

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

LAURIE GRAPE and DARLA WILCE

Plaintiffs,

vs.

**CIVIL ACTION NO.
07 CV 6075 CJS (F)**

**TOWN/VILLAGE OF EAST ROCHESTER, NY,
DAVID P. BONACCHI, individually and in
his official capacity as Mayor of the
Town/Village of East Rochester, LAWRENCE
PIERCE, individually and in his official capacity
as Building Inspector and Code Enforcement
Officer for the Town/Village of East Rochester,
and DAVID PUGILIESE, individually and in
his official capacity as Police Chief of the
Town/Village of East Rochester,**

**SECOND AMENDED
COMPLAINT**

Defendants.

I. PRELIMINARY STATEMENT

This action challenges a local law adopted by the Town and Village of East Rochester that prevents women facing imminent danger of domestic violence from being able to request the protection of the police or from invoking the criminal process of the courts in order to ensure their own safety and the safety of their children.

The local law challenged, a so-called “nuisance” law, requires a landlord to evict any household for which there have been three police calls within a twelve month period. Under the challenged law, the Town/Village will revoke the permit required to legally lease the apartment held by any landlord who fails to evict such a household. The law specifically includes within its terms police calls for situations of “domestic violence,” and makes no distinction for calls made by a person who is the target or victim of the criminal behavior. The ordinance contains no

exceptions, even for persons, such as Plaintiff Laurie Grape, who may simply be seeking to enforce the court ordered provisions of an Order of Protection.

This action seeks to have the local law invalidated as an unlawful infringement of Plaintiffs' rights to Due Process and of their right to Petition the Government.

This action further seeks to have this Court invalidate the ordinance as a violation of the federal Fair Housing Act, because the ordinance has a disparate effect upon women in that women are more likely than men to be the targets of domestic violence.

II. JURISDICTION AND VENUE

1. Jurisdiction is conferred on this court under 28 U.S.C. §§ 1331 (federal question), 1337 (commerce clause), and 1343 (civil rights claims), in conjunction with 42 U.S.C. § 3613 (the Fair Housing Amendments Act) and 42 U.S.C. § 1983 (the Civil Rights Act of 1871).
2. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this judicial district and the events or omissions giving rise to the claim occurred in this judicial district.
3. This Court has authority to grant declaratory and injunctive relief as well as compensatory and punitive damages pursuant to 42 U.S.C. §§ 3612, 3613, 28 U.S.C. §§ 2201-2 and 42 U.S.C. § 1983.

III. PARTIES

4. Plaintiff Laurie Grape is a thirty-year old woman with a disability who resides with her two minor daughters, Nicole Grape (13) and Amber Wheeler (10), in the Village of East Rochester. Mrs. Grape is legally separated. Mrs. Grape has been the target of several

serious incidents of domestic violence.

5. Plaintiff Darla Wilce is a forty-four year old woman living in Webster, NY. On April 20, 2007, Ms. Wilce changed her name from Darla Scalise to Darla Wilce. Ms. Wilce moved to East Rochester, NY in 1989 and lived there until October 2005. Her sons Logan Scalise and Christian Scalise are sixteen and thirteen years old respectively.
6. Defendant Town/Village of East Rochester is a municipal corporation established under the laws of the State of New York, and has its offices at 120 West Commercial Street, East Rochester, NY 14445.
7. Defendant David P. Bonacchi is the duly elected mayor of East Rochester, NY and has an office at 120 West Commercial Street, East Rochester, NY 14445.
8. Defendant Lawrence Pierce is the Building Inspector and Code Enforcement Officer for East Rochester, NY and has his office at 120 West Commercial Street, East Rochester, NY 14445.
9. Defendant Pierce is responsible for issuing permits for new construction, fences, signs, additions, etc. ensuring that all Village buildings meet the requirements of the New York State Fire Prevention and Building Code.
10. Defendant Pierce is the individual who, at all times relevant herein, is and has been responsible under Section 144-13 of the Code of the Town/Village of East Rochester to provide a written notice to the holders of rental dwelling permits, after a second disturbance involving police response, warning the permit holder that any further disturbance involving a police response may result in the revocation of the rental dwelling permit for that property.
11. Defendant David Pugliese is the Chief of Police for the Town/Village of East Rochester,

NY and has an office at 254 West Ivy Street, East Rochester, New York 14445.

