

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ROGER WALKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:16-cv-1316-RK
	)	
CITY OF GRANDVIEW, MISSOURI,	)	
	)	
Defendant.	)	

FIRST AMENDED COMPLAINT

Plaintiff Roger Walker alleges as follows:

INTRODUCTION

1. Missouri resident Roger Walker is a 67-year-old amputee who has been diagnosed with chronic obstructive pulmonary disease (COPD) and congestive heart failure. Walker's health conditions confine him to a motorized wheelchair.
2. Walker panhandles to secure donations of food and money.
3. Walker's efforts have been stymied by § 14-126 of the Grandview City Code, which codifies both an unjustifiable content-based restriction and an unjustifiable prior restraint on Walker's speech by requiring a permit to engage in panhandling.
4. Having been threatened with arrest for engaging in expressive activity protected by the First Amendment, Walker attempted to gain a permit as § 14-126 requires but was told by a city employee that permits were not given out for panhandling. Because of the threat and the inability to gain a permit, Walker has now decided to refrain from such expressive conduct because he recognizes arrest would only compound the problems he faces.

5. Subsequent to the enactment of § 14-126, the Supreme Court of the United States announced its opinions in two First Amendment cases—*McCullen v. Coakley*, 134 S. Ct. 2518 (2014), and *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015)—that demonstrate § 14-126 cannot withstand First Amendment scrutiny. Moreover, § 14-126 provides for no time limit on how long Grandview can take before deciding to issue a permit, which is a *per se* First Amendment violation under *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988). In addition, as evidenced by the City Clerk’s refusal to issue a panhandling permit under § 14-126, which requires permits for panhandling, that provision is vague and fails to provide persons of ordinary intelligence a reasonable opportunity to understand how to abide by it and, thereby, authorizes or encourages arbitrary and discriminatory enforcement based on the content of the speech persons wish to engage in. For these reasons, Walker challenges § 14-126 both on its face and as applied to him.

PARTIES

6. Plaintiff, Roger Walker, is a citizen of Missouri who resides in Kansas City.
7. Defendant, City of Grandview, Missouri, is a municipal corporation and political subdivision of the State of Missouri.

JURISDICTION AND VENUE

8. Walker brings this claim pursuant to 42 U.S.C. § 1983 and the Free Speech Clause of the First Amendment to the United States Constitution, incorporated as against States and their municipal divisions through the Fourteenth Amendment.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (2) because Defendant is located in Jackson County, Missouri, and its actions giving rise to the claim in this suit occurred in Jackson County.
10. Venue is proper in the Western Division pursuant to Local Rule 3.1(a)(1)(a).

FACTS

The Challenged Solicitation Ordinance and Permitting Scheme

11. On April 22, 2008, Grandview amended § 14-126 of the Grandview City Code, which now provides in relevant part that “[p]ersons or organizations desiring to solicit contributions, sell, collect money or collect items from persons in vehicles on city streets by standing in, or beside, city streets must apply for a permit on a form to be developed by the chief of the police.”
12. Section 14-126(a) defines “solicit” as “the act of standing on, in, in the median of, or in the right-of-way of any city street, or entering on the same, for the purpose of soliciting contributions or selling, offering for sale or advertising any product, property or service of any kind from persons in vehicles for himself or on behalf of any other person or organization.”
13. In accordance with the requirements set forth in § 14-126(b), Grandview developed a form called Application for Licensed Street Solicitor Permit.
14. The form requires applicants to list a slew of personal information, including name, address, social security number, date of birth, race, sex, organization name, “coordinator,” coordinator’s social security number, a description of the products to be sold, the location(s) of solicitation, the number of solicitors at each location, a description of any criminal convictions.

15. The form requires two types of identification be furnished.
16. The form requires payment of either \$50.00 for an annual permit or \$5.00 for a three-day permit.
17. The form permits a city official to fill in the duration and expiration date of a permit.
18. The form provides that the application “will be processed by the Grandview Police Department” without providing any time limit for that processing or any information about the grounds for approval or denial except that it provides that “furnishing false or incomplete information . . . may be grounds for denial.”

