

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

JAMES SPEET and ERNEST SIMS,

Plaintiffs,

Hon.

vs.

Case No.

BILL SCHUETTE, Attorney General for the State of Michigan, in his official capacity; the CITY OF GRAND RAPIDS; KEVIN BELK, Chief of Police of the Grand Rapids Police Department, in his official capacity; and OFFICER GREGORY BAUER, in his individual capacity,

Defendants.

JURY TRIAL DEMANDED

CLAIM OF UNCONSTITUTIONALITY

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VERIFIED COMPLAINT

INTRODUCTORY STATEMENT

1. This is a federal civil rights action under 42 U.S.C. § 1983 challenging Michigan's anti-begging statute, M.C.L. § 750.167(1)(h), as unconstitutional on its face and as applied.

2. The First Amendment of the United States Constitution protects the right to ask for employment or financial assistance in public places.

3. M.C.L. § 750.167(1)(h), which makes all “begging” in all public places a crime, is an unconstitutional content-based restriction on speech that occurs in traditional public fora.

4. Plaintiff James Speet is a homeless resident of Grand Rapids who was arrested and prosecuted under M.C.L. § 750.167(1)(h) for holding up a sign saying, “Need Job, God Bless.”

5. Plaintiff Ernest Sims is a veteran with a disability who lives in Grand Rapids. He was arrested, prosecuted and convicted under M.C.L. § 750.167(1)(h) for asking a passerby for change for bus fare.

6. Plaintiffs Speet and Sims wish to continue asking the public in Grand Rapids for employment or financial assistance. However, they fear again being arrested, prosecuted, and jailed under M.C.L. § 750.167(1)(h) if they do so.

7. Defendants, acting under color of state law and pursuant to a custom, policy, or practice, have criminalized all begging under M.C.L. § 750.167(1)(h), and have thereby deprived Plaintiffs of their rights under the First and Fourteenth Amendments to the United States Constitution.

8. Plaintiffs seek a declaration that Michigan's anti-begging statute is unconstitutional on its face and as applied, a permanent injunction against the enforcement of M.C.L. § 750.167(1)(h), damages, and other appropriate relief.

JURISDICTION AND VENUE

9. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343 because this is a civil action seeking redress for the deprivation of rights secured by the United States Constitution.

10. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202; by Rules 57 and 65 of the Federal Rules of Civil Procedure; and by the general legal and equitable powers of this Court.

11. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391(b), because that is the judicial district where the plaintiffs and defendants are located or reside, and where the majority of the events and omissions giving rise to this action occurred and will occur.

PARTIES

12. Plaintiff James Speet is an adult resident of Grand Rapids, Michigan. He has previously been arrested, prosecuted, and jailed under Michigan's anti-begging statute. He wishes to seek employment and financial assistance from the public in the future.

13. Plaintiff Ernest Sims is an adult resident of Grand Rapids, Michigan. He has previously been arrested, prosecuted, and jailed under Michigan's anti-begging statute. He wishes to seek financial assistance from the public in the future.

14. Defendant Bill Schuette is the Attorney General of the State of Michigan. He is responsible for the enforcement of state laws, including M.C.L. § 750.167(1)(h). As Attorney General, he is also responsible for defending state laws against challenges to their constitutionality. *See* M.C.L. §§ 14.28 and 14.29. In addition, as Attorney General he is responsible for "supervis[ing] the work of, consul[ing] and advis[ing] the prosecuting attorneys,

in all matters pertaining to the duties of their office.” M.C.L. § 14.30. Defendant Schuette is sued in his official capacity.

15. The City of Grand Rapids is a municipal corporation located in Kent County, Michigan.

16. Defendant Kevin Belk is the duly appointed Chief of the Grand Rapids Police Department (GRPD). The Grand Rapids Police Department is an entity created by and responsible to Defendant City of Grand Rapids. The GRPD operates under the direction of Defendant Belk, who is the chief law enforcement officer of the City of Grand Rapids and the final policymaker of the GRPD.

