

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

_____)	
THERESA M. PETRELLO,)	
)	
Plaintiff,)	
)	
v.)	Civil Case. No. 1:16-cv-008
)	
CITY OF MANCHESTER and)	
RYAN J. BRANDRETH, in his individual)	
capacity,)	
)	
Defendants)	
_____)	

SECOND AMENDED COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)

PRELIMINARY STATEMENT

This is an action brought under 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments to the United States Constitution for damages, declaratory, and injunctive relief against the City of Manchester—which encompasses the Manchester police department—as well as Manchester Police Officer Ryan J. Brandreth in his individual capacity (collectively, “Defendants”). This action arises out of the City of Manchester’s unconstitutional efforts to reduce “panhandling”—the peaceful solicitation of donations by the poor—in public places adjacent to the City’s roadways. In particular, the Manchester police department has developed and implemented an unconstitutional custom, practice, and/or policy in which it detains, harasses, threatens, disperses, and charges peaceful panhandlers for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), *even when the panhandlers are in a public place and do not step in the roadway.* These panhandlers are neither aggressive, obstructing traffic, nor breaking the law. They are

peacefully soliciting in a public place. This practice violates the panhandlers' (i) Fourth Amendment right to be free from unreasonable seizures, and (ii) First Amendment right to peacefully solicit in public places. In short, the department has elected to distort New Hampshire's disorderly conduct statute far beyond its plain terms to detain and prosecute peaceful panhandlers who solicit donations from motorists. In so doing, the department is stretching a criminal statute to criminalize an activity that is not a crime at all, but rather is protected speech. Plaintiff Theresa M. Petrello has felt the brunt of this unconstitutional practice directly.

This action also challenges, facially and as applied to Ms. Petrello's panhandling speech, Defendant City of Manchester's new Anti-Panhandling Ordinance which was enacted on October 6, 2015 and which Manchester raised as a defense in its March 14, 2016 Answer. This Ordinance—which exists in Section 70:32 of Manchester's City Ordinances and is entitled “Passing of Items to or from the Occupant of a Motor Vehicle” (hereinafter, the Ordinance)—bans a person from peacefully receiving a charitable contribution from a person in a motor vehicle, even if the recipient is in a public place and is not in a roadway. The Ordinance, which is designed to suppress constitutionally-protected panhandling speech, is unconstitutional and it should be enjoined.

Accordingly, Ms. Petrello seeks declaratory and injunctive relief to stop the City of Manchester from interfering with the constitutional rights of peaceful panhandlers adjacent to roadways, as well as damages for the violation of her rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

THE PARTIES

1. Plaintiff Theresa Petrello is a 54-year-old grandmother who resides in the City of

Manchester in the State of New Hampshire. Ms. Petrello is a veteran of the United States Navy and the United States Army, and was honorably discharged from both branches.

2. Defendant City of Manchester is a municipal entity created under the laws of the State of New Hampshire. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. At all times relevant to this lawsuit, Defendant City of Manchester was and is a “person” as that term is used by 42 U.S.C. § 1983.

3. Defendant Ryan J. Brandreth is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by the City of Manchester police department. On information and belief, he resides in Manchester, New Hampshire, which is within the District of New Hampshire. Defendant Brandreth is being sued in his individual capacity. At all times relevant to this lawsuit, Defendant Brandreth was and is a “person” as that term is used by 42 U.S.C. § 1983.

JURISDICTION AND VENUE

4. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343 (civil rights jurisdiction). This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201.

5. The Court has personal jurisdiction over Defendants.

6. Venue is proper under 28 U.S.C. § 1391(b)(2), as the events giving rise to Plaintiff’s claims occurred in Manchester which is within the District of New Hampshire.

THE FACTS

I. Manchester’s Policy

7. According to the Manchester police department’s own records, as early as January

2015 the department developed and implemented a custom, practice, and/or policy in which it detains, harasses, threatens, disperses, and charges panhandlers for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), *even when the panhandlers are in a public place and do not step in the roadway.* These panhandlers are neither aggressive, obstructing traffic, nor breaking the law. They are peacefully soliciting in a public place.

