

IN THE DISTRICT COURT FOR THE DISTRICT OF DELAWARE

WILMINGTON FOOD NOT BOMBS,)	
on behalf of itself and its protest participants,)	
)	
MADISON DALEY, and)	
)	
GEORGE JONES)	
Plaintiffs)	
v.)	C.A. No.
)	
KATHY JENNINGS,)	
IN HER CAPACITY AS ATTORNEY GENERAL)	
OF THE STATE OF DELAWARE, and)	
)	
)	
CITY OF WILMINGTON)	
Defendants)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
PRELIMINARY STATEMENT

1. The City of Wilmington and the Delaware Attorney General Kathy Jennings, (collectively the “Defendants”) unconstitutionally criminalize innocent human behaviors that pose no threat to people or society. It is a crime in Delaware to solicit contributions when in need (commonly referred to as “panhandling” or “begging”) and to stand idly in public spaces (commonly referred to as “loitering,” “congregating,” or “vagrancy”). Not only does the Defendants’ enforcement of these unconstitutional laws prevent groups like Plaintiff Wilmington Food Not Bombs (“FNB”) from peacefully protesting to raise awareness about homelessness, hunger and poverty, it also prevents their fellow community members who are hungry, unhoused and/or impoverished from being able to participate in the protest or to simply co-exist in public spaces.

2. The Court should enjoin the criminalization of innocent human behaviors and declare as unconstitutional the State of Delaware’s Solicitation statute 21 *Del. C.* § 4147,

Loitering statute 11 *Del. C.* §1321, and the City of Wilmington’s Loitering ordinance Section 36-68 (collectively the “Laws”) (*See Exhibit A*), thereby preventing the hundreds of unconstitutional stops, arrests, charges, and convictions that are annually brought under these Laws.

3. The State of Delaware’s Solicitation statute 21 *Del. C.* § 4147 prohibits Soliciting rides, employment, business, or contributions from a vehicle. The only exception to the solicitation law is for charities raising money on the Saturday prior to Father’s Day (21 *Del. C.* § 4147(e)). Criminalizing who can and who cannot ask for contributions under 21 *Del. C.* § 4147 is an unconstitutional government limitation on free speech, as already determined by the Delaware Attorney General’s office more than 20 years ago in Formal Opinion 02-IB13. (*See Exhibit B*). Nevertheless, the law is routinely enforced by Defendant Attorney General Jennings and otherwise used by police to justify unconstitutional stops when not charged as a crime. (*See Exhibit C*).

4. The State of Delaware’s Loitering statute 11 *Del. C.* §1321 and the City of Wilmington’s Loitering Ordinance Sec. 36-68 prohibit Loitering (defined in Black’s Law Dictionary as “to stand idly around”), which unconstitutionally criminalizes even the most innocuous activity such as existing in public. The vague language in these Laws enables police to arbitrarily punish people for engaging in life-sustaining acts in public spaces, like sitting or sleeping, and constitutionally protected acts like congregating for peaceful public protests.

5. Plaintiff FNB’s protest message is that the government should redirect some of its resources to solve problems like hunger, homelessness, and poverty. They raise awareness by preparing a buffet-style meal to share and commune with anyone who is hungry and otherwise in need of help. Defendants’ enforcement of the Laws is preventing Plaintiffs’ ability to engage in this protest activity.

6. Furthermore, these Laws are inconsistently enforced, resulting in Defendants unilaterally deciding which people get to loiter and solicit and which people do not. This results in an unconstitutionally unjust situation where the government chooses winners and losers. For example, under this construct, a law enforcement officer has the discretion to determine that a family soliciting donations on the sidewalk in front of a coffee shop asking for support of their children's sports team or scout troop is permissible, while a family soliciting donations on the sidewalk in front of a coffee shop asking for support for their children's dinner is not. Likewise, a law enforcement officer could arrest a poorly clothed person holding a sign at a traffic light asking for help, yet turn a blind eye to a tax preparation service's Statue-of-Liberty-dressed employee swinging a sign at a traffic light to solicit business. The existence of these selectively enforced Laws creates a situation of freedom for some but not for all.

7. As stated herein, the Laws unconstitutionally criminalize innocent human behaviors and violate Plaintiffs' fundamental constitutional rights under the First, Fourth, Fifth, and Fourteenth Amendments. Plaintiffs ask this Court to declare that the Laws are unconstitutional and enjoin the State of Delaware and the City of Wilmington from enforcing the Laws against any person.

