

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. _____

ABBY LANDOW,
JEFFREY ALAN,
SUSAN WYMER,
LAWRENCE BEALL,
individually and on behalf of all others similarly situated,

GREENPEACE, INC.,
NANCY YORK,

Plaintiffs,

v.

CITY OF FORT COLLINS,

Defendant.

CLASS ACTION COMPLAINT

1. The City of Fort Collins is engaged in a campaign to stop poor persons from asking for charity on the sidewalks, streets, and other public places in the city. Although city officials acknowledge that solicitation is speech that is protected by the First Amendment, Fort Collins is nevertheless actively and vigorously enforcing an unconstitutional Ordinance—section 17-127 of the Fort Collins Municipal Code, titled “Panhandling” (hereinafter, “Panhandling Ordinance” or “Ordinance”)—that turns constitutionally-protected expression into a crime. In recent years, police officers have issued dozens and dozens of citations for alleged violations, and the City Attorney’s office actively prosecutes and obtains convictions for these violations in the Fort Collins Municipal Court. The number of police-issued citations is dwarfed by countless

additional oral warnings and directives that police have issued, ordering poor persons to cease their solicitation communications and “move on.”

2. For years, the targets of this enforcement campaign have overwhelmingly been poor persons who are engaged in solicitation that is courteous, polite, nonthreatening and nonaggressive, such as the solicitation that Plaintiffs Abby Landow, Jeffrey Alan, Susan Wymer and Lawrence Beall carry out. Their requests for charity pose no risk to public safety, and their communications requesting assistance are squarely protected by the First Amendment.

3. Until recently, the City has looked the other way when canvassers for a recognized nonprofit organization—Greenpeace, Inc.—have stopped pedestrians to solicit contributions. That has now changed. Fort Collins police have recently put Greenpeace on notice that its canvassing activities in downtown Fort Collins violate the Panhandling Ordinance.

4. In this action Plaintiffs ask this Court, pursuant to 42 U.S.C. § 1983, for emergency injunctive relief to stop Fort Collins from invoking or relying on its Panhandling Ordinance to violate the First Amendment right of Plaintiffs to engage in peaceful and nonthreatening charitable solicitation in public spaces in Fort Collins. Plaintiffs also seek a declaratory judgment, a permanent injunction, and – for certain plaintiffs – nominal damages.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

6. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

7. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). The Defendant resides within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

PARTIES

Plaintiffs

8. Plaintiff Abby Landow is a resident of Fort Collins. She is homeless and destitute. She has peacefully and politely solicited charity from passersby in Fort Collins in a manner and in situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. She wants to be free to resume her peaceful solicitation without fear that police will enforce the challenged Ordinance against her.

9. Plaintiff Jeffrey Alan is a resident of Fort Collins. He is homeless, disabled, and poor. He has peacefully and politely solicited charity from passersby in Fort Collins in a manner and in situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. He wants to be free to continue his peaceful solicitation without fear that police will enforce the challenged Ordinance against him.

10. Plaintiff Susan Wymer is a resident of Fort Collins. She is disabled and homeless. She has peacefully and politely solicited charity from passersby in Fort Collins in a manner and in situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. She wants to be free to continue her peaceful solicitation without fear that police will enforce the challenged Ordinance against her.

11. Plaintiff Lawrence Beall is a resident of Fort Collins. He is homeless and poor. He has peacefully and politely solicited charity from passersby in Fort Collins in a manner and in

situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. He wants to be free to continue his peaceful solicitation without fear that police will enforce the challenged Ordinance against him.

12. Plaintiff Greenpeace, Inc. (“Greenpeace”) is a non-profit corporation that carries out fundraising and outreach activities in Fort Collins. Plaintiff Greenpeace wants to be free to continue its peaceful solicitation of donations without fear that police will enforce the challenged Ordinance against its canvassers.

13. Plaintiff Nancy York is a 76-year-old resident of Fort Collins. She sometimes gives money to poor persons who approach her and ask for help. The challenged Ordinance prohibits persons from approaching Ms. York and asking for assistance solely because she is over sixty years old. Ms. York wants to continue receiving messages of solicitation that the challenged Ordinance forbids.

