



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: May 8, 2006

FROM: City Attorney

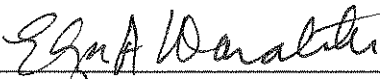
CONSENT

SUBJECT: Judith Chase, Ollen Rogers and Joseph Nelson v. City of Gainesville and Alachua County Sheriff's Office; United States District Court Case No. 1:06cv44SPM/AK


Recommendation: The City Commission authorize the City Attorney and/or Special Counsel if insurance coverage is available, to represent the City of Gainesville in the case styled Judith Chase, Ollen Rogers and Joseph Nelson v. City of Gainesville and Alachua County Sheriff's Office; United States District Court Case No. 1:06cv44SPM/AK.

On April 27, 2006, the City was served with a Complaint filed by Ms. Chase, Mr. Rogers and Mr. Nelson. The parties allege that their civil rights were violated by actions and policies of the City and the Alachua County Sheriff's Office. The parties seek declaratory and injunctive relief, compensatory damages and attorney's fees.

Prepared by:


Elizabeth A. Waratuke
Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

JUDITH CHASE, OLLEN ROGERS
and JOSEPH NELSON,

Plaintiffs,

v.

Case No. 1:06-cv-448 PM/AN

CITY OF GAINESVILLE and
ALACHUA COUNTY SHERIFF'S
OFFICE,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES**

INTRODUCTION

1. Plaintiffs' bring this civil rights action pursuant to 42 U.S.C. § 1983, seeking injunctive and declaratory relief and compensatory damages for the violation of their First, Fourth, and Fourteenth Amendment rights of the United States Constitution. Plaintiffs challenge the constitutional validity of §§ 316.2045 & 337.406, Fla. Stat. (2005), both facially and as applied to them by officers, agents, and employees of Defendant City of Gainesville (City) and Defendant Alachua County Sheriff's Office (ACSO) pursuant to official policy, practice, and/or custom of each entity. The statutes are being applied to Plaintiffs and other homeless individuals to prohibit them from standing on public sidewalks

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OF FLORIDA
GAINESVILLE OFFICE

and streets in Gainesville and Alachua County, holding signs soliciting charitable donations from fellow citizens. Plaintiffs also challenge the constitutionality of Article V of the Code of Ordinances, City of Gainesville, Florida (City Code), both on its face and as applied to them by officers, agents, and employees of the City and its police department (GPD). Article V prohibits protected speech activity on traditional public fora in violation of the First and Fourteenth Amendments.

JURISDICTION AND VENUE

2. This action seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983 for past and ongoing injury to the Plaintiffs' First, Fourth, and Fourteenth Amendment rights. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) & (4) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 & 2202.

3. Venue is proper in the Northern District of Florida, Gainesville Division, pursuant to 28 U.S.C. § 1391(b). All Plaintiffs reside, all Defendants are located, and all of the acts and omissions complained of herein occurred and will continue to occur in the Gainesville Division of the Northern District of Florida.

THE PARTIES

4. Plaintiff Judith Chase (Chase) is a resident of Gainesville, Florida. She is homeless. She has lived in Gainesville since April of 2002. On numerous occasions, GPD officers and ACSO deputies have threatened Chase with citation or arrest for holding signs soliciting charitable donations on public sidewalks in Gainesville and Alachua County. In June of 2005, she was issued a citation by an ACSO deputy for such activity, and she has been threatened with citation and arrest for such activity on several occasions by GPD

officers and ACSO deputies.

5. Plaintiff Ollen Rogers (Rogers) is a resident of Gainesville, Florida. He has lived in Gainesville for over twenty years and has been homeless for over a year. On several occasions, GPD officers and ACSO deputies have threatened to arrest Rogers for holding a sign soliciting charitable donations on public sidewalks. In August of 2005, he was arrested and incarcerated overnight by an ACSO deputy for holding a sign soliciting charitable donations on a public sidewalk in Alachua County.

6. Plaintiff Joseph Nelson (Nelson) is a resident of Gainesville, Florida. He is a 52 year old Vietnam Veteran and has been homeless in Gainesville for almost two years, after being hit by a car and seriously injured. GPD officers repeatedly have threatened him with arrest for holding a sign soliciting charitable donations on public sidewalks in various locations throughout Gainesville. In August of 2005, he was arrested by two GPD officers and was incarcerated overnight.

7. Defendant City is a municipal entity organized under the laws of the State of Florida, with the capacity to sue and be sued. It is the legal and political entity responsible for the actions of GPD, which is a department of the City of Gainesville. The City is sued for injunctive and declaratory relief and compensatory damages on the basis of the acts of officers, agents, and employees of GPD and the City, which were taken pursuant to official policy, practice, and/or custom. Norman Botsford is the Chief of Police at GPD. He has final policy-making authority for GPD concerning daily law enforcement activities and citation or arrest of persons alleged to have violated state and local laws within the jurisdictional

limits of the City of Gainesville.¹ The City Commission sets final policy on the creation and adoption of City Ordinances. At all times relevant herein, the officers, employees, and agents of GPD and the City were acting under the color of state law.

8. Defendant ACSO is a governmental entity organized under the laws of the State of Florida, and it has the capacity to sue and be sued. ACSO is sued for injunctive and declaratory relief and compensatory damages on the basis of the acts of ACSO deputies, agents, and employees, which were taken pursuant to official policy, practice, and/or custom of the final policymakers at ACSO. Stephen M. Oelrich (Oelrich), the Sheriff of Alachua County, a Florida constitutional officer, is the final policy maker at ACSO. He is responsible for the enforcement of all applicable laws, and the citation and arrest of persons alleged to have violated the law within Alachua County. At all times relevant herein, the officers, employees, and agents of ACSO were acting under the color of state law.

9. Pursuant to § 86.091, Fla. Stat. (2006), Plaintiffs are serving the Attorney General of the State of Florida with a copy of this Complaint, because the facial constitutionality of two state statutes are challenged. The Attorney General is not a party to this lawsuit, but has the option to intervene in this action and be heard on behalf of the State of Florida.

FACTUAL ALLEGATIONS

State Statutes

10. Section 316.2045, Obstruction of public streets, highways, and roads,

¹ Plaintiffs allege in the alternative that the City Manager, the administrative head of the government, is the final policymaker over all decisions of GPD.

provides, in pertinent part:

(1) It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provision of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provision of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 774.082 or s. 775.083. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.

(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government.

(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

11. Violation of § 316.2045(1) is a civil infraction, punishable by a fine, and § 316.2045(2) is a second degree misdemeanor offense, and can result in arrest and incarceration.

12. Chapter 16 of the Florida Statutes, which regulates “State Uniform Traffic Control,” does not define the terms “solicit” or “political campaigning,” as used in § 316.2045.

13. Section 337.406,² Unlawful use of a state transportation facility right-of-way;

penalties, provides, in pertinent part:

(1) Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. Failure to prohibit the use of a right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slow down of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities. Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local government entity. Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality. Before a road on the State Highway System may be temporarily closed for a special event, the local governmental entity which permits the special event to take place must determine that the temporary closure of the road is necessary and must obtain the prior written approval of the temporary road closure from the department. Nothing in this subsection shall be construed to authorize such activities on any limited access highway. Local governmental entities may, within their respective jurisdictions, initiate enforcement action by the appropriate code enforcement authority or law enforcement authority for a violation of this section.

² During its 2005 Session, the Florida Legislature amended § 337.406, effective June 20, 2005. The amended statute, which is the version challenged here, is set forth below; however, as it pertains to this case, the amended version is substantially the same as the previous one.

(2) Persons holding valid peddlers' licences issued by appropriate governmental entities may make sales from vehicles standing on the right-of-way to occupants of abutting property only.

(3) The Department of Highway Safety and Motor Vehicles and other law enforcement agencies are authorized and directed to enforce this statute.

14. Violation of § 337.406 is a second degree misdemeanor offense, and can result in arrest and incarceration.

15. The term "right-of-way" means "land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility." § 334.03(22), Fla. Stat.

16. The phrase "transportation facility" means "any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place." § 334.03(31), Fla. Stat.

17. Title XXVI, Public Transportation (Chapters 334-349), fails to define the term "appendages" or the phrase "incorporated municipality" as used in § 337.406, Fla. Stat.

City Ordinances

18. Article V, Street Solicitation by Non Profit Agency, governs charitable solicitation on public sidewalks, streets, and right-of-ways in the City of Gainesville.

19. The purpose and intent of Article V is

to preserve public safety, human life and convenience; to secure the comfort, health, welfare and prosperity of all city inhabitants; to ensure that the use of streets and sidewalks in the city does not become dangerous and that the free flow of traffic thereon is not impeded; to protect city inhabitants against crime and undue

annoyance; and protect those on the streets against abusive behavior by solicitors.

Gainesville, Fla., Code § 19-111 (2000).

20. Section 19-112 states “It shall be unlawful for any person to raise funds, or seek financial assistance of any kind or nature, on any street or right-of-way within the city without first acquiring a permit.” Gainesville, Fla., Code (2000).

21. Under the heading “Requirements,” the ordinance provides, in pertinent part,

(a) A permit for solicitation on city, county, or state rights-of-way within the boundaries of the city may be obtained from the city manager or designee under the following conditions:

(1) The applicant shall be an organization qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to F.S. Ch. 496, or persons or organizations acting on behalf of and with authority of such an organization.

Gainesville, Fla., Code § 19-113 (2000).

Background

22. Charitable solicitation is a form of expression that is protected under the First Amendment of the U.S. Constitution, whether the solicitation is for one’s personal needs or made charitably on behalf of other recipients.

23. Public sidewalks and streets are traditional public fora.

24. When Plaintiffs and other homeless individuals stand on public sidewalks and streets and hold signs that solicit charitable donations, they raise public awareness about the plight of homeless individuals in and around Gainesville.

25. Non-homeless individuals regularly stand on public sidewalks at busy intersections throughout Gainesville and Alachua County, holding signs advertising businesses and expressing views on political and social issues. During elections, political

campaigners regularly stand on public sidewalks and streets throughout Gainesville, holding signs in support of political candidates. On University of Florida football game days, students and other Gainesville residents oftentimes stand in the street and on public sidewalks and streets throughout the area surrounding the University of Florida campus, advertising the sale of game day parking spaces. Neither the City nor ACSO use § 316.2045 or § 337.406 to prohibit such activity by non-homeless individuals.