JURISDICTION

8. This action arises under the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution.

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343 (c) and (d), 42 U.S.C. § 1983, and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 & 2202.

VENUE

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) as the parties are all located in this District and the acts and omissions giving rise to the claims all occurred in this District.

PARTIES

11. Plaintiff Wilmington Food Not Bombs (“FNB”) is an unincorporated association affiliated with the international Food Not Bombs movement. Since June of 2018, FNB and its members have conducted near-weekly demonstrations to protest war and poverty, and to communicate the message that access to food is a human right and that our society can end hunger and poverty if our collective resources are redirected towards human needs. These demonstrations include a sign with the group’s logo, donated clothing and other necessities when available, informational flyers, and a table to serve food to anyone who is hungry as an expression of their political message. A significant amount of FNB’s resources have been directed towards providing basic human necessities to people in need in their community, including those who loiter and/or solicit to accomplish their human needs. The enforcement of the Laws has affected FNB’s ability to hold its demonstrations, provide charitable contributions, and safely share its message with its participants through a community meal. Not only is FNB injured, but also the people in their community who they serve are similarly prevented from obtaining information and resources. FNB is well-suited to challenge these Laws on behalf of those who participate in the Organization’s protest activities.

12. Plaintiff Madison “Mad” Daley is a resident of Wilmington, Delaware, and has been an active member of FNB since August of 2020. On numerous occasions throughout 2021 and 2023 Plaintiff Daley was unconstitutionally stopped by the Wilmington police and otherwise prevented from holding an FNB peaceful protest, providing charitable contributions to, or

sharing a community meal with, their participants.

13. Plaintiff George Jones is a resident of Wilmington, Delaware, and has been an active member of Wilmington FNB since 2020. On numerous occasions throughout 2022 and 2023 Plaintiff Jones was unconstitutionally stopped by the Wilmington police and otherwise prevented from holding an FNB peaceful protest, providing charitable contributions to, or sharing a community meal with, their participants.

14. Defendant Kathy Jennings is the Attorney General for Delaware (“AG”) and the State’s chief law enforcement officer. The Laws of Delaware are official policies of the State of Delaware. At all relevant times the AG, by and through her agents, was responsible for setting the policy on the enforcement of the Laws. At all relevant times the AG, by and through her agents, was responsible for enforcing the Laws. Defendant AG is sued in her official capacity.

15. Defendant City of Wilmington (“City”) is a municipal corporation duly organized, existing, and operating under and pursuant to the applicable laws of the State of Delaware. At all relevant times the City was responsible for ensuring that its police officers were in compliance with the United States Constitution. The City, by and through its agents, enacts and enforces the City Ordinance. The City Council sets final policy on the creation and adoption of City ordinances. The City is the legal entity responsible for the police department known as the Wilmington Police Department (“WPD”). The WPD is authorized to enforce Delaware State statutes and City ordinances.

16. The Defendants are sued for injunctive and declaratory relief on the basis of acts or omissions of officers, agents, and employees of the Defendants which were taken pursuant to official policy, practice, and/or custom.

17. At all times relevant herein, the officers, agents, and employees of Defendants were acting under color of state law.

FACTUAL ALLEGATIONS:

18. Since June of 2018, FNB protests have been held to raise awareness about homelessness, hunger, and poverty by sharing a meal with the community on Saturday afternoons in Wilmington, Delaware, by the Amtrak train overpass located at E. Front Street and Poplar Street in Wilmington, New Castle County, Delaware (the “Public Forum”).

19. The Plaintiffs utilized this exact location precisely because this is where several impacted people in the community congregate. They congregate there because the overpass provides shelter and warmth from the elements, and it is also near public transportation and other necessary support resources.

20. The sidewalks on both sides of the street are large, providing ample space for people to protest, solicit help, and exist in a public place without interfering with any vehicle or pedestrian traffic. In short, it is a quintessential public forum.

21. Since August of 2020, Plaintiffs Daley and Jones have helped organize weekly FNB protests. As part of their efforts, Plaintiffs assist in gathering and preparing food for approximately fifty (50) protest-participants. The Plaintiffs set-up the demonstration space at the Public Forum, make available any donated clothing and other necessities they collected throughout the week, and share a buffet-style meal with anyone who is hungry.

22. The political message conveyed by FNB, including the belief that more public funds should be directed towards social services, health care, and affordable housing, is apparent to a reasonable observer.