Defendant

14. Defendant City of Fort Collins is a municipal corporation incorporated in the State of Colorado. It adopted and enforces the Panhandling Ordinance that is challenged in this case. It is the policy and practice of Fort Collins—through the actions of its police officers, its city prosecutor, and its municipal court—to interpret and enforce the Ordinance in the unconstitutional manner that is described and challenged in this Complaint.

15. The acts and omissions of Fort Collins, and its police officers, prosecutors, and municipal court, are carried out under color of state law.

FACTUAL BACKGROUND

The Panhandling Ordinance

16. The enforcement campaign challenged in this case is carried out under the authority of Section 17-127 of the Fort Collins Municipal Code, which is titled “Panhandling.”

17. The Panhandling Ordinance consists of two parts. In subsection (a), “Panhandle” is defined as “to knowingly approach, accost or stop another person in a public place and solicit that person, whether by spoken words, bodily gestures, written signs or other means, for a gift of money or thing of value.”

18. Subsection (b) makes it unlawful for any person to “panhandle” in any of eleven circumstances:

- (1) Any time from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise;
- (2) In a manner that involves the person panhandling knowingly engaging in conduct toward the person solicited that is intimidating, threatening, coercive or obscene and that causes the person solicited to reasonably fear for his or her safety;
- (3) In a manner that involves the person panhandling knowingly directing fighting words to the person solicited;
- (4) In a manner that involves the person panhandling knowingly touching or grabbing the person solicited;
- (5) In a manner that involves the person panhandling knowingly continuing to request the person solicited for a gift of money or thing of value after the person solicited has refused the panhandler’s initial request;
- (6) In a manner that involves the person panhandling knowingly soliciting an at-risk person;¹

¹ Subsection (a)(1) defines an “at-risk person” as:

[A] natural person who is sixty (60) years of age or older, under eighteen (18) years of age, or who is a person with a disability. *A person with a disability* shall mean, for purposes of this Paragraph (1), a natural person of any age who suffers from one (1) or more substantial physical or mental impairments that render

- (7) On a sidewalk or other passage way in a public place used by pedestrians and is done in a manner that obstructs the passage of the person solicited or that requires the person solicited to take evasive action to avoid physical contact with the person panhandling or with any other person;
- (8) Within one hundred (100) feet of an automatic teller machine or of a bus stop;
- (9) On a public bus;
- (10) In a parking garage, parking lot or other parking facility; or
- (11) When the person solicited is entering or exiting a parked motor vehicle, in a motor vehicle stopped on a street, or present within the patio or sidewalk serving area of a retail business establishment that serves food and/or drink.

19. Section 1-15 of the Fort Collins Municipal Code provides that violation of the Panhandling Ordinance is a misdemeanor punishable by imprisonment up to 180 days and a fine of up to \$2,650.

20. In this action, Plaintiffs bring a facial and as-applied challenge to six subsections of the Fort Collins Panhandling Ordinance. The challenged portions of the Ordinance are Subsections (b) (1), (5), (6), (8), (9), (10) and (11). Plaintiffs seek relief from the challenged prohibitions of the Ordinance as written and also as Fort Collins interprets and enforces those prohibitions.²

the person significantly less able to defend against criminal acts directed toward such person than he or she would be without such physical or mental impairments. A *substantial physical or mental impairment* shall be deemed to include, without limitation, the loss of, or the loss of use of, a hand or foot; loss of, or severe diminishment of, eyesight; loss of, or severe diminishment of, hearing; loss of, or severe diminishment in, the ability to walk; and any developmental disability, psychological disorder, mental illness or neurological condition that substantially impairs a person's ability to function physically or that substantially impairs a person's judgment or capacity to recognize reality or to control behavior.

² Plaintiffs do not challenge subsections (2), (3), (4) or (7).

