

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

JEFFERY PENDLETON,)
)
 Plaintiff,)
)
 v.)
)
 TOWN OF HUDSON, DEREK S. LLOYD,)
 in his individual capacity, and ADAM M.)
 LISCHINSKY, in his individual capacity,)
)
 Defendants)

Civil Case. No. 14-cv-365

COMPLAINT AND JURY DEMAND
(INJUNCTIVE RELIEF REQUESTED)

Plaintiff Jeffery Pendleton, by and through his attorneys, hereby alleges as follows:

INTRODUCTION

1. 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 and declaratory and injunctive relief against the Town of Hudson—which encompasses the Hudson police department—as well as Hudson Patrol Officers Derek S. Lloyd and Adam M. Lischinsky in their individual capacities (collectively, “Defendants”). This action arises out of the Town of Hudson’s unconstitutional efforts to reduce “panhandling”—the peaceful solicitation of donations by the poor and homeless in public places—within the Town.

2. Mr. Pendleton regularly solicits donations and engages in other protected speech in the Nashua/Hudson area. He has specifically attempted to exercise his free speech rights by peacefully holding a sign asking for donations in Hudson—a town of approximately 23,000 residents directly east of the City of Nashua and its approximately 87,000 residents. Mr.

Pendleton has a constitutional right to peacefully panhandle in public places without fear of arrest, prosecution, retaliation, harassment, and interference by the police.

3. However, the Hudson police department has allowed an unconstitutional custom, practice, and/or policy to develop in which it detains, harasses, threatens, trespasses, disperses, and charges panhandlers like Mr. Pendleton in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution. This is evidenced by the actions of at least twelve (12) Hudson police officers on at least eighteen (18) separate incidents from March 2011 to March 2014 (thirteen (13) of which took place from September 2013 onward).

4. The Hudson police department engages in this disturbing practice in two ways—each of which Mr. Pendleton has experienced firsthand. First, Hudson police officers inform peaceful panhandlers that panhandling is illegal in all of Hudson, including on sidewalks and in other public places. However, there is no state or municipal law that makes panhandling illegal. The message from the Town is loud and clear: peaceful panhandling by the poor and homeless is unwelcome in Hudson, and all panhandlers should go back over the bridge spanning the Merrimack River to the City of Nashua. Second, the Hudson police department routinely threatens people who are peacefully panhandling in public places with prosecution under RSA 320:2 and Chapter 232 of the Hudson Town Code addressing “Hawkers, Peddlers, Vendors, and Solicitors,” which the department misrepresents as requiring a permit to panhandle. The department has even gone so far as to charge peaceful panhandlers like Mr. Pendleton under RSA 320:2 for “selling on state property without a license.” Despite the assertions of the Hudson police department to the poor and homeless, neither RSA 320:2 nor Chapter 232 of the Hudson Town Code ban peaceful panhandling on public property without a permit. These laws, on their face, govern only (i) hawkers, peddlers and vendors who sell goods, wares, and

merchandise and (ii) “door-to-door” solicitors. Moreover, even if these laws applied to peaceful panhandling, they would amount to prior restraints on speech that violate the First Amendment.

5. Unfortunately, the Hudson police department’s unconstitutional custom, practice, and/or policy of suppressing peaceful panhandling targets and criminalizes the least fortunate who live in the Nashua/Hudson area—namely, the poor and homeless like Mr. Pendleton who are just trying to “get by.” People like Mr. Pendleton—who depend on assistance from strangers for basic necessities like food and shelter—now risk arrest and prosecution if they stand peacefully and quietly on a sidewalk with a sign that says, “Homeless. Anything Helps. God Bless.”

6. Indeed, while the Hudson police department has charged Mr. Pendleton for engaging in peaceful solicitation near the Town center, the department has decided to allow the Hudson fire department to engage in the same form of solicitation in public places without any repercussions. Mr. Pendleton has also been told by the Hudson police department that he is banned from all medians—without any opportunity to challenge this verbal no-trespass order—despite the fact that the department has allowed others, including local politicians, to use medians for expressive activity.

7. This lawsuit can best be summarized by the words of Mr. Pendleton himself, who was interviewed by the *Nashua Telegraph* in a video published online on December 3, 2013:

In Nashua, [panhandling is] okay. The police don’t mess with us [when we panhandle because] we’re not harming people. We’re not doing anything bad We’re just trying to get by. And when we go to Hudson, the Hudson police just ... don’t care if you want to get by or live or anything. They just don’t want you there doing it. And it’s kind of not okay Why is it when people who are doing nothing but trying [to] get by and survive and all that, why would you mess with them by doing something [when] they ... just [want to] live their life and they are not harming anybody and all that? [I]t doesn’t make any sense

whatsoever.¹

See <https://www.youtube.com/watch?v=OstSIUianqw>; see also New Hampshire Civil Liberties Union, “It Should Not Be A Crime To Be Poor And Ask For Money,” Dec. 6, 2013, <http://nhclu.org/it-should-not-be-a-crime-to-be-poor-and-ask-for-money/>. The practices of the Hudson police department must end immediately.

8. For these reasons, Mr. Pendleton seeks declaratory and injunctive relief to stop the Town of Hudson from interfering with the free speech rights of peaceful panhandlers, as well as damages for the violation of his rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

THE PARTIES

9. Plaintiff Jeffery Pendleton is homeless and a resident of the Nashua area in the State of New Hampshire. He is twenty-four (24) years old and has been poor for much of his life. He and his five (5) siblings were raised by a single mother. He is a graduate of Palestine-Wheatley High School in Palestine, Arkansas, and he spent several years at East Arkansas Community College in Forrest City, Arkansas. He moved to New Hampshire from Arkansas with his then-wife in 2009.