12. Defendant Pugliese is responsible for notifying the Building Inspector/Code Enforcement Officer of police calls involving rental properties subject to the rental dwelling permit requirements of the Code of the Town/Village of East Rochester.
13. Defendant Pugliese is, and at all times relevant hereto has been, the individual responsible for making recommendations with respect to the revocation of rental dwelling permits under Section 144-13 of the Code of the Town/Village of East Rochester.

STATUTORY FRAMEWORK

The Fair Housing Act Title VIII of the Civil Rights Act of 1968, as amended, Prohibitions Against Discrimination Based on Sex

14. The Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-19, as amended, prohibits discriminatory housing practices against certain protected classes, including on the basis of sex..

In particular, the Fair Housing Act provides at 42 U.S.C. § 3604 that it shall be unlawful . . .

“(a) To ... otherwise make unavailable or deny, a dwelling to any person because of ... sex”

15. The Fair Housing Act, at 42 U.S.C. § 3613(a)(2), specifically allows aggrieved persons to commence a civil action in the appropriate U.S. District Court whether or not the party has filed an administrative complaint with the Department of Housing and Urban Development (HUD).
16. The Fair Housing Act, at 42 U.S.C. § 3602(i), includes in its definition of an “aggrieved

person,” any person who “... believes that such person will be injured by a discriminatory housing practice that is about to occur.”

**Town/Village of East Rochester Local Law
Providing for the Revocation of Rental Dwelling Permits**

17. Section 144-13 of the Code of the Town/Village of East Rochester provides, in pertinent part:

A. The Code Enforcement Officer shall revoke a rental dwelling permit and the affected rental dwelling unit shall be vacated forthwith where the permit holder has:

(1) . . . ;

(2) . . . ;

(3) . . . ;

(4) Caused, permitted, suffered or allowed to exist and remain upon the premises conditions such that any police agency has or combination of police agencies have responded to the premises for civil or criminal disturbances three times within a twelve-month period, and the Chief of Police of East Rochester has recommended such revocation. The Code Enforcement Officer shall provide written notice to the permit holder of the second disturbance involving police response and warning of the possible consequences of a third disturbance involving police response. Subsequent to any rental unit having been vacated based on revocation of a rental dwelling permit, such unit shall not be reoccupied until such unit shall have been inspected and a new permit shall have been issued; or

(5) Caused, permitted, suffered or allowed to exist and remain upon the premises conditions which constitute a substantial risk to public safety or the safety of individuals, including, but not limited to, the use or attempted use of weapons; the use, possession, manufacture, sale or distribution of controlled substances; criminal activity; or domestic violence. Revocation pursuant to this subsection shall be based upon the recommendation of the Chief of Police. Subsequent to any rental unit having been vacated based on revocation of a rental dwelling permit, such unit shall not be reoccupied until such unit has been inspected and a new permit issued.

B.

C. An appeal from such revocation may be taken by the permit holder to the Board of Trustees by written request made within 15 days from the date of notice of such revocation. The Board of Trustees shall hold a public hearing on such appeal within 15 days after receipt of written notice of such appeal and after hearing shall make written findings, conclusions and decision either sustaining

such permit revocation or such reinstating such permit within 15 days after close of such public hearing.

D. The Board of Trustees, for good cause shown, may stay the enforcement of any revocation for such period as it deems appropriate.

E. In the event the revocation is affirmed, the permit holder shall remove the occupants from the subject premises and be prohibited from renting the premises or any other apartment within the dwelling or on the premises to said occupants.

V. STATEMENT OF FACTS

Plaintiff Laurie Grape

18. Since August 2005, Plaintiff Laurie Grape and her two daughters, Nicole and Amber, have lived in a two-bedroom apartment located on the first floor of 118 E. Maple Avenue in East Rochester, NY.
19. Martin Adwin owns 118 E. Maple Avenue in East Rochester, NY and is Mrs. Grape's landlord.
20. Mr. Adwin is satisfied that Laurie Grape has met all of her obligations under her lease with him. He considers her to be a desirable tenant. Mr. Adwin states that Mrs. Grape has always paid her rent on time and has never had a lease violation. She has always notified him promptly of maintenance problems on the property.
21. Mr. Adwin has advised Mrs. Grape that he wished all of his tenants could be like her.
22. Mr. Adwin does not want to terminate Mrs. Grape's tenancy.
23. Mr. Adwin has no desire to evict Mrs. Grape and her children from his rental unit and would like to keep her as a tenant.
24. In 1998 at the age of twenty-three, Mrs. Grape was diagnosed with Multiple Sclerosis (hereinafter, "MS"). She now supports her family with Social Security Disability benefits and federal food stamps, together with the small amount of child support she