Enforcement of the Challenged Ordinance

21. Police enforcement of Fort Collins’ Panhandling Ordinance is on the rise. From August 2012 through the present, the Fort Collins police have issued dozens and dozens of citations for violations of the Ordinance, as well as countless oral warnings and move-on orders. In more than half of the cases in which Fort Collins police issued panhandling citations, the supposedly criminal behavior identified by the police was nothing more than passively displaying a sign inviting an act of charity from persons passing by. Likewise, the Fort Collins police have issued citations to street musicians for alleged violations of the Panhandling Ordinance. These buskers were simply playing music on a public sidewalk and passively and symbolically soliciting donations by means of an upturned hat or open guitar case. Such passive solicitation does not constitute “panhandling” according to the text of challenged Ordinance, because passive solicitors do not “approach, accost or stop” the person who is solicited. Nevertheless, it is the policy and practice of Fort Collins authorities—including the police, the City Attorney’s office, and the Municipal Court—to enforce the challenged Ordinance against persons who peacefully and passively ask passersby for donations.

22. Over the past several years, the Fort Collins police have also ticketed individuals who were engaged in “active” solicitation – meaning the solicitors approached people or used their voice to stop persons and request donations. The vast majority of citations issued to active solicitors reflect that the solicitors, while asking for help, did not in engage in conduct that was arguably threatening, intimidating or coercive.

23. Numerous citations reflect Fort Collins police officers enforcing the challenged Ordinance as if it were a complete ban on panhandling in the City. In several citations, the

description of the allegedly illegal “panhandling” did not reflect any violation of the Ordinance’s specific prohibitions regarding time of day, location, or manner of carrying out the solicitation. Some of these citations include police officers’ comments reflecting a view that the challenged Ordinance renders illegal any and all “panhandling” in Fort Collins, regardless of when, where, or how the panhandling is done.

Plaintiffs

Abby Landow

24. Plaintiff Abby Landow is a resident of Fort Collins who is homeless and destitute. To get by, Ms. Landow has often peacefully and politely solicited charity from passersby in downtown Fort Collins in a manner and in situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. Following is a photograph of Ms. Landow.



25. When Ms. Landow solicits charity, she usually sits on a public bench on a public sidewalk and silently holds a sign asking for help. Her sign usually says something like: “Need help. Anything is a blessing.”

26. Ms. Landow generally solicits in downtown Fort Collins where there is significant foot traffic. She has solicited after dark, in well-lit areas, as well as near outdoor seating areas of a restaurant.

27. Starting in early 2014, Ms. Landow started hearing about more and more people getting tickets for panhandling. On at least three occasions that year, police intervened to stop Ms. Landow from soliciting. One time, she was displaying a sign while sitting on a public bench on a public sidewalk outside of a restaurant. Fort Collins police officers approached her and told her she was illegally panhandling within 100 feet of an ATM located inside the restaurant. Another time, officers approached her and told her that she was illegally panhandling when she was displaying a sign inviting donations from people in vehicles that were exiting a parking lot. In both instances, the officers ordered Ms. Landow to move on, and she did so.

28. In April 2014, Fort Collins police ticketed Ms. Landow for violating the challenged Ordinance, because she was silently soliciting donations by displaying her sign while sitting on a public bench within sight of people sitting at an outdoor café. With the help of a friend, Ms. Landow fought the ticket, and the prosecutor ultimately dismissed the charge. However, the prosecutor warned Ms. Landow that if she were ticketed again, she would not avoid prosecution.

29. Because of her interactions with the police and prosecutor last year, as well as hearing of others who were ticketed, Ms. Landow has refrained from soliciting donations in Fort Collins on several occasions. She wants to be free to resume her peaceful solicitation without fear that police will enforce the challenged Ordinance against her.

Jeffrey Alan

30. Plaintiff Jeffrey Alan is a recent resident of Fort Collins. He is homeless, disabled, and poor. To pay for basic necessities, Mr. Alan sometimes solicits donations from passersby on public sidewalks. Mr. Alan has peacefully and politely solicited charity from passersby in Fort Collins in a manner and in situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. Following is a photograph of Mr. Alan.



31. Mr. Alan was a truck driver for 30 years. His career ended abruptly when he began undergoing treatment, including two major surgeries, for lip cancer – which has since spread to his tonsils. Mr. Alan’s illness has left him permanently disfigured, disabled, and unable to work.

32. In the past, Mr. Alan has solicited donations by standing on a public sidewalk, and, using his voice to stop passersby, asking if they could spare some change. He was polite and non-aggressive when he asked for money.