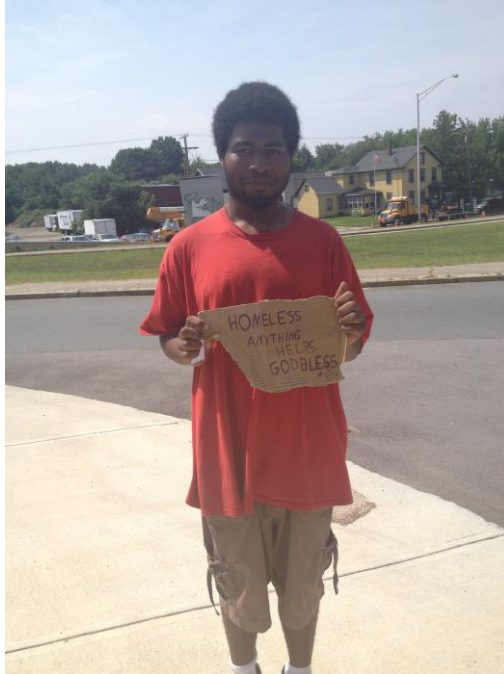
10. Since his arrival in the Nashua area in 2009, he has steadily worked low-wage jobs, including at McDonald’s restaurants and National Tire & Battery. At the time he and his ex-wife divorced in 2013, he lost his job and his life steadily went downhill. He has been homeless since 2013, and he sleeps outside in the woods. He survived the brutal 2013/2014 winter while sleeping outdoors in a tent with blankets. Mr. Pendleton is not on government

¹ As another panhandler explained to the *Nashua Telegraph* in the same video (between 0:29 and 0:46): “I come out here [panhandling in Nashua] because the Hudson side doesn’t like us over there. They kick us out. They actually treat the homeless population really bad over in Hudson. [They] give people citations and make them go to court. I’m homeless, I can’t pay if I get a fine, you know. And it’s hard enough to find something to eat and scrape a couple of dollars together.”

assistance, and he is working on getting back on his feet again.

11. Mr. Pendleton regularly stands in public places with a sign that contains a message asking passersby for help or money. He always engages in this expressive activity peacefully and without blocking pedestrian or vehicular traffic. He does not approach or touch any vehicles that pass by him unless the driver or passenger of the vehicle gestures or indicates to him that they wish to make a donation. Mr. Pendleton only steps into a roadway when cars are stopped at a traffic light, and only for the purpose of receiving a proffered donation. Mr. Pendleton relies on the donations that he receives to purchase basic necessities such as food and shelter.

12. On November 14, 2013, while peacefully panhandling in Hudson, Mr. Pendleton was issued a “hand summons arrest” citation for “selling on state property without a license,” purportedly in violation of RSA 320:2, the so-called “hawkers and peddlers” state statute. However, peacefully panhandling on public state property is not unlawful under RSA 320:2, and Mr. Pendleton is neither a “hawker” nor a “peddler” under the law. Mr. Pendleton wishes to peacefully panhandle in Hudson, but he is afraid to do so out of fear that he will be arrested and prosecuted. Below is a picture of Mr. Pendleton peacefully standing on a sidewalk in Nashua near Veterans Bridge that leads to Hudson:



13. Defendant Town of Hudson 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 Town of Hudson was and is a “person” as that term is used by 42 U.S.C. § 1983.

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

15. Defendant Adam M. Lischinsky is, or was at all times relevant to this lawsuit, acting under color of state law as a patrol officer employed by the Town of Hudson police department. On information and belief, he resides in Beverly, Massachusetts. Defendant Lischinsky is being sued in his individual capacity. At all times relevant to this lawsuit,

Defendant Lischinsky was and is a “person” as that term is used by 42 U.S.C. § 1983.

JURISDICTION AND VENUE

16. 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.

17. The Court has personal jurisdiction over Defendants.

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

FACTS

19. It is well-established that solicitation, panhandling, and begging are constitutionally-protected forms of speech. In *Village of Schaumburg v. Citizens for a Better Environment*, the United States Supreme Court struck down an ordinance that prohibited solicitation by certain organizations, holding that “charitable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.” 444 U.S. 620, 632 (1980). As the Court explained, “solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues,” and “without solicitation the flow of such information and advocacy would likely cease.” *Id.* at 620-21.

20. Likewise, begging and panhandling are expressive activities that are protected by the First Amendment. As the Second Circuit Court of Appeals has observed:

Begging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation. Even without particularized speech, however,

the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance.

Loper v. New York City Police Dep't, 999 F.2d 699, 704 (2d Cir. 1993) (restriction on “begging” was impermissibly content-based); *see also Benefit v. City of Cambridge*, 679 N.E.2d 184, 188 (Mass. 1997) (concluding that “there is no distinction of constitutional dimension between soliciting funds for oneself and for charities and therefore that peaceful begging constitutes communicative activity protected by the First Amendment”).

21. Accordingly, numerous courts have held that restrictions on begging or panhandling are unconstitutional. In *Benefit*, for example, the Massachusetts Supreme Judicial Court struck down a Massachusetts statute which made it a crime to beg without a license, finding that there was no compelling state interest justifying such a broad restriction on the right to freedom of speech:

The statute intrudes not only on the right of free communication, but it also implicates and suppresses an even broader right—the right to engage fellow human beings with the hope of receiving aid and compassion If such a basic transaction as peacefully requesting or giving casual help to the needy may be forbidden in all such places, then we may belong to the government that regulates us and not the other way around.

Benefit, 679 N.E.2d at 190 (emphasis added). Indeed, the list of decisions striking down restrictions on begging and panhandling in public places, like sidewalks, is extensive. *See, e.g., Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 556 (4th Cir. 2013) (plaintiff’s complaint challenging no-solicitation zone survives motion to dismiss); *Ayres v. City of Chicago*, 125 F.3d 1010, 1015-16 (7th Cir. 1997) (granting injunction against ordinance forbidding the peddling of any merchandise, except newspapers, on either public property or certain private property in districts designated by the city council); *Speet v. Schuette*, 889 F. Supp. 2d 969, 978 (W.D. Mich. 2012) (holding unconstitutional Michigan statute prohibiting begging), *aff’d*, 726 F.3d 867 (6th Cir. 2013); *Wilkinson v. State*, 860 F. Supp. 2d 1284, 1288-90 (D. Utah 2012) (striking down

statute stating that, in multiple circumstances, a person “may not sit, stand, or loiter on or near a roadway for the purpose of soliciting from the occupant of a vehicle”); *see also McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (“It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks.”); *Doyle v. Comm’r, N.H. Dep’t. of Resources & Economic Dev.*, 163 N.H. 215, 223 (2012) (“Traditional public forums are fundamental to the continuing vitality of our democracy, for time out of mind, [they] have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. As such, government entities are strictly limited in their ability to regulate private speech in [traditional public forums].”) (internal quotations and citations omitted).

22. According to the Hudson police department’s own documents, the department has a custom, practice, and/or policy of unconstitutionally restricting peaceful panhandling in public places. This is evidenced by the actions of at least twelve (12) police officers on at least eighteen (18) separate incidents from March 2011 to March 2014. *See Exhibit A* (Police Narratives and Call Logs in 18 Incidents). Thirteen (13) of these eighteen (18) incidents took place from September 2013 onward.

