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FILED & RECEIVED #1

2014 DEC 18 P 3:47

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**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, GENERAL EQUITY PART
MIDDLESEX COUNTY
DOCKET NO:**

NEW JERSEY COALITION TO END
HOMELESSNESS and
JOHN R. FLEMING,

Plaintiffs,

v.

THE CITY OF NEW BRUNSWICK,

Defendant.

CIVIL ACTION

**VERIFIED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Plaintiffs, the New Jersey Coalition to End Homelessness and John R. Fleming, by way
of Verified Complaint against defendant, the City of New Brunswick, state as follows:

ACCEPTED AT COUNTER
"UNDER REVIEW"
COPY GIVEN AT COUNTER (Y/N)

1. This is an action brought to protect the fundamental rights of speech and expression. It challenges the constitutionality of two City of New Brunswick (“New Brunswick”) Ordinances that prohibit speech based solely on its content. New Brunswick has criminalized the speech of poor and homeless people who have the constitutionally-protected right to ask their fellow citizens for money or food on city streets. While some passersby may not wish to be reminded of the plight of their fellow citizens through such peaceful speech, the desire to avoid discomfort cannot justify the suppression of protected speech in a public forum.

2. Both under Article 1, Paragraph 6 of the New Jersey Constitution and pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, plaintiffs now seek to (1) declare that these two New Brunswick Ordinances which, on their face and in practice, prohibit speech that involves the solicitation of or begging for money or food, violate the right to free expression, and (2) enjoin New Brunswick from enforcing both Ordinances.

JURISDICTION AND VENUE

3. This Court has jurisdiction because the action seeks to vindicate the rights protected by the Constitution of the State of New Jersey.

4. Venue properly lies in this vicinage pursuant to R. 4:3-2(a)(2) and 4:3-2(a)(3) because the Defendant is located in this County and the events giving rise to the claims herein occurred and will occur within this vicinage.

THE PLAINTIFFS

5. Plaintiff the New Jersey Coalition to End Homelessness (“the Coalition”) is a non-profit corporation of the State of New Jersey organized to advocate for homeless people in New Jersey and to eradicate homelessness in the state. It is tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

6. The Coalition is comprised of over 30 organizational members, including social service providers, religious and advocacy organizations, and for-profit businesses that provide grassroots assistance to homeless people and/or are committed to addressing the larger social, legal, economic, and political issues that affect homeless people. The Coalition furthers its mission through public education, policy/legal work, and advocacy, including efforts to end the criminalization of poverty and homelessness. At the core of its efforts is the goal of giving a voice to the state's homeless population.

7. Plaintiff John R. Fleming ("Mr. Fleming") (age 50) spends time almost every day in New Brunswick and has previously been a resident of New Brunswick, or nearby towns, at different points of time over the last ten years and at various addresses. He is now homeless.

8. For the past several years, Mr. Fleming has been confined to a wheelchair due to a physical disability.

THE DEFENDANT

9. Defendant New Brunswick is a municipal corporation organized under the laws of the State of New Jersey. It has the capacity to be sued. New Brunswick is the legal and political entity responsible for the actions of the New Brunswick Police Department and its officials, agents, and employees. New Brunswick is sued in its own right and on the basis of the acts and omissions of its officials, agents, and employees.

FACTUAL ALLEGATIONS

10. New Brunswick Ordinance No. 9.04.050(A)(6) (the "Anti-Begging Ordinance") states that "[it] is unlawful for any person within the city of New Brunswick to engage in any of the following activities: . . . To beg or solicit food or monies on any street or sidewalk within the city when not otherwise authorized to do so[.]"

11. New Brunswick Ordinance No. 9.04.050(B) provides for a penalty following a violation of the aforementioned section and states that “[a]ny person found guilty of violating any of the provisions of this section, upon conviction, shall pay a fine not to exceed two thousand dollars (\$2,000.00) and/or be subject to imprisonment for not more than ninety (90) days, or both.”

12. New Brunswick Ordinance No. 5.32 (the “Charitable Solicitation Permit Ordinance”) prohibits “charitable solicitations,” providing in relevant part that “[n]o person or organization shall solicit charitable and philanthropic contributions within the city without first obtaining a permit” (Ord. No. 5.32.020).

13. The Charitable Solicitation Permit Ordinance defines “solicitation” to mean “the request, directly or indirectly, of money, credit, property, financial assistance and other things of value on the plea or representation that money, credit, property, financial assistance or other things of value will be used for a charitable and philanthropic purpose as defined in this chapter. ‘Solicitation’ is deemed to be complete when made, whether or not the person making the solicitation receives any contribution.” The Ordinance further defines “charitable” and “philanthropic” to “mean and include the words, alms, food, clothes, money, subscription or property of any nature or kind.” (Ord. No. 5.32.010).

14. Under the Charitable Solicitation Permit Ordinance, individuals who seek authorization to engage in solicitation have no avenue through which to apply for a permit: authorization to engage in charitable solicitation is granted only where “the applicant is a bona fide *organization*.” (Ord. No. 5.32.050) (emphasis added).

