

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

CARL FAUSTIN and
RODNEY WILSON,

Plaintiffs,

v.

Case No.: 6:24-cv-1036

SEMINOLE COUNTY, FLA.,

Defendant.

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

INTRODUCTION

1. Plaintiffs Carl Faustin and Rodney Wilson are individuals experiencing poverty, and bring this suit to challenge an ordinance enacted by Defendant Seminole County, Florida (“County”), that restricts their ability to request charity within the County by criminalizing the content of their speech. Plaintiffs stand on sidewalks and other public fora holding signs with messages conveying their need for assistance to passersby and vehicles on public roadways.

2. The County adopted Chapter 232, Code of Ordinances, Seminole County, Florida (“Ordinance”), a content-based ordinance prohibiting, among other things, “aggressive” speech soliciting charitable assistance in many areas within the County.

3. A person seeking to engage in other forms of speech under similar

circumstances as those seeking charity – such as asking for votes, requesting signatures on a petition, encouraging people to join a church, or picketing – may do so without impunity or fear of arrest. Because the Ordinance restricts only certain types of speech, it is content-based and subject to strict scrutiny. Further, because it is not narrowly tailored to any compelling government interest, nor is it the least restrictive means of advancing any governmental interest, it is an unconstitutional restriction on free speech.

4. The County 's adoption and enforcement of the Ordinance hinders Plaintiffs' exercise of their First Amendment rights and subjects them to a continued threat of arrest for their protected speech, causing them to suffer damages.

5. Plaintiffs bring this civil rights action pursuant to 42 U.S.C. § 1983 for violations of their First Amendment rights under the United States Constitution.

6. Plaintiffs challenge the constitutional validity of the Ordinance, both facially and as applied to them by Defendant and its agents who are engaging in state functions pursuant to official policy, practice, or custom of the County.

7. Plaintiffs challenge only those provisions of the Ordinance that apply to traditional public forums and do not challenge the private property provisions contained in County Code § 232-3(b) and (d).

8. Plaintiffs seek injunctive relief against future enforcement of the Ordinance, declaratory relief, and damages against the County for injuries caused by the enforcement and violations of their First Amendment rights.

JURISDICTION

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

10. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

VENUE

11. Venue is proper in the Middle District of Florida, Orlando Division, pursuant to 28 U.S.C. § 1391(b). Plaintiffs reside (or resided at all pertinent times), Defendant resides, and all of the acts and omissions complained of herein occurred and will continue to occur, in the Orlando Division of the Middle District of Florida.

PLAINTIFFS

12. Plaintiff Carl Faustin is a resident of Seminole County, Florida, and has lived in the County for more than 20 years. He currently does not have permanent housing. Mr. Faustin solicits donations from passersby, including basic necessities such as food, water, clothing, hygiene products, and sometimes cash. At the direction of the County, Sheriff's deputies have repeatedly warned Mr. Faustin for holding signs soliciting charitable donations on public sidewalks next to roadways in the County. As a result, and because of his fear of arrest and prosecution for a violation of the Ordinance, Mr. Faustin has reduced the time and frequency during which he solicits donations in the County. He wants and needs to continue to solicit donations for his survival.

13. Plaintiff Rodney Wilson is a resident of Seminole County, Florida, and has lived in the County for approximately two years. He currently does not have permanent housing. Mr. Wilson solicits donations from cars at public intersections, including basic necessities such as food, water, clothing, hygiene products, and sometimes cash. At the direction of the County, Sheriff's deputies have repeatedly warned Mr. Wilson for holding signs soliciting charitable donations on public sidewalks next to roadways in the County. As a result, and because of his fear of arrest and prosecution for a violation of the Ordinance, Mr. Wilson has reduced the time and frequency during which he solicits donations in the County. He wants and needs to continue to solicit donations for his survival.

DEFENDANT

14. Seminole County, Florida, is an entity organized under the laws of the State of Florida with the capacity to sue and be sued.

15. At all times relevant hereto, the Board of County Commissioners was the final policymaker for the County for the purpose of adopting ordinances regulating constitutionally protected speech, expressive conduct, and assembly within the boundaries of the County.

16. County ordinances, including the challenged Ordinance, are official policies of the County.

17. The County is the legal entity responsible for the Seminole County Sheriff's Office. The Sheriff's Office has the traditional authority to enforce Florida statutes and County ordinances within the County.

18. The County is sued for injunctive and declaratory relief and damages, on the basis of acts of deputies, agents, and employees of the County taken pursuant to official policy, practice, or custom.

19. At all times relevant to this complaint, Defendant and their Sheriff's deputies, employees, and agents, were acting under color of state law.

FACTUAL ALLEGATIONS

The County's Ordinance

20. On January 13, 2015, the Board of County Commissioners adopted Ordinance No. 2015-2, an ordinance regulating panhandling, begging and related activities, codified at Chapter 232 of the County Code. (Ex. 1.)

21. The Ordinance defines "panhandle" to mean:

to ask for, demand or solicit money, gifts or donations, either by words, bodily gestures, signs or other means. The terms panhandle, solicit and beg are synonymous in meaning. Panhandling is any solicitation made in person, requesting an immediate donation of money or other thing of value. Purchase of an item for an amount far exceeding its normal market value, under circumstances where a reasonable person would understand that the purchase is, in substance, a donation, is a donation for the purpose of this Chapter. Panhandling does not include passively standing or sitting with a sign or other indication that one is seeking donations at a location not prohibited by this Chapter and not in a manner prohibited by this Chapter.

(Ex. 1, § 232.2.)

22. The ordinance only regulates one type of solicitation: requests for immediate donations.

23. 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.

24. The County's streets, sidewalks, medians, and roadways are traditional public forums that hold a special position in terms of First Amendment protection because of their historic role as places of discussion and debate.

25. The Ordinance prohibits charitable solicitation by individuals on traditional public forums in the County.

26. Other forms of speech or expression not involving charitable solicitation are not prohibited, making the Ordinance a content-based restriction on speech in traditional public forums and presumptively unconstitutional.

27. Chapter 232 contains regulations of speech based on location, § 232.3(e); obstruction of pedestrians, vehicles or traffic, §§ 232.3(a) and (c); and in connection with "aggressive" conduct, §§ 232.3 (a), (e) and (f). (Ex. 1.)

Location-Based Restrictions

28. County Code § 232.3(e) ("location-based provisions") regulate requests for charity when the speaker is present in certain enumerated locations.

29. This section of the Ordinance forbids "any person to aggressively panhandle in any public place within the County which public places include, by way of example only and not by way of limitation, the following places:

- a. At any bus or train stop;
- b. In any public transportation vehicle or facility, including, but not limited to, airports, roads, streets and right-of-way;

- c. In any vehicle on a street unless a permit has been issued to do so;
- d. In a public park, fairground, or sporting facility, including, but not limited to, entryways or exits thereto;
- e. Within a circumference of 25 feet of the site of any automated teller machine (ATM), a vending machine or any other machine dispensing cash or within a painted "privacy zone" painted on the ground around an ATM, whichever distance is less, all of which are subject to the permitting requirements of the County if such painted zone encompasses area within a road or right-of-way;
- f. In a parking lot or garage owned or operated by the County, including, but not limited to, entryways or exits and pay stations connected to the parking lot or garage; and
- g. Within 1,000 feet of a school bus stop when children are present.”

(Ex. 1 § 232.3(e).)

30. Individuals are otherwise permitted to be physically present or engage in protected speech in these same locations so long as they refrain from aggressively panhandling.

31. The prohibited zones and locations are generally located in traditional public forums.

Traffic-Related Restrictions

32. The Ordinance prohibits “a person to interfere with pedestrians or motor vehicles if he or she obstructs pedestrian or vehicular traffic or aggressively

panhandles on a right-of-way, road or street as defined in Section 334.03, Florida Statutes (2014), as this statute may be amended from time to time, which terms include, but are not limited to, associated sidewalks and crosswalks.” (Ex. 1 § 232.3(a) & (c).)

33. Further, “[i]t is prohibited and unlawful for any person to obstruct, impede or interfere with the movement of pedestrians or vehicles for the purpose of panhandling within a public building, the parcel of land on which a public building is located, or a public transportation area.” (Ex. 1 § 232.3(c).)

34. Individuals are permitted to engage in other types of speech near intersections, while approaching motor vehicles, and in public buildings/areas, so long as they do not make immediate requests for donations.

35. The County has other mechanisms by which it can address concerns about pedestrians and traffic safety.

36. For instance, the County may enforce state traffic laws governing pedestrians in roadways. *See* § 316.130, Fla. Stat. (2023) (regulating pedestrians in traffic); § 316.2045, Fla. Stat. (2023) (making it a pedestrian violation to willfully obstruct the free, convenient, and normal use of a public street, highway, or road”).

Conduct-Related Restrictions

37. The Ordinance provides:

Aggressive means and includes, but is not limited to, approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation,

unwanted physical contact, the intentional blocking of pedestrian and vehicular traffic, the touching or causing physical contact with a solicited person without that person's consent or threatening to make such contact, the intentional blocking of the entrance to any building or vehicle, the following behind, ahead or alongside a person who walks away from a solicitor after being solicited with the intent to intimidate or continue solicitation, the approaching of a solicited person in a manner that is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession or is intended to or is likely to intimidate a reasonable person into responding affirmatively to the solicitation, or the soliciting of a person while the solicitor is under the influence of alcohol or drugs in a manner which disrupts the peace. Aggressive includes, but is not limited to, by acting in a manner while committing an assault, by committing a battery, or in a manner which violates the provisions of this Chapter.

(Ex. 1 § 232.2.)

38. In addition to the restrictions on “aggressive” panhandling described in paragraphs 29 and 32 above, the Ordinance states:

It is prohibited and unlawful for any person to panhandle in any of the following manners each of which will rebuttably be deemed to be aggressive:

1. By blocking the path of the person solicited;
2. By using obscene, profane or abusive language, either during the solicitation or following a refusal;
3. By panhandling in a group of two or more persons which would encircle the person being solicited and deter their free movement; or
4. By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.

(Ex. 1 § 232.3(f).)

39. The Ordinance’s definition of “aggressive” panhandling includes descriptions of behavior that are not inherently aggressive; for example, “approaching ... pedestrians” or “repetitive soliciting despite refusals.” (Ex. 1 § 232.2.)

40. The Ordinance’s “aggressive” panhandling provisions prohibit a person from going up to someone to request a donation or attempting to make their request a second time. (Ex. 1 § 232.2.)

41. The Ordinance’s “aggressive” panhandling provisions prohibit requests for money or a donation of valuable property in public forums when engaging in another form of protected speech, the use of profane language. (Ex. 1 § 232.2.)

42. The Ordinance’s “aggressive” panhandling and other provisions prohibiting certain conduct in relation to protected speech (“Conduct-related Restrictions”) prohibit solicitation when accompanied by conduct that would otherwise be a crime under Florida statutes; for example, touching a solicited person without consent, which constitutes battery under § 784.03, Fla. Stat., or using threatening or coercive language or conduct, which could be charged as assault under § 784.011, Fla. Stat., or disorderly conduct/breach of the peace under § 877.03, Fla. Stat. Moreover, the law prohibiting “disorderly intoxication” already covers behavior that is disruptive and harmful to the public by persons who are under the influence of alcohol or drugs. § 856.011, Fla. Stat.

43. The Ordinance makes conduct that is already punishable by other criminal statutes, such as assault, battery, and disorderly intoxication, subject to additional penalties because of its connection to protected speech.

44. The Ordinance only punishes such conduct when it is connected to one type of speech: immediate requests for donations.

45. The Ordinance regulates expression that is protected by the First Amendment. Even an alleged “aggressive” panhandler conveys messages related to need and deprivation.

The County’s Justifications for the Ordinance

46. Section 232.1 of the Ordinance lists the County’s purported interests in adopting the Ordinance.

47. The Ordinance states that the conduct it prohibits is “a threat to the public health, welfare and safety of the citizenry.” (Ex. 1 § 232.1(a) & (c).)

48. The Ordinance states that “[a]ggressive panhandling is disturbing and disruptive to residents and businesses and contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder.” (Ex. 1 § 232.1(d).)

49. The Ordinance states “[t]he presence of individuals who solicit money from persons in places that are confined, difficult to avoid, or where a person might find it necessary to wait, is especially hazardous because of the enhanced fear of crime.” (Ex. 1 § 232.1(e).)

50. The County has not articulated any real and non-speculative harm to

justify the suppression of protected speech.

51. The County did not undertake to address the problems it identified with less intrusive tools readily available.

Enforcement of the County's Ordinance

52. Penalties for violating the Ordinance are set forth in § 232.7, which allows for the imposition of “a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a term not to exceed sixty (60) days, or by both.” In addition, court costs – typically \$263 or \$363, and as high as \$439.30 – are assessed for violations resulting in a disposition of guilty or adjudication withheld.

53. Since the Ordinance was enacted on January 13, 2015, Seminole County deputies have made at least 130 arrests for violations of the Ordinance.

54. Of these 130 arrests, 122 resulted in custodial arrests where the individual being charged was immediately taken to jail.

55. Of these 130 arrests, approximately 92 were arrests of individuals experiencing homelessness or who did not have a home address listed on their arrest report.

56. Individuals exercising their First Amendment right to request charity have been sentenced to approximately 858 days in jail and been assessed approximately \$39,147 in court costs, fees and fines after being arrested for violations of the Ordinance.

57. County deputies also threaten individuals making requests for charity with arrest and issue verbal warnings for panhandling, telling people what they are

doing is unlawful or to move along.

Plaintiff Carl Faustin

58. Plaintiff Carl Faustin has lived in the County for more than 20 years.

59. Mr. Faustin does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps outside.

60. Mr. Faustin engages in charitable solicitation on sidewalks and medians, including public areas frequented by drivers near businesses in the Fern Park area of the County, holding a sign that usually reads “Homeless & hungry, God Bless.”

61. Mr. Faustin intends his sign to convey to passersby that he needs help. He wants to express that he is hungry and does not want to be invisible.

62. When Mr. Faustin and other homeless individuals stand on public sidewalks and streets and hold signs or make verbal requests for charitable donations, they raise public awareness about the plight of homeless individuals in and around the County.

63. Mr. Faustin typically receives food, clothes, or hygiene products from drivers and passersby. Sometimes, people give him cash.

64. Mr. Faustin has regularly been warned by Seminole County Sheriff's deputies that he cannot ask for charity on sidewalks in the County. Mr. Faustin has been told that he is violating the Ordinance prohibiting panhandling. Deputies have threatened him with arrest if he did not stop panhandling.

65. As a direct consequence of the enforcement actions taken by

Defendant pursuant to the Ordinance, Mr. Faustin has been chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public forums.

66. Mr. Faustin has curtailed his panhandling due to the threats of arrest. If he sees a Sheriff's deputy in the area where he is requesting charity, he stops panhandling for the day.

67. On July 14, 2023, undersigned counsel sent a letter to the Seminole County Manager Darren Gray and the five Seminole County Commissioners on behalf of Mr. Faustin. The letter informed the recipients that the Ordinance was unconstitutional and requested its repeal.

68. On August 9, 2023, David Shields, an attorney in the Seminole County Attorney's Office, replied to the letter and indicated that the County believed the Ordinance was constitutional, and vowed to "vigorously defend any lawsuit" against it.

69. Mr. Faustin continues to hold signs on public sidewalks and in public areas near businesses in the County as a means of communicating with fellow citizens. He is concerned that he will continue to suffer the same violations of his rights and that he will be prevented from doing so by being threatened with arrest, cited, and/or arrested by Seminole County Sheriff's deputies under the Ordinance.

70. Mr. Faustin would like to continue to ask for charity without risking arrest.

Plaintiff Rodney Wilson

71. Plaintiff Rodney Wilson has lived in the County for approximately 2 years.

72. Mr. Wilson does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps outside.

73. Mr. Wilson engages in charitable solicitation in public areas frequented by drivers near businesses in the Fern Park area of the County, holding a sign that usually reads “Down today, Please help.”

74. Mr. Wilson intends his sign to convey to passersby that any form of support they could offer is helpful. He feels that sometimes a simple hello helps him emotionally, spiritually, and mentally.

75. When Mr. Wilson and other homeless individuals stand on public sidewalks and streets and hold signs or make verbal requests for charitable donations, they raise public awareness about the plight of homeless individuals in and around the County.

76. Mr. Wilson typically receives food, clothes, or hygiene products from drivers and passersby. Sometimes, people give him cash.

77. Mr. Wilson has been warned on multiple occasions by Seminole County Sheriff’s deputies that he cannot ask for charity at public places in the County. Wilson has been told that he is violating the Ordinance prohibiting panhandling. Deputies have threatened him with arrest if he did not stop panhandling.

78. As a direct consequence of the enforcement actions taken by

Defendant pursuant to the Ordinance, Mr. Wilson has been chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public forums.

79. Mr. Wilson has curtailed his panhandling due to the threats of arrest. When he does panhandle, he tries to be less visible in order to avoid arrest.

80. Mr. Wilson would like to continue to ask for charity without risking arrest.

FIRST CLAIM FOR RELIEF

FIRST AMENDMENT RIGHT TO FREE SPEECH (County Code § 232.3(e): Location-Based Provisions)

81. The allegations of paragraphs 1-31 and 46-80 are incorporated into this claim as though fully set forth herein.

82. The location-based provisions of the Ordinance, codified in County Code § 232.3(e) (the “Location-Based Provisions”), are an unconstitutional infringement, on their face and as applied to Plaintiffs, of Plaintiffs’ affirmative rights to freedom of speech and expression secured by the First Amendment to the U.S. Constitution.

83. The Location-Based Provisions restrict protected speech on traditional public forums throughout the County including public streets, sidewalks, medians, and parks.

84. The Location-Based Provisions are impermissible content-based restrictions on speech, because they discriminate based on the topic discussed or

the idea or message expressed. These subsections seek to limit constitutionally protected speech and manners of expression, as they single out one subject area of speech - charitable solicitation - for different treatment than speech on other subject matter.

85. As content-based regulations, the Location-Based Provisions are subject to strict scrutiny, requiring the County to show that these regulations are narrowly tailored to serve a compelling government interest and are the least restrictive means of serving that interest.

86. There is no compelling government interest that is furthered by this subsection's content-based restrictions on speech.

87. The County's purported interests in preventing speech that is "disturbing and disruptive to residents and businesses" and "contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder" are not recognized as compelling interests under the First Amendment to justify content-based restrictions on speech.

88. Even assuming the County's interests in public health, welfare and safety of the citizenry were compelling, the County did not proffer any evidence that this was an actual, and not speculative, issue at the time the Ordinance was passed.

89. Even if the County had a non-speculative compelling interest, the Location-Based Provisions fail strict scrutiny because they are not narrowly tailored to the County's interests. They are over-inclusive in that they suppress

speech that is unrelated to health, welfare or safety concerns, and under-inclusive in that they do not actually address the behaviors that are cited as a concern.

90. The Location-Based Provisions are over-inclusive, in that they sweep into their ambit protected speech that poses no threat, such as walking up to a pedestrian, or making a second request in a non-threatening manner after a previous refusal.

91. There is nothing inherently dangerous about initiating a conversation on a public street to ask for assistance or politely repeating a request after an initial refusal.

92. The Location-Based Provisions are also under-inclusive, in that they single out immediate donations of money or other things of value from other types of speech, such as protest or political signature gathering, that is equally problematic.

93. The County has means readily available to it to address its purported interests that do not infringe upon protected speech.

94. By depriving individuals of the use of traditional public forums to engage in expressive activity, the Location-Based Provisions force individuals to take their speech to other locations that are less effective channels for communicating protected speech. By doing so, they do not leave open reasonable alternative channels for protected speech.

95. The County continues to enforce the Location-Based Provisions to prohibit Plaintiffs and other homeless individuals from engaging in charitable

solicitation in traditional public forums.

96. Plaintiffs have a credible threat of future arrest and prosecution under the Location-Based Provisions. Plaintiffs have been threatened with arrest for panhandling by the Seminole County Sheriff's Office numerous times.

97. The County's enforcement of the Location-Based Provisions is the direct and proximate cause of the violations of Plaintiffs' constitutional rights.

98. The Location-Based Provisions have had a chilling effect on all Plaintiffs' constitutionally protected expression. Plaintiffs have curtailed their speech to avoid arrest under the Ordinance.

99. Plaintiffs have suffered, and continue to suffer, irreparable harm and has been damaged as a direct result of Defendant's enforcement of the Location-Based Provisions.

100. Plaintiffs have suffered damages including emotional distress, fear, humiliation, loss of opportunity to request and receive charitable donations, and loss of the constitutional right to engage in protected First Amendment activity.

101. An injunction is required as damages alone are not an adequate remedy to compensate Plaintiffs for the ongoing loss of their constitutional rights. Plaintiffs have suffered, and continues to suffer, irreparable harm and have been damaged as a direct result of Defendant's enforcement of the challenged Location-Based Provisions.

SECOND CLAIM FOR RELIEF

FIRST AMENDMENT RIGHT TO FREE SPEECH

(County Code §§ 232.3(a) and (c): Traffic-Related Provisions)

102. The allegations of paragraphs 1-27, 32-36, and 46-80 are incorporated into this claim as though fully set forth herein.

103. The Traffic-Related Provisions of the Ordinance, codified in § 232.3(a) and (c), are an unconstitutional infringement, on their face and as applied to Plaintiffs, of Plaintiffs' affirmative rights to freedom of speech and expression secured by the First Amendment to the U.S. Constitution.

104. The Traffic-Related Provisions restrict protected speech on traditional public forums throughout the County including public streets, sidewalks, medians.

105. The Traffic-Related Provisions are impermissible content-based restrictions on speech, because they discriminate based on the topic discussed or the idea or message expressed. The sections seek to limit constitutionally protected speech and manners of expression, as they single out one subject area of speech - charitable solicitation - for different treatment than speech on other subject matter.

106. As content-based regulations, the Traffic-Related Provisions are subject to strict scrutiny, requiring the County to show that these regulations are narrowly tailored to serve a compelling government interest and are the least restrictive means of serving that interest.

107. There is no compelling government interest that is furthered by these subsections' content-based restrictions on speech.

108. The County's purported interests in preventing speech that is "disturbing and disruptive to residents and businesses" and "contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder" are not recognized as compelling interests under the First Amendment to justify content-based restrictions on speech.

109. Even assuming the County's interests in public health, welfare and safety of the citizenry were compelling, the County did not proffer any evidence that this was an actual, and not speculative, issue at the time the Ordinance was passed.

110. Even if the County had a non-speculative compelling interest, the Traffic-Related Provisions fail strict scrutiny because they are not narrowly tailored to the County's interests. They are under-inclusive in that they do not address speech on other topics that would be equally dangerous to public health, welfare, and safety, such as protest or gathering signatures on a petition.

111. The County has other mechanisms by which it prohibits conduct presenting a traffic hazard. Ordinances and state statutes prohibiting the obstruction of rights of way already restrict behavior hindering the safe movement of traffic without intruding on protected speech.

112. By depriving individuals of the use of traditional public forums to engage in expressive activity, the Traffic-Related Provisions force individuals to take their speech to other locations that are less effective channels for

communicating protected speech. By doing so, they do not leave open reasonable alternative channels for protected speech.

113. The County continues to enforce the Traffic-Related Provisions to prohibit Plaintiffs and other homeless individuals from engaging in charitable solicitation in traditional public forums.

114. Plaintiffs have a credible threat of future arrest and prosecution under the Traffic-Related Provisions. Plaintiffs have been threatened with arrest for panhandling by the Seminole County Sheriff's Office numerous times.

115. The County's enforcement of the Traffic-Related Provisions is the direct and proximate cause of the violations of Plaintiffs' constitutional rights.

116. The Traffic-Related Provisions have had a chilling effect on Plaintiffs' constitutionally protected expression. Plaintiffs have curtailed their speech to avoid arrest under the Ordinance.

117. Plaintiffs have suffered damages including emotional distress, fear, humiliation, loss of opportunity to request and receive charitable donations, and loss of the constitutional right to engage in protected First Amendment activity.

118. An injunction is required as damages alone are not an adequate remedy to compensate Plaintiffs for the ongoing loss of their constitutional rights. Plaintiffs have suffered, and continues to suffer, irreparable harm and have been damaged as a direct result of Defendant's enforcement of the challenged Traffic-Related Provisions.

THIRD CLAIM FOR RELIEF

**FIRST AMENDMENT RIGHT TO FREE SPEECH
(County Code §§ 232.3 (a), (e) and (f): Conduct-Related Provisions)**

119. The allegations of paragraphs 1-27 and 37-80 are incorporated into this claim as though fully set forth herein.

120. The Conduct-Related provisions of the Ordinance, codified in § 232.3 (a), (e) and (f) are an unconstitutional infringement, on their face and as applied to Plaintiffs, of Plaintiffs' affirmative rights to freedom of speech and expression secured by the First Amendment to the U.S. Constitution.

121. The Conduct-Related Provisions restrict protected speech on traditional public forums throughout the County, including public streets, sidewalks, medians, and parks.

122. The Conduct-Related Provisions are impermissible content-based restrictions on speech, because they discriminate based on the topic discussed or the idea or message expressed. The sections seek to limit constitutionally protected speech and manners of expression, as they single out one subject area of speech - charitable solicitation - for different treatment than speech on other subject matter.

123. As content-based regulations, the Conduct-Related Provisions are subject to strict scrutiny, requiring the County to show that these regulations are narrowly tailored to serve a compelling government interest and are the least restrictive means of serving that interest.

124. There is no compelling government interest that is furthered by these subsections' content-based restrictions on speech.

125. The County's purported interests in preventing speech that is "disturbing and disruptive to residents and businesses" and "contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder" are not recognized as compelling interests under the First Amendment to justify content-based restrictions on speech.

126. Even assuming the County's interests in public health, welfare and safety of the citizenry were compelling, the County did not proffer any evidence that this was an actual, and not speculative, issue at the time the Ordinance was passed.

127. Even if the County had a non-speculative compelling interest, the Conduct-Related Provisions fail strict scrutiny because they are not narrowly tailored to the County's interests. They are over-inclusive in that they suppress speech that is unrelated to health, welfare or safety concerns, and under-inclusive in that they do not actually address the behaviors that are cited as a concern.

128. The Conduct-Related Provisions are over-inclusive, in that they sweep into their ambit protected speech that poses no threat, such as approaching a pedestrian or asking for money after an initial negative response.

129. The Conduct-Related Provisions are also under-inclusive, in that they single out solicitation from other types of speech, such as political protest, that would be equally problematic.

130. The County has other mechanisms by which it prohibits violent or threatening conduct that are not related to protected speech. Laws prohibiting battery, assault, disorderly conduct/breach of the peace, trespassing, and disorderly intoxication address behavior that is disruptive and harmful to the public without intruding on protected speech.

131. The Conduct-Related Provisions make conduct that is already punishable by state statute and other provisions of the County Code subject to additional penalties because of its connection to protected speech.

132. By depriving individuals of the use of traditional public forums to engage in expressive activity, the Conduct-Related Provisions force individuals to take their speech to other locations that are less effective channels for communicating protected speech. By doing so, they do not leave open reasonable alternative channels for protected speech.

133. The County continues to enforce the Conduct-Related Provisions to prohibit Plaintiffs and other homeless individuals from engaging in charitable solicitation in traditional public forums.

134. Plaintiffs have a credible threat of future arrest and prosecution under the Conduct-Related Provisions. Plaintiffs have been threatened with arrest for panhandling by the Seminole County Sheriff's Office numerous times.

135. The County's enforcement of the Conduct-Related Provisions is the direct and proximate cause of the violations of Plaintiffs' constitutional rights.

136. The Conduct-Related Provisions have had a chilling effect on Plaintiffs' constitutionally protected expression. Plaintiffs have curtailed their speech to avoid arrest under the Ordinance.

137. Plaintiffs have suffered, and continue to suffer, irreparable harm and have been damaged as a direct result of Defendant's enforcement of the Conduct-Related Provisions.

138. Plaintiffs have suffered damages including emotional distress, fear, humiliation, loss of opportunity to request and receive charitable donations, and loss of the constitutional right to engage in protected First Amendment activity.

139. An injunction is required as damages alone are not an adequate remedy to compensate Plaintiffs for the ongoing loss of their constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue a preliminary and permanent injunction preventing Defendant from enforcing the challenged provisions of the Ordinance, § 232.3(e) (“Location-Based Provisions”), §§ 232.3(a) and (c) (“Traffic-Related Provisions”), and §§ 232.3 (a), (e) and (f) (“Conduct-Related Provisions”);

B. Enter a declaration that the challenged provisions of the Ordinance, § 232.3(e) (“Location-Based Provisions”), §§ 232.3(a) and (c) (“Traffic-Related Provisions”), and §§ 232.3 (a), (e) and (f) (“Conduct-Related Provisions”), are unconstitutional both facially and as applied to Plaintiffs by deputies, agents, and employees of the County in violation of the First Amendment of the

U.S. Constitution;

C. Award compensatory damages to Plaintiffs against Defendant, including for emotional distress, fear, humiliation, opportunity to request and receive charitable donations, loss of opportunity to speak, and any other damages as permitted by law;

D. Award nominal damages to Plaintiffs against Defendant;

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

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

JURY DEMAND

Plaintiffs demand trial by jury on all counts alleged above.

Dated: June 5, 2024

Respectfully submitted,

/s/ Daniel Marshall

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