- intermittently receives on behalf of one daughter.
25. Mrs. Grape selected her apartment because its first floor location prevents her from having to negotiate difficult stairs during periods that her MS is exacerbated.
 26. In October 2006, Mrs. Grape began a personal relationship with an individual named Mike Baker.
 27. Not long afterward, Baker became abusive and violent toward Mrs. Grape.
 28. In or about mid-November 2006, Baker physically assaulted Mrs. Grape.
 29. Sometime before Thanksgiving 2006, Mrs. Grape told Baker that she wanted to end the relationship.
 30. On December 20, 2006, Baker appeared uninvited at Mrs. Grape's home to retrieve some of his belongings.
 31. While at her home, Baker committed acts of abuse against Mrs. Grape, including throwing her to the ground and strangling her around the neck with his hands. Attempting to stop the attack, Grape defensively scratched Baker on the face with her fingernails. Somehow during the attack, Mrs. Grape's wrist was also injured.
 32. Fearing for her mother's safety, Mrs. Grape's daughter, Nicole, called 911 for emergency assistance.
 33. After the call, two officers from the East Rochester Police Department arrived at Mrs. Grape's home and investigated the incident.
 34. Although the bruises caused by the strangulation on Mrs. Grape's neck were visible, the police officers failed to arrest Baker and did not remove him from Grape's home.
 35. After the situation had stabilized, the police left.
 36. Mr. Baker convinced Mrs. Grape to let him stay the night at her home because he was

homeless. Later that evening, Mr. Baker became angry and he again became violent with Mrs. Grape.

37. During the second incident, Baker punched Mrs. Grape in the face causing bruises and pain, and tore her ear.
38. As a result of Baker's attack, Grape called the police a second time for emergency assistance at her home.
39. Two officers from the East Rochester Police Department arrived, one of whom Mrs. Grape knew to be related to the assailant, Baker.
40. When Mrs. Grape inquired about pressing criminal charges against Baker, the police allegedly advised her that if she pressed charges against Baker, then Baker would likely press cross-charges against Mrs. Grape because of the scratches on his chest.
41. The police then told Mrs. Grape that if she pressed criminal charges against Baker, she too would be criminally charged, taken into custody and her children would be placed in foster care.
42. Additionally, in the presence of the assailant, Baker, as well as Mrs. Grape's minor children, the East Rochester police officers warned Mrs. Grape that because this was her second call for police service to her home, a third police call would result in her eviction from her home.
43. As a result of police officers statements, Mrs. Grape felt intimidated and afraid to press criminal charges against Baker for his assault.
44. Rather than arresting him, the East Rochester police officers instead escorted Baker and most of his belongings from Mrs. Grape's property and, upon information and belief, instructed Baker not to return to Grape's home again that evening.

45. The next morning, still in pain and afraid that her wrist was broken, Mrs. Grape sought medical treatment from her primary care physician, Dr. Maureen Perry.
46. Over the next few weeks, Mr. Baker continued to harass Mrs. Grape with threatening and obscene telephone calls and sending text messages to her cellular phone.
47. Despite her increasing fear of Baker and concern that he was stalking her, Mrs. Grape elected not to call the police for assistance because she feared the police officer's threat that she and her children would lose their home because of a third call for help.
48. On January 5, 2007, Defendant Lawrence Pierce, Building Inspector and Code Enforcement Officer to East Rochester, sent a letter to Mrs. Grape's landlord, Martin Adwin, attached as Exhibit 1, which states (verbatim) as follows:
- “Section 144-13 of the Code of the Town/Village of East Rochester, that I have been notified by the Chief of Police of East Rochester that police agencies have responded to the captioned [sic] premises for civil or criminal disturbances twice within a twelve(12) month period.
- “You are further notified and warned that the possible consequences of a third (3rd) disturbance involving a police response include revocation of the Rental Dwelling Permit for the premises and the necessity to have the premises vacated.”
49. Defendant Pierce did not send a copy of such letter or any similar kind of notice to Mrs. Grape that her housing could be in jeopardy if the police responded to her home one more time
50. Defendants at no time advised Mrs. Grape of an established municipal process available for determining whether the procedure for revoking rental dwelling permits would be applied or not to Mrs. Grape or to her landlord if she were the victim, or intended victim, of violence or the threat of violence.
51. Defendants have failed to establish any formal procedure to notify persons threatened by violence that accessing both police protection and the criminal prosecution of their

assailants will not jeopardize their continued tenancy by initiating the revocation of their landlord's rental dwelling permit.

