

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) CALVIN MCGRAW, )  
(2) G. WAYNE MARSHALL, )  
(3) MARK FAULK, )  
(4) TRISTA WILSON, )  
(5) NEAL SCHINDLER, )  
(6) OKLAHOMA LIBERTARIAN PARTY, )  
(7) RED DIRT REPORT, )  
Plaintiffs, )

vs. )

Case No. CIV-16-0352-HE

(1) CITY OF OKLAHOMA CITY, an )  
Oklahoma municipal corporation, )  
(2) WILLIAM CITTYY, in his official )  
capacity as CHIEF OF THE OKLAHOMA )  
CITY POLICE DEPARTMENT, )  
Defendants. )

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

**I. INTRODUCTION**

1. This civil rights action challenges Oklahoma City’s recently enacted Ordinance No. 25,283 (“Ordinance”), codified at § 32-458 of the Oklahoma City Municipal Code, facially and as applied. The anti-panhandling measure criminalizes “standing, sitting, or staying” on “any portion of a median” within city limits virtually “for any purpose” other than to cross it. A copy of the Ordinance is attached as Exhibit 1.

2. The Ordinance is a sweeping ban on the free speech, liberty, and equality guaranteed by the First and Fourteenth Amendments to the United States Constitution. In response to discomfort with and distrust of panhandlers seeking assistance in the public square, the Ordinance was originally crafted to push solicitation off public medians as part of a broader Oklahoma City campaign against panhandling. But to paper over such an unconstitutional crackdown on the protected speech of impoverished and marginalized citizens, the targeted measure was transmogrified into a blanket prohibition on nearly all speech and activities on public medians and rebranded with an unsubstantiated post-hoc traffic safety justification. Consequently, the enacted Ordinance now suppresses the free speech of a broad and diverse cross-section of the community—the poor and the rich, the charitable and the political, the young and the elderly, the healthy and the ailing—in prime public areas citywide that are specially safeguarded by the First Amendment as traditional forums for communication between citizens.
3. Preliminary and permanent injunctive relief is warranted to stop Oklahoma City from enforcing the Ordinance in violation of the cherished constitutional freedoms of Plaintiffs and a multitude of third parties.

## II. JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.
5. Venue is proper in the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. § 1391(b) because the claims arise in the district and all parties reside and/or operate in the district.

### **III. PARTIES**

6. Plaintiff Calvin McCraw, a formerly homeless vendor of The Curbside Chronicle, resides in Oklahoma City.
7. Plaintiff G. Wayne Marshall is formerly homeless and resides in the Oklahoma City metropolitan area.
8. Plaintiff Mark Faulk is a social activist, author, filmmaker, former and future political candidate, and current cat owner who resides in Oklahoma City.
9. Plaintiff Trista Wilson is a jogger who resides in Oklahoma City.
10. Plaintiff Neal Schindler resides in the Oklahoma City metropolitan area and runs in the annual Oklahoma City Memorial Marathon.
11. Plaintiff Oklahoma Libertarian Party is a minority political party in Oklahoma.
12. Plaintiff Red Dirt Report is an independent news outlet based in Oklahoma City.
13. Numerous Third Party Plaintiffs reside in the Oklahoma City metropolitan area.

14. Defendant City of Oklahoma City (“City”) is a municipal corporation chartered under the laws of Oklahoma.
15. Defendant William Citty, sued in his official capacity, is the Chief of Police of the Oklahoma City Police Department (“OKCPD”).

#### IV. FACTUAL ALLEGATIONS

##### **The Original Proposed Ordinance: Targeting a “Quality of Life” Problem**

16. On September 15, 2015, the first public draft of the Ordinance was introduced at a weekly public meeting of the City Council (“Council”) by Councilwoman Meg Salyer. The day before in *The Oklahoman*, the largest circulation newspaper in the metropolitan area, Councilwoman Salyer had related that “residents tell her their quality of life is destroyed every morning as they drive through the intersection” and see panhandlers. “Why should that have to be in our community?” she had been quoted as saying.
17. At the public meeting, Councilwoman Salyer explained that her proposed Ordinance was “just one tiny piece of what we hope will be a much larger community-wide effort” to “help those truly needy and to help direct funds to the agencies providing them rather than to those who choose panhandling as a business.” Rather than being—as later purported—a traffic safety measure, Councilwoman Salyer characterized her proposal as “a very simple change” to

existing law that adds “median” to “the description of locations where solicitation is prohibited.”

18. In particular, the original proposal introduced by Councilwoman Salyer would have amended § 32-458 of the municipal code—which already prohibited standing in streets to solicit from vehicular occupants—to also ban doing so from medians, as well as to ban “walk[ing]” on streets or medians for that purpose. Under the amendment, as another Councilmember confirmed, “you can walk in the median as long as you’re not soliciting.” The first public draft of the Ordinance is attached as Exhibit 2.
19. Members of the community who spoke at the meeting in support of the proposed Ordinance perfectly understood its anti-panhandling purpose. One urban neighborhood resident praised the Council for “taking the panhandling issue on,” as it was “bothering a lot of people.” Another stated, “I don’t like seeing them there.” And a third asked if the City alternatively could simply “outlaw people giving to these people,” because “if you give these people money you’re enabling them to continue in this sinful lifestyle.”
20. The public discussion among Councilmembers likewise centered on social issues with panhandling. Some wondered whether the City had done enough to address chronic homelessness and poverty, while others wondered whether more needed to be done to address panhandling at other locations, such as

parking lots and near schools. Concerns were also expressed that the City had not considered “any alternatives first” or “looked at all best practices in other cities.”

21. Throughout the September 15 Council meeting, not one member of the community or one member of the Council expressed any concern about the safety of those panhandling on medians or of passing motorists.

#### **A Business Problem Too**

22. Behind the scenes, the City’s anti-panhandling campaign had kicked into high-gear the summer before the proposed Ordinance was introduced, according to documents obtained from the City by the American Civil Liberties Union of Oklahoma (“ACLU OK”). For example, the Director of Public Information and Marketing for the City had prepared public relations materials to combat the public perception of the upcoming “panhandling campaign” as “heartless and cold.” Furthermore, she advised that it would “help[] tremendous[ly] if it’s the community’s voice saying this and not the City’s voice.”
23. In early August 2015, Councilwoman Salyer met with merchants located near the intersection of Northwest 23rd Street and North Pennsylvania Avenue in midtown Oklahoma City, an area frequented by panhandlers. That meeting was facilitated by Georgie Rasco, the Executive Director of the Neighborhood Alliance of Central Oklahoma (“Neighborhood Alliance”), to discuss the rights of

businesses “regarding the horrible panhandling issue around that corner.” One solution discussed was an anti-panhandling ordinance.