Incident

19. Walker, a disabled retiree with significant health issues, has made the difficult decision to panhandle to obtain food, drink, and money.
20. When Walker panhandles in Grandview and elsewhere, he receives donations of food, drink, and money.
21. On June 23, 2016, pressed with the need to make ends meet, Walker panhandled beside a public street in Grandview.
22. Walker communicated his message by sitting in his wheelchair beside a public street holding a sign that read “any help would be a blessing thank you.”
23. Walker was approached by Grandview Police Officer Unknown Poynter.
24. Officer Poynter told Walker it was illegal to panhandle in Grandview without a permit.
25. Because Walker did not have a permit, Officer Poynter ordered Walker to leave and told him he would be arrested if he panhandled in Grandview again without a permit.
26. Section 14-126(e)(3) provides that violations of the section “shall be punished by a fine not exceeding five hundred dollars (\$500.00), or such imprisonment not exceeding ninety

(90) days, or by both such fine and imprisonment” and that “[e]ach day there is any violation of this section shall constitute a separate offense.”

27. Because Walker feared arrest and citation, he stopped panhandling and left Grandview.
28. Walker was not violating any other section of the Grandview City Code, including Section 17-49, which prohibits so-called “aggressive solicitation.”
29. The following day, on June 24, 2016, Walker called the City Clerk’s office at (816) 316-4800 to learn how to obtain a permit.
30. The City Clerk’s office asked Walker what he was trying to sell. When Walker stated that he wanted to panhandle, the City Clerk’s office told him no permits were issued for panhandling and his application would not be accepted.
31. Because of his fear of citation or arrest and his inability to obtain a permit, Walker has since refrained from solicitation.
32. But for § 14-126, Walker would engage in the expressive conduct of soliciting on sidewalks both by holding a sign and by verbally requesting contributions.
33. The chilling effect of § 14-126 on Walker’s expressive activity is based on his reasonable belief that he will be subject to arrest and/or prosecution under the ordinance.
34. In addition, absent injunctive relief from this Court, Walker could still be cited and prosecuted for a violation of § 14-126 based on his expressive activity on June 23, 2016.
35. At all times relevant to this Complaint, Defendant acts under color of law.

COUNT I: FIRST AMENDMENT

§ 14-126 is Unconstitutional under the Free Speech Clause of the First Amendment

36. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

37. Section 14-126 violates the Free Speech Clause of the First Amendment to the Constitution, on its face and as applied, because its permitting scheme acts as an indefinite and discretionary prior restraint that allows for arbitrary and/or discriminatory permit denials and provides for no definite time limit for a decision to be made.
38. The \$50.00 prepaid fee and two forms of identification are unreasonably burdensome requirements and restrict a significant amount of constitutionally protected expressive activity without advancing a sufficiently strong governmental interest.
39. Section 14-126 also violates the Free Speech Clause of the First Amendment because it is unjustifiably content based. For example, under Section 14-126 Walker may lawfully, and without a permit, hold a sign in the same location requesting drivers vote for a political candidate but not a sign requesting drivers give him something to eat.
40. Solicitation of contributions is an expressive communication subject to First Amendment protection.
41. On its face, Section 14-126 is a prior restraint because it prohibits Walker and others from engaging in constitutionally protected speech until the government licenses them to do so and, further, neither Section 14-126 nor any other ordinance nor the permit application provide for objective criteria for approvals nor a time limit before the government must make its discretionary decision.
42. Section 14-126 applies, by its own plain language, to traditional and designated public fora, as well as nonpublic fora and private property.
43. Walker has been chilled from engaging in constitutionally protected speech because he reasonably fears citation, arrest, and/or prosecution.

44. Grandview has no significant or compelling interest that can justify § 14-126, which is unconstitutional both because it is content based and because it is a prior restraint.
45. Section 14-126 is neither narrowly tailored nor the least restrictive means to achieve any sufficiently strong government interest, and it does not leave open ample alternative avenues of communication for Walker to convey his message.
46. Section 14-126 is facially invalid because of its breadth. It is underinclusive because, for example, it does not restrict the holding of signs in the same location that contain other messages and overinclusive because, for example, it restricts a significant amount of constitutionally protected speech without advancing any sufficiently strong government interest.

WHEREFORE, Plaintiff prays this Court:

- a. Upon motion, grant a temporary restraining order and a preliminary injunction preventing the enforcement of § 14-126;
- b. Grant a permanent injunction preventing the enforcement of § 14-126;
- c. Enter a declaration that § 14-126 is unconstitutional on its face and as applied to Plaintiff;
- d. Award costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- e. Allow such other and further relief as this Court finds just.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing was delivered electronically on March 17, 2017 to all counsel of record.

/s/ Anthony E. Rothert