15. Both Ordinances prohibit speech based on its content regardless of the manner in which it is communicated, including speech that is entirely peaceful.

16. Mr. Fleming is an individual who has been adversely affected by the enforcement of both Ordinances challenged herein.

17. Mr. Fleming currently receives limited public assistance in the form of food stamps, and he has been forced to meet his most basic needs by asking passersby for money and food (*i.e.*, “panhandling”), which he chooses to do on public streets and sidewalks in New Brunswick. He began panhandling on a daily or near-daily basis starting in approximately August 2014, when he was evicted from his apartment and became homeless.

18. His sole method of panhandling involves sitting in his wheelchair and holding a sign that reads:

Broke
Please
Help
Thank You
God Bless You

Prior to October 2014, Mr. Fleming used a handwritten sign bearing these words. In October, Mr. Fleming obtained and began using a printed sign bearing an identical message. That sign is pictured below and attached as Exhibit A (hereafter referred to as the “sign”).



19. On September 11, 2014, Mr. Fleming was panhandling on a public sidewalk on George Street, between Paterson Street and Bayard Street, in New Brunswick. He did so while sitting in his wheelchair, holding his sign. A member of the New Brunswick Police Department (“the police”) approached Mr. Fleming and issued him a ticket for “panhandling” in violation of the Charitable Solicitation Permit Ordinance. There was no allegation that Mr. Fleming engaged in any unlawful conduct other than engaging in the speech described above.

20. After receiving the ticket on September 11th, Mr. Fleming continued to panhandle on the public streets and sidewalks of New Brunswick, using his sign to do so in the manner described. He felt he had no choice: asking his fellow citizens for help is his primary means of meeting his basic needs.

21. On October 4, 2014, Mr. Fleming was sitting in his wheelchair on the corner of George and Church Streets, engaging in panhandling, when two police officers approached him and told him to put his sign away. Mr. Fleming refused. A police officer then issued Mr. Fleming a ticket for “disorderly conduct, begging for money” in violation of the Anti-Begging Ordinance. The officers made no allegation that Mr. Fleming engaged in any unlawful conduct other than engaging in the speech described here.

22. On October 9, 2014, Mr. Fleming sat in his wheelchair on the corner of George and Somerset Streets, engaging in panhandling, when a police officer approached him and told him to put his sign away. When Mr. Fleming refused, the officer issued him a ticket for “panhandling” in violation of the Charitable Solicitation Permit Ordinance. There was no allegation that Mr. Fleming engaged in any unlawful conduct other than engaging in the speech described here.

23. On October 24, 2014, police officers approached Mr. Fleming on a public sidewalk outside of the George Street entrance to the New Brunswick train station, where he was

sitting in his wheelchair and engaging in panhandling in the manner described herein. An officer informed him he was being arrested. He did not read Mr. Fleming his Miranda rights, but did explain that the arrest was based on a warrant that was issued when he did not appear in court on a ticket he received for violating the Charitable Solicitation Permit Ordinance. The officer further based the arrest upon a warrant related to a traffic violation in Watchung, New Jersey, more than ten years ago.

24. In each of the three instances in which Mr. Fleming received tickets, and on the occasion of this arrest, his so-called illegal speech occurred on the streets or sidewalks of New Brunswick – public property that constitutes the quintessential public forum for the right to engage in expressive activity.

25. After being arrested and booked, Mr. Fleming was moved to the Middlesex County Adult Correctional Facility where he was detained for three weeks due to both his inability to pay bail and the warrant from Watchung. Mr. Fleming was finally released on November 14, 2014.

26. Since his release, Mr. Fleming's financial situation is unchanged: he remains homeless and wheelchair-bound, and he continues to use his sign to ask passersby for money and food on the public streets and sidewalks of New Brunswick.

27. The enforcement of the challenged Ordinances threatens both Mr. Fleming's right to engage in protected speech and his personal liberty. Given his circumstances, he must continue to engage in panhandling yet, by doing so, he faces the threat of additional criminal penalty – including further imprisonment – simply for engaging in such speech.

28. Mr. Fleming is not the only person who faces analogous harm: the challenged Ordinances either have visited, or at any moment could visit, the same harm upon every individual who asks their fellow citizens for monetary or food assistance in New Brunswick.

29. By preventing poor and homeless people from begging or soliciting money or food, the Ordinances also adversely affect the Coalition's efforts to advance the best interests of the homelessness population. Moreover, the Ordinances – and the criminalization of poverty that result therefrom – force the Coalition to redirect its mission and expend additional resources to help homeless people maintain their fundamental constitutional right to ask their fellow citizens for money and food when they need assistance.

CLAIMS FOR RELIEF

30. The Charitable Solicitation Permit Ordinance and the Anti-Begging Ordinance, and New Brunswick's enforcement of same, preclude Mr. Fleming and the other poor and homeless people from engaging in protected speech, *i.e.*, where the speaker asks for money or food. As such, these Ordinances, both on their face and as applied, violate the New Jersey Civil Rights Act and Article 1, Paragraph 6 of the New Jersey Constitution – in that they are impermissible content-based prior restraints on speech, and are also void under the doctrine of vagueness and overbreadth. Accordingly, plaintiffs seek temporary, preliminary, and permanent injunctive relief barring defendant from enforcing these two Ordinances.

31. Because the Charitable Solicitation Permit Ordinance and Anti-Begging Ordinance, on their face, violate the freedom of speech guaranteed by Article 1, Paragraph 6 of the New Jersey Constitution and the New Jersey Civil Rights Act for the reasons described herein, plaintiffs also seek declaratory judgment declaring them unconstitutional.

WHEREFORE Plaintiffs respectfully request entry of Judgment as follows:


1. Declaring that New Brunswick Ordinances No. 5.32 and No. 9.04.050(A)(6) violate the Constitution of the State of New Jersey, and therefore are void, without effect, and unenforceable.

2. Granting a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the Defendant, as well as its officers, agents, employees, attorneys, and all persons who are in active concert or participation with it, from enforcing New Brunswick Ordinances No. 5.32 and No. 9.04.050(A)(6).

3. Awarding counsel fees and cost of suit, pursuant to N.J.S.A. 10:6-2(f).

4. Granting all other relief that the Court deems to be just and equitable.

McCarter & English, LLP
Pro bono Attorneys for Plaintiffs and
Cooperating Counsel for the American Civil
Liberties Union of New Jersey Foundation

By: 
Nicholas M. Insua

Dated: December 17, 2014

DESIGNATION OF TRIAL COUNSEL


Pursuant to Rule 4:25-4, Plaintiffs designate Gerard Brew, Nicholas Insua, Emily Goldberg, Cynthia Betz, Amanda Dumville, and Desiree Grace as trial counsel in this action.

R. 4:5-1 CERTIFICATION

NICHOLAS M. INSUA, of full age, hereby certifies:

1. I am a member of the firm of McCarter & English, pro bono attorneys for the Plaintiffs in the within cause of action.
2. To the best of my knowledge and belief, this matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any such proceeding contemplated at this time.
3. To the best of my knowledge and belief, there are no other parties who must be joined in this action.
4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

McCarter & English, LLP
Pro Bono attorneys for Plaintiffs,
New Jersey Coalition to End Homelessness and
John R. Fleming and Cooperating Counsel for the
American Civil Liberties Foundation of New Jersey

By: 
Nicholas M. Insua
A Member of the Firm
NJ Attorney ID #00855200

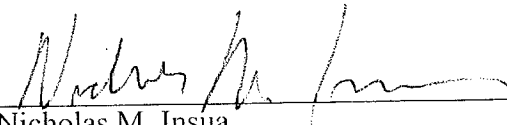
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CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(B)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

McCarter & English, LLP
Pro Bono attorneys for Plaintiffs,
New Jersey Coalition to End Homelessness and
John R. Fleming and Cooperating Counsel for the
American Civil Liberties Foundation of New Jersey

By: 
Nicholas M. Insua
A Member of the Firm
NJ Attorney ID #008552000

Dated: December 17, 2014

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VERIFICATION

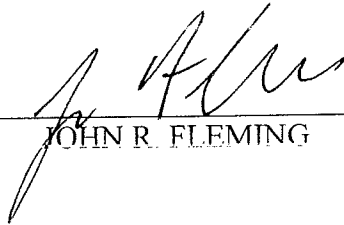
STATE OF NEW JERSEY)

) SS.

COUNTY OF MIDDLESEX)

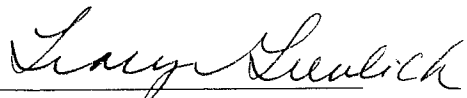
JOHN R. FLEMING, of full age, being first duly sworn according to law, upon his oath deposes and says:

1. I am a Plaintiff in the foregoing Complaint.
2. The allegations contained in the Complaint are true to the best of my knowledge.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



JOHN R. FLEMING

Sworn to and Subscribed
before me this 9th day
of December, 2014



Notary Public
My commission expires:

TRACY GREULICH
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/29/2016

VERIFICATION

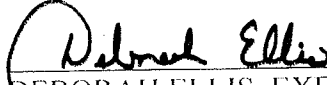
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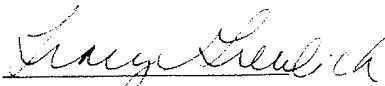
COUNTY OF MIDDLESEX)

DEBORAH ELLIS, EXECUTIVE DIRECTOR OF THE NEW JERSEY COALITION
TO END HOMELESSNESS, being first duly sworn according to law, upon oath deposes and
says:

1. The Coalition is a Plaintiff in the foregoing Complaint. As the Executive Director of the Coalition, I am authorized to speak on its behalf.
2. The allegations contained in the Complaint are true to the best of my knowledge.
3. I certify that the foregoing statements made on behalf of the Coalition are true. I am aware that if any of the foregoing statements made are willfully false, I am subject to punishment.


 DEBORAH ELLIS, EXECUTIVE
 DIRECTOR OF THE NEW
 JERSEY COALITION TO END
 HOMELESSNESS

Sworn to and Subscribed
before me this 9th day
of December, 2014


 Notary Public
 My commission expires:

TRACY GREULICH
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/29/2016