IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-3095-MSK

PIKES PEAK JUSTICE & PEACE COMMISSION;
STAR BAR PLAYERS;
GREENPEACE, INC.;
THE DENVER VOICE;
JAMES BINDER;
RONALD MARSHALL;
LAUREL ELIZABETH CLEMENTS MOSLEY;
ROGER BUTTS;

Plaintiffs,

v.

CITY OF COLORADO SPRINGS, COLORADO,

Defendant.

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Rules 65(a) and (b) of the Federal Rules of Civil Procedure, Plaintiffs move this Court for entry of a temporary restraining order and for a preliminary injunction.

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RULE 7.1 CERTIFICATE

1. Pursuant to D.C.Colo.L.Civ.R. 7.1, Sara J. Rich, counsel for Plaintiffs, conferred with Christopher Melcher, counsel for Defendant, who opposes the relief sought by this Motion.

NOTICE OF FILING OF MOTION FOR TEMPORARY RESTRAINING ORDER

2. Counsel for Plaintiffs, Sara J. Rich, contacted Colorado Springs City Attorney, Christopher Melcher, on November 28, 2012 and informed Mr. Melcher of the filing of the Complaint in this matter and the intended filing of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction.

3. Defendant City of Colorado Springs has actual notice of Plaintiffs' Motion and of Plaintiffs' intent to seek a hearing on the Motion at the Court's earliest convenience, and no later than December 5, 2012.

INTRODUCTION

In Colorado Springs, city officials report that some panhandlers have been intimidating and harassing pedestrians. In an effort to purge these menacing panhandlers from downtown, the City adopted an ill-advised ordinance that effects a breathtakingly broad suppression of First Amendment rights in a large twelve-city-block swath of the downtown area. Instead of focusing narrowly on threatening or coercive behaviors that invade the rights of others, Colorado Springs has banned any and all forms of "solicitation."

The City's expansive definition of "solicitation" in the new ordinance has unjustifiably banished a substantial amount of peaceful, non-intrusive, and constitutionally protected expression. Nonprofit organizations, like Plaintiffs Greenpeace and Pikes Peak Justice and Peace Commission, are forbidden to ask passersby for donations. Plaintiff James Binder, a street musician, violates the ordinance by playing his flute while his open hat silently solicits donations. The ordinance forbids Plaintiff Star Bar Players, a theater group, from setting up a signboard on the sidewalk that solicits pedestrians to buy tickets. The ordinance forbids a person to sit quietly with a sign requesting donations. It forbids the Salvation Army to deploy its familiar bell-ringers. Nonprofits cannot distribute literature that includes information on how to send a donation. Organizers of demonstrations and rallies in Acacia Park cannot ask supporters for a donation.

The new ordinance unjustifiably transforms each Plaintiff's peaceful, nonintrusive, nonthreatening and constitutionally-protected communications into crimes. According to a recent media account, Defendant plans to begin enforcing the ordinance on December 2, 2012.[1] However, based on representations by Colorado Springs City Attorney Chris Melcher in a

[1] Daniel Chacon, *Council Outlaws Panhandling, Solicitation Downtown*, THE GAZETTE, November 14, 2012, *available at* http://www.gazette.com/articles/zone-147292-downtown-council.html.

November 28, 2012 email, it appears that Defendant may not be able to begin enforcement until December 5, 2012.

Plaintiffs challenge this overbroad ordinance on its face and as applied to them.

In this motion, Plaintiffs ask this Court for an emergency temporary restraining order and a preliminary injunction to preserve their right and the right of others to peacefully and respectfully engage in expressive and communicative activity in the public areas of downtown Colorado Springs.

STATEMENT OF FACTS

On November 27, 2012, the Colorado Springs City Council passed an amendment to Section 9.2.111 of the Municipal Code, which forbids the wide array of constitutionally-protected activities that Plaintiffs carry out – and wish to continue carrying out – in the central downtown area. The newly-adopted ordinance establishes a "Downtown No-Solicitation Zone" that includes the public streets, sidewalks, and parks in 12-block area of downtown Colorado Springs. The amendment also sets up a dramatically broad definition of "soliciting," an act that is now prohibited in the downtown zone.

I. Background: The Already-Existing Ordinance Forbidding "Aggressive Solicitation"

For many years, the Colorado Springs Municipal Code, in Section 9.2.111, has included (and still includes) a strict prohibition against "aggressive solicitation" in public places.[2] Subsection B of Section 9.2.111 defines "soliciting" as "to knowingly approach, accost or stop another person in a public pace and to make a request, whether by spoken words, bodily gestures, written signs or other means, for a gift of money or other thing of value."[3] The

[2] A copy of the text of Section 9.2.111, as it existed before it was amended in November, 2012, is attached as Exhibit 1.

[3] As discussed *infra*, a much broader definition of "soliciting" now applies in the "Downtown No-Solicitation Zone."

definition and prohibition of aggressive solicitation appears in Subsection C, titled "Aggressive Soliciting Prohibited." For many years, Colorado Springs has prohibited, as "aggressive solicitation," such behaviors as:

- Continuing to solicit from a person after the person has given a negative response to the soliciting;
- Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;
- Intentionally blocking, obstructing or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact in the course of soliciting;
- Using violent or threatening conduct toward a person solicited which would cause a reasonable person to be fearful for his or her safety;
- Persisting in closely following or approaching the person being solicited and continuing to solicit after the person has informed the solicitor by words or conduct that the person does not want to be solicited or does not want to give money or any thing of value to the solicitor;
- Using profane or abusive language which is likely to provide an immediate violent reaction from the person being solicited or would cause a reasonable person to be fearful for his or her safety;
- Soliciting money from anyone who is waiting in line for tickets, for entry to a building or for another purpose; and
- Approaching or following a person for solicitation as part of a group of two or more persons, in a manner and with conduct, words or gestures intended or likely to cause a reasonable person to fear imminent bodily harm or damage to or loss of property or otherwise to be intimidated into giving money or other thing of value.

