

**IN THE DISTRICT COURT FOR THE DISTRICT OF DELAWARE**

WILMINGTON FOOD NOT BOMBS, )  
on behalf of itself and its protest participants, )  
) )  
MADISON DALEY, )  
) )  
GEORGE JONES, )  
) )  
DELAWARE CONTINUUM OF CARE, )  
) )  
FRIENDSHIP HOUSE, and )  
) )  
NAACP DELAWARE STATE CONFERENCE )  
OF BRANCHES, on behalf of itself and its members, )  
) )  
Plaintiffs, )  
v. )  
) )  
KATHY JENNINGS, )  
IN HER CAPACITY AS ATTORNEY GENERAL )  
OF THE STATE OF DELAWARE, and )  
) )  
CITY OF WILMINGTON )  
Defendants. )

C.A. No. 1:23-cv-00736-MN

**FIRST AMENDED 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”). 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, frustrates Plaintiff Delaware Continuum of Care (“CoC”) from executing its federal

duty to provide resources to unhoused populations and to assist in securing housing, and blocks community members who are hungry, unhoused and/or impoverished from being able to participate in Plaintiff Friendship House programs or to simply co-exist in public spaces. Worse, Defendants' enforcement actions contribute to the disproportionate criminalization of Black and brown communities by targeting people based on race.

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"), and thereby prevent the hundreds of unconstitutional stops, arrests, charges, and convictions that are annually brought under these Laws, disproportionately against people of color. *See* Exhibit A.

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)).

4. Criminalizing who can and who cannot ask for contributions under 21 *Del. C.* § 4147 is an unconstitutional government limitation on free speech.

5. The Delaware Attorney General's office determined more than 20 years ago in Formal Opinion 02-IB13 that criminalizing who can and who cannot ask for contributions under 21 *Del. C.* § 4147 is an unconstitutional government limitation on free speech. *See* Exhibit B.

6. Similarly, Wilmington City Council voted to amend Chapter 36 of the Wilmington City Code by deleting Section 36-68(b)(3) relating to the crime of loitering for the purpose of begging and Sections 36-221 through and including Section 36-227 relating to the regulation of

panhandling on January 16, 2020.<sup>1</sup>

7. Nevertheless, the State 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.

8. 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 activities, such as existing in public. Loitering laws have historically been used to discriminate against marginalized individuals. These prohibitions are rooted in Jim Crow-era Black codes which were intentionally written with broad language to give police wide discretion to criminalize people of color for simply being in public spaces.<sup>2</sup> Still today, the vague language in these Laws enables police to arbitrarily punish people for engaging in life-sustaining and constitutionally protected acts in public spaces, like sitting or sleeping, and constitutionally protected acts like congregating for peaceful public protests.

9. 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 unconstitutional and 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

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<sup>1</sup> Code 1968, § 39-45.2; Ord. No. 95-034, § 1, 6-8-95; Ord. No. 00-113(sub 1), § 1, 11-2-00; Ord. No. 02-123, § 1, 1-9-03; Ord. No. 19-054(sub 1), § 1, 1-16-20).

<sup>2</sup> *See* Bonnie Kristan, *Ahmaud Arbery and the Racist History of Loitering Laws*, The Week (May 7 2020), <https://theweek.com/articles/912977/ahmaud-arbery-racist-history-loitering-laws>; Andrew Lee, *The Jim Crow Roots of Loitering Laws*, Anti-Racism Daily (May 31, 2022) <https://the-ard.com/2022/05/31/the-jim-crow-roots-of-loitering-laws/>.

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.

10. As stated herein, the Laws unconstitutionally criminalize innocent human behaviors and violate Plaintiffs' fundamental constitutional rights under the First, Fourth, Fifth, Eighth, 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**

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

12. 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**

13. 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**

14. 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 Laws have 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 they serve in their community 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.

15. 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.

16. 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.

