

NORTH CAROLINA

FILE NOS: XXCRXXXXX

GUILFORD COUNTY
Greensboro Division

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

THE STATE OF NORTH CAROLINA)
)
)
Vs.)
)
XXXXXXXXXXXXX,)
Defendant.)

MOTION TO DISMISS

Pursuant to the First Amendment of the
U.S. Constitution and the First Article
of the North Carolina Constitution

The Defendant, through undersigned counsel, respectfully moves this court to dismiss the charges against the Defendant in file numbers 14 CR XXXXXXXX pursuant to the First Amendment to the United States Constitution and Article I, § 14 of the North Carolina Constitution. Under established First Amendment jurisprudence, the Defendant’s conduct is protected speech and Article IV of the Greensboro Code of Ordinances is fatally overbroad.

On April 22, 2014, the Defendant was soliciting contributions for his own gain in a public vehicular area at [ADDRESS] without a permit. Article IV of the Greensboro Code of Ordinances, ranging from §§ 20-65 to 20-73, governs “Persons Begging or Soliciting Alms for Personal Gain.” The Defendant, Raymond Hayes, Jr., is charged with violating § 20-66, which states in part that:

No person shall . . . solicit contributions for their own personal benefit or engage in any other form of commercial speech in the City of Greensboro unless such persons have previously registered therefore and obtained the panhandler privilege license required under section 13-31 and section 13-102.1 of the Greensboro Code of Ordinances.

§ 20-66. Any violation of the Article IV ordinances is a misdemeanor offense. See § 20-73. The criminalization of panhandling violates the First Amendment of the U.S. Constitution.

The U.S. Supreme Court has held that solicitation of donations to a charitable organization is a form of speech protected under the First Amendment. See *Riley v. Nat’l Federation of the Blind of N.C.*, 487 U.S. 781, 789 (1988). Begging “is simply solicitation on behalf of the speaker” and is thus “communicative activity within the protection of the First Amendment.” *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013).

The boundaries of permissible speech restrictions change with respect to “the nature of the forum the speaker seeks to employ.” *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). The government’s authority to regulate speech is most limited when the speech takes place in traditionally public forums. See *id.* In the present case, the ordinance targets beggars and solicitors seeking contributions “from occupants of vehicles and pedestrians on certain streets and sidewalks within the City of Greensboro.” See § 20–65. However, the Supreme Court of the United States has repeatedly characterized public streets and sidewalks as the quintessential public forum. See *Clatterbuck*, 708 F.3d at 555; see also *Frisby*, 487 U.S. at 480 (explaining that “a public street does not lose its status as a traditional public forum simply because it runs through a residential

neighborhood.”). Therefore, the Article IV ordinances unconstitutionally target activity in traditional public forums.

Although government regulation of traditionally public forum is not entirely prohibited, restrictions that are content-based are subject to strict scrutiny. *See Clatterbuck*, 708 F.3d at 555. To determine if an ordinance is content-based, courts look to “whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also Clatterbuck* at 708 F.3d at 555. Stated differently, a speech restriction “is only content-based if it distinguishes content ‘with a censorial intent to value some forms of speech over others to distort public debate, to restrict expression because of its message, its ideas, its subject matter, or to prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.’” *Clatterbuck* at 708 F.3d at 556 (quoting *Brown v. Town of Cary*, 706 F.3d 294 at 301–02).

Article IV of Greensboro Code of Ordinances states that:

The purpose of this article is to require the registration and permitting of street peddlers, beggars and charitable solicitors who attempt to solicit sales or contributions *for their own personal gain* from occupants of vehicles and pedestrians on certain streets and sidewalks within the City of Greensboro, and to thereby regulate and ensure the safety of vehicular and pedestrian traffic flow and to promote roadway safety and sidewalk safety.