24. In an email widely distributed to businesses near that intersection and Councilmembers, Ms. Rasco let it be known that her organization “strongly supports this measure.” As she explained, “first and foremost” panhandling “degrades” the panhandler and “bothers most citizens to think we live in a City that has so few resources for the poor,” and “secondly” panhandling “degrades our neighborhoods” and “hurts our businesses and property values.” She also asserted that “perceived or real safety issues abound,” such as “panhandlers stepping out into traffic to collect a donation.”
25. Meanwhile, the Municipal Counselor, Kenneth Jordan, worried that “[t]he downside of adopting additional panhandling/soliciting regulations that could be unconstitutional would be a federal-court lawsuit.” He documented that Councilwoman Salyer was working on a proposal “to ban panhandling/soliciting on all medians” (emphasis original), and that the rules would apply “across the board to all solicitors,” apparently to avoid invalidation for “discrimination against the content of the speech.” As he explained, the proposal would repeal “a special exemption” in the existing ordinance for firefighters that allowed them or anyone else to obtain a once-a-year solicitation permit—for \$200—“to walk in

the street, even in lanes of traffic.” The repeal of that permitting system was part of the Ordinance as originally introduced and later as enacted.

### **Key Opposition**

26. Opposition to the proposed Ordinance arose from non-profit social service providers across Oklahoma City who serve the homeless and impoverished. In a letter to the Mayor and Council, Catholic Charities, The Homeless Alliance, and Voices Organized in Civic Engagement (“VOICE”) wrote that “[t]he proposed Ordinance directed at median panhandling is ill-advised at best and potentially a further detriment to public safety by diverting already limited resources.” Instead, the coalition urged working with it “to craft a more balanced solution to the panhandling problem, which engages the affected population with positive alternatives as offered by many service providers.”
27. The Curbside Chronicle (“Curbside”) also opposed the measure. Curbside is the first and only “street paper” in Oklahoma. It provides an alternative to panhandling and a proven stepping stone out of homelessness by empowering individuals as small business owners to buy issues at a discount, distribute them for donations, and use the earnings to transition into housing and meet other basic needs. Curbside also provides a voice for the homeless, with articles by and about those who live on the streets and margins of society. Curbside’s Director, Ranya O’Connor, predicted that the anti-panhandling measure would



“increase the number of homeless in our community, starting with the numerous Curbside Chronicle vendors reliant on magazine sales to sustain their housing.” Most of Curbside’s vendors distribute on medians, which offer safe and direct access to drivers. Pushing them onto roadsides and street corners would have a “significant impact” on Curbside’s business model. It would be more difficult and less safe for vendors to attempt exchanges with drivers through the front passenger-side window, and Oklahoma City does not have enough foot-traffic to sustain pedestrian sales.

28. Local firefighters and the national Muscular Dystrophy Association (“MDA”) also publicly voiced strong opposition to the proposed measure. It would stop firefighters from engaging in their annual “Fill the Boot” campaign from medians to support the MDA. Phil Sipe, the President of the local International Association of Firefighters, informed The Oklahoman that yearly collections of around \$300,000 could drop by 75 to 80 percent, which would be a severe “blow to families” that depend on the charitable contributions.

#### **The “Public Safety” Rebrand**

29. In response to criticism of the anti-panhandling measure for being harmful to the poor as well as damaging to Curbside and the firefighter’s Fill the Boot campaign, key City employees and Councilmembers altered their messaging in support of the Ordinance from one that was a “piece of . . . a much larger

community-wide effort” to stamp out panhandling to one that was rebranded and promoted solely as a traffic safety measure.

30. To advance this post-hoc traffic safety justification, the OKCPD began “to pull stats” on pedestrian deaths “for the next City Council meeting, and for an upcoming public safety campaign.” Those statistics were to go into a slideshow the Chief of Police, William Citty, would present at a future Council meeting. Reviewing the slideshow before its public presentation, Assistant City Manager M.T. Berry observed in an email to Chief Citty that it “[l]ooks good but I would rename it ‘Median Safety Presentation’ or something other than Panhandler.”
31. Likewise, in subsequent public statements, City officials now explained and justified the proposed Ordinance in terms of traffic safety and denied that it concerned panhandling or panhandlers at all. For example, Municipal Counselor Jordan—who had internally referred to the proposed measure as one to “ban panhandling/soliciting” on medians—now informed ACLU OK that its description of the proposal as an anti-panhandling measure “is incorrect,” as “it is a traffic safety measure.”

### **Dramatically Expanded Ban**

32. In service of the City’s newly-minted “public safety campaign,” the proposed Ordinance was redrafted before the September 29, 2015 Council meeting. The redrafted proposal inserted a preamble asserting for the first time that its

“purpose” is to “[p]rotect persons from the traffic hazards and potential personal injuries that they are or may be exposed to . . . on the medians,” as well as to “[p]rotect drivers of vehicles from potential legal liability.”

33. In this second public draft, a copy of which is attached as Exhibit 3, all references to solicitation in the existing ordinance were to be stricken. Instead, the Ordinance would sweepingly provide that “no person shall stand, sit, or stay on . . . any median for any purpose.” The redraft exempted four classes of “conduct” from this prohibition: (1) “using a crosswalk or safety zone to cross from one side of the street or highway to another”; (2) “law enforcement officers or public officials acting within the scope of their work”; (3) “authorized construction or maintenance work”; and (4) “responding to any emergency situation.”

### **Public Hearing**

34. At the September 29, 2015 Council meeting, the revised proposed Ordinance received a public hearing. In a messaging slip, Mayor Mick Cornett candidly introduced the agenda item by noting that “this has to do with generally the panhandling issue.”
35. An attorney for the City countered that the proposed Ordinance had been revised to “ma[k]e it broad enough to keep everybody off,” including “people who were actually having campaign signs” or “the girls having carwash signs.”

He pushed back against what he characterized as “the public perception” that “we’re trying to stop panhandling,” noting that solicitation could still occur on roadsides and sidewalks. In support of the new traffic safety justification, he cited fourteen pedestrian deaths from 2014. However, in response to a question from a Councilmember, he admitted that “we never got the exact location where the people were” when struck, whether on sidewalks, crosswalks, roadways, or medians.

36. Chief Citty presented his view that the proposal has always concerned “public safety” rather than panhandling. He believed the proposal would effectively deter panhandling from public medians. He therefore predicted that the “primary violation” his officers would cite after enactment would be for illegally stepping into the street from roadsides, as “it’s pretty hard to restrain yourself if someone’s handing money from a car to not step into the street.” Asked by a Councilmember whether the City had “empirical data” to support the measure as “a public safety issue and not a panhandling issue,” Chief Citty admitted that the OKCPD had not pulled data to determine where pedestrian accidents near intersections had occurred. But he surmised that “you’re not going to have a huge number of people that are hit in the medians primarily because there’s not many people that stand in the medians—you’re talking about a very small group here that stand in the medians.” Finally, he confessed that “I’ll give to kids, and

I'll give to a football team, or I'll give to somebody if they're out there trying to raise funds."