26. Annually, firefighters stand in the middle of busy intersections, soliciting charitable donations for various charitable causes. They are regularly granted permits by the City to engage in this type of activity, which the City apparently does not deem a threat to public safety.

The City's Policy, Practice, and/or Custom

27. The City has adopted a policy and/or ratified a practice or custom within GPD of using § 316.2045 and § 337.406 to prohibit homeless individuals from standing on public sidewalks and streets in Gainesville, holding signs requesting charitable donations from fellow citizens. This is part of a broader effort by the City to prohibit homeless individuals such as Plaintiffs, from engaging in charitable solicitation on public sidewalks and streets.

28. GPD officers told Plaintiffs, and have told and continue to tell other homeless individuals, that they must have a permit to hold signs soliciting charitable donations on public sidewalks and streets in Gainesville.

29. Article V, which was promulgated and adopted by the City, prohibits charitable solicitation on public sidewalks, streets, and right-of-ways without a permit. The permit scheme that the City adopted under Article V only applies to registered charities.

30. Gainesville has not adopted a permit scheme that applies to charitable solicitation by an individual for personal use. The existing permit schemes in Gainesville do not apply to this kind of activity.

31. GPD officers are instructed by officials with final policymaking authority to use § 316.2045 and § 337.406 against homeless individuals holding signs requesting charitable donations on public sidewalks and streets in Gainesville.

32. The use of § 316.2045 and §337.406 against homeless individuals holding signs requesting charitable donations on public sidewalks and streets in Gainesville by GPD officers has been ratified by officials with final policymaking authority.

33. GPD officers have told each Plaintiff that they should go into the County to hold their signs and that such activity will not be tolerated in Gainesville.

34. The City and high ranking GPD officials previously had been put on notice that prohibiting homeless individuals from holding signs soliciting charitable donations on public sidewalks is unconstitutional.

ACSO's Policy, Practice, and/or Custom

35. ACSO has adopted a policy and/or ratified a practice or custom of using § 316.2045 and § 337.406 to prohibit homeless individuals from standing on public sidewalks and streets in Alachua County, holding signs soliciting charitable donations from fellow citizens.

36. Several ACSO deputies told Plaintiffs Chase and Rogers, and deputies continue to tell them and other homeless individuals, that they must have a permit to hold signs soliciting charitable donations on public sidewalks and streets in Alachua County.

37. Alachua County has not adopted a permit scheme that applies to charitable solicitation by individuals for personal use. Existing permit schemes do not apply to individuals engaging in charitable solicitation for personal use.

38. ACSO deputies have been directed by their superiors to “crack down” on homeless individuals holding signs on public sidewalks and streets in the County.

39. The use of § 316.2045 and § 337.406 by ACSO deputies against homeless individuals holding signs requesting charitable donations on public sidewalks and streets in Alachua County has been ratified by officials with final policymaking authority.

40. ACSO previously had been put on notice that prohibiting homeless individuals from holding signs soliciting charitable donations on public sidewalks is unconstitutional.

Facts Concerning Individual Plaintiffs

Plaintiff Chase

41. Chase became homeless approximately six years ago, after leaving an abusive marriage. She has lived in Gainesville for the last four years.

42. Chase does not have a regular income to buy the necessities of life such as food, clothing, and toiletries, and she relies primarily on food stamps and charitable donations for these items and/or money to buy these items.

43. Oftentimes, Chase engages in charitable solicitation on public sidewalks in Gainesville and Alachua County by standing on a public sidewalk near a busy intersection, holding a sign soliciting charitable donations from fellow citizens.

44. On Saturday, June 4, 2005, Chase was standing on the public sidewalk and

on the grass between the sidewalk and the roadside curb at a busy intersection, holding a sign that said "Homeless Please Help. Bless You." After a short time, ACSO deputy Garner approached Chase and told her that she could not hold her sign on the public sidewalk. He gave her a citation for "Obstruction/Solicitation on a State Road" in violation of § 316.2045, Fla. Stat. (2005).³ The State Attorney dropped the charges against Chase.

45. On several occasions prior to receiving the citation, Chase was told by ACSO deputies that she could not hold her sign on public sidewalks in Alachua County. She was threatened with citation and arrest and told to "move along."

46. Chase was told by several ACSO deputies that she needed a permit to engage in charitable solicitation on public sidewalks in Alachua County.

47. There is no permit in Alachua County that applies to charitable solicitation by individuals for personal use.

48. As a direct consequence of the citation that Chase received and of the previous threats of citation and/or arrest, Chase is afraid to hold a sign soliciting charitable donations on public sidewalks in Alachua County.

49. Chase also has been threatened with citation or arrest by GPD officers for holding signs requesting charitable donations on public sidewalks in Gainesville.

50. Chase has been told by GPD officers that she needs a permit to hold a sign soliciting charitable donations on public sidewalks in Gainesville.

