

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KENNETH MCLAUGHLIN and JOSHUA
WOOD,

Plaintiffs,

v.

City of LOWELL,

Defendant.

Civil Action No. 1:14-cv-10270-DPW

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Kenneth McLaughlin and Joshua Wood (together, "Plaintiffs") respectfully move for summary judgment against the Defendant City of Lowell (the "City") under Fed. R. Civ. P. 56 as to all Counts of their Complaint insofar as they claim that Lowell Code of Ordinances § 222.15 (the "Ordinance") violates the First Amendment of the United States Constitution. In support of this Motion, Plaintiffs rely on their accompanying Memorandum of Law and Statement of Undisputed Material Facts, as well as their Appendix of Exhibits and the attorney's Declaration of Corrine L. Lusic.

As explained in greater detail in Plaintiffs' accompanying Memorandum of Law, the Ordinance is facially impermissible under the First Amendment as it has been construed by the United States Supreme Court, including most recently in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015). Under *Reed*, the Ordinance is a content-based restriction of speech subject to strict

scrutiny. The City never has argued that the Ordinance satisfies strict scrutiny, nor could it plausibly do so. The Ordinance's ban on all panhandling in downtown Lowell is not justified by a compelling government interest, and neither that downtown panhandling ban, nor the Ordinance's ban on purportedly "aggressive" panhandling, are the least restrictive means of achieving the interests the City has asserted. Among other things, the Ordinance restricts far more speech than laws adopted by other jurisdictions to address concerns related to panhandling; Lowell's public safety concerns can generally be addressed by the application of laws already on the books; and the City concedes that the Ordinance on its face precludes many instances of speech that the City has no interest in banning, much less a compelling interest.

Accordingly, Plaintiffs respectfully request that the Court enter summary judgment that the Ordinance violates the First Amendment and grant Plaintiffs all the relief that they request in their Complaint, including declaratory and injunctive relief, attorney's fees and costs.

August 28, 2015

Respectfully submitted,

/s/ Kevin P. Martin

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LOCAL RULE 7.1(A)(2) CERTIFICATION AND CERTIFICATE OF SERVICE

I, Kevin P. Martin, hereby certify that on August 11, 2015, counsel for Plaintiffs Kenneth McLaughlin and Joshua Wood conferred with opposing counsel for the City of Lowell in an effort to resolve or narrow the issues presented in this motion prior to filing, but were unable to do so.

I further certify that the foregoing document is being filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on August 28, 2015. The foregoing document will be available for viewing and downloading from the ECF system.

/s/ Kevin P. Martin
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