to reconsider their views, agree to think more carefully about the issue, or continue discussions with him. That kind of interaction cannot be replicated by holding a sign or attempting to communicate from a distant location.

26. Mr. Conwell regularly engages in expressive activity in various Minnesota cities, including Benson, Willmar, and Alexandria. His goal is to reach more people with his message.

27. Mr. Conwell also regularly records his expressive activity on a video camera to gather newsworthy footage that he posts on social media.

28. While Mr. Conwell regularly posts to social media, social media and other forms of speech are not as effective in reaching his intended audience as in-person speaking as set forth above.

Benson, the Benson Farmers' Market and City Council's "exclusive use" authorization to the Market to use Railroad Park

29. The City was platted in 1870 when the St. Paul and Pacific Railroad was extended to that point. As the end of the tracks, the City became a lively trading center for the surrounding community.

30. The railroad is still in operation today, with its three tracks primarily serving the surrounding farming community. Trains run through the City approximately three to six times a day, depending on the season.

31. The City does not have a traditional "town square" or public plaza. Instead,

consistent with its origins as a railroad community, it has a linear business district centered along Atlantic and Pacific Avenues, which run parallel to the railroad between them. *See* Exhibit 1. The area zoned as the “Central Business District” contains primarily private businesses and government buildings. *Id.* The City also has large residential districts rimming the City. *Id.*

32. While the City is small—approximately 3,500 people live there—it is noisy. In downtown, there are regular sounds that can be heard from over fifty feet away, including, but not limited to, sounds associated with passing trains (like clanking steel, crossing bells, and the screech of brakes and shifting gears), the movement of heavy machinery and equipment from surrounding farms, emergency vehicles, other vehicular traffic, children playing at Roosevelt Park, snowplows, street repairs and other construction, restaurants and bars with outdoor seating (including those with loudspeakers), and ordinary conversations of individuals outside, whether face-to-face or over cellphone speakers.

33. Because the City does not have a traditional town square, community gatherings take place at designated public spaces owned by the City.

34. The Benson Farmers’ Market is a community event where local farmers, gardeners, and other food producers gather to sell their produce. The Farmers’ Market boosts the local economy through direct sales, provides fresh foods to members of the community, and allows members of the community to socialize, listen to live music, and build local connections. Vendors at the Market typically sell their wares from the backs of their cars or trucks and / or open tents erected for that purpose.

35. There is no fee to enter the Farmers’ Market. Members of the public may freely

enter, walk through, and remain at the Market while it is occurring. The Benson Code of Ordinances does not contain any provisions specifically regulating activity—including, but not limited to, First Amendment expression—at the Farmers’ Market.

36. The Farmers’ Market is an unincorporated association. Cherie Stielow is the Farmers’ Market’s organizer. Ms. Stielow—who has been a member of City Council since April 2025—is also a vendor at the Market.

37. For many years, the Farmers’ Market has operated on a recurring basis during summer/early fall. In 2026, the Market takes place from 3:30 p.m. to 5:30 p.m. every Thursday from July to October. The Market’s schedule for 2027 and beyond has not yet been publicly released.

38. The Farmers’ Market is an important community event. There are only a small number of public events held in the City every year due to its small size and cold weather. The City has considered erecting a permanent pavilion for the Farmers’ Market, *see* Exhibit 2 at 2, but to date, the City has not done so.

39. Instead, the City has granted the Farmers’ Market authority to hold the event at Railroad Park, a City-owned park in the Central Business District of downtown Benson. Railroad Park is designated as a public “park” in Benson Code of Ordinance § 131.06. *See* Exhibit 3. Other official City documents also refer to Railroad Park as a “park.” *See, e.g.*, Exhibit 4.

40. Railroad Park is bounded by Atlantic Avenue to the north, Pacific Avenue to the south, 12th Street to the west, and 14th Street to the east. The Park is identified in Swift County records as Parcel Identification No. 23-0246-100, bearing the legal description

“Railroad Parks between 12th & 14th Street.” It is classified in the County’s records as exempt municipal property owned by the City. *See* Exhibit 5.

41. An aerial image of Railroad Park, taken from Swift County’s GIS map, is set forth below:



Railroad Park is comprised of the areas within the blue lines. It includes grassy areas, trees, ordinary public sidewalks, and paved areas.

42. Railroad Park is generally open to the public. There are no fences or other physical barriers around the Park, nor are there any signs forbidding entrance into the Park. Individuals can and do freely walk on the Park’s sidewalks, gather in the Park’s grassy areas, and park their cars and gather in the Park’s paved area.

43. The City regularly uses Railroad Park—including, but not limited to, the paved area—as a place for people to gather, socialize, and engage in public assemblies at events that are free and open to the public.

44. For example, the City recently used Railroad Park as the launching point for the Community Walk and Bike Audit, a community event designed to help the City shape its new transportation plan. *See* Exhibit 4. The City also regularly uses Railroad Park for events associated with its annual Kid Day event, a days-long festival dedicated to celebrating children. *See* Exhibit 6.

45. The City also regularly allows private individuals and organizations to use Railroad Park—including, but not limited to, the paved area—as a gathering place.

46. For example, a private organization uses Railroad Park to hold an annual event called the “Stuff the Ambulance” Toy Drive. At this event, the community gathers to fill an ambulance with toys and monetary donations to support local children in need during the Christmas season. Since at least 2020, groups of teenagers have regularly used Railroad Park on weekend nights during the summer months as a place to gather, meet, and socialize with one another. And a private group of individuals with classic “muscle cars” has also used Railroad Park as a gathering place. These individuals park their cars in parking spaces and gather in a large group in the paved area. The individuals talk, mingle, and otherwise socialize with one another outside their vehicles.

47. For years, the City has also allowed the Farmers’ Market to use Railroad Park. The Market takes place in the northeast quadrant of the Park—*i.e.*, south of the sidewalk along Atlantic Avenue, north of the railroad, and between 12th and 13th Streets. Vendors generally erect their tents and park their cars on the western side of paved area in the northeast quadrant of the Park, while patrons generally park their cars on the eastern side of that paved area.

48. Historically, the Market’s organizer has required vendors to (1) register as a vendor by completing an Operator Certificate of Compliance Form published by the Minnesota Department of Revenue and (2) pay a fee to cover costs associated with promoting and conducting the Market for the benefit of the vendors. According to Ms. Stielow, the Market requires vendors to register to ensure they pay sales taxes, thus protecting the Market from liability to the state. The vendor fee is currently \$20. The current version of the Operator Certificate of Compliance Form is attached as Exhibit 7.

49. Prior to September 5, 2023, the City’s authorization for the Farmers’ Market to use Railroad Park was informal—that is, the authorization was not put in writing.

50. As alleged in more detail below, on July 27 and August 10, 2023, Mr. Conwell attempted to engage in protected First Amendment activity at the Farmers’ Market. The Benson Police—including, but not limited to, Benson Police Chief Ian Hodge—came to the Market to address the situation.

