UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

JOHN MANCINI, and NORTHEAST OHIO COALITION FOR THE HOMELESS,	)	
Plaintiffs,	)	
v.	)	Civil Action No.:
CITY OF CLEVELAND, FRANK JACKSON, in his official capacity as Mayor of Cleveland, and CALVIN WILLIAMS, in his official capacity as Chief of Police,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Cleveland is aggressively charging poor, and homeless, residents with a crime if it catches them asking for help. The City's cruel and counterproductive response to poverty is based on a pair of ordinances specifically targeting speech that requests a donation of money. Cleveland, OH Municipal Ordinances §§ 471.06(b)-(d); 605.031 (2017). These ordinances were expressly crafted to drive a disliked form of speech (panhandling) and speaker (homeless or very poor individuals) from public view.

The First Amendment protects the speech of all people, and such content-based discrimination in our public space is offensive to the American tradition of free speech.

Cleveland's ordinances are plainly unconstitutional under a long and ever-growing list of precedent from the Supreme Court, the Sixth Circuit, and federal courts from Massachusetts to Hawaii. As discussed below, *every single* federal court to consider the issue in recent years has found anti-panhandling ordinances like Cleveland's to violate the First Amendment. *See, e.g.*, *Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015); *Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015); *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 941 (9th Cir. 2011) (en banc); *Homeless Helping Homeless, Inc. v. City of Tampa, Florida*, No. 8:15-cv-1219-T-23AAS, 2016 WL 4162882 (M.D. Fla. Aug. 5, 2016); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218 (D. Mass. 2015); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177 (D. Mass. 2015); *Browne v. City of Grand Junction, Colorado*, 136 F. Supp. 3d 1276 (D. Colo. 2015); *Clatterbuck v. City of Charlottesville*, 92 F. Supp. 3d 478 (W.D. Va. 2015); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014); *Guy v. County of Hawaii*, No. 14-00400 SOM/KSC, 2014 WL 4702289, at *5 (D. Hawaii, Sept. 19, 2014); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 631 (S.D.W.Va. 2013); *Jefferson v. Rose*, 869 F. Supp. 2d 312, 317 (E.D.N.Y. 2012); *see also Champion v. Kentucky*, ---S.W.3d---, No. 2015-SC-000570-DG, 2017 WL 636420 (Ky. Feb. 16, 2017) (unanimous); *City v. Willis*, 375 P.3d 1056, 1058 (Wash. 2016).[1] Against this backdrop of firmly established law, cities across Ohio (and indeed the nation) have repealed anti-panhandling laws like Cleveland's, rather than face a losing judicial battle. Akron Ord. No. 152-2016 (May 2016); Dayton Ord. No. 31501-16 (July 2016);

[1] Two appellate decisions initially upheld anti-panhandling ordinances, but were vacated in light of new Supreme Court guidance, leading to a final judgment declaring the ordinances unconstitutional. *Norton v. City of Springfield, Ill.*, 768 F.3d 713 (7th Cir. 2014), *rev'd*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015), *on remand*, 144 F. Supp. 3d 218, 238 (D. Mass. 2015).

Fairlawn Ord. No. 2016-052 & 2016-053 (May 2016); Toledo Ord. No. 421-16 (Nov. 2016); *see also Hill v. Akron*, Case No. 5:16-cv-1061 (N.D. Ohio) (motion for preliminary injunction withdrawn after City repealed ordinance).

Over the past decade, the Cleveland Police have issued more than 5,000 citations to people like Mr. Mancini, and thousands more have been harassed or told to leave public fora because they sought to exercise their free speech right to ask for assistance. And the Cleveland Police have even started jailing people on capias warrants after they are unable to pay their panhandling tickets.

Defying its Constitutional obligations and flouting overwhelming precedent, Cleveland aggressively enforces its anti-panhandling laws against individuals such as Plaintiff John Mancini, who has been repeatedly ticketed and harassed by Cleveland law enforcement simply for holding a sign asking for help. As a result of stepped-up harassment and threats of arrest in recent days, Mr. Mancini has become too afraid to exercise his free speech rights in downtown Cleveland, and is not conducting his usual panhandling activity—despite his reliance on panhandling for his livelihood.

Every day, the City's unrelenting enforcement of its unconstitutional panhandling ordinances inflicts harm on speakers like Mr. Mancini, on clients and members of Plaintiff NEOCH, and on many others.