17. Plaintiff Delaware Continuum of Care ("CoC") is a federally mandated entity that coordinates local service providers for people experiencing homelessness in providing services

and applying for federal funding.<sup>3</sup> Pursuant to the United States Department of Housing and Urban Development (“HUD”) regulation 24 CFR §578.7, CoC is required to, among other things, coordinate effective planning processes to serve people experiencing homelessness with the goal of ending homelessness.<sup>4</sup> CoC has invested significant time and resources into addressing homelessness in Delaware. CoC has hosted town halls, created resource folders, written reports, and more in order to serve unhoused populations in Delaware.<sup>5</sup>

18. Plaintiff National Association for the Advancement of Colored People Delaware State Conference of Branches (hereinafter DE-NAACP) is the Delaware affiliate of the National Association for the Advancement of Colored People. DE-NAACP’s mission is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure health and well-being of all persons. Their vision is to ensure a society in which all individuals have equal rights without discrimination based on race and a significant amount of the DE-NAACP’s resources have been directed towards eliminating unconstitutional and discriminatory statutes and ordinances that remain on the books in Delaware. The DE-NAACP is well-suited to argue against these Laws not only in how they injure DE-NAACP and its members, but also the people they aim to protect in Delaware, who are affected by these Laws, and whose interests are clearly aligned but would have a difficult time pursuing litigation themselves. The principal objectives of the DE-NAACP are:

- To ensure the political, educational, social, and economic equality of all citizens
- To achieve equality of rights and eliminate race prejudice among the citizens of the United States
- To remove all barriers of racial discrimination through democratic processes
- To seek enactment and enforcement of federal, state, and local laws securing civil rights

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<sup>3</sup> See generally Delaware Continuum of Care, *State of Delaware Governance Charter*, (Apr. 24, 2015) [https://www.housingalliancedelaware.org/files/ugd/9b0471\\_69ec6ffefb7a47f9a20d02059c2b9f75.pdf](https://www.housingalliancedelaware.org/files/ugd/9b0471_69ec6ffefb7a47f9a20d02059c2b9f75.pdf); See also United States Department of Housing and Urban Development, *Introductory Guide to the Continuum of Care Program*, (2012) <https://files.hudexchange.info/resources/documents/CoCProgramIntroductoryGuide.pdf>.

<sup>4</sup> Continuum of Care Program, HUD 24 CFR § 578.7 (2012).

<sup>5</sup> See generally Delaware Continuum of Care, *Events*, <https://www.housingalliancedelaware.org/coc-events>; See generally Delaware Continuum of Care, HUD System Performance Measures FY22 Report, (July, 2023) <https://drive.google.com/file/d/1TuomlU0j4m537JINa2RB5PpMrz4APJsH/view>

- To inform the public of the adverse effects of racial discrimination and to seek its elimination
- To educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof, and to take any other lawful action in furtherance of these objectives, consistent with the NAACP's Articles of Incorporation and this Constitution.

19. Plaintiff Friendship House is a non-profit entity in Delaware that works with people who are experiencing houselessness, homelessness, or both.<sup>6</sup> Over the course of 35 years, Friendship House has served these Delaware communities, and with the support of its partners, has annually served more than 12,000 people.<sup>7</sup> Programs offered to these communities by Friendship House include a Clothing Bank, Empowerment Centers, Winter Programming, Financial Assistance, and Transitional Housing.<sup>8</sup> Another critical program offered by Friendship House is its Fines and Fees Fund, a program that helps the populations they serve to pay court fines and fees that they lack the financial stability to shoulder.<sup>9</sup>

20. 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. *See generally*, 29 Del. C. §2505(c). Defendant AG is sued in her official capacity.

21. 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 complied with the United States Constitution. The City, by and through its agents, enacts and enforces the

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<sup>6</sup> Friendship House, *About Friendship House*, <https://www.friendshiphousede.org/delaware-homeless/who-we-are/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Friendship House, *Fines and Fees Fund*, <https://www.friendshiphousede.org/delaware-homeless/other-resources/financial-documents/fines-and-fees-fund/>.