51. In response to Mr. Conwell’s First Amendment activities at the Market—and to stop Mr. Conwell from engaging in those activities—Chief Hodge appeared, on behalf of the Farmers’ Market, at a City Council meeting on September 5, 2023. Exhibit 8. Chief Hodge informed City Council that there had been a “conflict of use” of Railroad Park during the Farmers’ Market—*i.e.*, Mr. Conwell’s First Amendment activities—and he requested, on behalf of the Market, that City Council formally give the Market exclusive use of Railroad Park consistent with prior informal practice. *Id.* at 24:02–09. Chief Hodge specifically explained to City Council that this formal authorization would mean that attendance at the Market would be limited to “the patrons that . . . shop there” and the

vendors “that pay money”—*i.e.*, the vendor fee. *Id.* at 24:09–17. City Council members clarified with Chief Hodge that, by granting his request, the City would be “giving [the police department] the authority here . . . to tell [non-participants] that, yep, you can’t be here. This is designated for farmer’s market participants only.” *Id.* at 24:25–25:36

52. City Council unanimously granted Chief Hodge’s request. *Id.* at 25:40–25:45.

53. The minutes from that City Council meeting state as follows:

Chief Hodge came forward with a request from the Farmer’s Market group to have exclusive use of the parking lot on the south side of the 1200 Block of Atlantic Avenue. Currently they use a portion of this lot and wish to use the entire lot on the Farmer’s Market days which is on Thursday afternoon for the summer and into early fall. After discussion, it was moved by Schreck, seconded by Carruth and carried unanimously to approve the request sidewalk to railroad track at the parking lot aforementioned during Farmer’s Market days 3-6 p.m.

Exhibit 9.

54. This “exclusive use” authorization from City Council is the only basis for the Farmers’ Market’s purported right to use Railroad Park and right to exclude others from the Market. There is no permit, license, lease, deed, written agreement, or other documentation defining the existence, scope, terms, boundaries, or conditions of the Farmers’ Market’s right to use Railroad Park. The City does not require the Market to pay for the use of Railroad Park.

55. City Council’s “exclusive use” authorization formally granted the Farmers’ Market the right to use Railroad Park and the authority to exclude anyone who was not either a patron or a registered, fee-paying vendor—including persons engaged in expression protected by the First Amendment, like Mr. Conwell—consistent with the

Market’s historical practice.

56. City Council’s grant of the “exclusive use” authorization to the Farmers’ Market was a deliberate choice of a guiding principle or procedure made by City Council.

57. In this litigation, the City has acknowledged that it is aware that the Farmers’ Market’s longstanding practice—both before and after City Council’s formal “exclusive use” authorization—is to exclude anyone from the Market who is not either a patron or a registered, fee-paying vendor. Defs.’ Opp’n to Pl.’s Mot. for Temp. Restr. Order (Dkt. 21) at 4 (noting that “[s]ince 2021, the Benson Farmers’ Market organizers have required anyone that wanted to stage at the market to fill out an Operator Certificate of Compliance Form and pay a required fee for the season”).

The Sound Ordinance, the Special Use Permit Provision, and their Restrictions on Amplified Expression

58. The City regulates sound within the City through Benson Code of Ordinance § 93.18 (the “Sound Ordinance”). *See* Exhibit 10.

59. The Sound Ordinance applies to all sounds “produced on public or private property and whether indoors or outdoors or in a motor vehicle.” § 93.18(D).

60. The Sound Ordinance does not have differing restrictions for business and residential districts. Instead, the Sound Ordinance’s provisions are the same regardless of the zone in which the sound in question occurs.

61. The Sound Ordinance provides that “[n]o person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of a reasonable person or

reasonable persons, or precludes their enjoyment of property, or adversely affects their property's value." § 93.18.

62. The Sound Ordinance enumerates specific "[u]nlawful acts" declared to be "loud, disturbing, and unnecessary noises" and thus "public nuisances" in violation of the Sound Ordinance. § 93.18(B).

63. Among the Sound Ordinance's enumerated "[u]nlawful acts" are "[t]he play, use or operation of any radio, stereo, tape player, disc player, musical instrument, phonograph, loud speaker, sound amplifier or any other machine or device used for the production or amplification of sound in such a manner as to be audible at a distance of 50 feet from said machine or device." § 93.18(B)(2).

64. The Sound Ordinance exempts certain amplified sound from its prohibitions. Among other things, it provides that the prohibition "shall not apply to sound produced by . . . [a]mplifying equipment used in connection with an activity sponsored by Benson Public Schools or by the city or for which a permit has been granted by the city provided that such use is consistent with the provisions of such permit." § 93.18(C)(1).

65. Under the Sound Ordinance, the City may excuse a speaker from its prohibitions on amplifying equipment if the City decides to "sponsor" the speaker's activity.

66. The Sound Ordinance does not set forth a process for applying for sponsorship by the City or Benson Public Schools.

67. While the Sound Ordinance itself also does not specify a process for applying for a permit that would authorize the use of amplified sounds, a separate provision of the Benson Code of Ordinances does. Specifically, § 92.03 (the "Special Use Permit

Provision”) contemplates that individuals or groups may apply for a “special use permit” from the City that authorizes First Amendment activity. *See* Exhibit 11. As relevant, the Special Use Permit Provision provides:

a person or organization may use all or a portion of a street, lane, alley, sidewalk, or other public place in the city for temporary use for special events, but only after such person or organization first obtains a written permit allowing such use from the City Manager. The City Manager shall have the authority to grant or deny such permit and if granted he or she shall have the authority to determine the terms, conditions, and duration of such special use permit. The City Council may revoke such permit at any time if such person receiving the permit violates the terms and conditions thereof. The person receiving such permit shall be required to pay a fee as may be adopted from time to time by Council resolution or ordinance to the city upon receipt thereof.

68. According to the City Council Minutes from the meeting on June 5, 2023, the special use permit application fee is \$5. *See* Exhibit 12.

69. The Special Use Permit Provision does not contain a numerical threshold of attendees necessary to constitute a special use event.

70. The City has admitted that Mr. Conwell is not *required* to obtain a special use permit to engage in his typical First Amendment expression—*i.e.*, standing alone and speaking and / or holding a sign in a public place—without a sound amplifier. *See* Exhibit 13 at 2. Under the terms of the Special Use Permit Provision, however, such a permit would *allow* him to use a sound amplifier in connection with his First Amendment expression.

71. Neither the Sound Ordinance nor the Special Use Permit Provision specifies any of the following: a process for applying for sponsorship by the City or Benson Public Schools; a deadline within which the City must adjudicate a request for sponsorship by the City or Benson Public Schools or a special use permit; any standards, criteria, limits, or

considerations governing whether the City must grant a request for sponsorship by the City or Benson Public Schools or a special use permit; any standards, criteria, limits, or considerations governing the City's determinations regarding the terms, conditions, and duration of sponsorship by the City or Benson Public Schools or special use permits; or any process allowing review of a decision to deny a request for sponsorship by the City or Benson Public Schools or a special use permit.

72. The Benson Code of Ordinances provides a process for obtaining other types of permits, but, other than the Special Use Permit Provision, none pertain to First Amendment activity. No other provision of the Benson Code of Ordinances regulates the use of sound amplification.

