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.: 3:19-cv-00186

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION
AND MEMORANDUM OF LAW WITH REQUEST FOR ORAL ARGUMENT

Pursuant to Fed. R. Civ. P. 65 and M.D. Loc. R. 4.06, Plaintiff, through his undersigned attorneys, moves for an Order enjoining Defendants (i) DAVID B. SHOAR, in his official capacity as Sheriff ("Sheriff") of St. Johns County ("County"), and his or its agents, employees, or any other person acting in concert or on his or its behalf, and (ii) GENE SPAULDING, in his official capacity as Director ("Director") of the Florida Highway Patrol ("FHP"), and his or its agents, employees, or any other person acting in concert or on his or its behalf, from enforcing or taking action to enforce Florida Statutes §§ 316.2045 & 337.406 (2018), which are facially unconstitutional in violation of the First and Fourteenth Amendments. As grounds for this motion, Plaintiff states:

1. Plaintiff Peter Vigue ("Vigue") seeks a preliminary injunction to enjoin

enforcement of Florida Statues §§ 316.2045 & 337.406 (2018), which are facially unconstitutional. These statutes prohibit charitable solicitation, which is constitutionally protected expression, on traditional public fora (streets, sidewalks, and medians) without a permit. These statutes are content-based prior restraints on speech, are overbroad, deny equal protection and are unconstitutionally vague.

2. There exists a substantial likelihood that Plaintiff's facial challenges to the constitutionality of Florida Statutes §§ 316.2045 & 337.406 will succeed on the merits.

3. Florida Statute § 316.2045 (2018) prohibits solicitation without a permit on public streets and rights-of-way, including public sidewalks. The statute does not set forth a permitting scheme, but rather leaves it to municipalities and counties to create permitting schemes and enforce the law in accordance with Florida Statute § 337.406.

4. 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).

5. The Florida Legislature amended Florida Statute § 316.2045 (2018) in 2007 by Chapter 2007-43, Laws of Florida (the "Iris Roberts Act") to exempt certain charitable 501(c)(3) organizations from permit requirements to engage in charitable solicitation. (Ex. 4.) Section 316.2045 continues, after the 2007 amendments, to

impermissibly favor speech by 501(c)(3) charitable organizations by exempting certain charitable organizations from local government permitting requirements to engage in charitable solicitation.

6. The Florida legislature has not, by repeal or amendment, addressed the constitutional infirmities recognized by the U.S. District Courts in *Bischoff* and *Chase*. The same constitutional infirmities present on the face of these statutes during prior court challenges in *Bischoff* and *Chase* persist to present day and were exacerbated by the 2007 amendments.

7. St. Johns County has not adopted a permit scheme that applies to charitable solicitation by individuals for their 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 Defendants.

8. Defendants Sheriff and FHP continue to enforce Florida Statutes §§ 316.2045 & 337.406 against Plaintiff and other individuals who hold signs asking for money on public streets, sidewalks, and medians in St. Johns County. (Ex. 1.)

9. Defendant Sheriff has cited and/or arrested Vigue for violations of § 316.2045 eight times from 2016-2019. With the exception of one citation for which Vigue was assessed a fine, all of the charges have been dismissed. A summary and copies of these arrests/citations and their dispositions is attached. (Ex. 2.)

10. Defendant FHP has cited Vigue one time and this charge was nolle prossed. (Ex. 2.)

11. Statewide enforcement statistics from the Department of Highway Safety & Motor Vehicles demonstrate that FHP has issued 888 citations for violations of Section 316.2045 statewide in 2017, 768 citations statewide in 2016 and 723 citations statewide in 2015. A summary of the enforcement data received through a public records request is attached. (Ex. 3.)

12. Vigue is a resident of St. Augustine, Florida. He has lived in St. Augustine for approximately seven (7) years. Vigue 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. Due to a disability, Vigue cannot work at a traditional job. He receives monthly disability benefits which he uses for food and similar necessities. (Ex. 1 ¶¶ 1-4)

13. Vigue engages in charitable solicitation in St. Johns County by standing on public sidewalks, or on the medians or shoulders of public streets, in areas frequented by pedestrians or near intersections, holding a small sign that usually says "Please care God Bless Love" or something similar. (*Id.* ¶ 5.)

14. Charitable solicitation communicates Plaintiff's need for food, money and other necessities while raising awareness about the existence of homelessness in St. Augustine and the plight of people who are homeless. 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. Plaintiff does not obstruct or otherwise interfere with traffic on any road. (*Id.* ¶¶ 5-6, 10.)