Ex. 1, Section 9.2.111 (C)(1)(a)-(h). The "aggressive solicitation" ordinance, which remains in place, also prohibits persons from engaging in the following behaviors:

- soliciting on private property after being asked to leave;
- soliciting within 20 feet of an automated teller machine;
- soliciting in busses, bus stops, parking lots, or parking structures;

- soliciting within six feet of a building's entrance;[4] and
- soliciting any person entering or exiting a parked car or a person in a car that is stopped on the street.

Ex. 1, Section 9.2.111 (C)(2)-(6).

II. Proponents Advocated the Proposed "No Solicitation Zone" as a Measure to Combat Aggressive Panhandling

Aggressive panhandling was the perceived problem that prompted city officials to consider – and eventually adopt – the "no solicitation zone." In June 2012, a meeting of elected officials, business persons and residents was held at City Council chambers to discuss the proposal. A reporter in attendance summarized: "Complaints of active and aggressive solicitation, including money begging, threats, harassments and profane language have prompted the City to consider an ordinance that simplifies the definition of panhandling."[5]

At an informal meeting of the City Council on August 27, 2012,[6] David Munger, Chair of the Mayor's Downtown Solutions Team – a citizens group appointed by Colorado Springs Mayor Steve Bach to consider ways to revitalize the downtown – said the aim was to make it "more comfortable" for people to come downtown and to alleviate "a perceived lack of safety."[7] Mr. Munger cited complaints of being "actively harassed by folks who are asking for money or panhandling."[8] The Chief of Police related information about a group of newer arrivals to

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[4] When Colorado Springs amended the ordinance on November 27, 2012, it also changed the 6-foot limit of this provision to 20 feet. Plaintiffs have not, at this time, challenged the new provision that forbids soliciting within 20 feet of a building's entrance.

[5] Achille Ngoma, "Kicking panhandlers out of downtown," Colorado Springs Independent blog, June 20, 2012, available at http://www.csindy.com/IndyBlog/archives/2012/06/20/kicking-panhandlers-out-of-downtown.

[6] Videos of Colorado Springs City Council meetings are available to stream online at this internet address: http://www.springsgov.com/Page.aspx?NavID=252. All City Council meetings are listed on the webpage by the date of the meeting. By clicking on the date of the meeting, the video will open in Windows Media Player for viewing. Hereinafter, Plaintiffs will indicate in a footnote citation the date the meeting occurred and the specific hour and minute of the video where the statements can be viewed.

[7] *See* n.6, *supra*, Video of Aug 27, 2012 meeting, at 2 hours, 44 minutes.

[8] *See* n.6, *supra*, Video of Aug 27, 2012 meeting, at 2 hours, 45 minutes.

Colorado Springs who are panhandling and are "much more aggressive."[9] A council member said "the problem we are trying to address is aggressive solicitation."[10]

On November 13, 2012, Mayor Bach urged the Council to adopt the proposed ordinance. "The downtown retailers and restaurants," Mayor Bach said, "are suffering due to the continued aggressive panhandling." He said that "consumers, especially women" fear coming downtown "because of the panhandling."[11] The Mayor alluded to panhandlers who use "coercion and intimidation and where the other person feels threatened." The mayor said that when people feel threatened, "this goes beyond the simple exchange of words and could you please help me." The Mayor said "this is where we have to draw the line."[12]

At the November 13, 2012 meeting, the City Council passed the proposed ordinance on first reading. The ordinance passed second reading at the City Council meeting on November 27, 2012.

III. The Challenged Ordinance

The challenged ordinance adopts a dramatically broadened definition of "soliciting" that applies only to the downtown area. It then prohibits, in the downtown area, every activity that falls within the newly-expanded category of "solicitation."

Under the previous definition of soliciting, which still applies outside the no-solicitation zone, a person who quietly holds a sign asking for donations is not engaging in solicitation.[13] The newly-expanded definition that applies downtown now applies to persons passively holding

[9] *See* n.6, *supra*, Video of Aug 27, 2012 meeting, at 2 hours, 52 minutes.
[10] *See* n.6, *supra*, Video of august 27, 2012 meeting, at 2 hours, 54 minutes
[11] *See* n.6, *supra*, Video of Nov 13 meeting, at 3 hours, 21 minutes.
[12] *See* n.6, *supra*, Video of Nov. 13 meeting, at 3 hours, 22 minutes.
[13] "Soliciting does not include passively standing or sitting, with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person, other than in response to an inquiry by that person." Ex. 1, Colorado Springs Municipal Code Section 9.2.111(B) (text of ordinance as it existed before it was amended on November 27, 2012).

signs with messages that request donations or monetary transactions. In the no-solicitation zone, the new definition of "soliciting" reads as follows:

> The terms "solicit" or "soliciting" shall mean and include any one or more of the following activities:
>
> 1. Seeking to obtain orders for the purchase of goods, merchandise, foodstuff services or another thing of any kind, character or description whatsoever for any kind of consideration.
> 2. Selling goods, merchandise, foodstuff, services or another thing of any kind, character or description whatsoever, for any kind of consideration.
> 3. Selling or seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication for any kind of consideration.
> 4. Seeking to obtain gifts, or contributions of money, clothing or any other thing for any reason.
> 5. Placing or carrying, or causing to be placed or carried any showboard, placard or sign for the purpose of accomplishing any of the activities set forth in subsections 1 through 4 of this section.

Ex. 2, Ordinance 12-100, Section 9.2.111(B) (adopted November 27, 2012, amending Colorado Springs Municipal Code Section 9.2.111) (hereinafter "Ord. 12-100").

The new ordinance adds a Section D, which prohibits any solicitation in the Downtown No Solicitation Zone, which is defined to encompass twelve city blocks that include the main business and shopping area of downtown Colorado Springs. The no-solicitation zone is bounded by Boulder on the north, Cucharas on the south, Cascade on the west and Nevada on the east. Ex. 2, Ord. 12-100, Section 9.2.111(B) (showing map). The zone includes Acacia Park – a large downtown park with an amphitheater that hosts numerous widely-attended events every year. The sidewalks of the no-solicitation zone boast the highest concentration of foot traffic on public property in Colorado Springs. The pedestrians come from all walks of life, offering a rare cross-section of the demographic diversity of Colorado Springs. Ex. 3, *Saint Declaration,* ¶¶ 10, 13.