City Ordinances. 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 statutes and City ordinances.<sup>10</sup>

22. 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.

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

### **FACTUAL ALLEGATIONS**

24. 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.

25. Since June of 2018, Plaintiff 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”).

26. Plaintiff FNB utilized this exact location precisely because this is where several impacted people in the community congregate because the overpass provides shelter and warmth from the elements, and it is also near public transportation and other necessary support resources. *See* Exhibit D.

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<sup>10</sup> WILMINGTON, DEL., CODE ch. 2, art. V § 5-200, 5-201.



27. The sidewalks on both sides of the street provide 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. *See* Exhibit E.

28. Since August of 2020, Plaintiffs Daley and Jones have helped organize weekly FNB protests. As part of their efforts, Plaintiffs FNB, Daley and Jones assist in gathering and preparing food for approximately fifty (50) protest-participants. The Plaintiffs FNB, Daley and Jones 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. 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.

29. On July 10, 2021, during an FNB protest at the Public Forum, an unidentified person approached Plaintiffs FNB, Daley and Jones, 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 F.

30. Despite the ominous warning, Plaintiffs Daley and Jones and other members of FNB continued their regular weekly FNB protests at the Public Forum without incident for the next 18 months.

31. On or about Saturday, January 21, 2023, two WPD Officers approached Plaintiffs Daley and Jones and other members of FNB and informed them that they could not set up to serve a meal at the Public Forum.

32. The Plaintiffs Daley and Jones and other members of FNB then noticed that no community members, not even their regular FNB protest participants, were present at the

Public Forum.

33. WPD told the Plaintiffs Daley and Jones and other members of FNB they had ordered everyone to leave the Public Forum.

34. WPD told the Plaintiffs Daley and Jones and other members of FNB they were “loitering” and that they needed to “move on.”

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

36. Plaintiffs Daley and Jones 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.

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

38. Plaintiffs Daley and Jones informed the WPD officer that they had the right to protest on public property.

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

40. WPD left the Public Forum and Plaintiffs Daley and Jones, other members of FNB and members of the community carried on with participating in the protest activities.

41. When the Plaintiffs Daley and Jones and other members of FNB 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”) had suddenly been placed at the precise location where Plaintiffs Daley and Jones and other

members of FNB usually parked their cars for the FNB protest. *See* Exhibit G. Plaintiffs Daley and Jones and other members of FNB generally parked their cars in that precise location because it is free, un-metered, parking that is directly adjacent to the Public Forum.

42. Upon information and belief, the Sign was placed at this location in retaliation for Plaintiffs Daley and Jones and other members of FNBs' prior protest activity and to prevent their future protest activities. The Sign serves no legitimate purpose known to Plaintiffs FNB, Daley and Jones. No State or Local agency has offered a legitimate explanation for the placement of the Sign.

43. 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.

44. After these actions by WPD officers, the Plaintiffs FNB, Daley and Jones, 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.

45. The Sign and the Laws have effectively eliminated the Plaintiffs' FNB, Daley and Jones, 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 FNB, Daley and Jones, 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.

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

Plaintiffs FNB, Daley and Jones, 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 and members accept the contributions. As such, the solicitation laws have chilled the exercise of their constitutional rights.

47. Due to the threats of the loitering laws being enforced against them, FNB's members who accept contributions from other members in public forums 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.

48. Due to the enforcement of these Laws criminalizing innocent human behavior, Plaintiffs FNB, Daley and Jones, 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).

49. Plaintiffs FNB, Daley and Jones reasonably fear 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.

50. The Laws infringe on Plaintiffs FNB, Daley and Jones' 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.

51. 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.

52. 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.

53. Plaintiff CoC follows HUD 24 CFR §578.7, as is reflected in their federally mandated governance charter.<sup>11</sup> CoC's governance charter and federal regulations mandate that CoC seek to end homelessness.

54. HUD and Plaintiff CoC both recognize that the criminalization of homelessness frustrates the goal of the Continuum of Care program.<sup>12</sup>

55. In fact, HUD resources have indicated that “[c]riminalization measures do not prevent or end homelessness; they only exacerbate existing problems.”<sup>13</sup>

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<sup>11</sup> Delaware Continuum of Care, *State of Delaware Governance Charter*, (Apr. 24, 2015)

[https://www.housingalliance.org/\\_files/ugd/9b0471\\_69ec6ffefb7a47f9a20d02059c2b9f75.pdf](https://www.housingalliance.org/_files/ugd/9b0471_69ec6ffefb7a47f9a20d02059c2b9f75.pdf).

<sup>12</sup> United States Department of Housing and Urban Development, *SNAPS in Focus: The Case Against Laws that Criminalize Homelessness*, (Oct. 6, 2014)

<https://www.hudexchange.info/sites/onecpd/assets/File/SNAPS-In-Focus-The-Case-Against-Laws-that-Criminalize-Homelessness.pdf>; See also Delaware Continuum of Care, *Delaware Public Town Hall Event*, (September 28, 2022) (citing “biased legal systems” as contributing to the housing disparity in Black communities)

[https://www.housingalliance.org/\\_files/ugd/9b0471\\_784fbfdb71544075845173a529ba4d90.pdf](https://www.housingalliance.org/_files/ugd/9b0471_784fbfdb71544075845173a529ba4d90.pdf)

<sup>13</sup> United States Department of Housing and Urban Development, *SNAPS in Focus: The Case Against Laws that Criminalize Homelessness*, (Oct. 6, 2014)

<https://www.hudexchange.info/sites/onecpd/assets/File/SNAPS-In-Focus-The-Case-Against-Laws-that-Criminalize-Homelessness.pdf>

56. Additionally, HUD takes implementing “specific strategies to prevent the criminalization of homelessness within the CoC’s geographic area” into account when reviewing applications for HUD funding, further evidencing their belief that the criminalization of homelessness negatively impacts the work of CoCs.<sup>14</sup>

57. Research supports this claim, as studies have shown that homelessness and incarceration increase the risk of each other, with recent homelessness being “7.5 to 11.3 times more common among jail inmates than the general population.”<sup>15</sup>

58. Research also suggests that the criminalization of homelessness makes it more difficult and more expensive to provide services to unhoused populations.<sup>16</sup>

59. The challenged statutes criminally penalize public-facing behaviors that are associated with homelessness and the civil rights of unhoused people.

60. Therefore, Plaintiff CoC suffers an injury to one of its federally mandated reasons for existence and governance charter goals through the criminalization of homelessness and suffers direct injury through the increased cost and difficulty of providing services when unhoused populations are criminalized.

61. Plaintiff NAACP Delaware State Conference of Branches (“DE-NAACP”) is a non-partisan organization affiliated with the National Association for the Advancement of Colored People. NAACP-DE has seven branches located throughout the state. DE-NAACP’s mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination.

62. Plaintiff DE-NAACP is dedicated to ensuring that all people in Delaware have an

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<sup>14</sup> See Exhibit H at 73, 83.

<sup>15</sup> Greg A. Greenberg & Robert A. Rosenheck, *Jail Incarceration, Homelessness and Mental Health: A National Study*, 59 *Psychiatric Services* 170, 170 (2008).

<sup>16</sup> See Rethink Homelessness, *The Cost of Long-Term Homelessness in Central Florida*, 22-26 (2014) <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>.

equal opportunity to exist in public spaces, including by engaging in life-sustaining activities.

63. Members of Plaintiff DE-NAACP and its branches suffer harm because of the unconstitutional stops, searches, and arrests described in this Complaint.

64. Plaintiff DE-NAACP and its members are aggrieved by Defendants' actions and omissions described in this Complaint because they substantially impede DE-NAACP's ability to further its goals and institutional purpose of improving opportunities for people of color by diverting resources of its chapters and members to addressing the actions and failures of the Defendants.