8. This official policy is memorialized in writing and was developed by those within the City of Manchester who have final decision-making authority concerning such a policy.

9. On January 27, 2015, Lt. Stephen Reardon from the Legal Division of the Manchester police department sent an email to Manchester’s community policing division (Cpt. James Soucy, Lt. Brian O’Keefe, and Sgt. Jamie Gallant) containing an attachment informing officers of the ability to use RSA 644:2(II)(c) against panhandlers. *See Exhibit A*, at MANC006.

10. On July 2, 2015, community policing Cpt. James Soucy also sent an email to all officers explaining that RSA 644:2(II)(c) can be enforced against panhandlers if the “[p]anhandler *causes traffic to slow* or become impeded when accepting donations—*even if they’re not standing or step into a public way.*” *See id.* at MANC0036 (emphasis added).

11. As a matter of policy, panhandlers who are warned and/or cited for engaging in this constitutionally-protected form of expressive activity are also frequently ordered to cease engaging in solicitation. *See id.* at MANC037 (July 2, 2015 attachment inviting officers to order panhandlers to “move or remain away from a public place”).

II. Plaintiff Theresa Petrello

12. Ms. Petrello served in the Navy for four years, reaching the rank of petty officer third class. While in the Navy, she performed many duties, including practicing journalism. Ms.

Petrello also served in the Army for two years. While in the Army, she served in Germany, including as a cook. She grew up in a military family that had a deep commitment to military service.

13. Ms. Petrello has never been convicted of a crime.

14. Since leaving military service, Ms. Petrello has struggled to get by financially. She has been steadily employed, but mostly in low-wage jobs, including as a manager for a McDonald's Restaurant and at a call center.

15. Ms. Petrello began experiencing health problems—including back and neck pain, arthritis, and bone spurs—that caused her to leave her hourly housekeeper job at the Manchester VA Medical Center (“VA”) in November 2014. Given her disability, she hoped to obtain military disability benefits so that she could make ends meet. However, months after she left the VA and having not yet been approved for disability benefits, she ran out of money to live and pay rent.

16. By the end of May 2015, with no income, she felt that she had no choice but to panhandle. Before she started panhandling, she researched how to panhandle safely and legally, as she did not want to be confronted by the police. As a result of her research, she came to believe that it would be inappropriate for her to step in the roadway to solicit a donation.

17. When Ms. Petrello began panhandling in late May 2015, she would only solicit and receive donations from motorists in public places, like sidewalks or grassy areas. She would carry a sign that simply said “Veteran. Have Proof. Anything Will Help Please,” and she would direct that sign at motorists.

18. Ms. Petrello engaged in this expressive activity peacefully and without blocking pedestrian or vehicular traffic. She would not, as a matter of policy, step in the roadway to

solicit or collect a donation. She would remain on the public sidewalk or grass. She would not approach or touch any vehicles that pass by her unless the driver or passenger of the vehicle gestured or indicated to her that they wish to make a donation.

19. On June 3, 2015, Ms. Petrello was standing in a public place on the grass between the sidewalk and the roadway on the west side of Maple Street, south of Bridge Street. See Exhibit C, at PET005-6. She was peacefully soliciting donations while carrying a sign stating “Veteran. Have Proof. Anything Will Help Please.” She never stepped in the road either to solicit or to collect a donation.

20. A Googlemaps photo of the public place where Ms. Petrello was panhandling is below:



21. Seeing Ms. Petrello soliciting donations, Defendant Manchester police officer Ryan J. Brandreth charged Ms. Petrello with disorderly conduct.