23. The Defendant Town of Hudson has been aware of the practices used by its police department. For example, Hudson Selectman Ben Nadeau complained to the Hudson police department about peaceful panhandlers on no fewer than four occasions between September and November 2013. *See id.*, Pages 12-14, 20-22, 32, 33-37 (Incident Nos. 7, 10, 15, and 16). In

response to each of these complaints, the police immediately suppressed the speech of these panhandlers. *Id.* During meetings on November 26, 2013, December 3, 2013, and December 10, 2013, the Town Board of Selectmen also discussed panhandling, and several Board members expressed concerns with this form of speech and stated that action was needed. During the November 26, 2013 Board meeting, Selectman Nadeau called panhandling a “scheme” that is becoming “more and more of a problem here at the [Town] common,” and he expressed frustration that “people are feeding the problem by giving these people [panhandlers] money.” At the same meeting, Selectman Roger E. Coutu, referring to Nashua, expressed his belief that many panhandlers had relatively new looking cars, thereby suggesting that many panhandlers were not actually poor and homeless. During the December 10, 2013 meeting, Selectman Coutu added that “the image [panhandling] projects coming into the community is not a good one.”

24. The Hudson police department’s custom, practice, and/or policy of suppressing peaceful panhandling in public places is principally accomplished in two ways, which are explained in more detail below.

I. The Hudson Police Department Detains Peaceful Panhandlers and Tells Them That Panhandling is Illegal and Forces Them to Leave.

25. First, the Hudson police department routinely detains peaceful panhandlers and tells them that panhandling is illegal in all of Hudson, including in places open to the public. However, there is no state law or town ordinance that makes panhandling illegal.

26. For example, on October 19, 2013, Defendant Hudson Patrol Officer Derek S. Lloyd approached and detained Mr. Pendleton while Mr. Pendleton was sitting down with a companion on a sidewalk near the former Lucky Market on 16 Chase Street. They were not panhandling at the time. *See Exhibit B* (Police Narrative in Oct. 19, 2013 Pendleton/Lloyd Incident); *Exhibit A*, Pages 15-17 (Incident No. 8). Officer Lloyd was responding to a report of

“panhandlers.” *Id.* Officer Lloyd told Mr. Pendleton and his companion to “stay here” while Officer Lloyd apparently ran their names through his system. Based on Officer Lloyd’s language and tone of voice, Mr. Pendleton felt that he was not free to leave. As explained in Officer Lloyd’s narrative describing the incident, he then “explained [to Mr. Pendleton and his companion] that pan handling [sic] was not legal and they would need to leave the area. They complied and went back over the bridge to Nashua.” *Id.*

27. Similarly, on October 24, 2013, Officer Lloyd responded to the Veterans Bridge area following a report that there were panhandlers on a median near the Town Common. He approached three panhandlers who were holding signs asking for money. *See Exhibit A*, Pages 23-24 (Incident No. 11). According to Officer Lloyd’s narrative describing the incident, he “explained the laws to solicit in Hudson, NH as well as the State of New Hampshire.” *Id.* Officer Lloyd then advised the panhandlers that they were “all [no-]trespassed from the medians of Hudson and [that] it was a lawful order.” *Id.* The three people then left the area. *Id.*

28. According to Hudson police department documents, other examples include the following:

- a. October 19, 2013: Patrol Officer Charles J. Katsikides approached two individuals who were panhandling. According to Officer Katsikides’ narrative describing the incident, the panhandlers told Officer Katsikides that they were homeless and were trying to obtain some money to “get them through the night.” Officer Katsikides then told the individuals that “they could not [panhandle] in Hudson as a result of a town ordinance.” According to the narrative, “[a] warning and advice [were] given to both subjects.” *See id.*, Pages 18-19 (Incident No. 9).
- b. October 24, 2013: Patrol Officer Derek S. Lloyd, responding to a complaint of a “panhandler” from Hudson Selectman Ben Nadeau, approached the area of Veterans Bridge where he confronted a male panhandler. According to Officer Lloyd’s narrative describing the incident, the panhandler explained that “he was not trying to bother anyone or stop traffic,” and that “he does not have any money or any place to stay.” Officer Lloyd informed the man that “per town ordinance he cannot ‘pan handle’ and would have to stop.” Officer Lloyd then told the man that “he was verbally [no-]trespassed from the town median near the Veterans

Bridge” and would have “to leave the area.” *See id.*, Pages 20-22 (Incident No. 10).

- c. October 27, 2013: Officer William J. Kew approached a man panhandling on Ferry Street, near Chase Street in the center of town. According to his narrative describing the incident, Officer Kew told the man “of the town ordinance prohibiting [him] from pan handling [sic] and advised him to leave.” The man then walked back to Nashua. *See id.*, Pages 25-26 (Incident No. 12).
- d. November 13, 2013: Master Patrol Officer Larisa J. Johnson responded to a complaint by a “cell caller” that some people were panhandling near Veterans Bridge, and the caller “was not happy about it.” Officer Johnson apparently confronted the panhandlers and then reported that they “were enroute [sic] back to Nashua.” *See id.*, Page 27 (Incident No. 13).
- e. November 20, 2013: Officer William J. Kew was patrolling the Veterans Bridge area when he saw a woman panhandling. According to Officer Kew’s narrative describing the incident, he told the woman that panhandling “wasn’t permitted in Hudson.” *See id.*, Pages 38-39 (Incident No. 17).
- f. November 30, 2013: Officer Charles J. Katsikides was patrolling Ferry Street heading towards Veterans Bridge when he observed a man panhandling. According to Officer Katsikides’ narrative describing the incident, the man told Officer Katsikides that “he had just lost his job and was trying to solicit some food and work money.” After being confronted by Officer Katsikides, “the man advised [the Officer that] he would head over to Nashua.” Officer Katsikides provided “advice” to the man prior to his departure. *See id.*, Pages 40-41 (Incident No. 18).

II. The Hudson Police Department Systematically Detains and Threatens Peaceful Panhandlers with Prosecution for Failure to Obtain a Permit Under RSA 320:2 and/or Chapter 232 of Hudson’s Town Code.

29. Second, the Hudson police department regularly detains and threatens peaceful panhandlers for what it claims is a failure to obtain a permit to panhandle under RSA 320:2 and/or Chapter 232 of Hudson’s Town Code addressing “Hawkers, Peddlers, Vendors, and Solicitors.” However, neither law applies to peaceful panhandling on public property. *See Exhibit C* (RSA 320:2); *Exhibit D* (Hudson Town Code Chapter 232, “Hawkers, Peddlers, Vendors, and Solicitors,” and relevant code history of Article II).

