

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

PETER VIGUE,
Plaintiff,

v.

DAVID B. SHOAR, in his official capacity
as Sheriff of St. Johns County and
GENE SPAULDING, in his official
capacity as Director of the Florida
Highway Patrol,

Defendants.

Case No.:

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

INTRODUCTION

1. Plaintiff Peter Vigue (“Vigue”) brings this civil rights action pursuant to 42 U.S.C. §1983 for violation of his First and Fourteenth Amendment rights under the United States Constitution.

2. Vigue seeks injunctive, declaratory relief, and compensatory damages against Sheriff David B. Shoar (“Sheriff”), in his official capacity as Sheriff of St. Johns County, and injunctive and declaratory relief against Colonel Gene Spaulding, in his official capacity as Director of the Florida Highway Patrol (“FHP”).

3. Vigue challenges the constitutional validity of §§ 316.2045 & 337.406, Fla. Stat. (2018) (“the statutes”), both facially and as applied to him by Defendants pursuant to official policy, practice, and/or custom of FHP and the Sheriff.

4. The statutes prohibit individuals from engaging in charitable solicitation on public streets, including sidewalks, without a permit issued by the appropriate local government. The statutes exempt 501(c)(3) charitable organizations from local government permit requirements and all other restrictions on solicitation of charitable donations set forth in §§ 316.2045 & 337.406 Fla. Stat. (2018).

5. Defendants are enforcing the statutes against Vigue and other homeless individuals to prohibit them from standing on public sidewalks and streets in St. Johns County holding signs soliciting charitable donations from fellow citizens.

6. The statutes violate the First and Fourteenth Amendments, and have previously been held unconstitutional by U.S. District Courts for the Middle and Northern Districts of Florida. *See Bischoff v. Florida*, 242 F.Supp.2d 1226 (M.D. Fla. 2003); *Chase v. City of Gainesville*, Case No. 1:06-cv-44-SPM-AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006).

JURISDICTION

7. This action seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. §1983 for past and ongoing injury to Plaintiff's First and Fourteenth Amendment rights.

8. 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.

VENUE

9. Venue is proper in the Middle District of Florida, Jacksonville Division, pursuant to 28 U.S.C. §1391(b) and M.D. Loc. R. 1.02. The Plaintiff resides, and all of

the acts and omissions complained of herein occurred and will continue to occur, in the Jacksonville Division of the Middle District of Florida.

THE PARTIES

10. Plaintiff PETER VIGUE is a resident of St. Johns County, Florida. He is homeless. Vigue has lived in the St. Augustine area located in St. Johns County for approximately seven (7) years. St. Johns County Sheriff's deputies and FHP troopers have repeatedly arrested, issued citations, and threatened Vigue with citation and/or arrest under the statutes for passively holding signs soliciting charitable donations on public sidewalks, streets and medians in St. Johns County.

11. Defendant SHERIFF DAVID B. SHOAR, in his official capacity, is the Sheriff of St. Johns County, an elected constitutional office established by Florida law. Sheriff Shoar has the capacity to sue and be sued in his official capacity as Sheriff of St. Johns County. The Sheriff is the chief law enforcement officer of St. Johns County and is responsible for the enforcement of all applicable laws, and the citation and arrest of persons alleged to have violated the law within the jurisdiction of St. Johns County.

12. Defendant COLONEL GENE SPAULDING, in his official capacity, is the Director and Commander of Florida Highway Patrol. FHP is a state law enforcement agency created by Florida statute and is a Division of the Florida Department of Highway Safety and Motor Vehicles. FHP officers are law enforcement officers with statewide jurisdiction over violations of state statutes including arrest authority.

13. At all times relevant to this complaint, Defendants, and their troopers, deputies, officials, employees, and agents, were acting under color of state law.

14. Pursuant to § 86.091, Fla. Stat. (2018), Plaintiff is serving the ATTORNEY GENERAL OF THE STATE OF FLORIDA with a copy of this Complaint, because the facial constitutionality of a state statute is 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 Regulating Charitable Solicitation

15. 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.

16. Public sidewalks, streets and medians are traditional public fora.

17. Florida Statutes §§ 316.2045 & 337.406 prohibit charitable solicitation by individuals on traditional public fora.

18. Under the statutes, an individual may only engage in solicitation if a local government sets up a permitting scheme and the individual is able to obtain a permit. § 316.2045, Fla. Stat. (2018).

19. There is no requirement under state law that local governments set up permitting schemes to allow individuals to solicit.

20. Florida Statute section 316.2045, Obstruction of public streets, highways, and roads, 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 provisions 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 provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 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. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:

(a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:

1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.

2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.

3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.

4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than \$1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.

5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.

(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.

(c) All solicitation shall occur during daylight hours only.

(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.

(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device.

(f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.

(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

(h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.

(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.

21. 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.

22. Chapter 316 of the Florida Statutes, which regulates State Uniform Traffic Control, does not define the terms “solicit” or “political campaigning,” as used in § 316.2045.

23. Section 337.406, Fla. Stat. (2018), is referenced in § 316.2045(2) and provides, in relevant part, that it is prohibited to use the right-of-way of any “state transportation facility” for “solicitation for charitable purposes.” § 337.406(1), Fla. Stat. (2018).

24. Section 337.406, Fla. Stat. (2018) only authorizes “solicitation for charitable purposes” on the right-of-way of any “state transportation facility” if a local government entity issues a permit. Without a permit, “solicitation for charitable purposes” is prohibited on the right-of-way of any “state transportation facility” under this statute.

25. Permitting authority for “solicitation for charitable purposes” is granted under section 337.406, Fla. Stat. (2018), to municipalities within incorporated municipalities and to counties within unincorporated municipalities.

26. Florida Statute section 316.2045(3) exempts charitable organizations from any local permitting requirements to engage in “solicitation for charitable purposes.”

27. The term “right-of-way” as used in section 337.406, Fla. Stat. (2018), 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(21), Fla. Stat. (2018).

28. The phrase “transportation facility” as used in Section 337.406, Fla. Stat. (2018), 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(30), Fla. Stat. (2018).

29. Florida Statutes §§ 316.2045 & 337.406 have been declared unconstitutional on First Amendment grounds by U.S. District Courts for the Middle and Northern Districts of Florida. See *Bischoff v. Florida*, 242 F. Supp. 2d 1226 (M.D. Fla. 2003); *Chase v. City of Gainesville*, Case No. 1:06-cv-44-SPM-AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006).

30. The Florida legislature has not, by repeal or amendment, addressed the constitutional infirmities recognized by the U.S. District Courts in *Bischoff* and *Chase*.

31. The same constitutional infirmities present on the face of these statutes during prior court challenges in *Bischoff* and *Chase* remain in effect today.

32. Section 316.2045 was amended in 2007 by Chapter 2007-43, Laws of Florida (the “Iris Roberts Act”), to exempt certain charitable organizations from permit requirements to engage in charitable solicitation.

33. Section 316.2045 continues to facially prefer speech by 501(c)(3) charitable organizations by exempting certain charitable organizations from local government permitting requirements to engage in charitable solicitation.

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

34. The Sheriff has adopted a policy and/or a practice or custom within St. Johns County of using § 316.2045 to prohibit homeless individuals from standing on public sidewalks, medians and streets in St. Johns County holding signs requesting charitable donations from fellow citizens.

35. Sheriff's deputies have told Plaintiff and continue to tell Plaintiff that he cannot hold signs soliciting charitable donations on public sidewalks, medians and streets in St. Johns County without a permit.

36. St. Johns County does not have a process for granting permits to engage in charitable solicitation on any street, road, or right-of-way located in unincorporated St. Johns County.

37. St. Johns County has not adopted a permit scheme that applies to charitable solicitation by individuals for personal use. There is no way for individuals, including Plaintiff, to obtain permission to engage in this form of protected speech in St. Johns County without facing enforcement of the challenged statutes by Sheriff's deputies.

38. The Sheriff has made a deliberate policy decision to enforce § 316.2045 to arrest, cite, or issue warnings to individuals holding signs requesting charitable donations on public sidewalks and streets in St. Johns County.