22. Defendant Officer Brandreth never alleged that Ms. Petrello stepped in a roadway.

23. Notwithstanding this fact, Defendant Officer Brandreth claimed that Ms. Petrello was obstructing traffic because she was causing vehicles to stop. *Id.* at PET003, 005-6. As his police report states: “During a green light cycle for vehicles traveling north on Maple St a black

Cadillac came to a complete stop and handed [Ms. Petrello] something. The vehicle then traveled north through the intersection. The vehicle behind it ... had to stop because the Cadillac stopped. The light turned red and the Cherokee was unable to make it through on the green light cycle and would not have had to wait for the next light cycle.” *Id.* at PET005-6.

24. During the interaction, Defendant Officer Brandreth told Ms. Petrello “that she could not stop vehicles.” *Id.* Ms. Petrello then correctly informed Officer Brandreth that “she did not stop anyone.” *Id.*

25. Defendant Officer Brandreth then issued Ms. Petrello a summons to appear in Manchester District Court on July 9, 2015 for one count of disorderly conduct for obstructing vehicular traffic under RSA 644:2(II)(c). *Id.* at PET003, 005-6.

26. After retaining *pro bono* counsel, the Manchester police department nolle prossed this charge on August 31, 2015. *See Exhibit D.*

27. Similarly, on May 15, 2015, Officer Matthew J. Larochelle informed Ms. Petrello that “she could not solicit from motorists”—an order which applied even if she was in a public place, even if she did not step in a roadway, and even if she did not receive a donation from a motorist. *See Exhibit C*, at PET015.

28. Ms. Petrello wishes to peacefully panhandle in public places near roadways in the City of Manchester. However, because of these experiences, she fears that she will be ordered to leave, harassed, detained, threatened with arrest, cited, or arrested under these laws if she solicits near the City’s roadways to seek assistance from others.

29. In a five-day period between December 1 and 6, 2015 on South Willow Street (near the Mall of New Hampshire entrance), Manchester police officers also cited at least three peaceful panhandlers for disorderly conduct on at least four separate occasions who were

committing no crime (one solicitor received two summonses). *See Exhibit B*. None of these individuals are alleged to have acted aggressively or to have stepped in the roadway.

30. These individuals were seeking charity as the holidays approached. Instead of charity, the Manchester police department, without warning, charged them and sent them to court.

31. On information and belief, the City does not threaten to disperse, cite, or arrest (i) similarly-situated members of the public who ask motorists to slow down and pull over to buy lemonade or have their car washed or (ii) campaigning politicians or protesters who engage in speech near roadways directed at motorists.

THE CITY'S POLICY AND PRACTICE IS ILLEGAL AND UNCONSTITUTIONAL

I. The Fourth Amendment

32. The Manchester police department's policy to detain, harass, threaten, disperse, and charge panhandlers for allegedly "obstructing vehicular traffic on public streets" under New Hampshire's disorderly conduct statute, *see* RSA 644:2(II)(c)—even when the panhandlers do not step in the roadway and actually obstruct traffic—is illegal and unconstitutional.

33. A panhandler who never steps in the roadway and remains in a public place is not obstructing vehicular traffic.

34. The panhandler is not breaking the law, and thus there is not reasonable suspicion—let alone probable cause—to stop, detain, disperse, and charge the panhandler under RSA 644:2(II)(c).

35. Because the panhandler is committing no crime, Manchester's policy violates the Fourth Amendment.

36. The Department takes no action against the motorists, evidencing the

Department's policy of targeting panhandlers.

II. The First Amendment

37. By targeting the speaker—rather than the driver who is actually in the roadway—the Department is also violating the First Amendment, which protects peaceful and non-aggressive panhandling speech in public places.

38. It is well-established that solicitation, panhandling, and begging are constitutionally-protected forms of speech.

39. Peaceful speech directed at motorists from public places is also constitutionally protected.

40. A panhandler's peaceful speech from a public place cannot be criminalized because of someone's reaction to it.

41. In addition to having no foundation in the law, the City of Manchester's policy to cite panhandlers is also content-based, as it is premised on the fact that the content of panhandlers' speech is designed to elicit a specific response from motorists (i.e., to make a donation).