73. Violation of the Sound Ordinance is a misdemeanor, punishable by up to 90 days imprisonment, a fine of up to \$1,000, or both. §§ 93.10, 10.99(A); *see also* Minn. Stat. § 609.02(3).

74. The City regularly sponsors activities, grants special use permits, or otherwise authorizes the use of sound amplification that can be heard at over fifty feet in the City, including, but not limited to, various community events in the City (including the Kid Day Carnival and Rib Fest), various parades in the City (including the Kid Day Parade and the Pioneerland Band Festival Parade), various music concerts in the City (including Music in the Park), sporting events at Benson High School, and the Farmers' Market.

Mr. Conwell Seeks to Engage in First Amendment activity at the Farmers' Market in 2023 and 2026July 27, 2023

75. On or about July 27, 2023, Mr. Conwell went to the Farmers' Market to engage in First Amendment activity. He stood in the grassy area that runs along the east side of Railroad Park and used a sound amplifier to express his views.

76. Approximately thirty minutes to an hour later, Chief Hodge approached Mr. Conwell and told him he was not allowed to use his amplifier because it was audible at fifty feet. Chief Hodge also told Mr. Conwell that if he wanted to use his amplifier, he would need a permit.

77. Mr. Conwell stopped using his amplifier. In fact, he stopped speaking entirely and left the Market because, without amplification, his voice could no longer be heard by Market goers.

August 10, 2023

78. On or about August 10, 2023, Mr. Conwell went to the Farmers' Market to engage in First Amendment activity. Mr. Conwell walked the perimeter of the Farmers' Market expressing his views through his amplifier. Prior to doing so, Mr. Conwell had turned the amplifier down in an effort to stay within the Sound Ordinance's fifty-foot prohibition.

79. Soon after Mr. Conwell began speaking, Ms. Stielow and another vendor approached him while he was standing in a grassy area at the west side of the northeastern quadrant of Railroad Park.

80. Ms. Stielow identified herself as the Farmers' Market's organizer, handed Mr. Conwell an Operator Certificate of Compliance Form, and informed him that he was required to register and pay the vendor fee to express his message and display his sign. Mr. Conwell explained that he was not selling anything and was only there to preach the Christian Gospel and convey his message regarding abortion. Ms. Stielow nevertheless insisted that registration and payment were required.

81. After Mr. Conwell made clear he would not be registering and paying the fee, Ms. Stielow and the other vendor told Mr. Conwell to leave the Market. Mr. Conwell relocated to the public sidewalk between Railroad Park and Atlantic Avenue.

82. Approximately thirty minutes later, Benson Police Officer Noah Marrs approached Mr. Conwell. Officer Marrs told Mr. Conwell that he could not use his amplifier because it could be heard from over fifty feet away and he was "in violation" of the Sound Ordinance.

83. Officer Marrs told Mr. Conwell that he could communicate his message by yelling—even though, by yelling, his voice could be heard at over fifty feet away—but he could not use his amplifier. Mr. Conwell explained that he preferred the amplifier because he felt it inappropriate to yell while trying to preach the Christian Gospel. Officer Marrs expressed understanding but stated, "All I can do is enforce what the City ordinance is."

84. Officer Marrs stated he would not ticket Mr. Conwell, but he directed Mr. Conwell to stop using his amplifier.

85. Mr. Conwell stopped using his amplifier but continued speaking.

86. A video of Mr. Conwell's interaction with Officer Marrs is attached herein as

Exhibit 14.

September 7, 2023

87. On September 7, 2023—less than two days after City Council formally granted the Farmers’ Market “exclusive use” of Railroad Park consistent with the Market’s historical practice—Mr. Conwell returned to the Market to engage in First Amendment activity without the use of his amplifier.

88. Because Mr. Conwell wanted to speak at the Market, he registered and paid the \$20 vendor fee. At the time, Mr. Conwell was unaware of what his rights were and was simply trying to ensure that he could convey his message to Market goers.

89. Because he registered and paid the vendor fee, Mr. Conwell was allowed to speak at the Farmers’ Market, which he did in September and October of 2023. On those dates, he stood inside a tent located on the paved area at Railroad Park and expressed his religious and moral views to Market goers.

2024–2025

90. Because of the difficulties he faced attempting to speak in the City in 2023—as set forth above and below—Mr. Conwell devoted his efforts to speaking in Alexandria in 2024 and Willmar in 2025.

91. In 2026, Mr. Conwell returned to the City to preach the Christian Gospel and his abolitionist message.

July 9, 2026

92. On July 9, 2026, Mr. Conwell went to the Farmers’ Market to engage in First Amendment activity without amplification. He arrived at approximately 3:30 p.m.

93. Mr. Conwell positioned himself in the parking area within Railroad Park, near where members of the public entered the area in which vendors were set up. He stood in a fixed location and held a sign protesting abortion.

94. In the image below, taken from Swift County's GIS map, *see* Paragraph 41, *supra*, vendor stalls were located approximately in the areas highlighted in green. Mr. Conwell stood approximately at the red "X":



95. Mr. Conwell's sign stated: "Rape and abortion are wrong for the same reason. They are both violent acts of aggression upon other people's bodies."

96. The following is a photograph that accurately reflects where Mr. Conwell stood and what his sign looked like:



97. Mr. Conwell was not selling any goods or services. He was present to communicate his religious and moral message.

98. While Mr. Conwell was standing within the lines of a parking space, there were no vendors or patrons seeking to use that space.

99. Mr. Conwell stood peacefully, did not obstruct the entrance, vendor stalls, or the flow of pedestrians, and did not approach or speak to any person who did not approach him first. He recorded the event on a cell-phone camera and a nearby camera situated on a tripod.¹

100. During the event, a musician associated with the Farmers' Market was singing and playing guitar through an amplification device that could be heard at over fifty feet.

101. Soon after Mr. Conwell arrived at the Farmers' Market, Ms. Stielow approached him. Ms. Stielow handed Mr. Conwell an Operator Certificate of Compliance

¹ Mr. Conwell's body-worn camera malfunctioned and thus did not record any footage on July 9, 2026.

Form and told him that he was required to register and pay the \$20 vendor fee. According to Ms. Stielow, the Farmers' Market had "exclusive use" of the area. The following is a photograph that accurately shows this interaction:



102. Mr. Conwell declined to register and pay the fee. He explained that he was not selling anything and would not pay a fee to hold a sign and speak with members of the public.

103. At no time was Mr. Conwell aggressive or threatening towards Ms. Stielow or anyone else.

104. Ms. Stielow's interactions with Mr. Conwell were captured on video with limited audio. That video is attached as Exhibit 15.²

105. Ms. Stielow returned to her vendor booth and called the police because Mr. Conwell was refusing to register and pay the vendor fee.

106. Approximately ten minutes later, Chief Hodge and Officer B. DeHaan

² Mr. Conwell has blurred the background of Exhibit 15—along with several other video exhibits—to protect the privacy of individuals walking in the background. *See also* Exhibits 17, 18, 21, 22, 23 and 24. If the Court would like to see copies of the original videos, Mr. Conwell will make them available.

arrived at the scene. The officers told Mr. Conwell that they knew he was speaking and not selling anything. Nevertheless, they ordered him to leave the Farmers' Market because the Market had the exclusive use of Railroad Park and because he was refusing to register and pay the vendor fee.