15. 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. 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. (*Id.* ¶¶ 7-8.)

16. The Sheriff's deputies regularly tell Plaintiff that he may not hold his sign on public streets or sidewalks and threaten him with arrest for doing so. The deputies have also told Plaintiff that he must leave such public spaces and, in some instances, that he must leave St. Johns County entirely. (*Id.* ¶ 9.)

17. Plaintiff would like to engage in charitable solicitation of food, money and similar necessities from passersby by holding his sign on public sidewalks and along public streets in St. Johns County but is fearful of police harassment, citation and arrest for doing so. (*Id.* ¶¶ 11-15.)

18. If the requested preliminary injunctive relief is not issued, then Plaintiff and other similarly situated homeless individuals will be subjected to further loss of their First Amendment rights, continued loss of liberty due to arrest and incarceration, chilled in their speech, and denied equal protection and due process of the law under the Fourteenth Amendment. Plaintiff therefore faces irreparable harm and has no adequate remedy at law.

19. Granting the relief sought will not result in the imposition of greater harm to Defendant Sheriff or Defendant Director and such relief is in the public interest.

Sheriff's deputies and FHP troopers will remain free to enforce other laws that ensure public safety and the safe, free, and convenient flow of pedestrian and vehicular traffic. An immediate cessation of enforcement of these unconstitutional statutes will further the public interest in that it will protect and preserve the exercise of core First Amendment activity and ensure equal protection and due process of law.

20. Plaintiff requests that the Court waive the requirement of bond in Fed. R. Civ. P. 65(c). Public interest litigation such as this is a recognized exception to the bond requirement, especially where, as here, the posting of bond would cause significant hardship to Plaintiff and the relief sought would not pose a hardship on the Defendants.

21. Pursuant to M.D. Loc. R. 4.06, a proposed order is submitted with this Motion. (Ex. 5.)

22. Pursuant to M.D. Loc. R. 3.01(j), Plaintiff requests oral argument to aid this Court in deciding the issues presented in this Motion. Plaintiff anticipates oral argument will take no more than one hour.

WHEREFORE, Plaintiff moves this Honorable Court for an Order preliminarily enjoining Defendant Sheriff and Defendant Director from enforcing Florida Statutes §§ 316.2045 & 337.406 (2018), which violate the First and Fourteenth Amendments of the U.S. Constitution.

MEMORANDUM OF LAW

I. PLAINTIFF MEETS STANDARD FOR GRANTING PRELIMINARY INJUNCTION.

A preliminary injunction is proper if the plaintiff establishes: (1) a likelihood of success on the merits of one or more of his claims; (2) a likelihood that he will suffer irreparable harm; (3) that the balance of equities tips in his favor as the threatened injury outweighs whatever damage the proposed injunction might cause the non-moving party; and (4) the injunction would not be adverse to the public interest. *Winter v. Natural Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008). Plaintiff satisfies all of the required elements.

II. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM.

This Court should find that Plaintiff Vigue is likely to succeed on the merits of his claim that Florida Statutes §§ 316.2045 & 337.406 (2018) are facially unconstitutional in violation of the First and Fourteenth Amendments of the U.S. Constitution. These statutes prohibit charitable solicitation on public rights-of-way (streets, sidewalks, and medians) statewide without a permit. Charitable solicitation is protected speech under the First Amendment, whether undertaken on behalf of an organization or for one's own personal needs. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980); *see also Smith v. City of Ft. Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection.")

Vigue holds signs that convey a message of need. (Ex. 1). Vigue often

engages in discussions about homelessness and poverty with those that read his sign. (*Id.*) Courts have found that, like other types of charitable solicitation, the solicitation of alms is intertwined with "communication [of a political or social] nature," as it is "usually accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation." *Loper v. New York City Police Dep't*, 999 F.2d 699, 704 (2d Cir. 1993); *see also McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 184 (D. Mass. 2015) ("Panhandling is not merely a minor, instrumental act of expression … at stake is 'the right to engage fellow human beings with the hope of receiving aid and compassion.'") Thus, Vigue was engaged in protected expression when he was arrested and jailed on numerous occasions for violation of the challenged statutes. (Exs. 1 & 2.)