This Court should immediately enter an order restraining the City from enforcing Cleveland's Ordinances §§ 605.031 and 471.06(b)-(d).

FACTUAL BACKGROUND

Plaintiff John Mancini, a disabled veteran living in Cleveland, panhandles because he needs the money. Mr. Mancini prefers to sit quietly out of the way on a sidewalk in downtown

Cleveland and hold a sign that says "wartime vet; can you please help a vet trying to get by; your help appreciated." Declaration of John Mancini. ¶ 2, 4. Sometimes, he will stand alongside a street and hold up his sign, collecting donations from occupants of vehicles that are safely stopped at a traffic light. Mancini Decl. ¶ 3.

If Mr. Mancini's sign had spoken of any other topic—if it commented on politics, sports, religion, or celebrity weddings, or if it even contained a string of profanity and insults—he would be left undisturbed. But because his sign communicates a need for help, he was ticketed on four different days in December 2016 and January 2017; he has been threatened and commanded to vacate public spaces on countless other occasions; and he continues to be harassed. Mancini Decl. ¶ 7-10.

Mr. Mancini is not alone. From 2007 to 2015, the Cleveland Police Department issued 5,817 tickets to individuals who were caught committing the crime of asking for help. Plaintiff Northeast Ohio Coalition for the Homeless (NEOCH) has had many of its members and clients harassed, arrested, ticketed, excluded from public spaces, and/or charged with crimes simply for peacefully speaking about their needs to their neighbors. Declaration of Brian Davis ¶ 12.

Two separate Cleveland ordinances single out and impose special restrictions on speech that asks for assistance. First, Section 605.031 (the "Sidewalk Ordinance") imposes significant restrictions on where and how an individual may "request an immediate donation of money or other thing of value from another person… including by the spoken, written, or printed word, by gesture or by other means of communication." Cleveland, OH Municipal Ordinances § 605.031(a)(5). That section prohibits all speech that solicits a donation within a 20-foot buffer zone around bus stops, people waiting in line, sidewalk cafes, and valet zones, and within 10 feet of the entrance to a building or parking lot. § 605.031(b). It also prohibits what it characterizes as

"aggressive" solicitation, which it defines broadly to include speech such as asking a person twice for a donation. § 605.031(a)(1) ("'Aggressive Manner' means… Continuing to solicit from a person after the person has given a negative response.") The second provision, Section 471.06(b)-(d) (the "Roadside Ordinance") prohibits individuals from soliciting or receiving donations alongside a roadway *unless* the donation is for a "bona fide" charity—an undefined concept which endows police with unlimited discretion to dole out permission to speak based on their view of the worthiness of a cause.

Cleveland's laws cabin the ability of Mr. Mancini, NEOCH's members and clients, and many others in Cleveland from exercising their freedom of speech. These individuals are limited in whom they can reach, where they may speak, and what they may communicate with their intended audience. And, most urgently, they face an imminent and continual threat of being arrested, ticketed, or required to "move along" by the police if they are perceived as not complying with the strictures of the ordinances while they express themselves. In fact, only a few days ago, a police officer threatened to jail Mr. Mancini if he did not immediately stop sitting peacefully on a Euclid Avenue sidewalk holding his cardboard sign with its message requesting help. Mancini Decl. ¶ 10.

STANDARD OF REVIEW

Plaintiffs challenging a content-based restriction on speech are presumptively entitled to preliminary relief. A court considers four factors when deciding whether to grant a preliminary injunction: 1) Whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits; 2) Whether the plaintiff has shown irreparable injury; 3) Whether the issuance of a preliminary injunction would cause substantial harm to others; and 4) Whether the public interest would be served by issuing a preliminary injunction. *Newsom v. Norris*, 888 F.2d

371, 373 (6th Cir. 1989) (citation omitted). In light of our national commitment to First Amendment freedoms, each of these factors tips sharply in favor of a preliminary injunction against a content-based restriction on speech *unless* the government comes forward with sufficient evidence to meet a heavy burden of justifying the law's restrictions.

To begin, Plaintiffs challenging a content-based speech restriction are "deemed likely to prevail"—and therefore entitled to a preliminary injunction—unless the Government comes forward with proof that there is no less restrictive alternative that will fulfill its compelling interests. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004). The First Amendment places the heavy burden of justifying content-based restrictions on speech "entirely upon the Government," which can succeed only if it can prove that the restrictions meet strict scrutiny, "the most demanding test known to constitutional law." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015) (quotation omitted). "When a party seeks a preliminary injunction on the basis of the potential violation of the First Amendment, the likelihood of success on the merits often will be the determinative factor." *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). Likewise, "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 560 (6th Cir. 2014) (citations and quotations omitted).

