



“actively supervise, direct and control, in accordance with the provisions of.....the ordinances of the city...the activities of all administrative departments and agencies of the city. The mayor shall be responsible...for the enforcement of the laws of the state and ordinances of the city and the preservation of the peace, health and safety of its inhabitants.”

5. Defendant Michael J. Winqvist [“Winqvist”] is the Chief of Police for the City of Cranston. He is named herein in his official capacity. Pursuant to the Cranston Code of Ordinances, Winqvist is, subject to the supervision of the mayor, “in direct command of the department of police” and “shall make and amend, subject to the approval of the mayor, rules and regulations in conformity with the Ordinances of the city...” Winqvist “shall also have power with the approval of the mayor to make regulation and orders binding on the public for the purpose of implementing and giving effect to laws and Ordinances relating to the preservation of public order and the movement of traffic.”

6. Defendant David Capuano is the Treasurer of the City of Cranston. He is named herein in his official capacity.

### **Jurisdiction and Venue**

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 1343 and 1988, in that this action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. The Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §2201. The Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. §1367.

### **Facts**

8. The Cranston Ordinance [“the Ordinance”] provides:

10.40.070 - Solicitation on roadways prohibited. No person shall distribute literature to, request donations from, or in any other manner perform acts of solicitation of any

type directed at the operator or any passenger of any motor vehicle in a travel lane, including motor vehicles stopped at intersections or in obedience to any traffic control device, or [sic] any public street or highways within the state.

9. Monteiro is physically disabled. In or about January 2008, he was awarded social security disability benefits.

10. From time to time over the past ten (10) years, Monteiro has traveled by bus to the roadway median at 1776 Plainfield Pike, in Cranston, Rhode Island, to supplement his disability payments by soliciting charitable contributions. Monteiro carried a sign that reads “disabled, need help, thank you, God bless.” He generally remained at that location for approximately one (1) hour. Drivers and passengers frequently stopped to donate money.

11. On June 30, 2015, at about 9:30 a.m., Monteiro was soliciting donations at that location. Cranston Police Officer Fish observed Monteiro holding his sign. Monteiro told Officer Fish that he was soliciting money because it was toward the end of the month and he needed money to make ends meet because his disability check had run out. Officer Fish issued Monteiro a summons (#CO4082) for solicitation in violation of the Ordinance and advised him of an August 3, 2015, court date. Officer Fish ordered Monteiro to leave the area, and informed Monteiro that if he returned to solicit contributions he would be arrested.

12. On August 3, 2015, Monteiro appeared at Cranston Municipal Court. The Municipal Court Judge intended to fine and/or require community service of Monteiro, but upon being informed that Monteiro had no money and had a disability, dismissed the charges and told him not to return to the area.

13. The Ordinance regulates speech in a public forum, where the government’s power to regulate speech is most constrained. Consequently, the Ordinance is subject to strict scrutiny if it is content based.

14. As the United States Supreme Court held in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), an Ordinance is content based “on its face” if it “applies to a particular speech because of the topic discussed or the idea or message expressed.”

15. The Ordinance is content based because it pertains to a “request [for] donations,” “distribut[ion] of literature” or an “act [] of solicitation,” and because it prohibits solicitations directed at particular individuals (“the operator or any passenger of any motor vehicle.”). Thus, the Ordinance permits certain communications but prohibits others based on the content and object of the communication.

16. Content based regulations are “presumptively invalid.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1982).

17. Because it is content based, the Ordinance “must be the least restrictive means of achieving a compelling state interest.” *McCullen v. Coakley*, 134 S. Ct. 2518 (2014).

18. No compelling public interest supports the Ordinance.

19. The Ordinance is unconstitutionally vague and overbroad because it prohibits and fails to define “acts of solicitation” directed at an operator or passenger of a motor vehicle and encompasses constitutionally protected speech. The Ordinance does not convey in any meaningful way what conduct or communication is actually prohibited.

20. Upon information and belief, Defendants, and each of them, have selectively enforced the Ordinance by allowing certain individuals and groups, other than panhandlers, to solicit contributions notwithstanding the Ordinance.

21. By the foregoing acts and omissions, Defendants, and each of them, violated Plaintiff’s freedom of speech by promulgating, threatening to enforce, and actually enforcing the Ordinance.

22. As a proximate result of the foregoing acts and omissions, Plaintiff is in fear that if he returns to Cranston seeking donations or displaying his sign, he will be detained, arrested, and prosecuted.

**Claims for Relief**

**Count I: Violation of 42 U.S.C §1983**

23. Plaintiffs hereby incorporate by reference paragraphs 1-22 as though fully set forth herein.

24. Title 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.”

25. The First Amendment to the United States Constitution, as applicable to the states through the Fourteenth Amendment, prohibits the making of any law that “abridge[s] the freedom of speech.”

26. By the foregoing act and omissions, Defendants, and each of them, have violated the First Amendment to the United States Constitution.

Wherefore, Plaintiff prays as hereinafter set forth.

**Count II: Declaratory Judgment**

27. Plaintiff incorporates by reference paragraphs 1-26 as though fully set forth herein.

28. Title 28 U.S.C. §2201 (a) provides that: “[I]n a case of actual controversy within its jurisdiction,...any Court of the United States...may declare the rights and other legal relations of

any interested party seeking such a declaration, whether or not further relief is or could be sought.”

29. By the foregoing act and omissions, Defendants, and each of them, have violated the First Amendment to the United States Constitution and Article 1, Section 21 of the Rhode Island Constitution.

30. Upon information and belief, Defendants intend to continue to enforce the Ordinance.

31. There is an actual controversy between the parties as to whether the Ordinance is unconstitutional.

32. Plaintiff seeks a declaration that the Ordinance is unconstitutional and violates Plaintiff's right to freedom of speech under the First Amendment to the United States Constitution and Article 1, Section 21 of the Rhode Island Constitution.

Wherefore, Plaintiff prays as hereinafter set forth.

**Count III: Rhode Island Constitution**

33. Plaintiff incorporates by reference paragraphs 1-26 as though fully set forth herein.

34. Article 1, Section 21 of the Rhode Island Constitution provides:

The citizens have a right in a peaceable manner to assembly for their common good, and to apply to those invested with the powers of government, for redress of grievances, or for other purposes, by petition, address, or remonstrance. No law abridging the freedom of speech shall be enacted.

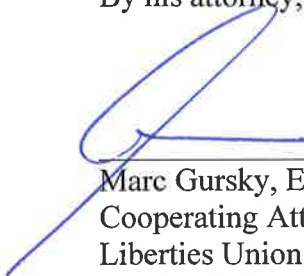
35. By the foregoing acts and omissions, Defendants, and each of them, have interfered with or attempted to interfere with Plaintiffs right to freedom of speech as secured by Article 1, Section 1, of the Rhode Island Constitution.

**Prayer for Relief**

WHEREFORE, Plaintiff requests that this Honorable court:

1. Issue a Declaratory Judgment that the Ordinance violates the First Amendment to the United States Constitution and Article 1, section 21 of the Rhode Island Constitution.
2. Issue a preliminary and permanent injunction prohibiting Defendants, and each of them, from enforcing the Ordinance.
3. Award nominal and compensatory damages according to proof.
4. Award Plaintiff his costs and attorney's fees.
5. Order such other relief as the Court deems just and proper.

Respectfully submitted,  
On behalf of Plaintiff,  
By his attorney,



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