51. During the Summer of 2005, Chase went to Gainesville City Hall to obtain

³ On the original citation, Garner inadvertently cited to § 316.2745 rather than § 316.2045, Fla. Stat. However, it was clarified by Chase's criminal attorney that the citation was for a violation of § 316.2045, Fla. Stat.

a permit to hold her sign soliciting charitable donations on public sidewalks in Gainesville, but she was told that no such permit existed.

52. Due to the repeated and ongoing threats of citation or arrest by GPD officers, Chase is afraid to hold her sign the public sidewalks in Gainesville.

53. Each time Chase has been threatened with citation or arrest for holding a sign soliciting charitable donations on public sidewalks, it has been by a different GPD officer or ACSO deputy.

54. Chase never intended to obstruct traffic while holding her sign on public sidewalks in Gainesville or Alachua County.

55. Chase never obstructed traffic while holding her sign on the public sidewalks in Gainesville or Alachua County.

56. As a direct consequence of the repeated threats of arrest or citation and citation by ACSO deputies for engaging in charitable solicitation on the public sidewalks of Alachua County, Chase is afraid to engage in charitable solicitation in traditional public fora in Alachua County. Similarly, due to repeated and ongoing threats of arrest by GPD officers, Chase is afraid to stand on public sidewalks in Gainesville and hold a sign soliciting charitable donations. She is chilled in the exercise of her constitutionally protected rights to free speech and expression in quintessential public fora.

57. As a direct and proximate cause of Defendant ACSO's and Defendant City's policy, practice, and/or custom of enforcing the statutes and Article V against homeless individuals engaging in charitable solicitation, Chase has suffered damages including loss of income, emotional distress, loss of liberty, and loss of her constitutional right to engage

in protected First Amendment activity.

Plaintiff Rogers

58. Rogers worked at the same job for 18 years, but was forced to quit after he had a heart attack and other major health problems. Shortly after losing his job, he became homeless.

59. Rogers relies on work through the local labor pool, odd jobs, and charitable solicitation as his only sources of income. He uses the little income he receives from these activities to purchase his medications, food, and other life necessities.

60. On Monday, August 1, 2005, at around noon, Rogers was standing on a public sidewalk at a busy intersection in Alachua County, holding a sign that said “Sometimes in life, everybody needs some help.” He was trying to get enough money to get prescriptions refilled for his heart and diabetes.

61. After about an hour, ACSO Deputy Rooney told Rogers that he could not stand on the public sidewalk and hold his sign soliciting charitable donations. Deputy Rooney said, “we are not going to put up with this.” Rooney also said that he was getting his orders from higher up and he was told by his boss to “crack down” on this type of activity. Rooney placed Rogers under arrest for “soliciting on a right-of-way,” in violation of § 337.406, Fla. Stat. (2005).

62. When another sheriff’s deputy, Steven Yakel, arrived, the two deputies confiscated Roger’s sign, took photographs of him, and then Deputy Yakel transported Rogers to jail. Rogers was incarcerated for the offense overnight and he pled “no contest” at first appearance. Rogers was given credit for time served and a fine of \$173.00, and he

was subsequently released from jail.

63. Rogers previously had been threatened by ACSO deputies for holding similar signs on public sidewalks in Alachua County. On one occasion earlier in 2005, Rogers was standing on the public sidewalk, holding his sign at a busy intersection when an ACSO deputy stopped and told Rogers that he could either tear up his sign and leave or get in the back of the ACSO patrol car and go to jail. Rogers tore up his sign, gave it to the deputy, and left.

64. Rogers has also been told by ACSO deputies that he needs a permit to hold his sign.

65. There is no such permit in Alachua County. The existing permit schemes do not apply to individuals engaging in charitable solicitation for personal use.

66. Rogers has not held a sign on a public sidewalk in Alachua County since his arrest, because he fears being arrested again. Due to the threats of arrest and his arrest, Rogers is now chilled in the exercise of his constitutionally protected right to free speech and expression in quintessential public fora.

67. Rogers repeatedly has been threatened with arrest by GPD officers for holding signs asking for charitable donations on public sidewalks in Gainesville. Because of the threats of arrest, Rogers is afraid to engage in charitable solicitation in traditional public fora in Gainesville.

68. Rogers has been told by GPD officers that he needs a permit to engage in charitable solicitation on public sidewalks in the City. There is no permit in Gainesville that applies to individuals engaging in charitable solicitation for personal use. The existing

permit schemes do not apply to this activity.

69. Rogers never intended to obstruct traffic while holding his sign on public sidewalks in Gainesville or Alachua County.

70. Rogers never obstructed traffic while holding his sign on the public sidewalks in Gainesville or Alachua County.

71. As a direct consequence of the repeated threats of arrest and arrest by ACSO deputies, Rogers no longer holds his sign on public sidewalks in Alachua County. Similarly, because of repeated threats of citation and arrest by GPD officers for engaging in charitable solicitation, Rogers is afraid to hold his sign soliciting charitable donations on public sidewalks in Gainesville. Rogers is now chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public fora.

72. As a direct and proximate cause of Defendant ACSO's and Defendant City's policy, practice, and/or custom of enforcing the statutes and Article V against homeless individuals engaging in charitable solicitation, Rogers has suffered damages including loss of income, emotional distress, loss of liberty, and loss of his constitutional right to engage in protected First Amendment activity.

Plaintiff Nelson

73. Nelson is unable to work due to the injuries he sustained when he was hit by a car and because of other major health problems. He relies on a modest monthly check from Veteran's Affairs, food stamps, and charitable solicitation to obtain food, or money for food, and the other necessities of life.

74. On Friday, August 12, 2005, Nelson was standing on a public sidewalk

holding a sign that said “Homeless, Disabled, Anything Will Do. God Bless,” in hopes of getting food or money to buy food.

75. After a short time, two GPD police cars pulled into the vacant lot behind him. The officers approached Nelson and asked him if he had any marijuana in his possession. He did not and he told the officer that he did not. One of the officers searched Nelson while the other officer checked Nelson’s identification for outstanding warrants. When the check found no outstanding warrants, the officers issued Nelson a citation for “no permit soliciting” in violation of § 316.2045(1), Fla. Stat. (2005).

76. The officers handcuffed Nelson and one of them transported him to the Alachua County Jail. While en route to the jail, the officer told Nelson, “my boss told me to crack down on the people flying signs in this area, because he is receiving complaints.” He also told Nelson that he was not the first person that he had arrested for holding a sign at that location.

77. The GPD officer told Nelson that he had to have a permit to hold a sign on a public sidewalk in the City and that, if he wanted to hold his sign, then he should go into the County to do so.

78. There is no permit in Gainesville that applies to individuals engaging in charitable solicitation for personal use. The existing permit schemes do not apply to this activity.

79. Nelson was subsequently charged with violating § 316.2045(2). Ultimately, the charges against Nelson were dropped.

80. Nelson will not return to that location, or any other location within the City,

to hold his sign, because he is afraid that he will be arrested again.

81. During the summer prior to this incident, Nelson was stopped three times by GPD Officer Moore, and told that he could not stand on the public sidewalk at a busy intersection in Gainesville and hold his sign that said "Please Help the Homeless." The first two times that Officer Moore approached Nelson, she told him that he could not stand on the sidewalk at that corner and hold his sign. The third time, Officer Moore told Nelson that if he continued to stand on the corner and hold his sign, she would arrest him. Nelson was not obstructing pedestrian traffic on the sidewalk and he did not impede the flow of traffic on the street. Nelson has not returned to that corner to hold his sign since, because he is afraid that he will be arrested.

82. As a direct consequence of the repeated threats of arrest and arrest by GPD officers for holding his sign on public sidewalks in Gainesville, Nelson no longer holds his sign on public sidewalks. Nelson is now chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public fora.

83. Nelson never intended to obstruct traffic while holding his sign on public sidewalks in Gainesville.

84. Nelson never obstructed traffic while holding his sign on the public sidewalks in Gainesville.

85. As a direct and proximate cause of Defendant City's policy, practice, and/or custom of enforcing the statutes and Article V against homeless individuals engaging in charitable solicitation, Nelson has suffered damages including loss of income, emotional distress, loss of liberty, and loss of his constitutional right to engage in protected First

Amendment activity.

LEGAL ALLEGATIONS

Municipal Liability

86. Sections 316.2045 and 337.406 are facially unconstitutional, under the First and Fourteenth Amendments, and both statutes were applied to Plaintiffs in an unconstitutional manner. Both statutes also have been applied by GPD officers and ACSO deputies to individuals other than Plaintiffs.

87. On its face, Article V is unconstitutional under the First and Fourteenth Amendments, and it is being applied in an unconstitutional manner. Plaintiffs and other individuals who do not qualify for a permit under Article V, are prohibited from charitable solicitation on traditional public fora in the City, pursuant to the City's official policy.

88. Plaintiff Nelson was falsely arrested in violation of the Fourth Amendment.

89. The acts complained of here are part of a deliberate and persuasive pattern of intimidation by all Defendants through the enforcement of patently unconstitutional laws or the enforcement of facially constitutional laws in an unconstitutional manner, all aimed at suppressing Plaintiffs' and other homeless individuals' constitutional rights.

90. In doing each of the violations of law, Defendants, and their officials, employees, and agents, were acting under the color of law.

91. On information and belief, at all times mentioned herein, Defendants, and their officers, employees, and agents have acted pursuant to the official policies, practices, and/or customs of the Defendant municipal and governmental entity at which they are employed. These policies, practices, and/or customs have been approved, ratified, and

enforced by the persons and/or entities with the authority to set policy for each respective governmental entity. This includes, without limitation, the authorization and/or ratification by the City and ACSO of the limitation and disruption of protected First Amendment activities in quintessential public fora.

92. The policy, practice, and/or custom of the City and ACSO was the direct and proximate cause of the constitutional violations complained of herein. It was reasonably foreseeable that the constitutional violations would result from the enforcement of the policy, practice, and/or custom of the City and ACSO.

Injunctive Relief

93. Plaintiffs intend to continue to hold signs on public sidewalks in Gainesville and Alachua County as a means of traditional expression. They fear that they will suffer the same violations of their rights when they do so and that they will be prevented from doing so by being threatened with arrest, cited, and/or arrested by GPD officers and ACSO deputies.

94. Plaintiffs have suffered harm and, absent extraordinary relief from this Court, Plaintiffs will continue to suffer irreparable harm by unwarranted violations of their constitutional rights.

95. Damages alone are not an adequate remedy at law, because, although Plaintiffs have suffered injury as a consequence of the Defendants' unlawful acts, damages alone cannot adequately compensate Plaintiffs for the loss of their constitutional rights.

FIRST CLAIM FOR RELIEF SECTION 316.2045 VIOLATES THE FIRST AMENDMENT

**By all Plaintiffs Against Defendant CITY and
by Chase and Rogers Against Defendant ACSO**

96. The allegations of paragraphs 1 through 95 are incorporated into the First Claim for Relief as though fully set forth here.

97. Section 316.2045, Obstruction of public streets, highways, and roads, is an unconstitutional infringement, on its face, of the Plaintiffs' affirmative rights to freedom of speech and expression secured by the First Amendment to the U.S. Constitution.

98. Section 316.2045 is an impermissible content based restriction. It seeks to limit constitutionally protected speech and manners of expression based on viewpoint of the speaker, at all times, and in locations in which the expression limited is not basically incompatible with the normal activity of the location. GPD Officers and ACSO deputies applied and continue to apply § 316.2045 to prohibit Plaintiffs and other homeless individuals from engaging in charitable solicitation on traditional public fora. Although § 316.2045 aims to serve a compelling government interest, it is not a narrowly tailored.

99. Even if § 316.2045 is a content neutral restriction on speech, it is not narrowly drawn and does not provide ample alternative times, locations, or methods for the prohibited speech and expressive activity.

100. On its face, § 316.2045 is a prior restraint on speech, as it bars lawful speech and expressive activity in traditional public fora, and grants to public officials the power to deny use of a forum in advance of actual expression. The statute does not contain narrow, objective, and definite standards to guide the licensing authority and it lacks procedural safeguards to ensure against unlawful infringement on protected speech. Although

§ 316.2045 requires individuals to have a permit to engage in protected speech activities, it fails to: establish an identifiable permitting process; set forth a specific agency to create and oversee the permitting process and to accept or deny applications; establish substantive constraints on the person who oversees the applications; provide for prompt judicial review; or place time constraints on issuance or denial of permits. The statute leaves it to individual municipalities to establish a permit scheme. The statute also fails to allow for spontaneous speech activity in traditional public fora.

101. Neither Gainesville nor Alachua County has adopted a permit scheme applicable to Plaintiffs' activity. Despite the lack of a permit scheme, as a matter of policy, practice, and/or custom, GPD officers and ACSO deputies regularly tell homeless individuals that they need a permit to hold a sign soliciting charitable donations on public sidewalks. Thus, it is being applied as a prior restraint on speech.

102. Section 316.2045 is overbroad, as it sweeps into its ambit constitutionally protected speech. The statute is not narrowly tailored to meet its interests in public safety and uniformity of traffic laws, as it prohibits all speech and expressive activity other than that of 501(c)(3) organizations and political speech. This distinction of permissible speech has no bearing on road safety or uniformity. Section 316.2045's overbreadth is substantial when judged in relation to the statute's plainly legitimate sweep.

103. As a direct and proximate result of Defendants' actions, Plaintiffs are deprived of their right to free speech in quintessential public fora, and the statute has a chilling effect on constitutionally protected expression. Plaintiffs have suffered, and continue to suffer, irreparable harm and have been damaged as a direct result of this conduct.

**SECOND CLAIM FOR RELIEF
SECTION 337.406 VIOLATES THE FIRST AMENDMENT**

**By all Plaintiffs Against Defendant CITY and
by Chase and Rogers Against Defendant ACSO**

104. The allegations of paragraphs 1 through 95 are incorporated into the Second Claim for Relief as though fully set forth here.

105. Section 337.406, Unlawful use of state transportation facility right-of-way, is an unconstitutional infringement, on its face and as applied to Plaintiffs by GPD officers and ACSO deputies, of the Plaintiffs' right to freedom of speech and expression secured by the First Amendment to the U.S. Constitution, as applied to the State of Florida through the Fourteenth Amendment.

106. On its face, § 337.406 is a prior restraint on speech, as it bars lawful speech and expressive activity in traditional public fora, and grants to public officials the power to deny use of a forum in advance of actual expression. The statute does not contain narrow, objective, and definite standards to guide the licensing authority and it lacks procedural safeguards to ensure against unlawful infringement on protected speech. Section 337.406 allows for temporary permits for prohibited activities, but it leaves it to municipalities to establish a permitting process and administer such permits. The statute fails to: establish an identifiable permitting process; set forth a specific agency to create and oversee the permitting process and to accept or deny applications; establish substantive constraints on the person tasked with overseeing the applications; provide for prompt judicial review; or place time constraints on issuance or denial of permits. Here, although ACSO deputies and GPD officers told the Plaintiffs, and continue to tell them and other homeless individuals,

that they need a permit to hold a sign on public sidewalks, neither the City nor ACSO or the County have a permitting process in place that applies to charitable solicitation by individuals for personal use. Enforcement of the statute without an applicable permitting scheme in place, amounts to an impermissible prior restraint on speech. The statute also fails to allow for spontaneous speech activity in traditional public fora.