LEGAL ARGUMENT

I. Plaintiffs are Likely to Prevail on their Claim that the City of Cleveland's Anti-Panhandling Ordinances Violate the First Amendment

"Consistent with the traditionally open character of public streets and sidewalks, [the Supreme Court] ha[s] held that the government's ability to restrict speech in such locations is very limited." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quotation omitted). Both the Supreme Court and the Sixth Circuit have repeatedly held that speech that solicits a donation is

entitled to the highest level of First Amendment protection. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980); *Planet Aid v. City of St. Johns, MI*, 782 F.3d 318, 324 (6th Cir. 2015) (collecting cases).

Laws that target speech based on its content are the most offensive to the First Amendment, and must be closely scrutinized under strict scrutiny, "the most demanding test known to constitutional law." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015) (quotation omitted). As the Supreme Court clarified in 2015, a law is a content-based restriction on speech if *either* of the following are true: (1) the *text* of the law makes distinctions based on speech's "subject matter … function or purpose" *or* (2) the *purpose* behind the law is driven by an objection to the content of a message. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015) (internal citations, quotations, and alterations omitted).

The Supreme Court's precise articulation of the law is clearly fatal to Cleveland's Anti-Panhandling Ordinances: under either of *Reed*'s alternative tests, Cleveland's Ordinances are unconstitutional, content-based restrictions on speech. The laws discriminate against one type of speech – panhandling – both in their clear text, and in the motive behind their enactment, and fall well short of meeting the demands of strict scrutiny. Cleveland's Anti-Panhandling Ordinances must face the same fate as *every single* similar anti-panhandling law considered by any federal court in recent years, as noted above and discussed in greater detail below. It is high time that Cleveland's unconstitutional Anti-Panhandling Ordinances be stricken as well.

A. Based on their Text and Purpose, Cleveland's Anti-Panhandling Laws are Content-Based Restrictions on Speech that Must Satisfy Strict Scrutiny

Any law that draws distinctions based on the "subject matter … function or purpose" of speech is a content-based rule that is presumptively unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015); *see also Police Dept. of City of Chicago v. Mosley*, 408 U.S.

92, 95 (1972) ("[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."). Cleveland's Anti-Panhandling Ordinances are clearly content-based under this test because whether their prohibitions apply to an individual depends on what the speaker is saying: a request for money is singled out and treated differently from any other type of speech. Cleveland's ordinances would permit Mr. Mancini to sit next to a sign containing a string of insults, a commentary on politics, or praise for a local sports team. But when he expresses his chosen message—asking for help—Cleveland's ordinances deem him a criminal.

Under both logic and precedent, the differential treatment of speech based on its "subject matter … function or purpose" plainly makes Cleveland's anti-panhandling laws content-based on their face. *See Reed*, 135 S. Ct. at 2229 (citing an "improper solicitation" regulation as a content-based restriction); *Planet Aid v. City of St. Johns, MI*, 782 F.3d 318, 328 (6th Cir. 2015) (restriction on "charitable solicitation and giving" was content-based); *accord Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015) (concluding anti-panhandling law was content-based). This triggers strict scrutiny, which is fatal to the laws challenged here. *See Reed*, 135 S. Ct. at 2228.

Although their text alone is plainly sufficient to demand strict scrutiny, these laws are content-based for the independent reason that they were adopted to drive one class of speakers from the public sphere because some listeners found the speech undesirable. "The Supreme Court … has repeatedly affirmed the principle that constitutional rights may not be denied simply because of hostility to their assertion or exercise." *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 252 (6th Cir. 2015) (en banc); *see also, e.g., McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) ("[T]he government may not selectively shield the public from some kinds

of speech on the ground that they are more offensive than others." (internal quotations and alterations omitted)); *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386 (1992) ("The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.") Cleveland adopted the Sidewalk Ordinance in response to worries that visitors to downtown did not like being panhandled. Compl. ¶ 21-22. The City Council wrote this rationale into the ordinance's preamble, characterizing panhandlers as threats to "the economic vitality of business and the City as a whole," and to the "enjoyment of public places." Ord. 695-05.