30. RSA 320:2 and Article I of Chapter 232 of Hudson’s Town Code, by their express

terms, apply only to “hawkers” or “peddlers” who are not soliciting donations as a form of charity, but rather are “selling or bartering or carrying for sale or barter or exposing therefor any goods, wares or merchandise.” Hudson Town Code § 232-2; *see also* RSA 320:2 (“No hawker or peddler shall sell or barter or carry for sale or barter, or expose therefor, any goods, wares or merchandise, unless he holds a license to do so as herein provided.”).

31. Article II of Chapter 232 of Hudson’s Town Code also does not apply to peaceful panhandlers; rather, it applies to those defined as “solicitors”—namely, those going “door to door” who are acting as vendors selling goods or seeking money to send to charitable organizations. *See* Hudson Town Code § 232-11 (defining a “solicitor” as, in part, one who travels “either by foot, automobile, truck or some other type of conveyance, who engages in the practice of going door to door, house to house or along any streets within the Town of Hudson ...”); *id.* § 232-12(A) (“It shall be unlawful for any solicitor to engage in solicitation activities in the Town of Hudson without first obtaining a license from the Town Police Department.”); *id.* § 232-13(B) (noting that “solicitors” must disclose in their license application “*the nature, character and quality of the goods or merchandise to be sold* and the purpose of the solicitation”) (emphasis added).

32. As misapplied by the Hudson police department, Article II of Chapter 232 criminalizes the act of peacefully panhandling in a public forum except in one narrow circumstance: when the individuals seeking to solicit have (i) registered with the Town or police department, (ii) disclosed their identities and a wide array of personal information (including social security number and proof of a permanent residence), (iii) undergone intrusive criminal background checks and fingerprinting at the expense of the solicitor using the guidelines under RSA 31:102-b (a statute which, itself, applies only to “persons who go from door to door, place

to place within a town, or town to town, who sell, offer to sell, or take orders for merchandise or offer to perform personal services for household repairs or improvements”), (iv) paid a license fee of \$10 pursuant to Hudson Town Code § 205-8(G), and (v) regularly renewed the license, which expires after ninety (90) days. Even if this language applied to peaceful panhandling—which it does not—such prior restraints on speech are prohibited under the First Amendment.

33. For example, on November 14, 2013, Defendant Hudson Patrol Officer Adam M. Lischinsky stopped and detained Mr. Pendleton while he was peacefully panhandling using a sign on the Ferry Street median in Hudson. *See Exhibit B* (Police Narrative in Nov. 14, 2013 Pendleton/Lischinsky Incident, and Complaint); *Exhibit A*, Pages 28-31 (Incident No. 14). Mr. Pendleton’s sign read “Homeless and Struggling. Anything Helps. God Bless.” Officer Lischinsky asked Mr. Pendleton for identification, which Mr. Pendleton provided. *Id.* Officer Lischinsky then went to his car apparently to run Mr. Pendleton’s name through his system. Once again, based on Officer Lischinsky’s language, Mr. Pendleton felt that he was not free to leave. According to Officer Lischinsky’s narrative describing the incident, because Mr. Pendleton had been “clearly told” on October 19, 2013 that “he could not panhandle in the Town of Hudson without a solicitors permit” before being sent “on his way,” Officer Lischinsky issued a “hand summons arrest” citation, *see* RSA 594:14, to Mr. Pendleton for “selling on state property without a license” under RSA 320:2. *Id.* Evidencing the custom, practice, and/or policy of the Hudson police department, Officer Lischinsky even asked Mr. Pendleton prior to issuing the summons “if he has ever been spoken to by an officer in Hudson about panhandling [sic].” *Id.* Mr. Pendleton questioned the summons when he received it, asking Officer Lischinsky how he could be “selling on state property” under the law when he was not selling anything, but rather seeking donations. Officer Lischinsky said it was the “same.”

34. During this confrontation, Officer Lischinsky also issued a verbal no-trespass order banning Mr. Pendleton from all medians in Hudson indefinitely. Mr. Pendleton was never given a written explanation of the reasons for the order, nor did Officer Lischinsky tell Mr. Pendleton that he had an opportunity to challenge the order.

35. Mr. Pendleton was compelled to go to court on December 5, 2013 to be arraigned on this frivolous charge for allegedly violating RSA 320:2. On January 3, 2014, Mr. Pendleton was compelled to go to court again, and the charge was placed on file without a finding with the understanding that he would not be prosecuted if he was on “good behavior” for six months. *See id.* (Pendleton Case Summary). Thus, the charge was effectively dismissed without any finding of guilt. The Hudson prosecutor told Mr. Pendleton that, under this arrangement, he could not go back to Hudson to panhandle for six months and that, if he did, he would be arrested and prosecuted.

36. Similarly, on November 18, 2013, Hudson Patrol Officer Pharith N. Deng approached and detained two panhandlers. *See Exhibit A*, Pages 33-37 (Incident No. 16). Officer Deng was responding to a complaint from Hudson Selectman Ben Nadeau that there were two panhandlers near Ferry Street and Chase Street. According to Officer Deng’s narrative describing the incident: “I advised [the female panhandler] that she cannot be soliciting without a permit from the town of Hudson, New Hampshire and a permit from the State of New Hampshire.” *Id.* As the female panhandler had no such permit and had been given a no-trespass order on October 24, 2013 by Patrol Officer Derek Lloyd banning her from all town medians—*see Exhibit A*, Pages 23-24 (Incident No. 11)—Officer Deng issued a criminal citation, “for the

crime of Soliciting on State Property Without a License” under RSA 320:2.² The other panhandler was given “a [no-]trespass order not to solicit in the area without a permit.” *Id.* The charge against the female panhandler was ultimately dismissed. *Id.*

