

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.:  
DIVISION:

ROBERT BURCK, D/B/A “NAKED COWBOY,”  
Plaintiff,

vs.

OFFICER FERTZ GASPARD, OFFICER  
VALERIE PITTMAN, DAYTONA  
BEACH POLICE DEPARTMENT, JAKARI  
E. YOUNG, IN HIS CAPACITY AS  
CHIEF OF POLICE and THE CITY OF  
DAYTONA BEACH, FLORIDA  
Defendants.

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**PLAINTIFF’S COMPLAINT FOR DAMAGES AND INJUNCTIVE AND  
DECLARATORY RELIEF**

COMES NOW Plaintiff, ROBERT BURCK, D/B/A “NAKED COWBOY,” (“BURCK”), by and through the undersigned attorneys, and hereby files this Complaint against OFFICER FERTZ GASPARD (“GASPARD”), and OFFICER VALERIE PITTMAN (“PITTMAN”), in their individual capacities and for acts that occurred during the course and scope of their employment with Defendant, and Defendant DAYTONA BEACH POLICE DEPARTMENT (“DBPD”) BY AND THROUGH JAKARI E. YOUNG, IN HIS CAPACITY AS CHIEF OF POLICE, (“Chief Young”), for improper arrest, civil rights violations and to challenge the

unconstitutional ordinance enacted by THE CITY OF DAYTONA BEACH, FLORIDA (hereinafter “The City”).

### **JURISDICTION AND VENUE**

1. This is an action in equity and for damages in tort as well as deprivation of civil rights guaranteed by the United States Constitution via 42 U.S.C. §1983 and §1988; 4<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution; and Florida state law claims, pursuant to the laws of the State of Florida. The amount in controversy exceeds the jurisdictional limits of the Court, exclusive of interest, costs and attorney fees.

2. Venue is proper in the Middle District of Florida Orlando Division under 28 U.S.C. §1391(b) and M.D. Fla. Loc. R. 1.4. Defendants are subject to personal jurisdiction here because they are located in the city of Daytona and all wrongful acts complained of occurred within Daytona Beach, Volusia County, Florida.

3. All conditions precedent to filing this Complaint have occurred. Prior to the filing of this Complaint, Plaintiff served requisite notices of these claims pursuant to Florida Statute Section 768.28 and other relevant laws.

4. Plaintiff in this action seeks relief under the First, Fourth, Fifth and Fourteenth Amendments of the United States Constitution.

5. This Court has subject-matter jurisdiction over the Plaintiff's 42 U.S.C. § 1983 claims pursuant to 28 U.S.C. §§ 1331 (federal question), 1343(a)(3) (civil rights), and 1988.

6. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a) because the Plaintiff's' state constitutional claims form the same case or controversy as their claims based on federal law.

7. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and F.R.C.P. 65.

### **PARTIES**

8. Plaintiff BURCK is a resident of New York, but at all material times was in Daytona Beach, Volusia County, Florida, where the incidents described herein occurred.

9. Plaintiff BURCK periodically performs in The City. He wants to continue to perform in The City. To comply with The City's ordinance, as illegally enforced, Plaintiff would have to significantly waive his rights under the Constitution and Bill of Rights and fear further retribution and prosecution of an unconstitutional ordinance.

10. At all times material hereto, Defendant GASPARD was employed as a Certified Sworn Law Enforcement Officer for the Defendant DBPD and was acting under the direction and control of DBPD, in such capacity as an agent, servant, and

employee of DBPD. Upon information and belief, and at all times material hereto, Defendant GASPARD participated in the unconstitutional violations and other wrongful acts that occurred on March 6, 2021, at which time he was acting within the course and scope of his employment under color of state law.

11. At all times material hereto, Defendant PITTMAN was employed as a Certified Sworn Law Enforcement Officer for the Defendant DBPD and was acting under the direction and control of DBPD, in such capacity as an agent, servant, and employee of DBPD. Upon information and belief, and at all times material hereto, Defendant PITTMAN participated in the unconstitutional violations and other wrongful acts that occurred on March 6, 2021, at which time he was acting within the course and scope of his employment under color of state law.

12. The Defendant, Chief Young serves in his official capacity as the Chief of Police for the Defendant DBPD. Chief Young is sued herein in his official capacity as Police Chief and is *sui juris*.

13. At all times material hereto, Defendant DBPD [by and through Chief Young] is an entity, corporate and political, duly organized under the laws of the State of Florida. DBPD is the governmental entity responsible, as a matter of law, for the actions of its officials, agents, and employees, and was responsible for their training, supervision, and conduct. DBPD is also responsible for ensuring that its

police personnel obey the laws of the State of Florida and ensuring that its rules and regulations are followed and enforced.

14. Defendant DBPD is a municipal corporation organized under the laws of the State of Florida. It has the capacity to be sued as it is the legal and political governmental entity responsible for the actions of Daytona Beach Police Department and its officials, agents, and employees.

15. The City is sued in its own right and on the basis of the acts of its officials, agents, and employees. At all relevant times, The City acted under color of state and federal law.

**FACTUAL ALLEGATIONS**  
**“I’M THE NAKED COWBOY”**

16. BURCK is a singer, songwriter, writer and street performer, better known as the “Naked Cowboy.” BURCK is best known for his appearances in Times Square where he is often bombarded by pedestrians looking to hear his songs and take pictures of and with him. Often times, these pedestrians leave monetary tips in appreciation.