23. On July 10, 2021, during an FNB protest at the Public Forum, an unidentified person approached Plaintiffs and delivered an unsigned notice telling them to “Be Aware” that the City of Wilmington will no longer be allowing the FNB protests to occur in the Public Forum. The notice said in part, “[Preventing further protests at this location] is to help all the homeless

to seek help for their persistent issues.” (*See* Exhibit D).

24. Despite the ominous warning, Plaintiffs continued their regular weekly FNB protests at the Public Forum without incident for the next 18 months.

25. On or about Saturday, January 21, 2023, two WPD Officers approached the Plaintiffs and informed them that they could not set up to serve a meal at the Public Forum.

26. The Plaintiffs then noticed that no community members, not even their regular FNB protest participants, were present at the Public Forum.

27. WPD told the Plaintiffs they had ordered everyone to leave the Public Forum.

28. WPD told the Plaintiffs they were “loitering” and that they needed to “move on.”

29. Plaintiffs and other members of FNB left the Public Forum and unsuccessfully attempted to find people to feed elsewhere.

30. Plaintiffs and other members of FNB returned to the Public Forum on the following three Saturdays (January 29, 2023, February 4, 2023, and February 11, 2023) to protest and share a meal with some of their regular participants (who had also returned), and with new people who came to Plaintiffs to solicit help.

31. The following Saturday, February 18, 2023, a WPD officer again appeared at the Public Forum and told Plaintiffs and their fellow FNB participants to move on.

32. Plaintiffs informed the WPD officer that they had the right to protest on public property.

33. Plaintiffs asked the WPD officer if they were being detained and the WPD officer said “no.” The Plaintiffs continued to exercise their constitutional rights.

34. WPD left the Public Forum and Plaintiffs and members of the community carried on with participating in the protest activities.

35. When the Plaintiffs arrived at the Public Forum on Saturday, March 11, 2023, they

found a large digital construction traffic message board and trailer surrounded by cones displaying a “No Parking” message (“Sign”) at the precise location where Plaintiffs usually parked their cars for the FNB protest. (*See* Exhibit E). Plaintiffs generally parked their cars in that precise location because it is free, un-metered, parking that is directly adjacent to the Public Forum.

36. Upon information and belief, the Sign was placed at this location in retaliation for Plaintiffs’ prior protest activity and to prevent the Plaintiffs’ future protest activities. The Sign serves no legitimate purpose known to Plaintiffs. No State or Local agency has offered a legitimate explanation for the placement of the Sign.

37. Placing the large Sign at the Public Forum resulted in a chilling effect and no protest participants were present for the usual FNB protest on March 11, 2023.

38. After these actions by WPD officers, the Plaintiffs began to fear that any future protest activity would result in them and/or their participants being arrested by the WPD, the New Castle County Police Department (“NCCPD”), or the Delaware State Police Department (“DSPD”) under the loitering and/or solicitation Laws.

39. The Sign and the Laws have effectively eliminated the Plaintiffs’ and participants’ ability to participate in the FNB protest and reliably share in their community meal, as no one in the community is sure when and where to go anymore to safely congregate without interference from law enforcement officers. The Plaintiffs and participants fear that even if they found a new public forum for their protest, the loitering laws would still be enforced against them and that any location they found would be inadequate and undermine their protest message as compared to their desired location. Thus, the threat to enforce the laws against them has chilled their speech in all public forums across the City of Wilmington and the State of Delaware.

40. As a result of being blocked from their regular Public Forum since March 11, 2023,

Plaintiffs changed their buffet-style food prep intended to be served as a community meal as an expression of their FNB protest into individually packaged bags of food. They initially tried to identify people who were hungry that they could give food to from their vehicles, but now fear enforcement of the solicitation laws if protest participants accept the contributions. As such, the solicitation laws have chilled the exercise of their constitutional rights.

41. Due to the threats of the loitering laws being enforced against them, FNB's members who accept contributions from other participants fear that they will also be charged with the solicitation laws. As a result, they have not accepted any contributions that may be perceived as solicitation. As such, the solicitation laws have chilled the exercise of their constitutional rights.

42. Due to the enforcement of these Laws criminalizing innocent human behavior, Plaintiffs cannot peacefully protest in any public forum with people who are standing around in public without risking conviction for loitering (11 *Del. C.* §1321 and Wilmington's Loitering Ordinance Sec. 36-68), nor can they pass out food from their vehicle or in any public forum to people in need in their community without putting the members and participants accepting the contributions at risk of conviction for solicitation. (21 *Del. C.* § 4147).

43. Plaintiffs worry about the legal repercussions if they once again return to the Public Forum to exercise their constitutional right to assemble peaceably in public and exercise free speech; they do not want to be stopped by law enforcement officers for simply helping their community members and exercising their constitutional rights to exist in public spaces. They fear that enforcement of these Laws could occur in any public forum in the City of Wilmington and State of Delaware.

44. The Laws infringe on Plaintiffs' freedom of association with members of their group, protest participants, and the public, and burdens their ability to engage in expressive conduct towards positive social change in support of their group's mission and purpose.

45. The First Amendment protects the right of all people to be able to peaceably protest and assemble with others, to stand around innocently in public, and to be able to ask for and receive help without interference from the State. This constitutionally-protected activity may not therefore be criminalized.

46. Plaintiffs believe the taxpayer money being used to criminalize their actions and their community members' innocent human behaviors should instead be used for social services, health care, and affordable housing.

47. Hundreds of people in Delaware are cited each year for violations of the unconstitutional state statutes prohibiting solicitation and loitering - 21 *Del. C.* § 4147 & 11 *Del. C.* §1321, (*See Exhibit C*), and reasonable discovery will show many others have been cited, stopped, and/or or negatively affected by the City of Wilmington's unconstitutional Loitering Ordinance Section 36-68 prohibiting the same.

48. The entire scope of harm created by these Laws is obscured by the fact that WPD has inadequate records and record-keeping policies and practices that fail to capture each and every unconstitutional stop, frisk, and/or search performed by an officer without reasonable suspicion or probable cause. As such, officers routinely stop people for no reason other than that they are "loitering" or "soliciting," while evading the creation of a record documenting the scope and scale of these ongoing constitutional violations. In light of repeated complaints about these practices, WPD's failure to track and record each stop, frisk, or search constitutes deliberate indifference to the civil rights of the Plaintiffs' members and participants.

49. WPD's policies and practices of not recording that stops were initiated because of "loitering" or "soliciting" is constitutionally infirm. Upon information and belief, the practice and policy of not recording and maintaining data on encounters with civilians is intended to mask the constitutionally deficient standard that the Departments use to stop civilians.

COUNT I – FIRST AMENDMENT
VIOLATION OF THE RIGHT TO FREE SPEECH AND TO PEACEABLY ASSEMBLE

50. The foregoing allegations are incorporated in full by reference as if fully set forth herein.

51. Since 2002, when the AG’s office determined that 21 *Del. C.*§ 4147(e) is unconstitutional in part (Exhibit B), the United States Supreme Court issued its landmark decision in *Reed v. Gilbert*, which effectively abolished any distinction between content regulation and subject-matter regulation and annihilates the prior rationale finding any provisions of 21 *Del. C.*§ 4147 constitutional going forward. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015). As a result of the holding in *Reed*, courts across the country have ruled that “[a]ny law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.” *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412 (7th Cir. 2015) (ruling panhandling ordinance unconstitutional). Laws that target speech based on content must satisfy strict scrutiny to be constitutional. *Reed*, 576 U.S. at 163-64. This means that content-based restrictions on speech must be narrowly tailored to achieve a compelling governmental interest. *Id.* Content-based discrimination is any “law [that] applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.*; *see also Thayer v. City of Worcester*, 144 F.Supp.3d 218 (D. Mass. 2015) (declaring an ordinance prohibiting solicitation of donations unconstitutional), and *Scott v. Daytona*, Case No. 6:22-cv-02192-WWB-DAB Document 26, Statement of Interest (U.S. Dep’t of Justice 01/06/23) (supporting Plaintiffs’ petition to prevent future enforcement of a solicitation ordinance).

52. As written, the Laws create unconstitutional content-based restrictions. Specifically, the Laws permit people in a public forum to solicit votes or to solicit contributions for qualified charitable organizations but specifically prohibit people in the same public forum from:

- “soliciting any employment, business or contributions” (21 *Del. C.* § 4147(a));
- “soliciting the watching or guarding of any vehicle” (21 *Del. C.* § 4147(b));
- “soliciting a ride” (21 *Del. C.* § 4147(c));
- “congregat[ing] with others” (11 *Del. C.* §1321(2) & (6)), (36-68(b)(2));
- “begging” (11 *Del. C.* §1321(4)); and,
- “soliciting another person to engage in sexual intercourse or deviant sexual intercourse” (11 *Del. C.* §1321(5)), (36-68(b)(3)). (*See also*, Exhibit A).

53. The Laws serve no compelling state interest, nor are they narrowly tailored. The Laws prohibit certain protected speech and other First Amendment activities and are used to target unhoused individuals and people in need who are exercising their constitutional rights to exist in public spaces and to ask for help through panhandling, begging, or congregating to protest.

54. The Laws infringe upon Plaintiffs’ freedom of association with members of their group and the public to engage in political organizing for positive social change in support of the group’s purpose and mission. The laws unlawfully restrain Plaintiffs’ ability to participate in the public debate about the human right to access food and housing by prohibiting them from exercising their First Amendment rights of expression and association.

55. The Defendants, through their agents, have enforced the Laws in such a manner against the Plaintiffs as to effectively chill the Plaintiffs from engaging in First Amendment protected speech and expressive activities in any public forum in the City of Wilmington and State of Delaware.

56. The City of Wilmington’s Loitering Ordinance Section 36-68 on its face, and through Defendants’ policies of enforcing it, unconstitutionally infringes or imminently threatens to infringe upon Plaintiffs’ constitutional rights under the First Amendment of freedom of speech and freedom to peaceably assemble.

57. The State of Delaware’s Solicitation statute 21 *Del. C.* § 4147 on its face, and through Defendants’ policies of enforcing it, unconstitutionally infringes or imminently threatens to infringe upon Plaintiffs constitutional rights under the First Amendment to freedom

of speech and freedom to peaceably assemble.

58. The State of Delaware's Loitering statute 11 *Del. C.* § 1321 on its face, and through Defendants' policies of enforcing it, unconstitutionally infringes or imminently threatens to infringe upon Plaintiffs constitutional rights under the First Amendment to freedom of speech and freedom to peaceably assemble.

59. As such, Defendants' failure to allow free speech and the right to peaceably assemble violated Plaintiffs' First Amendment Rights.

60. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and they have been directly damaged as a result of the Defendants' conduct.

COUNT II – FIFTH AND FOURTEENTH AMENDMENT
VIOLATION OF LIBERTY WITHOUT DUE PROCESS OF LAW

61. The foregoing allegations are incorporated in full by reference as if fully set forth herein.

62. The United States Supreme Court has held that ordinances are unconstitutionally vague when they do not give adequate notice of the prohibited conduct or would allow for arbitrary enforcement thereby denying personal liberty. *See Chicago v. Morales*, 527 U.S. 41 (1999) (holding that an ordinance requiring police officers to order loitering people to disperse and made failure to obey such an order a violation was unconstitutionally vague).

63. The Laws are unconstitutionally vague because they do not provide fair notice by properly defining the prohibited conduct of loitering, they fail to define key terms and phrases, and they permit arbitrary enforcement by law enforcement officers.

64. The Laws are unconstitutionally vague because they do not provide adequate notice of the prohibited conduct by:

- Allowing peace officers to arbitrarily determine if a person is loitering “under circumstances that warrant alarm” (11 *Del. C.* §1321(6)), (36-68 (b)(4));
- Failing to require law enforcement officers to identify prohibited conduct before ordering a person to “move on” from a public space (*See* 11 *Del. C.* §1321(1)), (36-68 (b)(1));
- Prohibiting a group from merely standing in a public forum if it would “hinder the free and convenient passage of persons walking, riding or driving” (*See* 11 *Del. C.* §1321(2)), (36-68 (b)(2)) (emphasis added); and,
- Repeatedly using “loiter” to define “loitering” without further definition and using vague undefined terms such as “prowls” (*See* 11 *Del. C.* §1321(2)-(6)), (36-68 (b)(4)).

65. The Laws also use unconstitutionally vague language that invites arbitrary enforcement. Specifically, the following provisions provide little specification as to what constitutes a criminal violation:

- “[A] reasonable request from *any person*” to “make way” (11 *Del. C.* §1321(2)), (36-68 (b)(2)) (emphasis added);
- “[T]he accused [will have] an opportunity to dispel any alarm which would otherwise be warranted” (11 *Del. C.* §1321(6)), (36-68 (b)(4)); and,
- A failure or refusal to “move on” or to “make way.” (11 *Del. C.* §1321(1)-(2)), (36-68 (b)(1)-(2)).