37. According to Hudson police department documents, other examples include the following:

- a. September 14, 2011: Master Patrol Officer Jason C. Downey told a woman who was panhandling on the corner of Lowell Road and the entrance to Walmart that “she was being detained since she was soliciting without a permit.” According to his narrative describing the incident, Officer Downey issued the woman a warning for the incident, and gave her \$4 to assist her in leaving town. *See id.*, Pages 1-2 (Incident No. 1).
- b. September 30, 2011: Patrol Officer Pharith N. Deng approached a man on a bike who was holding a sign “Will Work for Food.” Officer Deng told the man to leave the area and provided “advice” on the laws governing solicitation. *See id.*, Page 3 (Incident No. 2).
- c. October 6, 2011: Patrol Officer Eric. J. Ferreira told a panhandler who was standing on a sidewalk holding a sign asking for help to feed his two children that “he could no longer solicit money” because he did not have a permit. According to his narrative describing the incident, Officer Ferreira threatened the man that, if “he solicited money again he would be cited and possibly arrested.” *See id.*, Pages 4-5 (Incident No. 3).
- d. May 31, 2012: Master Patrol Officer Allison L. Cummings told a group of people who were collecting money near 35 Ferry Street that they needed to “immediately desist until they received a permit to solicit from Chief Lavoie.” Officer Cummings reported that “[t]he subjects understood they could be cited if they returned without permission.” *See id.*, Pages 6-7 (Incident No. 4).
- e. Approximately May 25, 2013: Master Patrol Officer James K. Stys approached a male panhandler who was staying in shelters in Nashua and informed him that “he was required to have a permit to panhandle in the Town of Hudson.” According to Officer Stys’ narrative describing the incident, the homeless man then “left the area and headed to Nashua.” *See id.*, Pages 8-9 (Incident No. 5).
- f. September 19, 2013: Master Patrol Officer Larisa J. Johnson approached three homeless persons panhandling on Lowell Road, near the Walmart entrance.

² The charge was listed on the citation as a Class A misdemeanor punishable by up to one year in jail and a \$2,000 fine (though, under RSA 320:2, this could only be a violation-level offense punishable by a fine of no more than \$500).

According to her narrative describing the incident, Officer Johnson told the group that “they are not allowed to ask people for things on town property unless they had a permit from the town.” One of the members of the group “asked how much a permit was and how to get one,” and Officer Johnson explained that “he would have to go to town hall across town for the details.” *See id.*, Pages 10-11 (Incident No. 6).

- g. September 20, 2013: Patrol Officer Steven C. McElhinney went to the Town Commons on the corner of Derry Street and Ferry Street in response to a complaint by Hudson Selectman Ben Nadeau that a panhandler was soliciting there. Upon his arrival, he saw a man walking across Veterans Bridge holding a cardboard sign. According to his narrative describing the incident, Officer McElhinney stopped the man and told him that he needed a permit to panhandle. Officer McElhinney then threatened the man that “if he is found panhandling again in town with a permit he will be issued a hand summons.” *See id.*, Pages 12-14 (Incident No. 7).
- h. November 16, 2013: In response to a complaint by Hudson Selectman Ben Nadeau of three people panhandling near Veterans Bridge, Officer Cassandra Avery approached two panhandlers near the Gulf Station on 18 Ferry Street. During this confrontation with the panhandlers, Officer Avery “provided advice on the Town ordinance concerning soliciting.” Officer Avery gave the panhandlers a “verbal warning” and she then reported that they were “heading to Nashua.” *See id.*, Page 32 (Incident No. 15).

38. As is clear from these documented incidents, the Hudson police department is misusing RSA 320:2 and Chapter 232 of the Hudson Town Code to curtail the free speech rights of individuals who are peacefully panhandling in public and who, in fact, are not violating these laws.

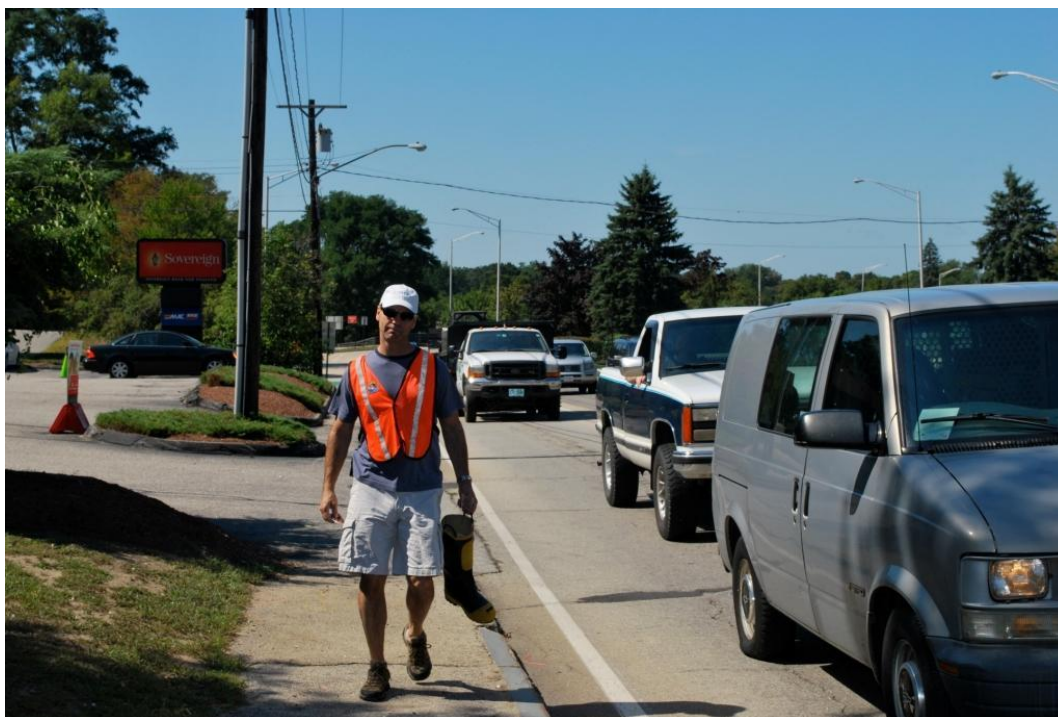
39. Mr. Pendleton wishes to peacefully panhandle in public places in the Town of Hudson. However, the Town’s custom, practice, and/or policy has chilled the exercise of his First Amendment rights because he fears that he will be ordered to leave, harassed, detained, threatened with arrest, or arrested under these laws if he returns to the Town’s public places to seek assistance from others.

III. The Hudson Police Department's Practices Selectively Target the Poor for Unconstitutional Harassment and Punishment While Permitting Others to Engage in Identical Activities.

40. Unfortunately, the Hudson police department's unconstitutional custom, practice, and/or policy of suppressing peaceful panhandling targets and criminalizes the least fortunate who live in the Nashua/Hudson area—namely, the poor and homeless who, like Mr. Pendleton, are just trying to “get by.”