"The First Amendment does not permit a city to cater to the preference of one group, in this case tourists or downtown shoppers, to avoid the expressive acts of others, in this case panhandlers, simply on the basis that the privileged group does not like what is being expressed." *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015); *see also American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014) ("Business owners and residents simply not liking panhandlers in acknowledged public areas does not rise to a significant governmental interest."). The constitutionally impermissible rationale behind the anti-panhandling ordinances provides an additional reason for striking them down. *See McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) ("To be clear, the Act [imposing a buffer zone around Massachusetts' abortion clinics] would not be content neutral if it were concerned with undesirable effects that arise from "the direct impact of speech on its audience" or "[l]isteners' reactions to speech." If, for example, the speech outside the abortion clinics caused offense or made listeners uncomfortable, such offense or discomfort would not give the Commonwealth a content-neutral justification to restrict the speech.").

B. The Sidewalk Ordinance Falls Well Short of Meeting the Demands of Strict Scrutiny.

Content-based laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015). This means that the government must point to a compelling—and non-censorial—governmental objective that cannot be furthered with a more specific law. This is "the most demanding test known to constitutional law." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015) (quotation omitted). "The burden for justifying such restrictions on speech falls entirely upon the government." *Id.* Plaintiffs challenging a content-based restriction are "deemed likely to prevail"—and therefore entitled to a preliminary injunction—unless the Government comes forward with proof that there is no less restrictive alternative that will fulfill its compelling interests. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004).

This presumption of unconstitutionality is exceedingly difficult to overcome. Only rarely can a law survive the strict scrutiny analysis. *See United States v. Alvarez*, 132 S.Ct. 2537, 2544 (2012) ("[C]ontent-based restrictions on speech have been permitted, as a general matter, only when confined to the few 'historic and traditional categories [of expression] long familiar to the bar'" (internal quotations omitted)). Over the past few years, the Sixth Circuit has twice struck down laws that target charitable solicitation for restrictions. *Planet Aid v. City of St. Johns*, 782 F.3d 318, 328 (6th Cir. 2015); *Speet v. Schuette*, 726 F.3d 867, 880 (6th Cir. 2013). In fact, *no* federal court has *ever* found an anti-panhandling ordinance like Cleveland's to survive strict scrutiny. *See, e.g.*, *Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015); *Homeless Helping Homeless, Inc. v. City of Tampa, Florida*, No. 8:15-cv-1219-T-23AAS, 2016 WL 4162882, (M.D. Fla. Aug. 5, 2016); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218 (D. Mass. 2015);

McLaughlin v. City of Lowell, 140 F. Supp. 3d 177 (D. Mass. 2015); *Browne v. City of Grand Junction, Colorado*, 136 F. Supp. 3d 1276 (D. Colo. 2015); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014); *Guy v. County of Hawaii*, No. 14-00400 SOM/KSC, 2014 WL 4702289, at *5 (D. Hawaii, Sept. 19, 2014); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 631 (S.D.W.Va. 2013). Recognizing the futility of argument in the face of precedent so consistent, other cities have not even bothered to defend their laws against a strict scrutiny analysis. *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 413 (7th Cir. 2015); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 797 (9th Cir. 2006) ("As the City concedes, the solicitation ordinance cannot survive strict scrutiny.").

The scope of the Sidewalk Ordinance's restrictions bears little relationship to any compelling, non-censorial government interest. First, the ordinance establishes panhandling-free zones around entrances to buildings, parking lots, sidewalk cafes, valet zones, bus stops, people standing in line, and other locations. Panhandling-free zones like these further no compelling state interest—much less in the least restrictive way possible—and are regularly struck down by courts. *See, e.g.*, *Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015); *Homeless Helping Homeless, Inc. v. City of Tampa, Florida*, No. 8:15-cv-1219-T-23AAS, 2016 WL 4162882, (M.D. Fla. Aug. 5, 2016) (striking down ordinance banning panhandling near a bus stop, sidewalk cafe, or ATM); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218 (D. Mass. 2015) (striking down 20-foot no-panhandling zone around entrance to or parking area of any bank, ATM, mass transportation facility or stop, "public restroom, pay telephone or theatre or place of public assembly, or of any outdoor seating area of any café, restaurant or other business"); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177 (D. Mass. 2015) (striking down 20-foot no-panhandling zone around bank, ATM, mass transportation facility, or outdoor seating area);

Browne v. City of Grand Junction, Colorado, 136 F. Supp. 3d 1276 (D. Colo. 2015) (striking down law prohibiting panhandling within 20 feet of an ATM or bus stop, in a parking lot, and near an outdoor cafe or line of people); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 915 (D. Idaho 2014) (striking down law prohibiting panhandling within 20 feet of an ATM, sidewalk cafe, street vendor, valet zone, or bus stop).

