

1 Michael Millen  
2 Attorney at Law (#151731)  
3 119 Calle Marguerita Ste. 100  
4 Los Gatos, CA 95032  
5 Telephone: (408) 871-2777  
6 Fax: (408) 516-9861  
7 mikemillen@aol.com

8 Catherine Short, Esq. (#117442)  
9 Life Legal Defense Foundation  
10 PO Box 1313  
11 Ojai, CA 93024-1313  
12 (707) 337-6880  
13 kshort@lldf.org

14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA (San Jose Division)

17 TERESITA AUBIN, DAVID BROWNFIELD, and  
18 WYNETTE SILLS,

19 Plaintiffs,

20 v.

21 ROB BONTA, in his official capacity as Attorney  
22 General of the State of California,

23 Defendant.

NO.: 21-CV-07938

**COMPLAINT FOR CIVIL RIGHTS  
VIOLATION AND INJUNCTIVE  
AND DECLARATORY RELIEF;**

- 1. 42 U.S.C. § 1983
- 2. California Civil Code §52.1

24 Plaintiffs allege as follows:

25 1. Plaintiffs Teresita Aubin, David Brownfield, and Wynette Sills are natural persons.  
26 Motivated by their moral, religious, and political beliefs, Plaintiffs regularly engage in pro-life,  
27 anti-abortion speech activities in California. These speech activities include hand-to-hand  
28 leafleting, education about abortion, and holding signs with a pro-life, anti-abortion message. All  
of these activities occur on public sidewalks or other public fora, where they can convey their  
message to the public.

1           2. Defendant Rob Bonta is the Attorney General of California and as such is the chief law  
2 enforcement officer of the state of California and is named herein in his official capacity.

3 According to Cal. Const. Article V, §13, the Attorney General’s duties include the following:

4           It shall be the duty of the Attorney General to see that the laws of the State are  
5 uniformly and adequately enforced. The Attorney General shall have direct  
6 supervision over every district attorney and sheriff and over such other law  
7 enforcement officers as may be designated by law, in all matters pertaining to the  
8 duties of their respective offices, and may require any of said officers to make reports  
9 concerning the investigation, detection, prosecution, and punishment of crime in their  
10 respective jurisdictions as to the Attorney General may seem advisable.

11           3. **JURISDICTION:** This Court has jurisdiction over this action pursuant to Title 28  
12 U.S.C. §§1331 and 1343(3) in that the controversy arises under the United States Constitution and  
13 under 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202. This Court has authority to award  
14 attorney fees pursuant to 42 U.S.C. §1988. Plaintiffs further invoke the supplemental jurisdiction  
15 of this Court under 28 U.S.C. §1367(a) to hear and adjudicate state law claims. Each and all of the  
16 acts (or threats of acts) alleged herein were done by Defendant, or his officers, agents, and  
17 employees, under color and pretense of the statutes, ordinances, regulations, customs and usages of  
18 the State of California.

19           4. **INTRADISTRICT ASSIGNMENT:** Venue is proper in this district under 28 U.S.C.  
20 §1391(b) because a substantial part of the events giving rise to the claims in this action occurred in  
21 Santa Clara County and Monterey County, California which is within this district and division.

22           5. On or about October 8, 2021, the State of California enrolled and chaptered Senate Bill  
23 742 (“SB742”), with the short title: “Vaccination sites: unlawful activities: obstructing,  
24 intimidating, or harassing.” Section 2 of SB742 adds section 594.39 to the Penal Code. Section  
25 594.39(a) provides:

26           It is unlawful to knowingly approach within 30 feet of any person while a  
27 person is within 100 feet of the entrance or exit of a vaccination site and is  
28 seeking to enter or exit a vaccination site, or any occupied motor vehicle  
seeking entry or exit to a vaccination site, for the purpose of obstructing,  
injuring, harassing, intimidating, or interfering with that person or vehicle  
occupant.

Section 594.39(c)(1) defines “harassing” as:

1 knowingly approaching, without consent, within 30 feet of another person  
2 or occupied vehicle for the purpose of passing a leaflet or handbill to,  
3 displaying a sign to, or engaging in oral protest, education, or counseling  
4 with, that other person in a public way or on a sidewalk area.

5 Section 594.39(c)(6) defines “vaccination site” as:

6 the physical location where vaccination services are provided, including,  
7 but not limited to, a hospital, physician’s office, clinic, or any retail space  
8 or pop-up location made available for vaccination services.