41. Indeed, while the Town of Hudson has charged people like Mr. Pendleton for engaging in peaceful solicitation near the center of Town, the Town does not threaten to disperse, cite, or arrest campaigning politicians or members of charity organizations who are standing on town sidewalks and medians seeking to engage members of the public and passing motorists.

42. For example, each year the Hudson fire department stands in public places and solicits motorists to donate money for charity. This commendable fundraiser—which is called a “boot drive”—collects money for the Muscular Dystrophy Association. As part of this campaign, when a motorist agrees to make a donation, a person associated with the fire department walks from an adjacent public area into the road and collects the donation. Below are images of volunteers collecting money during boot drive campaigns in 2010 and 2009, respectively. The 2010 photo directly below was taken near the Ferry Street Sovereign Bank (now Santander Bank) located at the end of Veterans Bridge—near where Mr. Pendleton was cited for engaging in the same expressive activity:



<http://www.hudsonfirefighters.com/images/MDA%20Boot%20Drive.JPG>.



See Hudson Police Department, Hudson Heat Newsletter (June 2009), at p. 5, available at

<http://www.hudsonfirefighters.com/Hudson%20Heat%20June%202009.pdf>.

43. Further demonstrating the Town's selective approach to solicitation, Selectman Roger Coutu, when discussing his concerns about panhandling during the November 26, 2013 and December 10, 2013 Board of Selectmen meetings, advocated for an anti-panhandling ordinance that would exempt non-profit groups—including the fire department's boot drive—while capturing those, like Mr. Pendleton, he believed presented a negative image for the Town.

44. The Hudson police department has also allowed politicians to campaign on medians in the Town, while it has simultaneously pursued a strategy of issuing no-trespass warnings to peaceful panhandlers banning them from town medians. Below is a picture of a median frequently used by politicians to campaign near the Town Common at the Derry Road/Ferry Street/Chase Street intersection—near where Mr. Pendleton was cited for engaging motorists:



45. While prosecuting individuals like Mr. Pendleton for engaging passing motorists, the Hudson police department has also at the same time allowed protests in public places aimed at passing motorists.

46. For example, demonstrations against illegal immigration have been a frequent occurrence during the Fourth of July holiday in Hudson. Below is a 2011 picture taken by the *Nashua Telegraph* of a person allowed to protest by the Hudson police department near the same Derry Road/Ferry Street/Chase Street intersection where Mr. Pendleton was cited:



See Stacy Milbouer, "Illegal Immigration Protest Staged in Hudson," *Nashua Telegraph*, July 3, 2011, available at <http://www.nashuatelegraph.com/news/924877-196/illegal-immigration-protest-staged-in-hudson.html>.

47. There also have been recent sidewalk protests directed at motorists outside the Market Basket supermarket on Lowell Road in Hudson, as shown in the picture below. On information and belief, the Hudson police department has not issued the sidewalk protesters citations or detained and threatened them in the same manner as it did Mr. Pendleton.



CLAIMS FOR RELIEF

Count I

Violation of the First and Fourteenth Amendments **(Against All Defendants)**

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

49. The First Amendment to the United States Constitution prohibits abridgment of freedom of speech. The First Amendment is incorporated against the states by the Fourteenth Amendment.

50. The First Amendment protects the right of individuals to engage in expressive activity, carry signs, and peacefully ask members of the public for donations.

51. 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.

52. 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.

53. Defendant Town of Hudson has intentionally allowed a custom, practice, and/or policy to develop of banning and/or restricting peaceful panhandling in public places by the poor and homeless upon penalty of citation and arrest, even though state law and Hudson's Town Code do not ban such peaceful panhandling or require a permit for this form of expressive activity. This unlawful custom, practice, and/or policy is evidenced by the actions of at least twelve (12) police officers in at least eighteen (18) separate incidents from March 2011 to March 2014. Hudson town officials have known or should have known about the existence of this custom, practice, and/or policy.

54. Defendant Hudson police officers Derek S. Lloyd and Adam M. Lischinsky, acting under color of state law and pursuant to this unlawful custom, practice, and/or policy, violated Mr. Pendleton's clearly established First Amendment rights to freely engage in expressive activity in a public place.

55. This unlawful custom, practice, and/or policy caused the violation of Mr. Pendleton's First Amendment rights and continues to chill his exercise of those rights. Mr. Pendleton has a First Amendment right to peacefully panhandle in public places. Such restrictions on this right, including any order banning him from all medians and from panhandling in Hudson, are unconstitutionally overbroad, content-based, not tailored to any legitimate governmental interest, and do not leave open alternative channels for expression. *See Cutting v. City of Portland*, No. 2:13-cv-359-GZS, 2014 U.S. Dist. LEXIS 17481 (D. Me. Feb. 12, 2014).

56. The Town of Hudson 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.

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

58. As demonstrated by the Hudson police department's actions since 2011, the Town of Hudson failed to train its police officers about the First Amendment right of individuals to peacefully panhandle in public places and that RSA 320:2 or Article 232 of Hudson's Town Code do not ban peaceful panhandling in public places without a permit, thereby permitting Officer Lloyd and Officer Lischinsky to be in a position to violate Mr. Pendleton's First Amendment rights.

59. Given this pattern of constitutional violations, the Town of Hudson 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.

60. The Town of Hudson's failure to train its officers directly resulted in the violation of Mr. Pendleton's First Amendment rights and continues to chill his exercise of those rights.

61. As a result of the violation of his First Amendment rights by Defendants Town of Hudson, Officer Lloyd, and Officer Lischinsky, Mr. Pendleton suffered and continues to suffer actual and irreparable harm, including interference with his First Amendment rights, the chilling of his freedom of speech, the deprivation of his liberty, fear, humiliation, and embarrassment.

Count II
Violation of the Fourth and Fourteenth Amendments
(Against All Defendants)

62. Plaintiff realleges and incorporates by reference the allegations contained in the

preceding paragraphs.

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

64. The Fourth Amendment is incorporated against the states by the Fourteenth Amendment.

65. 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.

66. 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.

67. Defendant Town of Hudson has intentionally allowed a custom, practice, and/or policy to develop of (i) stopping and detaining individuals who are peacefully panhandling in public places without reasonable suspicion that a crime is being committed, as state law and Hudson’s Town Code do not ban such peaceful panhandling or require a permit for this form of expressive activity, (ii) demanding that these individuals produce identification, and (iii) issuing summons without probable cause under RSA 594:14 for purported violations of RSA 320:2. *See* RSA 594:14, I (“In any case in which it is lawful for a peace officer to arrest without a warrant a person for a misdemeanor or violation, he may instead issue to him in hand a written summons Upon failure to appear, a warrant of arrest may issue. Any person who fails to appear in answer to such summons shall be guilty of a misdemeanor.”). This unlawful custom, practice, and/or policy is evidenced by the actions of at least twelve (12) police officers in at least eighteen (18) separate incidents from March 2011 to March 2014. Hudson town officials have known or should have known about the existence of this custom, practice, and/or policy.