42. On information and belief, the City does not threaten to disperse, cite, or arrest, for example, (i) members of the public who ask motorists to slow down and pull over to buy lemonade or have their car washed, or (ii) campaigning politicians or protesters who engage in speech near roadways directed at motorists.

43. As Officer Matthew J. Laroche incorrectly (and unconstitutionally) informed Ms. Petrello on May 15, 2015, "solicit[ation] from motorists" is prohibited regardless of whether an actual exchange takes place.

44. Accordingly, given this content-based policy, it is subject to strict scrutiny.

45. However, the policy fails strict scrutiny because it is not narrowly tailored to a compelling governmental interest. A far more narrowly tailored approach to addressing the City's perceived public safety concerns would be to, rather than criminalize protected speech in a public place, appropriately enforce existing criminal laws according to their plain terms.

THE CITY'S UNCONSTITUTIONAL ANTI-PANHANDLING ORDINANCE

46. Manchester has raised its new Anti-Panhandling Ordinance—which was enacted on October 6, 2015—as a defense in its March 14, 2016 Answer. *See* Ordinance, *Exhibit E*. However, this Ordinance—which exists in Section 70:32 of Manchester's City Ordinances and is entitled "Passing of Items to or from the Occupant of a Motor Vehicle"—is unconstitutional on its face and as applied to Ms. Petrello's panhandling speech.

47. As the Ordinance states: "[n]o person shall knowingly distribute any item to, receive any item from, or exchange any item with the occupant of any motor vehicle when the vehicle is located in the roadway."

48. Thus, this Ordinance bans a person from peacefully receiving a charitable contribution from a person in a motor vehicle, even if the recipient is in a public place and is not in a roadway.

49. This Ordinance is designed to suppress the constitutionally-protected speech of panhandlers, and therefore is content based requiring strict scrutiny.

50. As the Alderwoman sponsoring this Ordinance wrote when proposing its language on March 17, 2015: it was designed to address "an increase of panhandlers, sometimes aggressive, in the City."

51. As this statement makes clear, the Ordinance was adopted by the City because it disagrees with the message conveyed by panhandling and the receipt of contributions by

panhandlers.

52. For further confirmation that this Ordinance targets panhandlers, one need look no further than the fact that it does not prosecute both the motorist—who has an actual duty to obey roadway rules—and the panhandler receiving the monetary contribution. Rather, it punishes only the panhandler who is receiving a contribution in a public place.

53. The Ordinance bans a person from peacefully giving a leaflet—an act which is speech—to a person in a stopped motor vehicle in a roadway, even if the person leafletting is in a public place and is not in a roadway.

54. As the United States Supreme Court has made clear, the exchange of money is constitutionally-protected speech. If the First Amendment applies to the affluent wishing to contribute money for an election, then it must apply to the poor who are simply struggling to get by and wish to accept a monetary donation.

55. Moreover, this Ordinance does not regulate obstruction or vehicular safety—rather, it bans all exchanges that result from communications between a driver and someone standing in a public place. As a result, because the Ordinance regulates these exchanges where the panhandler is in a public place and not in the roadway, it regulates speech.

56. The City does not have a significant, let alone, compelling governmental interest in enacting this Ordinance, especially where the Ordinance overinclusively punishes non-obstructive and constitutionally-protected exchanges of money, and underinclusively punishes panhandlers (and not the motorists who also engage in the exchange).

57. Further, this Ordinance lacks narrow tailoring.

58. More narrow tailored approaches are obvious: greater enforcement of existing traffic laws; only punishing behavior where the panhandler steps in the roadway; placing signs

encouraging motorists to not give money to panhandlers; and only regulating specific intersections at certain times of day where the City can document a genuine public safety problem.

59. However, as the various Committee meeting minutes demonstrate, the City never even considered, let alone attempted, lesser restrictive alternatives.