66. As such, Defendants’ failure to give adequate notice by failing to adequately define the prohibited conduct of loitering, resulting in arbitrary enforcement of who has to “move on” to avoid citation, is unconstitutionally vague and in violation of Plaintiffs’ constitutional right to personal liberty.

67. In *Morales*, the United States Supreme Court struck down an ordinance similar to the Laws because the “[f]reedom to loiter for innocent purposes” is part of the liberty protected by the due process clause of the Fourteenth Amendment. *Morales*, 527 U.S. at 42.

68. The Laws are unconstitutionally overbroad in that they prohibit unavoidable, harmless, innocent conduct that all people engage in within public spaces, such as standing, sitting, congregating, sleeping, or asking for help.

69. As such, Defendants’ overbroad Laws preventing Plaintiffs and their protest

participants from innocently existing in public spaces and criminalizing otherwise innocent and/or constitutionally protected conduct violates Plaintiffs' and their protest participants' liberty protected by the due process clauses of the Fifth and Fourteenth Amendments.

70. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and they have been directly damaged as a result of the Defendants' conduct.

**COUNT III - FOURTH AMENDMENT-
VIOLATION BY UNJUSTIFIED STOP**

71. The foregoing allegations are incorporated in full by reference as if fully set forth herein.

72. The Laws unconstitutionally eliminate the legal standards for law enforcement officers to stop people. Making it a crime to "loiter" allows the police to stop any law-abiding person standing in public without having the requisite reasonable and articulable suspicion of criminal activity required by *Terry v. Ohio*, 392 U.S. 1 (1968). To allow the police to stop anyone who is standing in public obliterates the requirements of *Terry*, which is inconsistent with decades of Supreme Court and Third Circuit precedent.

73. A command to "move on" cannot be lawful if the command itself violates the Constitution. Stated another way, absent more, a person simply exercising their constitutionally protected rights cannot be lawfully ordered to move on.

74. By failing to have an adequate reporting system, the Defendants hide their unconstitutional practice, policy, and/or custom of stopping people without reasonable and articulable suspicion of criminal activity, as required by *Terry*.

75. As such, the Defendants' unjustified stops and Defendants' unlawful orders to move on under the Laws violated the Plaintiffs' Fourth Amendment Rights.

76. The violation of Plaintiffs' rights was caused by the policy, practice, and/or custom of the Defendants enforcing Laws that allow law enforcement officers to stop any individual in Delaware without first having the requisite reasonable and articulable suspicion of criminal activity.

77. The violation of Plaintiffs' rights was caused by the policy, practice, and/or custom of the Defendants giving unlawful orders to "move-on" to people in Delaware who are doing nothing more than exercising their constitutional rights.

78. The policies, practice and/or customs of Defendants violated the United States Constitution and was a significant factor behind Plaintiffs' injuries.

79. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and they have been directly damaged as a result of the Defendants' conduct.

COUNT IV– FIRST AMENDMENT- RETALIATION

80. The foregoing allegations are incorporated in full by reference as if fully set forth herein.

81. Placing the "no parking" sign in the area of the protest and ordering all of the protest participants to leave the area was unlawful retaliation against the Plaintiffs for exercising their First Amendment protected speech.

82. Defendants' actions "materially impair[ed] First Amendment freedoms," which constitutes an adverse action for retaliation. *Houston Cmty. Coll. Sys. v. Wilson*, 142 S. Ct. 1253 (2022).

83. There is a direct causal link between the Defendants' retaliatory conduct and the impairment of Plaintiffs' constitutional rights.

84. Defendants are therefore liable under 42 U.S.C. § 1983 for their violation of

Plaintiffs' First Amendment free speech rights.

85. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and they have been directly damaged as a result of the Defendants' conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- A. Issue a declaration that Delaware State Statutes 21 *Del. C.* § 4147, 11 *Del. C.* §1321, and City of Wilmington Loitering Ordinance 36-68 are unconstitutional facially and as-applied to Plaintiffs;
- B. Issue a temporary and permanent injunction enjoining the Defendants City of Wilmington, and their employees, agents, and successors in office from enforcing Loitering Ordinance 36-68;
- C. Issue a temporary and permanent injunction enjoining Defendant Attorney General Kathy Jennings (in her official capacity) and her employees, agents, and successors in office from enforcing state statutes 21 *Del. C.* § 4147 and 11 *Del. C.* §1321;
- D. Award Plaintiffs attorneys' fees and costs; and,
- E. Award any other relief as the Court deems just and equitable.

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