68. Defendant Hudson police officers Derek S. Lloyd and Adam M. Lischinsky, acting under color of state law and pursuant to this unlawful custom, practice, and/or policy, violated Mr. Pendleton's clearly established right to be free from unreasonable seizures by detaining him without reasonable suspicion that he was committing a crime and issuing him a summons without probable cause that he had violated RSA 320:2.

69. This unlawful custom, practice, and/or policy caused the violation of Mr. Pendleton's Fourth Amendment rights.

70. The Town of Hudson 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.

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

72. As demonstrated by the Hudson police department's actions since 2011, the Town of Hudson failed to train its police officers about the First Amendment right of individuals to peacefully panhandle in public places and that RSA 320:2 or Article 232 of Hudson's Town Code do not ban peaceful panhandling in public places without a permit, thereby permitting Officer Lloyd and Officer Lischinsky to be in a position to violate Mr. Pendleton's Fourth Amendment rights by detaining him without any reasonable suspicion and issuing a summons without probable cause that RSA 320:2 had been violated.

73. Given this pattern of constitutional violations, the Town of Hudson 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.

74. The Town of Hudson's failure to train its officers directly resulted in the violation of Mr. Pendleton's Fourth Amendment rights.

75. As a result of the violation of his Fourth Amendment rights by Defendants Town of Hudson, Officer Lloyd, and Officer Lischinsky, Mr. Pendleton suffered and continues to suffer actual and irreparable harm, including interference with his First Amendment rights, the chilling of his freedom of speech, the deprivation of his liberty, fear, humiliation, and embarrassment.

Count III

Violation of the Fourteenth Amendment's Procedural Due Process Protections (Against Defendants Town of Hudson and Adam M. Lischinsky in His Individual Capacity)

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

77. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits states from depriving "any person of life, liberty, or property, without due process of law."

78. 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.

79. 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.

80. Defendant Town of Hudson has intentionally allowed a custom, practice, and/or policy to develop of issuing no-trespass orders to individuals who are peacefully panhandling in public places even though state law and Hudson's Town Code do not ban such peaceful panhandling or require a permit for this form of expressive activity. A person who violates such

a no-trespass order may be arrested for criminal trespass. *See* RSA 635:2. Hudson town officials have known or should have known about the existence of this custom, practice, and/or policy.

81. Mr. Pendleton has a protected-First Amendment liberty interest in entering and remaining in public places.

82. Defendant Hudson police officer Adam M. Lischinsky, acting under color of state law and pursuant to this unlawful custom, practice, and/or policy, violated Mr. Pendleton's clearly established procedural due process rights by issuing a no-trespass order to Mr. Pendleton banning him from a public space without (i) any authority, (ii) any procedure for Mr. Pendleton to challenge the order or for the order to be rescinded, (iii) any opportunity for Mr. Pendleton to be heard before the no-trespass order became effective, (iv) adequate notice, and (v) any narrow, objective standards or criteria regarding when the issuance of a no-trespass order is appropriate and what its scope and duration should be, thereby giving law enforcement unbridled discretion to issue overbroad orders and engage in arbitrary and discriminatory enforcement. *See, e.g., Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011) (no-trespass ordinance caused a substantial risk of erroneous deprivation of liberty because it was easy for the City to issue trespass warnings and because no procedure was provided for the recipient of a trespass warning to challenge the warning or for the warning to be rescinded); *Vincent v. City of Sulphur*, No. 2:13-CV-189, 2014 U.S. Dist. LEXIS 67850, at *31 (W.D. La. May 14, 2014) (“[T]he court is convinced that a police officer’s constitutional inability to summarily ban an individual from public property for a prolonged and indeterminate period of time constituted clearly established law at the time of the alleged events herein.”).

83. This unlawful custom, practice, and/or policy caused the violation of Mr.

Pendleton's Fourteenth Amendment rights.

84. The Town of Hudson 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.

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

86. As demonstrated by the Hudson police department's actions between 2011 and 2014, the Town of Hudson failed to train its police officers about the appropriate use of no-trespass orders, about the First Amendment right of individuals to peacefully panhandle in public places, and that RSA 320:2 or Article 232 of Hudson's Town Code do not ban peaceful panhandling in public places without a permit, thereby permitting Officer Lischinsky to be in a position to violate Mr. Pendleton's Fourteenth Amendment rights by issuing a no-trespass order that fails to provide procedural due process.

87. Given this pattern of constitutional violations, the Town of Hudson 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.

88. The Town of Hudson's failure to train its officers directly resulted in the violation of Mr. Pendleton's Fourteenth Amendment rights.

89. As a result of the violation of his Fourteenth Amendment rights by Defendants Town of Hudson and Officer Lischinsky, Mr. Pendleton suffered and continues to suffer actual and irreparable harm, including interference with his First Amendment rights to enter medians that are open to the public, the chilling of his freedom of speech, the deprivation of his liberty,

fear, humiliation, and embarrassment.

Count IV
Violation of the Fourteenth Amendment's Equal Protection Clause
(Against Defendant Town of Hudson)

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

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

92. 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.

93. Defendant Town of Hudson has intentionally allowed a custom, practice, and/or policy to develop of banning and/or restricting peaceful panhandling by the poor and homeless upon penalty of citation and arrest, even though state law and Hudson’s Town Code do not ban such peaceful panhandling or require a permit for this form of expressive activity. This unlawful custom, practice, and/or policy is evidenced by the actions of at least twelve (12) police officers in at least eighteen (18) separate incidents from March 2011 to March 2014. Hudson town officials have known or should have known about the existence of this custom, practice, and/or policy.

94. The Town of Hudson’s impetus behind this custom, practice, and/or policy is to, in part, improve the image of the Town by reducing begging by the poor and homeless.

95. This custom, practice, and/or policy is enforced only against the poor and homeless based on an irrational hostility towards this powerless group of citizens.

96. For example, while the Town of Hudson has charged people like Mr. Pendleton

for engaging in peaceful panhandling near the center of Town, the Town does not threaten to disperse, cite, or arrest campaigning politicians or members of charity organizations who are standing on sidewalks and medians seeking to engage members of the public and passing motorists. Thus, the Town, through this custom, practice, and/or policy and its selective application, has infringed upon the equal protection rights of Plaintiff Jeffery Pendleton under the Fourteenth Amendment.