52. Defendants have failed to establish any formal due process protections for persons threatened by violence to assure such persons that their continued tenancy will not be jeopardized by initiating the revocation of their landlord's rental dwelling permit because they accessed police protection and/or the criminal prosecution of their assailants.
53. After receiving Defendant Pierce's letter, Mr. Adwin immediately mailed a copy to Mrs. Grape.
54. Upon receipt of the letter on or about January 10, 2006, Mrs. Grape was shocked, dismayed, and immediately and intensely fearful for her safety, suffering physical upset and great emotional distress.
55. When she read Defendant Pierce's letter, Mrs. Grape believed that she could no longer ask for police protection in connection with any incidents at her apartment in the Village of East Rochester.
56. Mrs. Grape believed that she would be evicted, and feared that she would lose her housing if she ultimately had to call the police in order to protect herself or her children.
57. Out of her fear and concern, Mrs. Grape telephoned Defendant Pierce to ask what she could do to prevent having this Ordinance enforced against her because she was a crime victim.
58. Mrs. Grape explained to Defendant Pierce that she was the target of domestic violence, and that the two police calls on that day in December were related to violence perpetrated upon her by a former boyfriend.
59. Defendant Pierce verified to Mrs. Grape that the police report indicated that the police

had responded to calls regarding domestic violence, and that Mrs. Grape had been the victim in both incidents.

60. Defendant Pierce told Mrs. Grape, however, that there was nothing he could do and that she should call the East Rochester Chief of Police herself.
61. Humiliated, fearful and discouraged by the history of the police and Village official response, Mrs. Grape elected not to call Defendant Police Chief Pugliese.
62. Defendants had no further contact with Mrs. Grape to address the concerns that she had expressed to Defendant Pierce as a victim of domestic violence.
63. Because of their unwillingness to hold Baker criminally accountable for his violence and their simultaneous threats to evict her from her home because of her pleas for help, Mrs. Grape believed that she had been completely stripped of any protective rights and remedies against Baker by the Town/Village of East Rochester.
64. Under New York law, Mrs. Grape is barred from using the Family Court to obtain order of protection relief against Mr. Barker because she is not married to him, divorced from him, does not have children in common with him and is not related by consanguinity or marriage. As a result, Mrs. Grape may only legally access protection from Baker by filing and pursuing charges against him in the criminal court system.
65. To date, Baker continues to stalk and monitor Mrs. Grape by calling her and reporting her comings and goings from her home.
66. Baker frequently knocks on Mrs. Grape's window at dawn, and regularly makes harassing calls or text messages to her throughout the night.
67. Baker shows up at Mrs. Grape's home and threatens to call the police if she does not permit him to enter. Baker has told Grape that he knows that if the police are called again,

she and her children will lose their housing and has repeatedly threatened to call the police if she refuses to succumb to his demand for entry into her home.

68. Overall, since receiving Defendant Pierce's letter, Mrs. Grape has needed protection from the police against Baker at least once or twice a week.

69. Because of the East Rochester ordinance and Defendant Pierce's letter, Mrs. Grape has not called the police for help when she has felt herself to be in danger.

70. Because of the threat of losing her home, Mrs. Grape has endured further abuse and violence by Baker.

71. Mrs. Grape's daughter, Nicole, has an order of protection in effect against Matthew Wheeler and this order is in effect until 2012.

72. Because the Ordinance provides no exception for calls for police service relating to the enforcement of valid court orders, she is fearful that any call to the East Rochester Police for help enforcing her daughter's order of protection may also result in the family's eviction.

73. The stress of constantly fearing for her safety and housing has exacerbated Mrs. Grape's MS, and she has had two flare ups from the disease since December 2006.

74. Mrs. Grape's daughters also live with the fear that if they call the police for help that this will result in the family's eviction.

75. Defendant Pierce's actions, personally and on behalf of the Village of East Rochester, have caused severe physical suffering and emotional distress to Mrs. Grape, arising from her anxiety in connection with the dilemma created by Defendants that she must choose between jeopardizing her safety and losing her housing.

Plaintiff Darla Wilce

76. Plaintiff Darla Wilce is a forty-four year old woman living in Webster, NY. On April 20, 2007, Ms. Wilce changed her name from Darla Scalise to Darla Wilce. Ms. Wilce moved to East Rochester, NY in 1989 and lived there until October 2005. Her sons Logan and Christian are sixteen and thirteen years old respectively.
77. Ms. Wilce is visually impaired, having no depth perception. As a child, Ms. Wilce had congenital esotropia, which means that her eyes were crossed. In order to correct this condition, Ms. Wilce underwent two operations. As a result of the surgery, Ms. Wilce lost her ability to judge distances and depth. Because Ms. Wilce has no depth perception, she cannot drive and has never had a driver's license. Ms. Wilce must use public transportation or rely on family and friends for transportation.
78. Ms. Wilce married her ex-husband Stephen Scalise in June 1992.
79. Stephen Scalise is a volunteer fireman for the Town/Village of East Rochester, and has lived in East Rochester, NY all his life. Mr. Scalise has a large family and is well-connected within the East Rochester community. For example, one of Mr. Scalise's sisters used to be a police officer for the East Rochester Police Department; therefore, Mr. Scalise personally knows many members of the East Rochester police force. Additionally, Mr. Scalise's father was once the head of the East Rochester School Board.
80. Throughout the duration of the marriage, Mr. Scalise was physically, emotionally, verbally, mentally and financially abusive toward Ms. Wilce. He committed acts of physical abuse toward Ms. Wilce, including but not limited to, punching her in the face, pushing her down a flight of stairs, physically dragging her up a flight of stairs by her hair, and attempting to rape her in front of their two sons. Mr. Scalise was unfaithful to

Ms. Wilce numerous times during the marriage, causing her great emotional and mental distress. Additionally, he repeatedly criticized her physical appearance and called her derogatory names. Finally, Mr. Scalise was also financially abusive toward Ms. Wilce by taking out cash advances on her credit cards without her permission and forging her name in order to cash checks made out to Ms. Wilce.

81. During the marriage, Ms. Wilce called the East Rochester Police Department for emergency assistance related to the acts of domestic violence numerous times, but Mr. Scalise was never arrested or otherwise held accountable by the East Rochester Police Department. Ms. Wilce believes that Mr. Scalise's connections and personal relationships with members of the police force muted the police response to her complaints.
82. Because of the poor law enforcement response, Ms. Wilce telephoned the 24-hour domestic violence hotline at Alternatives for Battered Women for information, help and support five times between September 1996 and February 2004, reporting a history of physical, mental, emotion and verbal abuse committed by her husband, Stephen Scalise.
83. Weary of Mr. Scalise's constant infidelity and abusive treatment, on or about July 1, 2002, Ms. Wilce and her sons moved out of the marital home they shared with Mr. Scalise to an apartment at 140 ½ Ivy Street in East Rochester, NY, owned by Mr. Dino Fiorvanti.
84. On or about July 1, 2002, as Ms. Wilce and her sons were moving into the apartment, Mr. Scalise arrived at Ms. Wilce's new home uninvited and began shouting epithets at Ms. Wilce in front of their two young children. Mr. Scalise also screamed at his sons. Mr. Scalise also became physically violent and kicked in the door of the new apartment.
85. Fearful for her safety and her children's safety, Ms. Wilce called the East Rochester

Police Department for assistance and they responded to the scene, constituting the first police call to that address while Ms. Wilce was a resident.

86. On July 15, 2002, Mr. Scalise filed for divorce from Ms. Wilce, who did not contest it.

The divorce became final on March 4, 2003.

87. After Ms. Wilce moved out of the marital home, she shared joint custody of the children with Mr. Scalise. Mr. Scalise began to harass Ms. Wilce with frequent telephone calls and arguments regarding custody and visitation of their two sons.

88. On December 23, 2002, Ms. Wilce filed a petition with the Monroe County Family Court seeking an Order of Protection against Mr. Scalise. The Court granted the Order, which was in effect January 15, 2003 to January 15, 2004.