The statutes therefore restrict protected expression on traditional public forums and must survive First Amendment scrutiny. *See McCullen v. Coakely*, 134 S. Ct. 2518, 2529 (2014). As discussed in more detail below, the statutes fail constitutional review. The statutes violate the First Amendment because they are content-based prior restraints on speech that are overbroad and not narrowly tailored to meet a compelling government interest. For the same reasons that the statutes are content-based, they likewise violate the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution. Finally, the statutes are void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment because they do not provide adequate notice of the proscribed conduct and they authorize and encourage arbitrary and discriminatory enforcement.

A. Sections 316.2045 & 337.406 Were Previously Held Facially Unconstitutional by U.S. District Courts in Florida.

Two U.S. District Courts have previously held that a prior version of Section 316.2045 was unconstitutional on its face, in violation of the First and Fourteenth Amendments of the United States Constitution. *Chase v. City of Gainesville*, Case No. 1:06-cv-044SPM/AK, 2006 WL 2620260 (N.D. Fla. Sept. 11, 2006); *Bischoff v. State*, 242 F. Supp. 2d 1226 (M.D.Fla.2003). *Chase* also held Section 337.406 unconstitutional. Likewise, the Court in *Bischoff* found that Section 316.2045's vagueness was compounded by its reference to the "opaque and undecipherable permit provisions" of Section 337.406. 242 F. Supp. 2d at 1236.

Section 316.2045 was subsequently amended in 2007 by Chapter 2007-43, Laws of Florida (the "Iris Roberts Act"). (Ex. 4.) The amendment added an explicit exemption to local government permitting requirements for organizations that are qualified under Section 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496 of the Florida code, or persons or organizations acting on their behalf of such organization. The 2007 amendment of Section 316.2045 failed to remedy the constitutional infirmities, *see* Fla. Atty. Gen. Op. 2007-50, 2007 WL3357169, at *1, and instead only exacerbated the content and viewpoint based discrimination already present on the face of the statutes. The Court should therefore adopt the analysis of *Chase* and *Bischoff*, and similarly hold Sections 316.2045 and 337.406 unconstitutional.

B. Sections 316.2045 & 337.406 Are Unconstitutional Content-Based Restrictions on Speech in Traditional Public Fora.

The government's ability to restrict speech in traditional public fora is "very limited" because public streets and sidewalks "occupy a special position in terms of First Amendment protection because of their historic role as sites for discussion and debate." *McCullen*, 134 S. Ct. at 2529 (internal quotes omitted). Under the First Amendment, the state "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). *Reed* was a turning point for free speech jurisprudence in the context of charitable solicitation cases generally and panhandling cases specifically. Under *Reed*, statutes that restrict charitable solicitation are considered content-based restrictions on speech and must survive strict scrutiny, which is nearly always fatal to the challenged statute. *See generally Reed*, 135 S. Ct. 2218 (2015); *see, e.g. Norton v. City of Springfield, Ill.,* 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated by* 135 S. Ct. 2887 (2015), *declaring ordinance unconstitutional on remand*, 144 F. Supp. 3d 218, 238 (D. Mass. 2015); *see also Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882, at *6 (M.D. Fla. Aug. 5, 2016).

The challenged statutes are content-based restrictions on speech because they prohibit an entire subject matter of speech—solicitation of charitable funds—while allowing other subject matters of speech such as "political campaigning". *See* §§ 326.2045(2)-(4) & 337.406, Fla. Stat. (2018). Further, the statutes engage in a "more

blatant" and "egregious" form of content discrimination because they discriminate among viewpoints by prohibiting Vigue's (and other homeless individuals') requests for money and assistance while allowing registered charities to ask for money without any restriction. *See Reed*, 135 S. Ct. at 2230 (viewpoint discrimination is a more blatant and egregious form of content discrimination by singling out certain viewpoints for differential treatment based on the specific motivating ideology or the opinion or the perspective of the speaker). Therefore, the statutes impermissibly "prefer[] the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views" while restricting Vigue and other homeless individuals from expressing their messages of need. *See Bischoff*, 242 F. Supp. 2d 1226, 1235 (M.D. Fla. 2003); *see also Reed*, 135 S. Ct. at 2230 (laws favoring some speakers over others demand strict scrutiny when they reflect a content preference).

Because the statutes are content-based they can only be upheld if they withstand strict scrutiny. This rigorous standard of review requires the government to prove the restriction on speech furthers a compelling interest and is narrowly tailored to meet that interest. *Reed*, 135 S. Ct. at 2231. The legislative intent in enacting § 316.2045 was presumably safety of pedestrians and vehicles. Section 316.2045 also is part of the legislature's attempt to make traffic laws uniform throughout the state. § 316.002, Fla. Stat. (2018). While traffic safety may be an important interest, it has not been recognized as a compelling one for purposes of restricting speech. *Solantic, LLC v. City of Neptune Bch.*, 410 F.3d 1250, 1267 (11th Cir. 2005). Even assuming the

State's interest is compelling, that interest is not furthered by its content-based restrictions on speech nor are the restrictions narrowly drawn. *Id.* (government must show that its interests are served by the content-based distinctions it is making between permissible and impermissible speech).

The express exemption of registered charities and political campaigners undermines the asserted interests and any claim that the law is narrowly tailored. *Loper*, 999 F.2d at 705 ("If individuals may solicit for charitable and other organizations, no significant governmental interest is served by prohibiting others for soliciting for themselves.") Certainly, "[t]raffic accidents or backups caused by political campaigners or duly-licensed charitable organizations are not less problematic than traffic accidents or backups caused by other[s]." *Bischoff*, 242 F. Supp. 2d at 1257. It also is unclear how someone with a permit is less of a threat to public safety than those without. Requiring an individual to request permission prior to engaging in protected speech (while allowing charitable organizations to do so without asking for permission) is not narrowly tailored to meet the government's traffic safety interests. *Burk v. Augusta-Richmond Cnty.*, 365 F.3d 1247,1252-53 (11th Cir. 2004) (restricting small groups of as few as five individuals from political expression without a permit demonstrates ordinance not justified by its purported content-independent goals of public safety and traffic). Furthermore, section 316.2045 does nothing to promote uniformity in traffic laws. The law effectively promotes variance of enforcement and permitting amongst municipalities and counties rather than uniformity. *Bischoff*, 242 F.Supp.2d at 1258.

These statutes completely prohibit individuals from engaging in charitable solicitation on public rights-of-way in the State unless a local governmental entity has set up a permitting scheme. In counties like St. Johns where there is no permitting scheme whereby individuals can apply for permission, the statutes completely prohibit protected speech in traditional public fora. *See Chase*, 2006 WL 2620260, at *2. It has long been established that a complete prohibition on solicitation on all streets and public places is overbroad and cannot be narrowly tailored. *See, e.g., Loper*, 999 F.2d at 705 (complete ban on begging in all public places not narrowly tailored); *see also C.C.B. v. State*, 458 So. 2d 47, 50 (Fla. 1st DCA 1984). This Court should therefore find that the statutes are unconstitutional content-based restrictions on speech in violation of the First Amendment for the same reasoning adopted by the U.S. District Courts in *Bischoff* and *Chase*.

C. Sections 316.2045 & 337.406 Are Unconstitutional Prior Restraints on Speech.

The challenged statutes are a prior restraint on speech because the State has denied access to traditional public fora (streets and sidewalks) to engage in protected speech unless a local government has set up a permitting scheme whereby individuals can request and be granted permission. *Bischoff,* 242 F. Supp. 2d at 1258. A prior restraint on speech exists where the government can deny access to a public forum for expression. *United States v. Frandsen*, 212 F.3d 1231, 1236-37 (11th Cir. 2000); *see also Se Promotions Ltd. v. Conrad*, 420 U.S. 546, 553 (1975) (grant to "public officials [of] the power to deny use of a forum in advance of actual expression" is the

hallmark of a prior restraint); *Sec'y of State of Md. v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 969 (1984) (prior restraint exists regardless of whether charity "is prevented from engaging in First Amendment activity by the lack of a solicitation permit or by the knowledge that its fundraising activity is illegal if it cannot satisfy [the permit requirements]").

Although such prior restraints "are not *per se* unconstitutional, there is a strong presumption against their constitutionality." *Frandsen*, 212 F.3d at 1237. Any attempt to subject "the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority is unconstitutional." *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-51 (1969). Even on public streets and sidewalks, where "a municipality must rightfully exercise a great deal of control in the interest of traffic regulation and public safety[,] ... [it] may not empower its licensing officials" with unfettered discretion to arbitrarily and discriminatorily grant or deny permits for protected First Amendment activity. *Id.* at 152-53. A government regulation that allows arbitrary application is 'inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.'" *Forsyth Cnty. v. Nationalist Movement,* 505 U.S. 123, 130-31 (1992).

Section 316.2045 does not meet these constitutional requirements. As the Court in *Bischoff* recognized:

> The permitting scheme established by section 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither

> this Court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license; whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license.

242 F. Supp. 2d at 1258. Further, the cross reference to Section 337.406 compounds the lack of clarity in this permit scheme. *Id.* at 1254-55. Due to the lack of standards and safeguards, the challenged statutes are facially unconstitutional. *Id.* at 1237 (due to a lack of any identifiable procedural safeguards for the permit scheme, § 316.2045 is an impermissible prior restraint).

D. The Statutes are Overbroad.

The statutes violate the cardinal rule that, especially in the area of the First Amendment, "a government purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Ala.*, 377 U.S. 288, 307 (1964). Courts invalidate overly broad statutes because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson*, 405 U.S. 518, 521 (1972). The First Amendment overbreadth doctrine rests on the need to eliminate an overbroad law's "chilling effect" on protected expressive activity. *Dombrowski v.*

Pfister, 380 U.S. 479, 494 (1965).

The statute sweeps a substantial amount of protected speech activity into their ambit. *See Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998) ("To prevail on an overbreadth claim, a plaintiff must demonstrate a substantial risk that application of the provision will lead to the suppression of speech."). Vigue and other homeless individuals who cannot obtain a permit and do not fall within any of the exceptions to the prohibitions on charitable solicitation, are effectively barred from engaging in protected speech on traditional public fora. The statutes therefore "sweep unnecessarily broadly and invade the area of protected freedoms." *See Bischoff*, 242 F. Supp. 2d at 1258 ("Persons whose expression is constitutionally protected—whether fireman, ninth graders, politicians, or judges, may well refrain from exercising their rights for fear of arrest and incarceration.").

There are other laws in place that better address pedestrian and vehicular safety (*see, e.g.,* § 316.130, Fla. Stat. (2018)), and the State's interest in public safety "can be better served by measures less intrusive than a direct prohibition of solicitation." *Village of Schaumburg v. Citizens for a Better Environ.*, 444 U.S. 820, 836 (1980). Thus, the statutes are unconstitutionally overbroad.

E. Sections 316.2045 & 337.406 violate the Equal Protection Clause of the Fourteenth Amendment.

For the same reasons the statutes are content based, they also violate the Equal Protection clause. *Bischoff*, 242 F. Supp. 2d at 1235-36. By facially preferring the speech of charitable organizations and those who are engaged in political speech,

the statutes violate the cardinal rule that there is "an equality of status in the field of ideas, and government must afford all points of view and equal opportunity to be heard." *Carey v. Brown*, 447 U.S. 455, 463 (1980) ("Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say."). This Court should find the statutes facially unconstitutional under the Equal Protection Clause of the Fourteenth Amendment due to their impermissible subject matter distinctions.

F. Sections 316.2045 & 337.406 are void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment.

The statutes are void for vagueness because they: (1) fail to provide fair notice of what would be considered required or prohibited conduct; and (2) lack precision and guidance so that those enforcing the law do not act in an arbitrary or discriminatory manner. *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). Due process requires the invalidation of laws that are impermissibly vague. *Id.* The government has a high burden to provide clarity where, as here, the statutes "threaten or inhibit the exercise of constitutionally protected rights." *Village of Hoffman Estates v. The Flipside, Hoffman Estates*, 455 U.S. 489, 498-99 (1982).

Section 316.2045 contains multiple terms that are so vague that "persons" of common intelligence must necessarily guess at [their] meaning and differ as to [their] application." *Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1429 (11th Cir. 1998). Section 316.2045(2) renders it unlawful to "obstruct the free, convenient, and normal use of any public street, highway, or road ... in order to solicit;" however, it fails to provide the

definition or application of the word "solicit." Furthermore, the statute states that one violates the law if s/he "willfully ... obstruct[s] the free, convenient, and normal use of any public street, high way, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon." §§ 316.2045(1) & (2). It is unclear whether merely holding a sign is willful obstruction under the statute. It is also unclear what constitutes "impeding, hindering, stifling, retarding, or restraining traffic." *Bischoff*, 242 F. Supp. 2d at 1256. Must one stand in the road or is standing on the sidewalk with a sign soliciting donations a violation of this statute? The statute also fails to define the phrase "political campaigning," which is an exception to the statute's prohibitions. Section 316.2045 leaves it to the individual officer to determine the meaning of such key terms, which renders the statute void for vagueness.

Finally, the statute's reference to, and partial incorporation of, the opaque permit provisions in § 337.406 adds to the lack of clarity of the statute. *Id.* at 1236, 1252-54. Due to these ambiguities, Plaintiff and others are not adequately put on notice of exactly what behavior is proscribed and law enforcement officers are left with unfettered discretion to arbitrarily and discriminatorily enforce the statute. Thus, § 316.2045 is impermissibly vague. *Kolender v. Lawson*, 461 U.S. 352, 358 (1982) (an imprecise law is impermissibly vague if "it fails to establish standards for police and public that are sufficient to guard against the arbitrary deprivation of liberty interests"); *see also Bischoff*, 242 F. Supp. 2d at 1236 (Section 316.2045 impermissibly vague as it "does

not convey sufficiently definite warning as to the unlawful conduct when measured by common understanding.").

III. PLAINTIFF MEETS THE OTHER STANDARDS FOR GRANTING THE MOTION FOR A PRELIMINARY INJUNCTION.

A. The Plaintiff will Suffer Irreparable Injury.

Plaintiff will suffer irreparable harm if the injunction is not issued. Plaintiff has been, and continues to be, repeatedly arrested and jailed for the content of his speech. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). So long as the statutes are in effect, Defendants have unbridled discretion to use the laws to prohibit Plaintiff's and other individuals' protected speech activity. *Univ. Books & Videos, Inc. v. Metro. Dade Cunty.*, 33 F. Supp. 2d 1364, 1373 (S.D. Fla. 1999) *citing Ne Fla. Chapter of Ass'n of Gen. Contractors of Amer. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) ("Because chilled speech cannot be compensated by monetary damages, an ongoing violation of the First Amendment constitutes irreparable injury."). Accordingly, the irreparable injury to the Plaintiff is clear.

B. The Threatened Injury Outweighs Any Damage the Proposed Injunction Might Cause the Defendant.

The Court must weigh the harm that Plaintiff likely will sustain if the injunction were denied against that which the Defendants will suffer if the injunction is issued. *Howard v. City of Jacksonville*, 109 F. Supp. 2d 1360, 1362 (M.D. Fla. 2000). Here, in contrast to the Plaintiff's past and continuing harm absent preliminary relief,

Defendants and their officers and deputies will not suffer injury if they are prevented from enforcing unlawful restrictions on the exercise of First Amendment rights. In the interim, Defendants are free to enforce other state and local laws when individuals' conduct goes beyond the bounds of the First Amendment.

C. A Preliminary Injunction Is Not Adverse to the Public Interest.

A preliminary injunction would not be adverse to the public interest. The protection of constitutional rights is always in the public interest. *Lebron v. Wilkins*, 820 F. Supp. 2d 1273,1292 (11th Cir. 2013) ("perhaps no greater public interest exists than protecting a citizen's rights under the constitution") (citations omitted); *see also Howard*, 109 F. Supp. 2d at 1365.

IV. REQUEST FOR RELIEF FROM REQUIREMENT TO POST BOND.

Plaintiff requests exemption from the requirements of Fed. R. Civ. P. 65(c). The Eleventh Circuit has held that "'the amount of security required by [Rule 65(c)] is a matter within the discretion of the trial court…[, and] the court may elect to require no security at all.'" *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Srvcs., LLC*, 425 F.3d at 964, 971 (11th Cir. 2005). Public interest litigation such as this case is a recognized exception to the Rule 65(c) bond requirement. Here, requiring a bond would cause significant hardship on Plaintiff, who is homeless, and is without monetary resources. By contrast, enjoining enforcement of the laws at issue (which have already been declared unconstitutional by prior court decisions) would not cause the Defendants serious harm. *Univ. Books & Videos, Inc.*, 33 F. Supp. 2d at 1374 (bond not required where (1) party seeking injunction has high probability of

succeeding on the merits; (2) party to be enjoined is a municipality that likely would not incur any significant cost or monetary damages from the injunction's issuance; and (3) enforcement of unconstitutional law would injure the constitutional rights of the plaintiff or public); *Howard*, 109 F. Supp. 2d at 1365 (no bond required as defendant was unlikely to suffer harm as a result of preliminary injunction). Thus, the Court should not require Plaintiff to post bond in this case.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enjoin enforcement of Florida Statutes §§ 316.2045 & 337.406 until the present matter is resolved without requiring him to post a bond. Plaintiff has established a substantial likelihood of success that the statutes are facially unconstitutional in violation of the First and Fourteenth Amendments of the U.S. Constitution and the balance of equities tips in his favor.

Dated: February 12, 2019

Respectfully submitted,

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