17. Defendant Belk is responsible for the enforcement of all applicable laws and for the arrest of all persons alleged to have violated the law within the jurisdiction of the City of Grand Rapids. Defendant Belk is also responsible for ensuring that the GRPD police officers subject to his control and direction enforce the law in a constitutional manner. Defendant Belk exercises such power on behalf of and for the benefit of the City of Grand Rapids. He is sued in his official capacity.

18. Defendant Gregory Bauer is an officer of the Grand Rapids Police Department.

19. In July 2011, Defendant Bauer arrested Plaintiff James Speet and cited him for violating Michigan’s anti-begging statute. Defendant Bauer is sued in his individual capacity.

20. At all times relevant to this Complaint, Defendants were acting under the color of state law.

FACTS

James Speet

21. Plaintiff James Speet is a resident of Grand Rapids. He has been homeless for approximately two years. He has a tent, which he uses to camp out in the woods or parks in the greater Grand Rapids area.

22. Mr. Speet receives food stamps. His only other source of income is through “scrapping.” Mr. Speet collects bottles, cans, and scrap metal, and turns that in for cash to meet his basic needs.

23. When Mr. Speet does not have any other way to get money, he sometimes holds up a sign asking for work or help. Mr. Speet prefers not to request such help, as he has to swallow his pride to do so. However, sometimes when he really needs money, he does go out and hold up a sign.

24. When Mr. Speet needs help, he holds up a sign, rather than approaching passersby.

25. When holding up his sign, Mr. Speet sees himself as informing people about his situation and his need for help.

26. Mr. Speet has been using a sign that says, “Need Job, God Bless.” Mr. Speet uses this sign to ask for work. He sees this as similar to going to employers and filling out employment applications.

27. Mr. Speet has been able to obtain various jobs by holding up his sign. Sometimes people ask him to come and mow their lawn. One time a woman asked him to come and paint her garage. In return, she paid for him to stay in a hotel for a week, and also bought him food.

28. Mr. Speet has been arrested and prosecuted for begging multiple times in several different jurisdictions, including Grand Rapids, Wyoming, and other local municipalities.

29. In Grand Rapids, Mr. Speet has twice been prosecuted for begging, once in January 2011 and more recently in July 2011. He was also stopped and given a warning by GRPD officers in 2009.

30. Most recently, on or about July 2, 2011, Mr. Speet was holding up his sign that said, "Need Job, God Bless." Mr. Speet was standing on the grass between the sidewalk and the street at Burton and Division in Grand Rapids.

31. Mr. Speet saw a police officer, and started folding up his sign.

32. The police officer involved in this incident was Defendant Officer Gregory Bauer.

33. Officer Bauer immediately handcuffed Mr. Speet, and put him in the police cruiser.

34. Officer Bauer found another cardboard sign on the ground that said "Hungry."

35. Officer Bauer wrote Mr. Speet an appearance ticket both for panhandling and for littering. Officer Bauer told Mr. Speet that if he was found panhandling again, he would go to jail, rather than get an appearance ticket.

36. The officer confiscated Mr. Speet's sign, and subsequently threw it away.

37. By stopping, arresting, and citing Mr. Speet for begging, Defendant Bauer violated Mr. Speet's clearly established rights under the First Amendment, Equal Protection Clause, and Due Process Clause of the United States Constitution.

38. Mr. Speet appeared in court on July 12, 2011, and pled not guilty.

39. On September 7, 2011, after Mr. Speet secured pro bono counsel, the prosecution dismissed the begging charge. Mr. Speet pled no contest to the littering charge, and was given a \$100 fine.

40. Mr. Speet was also arrested for begging in Grand Rapids in January 2011. In that case, Mr. Speet was holding up a sign saying “Cold and Hungry, God Bless.” It was very cold. Mr. Speet was trying to get enough money for a room overnight.

41. Mr. Speet was given an appearance ticket. He pled guilty.

42. The judge ordered him to pay \$198 in fines and costs. The judge asked whether he could pay that immediately. Mr. Speet explained that he only had a little more than 20 cents. The judge told him that since he could not pay, he would have to go to jail.