60. Instead, in sweeping fashion, the City enacted an Ordinance banning a constitutionally-protected form of speech in public places adjacent to every roadway in the City.

61. Ms. Petrello wishes to peacefully panhandle in public places near roadways in the City of Manchester. However, she fears that she will be ordered to leave, harassed, detained, threatened with arrest, cited, or arrested under this Ordinance if she receives donations near the City's roadways from motorists.

62. The Ordinance is unconstitutional and it should be enjoined.

CLAIMS FOR RELIEF

Count I

Violation of the Fourth and Fourteenth Amendments **(Against All Defendants for June 3, 2015 Summons)**

63. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs.

64. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.

65. The Fourth Amendment is applied to the states through the Fourteenth Amendment.

66. Under 42 U.S.C. § 1983, municipal defendants are "persons" liable for unconstitutional customs, practices, and policies, and failure to train their law enforcement

officers.

67. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

68. Defendant City of Manchester has intentionally developed and implemented a custom, practice, and/or policy in which it detains, harasses, threatens, disperses, and charges panhandlers for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), even when the panhandlers are in a public place and do not step in the roadway.

69. These panhandlers are not stepping in the roadway, and they are not obstructing a roadway under RSA 644:2(II)(c). There is no reasonable suspicion or probable cause to believe that they have committed a violation of RSA 644:2(II)(c) or any other law of the State of New Hampshire or City of Manchester.

70. This unlawful custom, practice, and/or policy is evidenced by (i) the internal documents produced by the Manchester police department, (ii) the fact that, in a five-day period between December 1 and 6, 2015, Manchester police officers cited at least three peaceful panhandlers for disorderly conduct on at least four separate occasions who did not step in a roadway and therefore were committing no crime (one solicitor received two summons), and (iii) the actions of Defendant Manchester Police Officer Ryan J. Brandreth on June 3, 2015.

71. Manchester city officials have known or should have known about the existence of this custom, practice, and/or policy.

72. Defendant Manchester police officers Ryan J. Brandreth, acting under color of state law and pursuant to this unlawful custom, practice, and/or policy, violated Ms. Petrello’s clearly established right to be free from unreasonable seizures by detaining her without

reasonable suspicion that she was committing a crime and issuing her a summons without probable cause that she had violated RSA 644:2(II)(c).

73. This unlawful custom, practice, and/or policy caused the violation of Ms. Petrello's Fourth Amendment rights.

74. The City of Manchester acted with deliberate indifference and/or willful blindness to the strong likelihood that unconstitutional conduct will result from the implementation of this custom, practice, and/or policy.

75. The City of Manchester failed to train its police officers about the First Amendment right of individuals to peacefully panhandle in public places adjacent to roadways and how to properly apply RSA 644:2(II)(c), thereby permitting Officer Brandreth to be in a position to violate Ms. Petrello's Fourth Amendment rights by detaining her without any reasonable suspicion and charging her without probable cause that RSA 644:2(II)(c) had been violated.

76. The City of Manchester knew or should have known that such training was inadequate and would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies.

77. The City of Manchester's failure to train its officers directly resulted in the violation of Ms. Petrello's Fourth Amendment rights.

78. In their March 14, 2016 Answer, Defendants have claimed that there was probable cause to charge Ms. Petrello under RSA 265:39(I) on June 3, 2015 because she was "along the road and not on the sidewalk." See Affirmative Defense (b). However, it is undisputed that Ms. Petrello was not actually in the roadway at the time she was cited, and thus she was not "along and upon" the roadway as required under the statute. Rather, Ms. Petrello

was in a public place where she had every right to be. Thus, Ms. Petrello was never in violation of RSA 265:39(I), and to charge her under this statute would have violated her clearly-established Fourth Amendment rights. To the extent there is any ambiguity, RSA 265:39(I) is unconstitutionally vague.