It is in this unique downtown area that Colorado Springs has forbidden non-profits, businesses, street performers, and needy people from communicating, by word or action, a need or a desire or a request for monetary help.

IV. The Need for Interim Injunctive Relief

Plaintiffs Pikes Peak Justice & Peace Commission ("PPJPC"), Star Bar Players, Greenpeace, Inc. ("Greenpeace"), The Denver Voice ("The Voice"), Binder, and Marshall each wish to engage in activities defined as "solicitation" in downtown Colorado Springs within the no-solicitation zone. Ex. 3, *Saint Declaration*, ¶ 9; Ex. 4, *Uustal Declaration*, ¶¶ 6-7; Ex. 5, *Binder Declaration* ¶ 10; Ex. 6, *Marshall Declaration*, ¶ 10; Ex. 7, *Mosley Declaration*, ¶¶ 8-9; Ex. 8, *Pazulski Declaration* ¶¶ 8-9. These Plaintiffs identified downtown Colorado Springs as their desired location because it boasts the largest volume of pedestrian traffic in a public space in Colorado Springs. Ex. 3, *Saint Declaration*, ¶ 10; Ex. 4, *Uustal Declaration*, ¶ 6; Ex. 5, *Binder Declaration*, ¶¶ 4, 8; Ex. 6, *Marshall Declaration*, ¶ 10; *see also* Ex. 8, *Pazulski Declaration* ¶ 9. Now, because of the challenged ordinance, each of these Plaintiffs must choose to either: (a) engage in constitutionally-protected expression that violates the ordinance; or (b) comply with the ordinance and forego the exercise of constitutional rights. Ex. __, *Saint Declaration*, ¶ 15; Ex. 4, *Uustal Declaration*, ¶ 7; Ex. 5, *Binder Declaration* ¶ 10; *see also* Ex. 6, *Marshall Declaration*, ¶ 10; Ex. 8, *Pazulski Declaration* ¶ 9.

A. Plaintiff PPJPC

Plaintiff PPJPC is a thirty-five year old community-based not-for-profit corporation grounded in principles of nonviolence, solidarity with the poor and oppressed, sustainable living, and social and economic justice. Ex. 3, *Saint Declaration*, ¶ 2. PPJPC is based in Colorado Springs and has in the past solicited donations in what is now the no-solicitation zone. Ex. 3,

Saint Declaration, ¶ 8. PPJPC planned to carry out more such solicitation activity in the future. Ex. 3, *Saint Declaration*, ¶¶ 3, 8-12. PPJPC not only planned to solicit at annual events held in Acacia Park, but also had a specific plan to solicit donations during the upcoming holiday season on the public sidewalks of the central downtown corridor of Colorado Springs, now the heart of the no-solicitation zone. Ex. 3, *Saint Declaration*, ¶ 9. Specifically, PPJPC wishes to stand on public sidewalks in the no-solicitation zone, don holiday hats, pass out literature about the organization and its mission, and peaceably ask passersby if they would like to make a donation. Ex. 3, *Saint Declaration*, ¶¶ 9-11.

B. Plaintiff Star Bar Players

Plaintiff Star Bar Players is a non-profit theater company located in downtown Colorado Springs in the no-solicitation zone. Ex. 7, *Mosley Declaration*, ¶ 8. Star Bar Players has solicited ticket sales and donations on many occasions within what is now the no-solicitation zone by passing out flyers and placing a signboard on the sidewalk in front of the theater advertising performances and encouraging the purchase of tickets. Ex. 7, *Mosley Declaration*, ¶ 8. Star Bar Players wishes to continue these constitutionally-protected forms of expression in the downtown area. Ex. 7, *Mosley Declaration*, ¶¶ 8-9.

C. Plaintiff Greenpeace

Plaintiff Greenpeace is a leading independent campaigning organization that uses peaceful protest and creative communication to expose global environmental problems in order to promote solutions that are essential to a green and peaceful future. Ex. 4, *Uustal Declaration*, ¶ 1. Since 2008, Greenpeace representatives have conducted an ongoing canvassing operation on the public sidewalks of what is now the no-solicitation zone in downtown Colorado Springs. Ex. 4, *Uustal Declaration*, ¶ *2*. The canvassers engage passersby in consensual, two-way

conversations about the environment and the mission and programs of Greenpeace, while also soliciting funds in the form of donations to the organization. Ex. 4, *Uustal Declaration*, ¶ 4. Greenpeace's canvassing operation provides financial support for the organization, as well as public outreach and education that is necessary for the organization to be successful. Ex. 4, *Uustal Declaration*, ¶ 2. Greenpeace's downtown Colorado Springs canvassing operation has been highly successful and the organization wishes to continue its outreach and fundraising operation in what is now the no-solicitation zone. Ex. 4, *Uustal Declaration*, ¶¶ 6-7.

D. Plaintiff The Denver Voice

Plaintiff The Denver Voice is a not-for-profit corporation whose mission is to facilitate a dialogue addressing the roots of homelessness by telling stories of people whose lives are impacted by poverty and homelessness and by offering economic, educational, and empowerment opportunities for the impoverished community. Ex. 8, *Pazulski Declaration* ¶¶ 2-4. The Voice has 500 vendors annually who typically sell the paper in the downtown areas of cities where there is significant foot traffic. Ex. 8, *Pazulski Declaration* ¶¶ 3, 8. The Voice is in a growth mode and fully expects that it will have vendors in Colorado Springs. Ex. 8, *Pazulski Declaration* ¶ 8. As the Acting Interim Executive Director of The Voice explains:

> When a Front Range community, like Colorado Springs, closes its public sidewalks and parks to solicitation in its most populous downtown area, the harm to our organization is very real. Our organizational goal is to allow homeless and people in poverty from all over the Front Range to share in the opportunities that vending the Voice can create – to earn an income, invest in their future and empower themselves to work their way off the streets. The Colorado Springs solicitation ban prevents our organization from making this opportunity available to persons who wish to vend the Voice in downtown Colorado Springs. Homeless and impoverished people in Colorado Springs should not be denied the opportunity to engage in the most basic of First Amendment freedoms – distributing the news.

