

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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THE FREDERICK DOUGLASS  
FOUNDATION, INC., *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

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Civil Action No. 20-3346 (JEB)

**DEFENDANT'S OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION AND  
CROSS-MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant the District of Columbia (the District) opposes plaintiffs' motion for a preliminary injunction and cross-moves to dismiss plaintiffs' Complaint with prejudice. LCvR 65.1(c); Fed. R. Civ. P. 12(b)(6).

As set forth in the accompanying memorandum of points and authorities, plaintiffs are not entitled to injunctive relief, and dismissal is appropriate because plaintiffs fail to state a claim upon which relief can be granted. Plaintiffs seek declaratory and injunctive relief based on the District's enforcement of the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 (the Defacement Ordinance), which prohibits chalking, painting or otherwise marking a message on sidewalks or roadways. Plaintiffs allege that the prohibition on chalking or painting "Black Pre-Born Lives Matter" on a street or sidewalk violates the Free Speech Clause, equal protection component of the Due Process Clause,

Assembly Clause, Religious Freedom Restoration Act and Free Exercise Clause. But plaintiffs cannot show that they have a right to deface public property or that the District's application of the Defacement Ordinance violates plaintiffs' constitutional or statutory rights. As a result, plaintiffs' motion for a preliminary injunction should be denied, and the Complaint should be dismissed with prejudice. A proposed order is attached.

Dated: January 29, 2021.

Respectfully submitted,

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