89. During an argument in the fall of 2003, Ms. Wilce felt physically threatened by Mr. Scalise, and called the East Rochester Police Department for assistance, resulting in a second police response to 140 ½ Ivy Street. Despite the existence of a valid Family Court Order of Protection at the time of the incident, the East Rochester police failed to arrest or otherwise hold accountable Mr. Scalise for violating the Order of Protection.

90. Shortly thereafter, in the fall of 2003, Ms. Wilce's landlord, Mr. Dino Fiorvanti, contacted Ms. Wilce and notified her that he had received a letter from the Town/Village of East Rochester threatening to revoke his Rental Dwelling Permit because of her calls for police assistance to her rental unit.

91. Mr. Fiorvanti told Ms. Wilce that he could not afford to lose his Rental Dwelling Permit and asked her not to call the police any more.

92. Ms. Wilce suffered great upset, fear, stress, embarrassment and humiliation from the threat of losing her home.

93. Afraid of being evicted, in December 2003, Ms. Wilce found another apartment in East Rochester, signed a one-year lease and moved to 216 ½ Magnolia Avenue, which was owned by Mr. Frank DiAgostino.
94. Upon information and belief, Mr. Frank DiAgostino is now deceased.
95. Again, on the day that Ms. Wilce was moving in to the apartment at 216 ½ Magnolia Avenue, Mr. Scalise arrived at the property uninvited and began arguing with Ms. Wilce. Feeling physically threatened, Ms. Wilce again called the East Rochester Police Department for assistance, and they responded. Mr. DiAgostino was there during the argument and intervened, succeeding in getting Mr. Scalise to stop yelling at Ms. Wilce.
96. As the police were responding to Ms. Wilce's call, Mr. Scalise taunted Ms. Wilce by wagging his index finger at her, and saying "That's one! Two more times, Darla, and you're out!" to indicate to Ms. Wilce that this constituted one police call on her record at 216 ½ Magnolia Street; two more and she would be kicked out as per the East Rochester Local Law 144-13.
97. Once again, the police failed to arrest or otherwise hold Mr. Scalise accountable for violating the Family Court Order of Protection.
98. After the police had left, Mr. DiAgostino asked Ms. Wilce whether she was "going to be a problem," and indicated that he had some reservations about her moving in.
99. Ms. Wilce interpreted Mr. DiAgostino's remarks to mean that he was reluctant to have a new tenant who would attract frequent police attention. Ms. Wilce felt that in order to keep her housing, she must assure Mr. DiAgostino that she would not call the police to her home.
100. On May 24, 2004, the Monroe County Family Court entered a Custody Order for

the Scalise family, awarding Joint Custody of Logan and Christian to Mr. Scalise and Ms. Wilce.

101. In the Custody Order, the parties agreed that Logan and Christian would remain enrolled in the East Rochester School District “unless agreed otherwise by the parties, or pursuant to Court Order....”

102. On October 15, 2004, Mr. Scalise used his influence with the East Rochester Police Department to have Ms. Wilce arrested at her home at 216 ½ Magnolia Avenue, claiming that Ms. Wilce violated the Monroe County Family Court Custody Order directing her to stay inside her home when Mr. Scalise was dropping off the children after visitation. Instead of staying inside, Ms. Wilce came outside to talk to Mr. Scalise about his failure to pay for the children’s medical expenses as ordered by the Monroe County Family Court. As a result of this confrontation, Mr. Scalise called the East Rochester police who arrested Ms. Wilce and charged her with Criminal Contempt. Ms. Wilce believes that Mr. Scalise called the police to retaliate against her.

103. At the time of her arrest, Ms. Wilce asked the East Rochester Police Department to also arrest Mr. Scalise for violating the same Family Court Custody Order by not paying the children’s medical expenses for two successive months. The East Rochester police refused to do so.

104. On April 4, 2005, the criminal case against Ms. Wilce was dismissed by the East Rochester Town Court. Although dismissed, the retaliatory call for police service made by Mr. Scalise on October 15, 2004 constituted the second police call in twelve months to 216 ½ Magnolia Street.

105. Shortly thereafter, Mr. DiAgostino called Ms. Wilce and notified her that he had

received a notice from the Town/Village of East Rochester threatening to revoke his Rental Dwelling Permit if there was a third police call to 216 ½ Magnolia Street. Mr. DiAgostino informed Ms. Wilce that he could not afford to lose his Rental Dwelling Permit.