Ex. 8, *Pazulski Declaration* ¶ 9.

E. Plaintiff Binder

Plaintiff Jim Binder is a street musician who plays the flute on the public sidewalks of downtown Colorado Springs six days a week, in what is now the no-solicitation zone. Ex. 5, *Binder Declaration* ¶ 1. When Mr. Binder plays, he lays out his hat should anyone want to tip him for his musical offering." Ex. 5, *Binder Declaration* ¶ 4. Mr. Binder does not verbally ask passersby for tips. Ex. 5, *Binder Declaration* ¶ 4. In fact, he says "[M]uch of the time I am playing, my eyes are closed, and I don't even realize if people are tipping me." Ex. 5, *Binder Declaration* ¶ 5. Mr. Binder would like to continue to play his flute, while silently soliciting tips, in what is now the no-solicitation zone. Ex. 5, *Binder Declaration* ¶ 10.

F. Plaintiff Marshall

Plaintiff Ron Marshall is a disabled, long-time resident of Colorado Springs. Ex. 6, *Marshall Declaration,* ¶¶ 1-2. For the last thirteen years, Mr. Marshall has peaceably asked for help from passersby on the public sidewalk of Tejon Street in downtown Colorado Springs, in what is now the no-solicitation zone. Ex. 6, *Marshall Declaration,* ¶¶ 1, 6. Mr. Marshall has been 100% disabled since 1999 and has struggled with a number of serious, degenerative diseases that render him unable to work. Ex. 6, *Marshall Declaration,* ¶ 2. Asking for assistance from others has helped Mr. Marshall make ends meet. Ex. 6, *Marshall Declaration,* ¶¶ 5, 10. Mr. Marshall is gentle and non-aggressive when he requests help from passersby. Ex. 6, *Marshall Declaration,* ¶¶ 7, 11. As a testament to his good nature, Mr. Marshall has a good relationship with many people who live and work in the downtown area. Ex. 6, *Marshall Declaration,* ¶ 8. Mr. Marshall wishes to continue to ask for assistance from others in the no-solicitation zone on a daily basis. Ex. 6, *Marshall Declaration,* ¶ 10.

G. Plaintiffs Mosley and Butts

Plaintiffs Mosley and Butts are residents of Colorado Springs and both regularly walk in what is now the no-solicitation zone. Ex. 7, *Mosley Declaration* ¶ 1; Ex. 9, *Butts Declaration,* ¶¶ 1-2. Plaintiffs Mosley and Butts want to receive requests for assistance from needy people. Ex. 7, *Mosley Declaration* ¶ 2; Ex. 9, *Butts Declaration,* ¶ 2. They value the information so received because it informs them of the presence of extreme poverty. Ex. 7, *Mosley Declaration* ¶ 5; Ex. 9, *Butts Declaration,* ¶ 2. The challenged ordinance will deprive them of these important communications. Ms. Mosley appreciates the opportunity to give money to those in need. Ex. 7, *Mosley Declaration* ¶¶ 2-3. Reverend Butts feels that exposure to pleas from the needy provides him important information that he uses in discussions about the problem of homelessness and poverty. Ex. 9, *Butts Declaration,* ¶¶ 2-3.

Plaintiff Mosley and Butts also appreciate and wish to hear the music of street musicians, along with the requests for tips that is so closely associated with the musical offering. Both Ms. Mosley and Reverend Butts frequently stop in what is now the no-solicitation zone to listen to the music of street musicians, and both enjoy showing their gratitude for the music by tipping musicians. Ex. 7, *Mosley Declaration* ¶ 7; Ex. 9, *Butts Declaration,* ¶ 6.

Plaintiff Butts wishes to hear the messages of advocacy organizations fundraising in central downtown corridor. He likes the interaction with these organizations that fundraising activities engender, and he appreciates the opportunity to make a donation to these organizations. Ex. 9, *Butts Declaration*, ¶ 7.

ARGUMENT

I. Legal Standard For Interim Injunctive Relief

The Tenth Circuit applies a four-prong test in evaluating whether an interim injunction is warranted. The moving party must generally demonstrate "(1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest." *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009). The Plaintiffs here easily satisfy this test.[14]

II. Plaintiffs are Substantially Likely to Succeed on the Merits of Their Constitutional Claims

Section A explains the challenged ordinance restricts constitutionally-protected expression in a public forum and that Colorado Springs bears the burden of justification. Section B explains that the challenged ordinance is a content-based restriction of speech and that Colorado Springs cannot meet its burden of demonstrating that its ordinance is the least restrictive means of furthering a compelling government interest. Section C explains that even if the restrictions were content-neutral (and they are not), Colorado Springs will be unable to demonstrate that its ordinance is narrowly tailored to further a significant government interest and that it leaves open adequate alternative channels of communication.

[14] Three types of "disfavored" injunctions require a heightened standard: "(1) preliminary injunctions that alter the status quo, (2) mandatory preliminary injunctions, and (3) preliminary injunctions that give the movant all the relief it would be entitled to if it prevailed in a full trial." *Id*. at 1208 n.3. The injunction requested by Plaintiffs does not fall into any of the three disfavored categories. By seeking pre-enforcement relief, Plaintiffs merely seek to preserve the status quo, which is the "last peaceable uncontested status existing between the parties before the dispute developed." S*ee Schrier v. University of Colorado*, 427 F.3d 1253, 1260 (10th Cir. 2005). Similarly, the proposed injunction is clearly prohibitory rather than mandatory. Finally, the proposed injunction would not give Plaintiffs all the relief they would be entitled to if they prevail in a full trial: it merely provides temporary protection for their First Amendment rights until this Court can issue a final judgment on the merits. *See Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1247-48 (10th Cir. 2001).

A. Colorado Springs Bears the Burden of Justifying its Restriction of a Wide Array of Constitutionally-Protected Expression –of the Plaintiffs and others--In A Public Forum

Subsection 1 explains that with its expansive definition of "solicitation," Colorado Springs has suppressed a wide variety of constitutionally-protected expression—of the Plaintiffs as well as others-- in the Downtown No-Solicitation Zone. Subsection 2 explains that Colorado Springs bears the burden of justifying its restriction of expression on the downtown streets, sidewalks, and parks, which courts regard as a public forum, where the government's power to restrict speech is at its nadir.

1. The ordinance restricts a wide array of constitutionally-protected communications of Plaintiffs and other Colorado residents

Each of the Plaintiffs wishes to engage in communicative activity that is protected by the First Amendment but forbidden by the challenged ordinance. The First Amendment protects the expressive activities of street musicians such as plaintiff Binder, theater performances such as those put on by Star Bar Players, and circulation of newspapers such as the Denver Voice. *See Berger v. City of Seattle*, 569 F.3d 1029, 1036 n.4 (9th Cir. 2009) (en banc) (street musicians and theater); *Denver Pub. Co. v. City of Aurora*, 896 P.2d 306 (Colo. 1995) (newspaper hawkers). Offering the audience or the reader the opportunity to provide compensation is part and parcel of that protected expressive activity. *Berger*, 569 F.3d at 1051-53.

Charitable solicitation is unquestionably expression that is protected by the First Amendment. *See Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980). This is true whether the solicitation is carried out by Plaintiff nonprofit organizations that seek support for their mission, such as Greenpeace and PPJPC, or by individuals seeking assistance for themselves, such as Plaintiff Marshall. *See Loper v. New York City Police Dept.*, 999 F.2d

699, 704-05 (2d Cir. 1993) (holding unconstitutional a statute that prohibited loitering "for the purpose of begging").

The Supreme Court explained why charitable solicitation is protected by the First Amendment:

> [C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests--communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes . . . . [S]olicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on . . . social issues, and . . . without solicitation the flow of such information and advocacy would likely cease.

Village of Schaumburg, 444 U.S. at 632. Similarly, the expression of individuals soliciting charity for themselves is also protected by the First Amendment:

> Begging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation. Even without particularized speech, however, the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance. We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed. The former are communicating the needs of others while the latter are communicating their personal needs. Both solicit the charity of others. The distinction is not a significant one for First Amendment purposes.

Loper, 999 F.2d at 703.

Finally, "the First Amendment includes not just a right of free speech, but also a right to receive information." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1118 (10th Cir. 2012). Thus, the First Amendment protects the right of Plaintiffs Mosley and Butts to hear the messages of charities and poor persons who ask for assistance, as well as their right to hear the music of street musicians who wish to play for tips.

The City's expansive definition of "solicitation" has criminalized a substantial amount of peaceful, non-intrusive, and constitutionally-protected expression in the downtown no-solicitation zone. Nonprofit organizations like Greenpeace and PPJPC are forbidden to ask

passersby for donations. Plaintiff Binder commits a crime by playing his music while his open hat silently solicits donations. The ordinance forbids Star Bar Players and other businesses to set up signboards on the sidewalk that solicit customers. Plaintiff Marshall's respectful and nonintrusive requests for assistance are transformed into a crime. The ordinance forbids newspaper hawkers from selling The Denver Voice or any other publication.

Because this is a facial challenge to an ordinance that is an overly broad restriction of First Amendment rights, Plaintiff is not limited to argument related to the harm posed to Plaintiffs by the challenged ordinance. In this overbreadth claim, Plaintiffs may invoke—and this Court must consider—the First Amendment rights of persons who are not before the Court. *See United States v. Stevens*, 130 S. Ct. 1577, 1587-89 (2010); *Watchtower Bible and Tract Society of New York v. Village of Stratton*, 536 U.S. 150, 167 n.14 (2002). Thus, in considering the extraordinary reach of the challenged ordinance, this Court must also consider that it forbids a person to sit quietly with a sign requesting donations. It forbids the Salvation Army to deploy its familiar bell-ringers in Santa costumes. Nonprofits cannot distribute literature that includes information on how to send a donation. Organizers of demonstrations and rallies in Acacia Park cannot ask supporters for a donation.

The ordinance is even broader. It forbids asking a companion for a quarter to feed a parking meter. It prohibits a stranded motorist from asking for change for the bus. It makes it a crime for girl scouts to sell their cookies or for youngsters to set up a lemonade stand in Acacia Park. Although it seems doubtful that Colorado Springs would actually enforce the ordinance in these latter situations, the Supreme Court has said "[w]e would not uphold an unconstitutional statute merely because the Government promised to use it responsibly." Stevens, 130 S.Ct. at 1591; *see Bd. of Airport Comm'rs of City of L. A. v. Jews for Jesus, Inc., 482 U.S. 569, 574-75*

(1987) (in rejecting, as facially overbroad, a regulation that prohibited all "First Amendment activities," the Court noted that "it prohibits even talking and reading, or the wearing of campaign buttons or symbolic clothing").

2. Colorado Springs bears the burden of justifying its restrictions of expression in a public forum

The no solicitation zone applies on the streets, sidewalks, and a public park – locations that are regarded as public forums. See *United States v. Grace*, 461 U.S. 171, 177 (1983) (explaining that "'public places' historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be 'public forums'"). The government's right to limit expressive activity in a public forum is "sharply circumscribed." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983).

In this case, it is Colorado Springs that bears the burden of justifying its suppression of expression. *See United States v. Playboy Entertainment Group, Inc*., 529 U.S. 803, 816 (2000) ("When the government restricts speech, the government bears the burden of proving the constitutionality of its actions."); *ACORN v. Municipality of Golden*, 744 F.2d 739, 746 (10th Cir. 1984) (When "a law infringes on the exercise of First Amendment rights, its proponent bears the burden of establishing its constitutionality.")

In this case, Colorado Springs has adopted a content-based regulation of expression, which is presumptively unconstitutional and subject to the strictest scrutiny. To justify a content-based regulation, Colorado Springs must demonstrate that it is the least restrictive means of furthering a compelling government interest. *Perry*, 460 U.S. at 45.

Even if the challenged ordinance were content-neutral (and it is not), the City bears the burden of demonstrating that the ordinance is narrowly tailored to further a significant

government interest and that it leaves open ample alternative channels of expression. *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989).

As the following sections demonstrate, Colorado Springs will be unable to meet its burden of justification.

B. The City Cannot Meet Its Burden of Justifying Its Content-Based Prohibition of Constitutionally-Protected Expression in a Public Forum

In multiple contexts, the Supreme Court has noted that regulations are content-based when they require enforcement authorities to "necessarily examine the content of the message that is conveyed." *F.C.C. v. League of Women Voters of Cal.*, 468 U.S. 364, 383(1984); see *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 230 (1987); *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992); *Cf. Cincinnati v. Discovery Network*, 507 U.S. 410, 423 n.19 (1993).

Numerous courts have held that broadly-worded prohibitions or regulations of panhandling, begging, or solicitation are content-based restrictions that fail to survive strict scrutiny. *See, e.g., ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784,796 (9th Cir. 2006); *Speet v. Schuette*, 2012 U.S. Dist. Lexis 126127 (W.D. Mich. Aug. 24, 2012) (holding unconstitutional Michigan statute prohibiting begging); *Loper v. New York City Police Dep't*, 999 F.2d 699, 705 (2d Cir. 1993) (restriction on "begging" was impermissibly content-based); *Blair v. Shanahan*, 775 F. Supp. 1315, 1325 (N.D. Cal. 1991) (finding a content-based restriction when "only begging . . . is proscribed. One may approach and speak at will to solicit directions or the time of day, request signatures for a petition, or any number of other common occurrences without running afoul of this statute"), *modified on other grounds*, 38 F.3d 1514 (9th Cir. 1994); *Carreras v. City of Anaheim*, 768 F.2d 1039, 1048 (9th Cir. 1985) ("ordinance worked an impermissible content discrimination by singling out for regulation speech that involves

soliciting donations"); *Benefit v. City of Cambridge*, 697 N.E.2d 184, 188 (Mass. 1997); *Berger v. City of Seattle*, 569 F.3d 1029, 1051-53 (9th Cir. 2009) (en banc).

The challenged Colorado Springs ordinance, on its face, clearly relies on content to distinguish between prohibited expression and expression that is not regulated. Anyone remains free to stand on a downtown street corner holding a sign that says "reelect the mayor," but a person violates the ordinance by standing on the same corner with a sign that says "please mail a donation to the campaign against breast cancer." Nonprofit organizations are free to distribute literature about their work, but distributing that literature is forbidden if it includes a pitch for donations. The Star Bar Players theater may display a sidewalk signboard, but not if it invites the public to purchase tickets.

Even when the activity involves interrupting pedestrians to engage them in conversation and make a request, the prohibitions of the ordinance turn on the content of the speaker's message. Persons are free to ask passersby to stop and sign a petition for a ballot measure, but the petitioner may not ask the passerby for a donation to help fund the ballot measure campaign. Candidates and campaign workers remain free to stop pedestrians and ask for their vote but not for a campaign contribution. Evangelicals remain free to stop passersby to ask if they are saved, but not to ask for a donation to a church or charity.

The Ninth Circuit's recent rejection of a Las Vegas ordinance is particularly instructive here. *See ACLU v. City of Las Vegas*, 466 F.3d 784 (9th Cir. 2006). Like the challenged ordinance in this case, the Las Vegas ordinance defined the prohibited solicitation broadly to include signs or handbills requesting donations. The court noted that "[h]andbills containing certain language may be distributed . . . , while those containing other language may not." *Id*. at 794. To enforce the regulation, the court concluded that "an official 'must necessarily examine

the content of the message that is conveyed.'" *ACLU*, 466 F.3d at 794, quoting *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992). The court explained that the distinction between the prohibited handbills and the permitted ones is a content-based distinction because "it singles out certain speech for differential treatment based on the idea expressed." 466 F.3d at 794, quoting *Foti v. City of Menlo Park*, 146 F.3d 629, 636 n.7 (9th Cir. 1998).

The Colorado Springs ordinance is content-based for precisely the same reason. It forbids "seeking to obtain . . . contributions of money." It expressly forbids carrying or displaying any placard or sign for the purpose of obtaining a donation. Thus, signs containing certain language are allowed, while signs containing other language are forbidden. To enforce the ordinance, Colorado Springs authorities "must necessarily examine the content of the message that is conveyed." *ACLU*, 466 F.3d at 794, quoting *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992).[15]

Colorado Springs bears the burden of demonstrating that its content-based regulation of expression is narrowly tailored to further a compelling government interest. The City will be unable to meet that strict scrutiny standard.

C. Even If The Challenged Ordinance Were A Content-Neutral Regulation Of Expression (And It Is Not), It Cannot Survive The Test Of Intermediate Scrutiny

Colorado Springs will undoubtedly argue that the challenged ordinance is a constitutional regulation of the time, place, or manner of expression. *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989). To meet its burden, Colorado Springs must demonstrate not only that the

[15] Although the Colorado Springs ordinance does not specifically mention handbills, persons who seek to obtain contributions by handing out literature that includes a request for a donation are nevertheless engaged in an activity forbidden by the ordinance: "seeking to obtain . . . contributions of money." Thus, the ordinance forbids handbills that contain requests for donations while allowing leaflets without such a request. The Colorado Springs must be regarded as content-based for exactly the same reason as the Las Vegas ordinance.

ordinance is content-neutral, (and it is not), but also that the regulation is narrowly tailored to advance a significant governmental interest and leaves open ample alternative channels for communication. *Id*. The challenged ordinance cannot satisfy this standard of intermediate scrutiny.

1. The challenged ordinance fails the test of narrow tailoring because it suppresses substantially more expression than is necessary to further the City's legitimate interests

"[A] regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests." *Ward*, 491 U.S. at 798. The regulation "need not be the least restrictive or least intrusive means" of achieving the government's goals, but it may not "burden substantially more speech than is necessary." *Id*. at 798-99. Put another way, the regulation must "focus[ ] on the source of the evils the city seeks to eliminate . . . and eliminate[ ] them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." *Id*. at 799 n.7.

In this case, the "evils" the city seeks to eliminate are behaviors that can generally be characterized as "aggressive" panhandling—face-to-face requests for an immediate donation made in a manner or in a context that can cause fear, alarm, or intimidation. These "evils" were the target of the ban on "aggressive panhandling" that has been on the books for years (and that remains on the books).

When it adopted the "downtown no solicitation zone," Colorado Springs amended the already-existing ordinance, Section 9.2.111 of the municipal code. Section A of the already-in-place ordinance describes the purpose of the City's legislation as "eliminating aggressive solicitation." "Aggressive solicitation," the ordinance explains, "is disturbing and disruptive to residents and business and impacts social harmony and economic viability of the City." The

"purpose" section also says that the ordinance does not intend to prohibit lawful solicitation, but "to regulate behaviors that contribute to the loss of access to and enjoyment of public places and an enhanced sense of fear, intimidation, and disorder."

When it amended Section 9.2.111 to establish the "downtown no solicitation zone," the City added an additional sentence to the "purpose" section of the existing ordinance. The new sentence states:

> Further, the purpose of this section is to preserve and protect the beauty, safety and economic viability of the downtown area. All solicitation in the Downtown No Solicitation Zone is disturbing and disruptive to residents and businesses and impacts social harmony, physical safety and economic viability of the City as a whole.

Ord. 12-100, Section 9.2.111(A). Although the City inserted a throw-away sentence stating that "all solicitation" is disturbing and disruptive, Colorado Springs will be unable to support this bare assertion. The City cannot demonstrate that any and all activities within its newly-expanded definition of solicitation are "disturbing," "disruptive," or that they negatively impact "social harmony," "physical safety" or "economic vitality."

Indeed, the numerous public statements made by the Mayor, council members, and other proponents of the challenged "no solicitation zone" clearly identify aggressive panhandling – rather than any and all solicitation – as the problem to be solved. *See infra*, Section II.

Although the "evil" that the City sought to eliminate was aggressive solicitation that reportedly intimidated and frightened downtown visitors, the challenged ordinance unreasonably prohibits numerous categories of peaceful, nonintrusive, nonthreatening, constitutionally-protected expression that has no reasonable connection to the problem the City sought to solve. Thus, the ordinance fails the test of narrow tailoring, because it fails to "focus on the source of

the evils" while it also "ban[s] or significantly restrict[s] a substantial quantity of speech that does not create the same evils." *Ward*, at 491 at 799 n.7.

> The Ninth Circuit's analysis of the Las Vegas solicitation ordinance applies here:
>
> The record indicates that aggressive panhandling, solicitation, and handbilling were the problems confronted by the City. Yet the solicitation ordinance targets a substantial amount of constitutionally protected speech that is not the source of the "evils" it purports to combat. The ordinance therefore would fail the time, place, and manner test even if it were content-neutral.

ACLU of Nevada v. City of Las Vegas, 466 F.3d 784, 796, n.13 (9th Cir. 2006). The Colorado Springs ordinance fails for the same reason.

Although narrow tailoring does not require that a restriction be "the least restrictive or least intrusive means" of achieving the governmental interest, the government must show that the regulation does not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward* at 798-99. In this case, it is clear that the City burdened "substantially more" speech than necessary. Indeed, it prohibited *all* messages of "solicitation" from the entire central downtown area. Such a complete ban on a form of expressive activity can be narrowly tailored "only if each activity within the proscription's scope is an appropriately targeted evil." *Ward* 491 U.S. at 800, quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). Here, the City will not be able to show that persons passively holding signs, or Salvation Army Santa Clauses, or other charitable solicitations are an "appropriately targeted evil." Nor will the City be able to show that street musicians, handbills with requests for contributions, or the Star Bar Players' sidewalk signboard constitute an "appropriately targeted evil." The City's ordinance suppresses substantial quantities and types of nonthreatening, nonintrusive expression that have no connection to the City's legitimate interests in curbing

aggressive solicitation that invades the rights of others and prompts shoppers to fear for their safety.

2. Less speech-restrictive alternatives

In this case, Colorado Springs also fails the test of narrow tailoring because there was an obvious and substantially less speech-restrictive alternative: enforcing the already-existing provisions that target "aggressive soliciting." "The availability of less burdensome alternatives to reach the stated goal signals that the fit between the legislature's ends and the means chosen to accomplish those ends may be too imprecise to withstand First Amendment scrutiny." *U.S. West, Inc. v. FCC*, 182 F.3d 1224, 1238 (10th Cir. 1999), quoting *44 Liquormart v. Rhode Island*, 517 U.S. 484, 529 (1996) (O'Connor, J., concurring).

"This is particularly true when such alternatives are obvious and restrict substantially less speech." *Id*. "[A]n obvious and substantially less restrictive means for advancing the desired government objective indicates a lack of narrow tailoring." *Id*. at 1238, n.11. *See also Horina v. City of Granite City*, 538 F.3d 624, 634 (7th Cir. 2008) (broad restriction on handbilling not needed to combat trespass to vehicles when the City already had an ordinance that proscribed trespass). In this case, Colorado Springs must bear the burden of justifying its decision to address problems of aggressive panhandling by banning the Plaintiffs' non-aggressive, nonintrusive expression instead of enforcing the already-existing ordinance.

3. The challenged ordinance fails to leave open ample and adequate alternative channels for communication

To survive intermediate scrutiny, the government must demonstrate that regulations of the time, place, or manner of expression "leave open alternative channels for communication" that are both "ample" and "adequate." *See Ward* at 798 ("ample"); *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994) ("adequate"). In this case, the Plaintiffs do not have ample alternative

channels of communication because they are deprived of the opportunity to reach their intended audience. "[A]n alternative is not ample if the speaker is not permitted to reach the intended audience." *Berger v. City of Seattle*, 569 F.3d 1029, 1049 (9th Cir. 2009) (en banc), quoting *Long Beach Area Peace Network v. City of Long Beach*, 522 F.3d 1010, 1024 (9th Cir. 2008).