107. Mr. Conwell said that he would not leave, and Officer DeHaan issued him a citation under Minn. Stat. § 609.605(1)(b)(3), Citation No. 76 02 2026000161, identifying the offense as "Trespass – refuse to leave." *See* Exhibit 16.

108. At no time did Ms. Stielow, other vendors, Chief Hodge, Officer DeHaan, or anyone else suggest that Mr. Conwell's presence at the Market—as he stood alone, unamplified, stationary, and nonobstructive—disrupted the Market in any way, nor did it.

109. Patrons walked through the Market wearing shirts, hats, and other clothing displaying the names, logos, and slogans of businesses and various other messages, many of which were secular in nature. Mr. Conwell did not see Ms. Stielow, another vendor, or any Benson police officer require any other person to register or pay the vendor fee to remain at the Market.

110. Mr. Conwell stayed at the Farmers' Market until approximately 5:00 p.m.

111. Additional videos partially capturing the events of that day are attached as Exhibit 17 and Exhibit 18.

112. Mr. Conwell's citation for misdemeanor trespass is currently pending and has been assigned Case No. 76-CR-26-286. His arraignment is scheduled for October 28, 2026. Trespass is punishable by a maximum of 90 days imprisonment, a fine of up to \$1,000, or both. *See* Minn. Stat. § 609.02(3).

July 16, 2026

113. On July 16, 2026, Mr. Conwell returned to the Farmers' Market to engage in First Amendment activity without amplification. He brought a sign with him that said "Abolish Abortion to the Glory of God" on one side and "Abortion is Murder, Forgiveness for Murder Can be Found in Jesus Christ" on the other side.

114. When Mr. Conwell arrived, a red Chevrolet HHR was parked at the exact spot where he had stood just the week prior. The vehicle was not parked like the other vendors' cars with their rear ends facing the middle of the lot and their trunks open to display goods for sale. Instead, the HHR was parked horizontally across three spots.

115. The following photograph accurately shows how the HHR was parked when Mr. Conwell arrived:



116. Mr. Conwell began setting up his tripod for his camera just inside the cone at the end of the parking space line in front of the HHR. He also used a body-worn camera.

117. The following photographs accurately show where Mr. Conwell set up his tripod and where he attempted to stand:



118. Almost immediately, a vendor nearby (the vendor in the bright green shirt in the photograph above) asked Mr. Conwell if he had paid the \$20 vendor fee. Mr. Conwell told him he did not need to pay to speak at the Market. The vendor insisted the Market could charge Mr. Conwell \$20 and that, if Mr. Conwell remained without paying the fee, he would call the police.

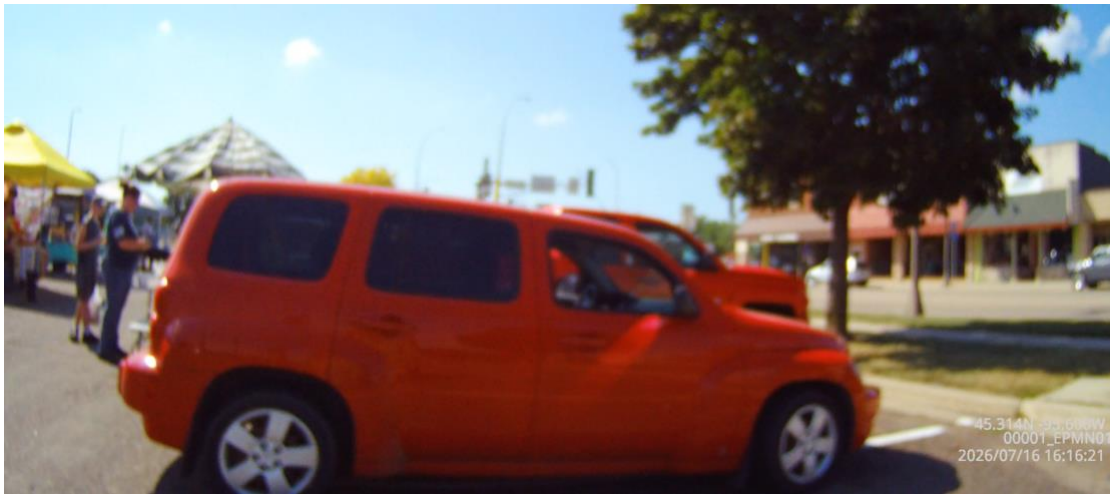
119. Around the same time, a woman got into the HHR and began to move it, at which time Mr. Conwell stepped away to give her space to maneuver. The woman began re-parking her car so that the car's trunk faced out towards the parking lot and took up two spaces next to the last vendor. In other words, the car was re-parked to occupy the space where Mr. Conwell had been standing moments earlier.

120. Ms. Stielow directed the HHR into its new position. This photograph accurately shows Ms. Stielow directing the driver of the HHR into its new position:



121. Ms. Stielow directed the HHR until it was so far back in the parking spot that it was sticking out into the public walkway. The HHR's trunk remained closed, and it was not used to sell food or goods. Instead, Ms. Stielow's purpose in directing the HHR to park where it did was to block Market goers from seeing Mr. Conwell.

122. The following photograph accurately shows how the HHR was reparked:



123. Because the spot where Mr. Conwell had intended to stand was no longer available, he stood near the trunk of the HHR, outside of the lines of any parking space, while also remaining out of the main walkway of the Market so pedestrians were not obstructed.

124. The following photograph accurately shows where Mr. Conwell stood after the HHR had been reparked:



125. As Ms. Stielow was directing the HHR to repark, she informed Mr. Conwell that the Farmers' Market had the "exclusive use" of Railroad Park.

126. After she finished directing the HHR to repark, Ms. Stielow went to speak with the vendor who objected to Mr. Conwell's presence, after which the vendor said he would be calling the police.

127. At no time was Mr. Conwell aggressive or threatening towards Ms. Stielow, the vendor, or anyone else.

128. A video of this exchange between Mr. Conwell, Ms. Stielow, and the objecting vendor is attached herein as Exhibit 19.³

129. Approximately fifteen minutes later, Officer DeHaan arrived. After confirming that Mr. Conwell was refusing to pay the vendor fee, Officer DeHaan told Mr. Conwell, "I'm going to issue you another citation, and we'll just do the same thing as before. The more you come back the more citations you're going to get."

³ Portions of Exhibit 19 have been redacted to remove a recording made of Mr. Conwell's phone call conversation with his attorneys.

130. Officer DeHaan explained that for misdemeanor trespass, the police had the “discretion” to either issue a citation or arrest. Officer DeHaan further explained that “we usually try to issue the warnings first” before escalating to an arrest.

131. Officer DeHaan issued Mr. Conwell a citation for trespass under Minn. Stat. § 609.605(1)(b)(3), Citation No. 76 02 2026000162, identifying the offense as “Trespass – refuse to leave.” *See* Exhibit 20.