107. As applied to the Plaintiffs by GPD officers and ACSO deputies, § 337.406, is a content based restriction on speech. In accordance with the official policy, practice, and/or custom of the City and ACSO, GPD officers and ACSO deputies use § 337.406 against the Plaintiffs and other homeless people to prevent them from engaging in charitable solicitation on traditional public fora. The City and ACSO's underlying interest in prohibiting charitable solicitation by the homeless is not a compelling government interest. The statute is not narrowly tailored to further any arguable compelling interest that the government asserts, such as regulation of traffic or public safety.

108. On its face, § 337.406 is an impermissible content neutral restriction on speech. The statute is a blanket prohibition of speech and expressive activity on public sidewalks, roads, and right-of-ways, it is not narrowly drawn, and it does not provide ample alternative times, locations, or methods for the prohibited speech and expressive activity.

109. On its face, § 337.406 is overbroad, as it sweeps into its ambit constitutionally protected speech. The statute is not narrowly tailored to meet the government's interest in public safety, as it prohibits all speech and expressive activity on public sidewalks which GPD officers and ACSO deputies interpret as the "right of way" or "appendages" to a state transportation facility. Section 337.406's overbreadth is substantial when judged in relation

to the statute's plainly legitimate sweep.

110. As a direct and proximate result of Defendants' actions, Plaintiffs are deprived of their right to free speech in a quintessential public fora and the statute has a chilling effect on constitutionally protected expression. Plaintiffs have suffered, and continue to suffer, irreparable harm and have been damaged as a direct result of this conduct.

**THIRD CLAIM FOR RELIEF
ARTICLE V OF THE CITY CODE VIOLATES THE FIRST AMENDMENT**

By all Plaintiffs Against Defendant CITY

111. The allegations of paragraphs 1 through 95 are incorporated into the Third Claim for Relief as though fully set forth here.

112. Article V is an unconstitutional infringement, on its face, of the Plaintiffs' and other non-registered charitable organizations who wish to engage in charitable solicitation on public streets or right-of-ways right to freedom of speech and expression secured by the First Amendment to the U.S. Constitution, as applied to the State of Florida through the Fourteenth Amendment.

113. On its face, Article V is an unlawful prior restraint on speech, as § 19-112 of Article V bars protected speech activity in traditional public fora, and grants to public officials the power to deny use of a forum in advance of actual expression. The provisions of Article V propose to ensure the safe use of "streets and sidewalks," § 19-111, by prohibiting "any person to raise funds, or seek financial assistance of any kind or nature, on any street or right-of-way within the city without first acquiring a permit," § 19-112. However, such permit is only available to registered charitable organizations. Although the

governmental purpose underlying Article V is compelling, the ordinance provisions therein are not narrowly tailored to further that goal. The ordinance provisions also fail to allow for spontaneous speech activity on traditional public fora.

114. Article V, on its face, is a content based restriction on speech. Read in its entirety, Article V prohibits anyone from engaging in any form of solicitation without a permit, but allows such permit only to registered charities. This Article clearly prefers the viewpoint of charitable organizations over that of organizations that do not qualify for § 501(c)(3) status and individuals who solicit for charitable donations for their own use. GPD Officers applied and continue to apply Article V to prohibit Plaintiffs and other homeless individuals from engaging in charitable solicitation on traditional public fora. The City's underlying interest of ensuring public safety and the free flow of pedestrian and vehicular traffic, while compelling, is not narrowly tailored.

115. Even if Article V is content neutral on its face, it is not narrowly drawn to further its government interest and it does not provide ample alternative times, locations, or methods for the prohibited speech and expressive activity.

116. On its face, Article V is overbroad, as it sweeps into its ambit constitutionally protected activity. In all its applications, Article V directly restricts protected First Amendment activity on traditional public fora and it does not employ means narrowly tailored to serve a compelling government interest. The City's prohibition of everyone except registered charities from engaging in charitable solicitation on public streets, sidewalks and right-of-ways is only peripherally promoted by the ordinance provisions. This regulation unnecessarily interferes with the First Amendment freedoms of those individuals

such as Plaintiffs who are not eligible for the permit.

117. As a direct and proximate result of Defendant City's unconstitutional ordinance provisions in Article V, Plaintiffs and other individuals who are not registered charities are deprived of their right to free speech in a quintessential public fora and the Ordinance provisions have a chilling effect on constitutionally protected expression. Plaintiffs have suffered, and continue to suffer, irreparable harm and have been damaged as a direct result of this restriction.

**FOURTH CLAIM FOR RELIEF
SECTION 316.2045 VIOLATES THE DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT**

**By all Plaintiffs Against Defendant CITY and
by Chase and Rogers Against Defendant ACSO**

118. The allegations of paragraphs 1 through 95 are incorporated into the Fourth Claim for Relief as though fully set forth here.

