

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

GEORGE K. HENAGAN,

Plaintiff,

v.

LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT,
MAYOR-PRESIDENT JOSH GUILLORY,
CITY-PARISH ATTORNEY GREGORY J.
LOGAN, Lt. SCOTT MORGAN, and
OFFICER JOSHUA MYERS,

Defendants.

Case No. 6:21-cv-3946-RRS-PJH

FIRST AMENDED COMPLAINT

Plaintiff George K. Henagan, by and through his undersigned attorneys, for his complaint against Defendants the Lafayette City-Parish Consolidated Government, Mayor-President Josh Guillory, City-Parish Attorney Gregory J. Logan, Lt. Scott Morgan, and Officer Joshua Myers, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff George Henagan is homeless and unemployed. He is supported in part by donations from the public. While exercising his protected speech to ask for donations, Mr. Henagan has twice been cited for misdemeanor offenses by the officers of the Lafayette Police Department (“LPD”). He seeks to remedy the past criminalization and prevent future criminalization of his exercise of protected speech arising from the City of Lafayette’s unconstitutional enforcement of municipal ordinances 62-71, 62-32, and 62-68 and state law La. R.S. § 14:97.

2. Lafayette City-Parish Consolidated Government Code of Ordinances (“Code”) § 62-71, “Begging and soliciting money,” discriminates based on the content of speech. The ordinance and its enforcement amount to a regulation of speech that is impermissible under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution, as well as Article I, Section 7 of the Louisiana Constitution.

3. Code § 62-71 specifically prohibits individuals from soliciting money or anything of value under various circumstances including doing so “in an aggressive manner,” soliciting “any operator of a motor vehicle that is in traffic on a public street,” or soliciting within 50 feet of either an ATM or the entranceway of a building that contains an ATM.

4. Nonprofits and other charitable organizations who ask for money for those in need are exempted from the ordinance; individuals who directly ask for money are targeted by it. In this way, the ordinance favors speech made for certain collections over others. Under Code § 62-71, certain topics of speech are restricted for certain speakers on the streets of Lafayette. On its face, Code § 62-71 regulates the message and content of speech. It should therefore be subject to strict scrutiny.

5. Mr. Henagan seeks declaratory relief and an order enjoining future enforcement of Code § 62-71 against him. He also seeks damages for his November 12, 2020 arrest and citation under Code § 62-71.

6. Mr. Henagan further seeks to enjoin the unlawful enforcement of Lafayette’s Criminal Mischief ordinance, Code § 62-32, which prohibits, “[a]cting in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others.” The application of this ordinance to criminalize Mr. Henagan’s speech would violate the First, Fourth, and Fourteenth Amendments to the U.S. Constitution and Article I, Section 7 of the Louisiana Constitution. Code § 62-32 is

both unconstitutionally vague and overbroad.

7. Finally, Mr. Henagan seeks to enjoin Defendants' unlawful enforcement of the "Simple obstruction of a highway of commerce" ordinance, Code § 62-68, and companion state statute La. R.S. § 14:97, which Defendants have applied to criminalize protected speech. The future application of these laws to criminalize Mr. Henagan's speech would violate the First, Fourth, and Fourteenth Amendments to the U.S. Constitution and Article I, Section 7 of the Louisiana Constitution.

8. This action arises under 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments to the United States Constitution. Mr. Henagan also brings supplemental claims for protection of free speech guaranteed by Louisiana State Constitution Article I, Section 7.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

10. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

PARTIES

11. Plaintiff George K. Henagan is a homeless resident of Lafayette. Defendants seized and cited him twice under Code § 62-71, first on November 12, 2020, and again on November 28, 2020.

12. Defendant Lafayette City-Parish Consolidated Government ("LCG" or "the City") is a Louisiana municipality and local governmental subdivision.

13. Defendant Josh Guillory is the Mayor-President of Lafayette. He is chief executive officer for LCG and has general executive and administrative authority over all departments, offices, and agencies of the LCG. He has the power to make final policies for executive departments, offices, and agencies of the LCG. He is responsible both for appointing the Chief of

the LPD and for overseeing the LPD's operations. In his term, Guillory has presided over the unconstitutional enforcement of ordinances and statutes, as detailed in this complaint. Mr. Henagan sues Defendant Guillory in individual capacity.