17. On or about May 6, 2021, BURCK traveled from New York City to Daytona Beach Florida for “Bike Week”. BURCK has frequented this event numerous times in years past and was eager to enjoy his time in Florida as he had done so many times before. The incident in question arose from a guitar performance that BURCK was giving to a crowd on the public right of way during “Bike Week.”

18. While enjoying the events of Bike Week, BURCK was approach by two DBPD officers, GASPARD and PITTMAN who asked him not to panhandle. At that time, BURCK informed the officers he does not panhandle and that he is an entertainer often recognized by pedestrians and given monetary tips.

19. The officers continued to follow BURCK, crouching behind pedestrians attempting to catch pedestrians giving him monetary gifts. When the officers observed BURCK receiving a donation, they immediately approached him to arrest him. They handcuffed BURCK and told him he was illegally panhandling. BURCK willingly submitted to the confinement and immediately turned around and gave his wrist to the officers so that they had appropriate access to his arms to safely place the handcuffs. Shortly thereafter, multiple pedestrians stopped to observe, record, and some can even be heard offering to pay BURCK's bail money.

20. BURCK was detained and questioned in a manner that contradicted the intention of the municipal code for which he was charged (Daytona Beach, Florida, Municipal Code, Sec. 66-1), a code which begins with the following preface: "The purpose and intent of this article is to recognize the constitutional right of persons to panhandle, including but not limited to solicit and beg, in a peaceful and non-threatening manner."

21. Making matters worse, BURCK's base citation, detention, and arrest were based on an ordinance that is unconstitutional.

22. While in a back-and-forth discord with officers, BURCK asked his girlfriend to retrieve his cell phone from his boot. When his partner attempted to oblige his request, PITTMAN with extreme and unnecessary force slammed BURCK into the patrol vehicle. PITTMAN proceeded to roll BURCK along the side of the patrol vehicle. His guitar, one of his main sources of income, was irreparably damaged as PITTMAN aggressively slammed and rolled BURCK down the side of the patrol vehicle. The guitar was affixed to BURCK's person at the time.

23. BURCK was subsequently arrested for resisting arrest without violence and violating Daytona Beach City Ordinance Sec. 66-1 (Panhandling, begging and solicitation) as an aggressive panhandler.

### **THE UNCONSTITUTIONAL ORDINANCE**

24. The City of Daytona Beach unanimously adopted an ordinance on February 6, 2019 which it falsely claims, places reasonable restrictions on what it refers to as "panhandling" within the city limits.<sup>1</sup>

25. Within 24 hours of passing the ordinance, The City and its agents engaged in a media tour noting, only a handful of "solicitors" and homeless individuals lingered on the streets.

26. The scare tactic worked. During the media tour, the Police Chief Craig Capri bragged, "Look at this. It's a ghost town." He added, as he drove around

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<sup>1</sup> The City's website details it here- <https://www.codb.us/866/Panhandling-Ordinance>

personally looking for panhandlers, “We did warnings last night. They all know. They were just waiting for this thing to get official.”

27. Shooing off some “panhandlers,” the chief said, “You’re getting a big break today because I’m a nice guy.” Media reported, “Capri suspects most panhandlers will just shift to nearby cities with weaker panhandling laws.”

28. When Craig Capri retired in November 2020, he handed the same lack of understanding of the First Amendment to new Daytona Beach Police Chief Young. After the arrest, Chief Young not only attacked BURCK’s First Amendment Rights, but was so thin-skinned that he further attacked the town’s newspaper and its readers, specifically disparaging The News-Journal for its alleged “slanted” reporting on the incident.

29. “Just to be clear, a person’s celebrity status does not exempt them from following the law and we will not pick and choose who the law applies to,” Chief Young wrote in his initial statement. “Mr. Burck was arrested as a result of his own actions. Had he complied when the officers initially made contact with him, he would have been free to go and enjoy the rest of his evening.”

30. Further, the chief said: *“Recently there has been much discussion surrounding the arrest of Robert Burck, also known as “The Naked Cowboy” to include a few published opinion pieces that suggests that Mr. Burck is owed an*



*apology. Everyone is entitled to their opinion but the only apology anyone will receive from the Police Chief is an apology for not releasing this statement sooner.”*

31. The ordinance is Sec. 66-1- Panhandling, begging and solicitation.” It specifically references the, “Constitutional right of persons to panhandle, including but not limited to solicit and beg.” However, the Ordinance is clearly and facially unconstitutional.

32. It demands:

(c) *Prohibited conduct, proximity and location restrictions.*

- (1) It shall be unlawful for any person to engage in aggressive panhandling on any sidewalk, highway, street, roadway, right-of-way, parking lot, park, or other public or semi-public area or in any public building lobby, entranceway, plaza or common area, public forum or limited public forum within the city limits of the City of Daytona Beach.
- (2) It shall be unlawful for any person to engage in aggressive panhandling on private property if the owner, tenant or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property.
- (3) It shall be unlawful for any person to engage in panhandling when either the person engaged in panhandling or the panhandler or the person being panhandled, is located in, on or at the following locations:
  - a. Within 20 feet, in any direction, from any entrance or exit of commercially zoned property;

- b. Within 20 feet, in any direction, of any bus or trolley stop or any public transportation facility;
  - c. Within 20 feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;
  - d. Within 20 feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the city;
  - e. Within 20 feet, in any direction, of any public restroom owned and operated by a governmental agency;
  - f. Within 100 feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;
  - g. Within 150 feet of any signalized intersection of:  
1) arterial roads; 2) collector roads; and 3) arterial and collector roads;
  - h. Occurring on the boardwalk as visibly defined by the map at the end of this section.
- (4) It shall be unlawful for any person to engage in the following prohibited conduct:
- a. Approach an operator or other occupant of a motor vehicle for the purpose of panhandling. Soliciting or begging, or offering to perform a service in connection with such vehicle, or otherwise soliciting the sale of goods or services, if such panhandling, soliciting or begging is done in an aggressive manner;

- b. Panhandle or solicit or beg at any lawfully permitted outdoor dining area amphitheater, amphitheater seating area, playground or lawfully permitted outdoor merchandise area, provided such areas are in active use at the time;
- c. Panhandle, solicit or beg at any transit stop or taxi stand or in a public transit vehicle;
- d. Panhandle, solicit or beg while the person or persons being solicited is standing in line waiting to be admitted to a commercial establishment;
- e. Panhandle, solicit or beg by touching the person or persons being solicited without that person's consent;
- f. Panhandle, solicit or beg with the use of profane or abusive language during the solicitation or following an unsuccessful solicitation;
- g. Panhandle, solicit or beg by or with the use of any gesture or act intended to cause a reasonable person to be fearful of the solicitor or feel compelled to accede to the solicitation;
- h. Panhandle, solicit or beg while under the influence of alcohol or after having illegally used any controlled substance, as defined in chapter 893 of the Florida Criminal Statutes; or
- i. Panhandle, solicit or beg after dark.<sup>2</sup>

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<sup>2</sup>See [https://library.municode.com/fl/daytona\\_beach/codes/code\\_of\\_ordinances?nodeId=PTIIC\\_OOR\\_CH66PESOCAITVE\\_ARTIINGE#:~:text=It%20shall%20be%20unlawful%20for,the%20city%20limits%20of%20the](https://library.municode.com/fl/daytona_beach/codes/code_of_ordinances?nodeId=PTIIC_OOR_CH66PESOCAITVE_ARTIINGE#:~:text=It%20shall%20be%20unlawful%20for,the%20city%20limits%20of%20the)

33. The Courts of Florida have specifically and repeatedly said, city ordinances prohibiting the begging for money while about or upon any public way are unconstitutionally overbroad, and infringe on free speech rights.

34. Stated alternatively, “panhandling,” i.e., the solicitation of any item of value through a request for an immediate donation, is expressive activity within the scope of the First Amendment, regardless of what words, if any, a panhandler speaks. *See* U.S. Const. Amend. 1; *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632, (1980).

35. Further, city streets and sidewalks are recognized as "quintessential public forum." *See Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45 (1983). These items would be under the strict scrutiny standard.

36. Reserving the fact BURCK did not violate this law, the very foundation cited for his arrest was unconstitutional and unenforceable.

37. The ordinance is a direct violation of the First, Fifth, and Fourteenth Amendments to the United States Constitution as well as Article 1, Section 4 (Freedom of Speech), and Section 9 (Due Process) of the Florida Constitution.

38. Plaintiff is filing this lawsuit because The City has eliminated his and other's ability to speak and interact with residents and visitors to solicit donations.

39. Plaintiff also seeks preliminary and permanent injunctive relief in the form of a Court Order preventing The City or the DBPD from enforcing the ordinance.

40. The ordinance imposes monetary penalties for failure to comply with its prohibitions. The ordinance is a content-based restriction because it targets one form of speech—solicitations—while allowing others to speak a different message.

41. While the ordinance bans all kinds of solicitations in The City, it is especially targeted towards homeless individuals and those organizations that solicit funds on behalf of homeless individuals. Thus, in addition to being a content-based restriction, it has an especially discriminatory effect on the homeless community. It also selectively targets street performance artists.

42. The ordinance is overbroad as it reaches clearly constitutionally protected speech.

43. The ordinance is a content-based restriction on speech because it targets only one type of speech—solicitations - not political speech or religious speech, for example.

44. The ordinance is also void for vagueness as it does not provide fair notice of what is prohibited and it is so standardless that it authorizes and encourages discriminatory and arbitrary enforcement.

45. The ordinance is overbroad as it reaches clearly protected speech.

46. The ordinance cannot survive strict scrutiny as required of content-based restrictions on speech. The City's stated reasons for passing this ordinance (promoting tourism, creating an attractive city, protecting its economy, and safety) are contradicted by its singling out of only solicitation speech and no other types of speech which may affect these goals.

47. The law is clear, "[T]he promotion of tourism and business has never been found to be compelling government interest for the purposes of the First Amendment." *See Pottinger v. City of Miami*, 810 F. Supp. 1551, 1581 (S.D. Fla. 1992) ("The City's interest in promoting tourism and business and in developing the downtown area are at most substantial, rather than compelling, interests.").

48. Additionally, as stated in a similar case, "The mechanism by which the ban on panhandling downtown would promote tourism flies in the face of the First Amendment. The First Amendment does not permit a city to cater to the preference of one group, in this case tourists or downtown shoppers, to avoid the expressive acts of others, in this case panhandlers, simply on the basis that the privileged group does not like what is being expressed. It is core First Amendment teaching that on streets and sidewalks a person might be "confronted with an uncomfortable message" that they cannot avoid; this "is a virtue, not a vice." Just as speech cannot be burdened "because it might offend a hostile mob," *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 135 (1992), it cannot be burdened because it

would discomfort comparatively more comfortable segments of society.” And, “For First Amendment purposes, economic revitalization might be important, but it does not allow the sensibilities of some to trump the speech rights of others.” *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189-90 (D. Mass. 2015).

49. The ordinance does not further a compelling government interest because The City’s specified reasons for passing the ordinance are insufficient justification for abridging the fundamental right of solicitation in the very heart of The City. It is not narrowly tailored to accomplish The City’s purported interests as it permits other types of speech in the same area.

50. Because this ordinance is not narrowly tailored to serve a compelling government interest, it fails strict scrutiny.

51. Plaintiff seeks a declaratory judgment that: (1) the ordinance is discriminatory and a content-based restriction on free speech in violation of the First and Fourteenth Amendments to the United States Constitution; (2) the ordinance is facially unconstitutional because it contains geographical restrictions that are content-based in violation of the First Amendment; (3) the ordinance is overbroad in violation of the First Amendment; (4) the ordinance is void for vagueness in violation of the Fifth and Fourteenth Amendments to the United States Constitution; (5) the ordinance is a discriminatory and content-based restriction on free speech in violation of Article 1, Section 4 of the Florida Constitution; and (6) the ordinance

violates the right to due process as guaranteed by Article 1, Section 9 of the Florida Constitution.

52. Plaintiff also seeks preliminary and permanent injunctive relief in the form of a Court Order preventing the City or DBPD from enforcing the ordinance.

53. Plaintiff seek relief on behalf of themselves and all others similarly situated.

### **DAYTONA BEACH POLICE DEPARTMENT**

54. On a daily basis, officers come into contact with citizens during their patrolling duties. Despite this daily contact, Defendant DBPD made no effort to adequately train and supervise said deputies. In order to adequately deal with the certainty of police contact with citizens, DBPD is charged with supplying the public with a police force that is adequately trained and equipped to handle calls dealing with those who are non-violently not complying.

55. DBPD was aware that there needed to be effective supervision and a command structure in place to deal with the problem of responding to non-threatening incidents. DBPD failed to provide adequate supervision of its deputies in the field when said deputies encounter those who are non-threatening.

56. At all times material hereto, DBPD was responsible for adopting and implementing the rules and regulations specifically in relation to hiring, screening,



training, supervising, controlling, disciplining, and assigning deputies to their respective duties within Volusia County, Florida.

57. DBPD has maintained a custom of excessive force in executing arrests by its sworn law enforcement officers. At all times material hereto, under DBPD policy pertaining to use of force, officers may use only the amount of force reasonably necessary to effect lawful objectives.

58. DBPD's actions in this case, and previous similar situations, indicate a policy and custom of indifference to the rights of those they arrest who are non-threatening and a failure to properly train and/or supervise their officers in how to deal with non-threatening individuals being arrested. DBPD's refusal to adequately train its deputies on how to interact with citizens—and DBPD's failure to supervise those deputies—has resulted in the infliction of excessive violence upon non-threatening individuals and the violation of their constitutional rights. This lack of training and supervision causes these ill-trained and ill-equipped deputies to resort to the use of excessive force as their only alternative.

59. DBPD deputies have increasingly and alarmingly abused their authority under the law and exerted excessive force in situations where the use of such force was entirely unjustified and where the conduct of the officers' created dangers that would otherwise have not existed and contributed to the claimed need to use force.

60. Further, there has been a pattern of similar incidents in which citizens were falsely arrested, injured, or endangered by the intentional and/or negligent misconduct of DBPD officers, revealing serious incompetence or misbehavior that is general or widespread throughout the department.

61. DBPD has maintained a long-standing, widespread history of failure to train, supervise, or otherwise discipline its police officers for, among other things, the use of excessive force, unlawful detentions, and/or arrests even though it had notice of this unlawful conduct by its employees and the public.

62. DBPD has maintained a system of review for abuses of lawful authority like the illegal use of force, unlawful detention, and/or arrests, among other things, by sworn law enforcement officers and complaints thereof, which has failed to identify improper use of force by police officers and to subject police officers who employed such acts to appropriate discipline, closer supervision, and/or retaining, to the extent that it has become the de facto policy and custom of DBPD to tolerate such acts by its officers.

63. Indeed, DBPD routinely performs cursory investigations of incidents involving extremely questionable use of excessive force on the part of DBPD deputies, with an eye toward exonerating the deputy involved rather than finding out the truth. Almost uniformly, investigators and supervisors uncritically endorse the deputies' versions of events, even when those versions are incomplete, inconsistent,

or are in direct contradiction to objective evidence. The result is that these incidents involving questionable use of force are not properly and impartially investigated, documented, or addressed with corrective measures where warranted.

64. DBPD's foregoing acts, omissions, policies, or customs caused law enforcement officers, including Defendants GASPARD and PITTMAN to believe that acts such as the improper use of force, unlawful detentions, unlawful arrests and the improper handling of incidents involving detained citizens, would not be properly investigated. The consistent lack of accountability within DBPD for the questionable and often unjustifiable use of excessive force has promoted an acceptance of disproportionate, aggressive, and unconstitutional behavior towards ordinary citizens. The resulting culture of aggression both promotes and condones intimidating and harsh approaches toward the citizenry, with the excessive use of force as a frequent and foreseeable outcome.

65. Despite DBPD's notice and knowledge of the dangerous propensities of their sworn law enforcement officers because of said officers' lack of training, skill and/or experience, DBPD failed to implement any policies or programs to train said officers or otherwise intentionally failed to protect the public, including the Plaintiff, from its danger.

66. DBPD had policies, customs, and practices that constituted deliberate indifference to Plaintiff's Constitutional Rights pursuant to the Fourth and

Fourteenth Amendments, and DBPD' policies and customs caused the violation of Plaintiff's rights and/or was the moving force behind such Constitutional violations as indicated by the facts described above.

67. The policies, customs, and practices complained of include, but are not limited to, the following:

- a. Deliberate indifference by failing to institute an appropriate policy for the detention of non-threatening individuals and by failing to enforce such a policy, if such a policy was in place;
- b. Deliberate indifference by failing to ensure that DBPD employees were sufficiently trained or otherwise educated in the extension and management of non-threatening individuals from the perspective of the arresting officer(s), dispatch officers and supervising or managing officers;
- c. Deliberate indifference by failing to provide sufficient supervision of the arrest in question and by failing to monitor the arrest in question;
- d. Deliberate indifference by improperly training DBPD Deputies in such a way that condones, encourages, and permits their officers and agents to violate the rights and inflict harm upon persons being arrested;

- e. Deliberate indifference in failing to properly supervise DBPD Deputies in their encounters with persons they arrest;
- f. Deliberate indifference in failing to have Deputies properly reviewed for accurate use of force of incidents involving force used against arrested persons, with conclusions frequently permitted to be drawn on the basis of clearly incorrect or contradictory information; and
- g. Deliberate indifference in failing to determine whether said employees, including Defendants GASPARD and PITTMAN posed a threat to the public as a result of their propensity to commit unlawful acts.

68. DBPD's deliberate indifference, failure to train, failure to effectively supervise, and its permission (and toleration of) the patterns and practices enumerated above, were the moving forces causing the serious injuries to Plaintiff and the violation of Plaintiff's Constitutional Rights.

69. The actions of Defendants GASPARD and PITTMAN in this case, as well as the actions of Defendant DBPD in other similar situations, indicate that the officers who violated BURCK's rights acted in accordance with DBPD's policies and reflect policies that were adopted by DBPD and their high-ranking officials.

## **CLAIMS FOR RELIEF**

### **Count I: Freedom of Speech under the U.S. Constitution** **Violation of 42 U.S.C. § 1983**

70. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

71. The City’s ordinance and its threatened actions to enforce it violate the freedom of speech guaranteed by the First and Fourteenth Amendments of the United States Constitution, facially, and as applied to Plaintiff.

72. The First Amendment to the United States Constitution prohibits the making of any laws “abridging the freedom of speech.” The First Amendment is applicable to the States through the Fourteenth Amendment.

73. “Every 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.” 42 U.S.C. § 1983.

74. Under 42 U.S.C. § 1983, Plaintiff is entitled to injunctive relief prohibiting The City from violating his rights, privileges, and immunities—and those of others not before the Court as well—under federal law.

75. The City's panhandling ban ordinance unconstitutionally infringes on Plaintiff's rights under the First and Fourteenth Amendments to freedom of speech and expression. Plaintiff's speech is chilled by the enactment of this ordinance. But for this ordinance, Plaintiff would continue to engage in solicitation of funds that is now restricted. Plaintiff's loss of his First Amendment rights and the chilling of his expression is an irreparable injury that cannot be cured by the award of money damages if Plaintiff ultimately prevails in this litigation.

76. The City acted and is threatening to act under the color of state law to deprive Plaintiff of rights guaranteed by the Constitution and laws of the United States. As such, Plaintiff may sue and seek relief pursuant to 42 U.S.C. § 1983.

77. Plaintiff is entitled to damages, preliminary and permanent injunctive relief, a declaratory judgment, costs and attorney fees, and such other relief as the Court deems just and proper.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1 - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees,

attorneys, and all persons in active concert or participation with it.

- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is



necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.

- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count II: Due Process under the U.S. Constitution**  
**Violation of 42 U.S.C. § 1983**

78. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

79. The City's ordinance and its threatened actions to enforce it also violate the right to due process as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

80. The Fifth Amendment to the United States Constitution provides that all persons shall be provided due process of law. The Fifth Amendment is applicable to the States through the Fourteenth Amendment.

81. The City of Daytona Beach's ordinance unconstitutionally denies Plaintiff's right to due process under the Fifth and Fourteenth Amendments. Plaintiff's loss of his Fifth Amendment right to due process is an irreparable injury

that cannot be cured by the award of money damages if Plaintiff ultimately prevail in this litigation.

82. The ordinance applies to common requests for money that involve no otherwise criminal activity. These requests constitute the vast majority of applications of this ordinance. A substantial number of its applications are unconstitutional.

83. The City acted and is threatening to act under the color of state law to deprive Plaintiff of his rights guaranteed by the Constitution and laws of the United States. As such, Plaintiff may sue and seek relief pursuant to 42 U.S.C. § 1983.

84. Plaintiff is entitled to damages, preliminary and permanent injunctive relief, a declaratory judgment, costs and attorney fees, and such other relief as the Court deems just and proper.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1. - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.

- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.

- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count III: Declaratory Judgment Under 28 U.S.C. § 2201-2202  
and Florida Statute § 86.021**

85. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

86. Plaintiff is entitled to a declaratory judgment under 28 U.S.C. § 2201-2202 declaring the City of Daytona Beach ordinance unconstitutional because the ordinance violates the freedom of speech and due process as guaranteed by the First, Fifth, and Fourteenth Amendments to the United States Constitution. Or, in the alternative, for the ordinance to only ever be interpreted in particular ways prescribed by the Court so as to be constitutional.

87. Plaintiff seeks a declaration that the ordinance is unconstitutional as it violates Plaintiff's rights of free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution, in addition to Article 1, section 4 of the Florida Constitution.

88. Plaintiff also seeks a declaration that ordinance is unconstitutional as it violates Plaintiff's right to due process as guaranteed by the Fifth and Fourteenth

Amendments to the United States Constitution, in addition to Article 1, section 9 of the Florida Constitution.