33. In the hope of avoiding tickets for a violation of the City's Panhandling Ordinance, Mr. Alan has recently refrained from stopping persons to solicit donations in downtown Fort Collins. Instead, he has silently solicited donations by displaying a sign while sitting on public benches on public sidewalks in downtown Fort Collins. His sign usually says: "Homeless/Have Cancer/Need Help." Even when soliciting by silently displaying his sign, he reasonably fears being ticketed for an alleged violation of the challenged Ordinance.

34. Mr. Alan has silently solicited donations with a sign in Fort Collins on public sidewalks within 100 feet of ATMs and bus stops, as well as after dark. He has also solicited near a restaurant's outdoor seating area and from people over 60 years of age.

35. Mr. Alan has also solicited donations from people who, like himself, are disabled. Mr. Alan does not want his disability to prevent other people from approaching him and asking him for help. Although he does not have much to give, he wants to be asked.

36. Mr. Alan was recently sitting on a public bench on a public sidewalk outside of a restaurant in downtown Fort Collins when a restaurant employee threatened to call the police if Mr. Alan did not move away from the restaurant. The employee said Mr. Alan was illegally panhandling near a restaurant and within 100 feet of an ATM. Mr. Alan, who was silently soliciting by displaying a sign, moved away from that location because he feared being ticketed by the police.

37. Mr. Alan wants to be free to continue soliciting as he has in the past, without fear that police will enforce the challenged Ordinance against him.

Susan Wymer

38. Plaintiff Susan Wymer is a resident of Fort Collins. She is disabled and homeless. To get by, Ms. Wymer has often peacefully and politely solicited charity from passersby in Fort Collins in a manner and in situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. Following is a photograph of Ms. Wymer.



39. Ms. Wymer recently lost her Section 8 apartment when it was declared uninhabitable. She has been approved to move into a new Section 8 apartment sometime in the spring, but she is currently homeless.

40. Ms. Wymer walks with a cane and – because of her diabetes – suffers from neuropathy in her feet and significant back pain. Her disabilities make her unable to work.

41. When Ms. Wymer solicits, she sometimes uses her voice to stop passersby and ask them for spare change or leftover food. She has done this in parking lots and on buses. Ms. Wymer is polite and non-aggressive when she solicits charity.

42. Usually, Ms. Wymer silently solicits donations by displaying a sign while sitting or standing on a public sidewalk. The sign usually says: “Anything will help. God bless you. John 3:16.” She sometimes solicits in this manner while sitting on a public bench in downtown Fort Collins that is within 100 feet of an ATM, near outdoor restaurant seating, and/or after dark.

43. On at least two occasions, Fort Collins police intervened to stop Ms. Wymer from soliciting charity. Once, police told her she was illegally panhandling because she was soliciting within 100 feet of an ATM and it was after dark (approximately 6:00 p.m.). The officer told Ms. Wymer to move on, and she did. Another time, Ms. Wymer was soliciting silently by displaying her sign on a public sidewalk near her Section 8 apartment. A police officer told her that panhandling was illegal and that breaking the law could mean a \$1000 fine. The officer directed Ms. Wymer to move on, and she did. Afterwards, she refrained from soliciting at that location for fear of being ticketed by the police.

44. Ms. Wymer wants to be free to continue her peaceful solicitation without fear that police will enforce the challenged Ordinance against her.

Lawrence Beall

45. Plaintiff Lawrence Beall is a resident of Fort Collins. He is homeless and poor. Mr. Beall has peacefully and politely solicited charitable donations in downtown Fort Collins in a

manner and in situations that violate the challenged Ordinance as written or as Fort Collins interprets and enforces it. Following is a photograph of Mr. Beall.



46. Mr. Beall is known as “Bicycle Larry,” because he fixes bikes for homeless people. He worked at Safeway for many years and retired with full benefits. Those benefits were recently cut in half – so that he now receives about \$500 per month. This money is not enough to cover his basic necessities, much less rent.

47. When Mr. Beall solicits charity, he usually walks up to people on public sidewalks and politely asks them for money. He usually says something like, “I’m down on my luck. Can you spare a couple of quarters?” Mr. Beall does not pressure people for money or get too close to them when approaching them. He thanks each person he asks for money – whether they give to him or not.

48. Mr. Beall has solicited donations at night from people leaving bars or restaurants on well-lit sidewalks in downtown Fort Collins. Mr. Beall has also solicited money from people leaving their vehicles, sometimes in parking lots.