37. The majority of those speaking during the public comment portion of the hearing opposed the proposed measure. They viewed the new traffic safety justification as pretextual. One member of the public recalled that "the origin of the ordinance was based around complaints about people being uncomfortable with seeing panhandlers," and described the revised measure as a continuing "effort to try to just avoid, ignore, and hide the issues that some of our most vulnerable individuals are facing every day." Another community member observed that moving panhandlers to the sidewalks on the right side of cars "is really more dangerous" than allowing them to solicit on medians next to motorists stopped in left-turn lanes. And a third pointed out that the City's multimillion-dollar downtown streetcar project, discussed earlier in the meeting, would place pedestrians at stops in the very medians it now characterized as unsafe—to which a Councilmember later in the meeting noted that "there might be a need for an additional exception for that once it's actually in existence."
38. Some members of the public spoke against the proposal on First Amendment grounds. One explained that "panhandling is an expression of free speech—it is the poorest among us petitioning for help," and "a morning commute made more uncomfortable for people in their cars is not nearly reason enough to

regulate speech in this way.” She also invoked her right “to give money or purchase a copy of *The Curbside Chronicle*” in support of neighbors who “struggle to make ends meet.”

39. Many non-profit organizations and advocates for the poor and homeless spoke against the proposal and detailed how it would exacerbate Oklahoma City’s poverty problems. Among them was Dan Straughan, the Executive Director of the Homeless Alliance. He disputed the stereotype of panhandlers expressed by some members of the public and the Council, stating that “many, if not most, are in extreme poverty.” He predicted that the measure would increase homelessness both because it would reduce the venues for solicitation, and because the failure to pay its fines would result in arrest warrants and the revocation of support for subsidized housing. In his organization’s view, “there are more constructive, less punitive ways” to address “the same ultimate goal [of] reducing panhandling in the community.”
40. Another community organizer, Suzanne Nichols of VOICE, spoke of her organization working with affected neighborhoods to develop a public education plan “aimed at the giver” to encourage supporting social service groups. This plan was provided to Councilwoman Salyer, but “the only response” from her was the proposed ordinance, which VOICE opposed as harmful to the poor and homeless.

41. Also opposed was Brad Barghols, Chief Executive of the MDA's Central Division. He warned that the firefighters' Fill the Boot campaign would be "in jeopardy" from a drastic drop in revenue that would result from kicking the campaign off public medians. He also observed that such charitable solicitation by firefighters on public medians has been a celebrated tradition in "countless communities" for over half a century.
42. One of the supporters of the proposal at the meeting, a public school superintendent, raised concerns about panhandling near a school in her district. Her backing was not based on traffic safety but on the fear that "there is someone out there on drugs or mentally ill and my kids have to walk past them on the way home."
43. Although Councilwoman Salyer was absent from the meeting, Ms. Rasco of Neighborhood Alliance was present. She defended the measure as "truly" about "median safety," and declared it was "never intended to outlaw panhandling in any way."
44. As the meeting closed, Councilman Shadid stated that he had "a hard time believing that this is really about public safety as opposed to panhandling." From his viewpoint on the Council, "panhandling has been the focus," and "the conversations I've had over the last year have been, 'Well how could we survive a legal challenge? Well we can't have exceptions—we can't have the

fire[fighters'] exception because then you wouldn't be able to pass a legal challenge.'"

### **Special Accommodation for Firefighters**

45. The vote on the proposal was set for October 13, 2015. However, it was deferred until at least December 8, 2015. Councilwoman Salyer explained to The Oklahoman that she wanted to gather more information about traffic safety and panhandling as well as to refine the definition of "median" in the measure.
46. Behind the scenes, recognizing the difficulty of soliciting from roadsides and street corners, the City already had been working hard to find adequate alternative venues for its preferred speakers and their cause—the firefighters and their Fill the Boot campaign. An August 7, 2015 email from Captain Ryan Boxwell of the OKCPD forwarded to Chief City referenced a meeting "between City Council members, OCFD Fire and MDA to entertain the idea of the fireman [sic] no longer using intersections for their pass the boot campaign." The communication continued: "If this is allowed, the city can/will change ordinance making standing in the median illegal."
47. Those efforts came to fruition just before Thanksgiving. On November 20, 2015, the Council's Chief of Staff, Debi Martin, contacted a regional Wal-Mart representative, who in turn emailed the Regional Manager that "OKC is trying to pass a bill for no solicitation on center medians . . . and they are trying to find a



solution for them.” Three days later, Ms. Martin emailed the Wal-Mart representative saying, “We are so pleased to learn that firefighters collecting for MDA would be allowed in front of the Wal Mart centers and Neighborhood markets in May.”

48. City officials put the proposed Ordinance back on the calendar for a final vote on December 8, 2015.

#### **Finalized Ordinance and Enactment**

49. The third and final public draft of the Ordinance revised the previous draft in notable respects, including (1) exempting medians “30 feet or more in width” as well as portions of medians “more than 200 feet away from any intersection”; (2) providing for three more classes of exempted conduct: persons “standing, sitting, or staying” on (a) “any trail designated for public use”; (b) “land dedicated to the public use as a public park”; and (c) “benches or other improvements designed for use by the public”; and (3) adding a maximum \$100 fine for each violation.
50. In explaining the last-minute exemptions, an attorney for the City informed the Council that the City had belatedly discovered that several of its medians have public trails, others have public parks, still others have benches for public use, and one was even home to an operating fire station. While these additional exemptions were consistent with the traditional public use and enjoyment of

medians with the City's active support, City counsel did not explain how these exemptions were consistent with its purported traffic safety rationale.

51. Chief Citty again spoke in support of the proposed Ordinance as a traffic safety measure. However, the traffic collision statistics he presented lumped vehicle-vehicle accidents with vehicle-pedestrian accidents citywide. When asked by a Councilmember, he expressed the belief that the number of pedestrian-related accidents is "not going to be very high." His data did not document any accidents occurring on public medians or resulting from any activities on them.
52. Also seized in support of the traffic safety rationale was the recent death of a panhandler struck by traffic, though he was not soliciting from a public median but illegally crossing a busy street.
53. In response to questioning from a Councilmember, Chief Citty observed that higher curbs or other barriers could protect pedestrians on public medians in high traffic areas.
54. During public comment, the Director of Curbside, Ms. O'Connor, observed that the 200-foot pushback from intersections perversely would put pedestrians, including her vendors, at greater risk, as motorists go faster and are less accustomed to looking out for pedestrians that far away from intersections and crosswalks. As for medians that are 30 feet or more in width, Ms. O'Connor was not aware of any in Oklahoma City that would be viable locations for

distributing Curbside. When asked for a list of such medians, Councilwoman Salyer responded that Curbside and its vendors could themselves “go and identify medians that are that width.”