39. Sheriff's deputies have a custom or practice of using § 316.2045 to arrest, cite or issue warnings to individuals holding signs requesting charitable donations on public sidewalks and streets in St. Johns County.

Florida Highway Patrol Policy, Practice, and/or Custom

40. The FHP has adopted a policy and/or a practice or custom within the State of Florida (the "State"), including St. Johns County, of using § 316.2045 to prohibit homeless individuals from standing on public sidewalks, medians and streets, holding signs requesting charitable donations from fellow citizens.

41. The FHP has made a deliberate policy decision to enforce § 316.2045 to arrest, cite, or issue warnings to individuals holding signs requesting charitable donations on public sidewalks and streets across the state of Florida, including in St. Johns County.

42. FHP troopers have a custom or practice of using § 316.2045 to arrest, cite or issue warnings to individuals holding signs requesting charitable donations on public sidewalks and streets in St. Johns County.

43. FHP troopers have enforced the statutes against Plaintiff and have issued and continue to issue warnings, citations, and/or arrest other individuals for violations of the statutes across the state of Florida, including in St. Johns County.

44. FHP troopers issue approximately 700 citations statewide each year for the past several years for violations of § 316.2045.

45. FHP troopers have told Plaintiff that he cannot hold signs soliciting charitable donations on public sidewalks and streets in the St. Johns County.

46. The State of Florida has not adopted a permit scheme that applies to charitable solicitation by individuals for personal use. The statutes only authorize charitable organizations to solicit funds on public streets, but do not authorize individuals to engage in this activity.

47. St. Johns County has not adopted a permit scheme to authorize charitable solicitation by individuals that FHP could apply or follow. Individuals such as Plaintiff are left with no way to engage in this form of protected speech in St. Johns County without facing enforcement of the challenged statutes by FHP troopers.

Facts Concerning Individual Plaintiff

48. Plaintiff has lived in St. Augustine for approximately seven (7) years.

49. Plaintiff does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps in the woods, on public sidewalks or in other public places.

50. Due to a disability, Plaintiff cannot work at a traditional job.

51. Plaintiff receives monthly disability benefits which he uses for food and similar necessities, however Plaintiff's monthly disability benefits often do not cover all such necessities.

52. Plaintiff engages in charitable solicitation on public sidewalks, or on the medians or shoulders of public streets, in areas frequented by pedestrians or near intersections in St. Johns County, holding a small sign that usually says "Please care God Bless Love" or something similar.

53. By engaging in charitable solicitation, Plaintiff communicates his need for food, money and other necessities while raising awareness about the existence of homelessness in St. Johns County.

54. When Plaintiff 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 St. Johns County.

55. Plaintiff intends his sign to convey to passersby that Plaintiff is a person who matters and that other individuals, like those reading his sign, could find themselves in a similar situation of needing assistance.

56. Plaintiff typically receives food, care packages containing water, hygiene products and clothing items, or religious materials such as bibles and brochures from passersby. Sometimes, passersby give Plaintiff cash.

57. Plaintiff frequently is approached while engaging in charitable solicitation by individuals who want to talk with him about homelessness and his life. Passersby sometimes ask to pray with Plaintiff when they see his sign.

58. Plaintiff does not intend to obstruct or otherwise interfere with traffic on any road when engaging in such solicitation. Plaintiff only walks in the road if traffic is stopped.

59. On June 28, 2016, Plaintiff received a citation for a violation of § 316.2045(1) from Sheriff's Deputy K. Lloyd for holding a sign soliciting donations at the intersection of US 1 and Lewis Point Road in St. Augustine, Florida. Plaintiff was

adjudicated guilty and was assessed a fine in the amount of \$64.50. An additional fee of \$23.00 was assessed on December 20, 2016.

60. On April 18, 2017, Plaintiff was standing at the intersection of SR 312 and Tingle Court in St. Augustine, Florida, holding a sign soliciting donations. Plaintiff received a citation for violation of § 316.2045(2) from Sheriff's Deputy Sean C. Adams. On June 2, 2017, a Nolle Prosequi was filed by the State and the charge was dismissed.