49. Mr. Beall reasonably fears that if he continues to solicit donations in Fort Collins he will be ticketed by the police. He wants to be free to continue his peaceful solicitation without fear that police will enforce the challenged Ordinance against him.

Greenpeace, Inc.

50. Plaintiff Greenpeace, Inc. (“Greenpeace”) is a non-profit corporation that uses peaceful protest and creative communication to expose global environmental problems and to promote solutions. For approximately nine years, Greenpeace has regularly sent canvassers to downtown Fort Collins to solicit passersby to become members of, and make donations to, Greenpeace. These canvassers solicit charity in a manner and in situations that violates the challenged Ordinance as written or as Fort Collins interprets and enforces it. Following is a photograph of Greenpeace canvasser soliciting donations on a public sidewalk.



51. For approximately nine years, Greenpeace has sent a team of canvassers to solicit donations in downtown Fort Collins on at least a weekly basis. Greenpeace chose the downtown area because it has significant foot traffic. Greenpeace views its canvassing operation in Fort Collins to be highly successful, meaning that on average compared with other parts of the country, a relatively high percentage of people in Fort Collins engage in meaningful conversation with canvassers about Greenpeace's mission and choose to become members.

52. Greenpeace canvassers are not aggressive or threatening. They do not block the sidewalk, entrances to buildings, or any pedestrians' right of way.

53. The canvassers initiate conversations with passersby about the environment and the mission and programs of Greenpeace. Typically, canvassers use their voice to stop or attempt to stop passersby by directing a statement like the following to particular individual walking nearby: "Let's have a conversation about Greenpeace's campaign."

54. When a passerby chooses to engage in conversation with a canvasser, the canvasser will spend some time educating the passerby on Greenpeace's mission. Then, the canvasser will encourage the passerby to join Greenpeace, which requires a donation to the organization. If the passerby agrees, the canvasser then calls Greenpeace's phone center and assists that passerby in signing up as a member and paying the membership fee via credit card. The canvasser does not accept any cash donations. The canvasser gives the new member literature about Greenpeace's programs. This literature includes instructions on how the member may increase his or her donation to Greenpeace at a later time.

55. Some of the busy downtown corners where Greenpeace canvassers solicit in Fort Collins are within 100 feet of an ATM, bus stop, or outdoor café. Because Greenpeace

canvassers do not discriminate on the basis of age or disability, they solicit from passersby who are over 60 and/or who have a disability.

56. In December, 2014, a Fort Collins police officer approached a Greenpeace employee who was canvassing in downtown Fort Collins and warned him that solicitation by Greenpeace violates Fort Collins' Panhandling Ordinance. When the canvasser explained that Greenpeace does not take actual money, and arranges all monetary transactions over the phone, the police officer said that this form of soliciting donations was still illegal.

57. This recent incident was the first time that Fort Collins police have contacted a Greenpeace canvasser regarding the Fort Collins Panhandling Ordinance. Greenpeace does not want to risk its canvassers being ticketed, fined and/or arrested for doing their jobs. Because of this incident and the need for clarity about the law, Greenpeace canvassers have ceased soliciting donations in downtown Fort Collins. Greenpeace wants to be free to continue its peaceful solicitation of donations without fear that police will enforce the challenged Ordinance against its canvassers.

Nancy York

58. Plaintiff Nancy York is 76 years old and wants to hear messages of solicitation from poor and homeless people in Fort Collins. Ms. York was born and raised in Fort Collins and owns a small business there. Although she is housed and is not poor, she is a community activist on behalf of poor people and homeless people. Following is a photograph of Ms. York.



59. Ms. York's job brings her to downtown Fort Collins on a regular basis, where she is frequently solicited by poor people and non-profits.

60. The challenged Ordinance prohibits persons from approaching Ms. York and asking for assistance solely because she is over sixty years old. Despite her age, Ms. York is quite capable of making decisions for herself about whether or not to make a charitable donation to a person or an organization.

61. Ms. York appreciates interaction with solicitors, particularly poor and homeless people. She wants to see their signs of need; she wants to be approached and asked for money so that she can better know the plight of these people. Ms. York wants to continue receiving messages of solicitation that the challenged Ordinance forbids.

The Ordinance is Unconstitutional

62. The challenged Ordinance, both as it is written and as Fort Collins interprets and enforces it, relies on content to distinguish between prohibited expression and expression that is not regulated. Anyone remains free to sit on a downtown sidewalk in the evening with a sign that says “reelect the mayor,” but a person violates the Ordinance—as Fort Collins interprets and enforces it—by sitting with a sign that seeks a contribution. Anyone is free to stop a person walking near a bus stop to ask for directions to a hospital, but if the requester asks for help with cab fare to get there, the Ordinance is violated. Nonprofit organizations are free to distribute literature about their work at bus stops, but distributing that literature is forbidden if it includes a pitch for donations. Evangelicals are free to stop passersby 99 feet from an ATM to ask if they are saved, but not to ask for a donation to a church or charity. Petition circulators are free to approach persons in the evening and solicit signatures for a ballot measure, but they commit a crime if they also ask for a donation to help finance the ballot effort. Anyone may approach a 61-year-old pedestrian to ask for directions, to solicit a signature, or to solicit support in an election campaign, but asking a 61-year-old for a donation is prohibited.

63. Even if the challenged Ordinance were content-neutral, and it is not, the challenged Ordinance, as written and as Fort Collins interprets and enforces it, is not narrowly tailored to advance any possible legitimate interest of the City. Without adequate justification, the challenged Ordinance prohibits peaceful, nonthreatening, nonintrusive solicitations that are squarely protected by the First Amendment.

64. The challenged Ordinance fails to provide notice that is adequate to enable an ordinary person to understand what conduct is prohibited. It fails to provide adequate guidance

to police, thus resulting in arbitrary and discriminatory enforcement. For example, the definition of “panhandle” in subsection (a) (5) appears to apply only to solicitations that are preceded by approaching, stopping or accosting the person solicited. A reasonable person can read the text and conclude that passively sitting with a sign that silently invites donations does not violate the Ordinance. Nevertheless, Fort Collins interprets and enforces the Ordinance as though such passive solicitation constitutes panhandling that the Ordinance regulates. Likewise, the prohibitions of the challenged Ordinance are applicable in any “public place,” but the Ordinance is vague as to whether “public places” include private property open to the public, such as private parking lots. A review of panhandling citations shows that some officers are enforcing the Ordinance on private property open to the public. Ordinary solicitors do not know where the Ordinance applies. Finally, the challenged Ordinance prohibits certain solicitation for a “gift of money or other thing of value.” The term “other thing of value” is vague and susceptible to multiple interpretations. Ordinary solicitors do not know whether the Ordinance regulates non-monetary requests for gifts such as food, clothing, or “help”.

CLASS ACTION ALLEGATIONS

65. Plaintiffs Landow, Alan, Wymer, and Beall bring this action on behalf of themselves and all others similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

The Plaintiff Class

66. Plaintiffs Landow, Alan, Wymer, and Beall represent a class of persons defined as follows:

All persons who, now or any time in the future, wish to engage in solicitation activities in Fort Collins that are prohibited by the challenged provisions of

section 17-127 of the Fort Collins Municipal Code as Fort Collins interprets, applies and enforces them.

67. The proposed class is so numerous that joinder of all members is impracticable.

68. There are questions of law and fact common to the members of the plaintiff class.

69. The claims of the named plaintiffs are typical of the claims of the members of the class.

70. The named plaintiffs will fairly and adequately protect the interests of the class.

Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the class. Plaintiffs are represented by attorneys employed by and working in cooperation with the ACLU Foundation of Colorado, which has extensive experience in litigating federal court class action cases involving federal civil rights claims.

71. Fort Collins has acted or refused to act on grounds generally applicable to the class, thereby making injunctive and declaratory relief appropriate for the class as a whole.

The Plaintiff Subclass (passive solicitors)

72. Plaintiffs Landow, Alan, and Wymer also represent a subclass of persons defined as follows:

All persons who, now or any time in the future, wish to passively solicit contributions in the public right of way in Fort Collins, such as by using a sign or by a symbolic communication that contributions are invited.

73. The proposed subclass is so numerous that joinder of all members is impracticable.

74. There are questions of law and fact common to the members of the plaintiff subclass.

75. The claims of the named plaintiffs are typical of the claims of the members of the subclass.

76. The named plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the class. Plaintiffs are represented by attorneys employed by and working in cooperation with the ACLU Foundation of Colorado, which has extensive experience in litigating federal court class action cases involving federal civil rights claims.

77. Fort Collins has acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief to the class as a whole.

DECLARATORY RELIEF

78. An actual and immediate controversy exists between Plaintiffs and Defendant. Plaintiffs contend that the challenged Ordinance, as interpreted, applied, and enforced, violates their constitutional rights. Defendant contends that the challenged Ordinance, as interpreted, applied and enforced, complies with the law.

79. Plaintiffs are therefore entitled to a declaration of rights with respect to this controversy. Without such a declaration, Plaintiffs will be uncertain of their rights and responsibilities under the law.

INJUNCTIVE RELIEF

80. Plaintiffs are entitled to injunctive relief. Defendant has enforced and threatens to continue enforcing the challenged Ordinance in the manner described in this Complaint. Defendant has acted and is threatening to act under color of state law to deprive Plaintiffs of their constitutional rights. Plaintiffs are suffering irreparable injury and will continue to suffer a real and immediate threat of irreparable injury as a result of the existence, operation, and enforcement of the challenged Ordinance. Plaintiffs have no plain, adequate or speedy remedy at law.

FIRST CLAIM FOR RELIEF

(First Amendment)

(Plaintiffs Landow, Alan, Wymer, Beall, the Plaintiff Class, and Greenpeace, Inc.)

81. The allegations of the preceding paragraphs are incorporated as though fully set forth herein.

82. The challenged provisions of the Ordinance, as Fort Collins interprets and enforces them, have infringed and threaten to continue infringing on the right of Plaintiffs to fully exercise their First Amendment rights, including their rights of freedom of speech and freedom of expression, in violation of the First Amendment.

83. By acting and threatening to act under color of state law to deprive Plaintiffs of rights guaranteed by the Constitution of the United States, Defendant has violated, and has threatened to continue violating, 42 U.S.C. §1983.

84. Wherefore, Plaintiffs are entitled to a temporary restraining order, a declaratory judgment, permanent injunctive relief, and nominal damages.

85. Plaintiffs Landow, Alan, and Wymer also seek nominal damages.

SECOND CLAIM FOR RELIEF

(Due Process, First Amendment)

(Plaintiffs Landow, Alan, Wymer and the Plaintiff Subclass)

86. The allegations of the preceding paragraphs are incorporated as though fully set forth herein.

87. Plaintiffs Landow, Alan, and Wymer solicit contributions by sitting or standing passively while holding a sign that invites charity from passersby. In doing so, they engage in communications that are protected by the First Amendment.

88. In soliciting contributions passively, Plaintiffs Alan, Landow and Wymer do not approach, accost, or stop passersby. They do not initiate interaction. Accordingly, their activity does not meet the definition of “panhandle” in the text of the challenged Ordinance, § 17-127 (a) (5) of the Fort Collins Municipal Code.

89. Nevertheless, as a matter of policy and practice, Fort Collins interprets and enforces the challenged Ordinance as though the act of passively displaying a sign meets the definition of “panhandling.”

90. By enforcing the challenged Ordinance against Plaintiffs when they are doing nothing more than displaying a sign, Fort Collins has violated and threatens to continue violating the First Amendment rights of the Plaintiffs.

91. By enforcing the challenged Ordinance against Plaintiffs whose conduct does not violate the terms of the Ordinance, Fort Collins has violated and threatens to continue violating the rights of the Plaintiffs to due process of law, in violation of the Fourteenth Amendment.

92. Wherefore, Plaintiffs seek a declaratory judgment that the definition of “panhandle” in Subsection (a) (5) of § 17-127 of the Fort Collins Municipal Code does not apply to persons who passively solicit contributions by means of a sign or otherwise, or to persons who do not actively initiate interactions. Plaintiffs also seek a temporary and permanent injunction that prohibits Fort Collins from enforcing the challenged Ordinance against passive solicitors, whether by means of tickets, citations, or orders to “move on.”