65. In 2022 and 2023 Plaintiff DE-NAACP worked successfully to prevent the City of Dover from passing an unconstitutional loitering ordinance. Their members wrote letters, protested, and filled the room during a 4-hour Dover City Council meeting during which they gave public testimony opposing the proposed loitering ordinance which ultimately was withdrawn.

66. Plaintiff DE-NAACP has significant ties to the impacted community, i.e. people whose constitutional rights are being violated by the Laws.

67. Hundreds of people in Delaware, disproportionately people of color, 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. A goal of Plaintiff Friendship House is to alleviate houselessness and homelessness in Delaware.

68. As previously alleged, the criminalization of homelessness frustrates the goal of alleviating homelessness and makes it more difficult and expensive to provide services to

unhoused populations.<sup>17</sup>

69. Therefore, Plaintiff Friendship House suffers an injury to one of its goals through the criminalization of homelessness and suffers direct injury through the increased cost and difficulty of providing its services when unhoused populations are criminalized.

70. Even more direct though is the injury that Plaintiff Friendship House faces through its Fines and Fees Fund.

71. The Fines and Fees Fund is a program that Plaintiff Friendship House's service population can apply to in order to "pay the financial burden that accompanies an *infraction*, *violation*, or misdemeanor."<sup>18</sup>

72. Plaintiff Friendship House created its Fines and Fees Fund in partnership with the Campaign to End Debtor's Prison to "break the cycle of homelessness caused by a court-issued fine to a person living in poverty."<sup>19</sup>

73. Through the Fines and Fees Fund, Plaintiff Friendship House pays "off an entire fee" or "pay[s] partial down payments allowing the individual to start a monthly payment plan with the court."<sup>20</sup>

74. Plaintiff Friendship House operates a helpline and monitors a request form that individuals can use to request assistance from the Fines and Fees Fund.<sup>21</sup>

75. Individuals who make such a request for assistance meet with a Friendship House caseworker to confirm identity and eligibility.<sup>22</sup>

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<sup>17</sup> See allegations 55-58.

<sup>18</sup> Friendship House, *Fines and Fees Fund*, <https://www.friendshipousede.org/delaware-homeless/other-resources/financial-documents/fines-and-fees-fund/>. (emphasis added)

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Delaware Campaign to End Debtors' Prison & Friendship House, *Statewide Fines and Fees Fund*, [https://www.friendshipousede.org/wp-content/uploads/2022/03/CEDP-get-help\\_flyer-1.pdf](https://www.friendshipousede.org/wp-content/uploads/2022/03/CEDP-get-help_flyer-1.pdf)

<sup>22</sup> *Id.*



76. Eligible individuals can receive up to \$500 from the Fines and Fees Fund.<sup>23</sup>

77. Therefore, the criminalization of homelessness through loitering and solicitation laws directly harms Plaintiff Friendship House, as it requires Friendship House to expend additional resources, time, and money to serve its organizational purpose. Plaintiff Friendship House could expend additional resources housing, clothing, or otherwise serving their target populations in other ways if not for the loitering and solicitation laws.

78. Underscoring the scope and impact of these laws, from August 1, 2022, through July 1, 2023, nearly fifty (50) separate charges were brought under the Laws in New Castle County, with no corresponding felony charge attached. Similarly, over 650 charges were brought related to these Laws in Dover, Delaware, from January 2017 through November 2022.

79. The Laws also have perversely encouraged other jurisdictions within Delaware to enact copy-cat laws that further criminalize loitering and solicitation. For example, the towns of Seaford and Milford have both enacted “pedestrian safety” ordinances in the last two years that borrow language from the Laws challenged in this Complaint.<sup>24</sup>

80. Further, enforcing these laws appears to be a recently renewed priority for the WPD. Upon information and belief, beginning in the summer of 2023, WPD began posting police officers at the exit ramps from I-95 to Delaware Ave. and at Adams Street every morning. WPD’s presence was intended to intimidate people who are known to stand at these specific locations and ask for donations using signs directed at the vehicular traffic, in violation of the Laws.