§20-65 (emphasis added). The process of acquiring the license is a substantial encumbrance. Applications may be denied or revoked on several grounds. *See* § 20-67. An individual must register with the tax department, which requires two forms of picture identification. *See* § 20-72(b). Individuals must then display the license on their person as they solicit. *See* § 20-72(a). Begging is confined to daylight hours, and is altogether banned at certain locations. *See* §§ 20-68–20-69. The ordinances thus burden speakers with the need to plan the placement of their speech and reduce the size of the audience that speech can reach, both of which are cognizable invasions of First Amendment activities. *See Clatterbuck* 708 F.3d at 554.

But these burdens are only placed on speech containing a certain message or regarding a certain subject matter (i.e., the speaker and his or her personal needs). The content-specific nature of the ordinances is plain when examining the eleemosynary activities that are exempted from the permit requirement:

The provisions of this article *shall not* apply to bona fide members of charitable, religious, civic or fraternal organizations which are exempt from the payment of privilege licenses and who receive no compensation of any kind for their services. Those persons excluded under the provisions of article III, section 2061(b) and (c) are excluded from the provisions of this article.

§20-65 (emphasis added). In short, the law distinguishes between those who solicit contributions for their own personal gain and those who solicit on behalf of charitable, religious, civic, or fraternal organizations; only the former are required to obtain a panhandler privilege license and submit to the panoply of restrictions that accompany it. Because the City has distinguished content based on its message—communicating the needs of others as opposed to communicating one’s personal needs—the ordinances are content-based speech restrictions. Consequently, the ordinances are subject to strict scrutiny.

Under strict scrutiny, Article IV can be upheld “only if it is the least restrictive means available to further a compelling government interest.” *Clatterbuck*, 708 F.3d at 555. The stated

government interest in enacting the ordinance is to “ensure the safety of vehicular and pedestrian traffic flow and to promote roadway safety and sidewalk safety.” § 20-65. Although traffic-related safety may be considered a compelling government interest in certain contexts, *see Davenport v. City of Alexandria, Va.*, 683 F.2d 853, 855 (4th Cir. 1982), the Supreme Court has held that when ordinances are underinclusive with respect to the government’s stated interest, that interest loses its compelling character. *See Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546–47 (1993). As the Court explained:

Where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling. It is established in our strict scrutiny jurisprudence that “a law cannot be regarded as protecting an interest ‘of the highest order’ . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.”

Id. (quoting *Florida Star v. B.J.F.* 491 U.S. 524, 541–542 (Scalia, J., concurring in part and concurring in judgment)). The exemptions granted to charitable, religious, civic, or fraternal organizations in § 20-65 render the ordinance underinclusive. The qualifier “for his or her own personal gain” in §§ 20-68, 20-69, and 20-70, as well as the qualifier “for personal gain” in § 20-72, exacerbate the underinclusiveness. Solicitations by the exempted organizations implicate the same harms—congesting traffic, delaying or harassing passersby, and distracting motorists—the ordinances are ostensibly trying to prevent. Excluding these groups from the law thus “leaves appreciable damage to that supposedly vital interest unprohibited.” Consequently, the City’s interests are not compelling.

Finally, the law is not the least restrictive means available to the City in regulating eleemosynary behavior. Assuming *arguendo* that the solicitation of alms raises concerns of sidewalk and roadway safety, there are straightforward measures of limiting addressing these issues that do not require the criminalization of protected speech. In fact, the City of Greensboro and the State of North Carolina have already done so. *See, e.g.*, § 20-1(b) (forbidding the solicitation of alms in a manner that involves “accosting another” or “forcing one-self upon the company of another”); N.C. Gen. Stat. § 20-174.1 (“No person shall willfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.”). In sum, then, the law does not serve a compelling interest and is not even the least restrictive means to further that interest.

Because the Article IV ordinances cause extensive collateral damage to constitutionally protected activity—namely, prohibiting the solicitation of alms for one’s personal benefit—the ordinances must be invalidated. *See United States v. Stevens*, 559 U.S. 460, 473 (2010) (noting that in “the First Amendment context . . . a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.”) (internal quotation marks omitted). Accordingly, the misdemeanor charges against the Defendant must be dismissed.

This the 31st day of July 2014.

By:

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