14. Defendant Gregory J. Logan is the City-Parish Attorney for the LCG and head of its legal department. Logan's supervisees within the legal department include the Office of City Prosecutor, which prosecutes violations of municipal ordinances and state misdemeanors in the City Court of Lafayette. Logan serves as chief legal advisor to both the Mayor-President and the Police Chief. Mr. Henagan sues Defendant Logan in his individual capacity.

15. Defendant Scott Morgan, a lieutenant in the LPD, served as interim Police Chief at the time that LPD officers under his command cited Mr. Henagan in retaliation for his speech. Mr. Henagan sues Defendant Morgan in his individual capacity.

16. Defendant Officer Joshua Myers carried out an unconstitutional deprivation of Mr. Henagan's rights through enforcement of Code § 62-71 "Begging and Soliciting Money" via the seizure, search, and citation of Mr. Henagan on November 12, 2020. This unlawful arrest violated the First and Fourth Amendments. Defendant Myers is sued in his individual capacity.

FACTUAL BACKGROUND

17. The City of Lafayette is the parish seat and most populous city of Lafayette Parish.

18. Over 15% of Lafayette Parish's population lives below the poverty line.

19. As part of the Department of Housing and Urban Development's annual Point-in-Time survey, the Lafayette/Acadiana continuum of care estimated a total homeless population of 417 people on Jan. 27, 2020.

20. Since the onset of the COVID-19 pandemic, Acadiana Regional Coalition on Homelessness & Housing ("ARCH") estimates the homeless population has risen dramatically,

nearly doubling in Acadiana between March 2020 and October 2020.¹

21. Some homeless residents of Lafayette, like Mr. Henagan, rely on asking for donations to support themselves.

22. Defendants Guillory, Logan, Morgan, and LPD have undertaken a campaign to eliminate begging and panhandling within the city.

23. In August 2020, Defendant Guillory proposed Ordinance No. JO-079-2020, which would have criminalized “sit[ting] or stand[ing] for any period of time (i) in or within 36 inches of any roadway, (ii) in or on any unpaved median, (iii) or in or on any median of less than 36 inches.”² When called to testify about the origin of the proposed ordinance, City-Parish Attorney Logan first stated that the ordinance was meant to “deal with the congregating of people right up against the street” and that “[b]ased on our research, it’s the only one that has held up as constitutional, trying to address the issues that we have.”³ In response to a councilmember’s question of whether the ordinance had been spurred by complaints and calls from constituents, Defendant Guillory said, “Call? They call and shake me down when I’m in public—but no, absolutely. Just drive around town and you can see.”⁴ When another council member questioned, “So, who are we targeting, panhandlers?”, Defendant Logan stated, “Panhandlers, people in traffic” The councilmember asked, “Why can’t we identify that, is that too general?” Defendant Logan responded, “Unfortunately, the United States Supreme Court has said that panhandling is

¹ Ken Stickney, *Acadiana’s homeless population nearly doubles as COVID-19 closes shelters, jobs plummet: survey*, The Acadiana Advocate, available at https://www.theadvocate.com/acadiana/news/coronavirus/article_bdabcfcc-18c7-11eb-9575-8bdee587e69f.html.

² Ordinance No. JO-079-2020.

³ Lafayette Consolidated Government Council Meeting, August 18, 2020, <https://video.ibm.com/recorded/127626692> at 50:00–51:10.

⁴ *Id.* at 52:10–:20.

ok. So, if you say ‘panhandlers,’ it will be declared unconstitutional.”⁵

24. At a Lafayette Consolidated Government Council meeting the following month, one speaker, Ryan Harris, succinctly stated, “Any ordinance that you write that has the purpose of stopping a person from asking for money on the side of the road will be unconstitutional—no matter how you word it. Because standing on the side of the road and asking for money is protected by the First Amendment.”⁶ The council deferred the ordinance indefinitely.⁷

25. On information and belief, following the proposed ordinance’s failure, Defendants Guillory, Logan, and Morgan instructed LPD officers to use existing municipal ordinances—including Code § 62-71—and statutes to criminalize panhandling in Lafayette. Defendant Logan or his subordinates in the legal department advised LPD officers on the laws under which to arrest and cite panhandlers and beggars.

26. Defendants Guillory, Logan, and Morgan either knew or should have known that Code § 62-71 was unconstitutional both on its face and as applied to the act of requesting charitable donations.

27. In the alternative, even if Defendants Guillory, Logan, and Morgan did not personally create a policy to criminalize panhandling, particularly through the enforcement of Code § 62-71, they knew or should have known of LPD’s custom or practice of arresting and issuing citations under these laws. Guillory, Logan, and Morgan failed to properly supervise or train employees to halt this practice, and they displayed deliberate indifference to this practice or

⁵ *Id.* at 58:12.

⁶ Lafayette Consolidated Government Council Meeting, September 15, 2020, available at <https://video.ibm.com/recorded/127894696> at 1:17:09.

⁷ Andrew Capps, *Lafayette councils pass \$400k rent assistance plan, dump anti-panhandling measure*, The Daily Advertiser, available at <https://www.theadvertiser.com/story/news/local/2020/09/16/louisiana-coronavirus-pandemic-covid-19-lafayette-rent-assistance-plan/5751574002/>.

custom's risk of violating First, Fourth, and Fourteenth Amendment rights.

28. LPD officers acting at the direction of Defendants Guillory and Morgan and subsequently appointed LPD chiefs compiled a list of names of people known to beg or solicit donations in Lafayette's public spaces for targeted enforcement of the existing ordinances.

29. One reason that Defendants Guillory and Morgan created and maintained this list of homeless individuals for targeted enforcement was in response to the Lafayette Parish Sheriff's Office's refusal to book into its custody those who did not have at least two prior citations.

30. As of February 2, 2022, LPD's list of panhandlers had grown to over 100 names, with 186 summonses, 21 citations, and 13 bookings into the Lafayette Parish Correctional Center.

31. LPD officers issue citations to those listed individuals under the panhandling ordinance, Code § 62-71; the criminal mischief ordinance, Code § 62-32; and the "simple obstruction of a highway of commerce" ordinance and statute, Code § 62-68 and La. R.S. § 14:97.

32. In an affidavit of probable cause supporting the arrest of Anthony Willis, a homeless man in Lafayette, under the criminal mischief ordinance, Code § 62-32, LPD officer D. Broussard attested that LPD keeps a list of individuals for targeted enforcement for panhandling:

On March 29, 2021 at 0948 hours I, Sr. Cpl. D. Broussard, observed a black male standing in the median, holding a sign, on the 100 block of W. Willow. I approached the defendant, Anthony Willis. I am familiar with the defendant's name due to compiling a list of name of subjects panhandling (holding signs asking for help; money, food or anything helpful.) for the past 4 months. Anthony Willis as been cited 6 times since January 1, 2021. (1/6/21, 2/8/21, 2/18/21, 2/22/21, 3/22/21 and 3/23/21) Defendant was placed under arrest and transported to LPCC for booking.

33. Mr. Willis's attorneys filed a habeas corpus petition on his behalf, arguing that his detention under Code § 62-32(7) was unconstitutional. In April 2021, the 15th Judicial District Court agreed and declared Code § 62-32(7) unconstitutional. The Louisiana Supreme Court reversed that decision not on the merits, but as moot because, in the time between Mr. Willis filing

his petition and the Louisiana Supreme Court issuing its ruling, the charges against Mr. Willis were dropped and he was released.⁸ But LPD's use of the criminal mischief ordinance was not limited to Mr. Willis. In ruling on Mr. Willis's habeas petition, the trial court noted, "In the last week I myself alone have seen two cases involving the exact same [ordinance]."⁹

34. On April 20, 2021, Malcolm Bussey of the LCG legal department emailed LPD Major Blair Dore, under a subject line of "Begging and Soliciting," relaying the following message from City Prosecutor Gary Haynes:

Yesterday in court, Gary Haynes advised me of the following,

If the suspect is witnessed (by a Police officer) walking in the roadway to accept money, charge the suspect with 62-68 Simple obstruction of a highway of commerce instead of 62-71 Begging and Soliciting. Also, please remind the officers to put in the narrative that they were in the roadway. (emphasis in original)

35. Between April 2019 and April 2021, LPD officers made 61 arrests under the "begging and soliciting" ordinance and 52 arrests under the criminal mischief ordinance.¹⁰

36. Local media reports that between December 2020 and June 2021, LPD cited 105 people for violations of the panhandling and criminal mischief ordinances. Among that number, 53 people were cited more than once. Some had been cited as many as five times.¹¹

37. In 2021, Defendants installed 40 signs throughout Lafayette instructing the public not to give to panhandlers. The text of the signs read, "Panhandling is not safe. Change the way you give. Call 211 to help." The signs were designed by the LCG communications officer and the

⁸ *Willis v. Garber*, 2021-00634 (La. 10/12/21), 325 So. 3d 1055 (Griffin, J., dissenting).

⁹ *Id.*

¹⁰ These numbers were produced in response to a public records request submitted by the Plaintiff's counsel to the LPD.

¹¹ Leslie Turk and Christiaan Mader, *Aggressive policing has Lafayette panhandlers caught in a cycle of jail and homelessness*, The Current, available at <https://thecurrentla.com/2021/aggressive-policing-has-lafayette-panhandlers-caught-in-a-cycle-of-jail-and-homelessness/>.

LPD designated the locations of their placement.

38. On July 27, 2021, then-Chief Thomas Glover issued an internal LPD memo to all personnel with subject line “Panhandling.” The memo, which was leaked to multiple media outlets, stated:

Effective immediately, all uniformed Lafayette Police Officers, regardless of rank, shall enforce laws that restrict panhandling within the city limits of Lafayette. This includes patrol, patrol support, traffic, TNT, and the Specialized Panhandling Detail. Specific officers enroute to other calls will contact the Watch Office with information regarding the panhandling. The Watch Commander’s Office will be responsible for assuring proper response to the panhandler. Violations of this directive shall result in progressive discipline.¹²

39. On information and belief, Defendant Guillory ordered LPD Chief Monte Potier and LPD officers to create another “specialized panhandling detail” in December 2021, consisting of officers working 12-hour shifts and devoted to citation and arrest of panhandlers.

40. Memos and emails circulated within LPD in December 2021 informed officers of the new specialized panhandling detail. An email from LPD Cpt. Brad Ridge on Dec. 17, 2021, directed officers that “Enforcement action must be taken for violations. NO WARNINGS.” He further instructed LPD officers writing a citation for panhandlers to call LPD communications to cross-reference the arrestee’s name against LPD’s panhandler spreadsheet and to attempt to book into the Lafayette Parish Correctional Center any person on the list who “has been issued a summons or citation on two previous incidents for a panhandling related offense.” The memo referred officers to the LCG legal department’s email concerning “the correct enforcement action to be taken in handling incidents related to this assignment” and stated that the “main violation

¹² LPD Chief releases statement after violent weekend, report of memo on panhandling enforcement, KATC 3, July 27, 2021, available at <https://www.katc.com/news/lafayette-parish/lpd-all-officers-will-enforce-panhandling-laws-or-face-discipline>; see also Claire Taylor, Lafayette Police ordered to enforce panhandling laws or face discipline, The Advocate, July 27, 2021, available at https://www.theadvocate.com/acadiana/news/crime_police/article_2a6f4688-ef38-11eb-9af4-57b9833cd0e6.html.

that can be enforced now is the person walking in the roadway to retrieve something from a person in a vehicle. That offense is ordinance 62[-]68—Simple Obstruction of a Highway. Your narrative must include the details of the suspect being in the roadway.” Along with Code § 62-68, Ridge lists the criminal mischief ordinance, Code § 62-32(7), as “the most common panhandling ordinances.” Cpt. Ridge’s memo further directed each member of the detail to complete a daily “Panhandling Detail Activity Sheet.”

A. The Laws that Lafayette Uses to Criminalize Protected Speech

41. Code § 62-71 (“Begging or Soliciting Money”) prohibits soliciting money or anything of value under various circumstances, including doing so “in an aggressive manner,” soliciting “any operator of a motor vehicle that is in traffic on a public street,” or soliciting within 50 feet of either an ATM or the entranceway of a building that contains an ATM. The ordinance further defines solicitation to include “the spoken, written, or printed word or such other acts or bodily gestures as are conducted in furtherance of the purposes of obtaining charitable or gratuitous donations, contributions or alms.”

42. Code § 62-71 exempts from these prohibitions “a professional firefighters association or other nonprofit organization who solicits contributions, as a member of such association, on behalf of bona fide charitable organizations.” By incorporation of Code § 70-61, the ordinance also exempts “peddler[s], solicitor[s], and/or door-to-door vendors” who offer goods, merchandise, or services for sale or rental.¹³

43. Code § 62-32 (“Criminal Mischief”) criminalizes various behaviors, among them “[a]cting in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others” and “[c]ongregating with others on a public street and refusing to move on when ordered by the

¹³ Code § 62-71(d)(1)–(2).

police.”

44. Code § 62-68 (“Simple Obstruction of a Highway of Commerce”) and its state-law analogue, La. R.S. § 14:97, criminalize “obstruction of a highway of commerce” by the “intentional or criminally negligent placing of anything or performance of any act on any railway, railroad, navigable waterway, road, highway, thoroughfare, or runway of an airport, which will render movement thereon more difficult.”

45. Policies enacted by Defendants Guillory, Logan, and Morgan to apply the above laws to criminalize requests for donations were the cause of Mr. Henagan’s arrests and citations in November 2020. In the alternative, LPD’s unconstitutional customs and practices to criminalize panhandling, of which Defendants Guillory, Logan, and Morgan knew or should have known, were the cause of Mr. Henagan’s arrests and citations.

B. Criminalization of Mr. Henagan’s Protected Speech

46. George K. Henagan is a resident of Lafayette. He has been homeless for about three years. He supports himself by asking the public for donations. He intends to engage in this practice in the future, absent a change in his financial circumstances.

47. Prior to Defendant Guillory taking office, LPD officers would not bother to cite or arrest Mr. Henagan for panhandling. Instead they would allow him to continue asking for donations, or at most would simply ask him to move along.

48. On the morning of November 12, 2020, LPD officers, including Defendant Myers, stopped Mr. Henagan near the intersection of West Congress Street and West University Avenue. Mr. Henagan had been asking for donations from the sidewalk. Officers detained Mr. Henagan for 15 minutes, frisked him, and wrote him a misdemeanor citation. Before leaving, Defendant Myers threatened Mr. Henagan from soliciting on the block again, saying, “If we catch you again, it’s not

going to be nice.” The citation listed his offense as “Begging and soliciting money 62-71(b)(6).” The explanation field of the citation reads “attempting to obtain money from cars in roadway with a sign.”

49. The case was filed in the City Court of Lafayette, where the City Prosecutor amended the charge to Simple Obstruction of a Highway, La. R.S. § 14:97, before dismissing the case in April 2021.

50. On the morning of November 28, 2020, LPD officers again detained Mr. Henagan while he was soliciting donations from a sidewalk in front of 100 S. College Road in Lafayette. The officers frisked Mr. Henagan and cited him for a misdemeanor offense of “Soliciting / Begging” under Code “62-79 [*sic*].”¹⁴ The explanation of Mr. Henagan’s alleged offense reads “Holding sign soliciting alms.”

51. This case was also filed in the City Court of Lafayette, where the City Prosecutor again amended the charge to “Simple obstruction of a highway.” Mr. Henagan pleaded no contest. The court sentenced Mr. Henagan to 30 days in Lafayette Parish Correctional Center on May 4, 2021.

CLAIMS FOR RELIEF

COUNT ONE

42 U.S.C. § 1983 Challenge to Lafayette Code § 62-71 “Begging and Soliciting Money”

52. Code § 62-71 is, on its face, a content-based restriction of free speech in violation of the First Amendment. The law criminalizes public speech requesting charitable donations by an individual.

¹⁴ This appears to have been a misprint by the citing officer, as Code § 62-79 criminalizes simple damage to property.

53. Furthermore, the text of the ordinance discriminates among speakers and viewpoints, exempting from its prohibitions firefighters and those working on behalf of “bona fide charitable organizations.”

54. The ordinance is neither narrowly tailored nor is it necessary to achieve a compelling government purpose.

55. In the alternative, were Code § 62-71 found to be content-neutral, the ordinance is a restriction on the place and manner of speech that neither serves a significant governmental interest nor leaves ample alternative channels for communication.

56. Mr. Henagan’s arrest and citation under this ordinance on November 12, 2020, violated his First, Fourth, and Fourteenth Amendment rights under the U.S. Constitution. Defendants Guillory, Logan, Morgan, and LCG created and implemented a policy to enforce this unconstitutional ordinance against people—like Mr. Henagan—who sought charitable donations in Lafayette’s public spaces. Guillory, Logan, and Morgan knew or should have known that Code § 62-71 was unconstitutional.

57. In the alternative, LCG employees acting under Defendants Guillory, Logan, and Morgan’s supervision engaged in a practice or custom of enforcing this unconstitutional ordinance against people seeking charitable donations, and Guillory, Logan, and Morgan failed to adequately supervise or train these employees to prevent this practice or custom. Guillory, Logan, and Morgan were deliberately indifferent to the risk posed to Mr. Henagan’s constitutional rights by this custom or practice.

58. Defendant Myers violated Mr. Henagan’s rights under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution when he arrested and cited Mr. Henagan on November 12, 2020. Defendant Myers knew or should have known that Code § 62-71 was

unconstitutional.

59. Defendants' subsequent conduct, including Mr. Henagan's later citation on November 28, 2020, presents a real and immediate threat of future unlawful enforcement of this ordinance against Mr. Henagan.

COUNT TWO

42 U.S.C. § 1983 Challenge to Lafayette Code § 62-32 "Criminal Mischief"

60. The "Criminal Mischief" ordinance, Code § 62-32, is so vague as to violate due process. The ordinance's prohibition on "acting in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others," lacks requisite specificity to place the public on notice of what conduct is prohibited. Furthermore, the vague nature of the statute encourages discriminatory and arbitrary enforcement. The ordinance therefore violates Due Process.

61. In addition, the ordinance is overbroad. Its language prohibits a substantial amount of constitutionally protected speech, so long as some member of the public might find that speech annoying, offensive, or disturbing. Thus, it criminalizes a substantial amount of conduct protected by the First Amendment.

62. Defendants Guillory, Logan, and LCG's use of Lafayette's "Criminal Mischief" ordinance to criminalize begging and panhandling presents a real and imminent threat to Mr. Henagan.

COUNT THREE

42 U.S.C. § 1983 Challenge to Lafayette Code § 62-68 "Simple Obstruction of a Highway of Commerce"

63. As applied by Defendants to Mr. Henagan's act of requesting donations, Code § 62-68 would violate Mr. Henagan's First Amendment rights. Defendants Guillory, Logan, and

LCG create and implement a policy of enforcing Code § 62-68 that is a content-based restriction on speech that violates First Amendment rights, regardless of whether the ordinance's text is unconstitutional on its face. In the alternative, Defendants Guillory, Logan, and LCG knew or should have known of the existence of a practice or custom of enforcing this unconstitutional ordinance against those seeking charitable donations in Lafayette's public spaces.

64. The ordinance's language is so broad as to potentially criminalize any entry into a roadway, ranging from demonstrations or political protests to a request for charitable donation. The ordinance prohibits a substantial amount of constitutionally protected speech and thus violates the First Amendment.

65. The language of the ordinance is so vague that it violates Due Process. Its prohibition on performing any act in a roadway that "will render movement thereon more difficult" confers so much discretion on officials in its interpretation that it lends itself to arbitrary and discriminatory enforcement.

66. Defendants Guillory, Logan, and LCG have used this ordinance to deny Mr. Henagan's and others' rights to engage in protected speech, amounting to an unreasonable restriction on time, manner, and place of speech.

67. Mr. Henagan suffers from a threat of imminent harm by Defendants' likely enforcement of this ordinance to silence his protected speech in the future.

COUNT FOUR

42 U.S.C. § 1983 Challenge to La. R.S. § 14:97

68. As applied by Defendants to Mr. Henagan's act of requesting donations, La. R.S. § 14:97 would violate Mr. Henagan's First Amendment rights. Defendants Guillory, Logan, and LCG create and implement a policy of enforcing § 14:97 that is a content-based restriction on

speech that violates First Amendment rights, regardless of whether the statute's text is unconstitutional on its face.

69. The statute's language is so broad as to potentially criminalize any entry into a roadway, ranging from demonstrations or political protests to a request for charitable donation. The statute prohibits a substantial amount of constitutionally protected speech and thus violates the First Amendment.

70. The language of the statute is so vague that it violates Due Process. Its prohibition on performing any act in a roadway that "will render movement thereon more difficult" confers so much discretion on officials in its interpretation that it lends itself to arbitrary and discriminatory enforcement.

71. Defendants Guillory, Logan, and LCG have used the statute to deny Mr. Henagan's and others' right to engage in protected speech, amounting to an unreasonable restriction on time, manner, and place of Mr. Henagan's speech.

72. Mr. Henagan suffers from a threat of imminent harm by Defendants' likely enforcement of this statute to silence his protected speech in the future.

COUNT FIVE

42 U.S.C. § 1983 Fourth Amendment Retaliatory Arrest

73. Mr. Henagan was subjected to an unlawful search and seizure.

74. While interacting with Defendant Myers and the officers as they searched and seized him, Mr. Henagan did not consent and was not realistically free to leave the presence of the officers.

75. Defendant Myers and other LPD Officers did not have a warrant or reason to suspect Mr. Henagan was committing a crime. Instead, their acts were retaliation for Mr.

Henagan's protected speech.

76. In the alternative, Defendant Myers and other LPD officers may have had probable cause to seize, search, and cite Mr. Henagan, but they did not seize, search, or cite people who were otherwise similarly situated and did not ask the public for donations.

77. This amounts to an unlawful, retaliatory arrest that violates the Fourth Amendment, as incorporated by the Fourteenth Amendment.

COUNT SIX

State Law Challenge to the Restriction of Speech

78. Mr. Henagan incorporates by reference the allegations in Counts One through Four.

79. Louisiana Constitution Article I, Section 7 protects freedom of speech: "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom."

80. Defendants Guillory, Logan, Morgan, Myers, and LCG's criminalization of Mr. Henagan's speech on November 12, 2020, under Code § 62-71, and the threat of future criminalization of his speech under Code §§ 62-32 and 62-68, violate Mr. Henagan's rights under Louisiana State Constitution Article I, Section 7.

REQUEST FOR RELIEF

Plaintiff requests that this Court:

- A. Declare that Lafayette Code § 62-71, “Begging and Soliciting Money” is unconstitutional as a content-based regulation on free speech that does not pass strict scrutiny.
- B. Declare that Lafayette Code § 62-32 “Criminal Mischief” is unconstitutional for vagueness and overbreadth.
- C. Enter an order enjoining future enforcement of Code §§ 62-71 and 62-32.
- D. Declare that the enforcement of the panhandling ordinance, Code § 62-71, against Mr. Henagan constituted an unlawful seizure that violated the Fourth Amendment.
- E. Declare that the policy applying of La. R.S. § 14:97 or Code § 62-68 to criminalize begging or panhandling is a content-based restriction on protected speech that fails to meet strict scrutiny.
- F. Declare that La. R.S. § 14:97 and Code § 62-68 are both vague and overbroad in violation of the Due Process and the First Amendment.
- G. In the alternative, declare that La. R.S. § 14:97 and Code § 62-68 are regulations on time and manner of speech that do not pass intermediate scrutiny.
- H. Enter an order enjoining Defendants from the enforcement of La. R.S. § 14:97 and Code § 62-68 against Mr. Henagan for exercising protected speech.
- I. Award damages to Mr. Henagan for the rights violated by the November 12, 2020, seizure and citation.
- J. Award reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988; and
- K. Order all other relief this Court deems just and proper.

Respectfully submitted,

/s/ Eric A. Foley

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