IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:18-cv-686

NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, et al., Plaintiffs, v. THE CITY OF GREENSBORO, et al., Defendants.	**PLAINTIFFS' BRIEF IN SUPPORT OF MOTIONS FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs seek a temporary restraining order and preliminary injunction enjoining Defendants from enforcing or continuing to give effect to Chapter 20, Article I, Section 20-1 of the Greensboro Code of Ordinances, enacted July 24, 2018.[1]

Section 20-1 creates a misdemeanor offense for "aggressive solicitation." *See* Compl. Ex. A, Dkt. 1-1. The section defines "solicit" as any "actions that are conducted in the public place in the furtherance of the purpose of collecting money or contributions for the use of one's self or others." *Id.* The definition of "solicit" expressly includes but is not limited to "panhandling, begging, charitable, or political soliciting." *Id.* Although the section does not define "aggressive," it prohibits asking for money or contributions in any public place in the city while taking any of the following actions:

> (1) Approaching or speaking to someone in such a manner or voice including but not limited to using profane or abusive language as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his or her person, or upon property in his or her

[1] Section 20-1 was also in effect from April 24 to May 15, 2018, as explained on page 4.

immediate possession, or otherwise be intimidated into giving money or other thing of value;

(2) Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

(4) Using violent or threatening gestures toward a person solicited;

(5) Soliciting from anyone who is waiting in line for entry to a building or for another purpose without the permission of the owner or landlord or their designee;

(6) By forcing one-self upon the company of another by continuing to solicit in close proximity to the person addressed or following that person after the person to whom the request is directed has made a negative response; or blocking the passage of the person addressed; or otherwise engaging in conduct which could reasonably be construed as intended to compel or force a person to accede to demands;

(7) By soliciting within twenty (20) feet of an automated teller machine which is defined as a device, linked to a financial institution's account records, which is able to carry out transactions, including but not limited to cash withdrawals, account transfers, deposits, balance inquires, and mortgage payments.

Id.

Section 20-1 prohibits only asking for money or contributions while engaged in these behaviors, and does not prohibit engaging in these behaviors generally or while conducting any other sort of speech. Its restrictions apply regardless of whether a solicitation is expressed orally or in writing, as in silently holding a sign on a street corner. Nearly identical restrictions on "aggressive" solicitation have been struck down in federal courts across the country in the wake of the U.S. Supreme Court's 2015 decision

in *Reed v. Town of Gilbert*, 135 S. Ct. 2218, as content-based restrictions on speech that presumptively violated the First Amendment and could not survive strict scrutiny.[2] Before enacting Section 20-1, the Greensboro City Council had been advised by third-party attorneys and its own counsel that any content-based restriction on speech was presumptively unconstitutional and unlikely to withstand strict scrutiny, and that "aggressive" solicitation ordinances in other cities had been categorically struck down after *Reed*. *See, e.g.*, Ex. B, NLCHP letter; Ex. C, ACLU-NC letter; Video, City of Greensboro, http://greensboro.granicus.com/MediaPlayer.php?view_id=2&clip_id=3696 (on-the-record comments of outside counsel Mac McCarley beginning at 46:01). Despite this, the Council has now voted three times to enact Section 20-1.

Plaintiffs are likely to succeed on the merits of their First Amendment claim[3] and will continue to suffer immediate, irreparable harm absent preliminary injunctive relief. Further, the balance of equities favors Plaintiffs, and preliminary injunctive relief is in the public interest. For those reasons, Plaintiffs ask this Court to temporarily enjoin the city from enforcing Section 20-1 of the Greensboro Code through August 21, when the

[2] *E.g., Homeless Helping Homeless, Inc. v. City of Tampa*, No. 8:15-cv-1219, 2016 WL 4162882, at *2-*3 (M.D. Fla. Aug. 5, 2016); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 229 (D. Mass. 2015); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 182 (D. Mass. 2015); *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1281 (D. Colo. 2015); *see also Sacramento Regional Coalition to End Homelessness v. City of Sacramento*, No. 2:18-v-878, Doc. No. 29 (July 19, 2018) (hereinafter "*City of Sacramento*") (order granting preliminary injunction) (attached as Exhibit A); *Rodgers v. Bryant*, 301 F. Supp. 3d 928, 930-31 (E.D. Ark. 2017) (granting preliminary injunction).