43. Mr. Speet was incarcerated for four days. He was charged \$30 a day for four days, plus a booking fee of \$12, for a total \$132. He receives collection notices on this bill, which is still outstanding.

44. Mr. Speet has also been arrested, prosecuted, and jailed for begging in other jurisdictions in Michigan. Mr. Speet has been sentenced to probation and jail time in those cases.

45. Mr. Speet’s speech has been chilled by the Defendants’ enforcement of M.C.L. § 750.167(1)(h). When he holds up a sign asking for help, he avoids locations where there is likely police enforcement. There are locations that Mr. Speet believes are promising spots to look for work, but that he avoids due to police enforcement. In addition, if he sees the police coming, he puts away his sign asking for help.

46. But for the state’s anti-begging law, Mr. Speet would hold up his sign in locations that he currently avoids due to likely police enforcement, including areas that he believes are more promising in terms of finding employment. But for the state’s anti-begging law, Mr. Speet would continue holding up his sign asking for help when he sees police officers.

47. Mr. Speet has also lost funds he would have otherwise received had he been able to hold up his sign without fear of prosecution.

48. Although Mr. Speet does not like to panhandle, he believes he will continue to need to engage in panhandling when he has no other way to get the money he needs. He also believes it is important to inform people about his situation, so that if they want to help him, they can.

49. Mr. Speet wishes to engage in panhandling in the future, when necessary. He wishes to be able to request employment and/or financial assistance, both in Grand Rapids and in other jurisdictions in Michigan, without fear of arrest, prosecution, or incarceration.

50. Mr. Speet has no adequate remedy at law and will suffer irreparable harm and continued violations of his constitutional rights unless Defendants are enjoined from enforcing M.C.L. § 750.167(1)(h).

51. Attached to this Complaint as Exhibit A is a Declaration by James Speet attesting to the truth of the facts set out in the Complaint as they pertain to him.

Ernest Sims

52. Plaintiff Ernest Sims is a veteran who served in the Air Force. He has a disability, and survives on approximately \$260 a month in state disability assistance, along with food stamps.

53. Mr. Sims is a resident of Grand Rapids, and is currently attending Grand Rapids Community College in the hopes of pursuing a career in electronics.

54. Mr. Sims occasionally panhandles when he needs money for transportation, clothing, or other items he cannot afford on his budget.

55. When Mr. Sims begs, he typically approaches other pedestrians and asks: "Say, can you spare change for a veteran." If the individual declines, Mr. Sims moves on.

56. In 2005, Mr. Sims was cited several times by the Grand Rapids Police Department for panhandling. He was prosecuted for begging, and pled guilty in each case.

57. Mr. Sims was sentenced to and served jail time for begging.

58. Most recently, on July 4, 2011, Mr. Sims needed money for bus fare. He was trying to get back and forth from his home to school, and did not have money for the bus.

59. Mr. Sims asked a person on the street, "Can you spare a little change?"

60. A male GRPD police officer witnessed Mr. Sims asking for help.

61. The officer immediately arrested Mr. Sims, handcuffed him, and put him in the police car.

62. After Mr. Sims requested that he not be taken to jail because it was the Fourth of July, the officer agreed to give him an appearance ticket.

63. Mr. Sims appeared in court on the panhandling charges on August 1, 2011 without counsel. He pled guilty, and was given a sentence of \$100 or two days in jail. He was ordered to pay \$20 a month towards his fine. Due to his limited income, he is having difficulty making the payments.

64. Because Mr. Sims fears prosecution, he is very reluctant to panhandle. He is afraid to exercise his free speech right to ask other people for assistance. He does not want to get a ticket, get a warrant, get arrested, or go to jail. Therefore, he only panhandles when he has no money and has no alternative means to get money.

65. As a direct result of M.C.L. § 750.167(1)(h) and its enforcement by the Defendants, Mr. Sims' speech has been chilled. Mr. Sims has limited his begging out of fear of being arrested, prosecuted, and jailed. He does not panhandle when he sees police in the area.