The Plaintiffs' declarations make clear that their intended audience is the significant pedestrian population in downtown Colorado Springs. The Plaintiffs' messages are banned from the precise public location that boasts the greatest density and greatest diversity of foot traffic in Colorado Springs. Colorado Springs will not be able to carry its burden of identifying adequate alternatives channels of communication that will allow the Plaintiffs to reach members of the public who walk downtown. The City's expected answer – that the Plaintiffs remain free to solicit outside the downtown zone – does not satisfy the First Amendment. As both the Supreme Court and the Tenth Circuit have explained, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Reno v. ACLU*, 521 U.S. 844, 880, quoting *Schneider v. State*, 308 U.S. 147, 163 (1939); *ACORN v. Golden*, 744 F.2d 739, 749 n.8 (10th Cir. 1984) (same). Further, no other public location in Colorado Springs allows speaker to reach such a large and diverse population of pedestrians as the area that is now the no-solicitation zone.

III. Plaintiffs Will Suffer Irreparable Injury if An Interim Injunction is Denied

As a general rule, a "plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain." *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001). When a law chills or suppresses expression protected by the First Amendment, that is a classic example of a case where monetary damages are both inadequate and difficult to ascertain.

In addition, "[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Id*. at 963. More specifically, "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1235 (10th Cir. 2005), quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); s*ee also Heideman v. South Salt Lake City*, 348 F.3d 1182, 1190 (10th Cir. 2003) (holding that even a "minimal restriction" on the manner in which dancers may convey their artistic message constitutes irreparable injury). Accordingly, when government action threatens First Amendment rights, as in this case, there is a presumption of sufficient irreparable injury to warrant interim injunctive relief. *Cmty. Communications Co. v. City of Boulder*, 660 F.2d 1370, 1376 (10th Cir. 1981).

According to a recent media account, Defendant plans to begin enforcing the ordinance on December 2, 2012.[16] However, based on representations by Colorado Springs City Attorney Chris Melcher in a November 28, 2012 email, it appears that Defendant may not be able begin enforcement until December 5, 2012. While Mr. Melcher claims that Defendant will engage in only "education" related to the ordinance for the first thirty days that it is in place, Plaintiffs have every reason to believe that – at minimum – such enforcement will include orders to Plaintiffs to "move along," and – if and when plaintiffs refuse to do so – may result in their arrest and/or citation. Moreover, even without such "soft" enforcement, the mere fact of the law being in effect would plainly chill a person of ordinary firmness from engaging in "solicitation" – when doing so would constitute a criminal act. It is worth noting that during public debate related to the ordinance, City Council members repeatedly underscored the need to have the ordinance in effect for the upcoming holiday shopping season. The plain inference of these discussions was

[16] Daniel Chacon, *Council Outlaws Panhandling, Solicitation Downtown*, THE GAZETTE, November 14, 2012, *available at* http://www.gazette.com/articles/zone-147292-downtown-council.html.

that the ordinance being in place (whether enforced through education, "move on" orders, and/or arrest citation), would have the effect of clearing out panhandlers from the downtown area for the holiday shopping season.

IV. The Balance of Equities Tips Sharply in Plaintiffs' Favor

In this case, the balance of equities clearly favors the Plaintiffs. In *Awad v. Ziriax*, 670 F.3d 1111 (10th Cir. 2012), the court affirmed a decision to enjoin a ballot measure adopted by the voters of Oklahoma. "[W]hen the law that voters wish to enact is likely unconstitutional, their interests do not outweigh Mr. Awad's in having his constitutional rights protected." *Id.* at 1131. Here, the challenged ordinance heavily burdens First Amendment rights – a burden that constitutes irreparable injury as a matter of law – and the ordinance is likely unconstitutional. Accordingly, the balance of equities tips sharply in Plaintiffs' favor. *See American Civil Liberties Union v. Johnson*,194 F.3d 1149, 1163 (10th Cir. 1999) ("the threatened injury to Plaintiffs' constitutionally protected speech outweighs whatever damage the preliminary injunction may cause Defendants' inability to enforce what appears to be an unconstitutional statute").

V. The Injunction is in the Public Interest

The temporary injunction Plaintiffs seek, which preserves First Amendment rights, is clearly in the public interest. "It is always in the public interest to prevent the violation of a party's constitutional rights." *Awad*, 670 F.3d at 1131. "[A]s far as the public interest is concerned, it is axiomatic that the preservation of First Amendment rights serves everyone's best interest." *Local Org. Comm., Denver Chap., Million Man March v. Cook*, 922 F. Supp. 1494, 1501 (D. Colo. 1996); accord El*am Constr. v. Reg. Transp. Dist.*, 129 F.3d 1343, 1347 (10th Cir. 1997) ("The public interest . . . favors plaintiffs' assertion of their First Amendment rights").

VI. No Security Should Be Required

"Trial courts have wide discretion under Rule 65(c) in determining whether to require security," *RoDa Drilling Co.*, 552 F.3d at 1215 (internal quotations omitted), and may decline to require security in appropriate cases. *See, e.g., Winnebago Tribe of Neb. v. Stovall*, 341 F.3d 1202, 1206 (10th Cir. 2003) (no bond necessary where there was no showing of harm from injunction); *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (finding no bond necessary where plaintiff had strong likelihood of success on merits).

This is a case in which Plaintiffs have a strong likelihood of success on the merits, and defendant will suffer no harm from an interim injunction. Accordingly, no security should be required.

CONCLUSION

For the foregoing reasons, the motion for interim injunctive relief should be granted. The Court should enjoin Colorado Springs from enforcing the challenged "Downtown No-Solicitation Zone" until this Court issues a final judgment on the merits of Plaintiffs' claims.

Respectfully submitted November 28, 2012.

s/ Mark Silverstein

_____

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2012, I electronically filed the foregoing **PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system and undersigned counsel will send notification of such filing to the following recipient:

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