79. As a result of the violation of her Fourth Amendment rights by Defendants, Ms. Petrello suffered and continues to suffer actual and irreparable harm, including interference with her First Amendment rights, the chilling of her freedom of speech, the deprivation of her liberty, fear, humiliation, and embarrassment.

Count II
Violation of the First and Fourteenth Amendments
(Against All Defendants for June 3, 2015 Summons)

80. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs.

81. The First Amendment to the United States Constitution prohibits abridgement of freedom of speech.

82. The First Amendment is applied to the states through the Fourteenth Amendment.

83. The First Amendment protects the right of individuals to engage in expressive activity, carry signs, and peacefully ask people for donations while in public places.

84. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional customs, practices, and policies, and failure to train their law enforcement officers.

85. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

86. Defendant City of Manchester has intentionally developed and implemented a

custom, practice, and/or policy in which it detains, harasses, threatens, disperses, and charges panhandlers for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), even when the panhandlers are in a public place and do not step in the roadway.

87. Manchester city officials have known or should have known about the existence of this custom, practice, and/or policy.

88. Defendant Manchester police officers Ryan J. Brandreth, acting under color of state law and pursuant to this unlawful custom, practice, and/or policy, violated Ms. Petrello’s clearly established First Amendment rights to freely engage in expressive activity in a public place.

89. Setting aside the fact that this policy is not grounded in New Hampshire law, this policy is content based and is not narrowly tailored to a compelling governmental interest.

90. This unlawful custom, practice, and/or policy caused the violation of Ms. Petrello’s First Amendment rights and has chilled her exercise of those rights. Ms. Petrello has a First Amendment right to peacefully panhandle in public places near roadways. Such restrictions on this right are unconstitutionally overbroad.

91. The City of Manchester acted with deliberate indifference and/or willful blindness to the strong likelihood that unconstitutional conduct will result from the implementation of this custom, practice, and/or policy.

92. The City of Manchester knew or should have known of the serious risk that this custom, practice, and/or policy would result in unconstitutional conduct.

93. The City of Manchester failed to train its police officers about the First Amendment right of individuals to peacefully panhandle in public places adjacent to roadways

and how to properly apply RSA 644:2(II)(c), thereby permitting Officer Brandreth to be in a position to violate Ms. Petrello's First Amendment rights.

94. The City of Manchester knew or should have known that such training was inadequate and would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies.

95. The City of Manchester's failure to train its officers directly resulted in the violation of Ms. Petrello's First Amendment rights.

96. In their March 14, 2016 Answer, Defendants have claimed that there was probable cause to charge Ms. Petrello under RSA 265:39(I) on June 3, 2015 because she was "along the road and not on the sidewalk." *See* Affirmative Defense (b). However, even if Defendants' application of RSA 265:39(I) to Ms. Petrello is correct—which it is not—enforcing that statute here would have violated Ms. Petrello's clearly-established First Amendment rights. This is because Defendants' interpretation of RSA 265:39(I) would have effectively banned (and would continue to ban) Ms. Petrello from engaging in any constitutionally-protected speech in public areas adjacent to roadways where there is an accompanying sidewalk. Defendants' interpretation of RSA 265:39(I) would, in sweeping fashion, ban all speech in these public places simply because the speaker is adjacent to a road even though (i) the speaker is not actually in the road and (ii) no vehicle is present.

97. As a result of the violation of her First Amendment rights by Defendants, Ms. Petrello suffered and continues to suffer actual and irreparable harm, including the chilling of her freedom of speech, the deprivation of her liberty, fear, humiliation, and embarrassment.

Count III
Violation of the Fourteenth Amendment's Equal Protection Clause
(Against All Defendants for June 3, 2015 Summons)

98. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs.

99. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits states from denying “to any person ... the equal protection of the laws.”

100. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional customs, practices, and policies, and failure to train their law enforcement officers.

101. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

102. Defendant City of Manchester has intentionally developed and implemented a custom, practice, and/or policy in which it detains, harasses, threatens, disperses, and charges panhandlers who are poor for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), even when the panhandlers are in a public place and do not step in the roadway.

103. Manchester city officials have known or should have known about the existence of this custom, practice, and/or policy.

104. This custom, practice, and/or policy is enforced only against panhandlers who are poor based on an irrational hostility towards this powerless group of citizens.

105. While the City of Manchester has charged people like Ms. Petrello for engaging in peaceful panhandling in public places near roadways, the City does not threaten to disperse, cite, or arrest drivers who actually decide to stop in response to a panhandling solicitation and,

thereby, may be causing an obstruction.

106. The City also does not threaten to disperse, cite, or arrest (i) similarly-situated members of the public who ask motorists to slow down and pull over to buy lemonade or have their car washed or (ii) campaigning politicians or protesters who engage in speech near roadways directed at motorists.

107. Accordingly, the City, through this custom, practice, and/or policy and its selective application, has deprived Plaintiff Theresa Petrello of her right to equal protection of the law in violation of the Fourteenth Amendment of the United State Constitution.

108. The City of Manchester acted with deliberate indifference and/or willful blindness to the strong likelihood that unconstitutional conduct will result from the implementation of this custom, practice, and/or policy.

109. The City of Manchester knew or should have known of the serious risk that this custom, practice, and/or policy would result in unconstitutional conduct.

110. The City of Manchester failed to train its police officers about the First Amendment right of individuals to peacefully panhandle in public places adjacent to roadways and how to properly apply RSA 644:2(II)(c), thereby permitting Officer Brandreth to be in a position to selectively and in a discriminatory fashion violate Ms. Petrello's constitutional rights.

111. The City of Manchester knew or should have known that such training was inadequate and would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies.

112. The City of Manchester's failure to train its officers directly resulted in the violation of Ms. Petrello's Fourteenth Amendment rights.

113. As a result of the violation of her equal protection rights under the Fourteenth

Amendment by Defendants, Ms. Petrello suffered and continues to suffer actual and irreparable harm, including interference with her First Amendment rights, the chilling of her freedom of speech, the deprivation of her liberty, fear, humiliation, and embarrassment.

Count IV
Violation of the First and Fourteenth Amendments
(Against Defendant City of Manchester Regarding Section 70:32 of Manchester City Ordinances)

114. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs.

115. The First Amendment to the United States Constitution prohibits abridgement of freedom of speech.

116. The First Amendment is applied to the states through the Fourteenth Amendment.

117. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

118. As described above, Section 70:32 of Manchester’s City Ordinances—which is entitled “Passing of Items to or from the Occupant of a Motor Vehicle”—on its face and as applied to the Plaintiff’s speech, unconstitutionally infringes or imminently threatens to infringe Plaintiff’s rights under the First and Fourteenth Amendments, including her right to freedom of speech, expression, and association.

119. The Ordinance bans a person from, in part, receiving a charitable contribution from a person in a motor vehicle, even if the recipient is in a public place and is not in a

roadway.

120. The Ordinance regulates speech because the First Amendment protects the right of individuals to contribute money, including in public places. The passing of items to and from the occupant of a motor vehicle is expressive.

121. The Ordinance was targeted at speech engaged in by panhandlers. Put another way, the Ordinance was adopted by the City because it disagrees with the message conveyed by panhandling and the receipt of contributions by panhandlers. Thus, the Ordinance is content based requiring strict scrutiny review.

122. The Ordinance does not serve a significant or compelling governmental interest.

123. The Ordinance, on its face and as applied to Plaintiff's speech, is not narrowly tailored towards the advancement of any government interest, let alone a significant or compelling one.

124. The Ordinance is not closely drawn to avoid unnecessary abridgment of associational freedoms.

125. The Ordinance does not leave open ample alternative avenues of communication.

126. The Ordinance, on its face and as applied to Plaintiff's speech, is substantially overbroad in that it restricts a large amount of protected speech of Plaintiff and others in the City.