89. “In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, 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.” 28 U.S.C. § 2201(a).

90. “Any person claiming to be interested or who may be in doubt about his or her rights . . . whose rights, status, or other equitable or legal relations are affected by . . . municipal ordinance . . . may have determined any question of construction or validity arising under such . . . municipal ordinance . . . or any part thereof, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.” Florida Statute § 86.021.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1. - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach’s Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.

- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.

- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count IV: Freedom of Speech under the Florida Constitution**

91. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

92. The ordinance and its threatened action violate the freedom of speech guaranteed by Article 1, section 4 of the Florida Constitution, which states “[n]o law shall be passed to restrain or abridge the liberty of speech . . . .”

93. Plaintiff is entitled to damages as well as injunctive relief prohibiting The City from violating his rights, privileges, and immunities—and those of others not before the Court—under state law.

94. Plaintiff is also entitled to a declaratory judgment declaring the ordinance unconstitutional or, in the alternative, to only ever be interpreted in particular ways prescribed by the Court so as to be constitutional.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1. - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.

- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.
- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.



- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count V: Due Process under the Florida Constitution**

95. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

96. The City's ordinance and its threatened action violate the right to due process guaranteed by Article 1, section 9 of the Florida Constitution, which states "no person shall be deprived of life, liberty or property without due process of law . . . ."

97. Plaintiff is entitled to damages and injunctive relief prohibiting The City from violating his rights, privileges, and immunities—and those of others not before the Court—under state law.

98. Plaintiff is also entitled to a declaratory judgment declaring the ordinance unconstitutional or, in the alternative, to only ever be interpreted in particular ways prescribed by the Court so as to be constitutional.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec 66-1. - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.
- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts

speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;

- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count VI: Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (42 U.S.C. § 1983)**

99. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

100. The City's ordinance and its threatened action to enforce it violate the freedom of speech guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

101. Under 42 U.S.C. § 1983, the Plaintiff is entitled to damages and injunctive relief prohibiting the City from violating his rights, privileges, and immunities under federal law.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1. - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.
- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker

conveys within the geographical limitations set forth therein;

- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count VII: Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (Declaratory Judgment under 28 U.S.C. §2201-2202)**

102. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

103. Plaintiff is entitled to damages and a declaratory judgment under 28 U.S.C. §2201-2202 because the ordinance violates the freedom of speech guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution or, in the alternative, only to ever be interpreted in particular ways prescribed by this Court, so as to be constitutional.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1. - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.
- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff

because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;

- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count VIII Void for Vagueness (42 U.S.C. § 1983)**

104. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

105. Although the ordinance refers to itself as “this article,” and says, “The restrictions contained in this article are neither overbroad nor vague and are narrowly tailored to serve a compelling and substantial governmental interest, and preserve ample alternative areas for the valid exercise of constitutional rights of solicitation which they do as set forth more particularly herein,” same is untrue.

106. The City claims, “blockage of ingress and egress into and from commercial businesses and other public areas as well as the impendance of pedestrian walkways and other public rights-of-way implicates the compelling governmental interest of Daytona Beach in protecting the health, safety and welfare of its citizenry and visitors in preserving police and fire department access to such rights-of-way in order to save lives.”

107. However, in media tours the chief of police, himself, bragged about running homeless individuals to other towns.

108. The ordinance itself is an intent to vaguely create such a shield against vaguely defined “panhandling” around all: commercially zoned property, bus or trolley stop or any public transportation facility, automated teller machine or any electronic information processing device which accepts or dispenses cash in



connection with a credit, deposit or convenience account with a financial institution, parking lot, parking garage, parking meter, public restroom owned and operated by a governmental agency, daycare or school, as well as roads and boardwalks that arrest becomes subjective as the ordinance is filled with landmines prohibiting protected speech nearly everywhere.

109. When it comes to the even more vaguely defined, “aggressive panhandling,” it includes essentially a list of everywhere a person can safely speak, such as “any sidewalk, highway, street, roadway, right-of-way, parking lot, park, or other public or semi-public area or in any public building lobby, entranceway, plaza or common area, public forum or limited public forum within the city limits of the City of Daytona Beach.”

110. As noted, Burck was not even panhandling, but was simply walking up and down a sidewalk playing his guitar and was arrested under this ordinance.

111. The City’s ordinance is void for vagueness and so violates the Fifth Amendment and Fourteenth Amendment of the United States Constitution.

112. The ordinance has vague and confusing requirements listed in, “Prohibited conduct, proximity and location restrictions.”

113. The history and stated purpose of the ordinance authorizes and encourages seriously discriminatory enforcement.

114. Under 42 U.S.C. § 1983, the Plaintiff is entitled to injunctive relief prohibiting The City from violating his rights, privileges, and immunities under federal law.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1-Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Sec. 66-1. - Panhandling, begging and solicitation by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.
- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts

speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;

- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count IX: Void for Vagueness (Declaratory Judgment under §2201-2202)**

115. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

116. Because the City's ordinance is void for vagueness and so violates the Fifth and Fourteenth Amendments to the United States Constitution, Plaintiff is

entitled to declaratory judgment under 28 U.S.C. §2201-2202 declaring the ordinance unconstitutional or, in the alternative, only to ever be interpreted in particular ways prescribed by this Court, so as to be constitutional.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1, Panhandling, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.
- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts

speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;

- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.
- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**COUNT X: THE CITY'S Ordinance is overbroad (42 U.S.C. § 1983)**

117. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

118. The City's ordinance is overly broad and infringes and violates the First and Fourth Amendments of the United States Constitution.