97. This unlawful custom, practice, and/or policy caused the violation of Mr. Pendleton's right to equal treatment under the Fourteenth Amendment.

98. The Town of Hudson 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.

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

100. As demonstrated by the Hudson police department's actions since 2011, the Town of Hudson failed to train its police officers about the First Amendment right of the poor and homeless to peacefully panhandle in public places and that RSA 320:2 or Article 232 of Hudson's Town Code do not ban the poor and homeless from peacefully panhandling in public places without a permit, thereby permitting Officer Lloyd and Officer Lischinsky to be in a position to selectively and in a discriminatory fashion violate Mr. Pendleton's constitutional rights.

101. Given this pattern of constitutional violations, the Town of Hudson 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.

102. The Town of Hudson's failure to train its officers directly resulted in the violation of Mr. Pendleton's equal protection rights under the Fourteenth Amendment.

103. As a result of the violation of his equal protection rights under the Fourteenth Amendment by Defendant Town of Hudson, Mr. Pendleton suffered and continues to suffer actual and irreparable harm, including interference with his First Amendment rights, the chilling of his freedom of speech, the deprivation of his liberty, fear, humiliation, and embarrassment.

Count V
Chapter 232 of the Hudson Town Code Violates the First and Fourteenth Amendments As Applied to Peaceful Panhandling in Public Places
(Against Defendant Town of Hudson)

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

105. The First Amendment to the United States Constitution prohibits abridgement of freedom of speech. The First Amendment is incorporated against the states by the Fourteenth Amendment.

106. The First Amendment protects the right of individuals to engage in expressive activity, carry signs, and peacefully ask members of the public for donations.

107. 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.

108. A permit scheme requiring governmental approval in order to engage in protected expression in a traditional public forum is a prior restraint under the First Amendment. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–151 (1969). Such prior restraints are presumptively unconstitutional. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

109. The Hudson police department regularly detains and threatens individuals who are peacefully panhandling in public places and tells them that municipal law requires a permit to panhandle under Chapter 232 of Hudson's Town Code. Plaintiff Jeffery Pendleton was subjected to this practice, though Chapter 232 does not, by its own terms, apply to peaceful panhandling on town public property.

110. However, to the extent Chapter 232, as written, encompasses peaceful panhandling on town public property (which it does not), it violates the First Amendment as applied to this form of expressive activity. When applied to peaceful panhandling on town public property, Chapter 232 chills protected speech by requiring individuals to disclose personal information as a condition to obtaining a license to speak.

111. For example, under Article II of Chapter 232, a person cannot "solicit" unless he (i) registers with the Town, (ii) discloses their identities and a wide array of personal information (including social security number and proof of a permanent residence), (iii) undergoes an intrusive criminal background check and fingerprinting at his expense using the guidelines under RSA 31:102-b, (iv) pays a license fee of \$10 pursuant to Hudson Town Code § 205-8(G), and (v) regularly renews the license, which expires after ninety (90) days.

112. As applied to peaceful panhandling in public places, Chapter 232 is an impermissible prior restraint, provides onerous burdens on expressive activity, and provides unfettered discretion to law enforcement officials in determining whether a permit should be issued. Chapter 232 is not narrowly tailored to advance significant or compelling governmental interests, and it does not leave open alternative channels for expression.

113. Accordingly, the enforcement of Chapter 232, as applied to peaceful panhandling in public places, irreparably harms and unconstitutionally infringes upon the First Amendment

rights of Plaintiff Jeffery Pendleton and others similarly situated under the First Amendment.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Jeffery Pendleton respectfully requests that this Court:

a) Declare that the actions taken by Defendants in precluding and/or restricting Plaintiff from peacefully soliciting donations in public places—including by stopping him and citing him for engaging in this expressive activity, issuing a no-trespass order with respect to a public place, and sending him “on his way”—violated Plaintiff’s rights under the First, Fourth, and Fourteenth Amendments;

b) Declare that Defendant Town of Hudson’s custom, practice, and/or policy of precluding and/or restricting the peaceful solicitation of donations in public places—including by stopping and citing panhandlers, issuing no-trespass warnings with respect to public places, and sending panhandlers “on their way”—violates the First, Fourth, and Fourteenth Amendments;

c) Preliminarily and permanently enjoin Defendants from precluding and/or restricting Plaintiff and other individuals from peacefully soliciting donations in public places—including by stopping and citing panhandlers, issuing no-trespass warnings with respect to public places, and sending panhandlers “on their way”—when such activity does not obstruct pedestrian or vehicular traffic or obstruct the entrance to any business establishment;

d) Preliminarily and permanently enjoin Defendants from citing or arresting Plaintiff and other individuals for peacefully soliciting donations in public places when such activity does not obstruct pedestrian or vehicular traffic or obstruct the entrance to any business establishment;

e) Preliminarily and permanently enjoin enforcement of the November 14, 2013 no-trespass order issued by Patrol Officer Adam L. Lischinsky banning Plaintiff from all medians in Hudson;

f) Declare that RSA 320:2 and Chapter 232 of the Hudson Town Code do not prohibit and/or restrict the peaceful solicitation of donations in public places;

g) Preliminarily and permanently enjoin Defendants from using RSA 320:2 and Chapter 232 of the Hudson Town Code to prohibit or restrict the act of peacefully soliciting donations in a public place;

h) Award Plaintiff compensatory damages for the violation of his constitutional rights;

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.

JURY DEMAND

Plaintiff Jeffery Pendleton requests a trial by jury.

Respectfully submitted,

JEFFERY PENDLETON,

By and through his attorneys with the New Hampshire
Civil Liberties Union Foundation,

/s/ Gilles R. Bissonnette

Gilles R. Bissonnette (N.H. Bar. No. 265393)
NEW HAMPSHIRE CIVIL LIBERTIES UNION
18 Low Avenue
Concord, NH 03301
Tel.: 603.224.5591
Fax.: 603.226.3149
Gilles@nhclu.org

Christopher Cole (N.H. Bar No. 8725)
SHEEHAN PHINNEY BASS + GREEN PA.
1000 Elm Street, 17th Floor
P.O. Box 3701
Manchester, NH 03105-3701
Tel.: 603.608.0300
Fax.: 603.627.8121
ccole@sheehan.com

Dated: August 20, 2014