81. The entire scope of harm created by these Laws is obscured by the fact that WPD

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<sup>23</sup> *Id.*

<sup>24</sup> SEAFORD, DEL., CODE §12.1.13 (2022); MILFORD, DEL., CODE Art. IX, § 197-35 (2023).

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.

82. The 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 WPD uses to stop civilians.

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

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

84. 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 163-6464. 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).

85. 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.

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.

91. 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.

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

93. 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**

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

95. 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).

96. 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.

97. 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)).

98. 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)).

99. 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.

100. 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.

101. 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.

102. As such, Defendants’ overbroad Laws preventing Plaintiffs, their members, the people they serve, 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.

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

**COUNT III –FOURTEENTH AMENDMENT**  
**VIOLATION OF EQUAL PROTECTION UNDER THE LAW (Racial Discrimination)**

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

105. Hundreds of people in Delaware, disproportionately people of color, 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.*

106. The United States Supreme Court held that an ordinance administered against a specific class of people was a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution stating, “[t]he fourteenth amendment to the constitution is not confined to the protection of citizens. It says: ‘Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.’ These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.” *Yick Wo v. Hopkins*, 118 U.S.356, 369 (1886).

107. Likewise, Defendants' Laws, which are disproportionately enforced against people of color, discriminate on the basis of race in violation of the Equal Protection Clause of the

Fourteenth Amendment and the Defendants cannot meet their burden to prove the Laws are necessary to prove a compelling government interest under the strict scrutiny test. Upon information and belief, reasonable discovery will show that Law enforcement officers use a person's race as a factor for determining when to enforce the Laws.

108. Defendants have a policy, practice, and/or custom of intentionally targeting people of color for solicitation and loitering, and under the Defendants' policies, practice and/or customs, the equal protection rights of the Plaintiffs, their members, the people they serve, and their protest participants will continue to be violated.

109. 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 –FOURTEENTH AMENDMENT**  
**VIOLATION OF EQUAL PROTECTION UNDER THE LAW (Animus)**

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

111. Defendants are also violating the constitutional guarantee of Equal Protection by actively and selectively targeting individuals who are unhoused, as well as questioning, searching, and arresting people due to their unhoused status.

112. Under rational basis review, unequal treatment under the law must be rationally related to a legitimate government interest. *See US. Dept. of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973). Animus can never constitute a legitimate government interest. *Id.* at 535.

113. Defendants are regularly target people based upon their unhoused status.

114. Housed individuals do not receive this level of scrutiny from police.

115. Defendants' Laws, which are disproportionately enforced against unhoused people,



discriminate on the basis of animus against unhoused people in violation of the Equal Protection Clause of the Fourteenth Amendment. Upon information and belief, reasonable discovery will show that Law enforcement officers use a person's unhoused status as a factor for determining when to enforce the Laws.

116. Defendants have a policy, practice, and/or custom of intentionally targeting unhoused people for solicitation and loitering, and under the Defendants' policies, practice and/or customs, the equal protection rights of the Plaintiffs, their members, the people they serve, and their protest participants will continue to be violated.

117. 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 Defendants' conduct.

**COUNT V - FOURTH AMENDMENT VIOLATION- UNJUSTIFIED STOP**

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

119. 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.

120. 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.

121. To allow the police to stop anyone who is standing in public makes the

requirements of *Terry* nothing more than *de minimis*, which is inconsistent with decades of Supreme Court and Third Circuit precedent.

122. 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*.

123. As such, the Defendants' unjustified stops and Defendants' unlawful orders to move on under the Laws violated the Plaintiffs, their members, the people they serve, and their protest participants' Fourth Amendment Rights.

124. 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.

125. 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.

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

127. 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 VI – EIGHTH AMENDMENT-EXCESSIVE FINES**

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

129. When fees and fines are grossly disproportionate to the gravity of the offense, they

run afoul of the Eighth Amendment. *See United States v. Bajakajian*, 524 U.S. 321,324 (1998).