119. There are numerous, unconstitutional ambiguities within the ordinance. The City's ordinance is so broad that it is unclear what spaces are safe to express one's First Amendment speech rights concerning charitable appeals for funds.

120. The ordinance restricts speech on any sidewalk, highway, street, roadway, right-of-way, parking lot, park, or other public or semi-public area or in any public building lobby, entranceway, plaza or common area, public forum or limited public forum within the city limits. The ordinance is being applied to so many public spaces, it is nearly impossible to discern areas that speech is not restricted. This ordinance essentially allows The City to diminish free speech rights any time a person is in public.

121. The law is overly broad and negatively impacts protected speech that was not intended to be regulated or restricted.

122. Under 42 U.S.C. § 1983, the Plaintiff is entitled to injunctive relief prohibiting the City from violating his rights, privileges, and immunities under federal law.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec. 66-1 - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.
- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of

the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.

- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral.
- E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.

- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**Count XI: The City's Ordinance is overbroad**  
**(Declaratory Judgment under §2201-2202)**

123. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

124. The City's ordinance violates the First and Fourth Amendments to the United States Constitution; Plaintiff is entitled to declaratory judgment under 28 U.S.C. §2201-2202 declaring the ordinance unconstitutional or, in the alternative, only to ever be interpreted in particular ways prescribed by this Court, so as to be constitutional.

WHEREFORE, Plaintiff respectfully request this Court to order the following relief:

- A. Declare the City of Daytona Beach Ordinance Sec 66-1 - Panhandling, begging and solicitation, to be unconstitutional, void, without effect, and unenforceable.



- B. Grant a temporary restraining order as well as preliminary and permanent injunctions prohibiting the enforcement of the City of Daytona Beach's Ordinance Sec. 66-1 by Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with it.
- C. Grant a declaratory judgment holding the solicitation ordinance violates the First and Fourteenth Amendments of the United States Constitution, and Article 1 Section 4 of the Florida Constitution.
- D. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is not content neutral. E. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that draws distinctions based on the message a particular speaker conveys within the geographical limitations set forth therein;
- F. Grant a declaration that the solicitation Ordinance violates the First Amendment on its face and as applied to Plaintiff because it is a content-based regulation that restricts speech based on the City's disagreement with the message panhandling conveys within the geographical limitations set forth therein;
- G. Grant a declaration that the ordinance violates the First Amendment on its face and as applied to Plaintiff because it is overbroad.
- H. Grant a declaration that the ordinance violates the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1 Section 9 of the Florida Constitution on its face and as applied to Plaintiff.
- I. Grant a declaration that the ordinance violates the Fifth Amendment because it is void for vagueness.

- J. Grant a permanent injunction requiring the Defendants, their agents, employees, and attorneys to repeal and remove the City of Daytona Beach Ordinance. This is necessary to ensure the public has adequate notice of the requirements of the law and the Daytona Beach City Code and to prevent chilling protected speech.
- K. Grant monetary damages, including nominal damages, as to each plaintiff.
- L. Award Plaintiff attorneys' fees and costs as allowed by law.
- M. All other relief this Court deems just and appropriate.

**COUNT XII: BATTERY BY AN OFFICER WITHIN HIS COURSE AND SCOPE OF EMPLOYMENT**

125. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

126. Defendant PITTMAN acted against BURCK when he forcibly slammed Plaintiff to the patrol car and proceeded to forcefully roll Plaintiff down the side of the patrol car as BURCK was put in handcuffs; clearly already under the physical control of the Defendants.

127. PITTMAN'S battery occurred when he touched, punched, shoved and/or hit Burck without consent and against his will within the course and scope of his employment with DBPD.

128. PITTMAN was exclusively trained on how to interact with suspects by DBPD. This use of force was unnecessary to defend himself or another officer while making an arrest based upon an unconstitutional panhandling ordinance.

129. As a further direct and proximate result of the conduct described above, Plaintiff suffered loss of his liberty and freedom, bodily injury and resulting pain and suffering, mental anguish, and medical expenses for treatment and care. These losses are either permanent or continuing, and Plaintiff will suffer the losses in the future, in violation of his civil rights. Plaintiff has also agreed to pay the undersigned a reasonable attorney fee for services provided.

WHEREFORE, BURCK demands judgment for damages, including compensatory damages, all costs, and interest provided under the applicable law, against the Defendant DBPD and any other such relief this Honorable Court deems reasonable and just.

**COUNT XIII: NEGLIGENCE BY AN OFFICER WITHIN HIS COURSE  
AND SCOPE OF EMPLOYMENT**

130. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

131. At all times material and at the time of the aforementioned incident, Defendants Chief Young and DBPD employed uniformed officer PITMAN who at all material times was acting within the scope of his employment.

132. DBPD is vicariously liable for the actions and inactions, as well as training and supervision of PITTMAN, as well as any negligent actions of its employee, Defendant, PITMAN.

133. PITTMAN owed a duty to BURCK to use appropriate force and to act as a reasonable law enforcement officer under same or similar circumstances.

134. DBPD breached the aforementioned duties in the following ways while arresting BURCK under the unconstitutional Panhandling Ordinance:

- a. by training PITTMAN to unreasonably use force on suspects, including BURCK;
- b. by not training or supervising PITTMAN on reasonable uses of force on suspects, including BURCK;
- c. by allowing unreasonable use of force as a pattern and protocol at DBPD;
- d. by not training PITTMAN and/or other officers to use reasonable force on suspects, including Plaintiff, BURCK;
- e. by failing to instruct officers to intervene where there is clearly escalating aggression by officers, including PITTMAN, which is visible to officers;
- f. by not training officers in de-escalation techniques;

- g. by condoning PITTMAN'S unreasonable use of force on Plaintiff, BURCK;
- h. by hiring or retaining PITTMAN despite knowledge or foreseeability of inappropriate conduct such as inappropriate use of force, violating civil rights or other harmful conduct cited herein.