66. But for the state's anti-begging law, Mr. Sims would request assistance from the public at times when he is short on funds, rather than waiting until he is in such great need that he is willing to risk arrest, prosecution, and incarceration. But for the state's anti-begging law, Mr. Sims would not stop panhandling when he sees police approaching.

67. Mr. Sims has also lost funds he would have otherwise received had he been able to engage in begging without fear of arrest, prosecution, and incarceration.

68. Mr. Sims wishes to engage in begging in the future, when necessary. He wishes to be able to request assistance without fear of arrest, prosecution, or incarceration.

69. Mr. Sims has no adequate remedy at law and will suffer irreparable harm and continued violations of his constitutional rights unless Defendants are enjoined from enforcing M.C.L. § 750.167(1)(h).

70. Attached to this Complaint as Exhibit B is a Declaration by Ernest Sims attesting to the truth of the facts set out in the Complaint as they pertain to him.

The Challenged Statute

71. M.C.L. § 750.167(1)(h) provides as follows:

(1) A person is a disorderly person if the person is any of the following:

....

(h) A person found begging in a public place.

72. A person convicted of being a disorderly person is "guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00 or both." M.C.L. § 750.168(1).

**Enforcement of M.C.L. § 750.167(1)(h) by Defendants
City of Grand Rapids and Chief Belk**

73. In May 2011, the American Civil Liberties Union of Michigan (“ACLU”) submitted a Freedom of Information Act request to the GRPD seeking incident reports since 2008 related to begging or panhandling offenses.

74. The GRPD produced 409 incident reports related to begging or panhandling from January 1, 2008 to May 24, 2011, a period of three years and five months.

75. The City of Grand Rapids does not have a municipal ordinance restricting begging. Begging is prosecuted under the state anti-begging statute, M.C.L. § 750.167(1)(h).

76. The ACLU of Michigan analyzed the FOIA results, and cross-referenced them with on-line court records from Michigan’s 61st District Court. *See* Exhibit C (Analysis of Results of Freedom of Information Act Request); Exhibit D (Declaration of Sofia Nelson); Exhibit E (Declaration of Liam Considine).

77. The analysis of incident reports shows that Defendants City of Grand Rapids and Chief Belk have a policy, practice, and custom of routinely citing and arresting people who exercise their First Amendment right to engage in peaceful begging.

78. The analysis of the incident reports obtained through FOIA shows that 38 percent of the individuals stopped by the GRPD (154 cases) were holding signs requesting help. The signs contained messages like “Homeless and Hungry: Need Work,” “Homeless Please Help God Bless,” “Lost My Job Need Help,” or “Homeless and Hungry Vet.”

79. The remaining 62 percent of the time (255 cases), the individuals stopped by the GRPD were verbally requesting charity.

80. In 43 percent of the cases (177 cases), the GRPD officers immediately arrested the individuals engaged in begging.

81. In 54 percent of the cases (222 cases) the GRPD officers issued appearance tickets or warrants on charges of begging, requiring the individual to appear in court for arraignment on those charges.

82. In only 2 percent of cases (10 cases) did the GRPD officer not proceed with charges. In at least seven of those cases, the GRPD officers warned the individuals not to beg again, or they would be arrested.

83. In the vast majority of cases (87.5 percent, or 358 cases), begging was the only offense charged.

84. In cases where an additional charge was brought, the most common additional charge was trespassing (24 cases).

85. In only three of the 409 cases was the individual also cited for a drug offense.

86. In 88 percent of cases (359 cases), the individual charged with begging pled guilty.

87. In 4 percent of cases (18 cases), the charges of begging were dismissed.

88. In the remaining 8 percent of cases (32 cases), either the cases were still pending, the dispositions could not be determined, no charges were brought, or the defendants died.

89. Individuals convicted of panhandling were given a range of sentences, including jail time and fines.

90. In 211 cases, individuals convicted of begging were sentenced directly to jail time. In 103 cases, individuals convicted of begging were given “pay or stay” sentences, whereby they were assessed fines, and were then incarcerated if they were unable to pay those fines.¹

91. Collectively, the individuals charged with begging between January 1, 2008 and May 24, 2011 were sentenced to a total of 1,641 days in jail.²

¹ Some individuals were given both mandatory jail time and an additional “pay or stay” sentence.

92. Individuals who were arrested for begging spent an average of 5.7 days in jail.

Individuals who were given appearance tickets spent an average of 2.8 days in jail.

93. Over the last six years, the Kent County Jail has charged other agencies daily per-inmate billing rates ranging from \$35.85 to \$52.97. *See* Exhibit F (“Measuring What Matters: Kent County Correctional Facility Annual Statistical Report,” Jan. 28, 2011, at 35).

94. Based on the daily rate for 2010 (\$36.82), the estimated cost of 1,641 days of incarceration for individuals charged with begging is approximately \$60,422.

95. This cost estimate does not include the law enforcement costs for arresting and processing individuals cited under M.C.L. § 750.167(1)(h), nor does it include the costs for judicial or prosecutorial time in handling such cases.

**Custom, Policy, or Practice of Defendants City of Grand Rapids
and Kevin Belk of Enforcing M.C.L. § 750.167(1)(h)**

96. It is the policy, practice and/or custom of Defendants City of Grand Rapids and its Police Department to arrest and cite individuals for begging in the City of Grand Rapids.

97. During the period from January 1, 2008 to May 24, 2011, officers of the Grand Rapids Police Department were responsible for 409 stops involving begging or panhandling, resulting in 399 cases where individuals were arrested or cited for begging or panhandling. *See* Exhibit C (Analysis of Results of Freedom of Information Act Request).

² The total number days actually served could not be precisely determined. The total listed reflects sentence length, which may in some cases be different from actual time served on the sentence. In addition, the total includes “pay or stay” sentences. Although many individuals engaged in begging presumably had difficulty paying the fines imposed and therefore served those sentences, some may have been able to find the money or may have been able to make payments and avoid jail. There were also a number of cases where individuals spent time in jail prior to arraignment, or after arraignment if bond was set and the defendant was unable to post bond. With one exception, where court records clearly reflect that an individual charged with a begging offense served 69 days because he was unable to post bond, the totals for pretrial jail days have not been included. Finally, it should be noted that in some cases, defendants were sentenced on multiple offenses. It was not possible to determine precisely what portion of the sentence was attributable to the begging offense.

98. These stops, arrests, and citations were made under color of state law and pursuant to the policy, practice, and/or custom of the Defendants.

99. Given the volume of arrests under M.C.L. § 750.167(1)(h), Defendant City of Grand Rapids and Defendant Belk had either actual or constructive notice of the widespread pattern and practice of unconstitutional interference with the free speech rights of individuals engaged in begging.

100. Despite such knowledge, Defendants took no action to stop the unconstitutional conduct of GRPD officers.

101. Individuals routinely engage in expressive activity other than “begging” in public places in the City of Grand Rapids, including engaging in political speech and charitable solicitation, without being arrested, prosecuted, or punished for such activity.

102. The State of Michigan does not compel the Defendants to enforce M.C.L. § 750.167(1)(h).

103. Some other municipalities in Michigan have adopted anti-begging ordinances that criminalize only specific types of begging, such as aggressive begging.

104. The Defendants had the option of not enforcing the statute.

105. The Defendants had the option of adopting a narrowly tailored, constitutionally valid ordinance, and enforcing that ordinance instead of M.C.L. § 750.167(1)(h).

106. However, the Defendants elected to enforce M.C.L. § 750.167(1)(h).

107. Defendants chose to enforce M.C.L. § 750.167(1)(h) despite the fact that they knew, or should have known, that the statute is unconstitutional.

108. Plaintiffs have previously been arrested and/or cited for begging by GRPD officers, who acted under color of state law pursuant to the policy, practice and/or custom of the Defendants.

109. Because of Defendants' policy, practice and/or custom of arresting/citing people for begging, Plaintiffs are unable to engage in begging without facing an imminent threat of being criminally prosecuted for doing so.

110. Because of Defendants' policy, practice, and/or custom of arresting/citing people for begging, Plaintiffs' speech has been and is being chilled.

111. Because of Defendants' policy, practice, and/or custom of arresting/citing people for begging, Plaintiffs have lost employment and or charitable donations they would have otherwise received as a result of soliciting such employment or charitable donations.

112. Because of Defendants' policy, practice, and/or custom of arresting/citing people for begging, Plaintiffs have been charged or may be charged for the costs of incarceration for time served in jail on convictions for begging.

113. Not only did Defendants City of Grand Rapids and Chief Belk elect to enforce M.C.L. § 750.167(1)(h), but they also failed to meet their duty to train, supervise, and discipline their personnel and officers to ensure that such personnel and officers act in accordance with constitutional principles.

114. Defendants City of Grand Rapids and Chief Belk knew or should have known that M.C.L. § 750.167(1)(h) violates the First Amendment and Fourteenth Amendment of the United States Constitution and that therefore M.C.L. § 750.167(1)(h) is unconstitutional on its face and as applied.

115. Nevertheless, Defendants City of Grand Rapids and Chief Belk either provided no training, supervision, and discipline to their personnel and officers regarding the First and Fourteenth Amendment rights of persons engaged in peaceful begging, or they provided inadequate training, supervision, and discipline to their personnel and officers regarding the First and Fourteenth Amendment rights of persons engaged in peaceful begging.

116. The need for adequate and proper training, supervision, and discipline of GRPD officers regarding the rights of individuals engaged in begging was so obvious in light of the duties assigned to GRPD officers, and the inadequacy of the actual training, supervision, and discipline was so likely to result in the violation of constitutional rights, that the failure of Defendant City of Grand Rapids and Defendant Belk to adequately and properly train, supervise, and discipline GRPD officers regarding the First and Fourteenth Amendment rights of individuals engaged in begging amounted to deliberate indifference.

117. The failure of the Defendant City of Grand Rapids and Defendant Belk to adequately and properly train, supervise, and discipline led directly to, proximately caused, and was a moving force behind the widespread pattern, practice, and custom of GRPD officers of arresting/citing individuals for begging.

118. The failure of the Defendant City of Grand Rapids and Defendant Belk to adequately and properly train, supervise, and discipline led directly to, proximately caused, and was a moving force behind the unconstitutional actions of the individual police officers who arrested Plaintiffs Speet and Sims.

119. The failure of the Defendant City of Grand Rapids and Defendant Belk to adequately and properly train, supervise, and discipline led directly to, proximately caused, and was a moving force behind the chilling effect that Plaintiffs Speet and Sims feel and have felt,

and that has in the past and continues at present to limit their rights under the First Amendment and Fourteenth Amendments of the United States Constitution.

120. In sum, Defendants City of Grand Rapids and Chief Belk maintained customs, policies, and practices, including routine enforcement of M.C.L. § 750.167(1)(h) and inadequate programs for training, supervision, and discipline regarding the First and Fourteenth Amendment rights of individuals seeking employment or financial assistance from the public, that allowed or encouraged GRPD officers to unlawfully but routinely arrest individuals, including the Plaintiffs, in violation of their rights under the United States Constitution.

COUNT ONE

**FACIAL VIOLATION OF THE FIRST
AMENDMENT RIGHT TO FREEDOM OF
SPEECH**

(All Defendants)

121. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

122. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech. The First Amendment is incorporated against the States by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

123. M.C.L. § 750.167(1)(h) is facially invalid under the First Amendment because it is a content-based restriction on protected speech in a public forum that is not narrowly tailored to serve a compelling state interest, and because it prohibits a substantial amount of protected speech.

COUNT TWO

**VIOLATION OF THE FIRST AMENDMENT
RIGHT TO FREEDOM OF SPEECH
AS APPLIED**

**(Defendants City of Grand Rapids,
Belk, and Bauer)**

124. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

125. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech. The First Amendment is incorporated against the States by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

126. M.C.L. § 750.167(1)(h) is unconstitutional as applied in this case because the Plaintiffs have been arrested, prosecuted, and jailed for engaging in constitutionally protected speech; because Plaintiffs face the imminent threat of again being arrested, prosecuted, and jailed if they engage in constitutionally protected speech in the future; and because Plaintiffs' speech has been chilled.