61. On May 15, 2017, Plaintiff was standing at the intersection of Tingle Court and SR 312 holding a sign that said "Donations Please Care God Bless Thank You." FHP Officer J. Mulhern arrested Plaintiff for violating § 316.2045(2) for soliciting in the roadway. Plaintiff was brought to the St. Johns County Jail and booked into the jail. On June 2, 2017, a Nolle Prosequi was filed by the State with respect to this arrest, and the charge was dismissed.

62. On November 25, 2017, Plaintiff was standing at Tingle Court in St. Augustine, Florida, in the afternoon holding as sign that said "God bless please care." Sheriff's Deputy Brandon Hand arrested Plaintiff for trespassing and for a violation of § 316.2045(2). Plaintiff was booked in St. Johns County Jail on January 18, 2018, in connection with this charge. The case was ultimately not prosecuted and an announcement of no information was filed by the State on January 11, 2018.

63. On October 2, 2018, Plaintiff was standing at the intersection of SR 312 and Tingle Circle in St. Augustine, Florida, holding a sign soliciting donations. Plaintiff received a citation from Sheriff's Deputy Johan G. Tschannerl for violation of §

316.2045(1). On December 27, 2018, the citation was dismissed by the hearing officer.

64. On November 13, 2018, Plaintiff was standing at the intersection of SR 312 and Tingle Court in St. Augustine, Florida, holding a sign soliciting donations. Plaintiff was arrested by Sheriff's Deputy John A. Floyd for violation of § 316.2045(2) for not having a permit to engage in solicitation. Plaintiff was booked in the St. Johns County Jail. After counsel for Defendant filed a motion to dismiss due to unconstitutionality of the Florida Statute, on December 3, 2018, the case was nolle prossed by the State and the charge was dismissed.

65. On January 8, 2019, Plaintiff was standing at the intersection of SR 312 and Tingle Court in St. Augustine, Florida holding a sign soliciting donations that read "God Bless – Anything Helps." Plaintiff was cited and arrested by Sheriff's deputy Nicholas Cooper for violations of § 316.2045(1) & (2) for not having a permit for solicitation. Plaintiff was booked in the St. Johns County Jail. On January 10, 2019, the citation for § 316.2045(1) was dismissed. On January 15, the separate charge for violation of § 316.2045(2) was nolle prossed by the State.

66. On January 13, 2019, Plaintiff was standing at the intersection of SR 312 and Tingle Court in St. Augustine, Florida holding a sign soliciting donations and not having a permit to solicit on a state road. Plaintiff was cited by Sheriff's deputy Justin Cash for violation of § 316.2045(2) and booked in the St. Johns County Jail. On February 11, 2019, the case was nolle prossed by the State and the charge was dismissed.

67. During all citations and arrests of Plaintiff under § 316.2045, Defendants, and their deputies, troopers, employees, and/or agents have acted pursuant to the official policies, practices, and/or customs of the law enforcement agencies at which they are employed. These policies, practices, and/or customs have been adopted or approved by the persons and/or entities with the authority to set policy for each respective law enforcement agency.

68. Section 316.2045 is facially unconstitutional, under the First and Fourteenth Amendments.

69. Section 316.2045 is being applied to Plaintiff in an unconstitutional manner by foreclosing any means by which he can lawfully engage in protected speech on traditional public fora in St. Johns County.

70. Sheriff's Office deputies and FHP troopers regularly tell Plaintiff that he may not hold his sign on public streets, medians, or sidewalks and threaten him with arrest for doing so. The deputies and officers have also told Plaintiff that he must leave such public spaces and, in some instances, that he must leave St. Johns County entirely.

71. Plaintiff has received trespass warnings from Sheriff's deputies banning him from returning to shopping plazas near intersections on public streets where he holds his sign to keep him from returning to those public places to solicit money.

72. As a direct consequence of the enforcement actions taken by Defendants pursuant to these statutes, Plaintiff is afraid to hold a sign soliciting charitable donations on public sidewalks, streets, and medians in St. Johns County.

73. Plaintiff has been cited or arrested for holding a sign soliciting charitable donations on public sidewalks on seven (7) separate occasions by seven (7) different Sheriff's deputies.

74. Plaintiff is chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public fora.

75. Section 316.2045 has also been applied by FHP troopers and by Sheriff's deputies to individuals other than Plaintiff.