132. While handing the citation to Mr. Conwell, Officer DeHaan stated that “if you’re allowed to be here by the court, those tickets will be quashed so you won’t have to pay any of those.” Officer DeHaan continued, “To be honest, man, I want clarification too. There are crimes of trespassing and crimes of disorderly conduct but also you have your First Amendment right, so we’ve got to try to figure that out. . . . I know what you’re doing, I get it. I’m glad someone is out here doing it.”

133. At no time did Ms. Stielow, other vendors, Officer DeHaan, or anyone else suggest that Mr. Conwell’s presence at the Market—as he stood alone, unamplified, stationary, and nonobstructive—disrupted the Market in any way, nor did it.

134. As with the July 9 event, patrons walked through the Market wearing shirts, hats, and other clothing displaying the names, logos, and slogans of businesses and various other messages, many of which were secular in nature. Mr. Conwell did not see Ms. Stielow, another vendor, or any Benson police officer require any other person to register or pay the vendor fee to remain at the Market.

135. Videos of the exchange between Mr. Conwell and Officer DeHaan are

included herein as Exhibit 21 (00:13:00 – 00:21:53) and Exhibit 22 (00:00:00 – 00:08:49).⁴

136. Mr. Conwell stayed at the Farmers' Market until approximately 5:00 p.m.

137. Additional videos capturing the events of that day are attached hereto as Exhibit 23 and Exhibit 24.

138. Mr. Conwell's citation for misdemeanor trespass is currently pending and has been assigned Case No. 76-CR-26-298. His arraignment is scheduled for November 23, 2026.

Mr. Conwell tries in vain to obtain a permit that would authorize him to use sound amplification

139. Mr. Conwell has attempted to obtain a permit that would allow him to use a sound amplifier in connection with his First Amendment activity on numerous occasions. To date, the City has stymied those efforts, while enforcing the Sound Ordinance against him.

140. As alleged above, on July 27, 2023, Mr. Conwell used his sound amplifier at the Farmers' Market. Chief Hodge instructed Mr. Conwell to stop using the device because he did not have a permit. Mr. Conwell complied.

141. On August 9, 2023, Mr. Conwell went to City Hall to obtain a permit that would allow him to use a sound amplifier in connection with First Amendment activity he planned to engage in at the Farmers' Market the next day.

142. Mr. Conwell spoke to the City Clerk, Val Alsaker, who told Mr. Conwell that

⁴ Portions of Exhibit 21 have been redacted to remove a recording made of Mr. Conwell's phone call conversation with his attorneys.

he would need to speak with the City Manager, who was not in the office.

143. Mr. Conwell left without a permit.

144. As alleged above, on August 10, 2023, Mr. Conwell used his sound amplifier at the Farmers' Market. Officer Marrs told him to stop using the device, and Mr. Conwell complied.

145. On October 12, 2023, Mr. Conwell went to City Hall to obtain a permit that would allow him to use a sound amplifier in connection with upcoming First Amendment activity he was planning. Mr. Conwell spoke to Ms. Alsaker and the City Manager, who was then Kyle Harris.

146. Ms. Alsaker informed Mr. Conwell that there was no formal process for obtaining such a permit and that she would speak with the City Attorney about the issue and call Mr. Conwell back.

147. Mr. Conwell left without a permit.

148. Ms. Alsaker never called Mr. Conwell.

149. On October 17, 2023, Mr. Conwell went to City Hall to obtain a permit that would allow him to use a sound amplifier in connection with upcoming First Amendment activity he was planning.

150. The City staff member at the front desk told Mr. Conwell that Ms. Alsaker handled permit requests and that she knew Ms. Alsaker had been working on his inquiry. She also told Mr. Conwell that neither Ms. Alsaker nor Mr. Harris were available and that they would call him back.

151. Mr. Conwell left without a permit.

152. Neither Ms. Alsaker nor Mr. Harris ever called Mr. Conwell.

153. On October 24, 2023, Mr. Conwell went to City Hall to obtain a permit that would allow him to use a sound amplifier in connection with upcoming First Amendment activity he was planning. Mr. Harris informed him that the City would not give him a permit.

154. Mr. Conwell left without a permit.

155. As alleged above, in 2024–25, Mr. Conwell focused his speaking efforts on other cities.

156. In or around May 2026, having decided to focus his efforts on Benson again, Mr. Conwell went to the grassy area at the corner of Atlantic Avenue and 13th Street—across the street from Railroad Park—and began to preach the Christian Gospel using an amplification device. Neither the Farmers’ Market nor any other event was going on at the time.

157. Officer Marrs arrived on the scene less than one hour later. Officer Marrs told Mr. Conwell that he needed a permit to use his amplifier and that, because he did not have a permit, he was required to shut the amplifier down. Mr. Conwell respectfully told Officer Marrs that he would not turn off his amplifier.

158. Officer Marrs informed Mr. Conwell that the matter would be referred to the City Attorney and then left.

159. To date, the City Attorney has not followed up with Mr. Conwell.

160. On July 17, 2026, Mr. Conwell went to City Hall to, among other things, obtain a permit that would allow him to use a sound amplifier in connection with upcoming

First Amendment activity he was planning. He met with Mr. Skaret, who was the new City Manager.

161. Mr. Skaret told Mr. Conwell that he did not know the permitting process and said that he would call Mr. Conwell back the following week.

162. Mr. Conwell left without a permit.

163. Mr. Skaret did not call Mr. Conwell.

164. On July 20, 2026, Mr. Conwell went to City Hall to follow up on his conversation with Mr. Skaret on July 17, 2026.

165. Mr. Skaret informed Mr. Conwell that he was still looking into the issue and could not provide Mr. Conwell an answer.

166. Mr. Conwell left without a permit.

167. To date, Mr. Skaret has not called Mr. Conwell.

Mr. Conwell Faces a Credible Threat of Ongoing Harm

168. Mr. Conwell wants to return to the Farmers' Market each time it is held in 2026 and in future years for the foreseeable future. When he does, he wants to again hold his signs or a similar sign and speak with members of the public who choose to engage him, without using amplification.

169. Mr. Conwell faces a credible threat that if he engages in his expressive activity at the Farmers' Market, he will again be required to register and pay a vendor fee; be directed to leave the Farmers' Market; be threatened by Benson Police with citation or arrest; be cited or arrested for trespass; and be imprisoned, fined, or both.

170. The City's threatened deprivations of Mr. Conwell's rights are immediate,

ongoing, and recurring. Indeed, after Mr. Conwell filed this lawsuit, his counsel asked the City to allow him to speak at the Farmers' Market on three occasions—by oral communication on July 22, by email on July 29, *see* Exhibit 25, and by letter on August 18, 2026, *see* Exhibit 26. In the letter dated August 18, 2026, Mr. Conwell's counsel specifically asked the City to disavow enforcement of the City Council's "exclusive use" authorization and state trespass laws against Mr. Conwell for the remainder of the Market's 2026 season. The City refused to grant any of Mr. Conwell's three requests. *See* Exhibit 25 at 1; Exhibit 13 at 6.