55. Councilwoman Salyer doubled down on the City’s public safety messaging despite her own previous inconsistent statements: “The ordinance before us today is not a panhandling ordinance. It’s a median safety ordinance.”
56. Councilman Shadid countered that “[t]here was no discussion about public safety or median safety” when the measure was introduced, and that “[t]he whole thing has been fundamentally dishonest” because “[o]nly when they got into legal trouble did they use safety as an issue.”
57. The Council did not agree to a request by Catholic Charities, Homeless Alliance, VOICE, Curbside, and other social service organizations for a six-month delay in enacting the Ordinance so that those groups could engage in a public education campaign to address panhandling and homelessness with a more holistic and less harmful long-term approach than criminalization.
58. Councilmembers also debated whether panhandlers were homeless and truly needy—or whether, in the words of Councilmember David Greenwell, “some of them are just out there doing it because they want to,” and whether as a Councilmember “you’re okay with that.” On the other side, Councilman Pete

White warned that “[y]ou can’t put ‘those people’ off of the intersection and expect them not to exist someplace.”

59. The Council voted 7-2 to enacted the Ordinance. Councilmen Shadid and White voted against it.

### **More Panhandling-Free Zones**

60. A month after passage of the Ordinance, another piece of the “much larger community-wide effort” against panhandling was introduced at the January 19, 2016 Council meeting by Councilmen John Pettis and Mark Stonecipher, both of whom had voted in favor of the Ordinance. Among other things, the measure would amend the definitional section of the City’s existing aggressive panhandling ordinance to (1) add a 50-foot panhandling-free zone around elementary school properties; and (2) expand from 20 feet to 50 feet the numerous existing panhandling-free zones around (a) cafes, (b) restaurants, (c) other businesses, (d) automated teller machines, (e) mass transportation stops, (f) public toilets, and (g) pay telephones. A copy of the proposed measure (“Aggressive Panhandling Amendment”) is attached as Exhibit 4. The criminal prohibition on aggressive panhandling, which incorporates the definitions proposed to be amended, is at § 30-431 of the municipal code.
61. A public hearing on the Aggressive Panhandling Amendment was held at the Council meeting on January 26, 2016. At the hearing, the Mayor explained that

the proposed citywide measure “has to do specifically with our efforts to try and keep our schoolchildren safe” at one particular elementary school, which has a bus stop near the spot where a panhandler purportedly had been soliciting.

62. As to the 625 percent expansion of the existing panhandling-free zones, Councilman Stonecipher indicated that he “respect[ed]” the views expressed in a news report that he then played for the public record. In that video, the President of City Rescue Mission took a minority view among social service agencies serving the homeless in opining that “even if [panhandlers] are poor, they don’t have to impose that on every other citizen in the community,” because those citizens “have their own right to go about their day without being bothered.”
63. Among community members speaking at the hearing was Ms. O’Connor of Curbside. She informed the Council that her vendors, 80 percent of whom had distributed issues from public medians, were already squeezed by the new Ordinance and scrambling for viable locations. She informed the Council that some police enforcing the Ordinance were having difficulty understanding it. On several occasions, officers had shut down vendors selling from the roadsides, explaining either that it is now illegal to panhandle in Oklahoma City, that permits are now required to panhandle, that panhandlers now need to be 200 feet away from the intersection, or that it is now illegal to panhandle from

roadsides. On top of the new Ordinance, the expanded buffer zones would, Ms. O'Connor concluded, "cripple us to the point we don't exist."

64. When the Executive Director of Be The Change, a street outreach program, implored the Council "not [to] continue to criminalize and vilify people that live in poverty in our community"—a reference to the recently enacted Ordinance—Councilwoman Salyer responded not with a reassertion that the Ordinance was a traffic safety measure, but with a candid reacknowledgment that "the goal of this Council was to help try to find a way to redirect the dollars that are going out windows to exactly the people you're talking about, which is yourself and everybody else."
65. On April 5, 2016, a revised version of the Aggressive Panhandling Amendment came before the Council for a final vote. It is attached as Exhibit 5. As revised, it retained the proposed 50-foot buffer zones around elementary schools and mass transportation stops, added school bus stops to the definition of the latter, and added a new ban on "soliciting, begging, or panhandling" to minors under sixteen years of age without any location or distance limitation. It left in place the existing 20-foot panhandling-free zones around other locations.
66. As revised, the Aggressive Panhandling Amendment passed by a vote of 7-2. Councilmen Shadid and White voted against it.

### **The Parties, Public Medians, and Protected Speech and Activities**

*Calvin McCraw*

67. Calvin McCraw, who can no longer find manual work at 59 years of age because of physical problems, currently distributes issues of Curbside to make ends meet. He was born in Crosbyton, Texas, and has lived in Oklahoma for over ten years. Mr. McCraw resides in subsidized housing in Oklahoma City.
68. For years, like many other Oklahomans, Mr. McCraw worked in the oil and construction industries. He moved wherever the prospect of work took him, including Pennsylvania and North Dakota.
69. In 2012, while working in maintenance at a trailer park in Oklahoma City, Mr. McCraw severely cut his hand with a table saw. As a result of this accident and growing physical problems from decades of manual labor, including heavy oilfield drilling work, Mr. McCraw could no longer compete for work in oil or construction.
70. Mr. McCraw then lived on and off the streets over the next three years. He turned to “flying a sign,” his term for panhandling, to earn a living.
71. Initially, the signs Mr. McCraw held were direct pleas for assistance, such as “injured, no money, please help.” But skeptical reactions from motorists, often based on negative stereotypes about panhandlers, led Mr. McCraw to change his message to more self-effacing or facetious ones, such as “Are you angry and

frustrated? Scream at a bum, 50 cents a minute,” and “Girlfriend kidnapped by ninjas, need ransom money.”

72. Mr. McCraw often flew signs in Oklahoma City on public medians near intersections, locations that are now banned under the Ordinance. Before the Ordinance passed, Mr. McCraw made up to \$40 on a typical day.
73. In Mr. McCraw’s experience, soliciting donations from public medians was much safer for panhandlers and motorists alike than doing so from roadsides. Drivers stopped at a red light could quickly and easily reach out of the driver-side window to give money to someone standing on the public median next to the driver’s side of the car. By contrast, if the panhandler were standing on the sidewalk next to the opposite side of the car, then the driver would have to stretch across the front passenger seat to reach out the window closest to the sidewalk, and the panhandler might have to step off the curb to close the distance. Mr. McCraw’s panhandling on public medians never led to an accident.
74. In August 2014, Mr. McCraw began distributing Curbside from public medians in Oklahoma City. Curbside enabled him to transition into housing and meet other basic needs. Curbside also gave voice to Mr. McCraw and his struggles in an interview featured in one of its issues.