106. Having already learned about the effect of police calls on access to rental housing in East Rochester, Ms. Wilce was not surprised by Mr. DiAgostino's telephone call and told him that she was already looking for another place, because Ms. Wilce believed that she would be evicted from her home if the police were called to her home one more time.

107. Ms. Wilce suffered great upset, fear, stress, embarrassment and humiliation from the threat of losing her home.

108. On Christmas Day 2004, Mr. Scalise arrived at Ms. Wilce's home on Magnolia Avenue to pick up the children for visitation. Mr. Scalise was accompanied by two East Rochester police officers, and demanded that Ms. Wilce turn the children over to him even though it was not the agreed upon hour. The East Rochester police supported Mr. Scalise in his request for the children and because of their presence Ms. Wilce felt that she had no choice but to give in to Mr. Scalise's request, even though it did not comply with the custody and visitation agreement between them for the Christmas holiday.

109. At this time, Ms. Wilce became completely discouraged and weary of the unending harassment, retaliation and abuse perpetrated by her ex-husband. Ms. Wilce felt that if she continued to reside in East Rochester, the harassment by Mr. Scalise would not cease and he would continue to utilize his influence with the East Rochester Police Department to have Ms. Wilce's complaints undermined and overlooked.

110. Believing that East Rochester was not a safe community in which she and her

children could reside, in October 2005, Ms. Wilce moved to Webster, NY.

111. At that time, Ms. Wilce was employed in Penfield, and used public transportation to get back and forth to work. Because Ms. Wilce cannot drive due to her disability, and because there is no direct bus service from Webster to East Rochester, Ms. Wilce was unable to transport Logan and Christian to school in East Rochester while they were in her care and custody.

112. On January 31, 2007, the Monroe County Family Court entered an Order modifying the original Custody Order and Agreement between Mr. Scalise and Ms. Wilce, awarding sole custody to Mr. Scalise and only visitation to Ms. Wilce, and ordering Ms. Wilce to pay child support to Mr. Scalise. The change in custody was specifically due to Ms. Wilce's change in residency from East Rochester to Webster.

113. The January 31, 2007 order stated that Ms. Wilce could not seek joint custody again unless she should "attain a residence closed [sic] to the East Rochester School District...."

114. Because of the East Rochester ordinance and her ex-husband's ongoing abusive and harassing behavior, Ms. Wilce has been forced to move out of East Rochester, for fear of being constantly under the threat of losing her housing.

115. Because of being forced to move from East Rochester, Ms. Wilce has lost custody of her two sons, Logan and Christian.

116. In the United States and in New York State, the overwhelming majority of victims of domestic violence are women, and women are much more likely than men to be the victims of domestic violence.

117. At all times relevant to this action, the defendants were or should have been aware

that the vast majority of victims of domestic violence are women and that women are much more likely than men to be the victims of domestic violence.

FIRST CAUSE OF ACTION

Fourteenth Amendment Claims Actionable Under 42 U.S.C. § 1983

118. Plaintiffs re-allege paragraphs 18 through 117 above, as if set forth fully herein, and further allege that all actions of Defendants described therein were performed intentionally and under color of state law.
119. Defendants have violated Plaintiffs' rights to due process of law under the Fourteenth Amendment to the United States Constitution, as made actionable by the Civil Rights Act of 1871, 42 U.S.C. § 1983, by their actions as described above, and including, but not limited to, the following particulars:
- a) By enforcing a local law which, on its face and as applied, fails to provide Plaintiffs, as tenants, with any prior notice or hearing, nor any substantive basis for appealing, the proposed revocation of their respective landlord's rental permit for unit, notwithstanding the lack of any wrongdoing on their part, and notwithstanding the fact that the revocation would be based upon incidents related directly to Plaintiffs' status as victims, or intended victims, of one or more incidents of domestic violence, or as victims of a civil or criminal disturbance; and
 - b) By enforcing a local law which, on its face and as applied, fails to provide Plaintiffs, as tenants, with any right to notice and hearing prior to depriving them of their right to continue contracting with their respective landlords to lease their rental units, notwithstanding the lack of any wrongdoing on Plaintiffs' parts, and notwithstanding the fact that the revocation would be based upon incidents related

directly to Plaintiffs' status as victims, or intended victims, of one or more incidents of domestic violence, or as victims of a civil or criminal disturbance.