Similarly unconstitutional are the ordinance's provisions that proscribe the manner in which panhandlers may ask for donations. § 605.031(a). For example, the ordinance prohibits solicitors from "blocking the path" of a person or asking a person to reconsider a "no" answer. These provisions are not sufficiently related to the City's purported goal of public safety (or any other compelling interest) to be justified. The City may regulate unprotected speech or conduct, such as "true threats," *Virginia v. Black*, 538 U.S. 343, 359 (2003). But standing in the middle of a sidewalk or asking a person who said "no" to reconsider hardly meets this standard. *See, e.g.*, *Thayer v. City of Worcester*, 144 F. Supp. 3d 218 (D. Mass. Nov. 9, 2015) (striking down provisions against blocking path and following a person after they gave a negative response); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 193 (D. Mass. 2015) ("The bans on following a person and panhandling after a person has given a negative response are not the least restrictive means available"); *Browne v. City of Grand Junction, Colorado*, 136 F. Supp. 3d 1276, 1293 (D. Colo. 2015) ("[T]he Court does not believe[] that a repeated request for money or other thing of value necessarily threatens public safety."). Moreover, even when a government may constitutionally regulate conduct unrelated to speech, *e.g.*, Ohio Rev. Code § 2903.13 (making assault a crime), "[t]he City may not deem criminal activity worse because it is conducted in combination with protected speech." *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 193 (D. Mass. 2015) (striking down similar "aggressive panhandling" provisions). Indeed,

other existing laws' prohibitions against assault and harassment demonstrate that an ordinance criminalizing speech is not the least restrictive means of protecting the public safety. Cleveland cannot reasonably suggest, much less prove, that its content-based regulation of so-called aggressive panhandling satisfies the demands of strict scrutiny. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992) (striking down content-based statute that regulated fighting words, because the government could have outlawed the same conduct in a content-neutral manner).

As every federal court decision in recent history indicates, the City is unlikely to meet its heavy burden to defend the Sidewalk Ordinance, and Plaintiffs are likely to prevail on their challenge.

C. The Roadside Ordinance is also an Unconstitutional Infringement on Free Speech

The Roadside Ordinance contains related provisions that the City uses to regulate roadside panhandling, and they share the same constitutional infirmities as the Sidewalk Ordinance. The Roadside Ordinance states, "No person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle. This division does not apply to police or firefighters soliciting contributions for bona fide charities." Sections (c) and (d) prohibit individuals from receiving contributions from drivers unless, *inter alia*, the donation "is due to police or firefighters soliciting contributions for bona fide charities; or is due to a charitable entity soliciting for bona fide charitable purposes." By targeting solicitation of contributions—and explicitly exempting solicitation in support of "bona fide charities"—this section poses a content-based restriction on the speech of panhandlers. *See, e.g.*, *City v. Willis*, 375 P.3d 1056, 1058(Wash. 2016) (panhandling ban near freeway ramps failed

strict scrutiny and thus was facially unconstitutional).[2] Like the Sidewalk Ordinance, this content-based restriction on speech cannot survive strict scrutiny.

Even if this section were deemed to be content-neutral, the Roadside Ordinance would not satisfy lesser intermediate scrutiny review. Under this more forgiving standard, a law "still must be narrowly tailored to serve a significant governmental interest." *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014) (quotation omitted). "[T]he burden of proving narrow tailoring requires the County to *prove* that it actually *tried* other methods to address the problem." *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015) (emphasis in original).