135. As such, DBPD's supervision and training of officer PITTMAN and/or their failure to provide him with active supervision was negligent and was the direct and proximate cause of BURCK'S injuries.

136. Alternatively, or additionally, PITTMAN misapplied or misunderstood his training by DBPD.

137. As a direct and proximate result of the aforementioned negligent acts of Defendants CHIEF YOUNG, DBPD and/or PITTMAN in their official capacity, Plaintiff, BURCK, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, incurred medical expenses in the treatment of her injuries, suffered physical handicap, and has lost earnings and her earning ability has been significantly impaired. These losses are either permanent or continuing in nature and Plaintiff, BURCK, will suffer like losses or impairments in the future.

WHEREFORE, the Plaintiff, BURCK, demands judgment for damages, including compensatory damages, all costs, and interest provided under the applicable law, against the Defendant CHIEF YOUNG in his capacity at DBPD, and any other such relief this Honorable Court deems reasonable and just.

**COUNT X: 42 U.S.C. § 1983 –**  
**Excessive Use of Force by Defendant PITTMAN**

138. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

139. This claim is brought pursuant to 42 U.S.C. §§1983 and 1988 for violation of Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

140. The actions alleged above deprived BURCK, of clearly defined, established and well-settled Constitutional rights specifically: (a) the freedom from the use of excessive and unreasonable force; (b) the freedom from unreasonable seizure; and (c) the freedom from deprivation of liberty without due process of law.

141. PITTMAN acted recklessly, maliciously, or deliberately indifferent towards Mr. Burck when he deprived him of his Constitutional rights.

142. As a direct and proximate result of the aforementioned acts and omissions of Defendant, PITTMAN, Plaintiff, BURCK, suffered bodily injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of

life, incurred medical expenses in the treatment of his injuries, and has lost earnings and her earning ability has been impaired.

WHEREFORE, the Plaintiff, BURCK, demands judgment for damages, including compensatory damages, all costs, interest and reasonable attorney's fees provided under the applicable law, against the Defendant, PITTMAN and any other such relief this Honorable Court deems reasonable and just.

**COUNT XI: 42 U.S.C. § 1983 –**  
**Excessive Use of Force By Defendant GASPARD**

143. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

144. This claim is brought pursuant to 42 U.S.C. §§1983 and 1988 for violation of Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

145. The actions alleged above deprived BURCK, of clearly defined, established and well-settled Constitutional rights specifically: (a) the freedom from the use of excessive and unreasonable force; (b) the freedom from unreasonable seizure; and (c) the freedom from deprivation of liberty without due process of law.

146. GASPARD acted recklessly, maliciously, or deliberately indifferent towards BURCK when he deprived him of his Constitutional rights.

147. As a direct and proximate result of the aforementioned acts and omissions of Defendant GASPARD, Plaintiff, BURCK, suffered compensatory damages.

WHEREFORE, the Plaintiff, BURCK, demands judgment for damages, including compensatory damages, all costs, interest and reasonable attorney fees provided under the applicable law, against the Defendant, GASPARD and any other such relief this Honorable Court deems reasonable and just.

### **COUNT XII- FALSE ARREST**

148. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

149. Defendants, DBPD, through Defendants, GASPARD and PITTMAN interfered with BURCK's rights under the United States and Florida Constitutions.

150. Defendants intentionally interfered with BURCK's rights under the Fourth Amendment and Article I Section 9 and 12 of the Florida Constitution.

151. Defendants intentionally interfered with BURCK's right under the Fourth Amendment and Article I, Section 9 and 12 of the Florida Constitution to be free from warrantless arrest without probable cause. Defendants used threats and force to effect BURCK's unlawful arrest, and BURCK reasonably believed they would commit violence against him if he did not physically submit to the unlawful arrest.



WHEREFORE, the Plaintiff, BURCK, demands judgment for damages, including compensatory damages, all costs, interest and reasonable attorney fees provided under the applicable law, against the Defendants, DBPD, GASPARD and PITTMAN and any other such relief this Honorable Court deems reasonable and just.

**COUNT XIII- PROPERTY DAMAGE**

152. Plaintiff adopts and re-alleges Paragraphs 1 through 69 as if set forth fully herein, and further alleges as follows:

153. As a direct and legal result of Defendants' PITTMAN and GASPARD's actions and/or omissions, Plaintiff has suffered damages and/or a loss to his personal property, more specifically, his guitar that was damaged during the arrest.

154. As a further direct and legal result of Defendants' PITTMAN and GASPARD's actions and/or omissions Plaintiff has incurred expenses related to the damage of his personal property, including costs related to repair and/or replacement of his guitar.

WHEREFORE, the Plaintiff, BURCK, demands judgment for damages, including compensatory damages, all costs, interest and reasonable attorney fees provided under the applicable law, against the Defendant, PITTMAN and any other such relief this Honorable Court deems reasonable and just.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial for all issues so triable.

Additionally, Plaintiff prays a declaratory judgment is granted declaring the ordinance unconstitutional or, in the alternative, to only ever be interpreted in particular ways prescribed by the Court so as to be constitutional.

Respectfully submitted,

**Law Office of Phillips & Hunt**

/s/ John M. Phillips

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