COUNT THREE

**FACIAL VIOLATION OF THE FOURTEENTH AMENDMENT
RIGHT TO EQUAL PROTECTION**

(All Defendants)

127. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

128. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides all persons equal protection under the law. Persons violating the Equal Protection Clause under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

129. M.C.L. § 750.167(1)(h) is facially invalid under the Equal Protection Clause because it prohibits individuals who wish to beg from engaging in protected First Amendment activity in public places, while allowing other persons to engage in First Amendment activity in public places.

COUNT FOUR

**VIOLATION OF THE FOURTEENTH AMENDMENT
RIGHT TO EQUAL PROTECTION
AS APPLIED**

**(Defendants City of Grand Rapids,
Belk, and Bauer)**

130. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

131. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides all persons equal protection under the law. Persons violating the Equal Protection Clause under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

132. M.C.L. § 750.167(1)(h) is also unconstitutional as applied in this case because the Defendants have enforced the statute so as to prohibit the Plaintiffs from engaging in protected First Amendment activity in public places, while allowing other persons to engage in First Amendment activity in public places.

COUNT FIVE

**VIOLATION OF THE VAGUENESS
DOCTRINE OF THE DUE PROCESS CLAUSE
OF THE FOURTEENTH AMENDMENT
AS APPLIED**

(Plaintiff Speet Only)

(Defendants City of City Grand Rapids, Belk, and Bauer)

133. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

134. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits States from enforcing unconstitutionally vague laws. Persons violating the Due Process Clause under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

135. Michigan's anti-begging statute is invalid under the vagueness doctrine of the Due Process Clause of the Fourteenth Amendment, as applied to Plaintiff Speet, because it fails to provide a person of ordinary intelligence fair notice that asking for employment or publicly stating that one is unemployed is prohibited under the statute.

136. Defendants City of Grand Rapids and Chief Belk, acting under color of state law, violated Plaintiff Speet's rights under the Due Process Clause by adopting a custom, policy or practice of enforcing the Michigan anti-begging statute against persons who are asking for employment from the public or stating publicly that they are unemployed.

137. Defendant Bauer, acting under color of state law, violated Mr. Speet's clearly established rights under the Due Process Clause by citing and arresting him for holding a sign stating that he needed employment.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Issue a permanent injunction restraining Defendants, their employees, agents, and successors from enforcing M.C.L. § 750.167(1)(h).
- b. Enter a judgment declaring that M.C.L. § 750.167(1)(h) violates the United States Constitution, on its face and as applied.
- c. Enter a judgment declaring that the Defendant Bauer violated Plaintiff Speet's clearly established rights by arresting and citing Mr. Speet for begging.
- d. Award damages to the Plaintiffs against Defendant City of Grand Rapids, Defendant Belk, and Defendant Bauer, including but not limited to:
 - i. Damages to all Plaintiffs for funds lost that they would have otherwise been able to receive had they been able to seek employment or financial assistance from the public without fear of prosecution.
 - ii. Damages to Plaintiff Speet for injuries suffered as a result of his July 2, 2011 arrest and prosecution for begging charges, which were subsequently dismissed by the court.
 - iii. Damages to all Plaintiffs in the amount of any sums they have been or will be charged by jail facilities based on incarceration for convictions under M.C.L. § 750.167(1)(h).
- e. Award costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- f. Grant or award such other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Miriam J. Aukerman

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Dated: September 13, 2011

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- B. Declaration of Ernest Sims
- C. Analysis of Results of Freedom of Information Act Request
- D. Declaration of Sofia Nelson
- E. Declaration of Liam Considine
- F. “Measuring what Matters: Kent County Correctional Facility Annual Statistical Report,”
Jan. 28, 2011 (selected pages)

JURY DEMAND

Plaintiffs demand a jury on all issues so triable.

Respectfully submitted,

/s/ Miriam J. Aukerman
Miriam J. Aukerman (P63165)
West Michigan Regional Office
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