75. On a typical day, Mr. McCraw might sell 30 magazines to motorists, making around \$50-\$75 dollars. Once in 2014, from a public median, Mr. McCraw handed an issue of Curbside to Governor Mary Fallin. Mr. McCraw's distribution of Curbside from public medians never led to an accident.
76. After the Ordinance went into effect in January 2016, Mr. McCraw shifted to circulating Curbside from sidewalks, roadsides, and off ramps. It proved much more difficult to operate from those relatively inconvenient, unsafe, or crowded positions. Mr. McCraw searched frantically around town for locations, and competed with panhandlers for space as the stock of viable locations had contracted dramatically under the Ordinance.
77. Mr. McCraw even tried distributing Curbside on public medians at a distance of more than 200 feet from the intersection, past the Ordinance's extensive zone of prohibition. He calculated the distance with his own measuring tape, even though he was uncertain whether the act of measuring the legal distance itself violated the Ordinance. But at that distance from the intersection—over two-thirds of a football field—passing cars were much less likely to stop, and it was generally more dangerous to do so.
78. Though Mr. McCraw does not wish to commit a crime by violating the Ordinance, as his use of the measuring tape demonstrates, he is also uncertain how to abide by the law in other respects. For example, when he needs to cross a

street with a public median but no crosswalk, or when he is on a public median where there are flowerbeds, shrubs, trees, or other improvements, it is not at all clear to him what the Ordinance permits and what it criminalizes. And it is also entirely unclear to him whether—and if so when—an individual facing starvation and homelessness would be exempted from criminal liability as a “person[] responding to [an] emergency situation” under the terms of the Ordinance.

79. Over the entire month of January, Mr. McCraw circulated fewer than 40 Curbside magazines. This steep drop in income continued into February, with one notable exception. From the off-ramp on Northwest 63rd and I-235, a driver gave him a \$100 bill as a donation for an issue of Curbside. That donor, who worked at nearby American Energy Partners as its then-CEO, was the late Aubrey McClendon.
80. Unable to generate a sustainable number of Curbside donations as a result of the Ordinance, Mr. McCraw returned to panhandling in late February 2016. Flying a sign mainly on off ramps and other lawful locations, he made around \$10 to \$15 on a typical day, in contrast to the \$40 he might make panhandling or the \$50-\$75 he might make through Curbside before the Ordinance went into effect.
81. In mid-March, increasingly worried about paying his bills, Mr. McCraw returned to distributing Curbside. He has not done much better with Curbside than flying

a sign, however. The Ordinance's extensive reach has him "still jumping around looking for a place" to exchange with motorists. One place he has not tried is the parking lot of a business such as Wal-Mart, as he expects the business would kick him off or have him arrested for trespassing. Given the limited and less viable locations that are left, Mr. McCraw now makes about \$15 a day.

82. Mr. McCraw is in danger of losing his subsidized housing, which he moved into after he began working with Curbside, and of becoming homeless again as a result of the Ordinance's devastating effect on his livelihood. He is also at risk of losing his liberty. On probation since May 2015 for drug possession, Mr. McCraw has complied with all of the conditions of probation that he can, including participating in Narcotics Anonymous and taking classes at Specialized Outpatient Services and The Education and Employment Ministry. However, because of the precipitous drop in his earnings, Mr. McCraw has fallen behind on monthly payments toward his criminal justice costs, fines, and fees. He has little means to meet his legal responsibilities and pay for basic necessities such as food and housing.
83. If the Ordinance were invalidated and its enforcement enjoined, Mr. McCraw would return to disbursing Curbside on public medians to earn his livelihood and maintain his liberty.

*G. Wayne Marshall*

84. G. Wayne Marshall currently panhandles to make ends meet for himself and his wife, both senior citizens who suffer from serious medical ailments. He was born in Fountainhead, Tennessee, and moved to Oklahoma in 1972, where he has resided ever since. The couple currently lives in subsidized housing in the Oklahoma City metropolitan area.
85. Now 67 years old, Mr. Marshall has been homeless for most of his adult life. A former oil-field worker, decades of tics and labored speech from Tourette syndrome have made it difficult for him to get hired or hold a job. Other health conditions, such as Parkinson's, have compounded that difficulty in recent years. He is no longer physically able to perform steady manual labor.
86. Mr. Marshall's wife, age 72, has diabetes and early-stage Alzheimer's. She relies on him to provide for her.
87. Mr. Marshall is on Supplemental Security Income and Medicaid, and his wife is on Social Security Disability, Medicare, and Medicaid. However, these programs do not cover all of their prescriptions or other medical expenses, leaving the couple with recurring out-of-pocket medical costs. Mr. Marshall works as a panhandler to cover them.
88. Mr. Marshall began panhandling in 2012, when he discovered that it was legal. A typical sign informed drivers that a "Senior Couple" with medical problems were on "Hard Times." He closed his signs with "Thank You."

89. Mr. Marshall preferred panhandling from the public median because, in his experience, it was easier and safer than from the sidewalk. Soliciting from the sidewalk would necessitate the driver stretching across to the front passenger window, and might also require the panhandler to step off the curb.
90. Mr. Marshall's panhandling on public medians near intersections in Oklahoma City never resulted in an accident. It did, however, sometimes provoke negative reactions from motorists, including spitting, obscenities, and even bottle throwing. Mr. Marshall believes those reactions were based on mistaken inferences that his tics, tremblings, and slurred speech were the symptoms of addiction or withdrawal rather than Tourette's and Parkinson's. Mr. Marshall has never used illegal drugs.
91. On a typical day, Mr. Marshall made around \$40. The most he ever earned was more than \$200 on Christmas Eve 2014. His earnings pay for medications and other basic necessities. In his words, "I don't waste my money."
92. After the Ordinance went into effect, Mr. Marshall tried working on public medians more than 200 feet from intersections, but could not make money at that distance because drivers generally could not stop safely. He also tried panhandling from roadsides and street corners, but could not easily and safely obtain donations from motorists. On one occasion, when Mr. Marshall was soliciting from a sidewalk near an intersection, an officer ordered Mr. Marshall to

stand 200 feet back from the intersection, based on a mistaken understanding that the Ordinance's set-back applies not just to public medians but to the entire public area around intersections.

93. Mr. Marshall has resorted to asking for donations mainly from off ramps. However, he must now compete for space with many other displaced panhandlers due to the limited number of viable locations. He is now regularly threatened, pushed, kicked, and punched by younger panhandlers. As a result of these fierce threats to his physical safety, he now only panhandles two times rather than four or five times a week.
94. Mr. Marshall believes that the Ordinance, in addition to threatening his livelihood and placing him in physical danger, violates his constitutional rights and those of his donors. He wants it struck down so that he can "get back to work" on public medians, where he can do "[his] job" to provide for himself and his wife "without fear of daily confrontation."

*Mark Faulk*

95. Mark Faulk is a social activist, author, filmmaker, former and future political candidate, and current cat owner. He is a fifth-generation Oklahoman whose family on both sides settled in Oklahoma during the land run. He resides in Oklahoma City.

96. As an activist, author, filmmaker, and political candidate, Mr. Faulk has advocated for the poor, oppressed, and disenfranchised in America, as well as against corruption on Wall Street and mass incarceration.
97. During the Occupy OKC movement in 2011, Mr. Faulk participated in protest marches and demonstrations in Oklahoma City. Some of these occurred on public medians.
98. In the 2014 election, Mr. Faulk ran for State House District 88. In the run-up to the election, following the time-honored practice of other grassroots campaigns and candidates without a lot of money, Mr. Faulk and his supporters campaigned on traditional public forums such as public medians near high volume intersections. Those prime public locations maximized exposure to voters at minimal expense.
99. For example, during the November 2014 campaign season, Mr. Faulk and his campaign volunteers stood on public medians in Oklahoma City holding campaign signs and waving to motorists. In Mr. Faulk's experience, public medians near intersections are one of the most common areas for campaigning because of the visibility and high volume of traffic. The corners and sides of intersections provide substantially less visibility to motorists from all directions. Mr. Faulk was never ordered to stop, cited, or arrested by the OKCPD for campaigning from public medians, nor did his campaigning cause any accidents.

100. To again reach fellow citizens in the public square on election day in November 2016—this time to campaign for other candidates and on state ballot questions—Mr. Faulk wishes to wave signs and wave to voters on now-forbidden public medians. However, the threat of arrest and criminal prosecution under the Ordinance is chilling his political advocacy on those highly visible public forums. Likewise, Mr. Faulk wishes to reach voters from the inexpensive and effective vantage point of now-forbidden public medians during the November 2018 campaign season, when he plans to run again for public office.
101. As a filmmaker and activist, Mr. Faulk has artistic and deeply personal reasons for getting on a public median for purposes other than solely “to cross from one side of the street or highway to another.” A homeless friend and one of the most talented musicians he has known was panhandling last fall on a public median near the intersection of Northwest 39th Street and North Pennsylvania Avenue. He was subsequently found unconscious in a nearby field and taken to a hospital, where he died this past February. Mr. Faulk visited his friend nearly every day of the last weeks of his life.
102. Mr. Faulk feels compelled to share his friend’s life story and musical legacy through a documentary film. As soon as possible, Mr. Faulk would like to film footage from the public median where his friend panhandled to show his friend’s perspective from that marginal vantage point. And now the Ordinance



itself is part of the story that Mr. Faulk wishes to share with the public through his documentary. He desires to show how the law has compounded the “difficulty of homelessness” and “the stigma and oppression of poverty” that led to his friend’s death.

103. For about a year before the Ordinance went into effect, to support the mission of Curbside and those who distribute the magazine, Mr. Faulk obtained an issue at least once a month—sometimes the same issue—from vendors on public medians. Mr. Faulk felt completely safe doing so when his car stopped at a red light near a vendor on the public median. He could quickly and easily accept a magazine through his driver-side window before the red light changed, and the vendors did not have to step off the public median to complete the sale. He never got into an accident as a result of his repeat purchases.
104. After the Ordinance went into effect, Curbside vendors moved from public medians to street corners and roadsides. Mr. Faulk has stopped purchasing the magazine because he does not feel that he can safely do so from his vehicle. With a vendor standing on the street corner or roadside to the right of his car, he would have to awkwardly reach across the front passenger seat to make the exchange through the passenger window. He also worries that the vendor might get in harm’s way by stepping off the curb to reach his hand. Alternatively, Mr. Faulk could park his car and cross one or more high traffic streets to reach the

vendor, but that seems much less convenient and safe than donating to vendors on a public median. As a result, Mr. Faulk has not obtained an issue of Curbside since the Ordinance went into effect.

105. As the owner of a home across from a public median that divides his residential street, and of a cat with a penchant for running away, Mr. Faulk occasionally has to rescue Evo Chavez from the public median before she attempts to cross the street again. But given the Ordinance, he is uncertain whether doing so would be legal, i.e., whether it would fall within the exemption for “persons responding to any emergency situation,” which is defined as “an unforeseeable occurrence of temporary duration.” The next time his cat escapes to the public median—and there will likely be a next time, if past is prologue—Mr. Faulk will face the cruel dilemma of abandoning his cat to the Russian roulette of traffic on either side of the public median or risking criminal liability to rescue Evo.

*Trista Wilson*

106. Trista Wilson is a financial compliance analyst, a former AmeriCorps volunteer, and an avid jogger. She earned a B.A. in English from Oklahoma State University and a J.D. from the University of Oklahoma College of Law. A lifelong Oklahoman from the town of Freedom, she presently resides in Oklahoma City.

107. Ms. Wilson jogs frequently in the heart of Oklahoma City. She runs by herself as well as with friends. During the course of her jogs, Ms. Wilson regularly traverses public medians, often near intersections. Sometimes, she does so “to cross from one side of the street . . . to another.” Ordinance § 2(b)(1). Other times, however, she stops to catch her breath, tie a shoe, or talk with a jogging companion in the safety of the public median. And when the public median is suitable for doing so, and particularly when there is no sidewalk on either side of the street, she jogs along the public median itself. She occasionally passes neighbors who are on the public median walking their dogs, taking a stroll, or talking with each other.

108. Ms. Wilson’s speech and activities, and those of her neighbors, often occur on parts of medians that may not fall within the Ordinance’s exemptions. Even with her legal background, Ms. Wilson is not sure whether any of her expressive and non-expressive activities or those of her neighbors on public medians are legal under the Ordinance.

*Neal Schindler*

109. Neal Schindler is a second-year student at the University of Oklahoma College of Law. Born in Bethesda, Maryland, he attended Norman High School, earned a B.A. in political science at the University of California at Davis, obtained a teaching certificate at the University of Oklahoma, and taught high school

history in Norman Public Schools for 17 years before attending law school. He resides in the Oklahoma City metropolitan area.

110. For four of the past five years, Mr. Schindler has run in the Oklahoma City Memorial Marathon (“Marathon”). He does so not only for his health, but moreover as an expressive activity to honor the victims and first responders of the Oklahoma City bombing, to “celebrate life” in the words of the Marathon organizers, and to support the Oklahoma City National Memorial and Museum.
111. The Marathon, in which thousands of Oklahomans participate each year as runners, spectators, sponsors, and volunteers for physical and expressive reasons similar to those of Mr. Schindler, winds through historic Oklahoma City neighborhoods with public medians. Parts of the route involve running past crowds of supporters on public medians waving hands and signs and shouting encouragement and support to passing marathoners. Those crowded public medians include ones along North Shartel Avenue (including the iconic “Gorilla Hill”), along North Robinson Avenue, and along North Lincoln Boulevard leading to the State Capitol. Mr. Schindler and other marathoners have run on public medians when the streets were too congested with other runners or for the sake of giving their knees a break from the pounding of the pavement. On some of those occasions, Mr. Schindler has talked with spectators. He has also seen the

media, friends, family members, and supporters stand on public medians to take photos and videos of this signature civic event.

112. Mr. Schindler would like to run (or more likely walk when he gets tired) on public medians at future Marathons, including this year's, and to converse with his fellow citizens along the way. However, even with his legal education, he is uncertain whether he may do so in light of the Ordinance's prohibitions, which do not appear to exempt the physical and expressive activities of the numerous Oklahomans who use public medians along the official course of the Marathon through historic Oklahoma City.

113. As a future lawyer, Mr. Schindler is concerned about the risk of arrest and conviction for violating the Ordinance, which could adversely affect his prospects of passing the character and fitness portion of the Oklahoma Bar Exam and thus endanger his prospects of practicing law.

*The Oklahoma Libertarian Party*

114. The Oklahoma Libertarian Party ("the Party") is a minority political party that believes in supporting all the freedoms of all people at all times, including the freedom to engage in panhandling as well as core political speech from the safety and visibility of public medians.

115. With small numbers and scant resources, the Party has struggled to obtain official state recognition and ballot access as a political party. To obtain such

recognition and access under Oklahoma law, an aspiring party must submit a petition with the signatures of registered voters equal to at least three percent of the total votes cast in the last gubernatorial election. To retain recognition, the party's gubernatorial or presidential candidate must receive at least ten percent of the votes cast in a general election. These thresholds are high and particularly challenging for minority parties without the means to fund massive signature drives or get-out-the-vote campaigns.

116. Over the course of a year, the Party engaged in a vigorous signature drive across the state and throughout Oklahoma City. Its signature gatherers attempted to reach registered voters in the parking lots of businesses such as Wal-Mart and at libraries, parks, and other public locations. They were often kicked out. Public medians therefore proved to be invaluable places to inform fellow citizens about the Party's petition for official recognition and ballot access.
117. Tina Kelly, a political activist and the vice chair of the Party, saw first-hand the difficulties faced by signature gatherers with limited public venues to reach voters. She credits combined efforts with another petitioning group, Green The Vote, which sought a referendum on legalizing medical marijuana, for the eventual success of the Party's signature drive. An inexpensive and effective method of getting the word out involved a sign-holder on a public median near a high traffic intersection directing motorists to sidewalks, street corners, or other

nearby locations where signatures were being gathered for both the Party and Green The Vote. No one involved in either campaign was ever ordered to stop, cited, or arrested by the OKCPD for their political advocacy on public medians, nor did they cause any accidents.

118. In Ms. Kelly's view, access to the people from public medians is "absolutely crucial" for minority parties and grassroots causes. As she puts it, "We want to affect change, you can't affect change without reaching people, and with no money and no access to the public, you can't get the word out."
119. With the help of public medians, the Party got the word out. By collecting more than 25,000 valid voter signatures, the Party succeeded for the first time in sixteen years in obtaining official recognition as a political party and ballot access for the November 2016 election.
120. To promote voter registration in Oklahoma City, as well as to campaign for candidates and causes in the November 2016 election, the Party wishes to have volunteers wave signs on public medians near intersections with good visibility and motorist volume. However, the Ordinance criminalizes those core political activities on those traditional public forums. As a result, the Party, along with other underresourced political minorities and movements, will be denied access to the people—and the people will be denied access to their messages—from those prime locations in the public square.

*Red Dirt Report*

121. Red Dirt Report is an independent news outlet established in 2007 and based in Oklahoma City. It provides in-depth reporting and commentary on matters of public concern to Oklahomans. Its mission is to educate and promote civic engagement and discourse on public policy, government, and politics. Andrew Griffin is its editor and owner.
122. Mr. Griffin and Red Dirt Report's multiple reporters and contributors regularly cover stories that may call for their presence on a public median or street. This press activity may now be criminal under the Ordinance.
123. For example, when reporting on and photographing scenes of accidents, crimes, or disasters, doing so on adjacent public medians may be safer for reporters and photographers as well as for first responders, as the media from those locations may remain out of the way of emergency vehicles and personnel. The public median may also provide the best vantage point for reporting such a story.
124. In other situations, reporting may call for being on a public median because a newsworthy event occurs there. Last year, for example, Red Dirt Report covered a press conference by Oklahoma Muslim and interfaith leaders on a public median in Oklahoma City.
125. The ability of Red Direct Report to fulfill its journalistic mission through the newsgathering of its contributors is severely burdened and chilled by the



Ordinance's criminalization of "sitting, standing, or staying" on public medians for any purpose other than its limited and vague exceptions. It is not at all clear to Red Dirt Report, for instance, whether or when the media would qualify as "persons responding to any emergency situation."

*Third Parties*

126. The Ordinance severely burdens and chills the protected speech and activities on public medians of numerous third parties. They include the spectators, sponsors, and supporters of Marathon runners who cheer them on from public medians along the route; neighborhood associations and residents who have parties and other events on public medians in their neighborhoods; neighbors who live across the street from each other and occasionally meet on public medians in the middle to chat on personal or political matters (including the legality of their doing so); dog owners who walk their pets along—and clean up after them on—public medians; civic organizations and volunteers who beautify public medians; political campaigns, campaigners, and candidates who wave signs and wave at other citizens from public medians; and solicitors ranging from parents with their children fundraising for sports teams to firefighters with their boots fundraising for the MDA.

127. The Ordinance also infringes the First Amendment rights of countless members of the community to receive or support the speech of Plaintiffs and other parties on public medians.

*Defendants*

128. The City of Oklahoma City, a municipal corporation established under the laws of Oklahoma, adopted the Ordinance through its City Council. It directs enforcement of the Ordinance through the OKCPD and prosecutes violations through its municipal court system.

129. William City, sued in his official capacity, is the Chief of Police for the City. He is the City official administratively responsible for the enforcement of the Ordinance, its selective and discriminatory enforcement against panhandlers, and the lack of enforcement of other municipal laws that would suffice to address any public safety issues with panhandling or other activities in public medians.

**V. CLAIMS FOR RELIEF**

**First Cause of Action: 42 U.S.C. § 1983**

**(Free Speech – Invalid Time, Place, Manner Regulation)**

130. All prior paragraphs are incorporated here by reference.

131. The First Amendment to the United States Constitution secures “the freedom of speech.” This fundamental right is secured against state and local governments

through the Fourteenth Amendment. Neither the City nor its employees may violate it.

132. Public medians are traditional public forums where citizens of every stripe—including the poor, the charitable, and the political—have historically, inexpensively, and effectively reached fellow members of their community.
133. Public forums such as public medians enjoy “a special position in terms of First Amendment protection.” *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (internal quotations omitted). The government’s ability to restrict speech in such protected places is “very limited.” *Id.* (internal quotations omitted).
134. The Ordinance is not a valid time, place, and manner regulation because it does not serve a significant government interest. Its traffic safety justification is an unsubstantiated sham, and its underlying anti-panhandling purpose is illegitimate.
135. The Ordinance is not a valid time, place, and manner regulation because it is not narrowly tailored. The City has not seriously considered, much less attempted, measures that would burden substantially less speech to achieve its purported interest.
136. The Ordinance is not a valid time, place, and manner regulation because it does not leave open ample alternative channels of communication for Plaintiffs’ speech.

137. For each of the above independent reasons, the Ordinance violates Plaintiffs' First Amendment rights to engage in expressive activities on public medians and chills the exercise of those expressive activities. Plaintiffs suffer irreparable and ongoing harm from the existence and enforcement of the unconstitutional Ordinance.

**Second Cause of Action: 42 U.S.C. § 1983**

**(Free Speech – Invalid Overbroad Regulation)**

138. All prior paragraphs are incorporated here by reference.

139. In addition to violating the First Amendment rights of Plaintiffs, the Ordinance violates the First Amendment rights of third parties to solicit, campaign, converse, support, and otherwise communicate on public medians with their fellow citizens. The Ordinance also chills the exercise of those rights.

140. As discussed below in the Fourth Cause of Action, the Ordinance also violates the First Amendment right of third parties to receive ideas.

141. Third parties suffer irreparable and ongoing harm from the existence and enforcement of the unconstitutional Ordinance.

142. Because the Ordinance restricts much more speech than is constitutionally permissible, including the speech rights of numerous third parties, it is invalid as a substantially overbroad speech regulation.

**Third Cause of Action: 42 U.S.C. § 1983**

**(Free Speech – Invalid Content-Based Regulation)**

143. All prior paragraphs are incorporated here by reference.
144. The purpose and effect of enforcing the Ordinance against Plaintiffs' panhandling on public medians is to banish their speech from highly visible locations in the public square based on objections to the undesirable message that such panhandling conveys.
145. The City lacks a compelling interest for such content-based censorship.
146. The Ordinance is not narrowly tailored to achieve any compelling interest.
147. For each of the above independent reasons, the Ordinance violates Plaintiffs' First Amendment rights to engage in expressive activities on public medians and chills the exercise of those expressive activities. Plaintiffs suffer irreparable and ongoing harm from the existence and enforcement of the unconstitutional Ordinance.

**Fourth Cause of Action: 42 U.S.C. § 1983**

**(Free Speech – Invalid Restriction on Right to Receive Ideas)**

148. All prior paragraphs are incorporated here by reference.
149. The "freedom of speech" guaranteed by the First Amendment embraces both the right to disseminate ideas and the right to receive ideas without government interference. "The uninhibited marketplace of ideas" fostered by the First Amendment could not function if citizens could not receive communications

from each other—even communications they might find discomfoting or offensive. *McCullen*, 134 S. Ct. at 2529 (internal quotations omitted).

150. The Ordinance severely burdens the ability of Plaintiffs and third parties to see and hear the speech of their fellow citizens—from panhandling to political campaigning—by sweeping speakers off prime historic locations in the public square for getting their messages out inexpensively and effectively. Plaintiffs and third parties cannot engage, support, disagree with, or report on the speech suppressed by the Ordinance.
151. The Ordinance lacks a compelling or significant interest.
152. The Ordinance is not narrowly tailored to achieve any such interest.
153. The Ordinance fails to leave ample alternative channels for receiving or supporting Plaintiffs’ speech.
154. For each of the above independent reasons, the Ordinance violates the First Amendment right of Plaintiffs and third parties to receive communications from their fellow citizens. Plaintiffs and third parties suffer irreparable and ongoing harm from the existence and enforcement of the unconstitutional Ordinance.

**Fifth Cause of Action: 42 U.S.C. § 1983**

**(Free Speech and Due Process – Invalid Vague Regulation)**

155. All prior paragraphs are incorporated here by reference.

156. The Ordinance is hopelessly vague in setting forth what speech and activities on public medians are now criminal and what speech and activities on public medians remain lawful.
157. The Ordinance fails to give ordinary law-abiding citizens such as Plaintiffs fair warning so that they may conform their conduct to the law and avoid criminal liability.
158. The Ordinance fails to establish adequate guidance for law enforcement, leaving basic policy decisions as to its application to police officers, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory enforcement against Plaintiffs. These dangers run especially high for poor and unpopular speakers such as panhandlers whose speech the City sought to suppress with the Ordinance.
159. Because the Ordinance fails to give fair notice and invites arbitrary and discriminatory enforcement, it chills the protected speech and activities of Plaintiffs on public medians.
160. For each of these independent reasons, the Ordinance is void for vagueness under both the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment. Plaintiffs suffer irreparable and ongoing harm from the existence and enforcement of the unconstitutional Ordinance.

**Sixth Cause of Action: 42 U.S.C. § 1983**

**(Due Process – Invalid Deprivation of Liberty)**

161. All prior paragraphs are incorporated here by reference.
162. The “liberty” guaranteed by the Due Process Clause of the Fourteenth Amendment secures the basic freedom of citizens to engage in lawful activities—including “sitting, standing, or staying”—in public areas without being threatened, fined, arrested, or branded as criminals by their government.
163. The City lacks any legitimate interest in criminalizing Plaintiffs and third parties for being on public medians, whether to sit, stand, or stay, or to walk, jog, or engage in other lawful activities.
164. The Ordinance is not reasonably related to any proper justification.
165. For each of the above independent reasons, the Ordinance violates Plaintiffs’ Fourteenth Amendment rights. Plaintiffs suffer irreparable and ongoing harm from the existence and enforcement of the unconstitutional Ordinance.

**Seventh Cause of Action: 42 U.S.C. § 1983**

**(Equal Protection – Animus)**

166. All prior paragraphs are incorporated here by reference.
167. Under the Fourteenth Amendment, the City may not deny any person “the equal protection of the laws.”
168. Laws based on animus are irrational, illegitimate, and deny equal protection to the class it targets for discrimination.



169. The Ordinance was drawn and enacted based on animus against those who engage in panhandling, and is enforced against panhandling for the same illegitimate reason.
170. Accordingly, the Ordinance denies Plaintiffs who panhandle the equal protection guaranteed by the Fourteenth Amendment. They suffer irreparable and ongoing harm from the existence and enforcement of the unconstitutional Ordinance.

#### VI. REQUESTS FOR RELIEF

171. WHEREFORE, Plaintiffs respectfully request the following relief:
- a. A declaratory judgment holding that the Ordinance on its face and as applied to Plaintiffs and third parties violates the First and Fourteenth Amendments to the United States Constitution;
  - b. A preliminary and permanent injunction prohibiting Defendants from enforcing the Ordinance;
  - c. An award to Plaintiffs of costs and attorneys' fees; and
  - d. Any such other and further relief the Court deems necessary and proper.

Respectfully submitted,

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