171. Based on the two criminal citations the City issued to Mr. Conwell, along with Officer DeHaan's statements to him on July 16, Mr. Conwell understood that if he returned to the Farmers' Market on future dates and engaged in the same peaceful expressive activity he did on July 9 and 16, 2026, he would receive another criminal citation and could be arrested.

172. Mr. Conwell wanted to attend subsequent Farmers' Market events after July 16, 2026, but he was fearful he would be threatened with citation or arrest, cited, or arrested. Mr. Conwell cannot afford to continue to incur possible fines, nor does he wish to be imprisoned. Had Mr. Conwell not faced these consequences, he would have attended Markets after July 16, 2026 and engaged in the same or similar peaceful expressive activity as he did on July 9 and 16, 2026.

173. Mr. Conwell also wants to engage in similar First Amendment activity on public streets, sidewalks, and in public parks in the City other than at the Farmers' Market, with amplification that can be heard at over fifty feet. Mr. Conwell does not seek to use

amplification within the boundaries of, or in a manner that would disturb, any event for which the City has granted a permit to another. Instead, he seeks only to use amplification at times and places that do not conflict with another permit-holder's event.

174. Mr. Conwell specifically wants to engage in this activity every Wednesday for the foreseeable future on the public sidewalk at and near the corner of Atlantic and 12th Street—an area in the Central Business District—from the hours of approximately 12 p.m. until 2 p.m. and / or 5 p.m. to 7 p.m. During those times, this area will give Mr. Conwell a larger audience than usual because many Benson residents will be on their lunch break or returning home from work.

175. Mr. Conwell faces a credible threat that if he uses an amplification device that can be heard at over fifty feet at and near the corner of Atlantic and 12th Street, he will be subject to enforcement under the Sound Ordinance; be directed to stop using his amplification device; be threatened by Benson Police with citation or arrest; be cited or arrested for violating the Sound Ordinance; and be imprisoned, fined, or both.

176. The City's threatened deprivation of Mr. Conwell's rights under the Sound Ordinance is also immediate, ongoing, and recurring. If he engages in First Amendment activity with the use of an amplification device at and near the corner of Atlantic and 12th Street without a permit from the City, he will be in violation of the Sound Ordinance and subject to a fine, incarceration, or both.

177. Mr. Conwell wanted to begin using an amplifier in connection with First Amendment activity at Atlantic Avenue and 12th Street over the summer of 2026, but he was fearful he would be threatened with citation or arrest, cited, or arrested. Mr. Conwell

cannot afford to incur possible fines, nor does he wish to be imprisoned. If Mr. Conwell had not faced these consequences, he would have used an amplifier in connection with First Amendment activity at Atlantic Avenue and 12th Street.

178. With respect to both the Farmers' Market and his amplified speech elsewhere, Mr. Conwell is forced to choose between refraining from constitutionally protected expressive activity and risking a fee, citation, fine, arrest, and incarceration, and the exercise of his First Amendment rights is thereby burdened, deterred, and chilled.

179. With respect to both the Farmers' Market and his amplified speech elsewhere, Mr. Conwell has no adequate remedy at law. The loss of First Amendment freedoms, even for minimal periods, constitutes irreparable injury. Absent relief from this Court, the City will continue to burden, deter, and prohibit his protected expressive activity, and he will continue to suffer the loss of his constitutional rights.

CAUSES OF ACTION

COUNT ONE

42 U.S.C. § 1983—First and Fourteenth Amendments (Right to Free Speech—Denial of Access to Public Forum)

180. Mr. Conwell hereby incorporates by reference all other paragraphs of this Complaint as though fully set forth herein.

181. Mr. Conwell engages in peaceful, non-commercial expressive activity at the Farmers' Market—standing with a sign, selling nothing, obstructing no one, filming himself, and speaking only to those who approach him. This activity is protected by the First Amendment.

182. The First Amendment protects the right to engage in peaceful expressive

activity on public property that is open to the public. The government's grant to a private party of the right to "exclusive use" of such property does not extinguish that right at events that are free and open to the public. A grantee acquires no authority to exclude peaceful speakers from public property that is free and open to the public, and the government may not lend its coercive power—through enforcement of trespass laws by its police—to enforce such an exclusion.

183. Railroad Park is a traditional public forum. Public parks are quintessential traditional public forums, and based on Railroad Park's physical characteristics, history of use, and government intent, Railroad Park falls within that rule. Moreover, Railroad Park remains a traditional public forum on Farmers' Market days. Anyone may attend the Market. There is no fee to enter the Market, and there is no controlled access other than for vendors. Because Mr. Conwell does not sell anything, those vendor rules are not properly applied to him.

184. In the alternative, Railroad Park is a designated public forum, both generally and during the Farmers' Market.

185. The City Council's "exclusive use" authorization codified the Market's pre-existing access rules, under which the Market excluded vendors who did not register and pay the vendor fee. But that grant did not close the property to the public or transform Mr. Conwell, a member of the public engaged in expressive activity on public ground, into a trespasser, nor did it alter the status of the property as a traditional or designated public forum.

186. Under the City Council's "exclusive use" authorization, City Council

authorized the Farmers' Market to exclude anyone who was not either a patron or a registered, fee-paying vendor consistent with the Market's historical practice. This rule is content based—whether the restriction applies is determined by the content of the speech in question.

187. The City infringed Mr. Conwell's right to free speech when it cited him for trespass for failing to comply with the Farmers' Market's registration and vendor fee requirements. The City's actions constitute state action undertaken under color of state law.

188. The City's actions do not comply with strict scrutiny. There was no compelling governmental interest and the City's actions were not the least restrictive means available to it.

189. The City's actions do not comply with intermediate scrutiny. There was no significant governmental interest, the City's actions were not narrowly tailored to serve any such interest, and the City did not leave open ample alternative channels of communication.

190. Outside the Farmers' Market, Mr. Conwell is unable to engage with the same audience that is at the Market in the same way. Outside the Market, most people would be in their cars rather than walking close enough to stop and speak with Mr. Conwell, making voluntary, one-on-one conversations far less likely.

191. Even if the Farmers' Market were a limited public forum or a nonpublic forum, the City's actions would still be unconstitutional. It is constitutionally unreasonable to require individuals who do not engage in sales to register and pay a vendor fee because their actions do not create the possibility of liability to the Market organizers.

192. By its own terms, the Operator Certificate of Compliance Form is not

applicable to Mr. Conwell. The Form specifies that it applies only to “sellers” at farmers’ markets and similar events involving sales. *See* Exhibit 7.

193. Even if City Council’s grant of “exclusive use” to the Farmers’ Market did not codify the Market’s pre-existing access rules—but rather authorized the Market to determine its own access rules—the City’s actions would still be unconstitutional. The government may not give third parties authority to determine access to an event at a forum that is free and open to the public without providing objective, workable standards. To the extent City Council’s “exclusive use” authorization allowed the Farmers’ Market to determine its own access rules, the authorization lacks any objective, workable standards.

194. The City’s unlawful actions as alleged herein constitute official City policy. City Council’s “exclusive use” authorization codified the Farmers’ Market’s pre-existing practices and purports to give the Market the authority to exclude non-shoppers who do not pay the vendor fee.

195. Even if City Council’s “exclusive use” authorization did not codify the Market’s pre-existing access rules (and it did), that authorization purports to give the Market the unfettered discretion to exclude speakers. Either way, City Council’s “exclusive use” authorization is a City policy that was the moving force behind the violation of Mr. Conwell’s rights.

196. In the alternative, the City’s unlawful actions as alleged herein constitute a City custom. The City’s treatment of Mr. Conwell reflected a persistent practice of which City Council had notice and which City Council was deliberately indifferent to or tacitly authorized, and that custom was the moving force behind the violation of Mr. Conwell’s

rights. At the City Council meeting on September 5, 2023, Chief Hodge informed City Council that there had been a “conflict of use” of Railroad Park during the Farmers’ Market and that the Market’s historical practice had been to exclude anyone who was not either a patron or a registered, fee-paying vendor. Ms. Stielow—a member of City Council since April 2025—has long known about the Farmers’ Market’s registration and vendor fee requirement. In its briefing on Mr. Conwell’s Motion for Temporary Restraining Order, the City admitted that it knew the Market’s longstanding practice was to exclude anyone who was not either a patron or a registered, fee-paying vendor consistent with the Market’s historical practice. Yet despite knowing of the Farmers’ Market’s interpretation and application of the “exclusive use” authorization, the City continues to refuse to disavow further enforcement by the Benson Police of that authorization against Mr. Conwell. The City’s ongoing enforcement of City Council’s “exclusive use” authorization as applied by the Farmers’ Market thus constitutes a City custom that is being applied at every subsequent Farmers’ Market event.

197. As a direct and proximate result of the City’s actions, Mr. Conwell has suffered and will continue to suffer irreparable injury to his First Amendment rights, for which he has no adequate remedy at law.

198. Mr. Conwell is entitled to declaratory and injunctive relief and to attorneys’ fees and costs under 42 U.S.C. § 1988.

COUNT TWO
42 U.S.C. § 1983—First and Fourteenth Amendments
(Right to Free Speech—Unconstitutional Fee on Speech)

199. Mr. Conwell hereby incorporates by reference all other paragraphs of this

Complaint as though fully set forth herein.

200. A government may not punish an individual for failing to register and pay a vendor fee as a condition of engaging in protected expressive activity on public property at an event that is free and open to the public unless the fee is narrowly tied to the administrative costs of a valid, content-neutral regulatory scheme that is constitutionally reasonable and governed by objective standards. A fee on pure, non-commercial speech is presumptively invalid.

201. Mr. Conwell's signs and conversations with those who approached him were pure, non-commercial expressive activity. He sold nothing and sought only to communicate his religious and moral message.

202. The City nonetheless punished Mr. Conwell for failing to pay the vendor fee, thus conditioning his expressive activity on payment. Ms. Stielow required Mr. Conwell to register and pay the \$20 vendor fee to stand with his sign, and Chief Hodge and Officer DeHaan enforced that condition by directing Mr. Conwell to leave and citing him for trespass when he declined. The requirement was imposed on more than one occasion—first in 2023, when Mr. Conwell paid the fee and was confined to a vendor tent; again on July 9, 2026, when he refused to pay the fee and was cited for trespass; and yet again on July 16, 2026, when he again refused to pay the fee and was cited for trespass.

203. The fee bore no relation to any administrative cost that was properly imposed on Mr. Conwell, was governed by no objective standard, and was imposed on Mr. Conwell's non-commercial expressive activity even though he was not a vendor and sold nothing. The fee thus fails strict and intermediate scrutiny and is constitutionally

unreasonable.

204. By conditioning protected expressive activity on registration and payment of a vendor fee, the City imposed an unconstitutional burden on his First Amendment rights.

205. The City's unlawful actions as alleged herein constitute official City policy. City Council's "exclusive use" authorization codifies the Farmers' Market's pre-existing practices or, alternatively, confers unbridled discretion on the Farmers' Market to decide what speech is permissible and what speech is not permissible.

206. In the alternative, the City's actions constitute City custom. The City's treatment of Mr. Conwell reflected a persistent practice of which the City's policymakers had notice and which they were deliberately indifferent to or tacitly authorized, and that custom was the moving force behind the violation of his rights.

207. As a direct and proximate result of the City's conduct, Mr. Conwell has suffered, and absent relief will continue to suffer, irreparable injury to his First Amendment rights, for which he has no adequate remedy at law.

208. Mr. Conwell is entitled to declaratory and injunctive relief, and to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

COUNT THREE
42 U.S.C. § 1983—First and Fourteenth Amendments
(Prior Restraint / Unbridled Discretion—Facial and As-Applied)

209. Mr. Conwell incorporates by reference each preceding paragraph as though fully set forth herein.

210. The use of sound amplification equipment is an aspect of speech protected by the First Amendment.

211. The Constitution prohibits the government from regulating speech under laws that are vague or overbroad. The Constitution also prohibits the government from conditioning protected expressive activity on prior approval under a permitting scheme that lacks narrow, objective, and definite standards, allows indefinite delay, or imposes an undue burden on speech.

212. The Sound Ordinance is unconstitutionally vague, both facially and as applied to Mr. Conwell, insofar as it prohibits “any distinctly and loudly audible noise” that “unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of a reasonable person or reasonable persons, or precludes their enjoyment of property, or adversely affects their property’s value.” The Sound Ordinance fails to provide ordinary citizens fair notice of what is prohibited and encourages arbitrary and discriminatory enforcement.

213. The Sound Ordinance is overbroad, both facially and as applied to Mr. Conwell, because it prohibits a substantial amount of constitutionally protected speech.

214. The Sound Ordinance generally prohibits sound amplification that can be heard at fifty feet at any location within the City at any time, including downtown Benson during business hours and the evening rush hour. This restriction is overbroad, both facially and as applied to Mr. Conwell, because it prohibits a substantial amount of constitutionally protected speech.

215. The Sound Ordinance’s prohibition on sound amplification is content based. The Sound Ordinance authorizes the use of amplification devices at activities “sponsored” by the City or Benson Public Schools. The City and Benson Public Schools decide whether

to sponsor an activity based, at least in part, on the content of the speech expressed at the activity. In addition, the Sound Ordinance exempts “[a]nti-theft devices,” “security alarms,” and sounds “used as a danger warning.” § 93.18(C)(2), (4). To know whether a sound is exempt under this provision, the City must examine its purpose.

216. The Sound Ordinance does not comply with strict scrutiny or intermediate scrutiny.

217. The Sound Ordinance and the Special Use Permit Provision are also facially overbroad because they lack narrow, objective, and definite standards, allow indefinite delay, and impose an undue burden on speech in connection with sponsorship and permitting.

218. The Sound Ordinance prohibits the use of amplifying equipment audible at fifty feet but exempts such equipment used “in connection with an activity sponsored by Benson Public Schools or by the city or for which a permit has been granted by the city.”

219. The Sound Ordinance and Special Use Permit Provision give the City unbridled discretion to determine who may engage in amplified expressive activity; give the City unbridled discretion to determine the terms, conditions, and duration of that activity; allow the City to delay or withhold that determination indefinitely; and place an undue burden on speech. These features of the Sound Ordinance and Special Use Permit Provision create a substantial risk of content- or viewpoint-based decision-making, chill protected expressive activity, and render the Sound Ordinance facially unconstitutional.

220. The Special Use Permit Provision’s \$5 permit fee is an unconstitutional condition on speech.

221. The City has also unconstitutionally applied the Sound Ordinance and Special Use Permit Provision against Mr. Conwell. Mr. Conwell has repeatedly sought authorization to use sound amplification for his religious and expressive activity. City officials have either failed to act on his requests—resulting in de facto denial—or denied them outright despite authorizing others to use sound amplification.

222. The City has also enforced the Sound Ordinance and Special Use Permit Provision against Mr. Conwell. On July 27 and August 10, 2023, Benson Police directed Mr. Conwell to stop using his amplifier at the Farmers' Market because the sound was audible at fifty feet and he lacked a permit. In May 2026, Benson Police directed Mr. Conwell to shut down his amplifier and informed him that the matter would be referred to the City Attorney.

223. Because there is no process under the Sound Ordinance to seek sponsorship from Benson Public Schools or the City, it would be futile for Mr. Conwell to seek such sponsorship.

224. Because Mr. Harris told Mr. Conwell that the City would not give him a permit that would authorize him to use his amplification device in connection with his First Amendment activity, it would be futile for Mr. Conwell to continue applying for such a permit.

225. The Sound Ordinance and the Special Use Permit Provision—along with their enforcement by the Benson Police—constitute official City policy.

226. As a direct and proximate result of the Sound Ordinance and the Special Use Permit Provision—and the City's enforcement thereof—Mr. Conwell has suffered, and,

absent relief, will continue to suffer, damages and irreparable injury to his First Amendment rights.

227. Mr. Conwell is entitled to a declaration that the Sound Ordinance and Special Use Permit Provision are unconstitutional on their face and as applied to him, preliminary and permanent injunctive relief against their enforcement, nominal and compensatory damages, and attorneys' fees and costs under 42 U.S.C. § 1988.

COUNT FOUR
42 U.S.C. § 1983—First and Fourteenth Amendments
(Free Exercise of Religion)

228. Mr. Conwell incorporates by reference each preceding paragraph as though fully set forth herein.

229. Mr. Conwell's display of signs, open-air proclamation of his religious and abolitionist message, conversations with members of the public, and amplified preaching are exercises of his sincerely held religious beliefs.

230. Government action burdening religious exercise is subject to strict scrutiny when it is not neutral and generally applicable, including when the government confers or retains discretion to grant individualized exceptions or when comparable secular activity is treated more favorably than religious activity.

231. The City burdened Mr. Conwell's religious exercise when it cited him for trespass for failing to comply with the Farmers' Market's registration and vendor fee requirements pursuant to City Council's "exclusive use" authorization.

232. The City's actions were not neutral or generally applicable.

233. City Council granted the "exclusive use" authorization to the Farmers'

Market in its individualized discretion and the Market imposed the registration and fee requirements on Mr. Conwell's religious exercise—leading to the City's trespass citations—while others engaged in similar expressive activity that was secular were not subjected to the same requirements.

234. The City also burdens Mr. Conwell's religious exercise through the Sound Ordinance and Special Use Permit Provision, which prohibit him from using amplification in his religious proclamation unless the City grants him sponsorship or a permit authorizing the use of sound amplification in its unfettered discretion. The Sound Ordinance and Special Use Permit Provision therefore create a system of individualized exemptions and treat secular activity more favorably than Mr. Conwell's religious exercise. The various uses of sound amplification alleged above that the City allows are comparable to Mr. Conwell's proposed use. These other usages have a similar (or longer) duration, a similar (or louder) volume, a similar location (*i.e.*, downtown Benson), and a similar purpose to Mr. Conwell's proposed First Amendment activity.

235. The City has enforced the Sound Ordinance against Mr. Conwell's religious exercise. In 2023, an officer directed him to stop using his amplifier to proclaim his religious message because he lacked a permit. In 2026, Officer Marrs directed him to shut down his amplifier and referred the matter to the City Attorney.

236. Because the City's challenged practices are not neutral and generally applicable, they are subject to strict scrutiny. The burdens imposed on Mr. Conwell's religious exercise are not narrowly tailored to serve any compelling governmental interest. Any asserted interests in operating the Market or controlling amplified sound are

undermined by the individualized discretion, exemptions, and favorable treatment the City extends to governmental and secular activity. The City's conduct, and the Sound Ordinance on its face and as applied to Mr. Conwell, therefore violate the Free Exercise Clause.

237. The City's unlawful actions as alleged herein constitute official City policy. City Council's "exclusive use" authorization codifies the Farmers' Market's pre-existing practices or, alternatively, confers unbridled discretion on the Farmers' Market to decide what speech is permissible and what speech is not permissible.

238. In the alternative, the City's actions constitute City custom. The City's treatment of Mr. Conwell reflected a persistent practice of which the City's policymakers had notice and which they were deliberately indifferent to or tacitly authorized, and that custom was the moving force behind the violation of his rights.

239. The Sound Ordinance and Special Use Permit Provision—and the City's enforcement thereof—also constitute official City policy.

240. As a direct and proximate result of the City's conduct, Mr. Conwell has suffered, and absent relief will continue to suffer, irreparable injury to his First Amendment rights, for which he has no adequate remedy at law.

241. Mr. Conwell is entitled to declaratory and injunctive relief and an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bryan Conwell requests the following relief:

1. A declaration that the City's actions pertaining to the Farmers' Market, including, but not limited to, giving the Farmers' Market the "exclusive use" of Railroad

Park, citing him for trespass, and threatening to cite or arrest him for trespass for engaging in First Amendment activity at the Farmers' Market violate the First and Fourteenth Amendments;

2. A declaration that the Sound Ordinance and Special Use Permit Provision are unconstitutional on their face and as applied to Mr. Conwell under the First and Fourteenth Amendments or, in the alternative, a declaration that the Sound Ordinance and Special Use Permit Provision may not constitutionally be enforced against Mr. Conwell's protected expressive activity under the First and Fourteenth Amendments;

3. A preliminary and permanent injunction restraining the City and its officers, agents, employees, and successors from citing or threatening to cite or arrest Mr. Conwell for engaging in peaceful, non-commercial expressive activity at the Farmers' Market without registering or paying the vendor fee;

4. A preliminary and permanent injunction restraining the City and its officers, agents, employees, and successors from enforcing the Sound Ordinance and Special Use Permit Provision against Mr. Conwell;

5. Such further injunctive relief as is necessary to prevent the City from continuing to burden, exclude, or penalize Mr. Conwell's protected expressive activity and religious exercise;

6. Nominal and compensatory damages caused by the City's enforcement of the Sound Ordinance;

7. An award of Mr. Conwell's reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988, and any other applicable law;

8. Retention of jurisdiction to enforce the Court's orders; and
9. All other relief the Court deems just and proper.

Dated: September 15, 2026

/s/ Joshua Dixon
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