[3] Plaintiffs' Complaint states claims for relief under the First Amendment, Equal Protection Clause of the Fourteenth Amendment, and Due Process Clause of the Fourteenth Amendment. Compl. ¶¶ 41-55. Plaintiffs are moving this Court for a preliminary injunction based on their First Amendment claim alone, but do not waive or concede their remaining claims for relief.

Council will have an opportunity to repeal Section 20-1 at its regularly scheduled meeting. If Section 20-1 remains in effect after the Council's August 21 meeting,[4] Plaintiffs ask this Court to issue a preliminary injunction effective August 21, preventing Defendants from enforcing Section 20-1 for the duration of this action.

FACTUAL ALLEGATIONS

The City Council enacted the current version of Section 20-1 on July 24, 2018. Compl. ¶ 26. The enactment followed a convoluted legislative process by which the Council first enacted the law on April 24, 2018, rendered it ineffective in a reconsideration vote on May 15, and then re-enacted it against the advice of its counsel in a surprise vote on July 24, when Section 20-1 did not even appear on the public meeting agenda. Compl. ¶¶ 20-27. Between May 15 and July 24, the Council received input from the public, including attorneys, opining that Section 20-1 was not only bad policy but unconstitutional. Compl. ¶¶ 22. The Council retained outside counsel to conduct a legal analysis of Section 20-1. Compl. ¶ 23. The outside counsel concluded that Section 20-1 was unlikely to survive strict scrutiny and recommended that the Council instead review data on recent panhandling complaints and arrests, which the City had not done, and consider an alternative ordinance tailored to that data. Compl. ¶¶ 23-24, 28-29. The Council took a preliminary vote on an alternative ordinance during its July 24 meeting, then upon emerging from a recess swiftly re-enacted Section 20-1, which took effect

[4] Plaintiffs intend to file a status update on Section 20-1 with the Court at the conclusion of the Council's August 21 meeting, regardless of whether the Council acts on the section. If possible, Plaintiffs will seek to make that status update a joint report from Plaintiffs and Defendants.

immediately. Compl. ¶¶ 25-26. To date, the Council has not held any final vote to enact an alternative ordinance, and Section 20-1 remains law. Compl. ¶¶ 25, 30.

The individual plaintiffs are all residents of Greensboro who have experienced homelessness and solicited for donations or contributions within city limits. Compl. ¶ 1. They are living in poverty and in need of income from soliciting to meet their basic needs. Compl. ¶ 16. As explained in Part II below, Section 20-1 has had a chilling effect on their speech, and they are falling deeper into poverty because they are unable to continue soliciting as they had before Section 20-1 was enacted. Compl. ¶ 17.

Plaintiff National Law Center on Homelessness & Poverty is a non-profit organization whose mission is to combat homelessness and poverty. Compl. ¶ 13. Section 20-1 is frustrating NLCHP's mission by criminalizing the behavior of peaceful solicitors based on the content of their message, deterring them from exercising their constitutional rights to request immediate assistance from the public, and interfering with their ability to acquire life necessities they cannot otherwise afford. Compl. ¶ 14.

QUESTIONS PRESENTED

Have Plaintiffs demonstrated they are entitled to a preliminary injunction prohibiting Defendants from enforcing Section 20-1?

Have Plaintiffs additionally demonstrated that because they are likely to suffer immediate harm, they are entitled to a TRO to enjoin enforcement of Section 20-1 until August 22, 2018, through the Council's August 21 meeting?

ARGUMENT

Granting preliminary injunctive relief to Plaintiffs will preserve the "last uncontested status between the parties which preceded the controversy," in this case the status quo before Section 20-1 was enacted. *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013). When a party "has recently disturbed the status quo," as Defendants have by adopting Section 20-1, a court may require that party "to reverse its actions." *N.C. NAACP v. State Board of Elections*, 1:16-cv-1274, 2016 WL 6581284, *10 (M.D.N.C. Nov. 4, 2016) (quoting *Aggarao v. MOL Ship Management Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012)). By doing so in this case, the Court will prevent irreparable violations of Plaintiffs' constitutional rights and resulting deprivation of income, and "preserve the ability of the court to render meaningful relief on the merits" by ensuring Plaintiffs are able to exercise their right to free expression and are not driven further into poverty by Section 20-1 while this litigation is pending. *Id.*, at *9.

Under Federal Rule of Civil Procedure 65, the standards for granting a TRO and preliminary injunction are identical, except that granting a TRO with notice to the defendants[5] additionally requires a showing of "immediate" harm. Fed. R. Civ. P. 65(b)(1)(a). To receive either form of preliminary injunctive relief, Plaintiffs must satisfy the familiar four-prong test, showing that (1) they are likely to succeed on the merits of

[5] Plaintiffs have served City Attorney Tom Carruthers with all documents filed today, and he has accepted service on behalf of Defendants. Because Plaintiffs are seeking a TRO with notice to Defendants, Rule 65's requirements regarding orders issued without notice are inapplicable. Because Defendants have received notice and may also receive the opportunity to be heard and present evidence, the Court has discretion to enter an immediate preliminary injunction in lieu of a TRO if it chooses. *See N.C. NAACP*, 2016 WL 6581284, at *3 (citing *U.S. Dep't of Labor v. Wolf Run Mining Co.*, 452 F.3d 275, 284 (4th Cir. 2006)).

one or more of their claims, (2) they are likely to suffer irreparable harm, (3) the balance of hardships tips in their favor, and (4) injunctive relief is in the public interest. *Pashby*, 709 F.3d at 320 (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)).

I. Plaintiffs are likely to succeed on the merits of their First Amendment claim.

To demonstrate entitlement to preliminary injunctive relief, Plaintiffs must show they are "likely to succeed at trial" but "need not establish a certainty of success." *Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 256 (4th Cir. 2018).

The right to speak free from government interference is foundational to our democracy and marketplace of ideas. *See United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000). A special level of protection attaches to speech conducted in traditional public forums such as streets and sidewalks. *See McCullen v. Coakely*, 134 S. Ct. 2518, 2529 (2014). Through the First and Fourteenth Amendments, this right to free speech in public places is guaranteed for all citizens, including those engaged in what Section 20-1 classifies as "soliciting," which expressly includes "[p]anhandling, begging, charitable or political soliciting," as well as peddling, commercial soliciting, itinerant merchanting, street performing, and mobile food vending. Compl. Ex. A. The Fourth Circuit has made clear that "[t]here is no question that panhandling and solicitation of charitable contributions are protected speech." *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015).

The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* was a turning point for free speech jurisprudence in the context of solicitation cases. Historically, any content based regulation of speech is presumptively invalid and subject to strict scrutiny under

the First Amendment. *Playboy*, 529 U.S. at 817 (quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992)). Under strict scrutiny, the government must prove that the regulation is not only narrowly tailored to a compelling government interest, but also the least restrictive alternative available to meet that interest. *Central Radio Co., Inc. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016). In *Reed*, the Supreme Court clarified that a regulation of speech should be considered content based anytime "a law applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 632 (quoting *Reed*, 135 S. Ct. at 2227). That means a speech regulation "that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Reed*, 135 S. Ct. at 2228.

Less than a month after *Reed,* the Seventh Circuit applied this principle to a panhandling ban in Springfield, Illinois. Sitting *en banc*, the Seventh Circuit reversed a panel decision that applied intermediate scrutiny, emphasizing that such solicitation ordinances must satisfy strict scrutiny. *Norton v. City of Springfield,* 806 F.3d 411, 412-13 (7th Cir. 2015). During the same timeframe, the Supreme Court remanded a case challenging Worcester, Massachusetts' "aggressive" panhandling ordinance for reconsideration in light of *Reed*. *See Thayer*, 144 F. Supp. 3d 218 (D. Mass. 2015). By the time the Worcester case was decided, that court stated that "a protracted discussion . . . is not warranted as substantially all of the Courts which have addressed similar laws since *Reed* have found them to be content based and therefore, subject to strict scrutiny." *See Thayer*, 144 F. Supp. 3d at 233 (citing *McLaughlin*, 140 F. Supp. 3d at 185-87;

Browne, 136 F. Supp. 3d at 1288-91). *Reed* effectuated a "sea change," *Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 666 (E.D. La. 2017), and no federal court has found an "aggressive" panhandling ordinance to be narrowly tailored or sufficiently compelling to survive strict scrutiny since it was decided.[6]

A. On its face, Section 20-1 is a content-based restriction on speech in a traditional public forum and thus subject to strict scrutiny.

Section 20-1 applies exclusively to speech or expression done to "collect[] money or contributions for one's self or others." Compl. Ex. A. The law does not apply to speech or expression done for any other purpose. *See id.* It applies only to requests for money or non-monetary contributions, and it applies regardless of whether the request is oral, written, or conveyed through gestures. *See id.* Because Section 20-1 "applies to particular speech because of the topic discussed or the idea or message expressed," in this case regulating only requests for donations and no other speech, under *Reed* it is classified as content-based and therefore subject to strict scrutiny. 135 S. Ct. at 2227. And by expressly regulating speech that occurs in traditional public forums including "any street, highway, parking lot . . . park, or playground," Compl. Ex. A, among other places open to the public, Section 20-1 applies to spaces that hold a "special position in terms of First Amendment protection." *McCullen v. Coakely*, 134 S. Ct. 2518, 2529 (2014) (internal quotation marks omitted). Other federal courts considering solicitation regulations after *Reed* have found nearly identical restrictions on speech in public forums to be content

[6] *See, e.g., Homeless Helping Homeless, Inc.*, 2016 WL 4162882, at *2-*3; *Thayer*, 144 F. Supp. 3d at 229; *McLaughlin*, 140 F. Supp. 3d at 182; *Browne*, 136 F. Supp. 3d at 1281; *see also* Ex. A, *City of Sacramento*; *Rodgers*, 301 F. Supp. 3d at 930-31.

based and therefore subject to strict scrutiny.[7]

B. Section 20-1 is not narrowly tailored to the city's compelling interest in public safety, nor is it the least restrictive alternative for preventing threatening or harassing behavior in public spaces in Greensboro.

Any content-based regulation of speech must be narrowly tailored to a compelling government interest. *Central Radio Co., Inc.*, 811 F.3d at 633. A government's desire to shield the sensitivities of listeners is not a compelling interest justifying a content-based restriction on speech. *Playboy*, 529 U.S. at 817. Although Greensboro's other stated interest, public safety in public places, is well recognized as a compelling government interest, *see, e.g., Madsen v. Women's Health Center*, 512 U.S. 753, 768 (1994), Section 20-1 is not narrowly tailored to meet that interest. And even if it were, "[i]f a less restrictive alternative would serve the Government's purpose, the [government] must use that alternative." *Playboy*, 529 U.S. at 813. As explained below, the City has not met its burden of "demonstrat[ing] that alternative measures that burden substantially less speech would fail to achieve the government interests." *McCullen*, 134 S. Ct. at 2540.

First, the City did not put forward evidence of recent panhandling complaints or arrests when drafting and debating Section 20-1, meaning Section 20-1 was not drawn up to address documented public safety threats connected to solicitation in Greensboro. Rather, after Section 20-1 had already been drafted, through public comment the City Council heard generalized and anecdotal statements about residents who were fearful of being approached by strangers in public spaces, and a cursory summary from the police

[7] *See, e.g., Homeless Helping Homeless, Inc.*, 2016 WL 4162882, at *4-*5; *Thayer*, 144 F. Supp. 3d at 233-34; *McLaughlin*, 140 F. Supp. 3d at 191; *Browne*, 136 F. Supp. 3d at 1288-90; *see also* Ex. A, *City of Sacramento*; *Rodgers*, 301 F. Supp. 3d at 933-34.

chief of the number of complaints received and arrests made. Ex. D, Excerpted minutes of May 15, 2018 City Council meeting. Protecting residents' sensibilities is not a compelling interest justifying a content-based regulation of speech, *Playboy*, 529 U.S. at 817, and regardless, the City never narrowed or otherwise modified the ordinance from its original draft form in response to input from the public, the police chief, or its own counsel. Federal courts considering "aggressive" solicitation bans after *Reed* have consistently rejected ordinances as not narrowly tailored when the government did not consider arrest or complaint data and other evidence that solicitation posed an actual threat to public safety before enacting restrictions on solicitation speech.[8]

Second, despite expressly considering an alternative option for achieving its public safety goals that would "burden substantially less speech," *McCullen*, 134 S. Ct. at 2540, the City chose to re-enact Section 20-1. The City Council retained outside counsel who recommended abandoning Section 20-1 as unlikely to survive strict scrutiny and, after reviewing recent arrest and complaint data pertaining to solicitation, drafted an alternative ordinance that would restrict solicitation only in city-owned parking areas with exceptions for events, elections, and sidewalks in those areas.[9] *See* Ex. E, Alternative Ordinance. The City rejected that narrower alternative by choosing to re-enact Section 20-1 when the alternative ordinance was presented. On those facts, the City

[8] *See, e.g., Thayer*, 144 F. Supp. 3d at 235-37; *McLaughlin*, 140 F. Supp. 3d at 192; *Browne*, 136 F. Supp. 3d at 1292-94; *see also* Ex. A, *City of Sacramento*; *Rodgers*, 301 F. Supp. 3d at 934.

[9] Although the alternative ordinance burdens substantially less speech, Plaintiffs do not express an opinion on whether it is constitutional. *See Browne*, 136 F. Supp. 3d at 1293 (prohibition on solicitation in public parking lots was not narrowly tailored).

cannot meet its burden of "demonstrat[ing] that alternative measures that burden substantially less speech would fail to achieve" its public safety interests. *McCullen*, 134 S. Ct. at 2540.

Finally, each of the seven restrictions contained in Section 20-1 appears in substantially similar or in some cases identical form in the "aggressive" solicitation ordinances struck down by other federal courts as overbroad or otherwise not narrowly tailored. *See, e.g., Thayer*, 144 F. Supp. 3d at 237 (provisions analogous to Section 20-1(c)(1)-(7) were not least restrictive means because they were duplicative of existing laws or overbroad); *McLaughlin*, 140 F. Supp. 3d at 192-96 (provisions analogous to Section 20-1(c)(1)-(7) were not least restrictive means because they amounted to harsher punishments for existing offenses or were overbroad); *Browne*, 136 F. Supp. 3d at 1292-94 (provisions analogous to Section 20-1(c)(3) and (5)-(7) were not least restrictive means because they were overbroad); *see also* Ex. A, *City of Sacramento*, at 7-9 (under preliminary injunction standard, provisions analogous to Section 20-1(c)(1) and (6)-(7) were likely not least restrictive means where they were duplicative of existing laws and city had not presented evidence that solicitation was causing public safety problems).

Like those unconstitutional restrictions, Section 20-1 is overbroad, duplicative of existing laws, not narrowly tailored to the City's interest in public safety, and the City adopted it when a less restrictive alternative was readily available. For these reasons, Plaintiffs are likely to succeed on the merits of their First Amendment claim.

II. Plaintiffs are likely to suffer irreparable harm without temporary and preliminary injunctive relief.

"'The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury' that supports a preliminary injunction." Ex. A, *City of Sacramento*, at 9 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). In the Fourth Circuit, generally "the denial of a constitutional right . . . constitutes irreparable harm for purposes of equitable jurisdiction," *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987), especially where, as here, "monetary damages are difficult to ascertain or are inadequate." *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994), *abrogated on other grounds by Winter*, 555 U.S. 7.

Plaintiffs have suffered harm in the form of deprivation of their constitutional right to engage in speech requesting donations or contributions, and lost income that has driven them deeper into poverty and housing insecurity. Without temporary and preliminary injunctive relief, these immediate, irreparable harms are likely to continue.

A. Since Section 20-1 became law, Plaintiffs have suffered and will likely continue to suffer irreparable abridgement of their First Amendment right to free speech.

The individual plaintiffs are all Greensboro residents who have experienced homelessness and fear that they may become homeless again if they are unable to ask for donations in public places. Decl. of Sima Fallahi ¶¶ 3, 8 (attached as Exhibit F); Decl. of Zalonda Woods ¶¶ 3, 10 (attached as Exhibit G); Decl. of Terry Lindsay ¶¶ 3, 9, 12 (attached as Exhibit H). Since the City enacted Section 20-1, all of the individual plaintiffs have stopped asking for donations entirely, reflecting a chilling effect on their speech that is directly attributable to Section 20-1. *See* Fallahi Decl. ¶ 8; Woods Decl. ¶¶

3, 8; Lindsay Decl. ¶¶ 8-9. They know the new law is strict but are confused about exactly what types of speech and what types of behavior it prohibits. Fallahi Decl. ¶ 8; Woods Decl. ¶ 8; Lindsay Decl. ¶ 9. They are afraid that if they continue to politely ask for donations in their normal way, they will be charged with a crime that will make it harder for them to keep their housing, jobs, and immigration status, and assessed a fine they cannot afford to pay. Fallahi Decl. ¶ 9; Woods Decl. ¶ 10; Lindsay Decl. ¶ 11.

For example, Plaintiff Sima Fallahi is an artist who sells her work on the street, both to make ends meet and "as a way to make connections and new friends." Fallahi Decl. ¶¶ 4, 6. She has previously sold her art near an ATM, which is a crime under Section 20-1. *Id.* ¶ 8. Since the city enacted Section 20-1, Ms. Fallahi has stopped selling her artwork, which harms both her artistic expression and ability to survive. *Id.* ¶¶ 8, 10. She now feels unable to "take the risk of selling my art on the street if I can be charged for a crime, because that would mean I have to pay fines that I cannot afford, and having a criminal record would make it even harder for me to find a job, housing, or impact my citizenship." *Id.* ¶ 9.

Plaintiff Zalonda Woods is a mother of four who is unable to work because of medical disabilities, so to support herself and her children she has asked for donations inside and outside the train depot and bus station downtown. Woods Decl. ¶¶ 2, 4. In the lobby of the train depot, there is an ATM within 20 feet of where she has asked for donations. *Id.* In the course of explaining her situation and politely requesting a donation, Ms. Woods often hugs people, even before they make a donation. *Id.* ¶ 7. If someone initially declines to donate, Ms. Woods sometimes has "continued to ask and politely and

sincerely made a plea while continuing to explain my situation and why I needed money." *Id.* She has also asked for donations from people standing in the lines that form at the bus and train stations. *Id.* Under Section 20-1, each of these expressive behaviors could result in Ms. Woods being charged with a crime. Since Section 20-1 was enacted, Ms. Woods has stopped asking for donations entirely because "[i]f the law remains in effect, I am afraid that I will be charged with a crime, or I will not be able to provide for myself and my children." *Id.* ¶¶ 8, 10.

Plaintiff Terry Lindsay is unemployed and legally blind, and for decades has occasionally asked for donations to help pay for food and personal items. Lindsay Decl. ¶ 4. He has solicited on Washington and Elm streets downtown, and on Gate City Boulevard, including outside the Great Stops convenience store. *Id.* Mr. Lindsay often stands outside the store, in a place accessible to the public, asking for donations as shoppers exit. *Id.* Just inside the front door of the store, there is an ATM. *Id.* Soliciting for hours and coping with uncertainty and poverty can be frustrating, and Mr. Lindsay has sometimes cursed while he is out asking for donations. *Id.* ¶ 8. He has also asked people to reconsider after they have declined to donate. *Id.* While taking a break to sit down or waiting to have a meal at a soup kitchen, Mr. Lindsay has sometimes asked for donations while sitting on the curb or sidewalk, where people have stepped around him out of necessity or discomfort with poverty. *Id.* Under Section 20-1, each of these expressive efforts associated with trying to provide for himself could get Mr. Lindsay charged with a crime. *Id.* Mr. Lindsay has previously been approached by police while asking for donations on a street corner, and although as a rule he complies with their

requests to move along, he was once cited while panhandling on Elm Street. *Id.* ¶ 7. Even though a judge dismissed that case, Mr. Lindsay is afraid of being arrested or cited again, and since Section 20-1 was enacted he has stopped asking for donations entirely because many of his normal practices are now prohibited and he is uncertain of what is permitted under the new law. *Id.* ¶¶ 7-9.

Section 20-1's abridgement of and chilling effect on the individual plaintiffs' constitutional right to free speech is irreparable harm, *see Ross*, 818 F.2d at 1135, and "monetary damages are difficult to ascertain or inadequate" to redress it, *Multi-Channel TV Cable Co.*, 22 F.3d at 551.

B. As a result of Section 20-1's abridgement of their right to free speech, Plaintiffs have suffered and will likely continue to suffer lost income from solicitation that they cannot recoup elsewhere, causing them to fall behind on their bills and forfeit things they rely on to support themselves and maintain their health.

As a direct result of the chilling effect on the individual plaintiffs' ability to ask for donations in public places, Section 20-1 has already caused the individual plaintiffs to begin falling behind on their bills and, if not enjoined, will continue to drive them further into a cycle of poverty in which they stand to lose their housing, employment and custody of their children, an injury that is irreparable.

All three individual plaintiffs have previously experienced homelessness and, although they are not currently homeless, are struggling to pay their bills and fear that if they are not able to fall back on soliciting for donations, they may become homeless once again. *See* Fallahi Decl. ¶¶ 3, 8; Woods Decl. ¶¶ 3, 10; Lindsay Decl. ¶¶ 3, 9, 12. Since Section 20-1 was enacted, because they have not been able to ask for donations, Mr.

Lindsay has "already fallen behind on my rent," Lindsay Decl. ¶ 9, and Ms. Woods has "already been unable to pay for transportation and to provide food and other basic needs for my family," Woods Decl. ¶ 8.

Ms. Fallahi, who lived in her car and a shelter when she was previously homeless, feels fortunate to have Section 8 housing for the time being, but "[w]ithout being able to sell my work on the street, I am losing out on a valuable source of income" that she has relied on in emergencies or "when unusual expenses have occurred, such as large utility bills and paying for my car registration." Fallahi Decl ¶ 8. If Section 20-1 is not preliminary enjoined, Ms. Fallahi risks "falling back into homelessness or housing instability when such emergencies arise." *Id.*

Ms. Woods is similarly concerned that absent preliminary injunctive relief, she "will be unable to pay all my bills" or even ask for donations of food to feed her family. Woods Decl. ¶ 8. Her long-term outlook under the new law is bleak: "I will not be able to make up the lost income from donations as long as the law is in effect because I am disabled and cannot work." *Id.* ¶ 9.

Mr. Lindsay is unable to pay all of his bills without help from donations and often runs out of food stamps at the end of the month. Lindsay Decl. ¶ 5. If he is not able to ask for donations, he cannot afford food. *Id.* Mr. Lindsay "will not be able to make up the lost income from donations as long as the law is in effect because I cannot get work that I can do" due to his disability and previous contact with the criminal justice system. *Id.* ¶ 10.

As both the human and financial cost of losing stable housing and being forced to skip meals are difficult to quantify and redress, they amount to a further irreparable harm

caused by Section 20-1 in addition to the violation of Plaintiffs' right to free speech, and the Court should preliminarily enjoin the law to prevent continued harm while this action proceeds. *See Multi-Channel TV Cable Co.*, 22 F.3d at 551.

C. Absent a TRO, Plaintiffs will immediately suffer further loss of income and abridgement of their right to free speech.

A showing of immediate harm is required for Plaintiffs to receive a TRO, but not to receive a preliminary injunction. *Compare* Fed. R. Civ. P. 65(b) *with Pashby*, 709 F.3d at 320. As explained above, since the City enacted Section 20-1 on July 24, all three individual plaintiffs have suffered deprivation of their First Amendment right to ask for donations in public places, and continue to suffer that harm every day. Additionally, as a result of Section 20-1's chilling effect on the individual plaintiffs' ability to ask for donations, all three are currently suffering financial harms including the inability to afford housing and food. Those harms are immediate and pressing as the individual plaintiffs' monthly bills continue to mount while their income from solicitation has ground to a halt as a result of Section 20-1. As a direct result of the law's enactment and its chilling effect on their speech, the individual plaintiffs fear they will be unable to afford their housing payments going forward and will soon become homeless again if the law is not temporarily and preliminarily enjoined. This threat is real and immediate, and the individual plaintiffs will suffer compounded harm absent preliminary relief.

III. The injury Plaintiffs face outweighs any harm to Defendants if the City is enjoined from enforcing Section 20-1 while this action proceeds.

As long as Section 20-1 remains in effect, Plaintiffs and all Greensboro residents who ask for contributions of any sort will continue to have their right to free speech

unconstitutionally abridged. For the individual plaintiffs, not being able to ask for donations because of the law's chilling effect on solicitation will lead to further loss of income, sending already impoverished individuals into a downward spiral. One missed rent payment could mean losing a roof over their heads, and one missed bus fare could mean not making it to work and losing a job. To prevent those outcomes requires the individual plaintiffs to solicit for donations despite the risk of arrest, and having a criminal record would be an additional barrier to securing a good job and safe housing. The organizational plaintiff, NLCHP, continues to invest significant resources in attempting to advise Greensboro residents and advocates on their constitutionally protected behavior, and Section 20-1 creates confusion.

On the other hand, if Defendants are enjoined from enforcing Section 20-1 while this action proceeds, the City has other existing means of protecting public safety and addressing problem behavior among those engaged in solicitationn.

The balance of equities favors Plaintiffs, who will be constitutionally harmed and forced deeper into poverty, over the City, which has other existing means of ensuring its interests in public safety. Because Plaintiffs are personally experiencing poverty or serve people experiencing poverty, and because there is no realistic likelihood of monetary harm to Defendants from the issuance of preliminary injunctive relief, Plaintiffs request that the Court not require them to post a bond if the Court issues the requested preliminary relief.

IV. Injunctive relief to protect freedom of speech and impoverished individuals' ability to sustain themselves is in the public interest.

The Fourth Circuit has unequivocally stated that "upholding constitutional rights surely serves the public interest." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). The constitutional guarantee of free speech "exists precisely so that opinions and judgments . . . can be formed, tested, and expressed. What the Constitution says is that these judgments are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority." *Playboy*, 529 U.S. at 818.

In Section 20-1(a), the City expressly acknowledged the importance of not "unconstitutionally impinging upon protected speech, expression, or conduct." Compl. Ex. A. It is in the public interest of all Greensboro residents to have their free speech meaningfully protected in the city. The restrictions in Section 20-1 broadly apply not just to panhandlers, but to all people in public spaces who sell goods or offer information on their services for a fee or the promise of a donation, to Girl Scouts and firefighters raising money, to street performers and food vendors and people engaged in raising awareness and seeking contributions to a candidate or political cause. All of this speech is constitutionally protected, and limiting attempts to squelch or chill it is in the public interest. More specifically applicable to Plaintiffs, it is in the public interest for people in need in the city to be able to support themselves instead of relying more heavily on limited public resources. And it is in the public interest for all residents of Greensboro, including those who occasionally resort to asking strangers for contributions to make ends meet, to have a realistic opportunity to build better lives for themselves and their families.

CONCLUSION

Plaintiffs respectfully request that the Court enter a TRO prohibiting Defendants from enforcing Section 20-1 of the Greensboro Code through August 21. Plaintiffs further request that the Court not require a bond. If Section 20-1 remains in effect after the City Council's August 21 meeting, Plaintiffs request that the Court enter a preliminary injunction enjoining Defendants from enforcing Section 20-1 for the duration of this action.

Respectfully submitted this 8th day of August, 2018.

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CERTIFICATE OF WORD COUNT

I certify that the foregoing contains 6,004 words as counted by the word count feature of Microsoft Word, in compliance with Local Rule 7.3(d)(1).

This 8th day of August, 2018.

/s/ *Emily E. Seawell*
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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which has provided electronic notice to all counsel of record, and served the document by hand delivery and electronic mail to the following counsel, who has accepted service on behalf of Defendants:

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This 8th day of August, 2018.

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