130. The Laws impose excessive fines of up to \$1,150.00 for innocent human behaviors that pose no real threat to people or society. These fines are grossly disproportionate to the gravity of the offense committed.

131. Forcing Plaintiffs , their members, the people they serve, and their protest participants to disperse on the threat they are loitering and soliciting contributions, or else face citations, constitutes excessive fines under the Eighth Amendment of the Constitution.

132. 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 Defendants' conduct.

#### **COUNT VII – EIGHTH AMENDMENT-CRUEL AND UNUSUAL PUNISHMENT**

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

134. “Loitering” in a public place as defined by the Laws is an unavoidable consequence of being homeless. By virtue of not having anywhere else to go, homeless people stand around and linger in public spaces. The need and desire to simply stand around is a universal and unavoidable consequence of being human.

135. The Eighth Amendment’s Cruel and Unusual Punishment clause “imposes substantive limits on what can be made criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667 (1977). This means that there are inherent limits on the behaviors that states and localities can criminalize. “Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.” *Robinson v. California*, 370 U.S. 660, 667 (1962). Criminal penalties must be for an act or omission, not a status or condition. *Id.* (holding that a narcotic addiction, absent drug use or irregular behavior, cannot be criminalized

based on status alone).

136. It follows then that when the conduct at issue is involuntary and inseparable from a status, such as homelessness, criminalizing biologically compelled processes is essentially the same as criminalizing the status itself. *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019). The state cannot prosecute people based on a false premise that they have a choice of standing around in public. *Id.*

137. Prohibiting people experiencing homelessness from involuntarily standing around in any public space at any time essentially criminalizes the status of being homeless, which is cruel and unusual punishment under the Eighth Amendment.

138. Defendants have therefore violated Plaintiffs, their members, the people they serve, and their protest participants' Eighth Amendment rights to be free of cruel and unusual punishment.

139. 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 Defendants' conduct.

#### **COUNT VIII –VIOLATION OF THE FUNDAMENTAL RIGHT TO TRAVEL**

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

141. Since even before the adoption of the U.S. Constitution, residents of all states have “possessed the fundamental right, inherent in citizens of all free governments, [to] peacefully dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom . . .” *U.S. v. Wheeler*, 254 U.S. 281, 293 (1920). The fundamental right to interstate travel, although not explicitly enumerated in the Constitution, has been consistently recognized by the courts and has been found to be

embedded within the Privileges and Immunities Clause of Article IV §2, which is enforced against the states under the parallel clause of the Fourteenth Amendment. *Toomer v. Witsell*, 334 U.S. 385, 395 (1948).

142. The Supreme Court has recognized the right to travel as “fundamental” and “elementary.” *U.S. v. Guest*, 383 U.S. 745, 757-58 (1966). Any ordinance restricting exercise of that right is “presumptively invidious” and is invalid unless the government can prove the restriction has been “precisely tailored to serve a compelling governmental interest.” *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982).

143. The Defendants have no compelling reason to limit the Plaintiffs’ movements and banish them from the Public Forum based on their message or the socio-economic and/or racial status of the people who attend their protests. Nor are the loitering laws narrowly tailored to meet any interests that the Defendants may claim.

144. Defendants’ policy, practice, and/or custom of burdening peoples’ freedom of movement violates Plaintiffs, their members, the people they serve, and their protest participants’ constitutional right to travel.

145. 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 Defendants’ conduct.

#### **COUNT IX– FIRST AMENDMENT-RETALIATION**

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

147. The placing of a “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. “But for” the Plaintiffs’ protected speech,

the Defendants would not have taken these actions. *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274 (1977).

148. 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).

149. There is a direct causal link between the Defendants' retaliatory conduct and the impairment of Plaintiffs FNB, Daley and Jones' constitutional rights.

150. Defendants are therefore liable under 42 U.S.C. § 1983 for their violation of Plaintiffs FNB, Daley and Jones' First Amendment free speech rights.

151. 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 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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Dated: