

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS.

Superior Court

_____)
 MASSACHUSETTS COALITION FOR THE)
 HOMELESS, JOHN CORREIRA, and JOSEPH)
 TREEFUL,)
 Plaintiffs,)
 v.)
 THE CITY OF FALL RIVER, ALBERT F. DUPERE,)
 in his individual capacity and in his official capacity as)
 a Chief of the Fall River Police Department, PAUL)
 BERNIER, in his individual capacity and in his official)
 capacity as Lieutenant in the Fall River Police)
 Department, DAVID GOUVEIA, in his individual)
 capacity and in his official capacity as Lieutenant in the)
 Fall River Police Department, JAMES SMITH, in his)
 individual capacity and in his official capacity as Police)
 Sergeant in the Fall River Police Department,)
 MICHAEL PAVAO, in his individual capacity and in)
 his official capacity as an officer within the Fall River)
 Police Department, DEREK AMARAL, in his)
 individual capacity and in his official capacity as an)
 officer within the Fall River Police Department, and)
 THOMAS QUINN, in his official capacity as the)
 District Attorney for Bristol County, Massachusetts,)
 Defendants.)

Civil Action No. 19- _____

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Plaintiffs the Massachusetts Coalition for the Homeless, John Correria, and Joseph Treeful bring this lawsuit to challenge the ongoing actions by the City of Fall River, the Fall River Police Department, and the Bristol County District Attorney’s Office of aggressively enforcing a facially unconstitutional state statute against some of Fall River’s most vulnerable residents. The Statute, M.G.L. c. 85, § 17A, purports to prohibit certain classes of people from soliciting funds

from operators of motor vehicles, and the defendants in this lawsuit are relying on the Statute to target for criminal charges people who solicit charity on behalf of themselves, an activity sometimes called “panhandling.” But these requests for charity are constitutionally-protected speech, the Statute is an unconstitutional content- and identity-based restriction of that speech, and the Defendants’ actions are therefore unlawful.

2. Plaintiff Massachusetts Coalition for the Homeless (“MCH”) is a statewide non-profit organization that represents the interests of persons experiencing homelessness and, among other initiatives, seeks to eradicate homelessness, foster financial independence, and organize and advocate for public policy matters that directly affect its members, including the preservation and expansion of adequate income maintenance programs. Its mission further seeks to advance the interests and views of its members, including those members who are directly affected by M.G.L. c. 85, § 17A (the “Statute”).

3. Plaintiff John Correia (“Mr. Correia”) is a low-income resident of Fall River who is experiencing homelessness. Mr. Correia is a member of MCH. He has in the past solicited and in the future intends to solicit funds for his own support from motorists within the City of Fall River.

4. Plaintiff Joseph Treeful (“Mr. Treeful”) is a low-income resident of Fall River who is experiencing homelessness. Mr. Treeful is a member of MCH. He has in the past solicited and in the future intends to solicit funds for his own support from motorists within the City of Fall River.

5. Mr. Correia and Mr. Treeful have been the subject of numerous criminal complaints in the Fall River District Court based on reports filed by members of the Fall River Police Department pursuant to the Statute. These complaints allege that these plaintiffs are

committing a crime by soliciting contributions for their own support from members of the public who are stopped in vehicles at intersections within the City of Fall River. Plaintiffs submit that these charges and the underlying police actions spurring those charges are unlawful because the Statute under which Mr. Correira and Mr. Treeful are repeatedly charged is a content-based restriction on speech not narrowly tailored to serve a compelling governmental interest. The Statute, therefore, violates Article 16 of the Declaration of Rights of the Commonwealth of Massachusetts, as amended, as well as the First and Fourteenth Amendments to the U.S. Constitution.

6. Upon information and belief, the Fall River Police Department and/or the City of Fall River have purposely targeted for criminal charges persons seeking contributions for their own support, possibly in order to deter low-income individuals, including individuals experiencing homelessness, from exercising their free speech right to solicit funds for their own support within the City of Fall River. See, e.g. <http://www.heraldnews.com/news/20181026/panhandlers-say-fall-river-police-are-cracking-down>.

7. Upon information and belief, the Fall River Police Department has requested that the Fall River District Attorney's Office prosecute and no longer dismiss criminal complaints that involve the Statute in order to further deter low-income individuals, including individuals experiencing homelessness, from exercising free speech rights. Upon information and belief, the District Attorney's Office has agreed to this request.

8. As a result of the criminal complaints filed pursuant to the Statute at the request of Fall River police against Mr. Correira, Mr. Treeful, and other individuals soliciting funds for their own support, Mr. Correira and Mr. Treeful are deterred from exercising their right to free speech guaranteed under both the state and federal constitutions, must defend themselves in a court of

law, are the subject of repeat criminal process, are at risk of arrest for not receiving or responding to such criminal process, and are at risk of significant penalty merely for exercising their speech rights.

9. Plaintiffs seek, among other things, an injunction and declaratory relief as follows: (a) a preliminary and permanent injunction that prohibits the Defendants from taking steps to enforce the Statute, including but not limited to by questioning individuals, forcing individuals to stop soliciting upon threat of criminal process, filing charges, and prosecuting complaints under the Statute; (b) a declaration that the Statute is unconstitutional; and (c) further declaratory and injunctive relief that the acts of the Individual Defendants targeting the speech rights of individuals experiencing homelessness under the Statute constitute “threats, intimidation and coercion” that attempt to interfere and have interfered with rights secured by Article 16 and the First Amendment in violation of M.G.L. c. 12, § 11I and should be enjoined.

Jurisdiction and Venue

10. This Court has jurisdiction over this action pursuant to M.G.L. c. 231A, M.G.L. c. 214, § 2, and M.G.L. c. 12, § 11I.

11. Bristol County Superior Court is a proper venue for this action since the unlawful restraint of free speech, threats of criminal complaints and resulting arrests, and the actual filing of criminal complaints and/or arrests under the Statute arose and are arising in Fall River, Massachusetts.

The Parties

12. Massachusetts Coalition for the Homeless (“MCH”) is a non-profit organization with its principal place of business at 73 Buffum Street, Lynn, Massachusetts.

13. John Correira is an adult individual and resident of Fall River, Massachusetts and a member of MCH.

14. Joseph Treeful is an adult individual and resident of Fall River, Massachusetts and a member of MCH.

15. The City of Fall River (the “City”) is a City within Bristol County in the Commonwealth of Massachusetts. The City is a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts with the capacity to sue and be sued. It is empowered to exercise all of the powers and authority of a municipality, including police power, and it maintains, operates and controls the Fall River Police Department and employs Defendants Dupere, Bernier, Smith, Gouveia, Pavao and Amaral.

16. Chief Albert L. Dupere (“Dupere”) is an adult individual and the Chief of the Fall River Police Department (the “Department”) responsible for the operations and practices of the Department and the official conduct of the Individual Defendants. Upon information and belief, he, or persons operating under his direction, instructed members of the Department to target persons soliciting contributions for their own support for criminal charges under the Statute. Plaintiffs sue Dupere in his official and individual capacities.

17. Lieutenant Paul Bernier (“Bernier”) is an adult individual and lieutenant in charge of the Traffic Enforcement Unit in the Special Operations Division of the Fall River Police Department. He has personally filed at least one police report that resulted in a complaint under the Statute against Mr. Treeful for soliciting funds for his own support. Upon information and belief, he has also encouraged officers to seek charges against Mr. Correira, Mr. Treeful and others experiencing homelessness under the Statute. He is sued in his official and individual capacities.

18. Lieutenant David Gouveia (“Gouveia”) is an adult individual and member of the Department who has filed multiple police reports that resulted in criminal complaints being issued under the Statute against Mr. Correira, Mr. Treeful and/or others soliciting funds for their own support. He is sued in his official and individual capacities.

19. Sergeant James Smith (“Smith”) is an adult individual and member of the Department who has filed multiple police reports that resulted in criminal complaints being issued under the Statute against Mr. Correira, Mr. Treeful and/or others soliciting funds for their own support. He is sued in his official and individual capacities.

20. Michael Pavao (“Pavao”) is an adult individual and member of the Department who has filed multiple police reports that resulted in criminal complaints being issued under the Statute against Mr. Correira, Mr. Treeful and/or others soliciting funds for their own support. He is sued in his official and individual capacities.

21. Derek Amaral (“Amaral”) is an adult individual and member of the Department who has filed multiple police reports that resulted in criminal complaints being issued under the Statute against Mr. Correira, Mr. Treeful and/or others soliciting funds for their own support. He is sued in his official and individual capacities.

22. Thomas Quinn (“Quinn”) is the District Attorney of Bristol County, Massachusetts. Upon information and belief, pursuant to his authority, staff within the Office of the District Attorney of Bristol County, including Assistant District Attorneys, were instructed no longer to dismiss charges initiated by members of the Fall River Police Department pursuant to the Statute prior to arraignment. This action placed—and continues to place—Plaintiffs Correira and Treeful and other individuals soliciting funds for their own support at risk of extended criminal process and penalty and at risk of having charges pursuant to the Statute added to their Criminal Offender

Record Information, which will have collateral consequences for them. He is sued in his official capacity.

23. Defendants Dupre, Bernier, Gouveia, Smith, Payao, and Amarol are named in their individual as well as their official capacities and are collectively referred to herein as the “Individual Defendants.”

Factual Background

24. Mr. Correira and Mr. Treeful have in the past solicited and in the future intend to solicit funds for their own support from motorists stopped at intersections within the City of Fall River.

25. Upon information and belief, during 2018 and into 2019 more than 150 criminal complaints were issued based on reports by members of the Department accusing those soliciting funds from motor vehicle operators for their own support of violating the Statute.

26. Plaintiff Correira has been the subject of no fewer than 30 criminal complaints under the Statute; complaints that are based on police reports filed by members of the Department since the summer of 2018.

27. Plaintiff Treeful has been the subject of no fewer than 13 criminal complaints under the Statute; complaints that are based on police reports by members of the Department since November 15, 2018.

28. In their police reports, which spur criminal action, officers of the Fall River Police Department allege that Mr. Correira and Mr. Treeful violate the Statute by standing by the side of roads with signs indicating that they are experiencing homelessness or in need and accepting proffered donations to assist in their financial support from operators of motor vehicles stopped at intersections within the City of Fall River.

29. At one point, when Mr. Correira failed to receive and therefore respond to a summons related to such a complaint, he was arrested and held in jail for a few days until ordered released by the court. In January 2019, Mr. Treeful was taken into custody for alleged probation violations, including an alleged violation of the challenged Statute, and was held in the Dartmouth House of Correction for several days. He was found in violation of probation based on a separate charge but released for time served.

30. Upon information and belief, and based on the language used in several of the police reports used to support the recommendation of charging Mr. Correira and Mr. Treeful, Individual Defendants are engaged in a targeted effort to apply the Statute to individuals experiencing homelessness.

31. Upon information and belief, representatives of the District Attorney's Office previously dismissed charges filed under the Statute prior to arraignment. But, since February 2019, these representatives have indicated that they are no longer authorized to agree to dismiss the charges based on a request from the Department to the office of Defendant Quinn.

32. Solicitation of funds for one's own support is speech protected by Article 16 and the First Amendment, and discrimination against those soliciting funds for their own support, as compared to solicitation for sale of newspapers or other merchandise or by non-profit organizations seeking funds for the benefit of others, is content-based and indeed viewpoint- and speaker-based discrimination. *Benefit v. City of Cambridge*, 424 Mass. 918, 922-925 (1997); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 183-184 (D. Mass. 2015); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 232-233 (D. Mass. 2015); *see also Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015).

33. The Statute, which is entitled "Soliciting from vehicles on public ways," provides:

Whoever, for the purpose of soliciting any alms, contribution or subscription or of selling any merchandise, except newspapers, or ticket of admission to any game, show, exhibition, fair, ball, entertainment or public gathering, signals a moving vehicle on any public way or causes the stopping of a vehicle thereon, or accosts any occupant of a vehicle stopped thereon at the direction of a police officer or signal man, or of a signal or device for regulating traffic, shall be punished by a fine of not more than fifty dollars. Whoever sells or offers for sale any item except newspapers within the limits of a state highway boundary without a permit issued by the department shall for the first offense be punished by a fine of fifty dollars and for each subsequent offense shall be punished by a fine of one hundred dollars. Notwithstanding the provisions of the first sentence of this section, on any city or town way which is not under jurisdiction of the department, the chief of police of a city or town may issue a permit to nonprofit organizations to solicit on said ways in conformity with the rules and regulations established by the police department of said city or town.

M.G.L. c. 85, § 17A.

34. On its face, the Statute discriminates on the basis of the content of speech.

35. On its face, the Statute discriminates based on the identity of the speakers.

36. For example, the Statute’s prohibition on “signal[ing],” “caus[ing] the stopping of,” or “accost[ing]” vehicles depends on whether those forms of expression are undertaken for the expressive purpose of solicitation or instead for some other purpose. And even then, only some kinds of solicitation are prohibited. The Statute prohibits all solicitation that seeks money for the solicitor, while exempting soliciting that seeks money for a newspaper or, with a permit, other merchandise. And unlike individuals, who are strictly prohibited from seeking charity for themselves, nonprofit organizations are permitted to seek charity for others, but only if they secure a permit from a municipality’s chief of police.

37. In other words, the Statute expressly exempts from the criminal offense of soliciting from a motor vehicle those persons who solicit for the purpose of selling newspapers or, with a permit, selling other items or collecting funds for nonprofit organizations; but it expressly criminalizes solicitation of funds for one’s own financial needs.

38. Thus, if an individual holds up a sign next to a roadway and accepts donations from motorists, whether that individual has violated the Statute depends on what the sign says. If the sign says “Newspapers For Sale,” the solicitation is lawful. If a sign says “Save The Whales,” the solicitation’s legality depends on whether the person holding the sign seeks money for a whale-saving organization that has secured a permit from the chief of police. And if the sign says “Homeless – Anything Helps,” the solicitation is strictly illegal.

39. A law that discriminates on the basis of content cannot be justified as a reasonable time, place, or manner restriction. *See, e.g., Reed v. Town of Gilbert*, 576 U.S. ___, 135 S. Ct. 2218, 2226 (2015) (“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests); *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992); *United States v. Grace*, 461 U.S. 171, 177 (1983). In addition, a law that discriminates based on the identity of the speaker and the viewpoints expressed is unlawful. *See R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992) (“The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects”).

40. The Statute’s facial discrimination cannot be justified as being narrowly tailored to serve a compelling governmental interest, because *inter alia* it is “underinclusive.” *Reed*, 135 S.Ct. at 2231. Solicitation from motor vehicles for the purposes of selling newspapers or collecting funds for a nonprofit is no more and no less potentially disruptive to traffic safety than solicitation by those seeking funds for their own support. Yet, the law criminalizes solicitation by those seeking funds for their own support and not the others. In addition, the law criminalizes interference with

traffic only when such interference is combined with certain forms of speech, and does not penalize any other form of interactions that could potentially disrupt traffic.

41. The Massachusetts Civil Rights Act (MCRA), M.G.L. c. 12, § 11I, provides a private cause of action against any person, whether or not acting under color of law, who, by means of “threats, intimidation or coercion,” attempts to interfere with or does interfere with a right secured by the constitution or laws of either the United States or the Commonwealth of Massachusetts.

42. An arrest or the threat of arrest of one engaging in an activity that is protected by state or federal law satisfies the “threats, intimidation or coercion” requirement. *Batchelder v. Allied Stores Corp.*, 393 Mass. 819, 823 (1985) (“A uniformed security officer ordered Batchelder to stop soliciting and distributing his political handbills. Though Batchelder objected, he complied. This was sufficient intimidation or coercion to satisfy the statute.”); *Sarvis v. Boston Safe Deposit & Tr. Co.*, 47 Mass. App. Ct. 86, 93 (1999) (“The arrests and detention of the plaintiffs by police were intrinsically coercive and, thus, sufficient to meet the plaintiffs’ burden on that prong.”); *Reproductive Rights Network v. President of the University of Mass.*, 45 Mass. App. Ct. (1998) (implicit threat of arrest constitutes “threats, intimidation or coercion”). Threatened or actual arrests and/or filings of criminal complaints against those who exercise their constitutional rights to solicit funds from motorists for their own support along the sides of public ways are “threats, intimidation or coercion” under the MCRA.

Causes of Action

Count 1 – Free Speech and Expressive Conduct

43. The Plaintiffs reallege and incorporate all of the preceding allegations.

44. M.G.L. c. 85, § 17A unconstitutionally impinges on the Plaintiffs Correira and Treeful's rights of free speech and expressive conduct guaranteed by Article 16 of the Massachusetts Declaration of Rights, as well as by the First Amendment to the U.S. Constitution, made applicable to the states by the Fourteenth Amendment to the U.S. Constitution.

45. Enforcement actions taken and/or criminal complaints filed pursuant to this unconstitutional statute, as well as efforts actually to arraign or prosecute based on alleged violations of the Statute, violate Article 16 and the First Amendment.

46. The Defendants have infringed, are infringing and, absent relief from this Court, will continue to infringe upon the constitutional rights of Mr. Correira and Mr. Treeful to engage in free speech.

Count 2 – Massachusetts Civil Rights Act

47. The Plaintiffs reallege and incorporate all of the preceding allegations.

48. The Massachusetts Civil Rights Act (“MCRA”) provides a private cause of action to any person whose rights have been interfered with or who are subject to an attempt at infringement through “threats, coercion, or intimidation” by another. The MCRA must be liberally construed.

49. The Individual Defendants have interfered with the rights of Mr. Correira and Mr. Treeful guaranteed under Article 16 of the Massachusetts Declaration of Rights and the First and Fourteenth Amendments of the United States Constitution to engage in free speech and expressive conduct by, among other things, undertaking the following acts:

- a. Filing criminal complaints against or arresting Mr. Correira and Mr. Treeful and others for soliciting funds for their own support;

- b. Ordering or encouraging the filing of criminal complaints against or arrests of Mr. Correira and Mr. Treeful and others for soliciting funds for their own support;
- c. Threatening to file criminal complaints against or arrest Mr. Correira and Mr. Treeful and others for soliciting funds for their own support;
- d. Creating and implementing policies intended to and directed at deterring the exercise of the right to free speech and expression by Mr. Correira and Mr. Treeful and others for soliciting funds for their own support.

50. As a direct and proximate result of the MCRA violations, Mr. Correira and Mr. Treeful have suffered and are suffering actual harm, including, but not limited to deterrence of the exercise of free speech rights, loss of financial support, diminution of financial resources, and/or mental distress, emotional distress, and/or embarrassment.

Prayers for Relief

Wherefore, Plaintiffs respectfully ask this Honorable Court to:

1. Enter a temporary restraining order prohibiting all Defendants from arresting, filing criminal charges against, or prosecuting any charges brought pursuant to the Statute;
2. Issue a short order of notice and, after hearing, enter a preliminary injunction prohibiting all Defendants from arresting, filing criminal charges against, or prosecuting any charges brought pursuant to the Statute;
3. Issue a permanent injunction against all Defendants threatening or making arrests, filing criminal charges, or prosecuting charges brought pursuant to M.G.L. c. 85, § 17A;
4. Declare that the Statute is unconstitutional in that it violates Article 16 of the Massachusetts Declaration of Rights and the First and Fourteenth Amendments of the United States Constitution;

5. Find and declare that by filing criminal complaints, making arrests, threatening to file criminal complaints or make arrests, and/or pursuing prosecutions which deter the Plaintiffs' exercise of rights protected by Article 16 of the Massachusetts Declaration of Rights and the First and Fourteenth Amendments of the United States Constitution, the Individual Defendants have violated the MCRA;

6. Find and declare that all Defendants deprived the Plaintiffs of their right to free speech and expression under Article 16, as well as the First Amendment;

7. Award Plaintiffs' attorneys their reasonable attorneys' fees and costs; and

8. Award such other and further relief as the Court deems proper, just and equitable.

On behalf of Plaintiffs Massachusetts Coalition for the Homeless,
John Correira and Joseph Treeful,

Ruth A. Bourquin

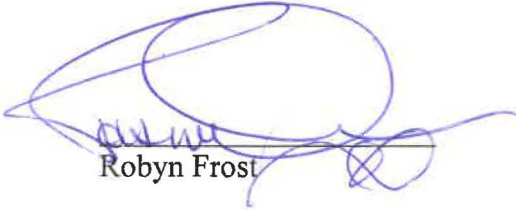
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Verification of Complaint as to Massachusetts Coalition for the Homeless

I, Robyn Frost, Executive Director of the Massachusetts Coalition for the Homeless hereby affirmed under the pains and penalties of perjury that the allegations in the Complaint that relate to the Massachusetts Coalition for the Homeless are true and correct.




Robyn Frost


03 24 2019
Date

Verification of Complaint

I, John Correia, hereby affirm under the pains and penalties of perjury and based on my personal knowledge that the factual allegations in the Complaint that relate to me are true and correct.



John Correia



Date

Verification of Complaint

I, Joseph Treeful, hereby affirm under the pains and penalties of perjury and based on my personal knowledge that the factual allegations in the Complaint that relate to me are true and correct.

Joseph E. Treeful Esq.
Joseph Treeful

3-15-19
Date