SECOND CAUSE OF ACTION

First Amendment Claims Actionable Under 42 U.S.C. § 1983

120. Plaintiffs re-allege paragraphs 18 through 117 above, as if set forth fully herein, and further allege that all actions of Defendants described therein were performed intentionally and under color of state law.

121. Defendants have violated Plaintiffs' rights under the First Amendment to the United States Constitution, as made actionable by the Civil Rights Act of 1871, 42 U.S.C. § 1983, including Plaintiffs' right to petition the government, their right to free speech and their right to freedom of association, by Defendants actions as described above and including, but not limited to, the following particulars:

- a) By depriving Plaintiffs of their right to request the assistance of any police agency in order to protect themselves and their children from harm or potential harm related to incidents of domestic violence or civil or criminal disturbances at their respective apartments;
- b) By depriving Plaintiff of her access the criminal justice system as a means of protecting herself and her children from harm or potential harm related to incidents of domestic violence or criminal disturbances at her apartment;
- c) By enforcing a local law which, on its face, is vague and overbroad with the consequence that Plaintiffs have been deterred from exercising their rights to call for police assistance in order to protect themselves and their children from harm or potential harm related to incidents of domestic violence, or of other civil or

criminal disturbances at her apartment;

- d) By threatening to take action that would force Plaintiffs and their families out of their home if Plaintiffs were to call the police for protection.

THIRD CAUSE OF ACTION
Fair Housing Act Claims

122. Plaintiffs re-allege paragraphs 18 through 117 above as if set forth fully herein.
123. By adopting and enforcing a local law that threatens and results in the loss of housing of domestic violence victims, by treating the police calls and investigations of victims of actual or threatened domestic violence the same as police calls regarding all other civil and criminal nuisances, and without taking into account the status of the tenant as a victim of the incident, Defendants' policies and practices have a disparate impact on women, because the great majority of victims of domestic violence are women, and therefore have resulted in the unlawful denial of housing (or otherwise making housing unavailable) on the basis of sex in violation of the Fair Housing Amendments Act, 42 U.S.C. §§ 3601-19.
124. Defendants' actions as described above were carried out intentionally, willfully, and with callous disregard of the rights of Plaintiffs and others similarly situated.
125. Plaintiffs have experienced physical suffering accompanied by severe emotional distress as a result of Defendants' conduct as described above.
126. As a consequence of the above violations, Plaintiffs are entitled to compensatory and punitive damages, declaratory relief, and injunctive relief, as requested below.

WHEREFORE, Plaintiffs respectfully request a Judgment and Order of this Court:

- a) Assuming jurisdiction of this action; and
- b) Declaring the practices of Defendants, as set forth above, to be an unlawful denial of Plaintiffs' rights to Due Process of Law as protected by the Fourteenth Amendment to the United States Constitution and made actionable by the Civil Rights Act of 1871, 42 U.S.C. § 1983;
- c) Declaring the practices of Defendants, as set forth above, to be an unlawful denial of Plaintiffs' rights under the First Amendment to the United States Constitution, as made actionable by the Civil Rights Act of 1871, 42 U.S.C. § 1983;
- d) Declaring the practices of Defendants, as set forth above, to violate the Fair Housing Act, as amended, 42 U.S.C. § § 3601-19;
- e) Declaring Section 144-13 of the Town/Village of East Rochester Code unconstitutional on its face and as applied;
- f) Declaring that Section 144-13 of the Town/Village of East Rochester Code violates the Fair Housing Act, Title VIII of the Civil Rights Act of 1968;
- g) Enjoining Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them, from enforcing Section 144-13 of the Town/Village of East Rochester Code;
- h) Awarding such damages as would fully compensate Plaintiffs Laurie Grape and Darla Wilce;
- i) Awarding punitive damages to Plaintiffs Laurie Grape and Darla Wilce;
- j) Awarding costs, disbursements and attorneys' fees to Plaintiffs under 42 U.S.C. § 3613(c)(2) and § 1988; and

- k) Awarding such additional relief and further relief as the interests of justice require.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues.

Dated: May 16, 2007

Respectfully submitted,

/s/ Karen M. Phillips

Karen M. Phillips, of Counsel

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