127. Accordingly, the Ordinance, on its face and as applied to the Plaintiff's speech, violates the First and Fourteenth Amendments.

128. As a result of the violation of her First Amendment rights by Defendant, Ms. Petrello suffered and continues to suffer actual and irreparable harm, including her right to freedom of speech, expression, and association.

Count V
Violation of the Fourteenth Amendment's Equal Protection Clause
(Against Defendant City of Manchester Regarding Section 70:32 of Manchester City Ordinances)

129. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs.

130. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits states from denying “to any person ... the equal protection of the laws.”

131. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

132. As described above, Section 70:32 of Manchester’s City Ordinances—which is entitled “Passing of Items to or from the Occupant of a Motor Vehicle”—bans a person from, in part, receiving a charitable contribution from a person in a motor vehicle, even if the recipient is in a public place and is not in a roadway.

133. This Ordinance, on its face and by intent, discriminates against panhandlers. As the Alderwoman sponsoring this Ordinance wrote when proposing its language on March 17, 2015: it was designed to address “an increase of panhandlers, sometimes aggressive, in the City.”

134. Further, the Ordinance does not prosecute *both* the motorist and the panhandler receiving the monetary contribution. Rather, it punishes *only* the panhandler who is receiving a contribution.

135. Thus, under the Ordinance, panhandlers like Plaintiff Ms. Petrello can be cited,

while motorists cannot.

136. Accordingly, the Ordinance has deprived Plaintiff Theresa Petrello of her right to equal protection of the law in violation of the Fourteenth Amendment of the United State Constitution.

137. As a result of the violation of her Fourteenth Amendment rights by Defendant, Ms. Petrello suffered and continues to suffer actual and irreparable harm, including her right to freedom of speech, expression, and association.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Theresa M. Petrello respectfully requests that this Court:

a) Declare that the June 3, 2015 actions taken by Defendants in detaining and charging Plaintiff Theresa Petrello for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), even though she was in a public place and did not step in the roadway, violated Plaintiff’s rights under the First, Fourth, and Fourteenth Amendments;

b) Declare that Defendant City of Manchester’s custom, practice, and/or policy of stopping, citing, and dispersing panhandlers for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), when the panhandlers are in a public place and do not step in the roadway violates the First, Fourth, and Fourteenth Amendments;

c) Preliminarily and permanently enjoin Defendants from detaining, charging, and dispersing Plaintiff Theresa Petrello for “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), when she is panhandling in a public place and not stepping in a roadway;

d) Preliminarily and permanently enjoin Defendants from stopping, citing, and dispersing panhandlers for allegedly “obstructing vehicular traffic on public streets” under New Hampshire’s disorderly conduct statute, *see* RSA 644:2(II)(c), when the panhandlers are in a public place and do not step in the roadway;

e) Award Plaintiff compensatory damages for the violation of her constitutional rights;

f) Declare that Section 70:32 of Manchester’s Ordinances titled “Passing of Items to or from the Occupant of a Motor Vehicle” violates the First and Fourteenth Amendments;

g) Preliminarily and permanently enjoin Defendant City of Manchester, as well as its officers, agents, employees, attorneys, and all persons who are in active concert or participation with it, from enforcing Section 70:32 of Manchester's Ordinances titled "Passing of Items to or from the Occupant of a Motor Vehicle";

h) To prevent chilling of speech, order Defendant City of Manchester, including its agents, employees, and attorneys, to repeal and remove Section 70:32 of Manchester's Ordinances titled "Passing of Items to or from the Occupant of a Motor Vehicle" from the City Ordinances;

i) Award Plaintiff costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

j) Grant or award other such relief as this Court deems just and proper.

Respectfully submitted,

THERESA M. PETRELLO,

/s/ Gilles R. Bissonnette

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Dated: April 12, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded this date by ECF to:

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