93. Plaintiffs Landow, Alan, and Wymer also seek nominal damages.

THIRD CLAIM FOR RELIEF
(First Amendment Right to Receive Information; Equal Protection)
(Plaintiffs Alan and York)

94. The allegations of the preceding paragraphs are incorporated as though fully set forth herein.

95. Plaintiff Alan is disabled and Plaintiff York is over 60 years old. In Subsection (a)(1) of its Panhandling Ordinance, Fort Collins defines Plaintiffs Alan and York as persons who are “at risk.” Subsection (b)(6) of the challenged Ordinance prohibits persons from directing messages of solicitation to persons defined as “at risk.”

96. Plaintiffs Alan and York have a right to receive information and ideas that are protected by the First Amendment.

97. Plaintiffs Alan and York have a cognizable legal interest in receiving the messages of solicitation that needy persons, street musicians, and non-profit organizations like Greenpeace are prohibited from directing to them.

98. The existence, operation, and enforcement of the challenged Ordinance interfere with and infringe the right of Plaintiffs Alan and York to receive these messages and information, in violation of the First Amendment.

99. By classifying Plaintiffs Alan and York as “at risk” and depriving them of communications that they wish to receive, Fort Collins deprives Plaintiffs of the equal protection of the laws, in violation of the Fourteenth Amendment. Fort Collins cannot provide any rational basis for establishing the challenged classification. The only possible justification for the classification is an invidious stereotype that provides no rational basis.

100. By acting and threatening to act under color of state law to deprive Plaintiffs Alan and York of rights guaranteed by the Constitution and laws of the United States, Fort Collins has violated and threatens to continue violating 42 U.S.C. § 1983.

101. Wherefore, Plaintiffs are entitled to a declaratory judgment and interim and permanent injunctive relief.

FOURTH CLAIM FOR RELIEF

(Due Process; Vagueness)

(Plaintiffs Alan, Landow, Wymer, Beall, Greenpeace, Inc., and the Plaintiff Class)

102. The allegations of the preceding paragraphs are incorporated as though fully set forth herein.

103. The challenged Ordinance provides for criminal penalties.

104. The challenged Ordinance, on its face and as interpreted, applied, and enforced by Fort Collins officials, fails to provide notice that is adequate to enable an ordinary person to understand what conduct is prohibited.

105. The challenged Ordinance, on its face and as interpreted, applied and enforced by Fort Collins officials, fails to establish adequate guidelines to govern law enforcement and hence, authorizes and encourages arbitrary and discriminatory enforcement.

106. The challenged Ordinance is vague, in violation of the Due Process Clause of the Fourteenth Amendment.

107. By acting and threatening to act under color of state law to deprive Plaintiffs of rights guaranteed by the Constitution and laws of the United States, Fort Collins has violated and threatens to continue violating 42 U.S.C. § 1983.

108. Wherefore, Plaintiffs are entitled to a declaratory judgment and interim and permanent injunctive relief.

PRAYER FOR RELIEF

Plaintiffs respectfully request the following relief:

1. A temporary and permanent injunction enjoining Fort Collins from 1) enforcing Fort Collins Municipal Section 17-127, Subsections (b) (1), (5), (6), (8), (9), (10) and (11); and 2) prohibiting Fort Collins from relying on the challenged provisions of section 17-127 of the Fort Collins Municipal Code as grounds for issuing citations or orders to move on to persons who are soliciting passively by means of a sign or other indication that donations are invited;
2. A declaratory judgment that the challenged provisions of section 17-127 of the Fort Collins Municipal Code, on their face and as Fort Collins has been interpreting and enforcing them, violate the First Amendment;
3. A declaratory judgment that the definition of “panhandle” in Fort Collins Municipal Code Section 17-127(a) applies only to solicitors who first stop, approach, or accost the person to be solicited and does not apply to passive soliciting such as displaying a sign indicating that donations are invited;
4. An award of nominal damages for Plaintiffs Landow, Wymer and Alan;
5. An award of Plaintiffs’ costs and reasonable attorney’s fees; and
6. Such additional relief as this Court may deem just and proper.

Dated: February 10, 2015

Respectfully submitted,

s/ Hugh Q. Gottschalk

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on February 10, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and sent the same via email to the following:

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s/ Hugh Q. Gottschalk by Karen Brock