119. On its face, § 316.2045, Obstruction of public streets, highways, and roads, unconstitutionally infringes Plaintiffs' affirmative right to due process of the law, a right guaranteed by the Fourteenth Amendment of the U.S. Constitution.

120. Section 316.2045 is void for vagueness.

121. The language of § 316.2045 does not convey a sufficiently definite warning as to the proscribed conduct so that the ordinary citizen can understand what acts and/or behaviors are unlawful. It is ambiguous as to whether it is lawful or unlawful to simply stand on the public sidewalk and hold a sign, or whether one has to be standing in the road to violate the statute. The statute also fails to define the term "solicit" and the phrase "political

campaigning,” making it unclear what behavior is prohibited. The reference to, and partial incorporation of, the permit provisions in § 337.406, Fla. Stat., in subsection two of the statute adds to the ambiguity of the statute.

122. Section 316.2045 also fails to establish minimal guidelines to govern law enforcement, leaving law enforcement officers unbridled discretion to determine what behaviors constitute soliciting and what messages fall within the ambit of “political campaigning,” thus allowing for arbitrary and discriminatory enforcement.

123. The vague portions of the statute are so inherent to its meaning that they cannot be severed from the statute. The entire statute should be stricken.

124. As a direct and proximate result of Defendants’ actions, Plaintiffs have been deprived their right to due process of the law. Plaintiffs have suffered, and will continue to suffer, irreparable harm and have been damaged as a direct result of this conduct.

**FIFTH CLAIM FOR RELIEF
SECTION 337.406 VIOLATES THE DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT**

**By all Plaintiffs Against Defendant CITY and
by Chase and Rogers Against Defendant ACSO**

125. The allegations of paragraphs 1 through 95 are incorporated into the Fifth Claim for Relief as though fully set forth here.

126. On its face, § 337.406, Unlawful use of state transportation right-of-way, is an unconstitutional infringement of the Plaintiff’s affirmative right to due process of the law, a right guaranteed by the Fourteenth Amendment of the U.S. Constitution.

127. Section 337.406 is void for vagueness.

128. The language of § 337.406 does not convey a sufficiently definite warning as to the proscribed conduct so that the ordinary citizen understands the act and/or behavior that is unlawful. The statute fails to define or explain the phrase “outside of an incorporated municipality,” thus it is unclear whether the statute applies inside or outside cities and incorporated areas of counties. It also fails to define the term “appendages,” leaving unclear the exact parameters covered by the statute.⁴

129. Section 337.406 fails to establish minimal guidelines to govern law enforcement, leaving law enforcement officers unbridled discretion to determine what behaviors are prohibited, allowing for arbitrary and discriminatory enforcement.

130. The vague portions of the statute are so inherent to its meaning that they cannot be severed from the statute. The entire statute should be stricken.

131. As a direct and proximate result of Defendants’ actions, Plaintiffs have been deprived their right to due process of the law. Plaintiffs have suffered, and will continue to suffer, irreparable harm and have been damaged as a direct result of this conduct.

**SIXTH CLAIM FOR RELIEF
SECTION 316.2045 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT**

**By all Plaintiffs Against Defendant CITY and
by Chase and Rogers Against Defendant ACSO**

⁴ The prior version of § 337.406 referred to “state maintained road” and “appendages thereto” rather than “state transportation facility” and “appendages thereto.” By definition, the term “road” included “associated sidewalks.” § 334.03(23), Fla. Stat. (2005). Because “appendages” to a state transportation facility is not defined or explained, it is unclear whether the legislature intended for the amended version of the statute to include public sidewalks. The legislative history of the statute is similarly silent. Clearly, here, GPD and ACSO are enforcing the statute to include sidewalks.

132. The allegations of paragraphs 1 through 95 are incorporated into the Sixth Claim for Relief as though fully set forth here.

133. Section 316.2045, Obstruction of public streets, highways, and roads, is an unconstitutional infringement, on its face, of the Plaintiffs' affirmative right to Equal Protection under the Fourteenth Amendment to the U.S. Constitution.

134. Section 316.2045 prefers speech and expressive conduct of registered 501(c)(3) corporations and those engaged in political speech or campaigns, while placing a wholesale restriction on the speech and expressive activity of all other individuals. In doing so, it impermissibly prefers the viewpoints of registered charities and political campaigners, but prohibits all other viewpoints.

135. Although the government's interest in public safety is substantial, the statute is not narrowly drawn to further that interest.

136. As a direct and proximate result of Defendants' actions, Plaintiffs have been deprived their right to equal protection under the law. Plaintiffs have suffered, and will continue to suffer, irreparable harm and have been damaged as a direct result of this conduct.

**SEVENTH CLAIM FOR RELIEF
ARTICLE V VIOLATES THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT**

By all Plaintiffs Against Defendant CITY

137. The allegations of paragraphs 1 through 95 are incorporated into the Seventh Claim for Relief as though fully set forth here.

138. Article V is an unconstitutional infringement, on its face, of the Plaintiffs' affirmative right to Equal Protection under the Fourteenth Amendment to the U.S.