Although the City has legitimate interests in the free flow of traffic and vehicular safety, it must *prove* that it cannot satisfy these interests with a more narrowly tailored alternative than the broad restriction in the Roadside Ordinance. And the City's ban falls far from meeting this goal: it applies everywhere in the City and at all times of the day and night, regardless of how light traffic is or how safe a solicitation might be. Courts have repeatedly struck down similar bans for want of narrow tailoring. *See, e.g.*, *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 941 (9th Cir. 2011) (en banc) (striking down nearly identical law); *Cutting v. City of Portland, Maine*, 802 F.3d 79, 92–93 (1st Cir. 2015) (holding law prohibiting standing in roadway medians was not narrowly tailored to city's interest in traffic flow and safety because it failed to try more targeted geographic restrictions); *Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015) (finding City failed to prove it had tried less

[2] By giving the City total discretion to determine which types of causes are "bona fide," the permits censorship by allowing the City to substitute its judgment as to the worthiness of speech for that of the listener. This poses a special threat to the First Amendment. "'It is settled by a long line of recent decisions of this Court that an ordinance which ... makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official… is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.'" *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 226 (1990) (citation omitted).

restrictive means than ban on roadside solicitation); *Thayer v. City of Worcester*, 144 F. Supp. 218, 237 (D. Mass. 2015) (striking down law prohibiting individuals from standing "on any traffic island or upon the roadway of any street or highway"); *Guy v. County of Hawaii* No. 14-00400 SOM/KSC, 2014 WL 4702289, at *6 (D. Hawaii, Sept. 19, 2014) (enjoining law that prohibited solicitation near roadway); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 630 (S.D. W.Va. 2013) (enjoining law prohibiting solicitation on roadways or near intersections); *Wilkinson v. Utah*, 860 F. Supp. 2d 1284, 1290 (D. Utah 2012) (striking down ban on soliciting donations near roadways); *see also Champion v. Kentucky*, --- S.W.3d ---, No. 2015-SC-000570-DG, 2017 WL 636420 (Ky. Feb. 16, 2017) ((unanimous) (striking down law prohibiting soliciting at intersections). "The City may have been motivated by a perfectly understandable desire to protect the public from the dangers posed by people lingering in median strips. But the City chose too sweeping a means of doing so, given the First Amendment interest in protecting the public's right to freedom of speech." *Cutting v. City of Portland, Maine*, 802 F.3d 79, 92–93 (1st Cir. 2015).

The mismatch between the Roadside Ordinance's purported goals and actual prohibitions is illustrated by the law's exceptions for fundraising in support of "bona fide" charitable causes. If traffic flow and safety truly compelled the ordinance's broad restrictions, there could be no exception for the cherry-picked causes favored by the City. "This underinclusiveness calls into question what the County claims to have been a content-neutral purpose." *Guy v. County of Hawaii*, No. 14-00400 SOM/KSC, 2014 WL 4702289, at *4 (D. Hawaii, Sept. 19, 2014).

Thus, the Court should also enjoin enforcement of the Roadside Ordinance, (Section 471.06 (b) through (d)).

II. The Other Factors Support Issuance of a TRO and Preliminary Injunction

With the strong likelihood of success on plaintiffs' First Amendment case, preliminary relief is plainly appropriate. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality). "Even threats of arrest or being told to 'move along' by the police violate Plaintiff's rights" and constitute irreparable harm. *Jefferson v. Rose*, 869 F. Supp. 2d 312, 318 (E.D.N.Y. 2012) (enjoining police from arresting or threatening to arrest panhandlers). Enforcement of the Anti-Panhandling Ordinances threatens not only the Constitutional rights of panhandlers, but also jeopardizes their livelihood. Further, imposing a criminal record on panhandlers makes it even harder for homeless and very poor individuals to find stable housing and transition out of poverty—frustrating, rather than forwarding, public interests.

The City has no recognized interest in violating the First Amendment, and "it is always in the public interest to prevent the violation of a party's constitutional rights." *Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 412 (6th Cir. 2014) (quotation omitted). Enforcement of these unconstitutional laws wastes valuable police and court resources—resources better spent on solutions to poverty that actually work—while doing absolutely nothing to alleviate poverty or homelessness. *See, e.g.*, San Francisco Budget and Legislative Analyst's Office, Policy Analysis Report (May 26, 2016) (concluding that in 2015, City of San Francisco spent $20 million enforcing "quality of life" laws against the homeless, and that laws had no effect as homeless population grew during the year), *available at* http://tinyurl.com/hjrr6pu. In light of years of consistent precedent, the Court should enjoin these unconstitutional ordinances. "To do otherwise would be to do less than the First Amendment commands." *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 670 (2004).

CONCLUSION

For these reasons, the Court should grant Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction and enjoin enforcement of Cleveland's Sidewalk Ordinance (605.031) and Roadway Ordinance (Section 471.06(b)-(d)).

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that this 28th day of February, 2017, a copy of the foregoing Memorandum was filed electronically, and that Defendants were served by email, fax, and hand delivery to:

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