76. The Defendants' policy, practice, and/or custom of enforcing the statutes was the direct and proximate cause of the constitutional violations complained of herein.

77. As a direct and proximate cause of Defendant Sheriff's, policy, practice, and/or custom of enforcing the statute against individuals engaging in charitable solicitation, Plaintiff has suffered damages including emotional distress, loss of liberty, loss of freedom, and loss of his constitutional right to engage in protected First Amendment activity.

78. Plaintiff intends to continue to hold signs on public sidewalks in St. Augustine and St. Johns County as a means of communicating with fellow citizens. He fears that he will suffer the same violations of his rights when he does so and that he will be prevented from doing so by being threatened with arrest, cited, and/or arrested by Sheriff's deputies and FHP troopers.

79. Plaintiff has suffered harm and, absent extraordinary relief from this Court, Plaintiff will continue to suffer irreparable harm by unwarranted violations of his constitutional rights.

80. Damages alone are not an adequate remedy at law, because, although Plaintiff has suffered injury as a consequence of the Defendants unlawful acts, damages alone cannot adequately compensate Plaintiff for the loss of his constitutional rights.

**FIRST CLAIM FOR RELIEF
FIRST AMENDMENT**

81. The allegations of paragraphs 1 through 80 are incorporated into the First Claim for Relief as though fully set forth herein.

82. Sections 316.2045 & 337.406 are an unconstitutional infringement, on their face, of Plaintiff's affirmative rights to freedom of speech and expression secured by the First Amendment to the U.S. Constitution.

83. Sections 316.2045 & 337.406 are impermissible content-based restrictions on speech. The statutes seek to limit constitutionally protected speech and manners of expression based on subject matter and viewpoint of the speaker, at all times, and in traditional public fora statewide.

84. Section 316.2045 singles out an entire subject matter—charitable solicitation—and a determination as to whether an individual is violating the statute requires a law enforcement officer to examine the content of a person's speech.

85. FHP troopers and Sheriff's deputies applied and continue to apply § 316.2045 to prohibit Plaintiff and other homeless individuals from engaging in charitable solicitation on traditional public fora.

86. Sections 316.2045 & 337.406 are not narrowly tailored to meet a compelling government interest.

87. Even if §§ 316.2045 & 337.406 were content neutral, the statutes are not narrowly drawn and do not provide ample alternative times, locations, or methods for the prohibited speech and expressive activity.

88. On their face, § §316.2045 & 337.406 are a prior restraint on speech, as the statutes bar lawful speech and expressive activity in traditional public fora, and grant to public officials the power to deny use of a forum in advance of actual expression. The statutes do not contain narrow, objective, and definite standards to guide the licensing authority and they lack procedural safeguards to ensure against unlawful infringement on protected speech.

89. Although §§ 316.2045 & 337.406 require individuals to have a permit to engage in protected speech activities, the statutes fail 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 statutes leave it to individual municipalities and counties to establish a permit scheme but does not require them to

do so. The statutes also fail to allow for spontaneous speech activity in traditional public fora.

90. The statutes facially prefer the viewpoint of charitable 501(c)(3) organizations by exempting their requests for charitable solicitation from any local government permitting requirements.

91. St. Johns County has not adopted a permit scheme applicable to Plaintiff's activity. Plaintiff therefore has no way to ask for permission to engage in constitutionally protected expression. The statutes are being applied to Plaintiff as a blanket prohibition on his ability to hold signs communicating his message of need to fellow human beings.

92. Despite the lack of a permit scheme, as a matter of policy, practice and/or custom, FHP troopers and Sheriff's deputies have told Plaintiff that he cannot hold a sign soliciting donations without a permit. Thus, the statutes are being applied to Plaintiff as a prior restraint on constitutionally protected expression.

93. Sections 316.2045 & 337.406 are overbroad, sweeping into their ambit constitutionally protected speech. The statutes are not narrowly tailored to meet state interests in public safety and uniformity of traffic laws, as the statutes prohibits all solicitation other than that of 501(c)(3) organizations while allowing political speech. The state has drawn impermissible distinctions based on the content or viewpoint of an individual's speech that have no bearing on road safety or uniformity. The overbreadth of these statutes is substantial when judged in relation to the statutes' plainly legitimate sweep.

94. Defendants have enforced the statutes against Plaintiff through warnings, citations, arrests, and through the issuance of trespass warnings to prohibit Plaintiff from returning to public places as a penalty for engaging in protected expression.

95. As a direct and proximate result of Defendants' enforcement actions, Plaintiff is deprived of his right to free speech in quintessential public fora, and the statutes have a chilling effect on constitutionally protected expression. Plaintiff has suffered, and continues to suffer, irreparable harm and have been damaged as a direct result of Defendants' enforcement of these statutes.

**SECOND CLAIM FOR RELIEF
DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**

96. The allegations of paragraphs 1 through 80 are incorporated into the Second Claim for Relief as though fully set forth here.

97. Sections 316.2045 & 337.406 are an unconstitutional infringement, on their face, of Plaintiff's affirmative rights to due process of the law, a right guaranteed by the Fourteenth Amendment of the U.S. Constitution.

98. Sections 316.2045 & 337.406 are void for vagueness.

99. The language of §§ 316.2045 & 337.406 do 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 § 316.2045 adds to the ambiguity of the statute.

100. Sections 316.2045 & 337.406 also fail 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.

101. The vague portions of the statutes are so inherent to the meaning that they are not severable. The entire statute should be stricken.

102. As a direct and proximate result of Defendants actions, Plaintiff has been deprived of his right to due process of the law. Plaintiff has suffered, and will continue to suffer, irreparable harm and has been damaged as a direct result of Defendants’ enforcement of these statutes.

**THIRD CLAIM FOR RELIEF
EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**

103. The allegations of paragraphs 1 through 80 are incorporated into the Third Claim for Relief as though fully set forth here.

104. Sections 316.2045 & 337.406 are an unconstitutional infringement, on their face, of Plaintiff’s affirmative rights to Equal Protection under the Fourteenth Amendment to the U.S. Constitution.

105. Sections 316.2045 & 337.406 infringe on Plaintiff’s free speech rights, which are fundamental rights guaranteed by the Equal Protection clause of the U.S. Constitution.

106. Section 316.2045 & 337.406 prefer speech and expressive conduct of registered 501(c)(3) corporations and those engaged in political speech, 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.

107. Although the government's interest in public safety is substantial, the statutes are not narrowly drawn to further that interest.

108. There is no legitimate government interest in allowing certain types of charitable solicitation while disallowing others.

109. As a direct and proximate result of Defendants' actions, Plaintiff has been deprived his right to equal protection under the law. Plaintiff has suffered, and will continue to suffer, irreparable harm and have been damaged as a direct result of Defendants' enforcement of these statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

110. Issue a preliminary and permanent injunction preventing Defendant Sheriff, and his officers, agents, and employees, from enforcing §§ 316.2045 & 337.406, Fla. Stat.;

111. Issue a preliminary and permanent injunction preventing Defendant FHP and its officers, agents, and employees, from enforcing §§ 316.2045 & 337.406, Fla. Stat.;

112. Enter a declaration that §§ 316.2045 & 337.406, Fla. Stat., are unconstitutional both facially and as applied by officers, agents, and employees of the Sheriff and FHP, in violation of the First Amendment of the U.S. Constitution;

113. Enter a declaration that §§ 316.2045 & 337.406, Fla. Stat., are unconstitutional, both facially and as applied by officers, agents, and employees of the Sheriff and FHP, in violation of the Fourteenth Amendment of the U.S. Constitution;

114. Rescind trespass warnings issued to Plaintiff by Defendant Sheriff to prohibit Plaintiff from returning to public places as a penalty for engaging in protected expression;

115. Award compensatory damages for Plaintiff against Defendant Sheriff, including emotional distress, loss of protected First Amendment rights, loss of liberty, and any other damages as permitted by law;

116. Award attorneys' fees and costs pursuant to 42 U.S.C. §1988; and

117. Award such other relief as this Court deems just and proper.

Dated: February 12, 2019

Respectfully submitted,

/s/Kirsten Anderson

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*Pro hac vice motion pending

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