9 Section 594.39(d) provides:

10 It is not a violation of this section to engage in lawful picketing arising out  
11 of a labor dispute, as provided in Section 527.3 of the Code of Civil  
12 Procedure.

13 6. Violation of SB742 is a criminal misdemeanor under section 594.39(b), punishable by  
14 fine or imprisonment or both.

15 7. Plaintiffs regularly exercise their free speech rights to display signs to, distribute  
16 literature to, and engage in oral protest, education, and counseling with other persons, in or out of  
17 vehicles, within 100 feet of the entrance or exits of “vaccination sites” as defined under SB742.  
18 Plaintiffs do not seek, nor could they reasonably be expected to seek or to gain, from 30 feet away,  
19 permission to approach other persons in order to engage in these activities.

20 8. SB742 is content- and viewpoint on its face, as it exempts speech activity “arising out of  
21 a labor dispute” from the restrictions imposed on other speech and speakers. It is also content-  
22 based in that it restricts only those oral communications that consist of “protest, education, or  
23 counseling.”

24 9. SB742 on its face burdens and denies free speech in a traditional public forum, does not  
25 further any important or substantial government interest, and is not narrowly tailored to further any  
26 government interest asserted, and fails to leave open ample alternative channels of communication.

27 10. Any interest advanced by Defendant to support SB742 is related to the suppression of  
28 constitutional free speech rights and is also minor compared to the infringement of rights worked  
by SB742.

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11. Unless and until Defendant is restrained by order of this Court, defendant, acting through his officers, servants, agents and employees, will enforce SB742.

12. Unless and until this Court declares SB742 unconstitutional, Defendant, acting through his officers, servants, agents and employees, will enforce SB742.

13. All of the acts of the Defendant, his officers, agents, servants, and employees, as alleged herein, were done or are threatened to be done under color and pretense of the statutes, ordinances, regulations, customs, official policies, official procedures, and usages of the State of California.

14. Plaintiffs are suffering irreparable injury from the enforcement and threat of enforcement of SB742, and will continue to suffer irreparable injury until the threat of enforcement is lifted.

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF 42 U.S.C. § 1983)**

15. Plaintiffs incorporate by reference all preceding paragraphs as if fully restated here.

16. SB742 is an unconstitutional abridgment on its face, and as applied or threatened to be applied, of the Plaintiffs’ affirmative rights to freedom of speech under the United States Constitution, First and Fourteenth Amendments.

17. SB742, on its face and as applied or threatened to be applied, is an unconstitutionally overbroad restriction on expressive activity.

18. SB742, on its face and as applied or threatened to be applied, is an unconstitutionally vague restriction on expressive activity.

19. SB742 on its face and as applied or threatened to be applied, is a content-based and viewpoint-based restriction on speech.

20. SB742, on its face and as applied or threatened to be applied, does not serve a significant governmental interest.

21. SB742, on its face and as applied or threatened to be applied, does not leave open ample alternative channels of communication.

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22. SB742, on its face and as applied or threatened to be applied, is neither narrowly tailored nor the least restrictive means to accomplish any permissible governmental purpose sought to be served by the legislation.

23. SB742 fails to adequately advise, notify, or inform persons threatened with possible prosecution for violation of their requirements. Therefore, the Ordinance is unconstitutionally vague, on its face and as applied or threatened to be applied, in violation of the due process guarantee of the Fourteenth Amendment to the United States Constitution.

24. SB742 is an irrational and unreasonable statute, imposing unjustifiable restrictions on the exercise of protected constitutional rights. Because the Ordinance is irrational and unreasonable, its application violates the due process guarantee of the Fourteenth Amendment to the United States Constitution

25. SB742, on its face and as applied or threatened to be applied, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and similar guarantees in the California State Constitution by denying to Plaintiffs free speech rights allowed to others in similar situations and other protections of state and federal law

**SECOND CAUSE OF ACTION**  
**(VIOLATION OF CALIFORNIA CIVIL CODE §52.1)**

26. Plaintiff incorporates paragraphs 1-25 as if fully set forth herein.

27. SB742, on its face and as applied or threatened to be applied, interferes with Plaintiffs' exercise of the right to free speech and to assembly guaranteed by the First Amendment of the United States Constitution and Article I, §2 of the California Constitution, their right to be free from unlawful search and seizure guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §13 of the California Constitution, their rights under California's Unruh Act to be free from unlawful discrimination, and his equal protection rights under the 14<sup>th</sup> Amendment to the United States Constitution. This was and is a violation of California Civil Code §52.1.


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28. Unless enjoined by this Court, Defendant will continue to infringe Plaintiffs’ constitutionally protected rights and thereby cause irreparable injury, as damages alone cannot fully compensate Plaintiffs for the ensuing harm. This threat of injury from continuing violations requires injunctive relief.

WHEREFORE, Plaintiffs pray that this Court:

- (a) Enter judgment against the Defendant;
- (b) Enter a declaratory judgment declaring the acts of the Defendant to be a violation of Plaintiffs’ constitutional rights to freedom of speech and due process;
- (c) Issue a declaratory judgment declaring that SB742 is unconstitutional on its face;
- (d) Issue a declaratory judgment declaring that SB742 is unconstitutional as enforced and as applied;
- (e) Issue a temporary restraining order, and a preliminary and permanent injunction enjoining defendants, their agents, servants, employees, officers from enforcing SB742;
- (f) Award Plaintiffs costs, interest and reasonable attorneys’ fees for this action pursuant to 42 U.S.C. §1988, Code of Civil Procedure §1021.5, and/or Civil Code §§ 52 and 52.1; and,
- (g) Order such other and further relief as the Court deems just and proper under the circumstances.

Dated: October 10, 2021

  
\_\_\_\_\_  
MICHAEL MILLEN, ESQ.  
ATTORNEY FOR PLAINTIFF

JS-CAND 44 (Rev. 10/2020)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Teresita Aubin, David Brownfield, Wynette Sills

(b) County of Residence of First Listed Plaintiff Santa Clara County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael Millen, Esq., 119 Calle Marguerita, Los Gatos, CA 95032, (408) 871-2777; Catherine Short, Esq., LLDf, PO Box 1313, Ojai, CA 93024, (707) 337-6880

**DEFENDANTS**

ROB BONTA, in his official capacity as Attorney General of the State of California

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	320 Assault, Libel & Slander	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	330 Federal Employers' Liability	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	340 Marine	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	345 Marine Product Liability	790 Other Labor Litigation	880 Defend Trade Secrets Act of 2016	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	350 Motor Vehicle	791 Employee Retirement Income Security Act	<b>SOCIAL SECURITY</b>	480 Consumer Credit
190 Other Contract	355 Motor Vehicle Product Liability	<b>IMMIGRATION</b>	861 HIA (1395ff)	485 Telephone Consumer Protection Act
195 Contract Product Liability	360 Other Personal Injury	462 Naturalization Application	862 Black Lung (923)	490 Cable/Sat TV
196 Franchise	362 Personal Injury—Medical Malpractice	465 Other Immigration Actions	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>		864 SSID Title XVI	890 Other Statutory Actions
210 Land Condemnation	<input checked="" type="checkbox"/> 440 Other Civil Rights		865 RSI (405(g))	891 Agricultural Acts
220 Foreclosure	441 Voting	<b>HABEAS CORPUS</b>	<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
230 Rent Lease & Ejectment	442 Employment	463 Alien Detainee	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
240 Torts to Land	443 Housing/Accommodations	510 Motions to Vacate Sentence	871 IRS—Third Party 26 USC § 7609	896 Arbitration
245 Tort Product Liability	445 Amer. w/Disabilities—Employment	530 General		899 Administrative Procedure Act/Review or Appeal of Agency Decision
290 All Other Real Property	446 Amer. w/Disabilities—Other	535 Death Penalty		950 Constitutionality of State Statutes
	448 Education	<b>OTHER</b>		
		540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation—Transfer
- 8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. §1983

Brief description of cause:

Lawsuit seeking declaration that state law SB742 (Penal Code §594.39) is unconstitutional

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT** (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 10/10/2021

SIGNATURE OF ATTORNEY OF RECORD



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

TERESITA AUBIN, DAVID BROWNFIELD, and  
WYNETTE SILLS

Plaintiff(s)

v.

ROB BONTA, in his capacity as Attorney General of  
the State of California,

Defendant(s)

Civil Action No. 21-CV-7938

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ROB BONTA, in his capacity as Attorney General of the State of California,  
1300 "I" Street  
Sacramento, CA 95814-2919

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

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*Server's signature*

\_\_\_\_\_  
*Printed name and title*

*Server's address*

Additional information regarding attempted service, etc: