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15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF ARIZONA

17 Amy Hughes;
18 Denise Carr; and
19 Gabriel Gilbert,

20 *Plaintiffs;*

21 v.

22 City of Glendale,

Defendant.

CASE NO. CV-25-02681-PHX-KML

**MOTION FOR PRELIMINARY
INJUNCTION AND SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

Plaintiffs Amy Hughes, Denise Carr, and Gabriel Gilbert move to preliminarily enjoin Defendant City of Glendale from enforcing Glendale City Code sections 24-161(b) and 26-74.

INTRODUCTION

In 2022, the City of Glendale (“Glendale” or “the City”) enacted Ordinances O22-67 (the “Panhandling Ordinance”) and O22-66 (the “Street and Median Ordinance”) which prohibit the solicitation of money, goods, or services—a practice commonly known as

1 “panhandling”—in many places and in any manner deemed “aggressive,” as well as
 2 pedestrian presence in crosswalks and medians for any expressive purpose. Plaintiffs have
 3 curbed their panhandling for fear of arrest and harassment by the police. Without the
 4 Court’s intervention, Glendale will continue to infringe on its residents’ constitutional
 5 rights. The case for a preliminary injunction is clear and in line with decisions across the
 6 country in which courts have routinely ruled that ordinances nearly identical to Glendale’s
 7 are unconstitutional.

8 **FACTUAL BACKGROUND**

9 On September 13, 2022, the Glendale City Council gathered at a workshop to hear
 10 a proposal to amend Sections 26-74 and 24-161 of its City Code. *See generally*
 11 Complaint ¶¶ 19–21. On October 11, 2022, the Glendale City Council voted to enact the
 12 Street and Median Ordinance and the Panhandling Ordinance. Complaint ¶ 22; Ex. A, B.

13 The Panhandling Ordinance prohibits solicitation, which Glendale later defined in
 14 Ordinance 023-04 (the “Definitions Ordinance”) to include both panhandling and
 15 charitable solicitation for an “immediate donation or transfer of money or other thing of
 16 value... regardless of the solicitor’s purpose[.]” Complaint ¶¶ 26–27; Ex. C; Glendale
 17 City Code § 26-74 (all “§” references are to this Code unless otherwise indicated).
 18 Solicitation includes communication “by spoken, written, or printed word, or by other
 19 means[.]” *Id.* Thus, even passive and silent solicitors sitting next to a sign or a tin cup
 20 seeking spare change are covered by the Panhandling Ordinance’s prohibitions.
 21 Similarly, a person passively soliciting funds for a school or charitable organization is
 22 covered by the law.

1 The Panhandling Ordinance establishes extensive no-solicitation buffer zones on
2 public sidewalks and other public places throughout the entire City. Complaint ¶ 28; Ex.
3 B; § 26-74(a)(2)–(6). Solicitation is prohibited in any public transportation vehicle or bus
4 stop; within 50 feet of all banks, ATMs or other financial institutions; on private property
5 if the person has been asked not to solicit there; within 25 feet of any business or
6 “privately owned establishment”; and from any operator of a motor vehicle. *Id.* The
7 Panhandling Ordinance also prohibits “aggressive” solicitation in any public place.
8 Complaint ¶ 30; Ex. B; § 26-74(a)(1). The Definitions Ordinance defines “aggressive” to
9 include a broad range of conduct, from “requiring the person [being solicited]... to take
10 evasive action to avoid physical contact[,]” to “[a]pproaching the person being solicited
11 in a manner that... “is reasonably likely to intimidate the person being solicited into
12 responding affirmatively[.]” Complaint ¶ 30; Ex. C; § 26-74(c).

13 The Street and Median Ordinance prohibits any pedestrian from stopping in the
14 road or on a median or traffic island “not designated for use by pedestrians except to wait
15 to cross the roadway at the next pedestrian signal[.]” Complaint ¶ 33; Ex. A; § 24-161(b).
16 Pedestrians—including panhandlers and demonstrators passively holding a sign—are
17 forbidden from being in places they are otherwise permitted to be, including crosswalks
18 and the medians or traffic islands that interrupt crosswalks, if their purpose is anything
19 other than “wait[ing] to cross the roadway at the next pedestrian signal”—that is, if their
20 purpose is expressive. *Id.*

21 Plaintiffs Amy Hughes (“Amy”), Denise Carr (“Denise”), and Gabriel Gilbert
22 (“Gabriel”) are poor and were recently homeless. Complaint ¶¶ 40–49. Declarations of

1 Amy Hughes (“Hughes Decl.”) ¶¶ 4–6, Denise Carr (“Carr Decl.”) ¶¶ 3–5, and Gabriel
2 Gilbert (“Gilbert Decl.”) ¶¶ 3–5. All three plaintiffs rely on contributions from passersby
3 to obtain money for food, gas, bus fare, or shelter. Hughes Decl. ¶ 7, Carr Decl. ¶ 5,
4 Gilbert Decl. ¶ 5. Amy has solicited on public sidewalks outside convenience stores and
5 at highly-trafficked intersections. Hughes Decl. ¶ 8. When soliciting at intersections, she
6 holds a sign and works with a friend who steps into the roadway to accept donations. *Id.*
7 Denise, Gabriel, and their dog lived out of their car until recently. Carr Decl. ¶ 3, Gilbert
8 Decl. ¶ 3. They had to keep the engine running to avoid overheating in the summer. Carr
9 Decl. ¶ 5. Denise frequently stood on a public sidewalk outside a gas station, asking
10 pedestrians for money to fill her gas tank. Carr Decl. ¶ 6. Gabriel has stood on a public
11 sidewalk outside a grocery store asking pedestrians for money to buy food or dog food. ¶
12 6. Plaintiffs’ speech is chilled by the threat of arrest, fines and imprisonment. Hughes
13 Decl. ¶ 10, Carr Decl. ¶ 9, Gilbert Decl. ¶ 9.

14 Before enacting the ordinances, the Glendale City Council was not presented with
15 any statistics, testimony, or other evidence that demonstrated a need for either ordinance.
16 Glendale City Council, *Sep. 13, 2022 City Council Workshop*, WWW.GLENDALEAZ.COM
17 (Sep. 13, 2022), <https://glendaleaz.new.swagit.com/videos/184283> at 0:47–38:39;
18 Glendale City Council, *Oct. 11, 2022 City Council Regular*, WWW.GLENDALEAZ.COM
19 (Oct. 11, 2022), <https://glendaleaz.new.swagit.com/videos/186439> at 15:01–23:18;
20 Glendale City Council, *Feb. 14, 2023 City Council Regular*, WWW.GLENDALEAZ.COM
21 (Feb. 14, 2023), <https://glendaleaz.new.swagit.com/videos/208367> at 26:24–27:58.
22 Glendale’s only explanations for passing the ordinances were either platitudes—such as

the roads being “not as safe as they could be for our pedestrians[.]” *Sep. 13, 2022 City Council Workshop*, 2:25–2:30—or anecdotes—such as the Mayor explaining how his wife felt “very uncomfortable, very unsafe” when asked for money in a grocery store parking lot, *Oct. 11, 2022 City Council Regular*, 21:50–21:52.

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). Alternatively, a preliminary injunction can issue if a plaintiff raises “serious questions going to the merits... and the balance of hardships tips sharply in the plaintiffs favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). Plaintiffs meet the requirements for a preliminary injunction under either test.

ARGUMENT

This Court should follow the long line of cases enjoining anti-panhandling laws as unconstitutional under the First Amendment. *See, e.g., Lopez v. Town of Cave Creek, AZ*, 559 F. Supp. 2d 1030 (D. Ariz. 2008). The merits tilt heavily in Plaintiffs’ favor and all other requirements for a preliminary injunction are met.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR FIRST AND FOURTEENTH AMENDMENT CLAIMS.

A. Panhandling is speech protected by the First Amendment.

Solicitation, including panhandling, is a form of speech, and therefore protected under the First Amendment to the United States Constitution. *Lopez*, 559 F. Supp. 2d at

1 1031 (“It is beyond dispute that solicitation is a form of expression entitled to the same
2 constitutional protections as traditional speech.”) (cleaned up).

3 **B. Regulation of speech that takes place in a traditional public forum is**
4 **particularly disfavored.**

5 The ordinances’ restrictions apply to a wide range of solicitation that occurs in
6 public places, including medians, sidewalks, streets, and parks. §§ 26-74, 25-161(b).
7 These are all traditional public fora which have “been held in trust for the use of the
8 public, and time out of mind, have been used for purposes of assembly... and discussing
9 public questions.” *Hague v. CIO*, 307 U.S. 496, 515 (1939).

10 **C. The Panhandling Ordinance is content-based and fails strict**
11 **scrutiny.**

12 Any law that draws distinctions and restricts speech in a public forum based on the
13 speech’s message or subject matter is content based, subject to strict scrutiny, and
14 presumptively invalid because it raises the specter of official disfavor and
15 discouragement of certain messages and speakers. *R.A.V. v. City of St. Paul*, 505 U.S.
16 377, 394 (1992). The government bears the burden of justifying the content-based
17 distinctions of the law under the exacting standard of strict scrutiny—namely, that these
18 presumptively invalid distinctions are “actually necessary” to promote a compelling
19 governmental interest, and that they are the least restrictive means of promoting that
20 interest. *See United States v. Alvarez*, 567 U.S. 709, 725 (2012).

21 The Supreme Court’s 2015 decision in *Reed v. Town of Gilbert* changed the way
22 courts must define whether a speech restriction is content based or content neutral,
holding that a sign ordinance was content based on its face because its restrictions

1 “depend entirely on the communicative content of the sign[.]” 576 U.S. 155, 164 (2015).
 2 *Reed*’s impact on the constitutionality of solicitation and panhandling ordinances has
 3 been transformative; the decision led several courts to overrule their prior caselaw
 4 upholding these ordinances. *See, e.g., Norton v. City of Springfield*, 806 F.3d 411, 412
 5 (7th Cir. 2015) and *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233 (D. Mass.
 6 2015) (holding that prohibitions of “aggressive solicitations” and solicitations within
 7 buffer zones were content based—and that “a protracted discussion of [the] issue is not
 8 warranted as substantially all of the Courts which have addressed similar laws since *Reed*
 9 have found them to be content based and therefore, subject to strict scrutiny”).

10 Glendale’s Panhandling Ordinance is content based for the same reason found by
 11 other post-*Reed* courts: whether the Panhandling Ordinance’s criminal prohibitions apply
 12 to a speaker depends on the content of the person’s speech. A request for donations is
 13 treated differently than other types of messages, such as a solicitation for signatures for a
 14 ballot initiative or responses to a public opinion survey. To enforce the ordinance, the
 15 government must read the message on the sign or listen to the verbal communication.
 16 This is the hallmark of a content-based law. The Panhandling Ordinance is therefore
 17 subject to strict scrutiny.

18 **1. The City has not offered a compelling state interest for the**
 19 **Panhandling Ordinance.**

20 Strict scrutiny “is a demanding standard. ‘It is rare that a regulation restricting
 21 speech because of its content will ever be permissible.’” *Brown v. Entm’t Merchants*
 22 *Ass’n*, 564 U.S. 786, 799 (2011) (citation omitted). Indeed, numerous courts have struck

1 down nearly identical panhandling ordinances because they fail or—at the preliminary
2 injunction stage, are likely to fail—strict scrutiny. *See, e.g., Messina v. City of Fort*
3 *Lauderdale*, 546 F. Supp. 3d 1227, 1231, 1243–46, 1248–49 (S.D. Fla. 2021); *Rodgers v.*
4 *Bryant*, 942 F.3d 451, 453–54 (8th Cir. 2019); *Scott v. City of Daytona Beach Fla.*, 740
5 F. Supp. 3d 1205, 1211–12, 1217 (M.D. Fla. 2024); *Thayer*, 144 F. Supp. 3d at 225, 229,
6 235–37; *Browne v. City of Grand Junction, Colo.*, 136 F. Supp. 3d 1276, 1280–81, 1291–
7 94 (D. Colo. 2015); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 182–83, 187–96
8 (D. Mass. 2015).

9 To start, Glendale has not offered any specific interest—compelling or not—for
10 the Panhandling Ordinance. When introducing the proposed ordinances to the Glendale
11 City Council, Deputy City Manager Rick St. John said that his presentation was “not a
12 conversation about homelessness... this is really about traffic safety.” *Sep. 13, 2022 City*
13 *Council Workshop*, 1:53–2:00. Mr. St. John went on to say that, “In conversation with
14 [Glendale Police] Chief Briggs and his staff, it’s become clear that pedestrian fatalities,
15 pedestrian-related accidents in our roadways continue to rise.... Our roadways are just
16 not as safe as they could be for our pedestrians.” *Id.* at 2:01–2:30.

17 Yet when asked by Councilmembers about how specific provisions—such as
18 Section 26-74(1)(c) prohibiting solicitation near a bank, check cashing business, or
19 ATM—relate to traffic safety, Mr. St. John could only speculate that, “I think the reason
20 why we include [section] c is that protection for people that are using ATMs, walk-up
21 ATMs in many cases. So I know ATMs exist in some convenience stores, for example,
22 and we would want to prohibit people from soliciting from people that are using ATMs.

1 It's just a safety concern.” *Id.* at 11:25–11:46.

2 By the time the Council voted on the Panhandling Ordinance, the City’s actual
3 interest in passing the ordinance became clear. Mayor Jerry Weirs explained that

4 what we’re trying to accomplish is many, many things. And one of them, my
5 wife complained to me a few months ago when she was at a local grocery store
6 shopping. As she exited the grocery store, making her way to the car, she had a
7 guy that sort of was walking towards her, a little faster than she could walk,
before she got to the car. And she felt very uncomfortable, very unsafe. He was
aggressively trying to get money from her. This kind of stuff has to stop.
Oct. 11, 2022 City Council Regular, 21:25–22:00.

8 Whether the City’s interest was in traffic safety or public safety, the City failed to
9 present any actual evidence showing that the ordinances it adopted would increase safety
10 at all. This is insufficient to meet the City’s burden. *See, e.g., Lopez*, 559 F. Supp. 2d at
11 1034 (“[m]erely invoking an interest in traffic safety . . . is insufficient” to justify
12 ordinance banning day laborers from soliciting employment from vehicle occupants
13 where town “provided no evidence that traffic safety is endangered” by such solicitation);
14 *Indiana C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 470 F. Supp. 3d
15 888, 904 (S.D. Ind. 2020) (“simply stating that individuals may not want to be
16 approached for a solicitation is not enough to show a compelling state interest”);
17 *Messina*, 546 F. Supp. 3d at 1244 (invalidating panhandling ordinance for which the city
18 offered no “evidence in support of [its] public-safety rationale”) (emphasis omitted).

19 In the absence of a showing that the City considered a strong and particularized
20 factual record before adopting the ordinances, the City cannot meet its burden under strict
21 scrutiny. *See, e.g., Lopez*, 559 F. Supp. 2d at 1035; *Blitch v. Slidell*, 260 F. Supp. 3d 656,
22 669 (E.D. La. 2017). Notably in *Blitch*, the city, unlike Glendale, actually considered

1 statistics concerning complaints, but the Court noted that “fifty-six incidents over two
 2 years . . . does not provide a strong justification for burdening speech.” *Id.* at 670. Here,
 3 Glendale did not rely on *any* factual record to support a public safety or traffic safety
 4 justification for the Panhandling Ordinance and consequently cannot demonstrate a
 5 compelling interest in burdening speech.

6 **2. The Panhandling Ordinance is not the least restrictive means to**
 7 **achieve any assumed compelling state interest.**

8 Even if the City could prove that it was pursuing a “compelling state interest,” the
 9 ordinance would still fail to meet strict scrutiny unless it was “the least restrictive means
 10 of achieving a compelling state interest.” *McCullen v. Coakley*, 573 U.S. 464, 478 (2014).

11 ***a. The “aggressive” solicitation prohibition is not the least***
 12 ***restrictive means to achieve any compelling state interest.***

13 The Panhandling Ordinance prohibits “aggressive” solicitation in a virtually
 14 identical fashion to ordinances that have already been struck down by the post-*Reed*
 15 courts. § 26-74(a)(1). In *McLaughlin*, the aggressive panhandling provisions criminalized
 16 many of the same prohibited behaviors identified in the Panhandling Ordinance. These
 17 included solicitation “intended to or likely to cause a reasonable person to fear bodily
 18 harm”; “intentionally touching . . . without that person’s consent”; using “threatening
 19 language or gestures likely to provoke an immediate violent reaction”; and continuing to
 20 panhandle from a person after that person has “given a negative response to such
 21 soliciting.” 140 F. Supp. 3d at 182–83. The court ruled that these provisions did not meet
 22 the least restrictive alternative test because many of the behaviors criminalized by the
 solicitation law were already criminalized by content neutral laws that burdened less

1 speech. *Id.* at 193. *See also Thayer*, 144 F. Supp. 3d at 229.

2 The conclusions of these courts apply with equal force to Glendale’s attempt to
 3 create a criminal law targeting only those who are engaging in solicitation speech,
 4 because Glendale already has available to it the same array of existing laws that would
 5 punish much of the conduct in the ordinance. *See* A.R.S § 13-2923 (stalking); A.R.S §
 6 13-1203 (assault); A.R.S § 13-2906 (obstruction of a public thoroughfare); A.R.S § 13-
 7 2904 (disorderly conduct); A.R.S § 13-1202 (threatening and intimidating).

8 ***b. The no-solicitation “buffer zones” are not the least***
 9 ***restrictive means to achieve any compelling state interest.***

10 The Panhandling Ordinance also carves out no-solicitation zones that apply to the
 11 public sidewalks and streets throughout the entire city. § 26-74(a)(2)–(6). Speech
 12 requesting an immediate donation or other assistance at certain locations and inside no-
 13 solicitation zones is criminalized, irrespective of how passive and peaceful the solicitor,
 14 while all other types of speech—soliciting petition signatures, political and religious
 15 proselytizing—are free from the ordinance’s restrictions and prohibitions.

16 In the post-*Reed* cases, the courts have repeatedly struck down buffer zones and
 17 location restrictions that were more narrowly tailored in terms of distance than
 18 Glendale’s. *See, e.g., Browne*, 136 F. Supp. 3d at 1293–94; *McLaughlin*, 140 F. Supp. 3d
 19 at 183, 195, 196; *Thayer*, 144 F. Supp. 3d at 226, 228; *Homeless Helping Homeless v.*
 20 *City of Tampa*, 2016 WL 4162882 (M.D. Fla. 2016).

21 The Panhandling Ordinance also restricts solicitation from operators of a motor
 22 vehicle, whether that vehicle is in transit or stopped. § 26-74(a)(6). There are countless

places—sidewalks, cafes, parks—from which a panhandler holding a sign could solicit the driver of a motor vehicle. The City did not show that each of those settings poses a public safety or traffic safety risk that requires this blanket ban on speech. A general desire to keep panhandlers out of sight (and perhaps out of mind) of drivers is hardly a compelling government interest, and the City never even tried to elicit evidence to establish that these speech prohibitions were necessary to promote traffic safety.

D. The Street and Median Ordinance fails intermediate scrutiny.

Content neutral regulations that burden First Amendment activity must survive intermediate scrutiny and “be narrowly tailored to serve a significant governmental interest.” *City of Austin v. Reagan Nat’l Advert. of Austin*, 596 U.S. 61, 76 (2022) (quotation omitted). In other words, the law “must not burden substantially more speech than is necessary to further the government’s legitimate interests.” *McCullen* 573 U.S. at 486 (quotation omitted). The government’s goal must be substantial, the cost “carefully calculated[,]” and the restriction “reasonabl[y] fit” its purpose, all of which the state bears the burden of establishing. *Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 481 (1989).

1. The Street and Median Ordinance serves no concrete, non-speculative state interest.

For the Street and Median Ordinance to survive intermediate scrutiny, the City must articulate a concrete interest the ordinance serves—one that is more than a flimsy excuse to obscure its true aims. This means the government “must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate

1 these harms in a direct and material way.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622,
 2 664 (1994) (internal quotation omitted).

3 Here, the ordinance addresses no concrete traffic or pedestrian safety interest. Mr.
 4 St. John’s presentation to the City Council asserted only general concerns for pedestrian
 5 safety while noting that the number of pedestrian-related accidents had risen, but failed to
 6 provide any evidence, or even assert, that pedestrians sitting or standing on medians, or
 7 “stopping” in a crosswalk while cars are stopped at a red light, were particularly at risk or
 8 involved in any of these accidents. *See supra* at 8.

9 **2. The Street and Median Ordinance is not narrowly tailored to**
 10 **respond to any assumed significant state interest.**

11 Even if the City could prove that it was pursuing a significant state interest, the
 12 Street and Median Ordinance still fails to meet intermediate scrutiny because it is not
 13 narrowly tailored. An ordinance is not narrowly tailored when it “regulate[s] expression
 14 in such a manner that a substantial portion of the burden on speech does not serve to
 15 advance its goals.” *McCullen*, 573 U.S. at 486 (quotation omitted).

16 When considering similar ordinances, courts have invalidated restrictions on
 17 speech on medians and roadsides in light of the significant amount of speech prohibited.
 18 In *Brewer v. City of Albuquerque*, the Tenth Circuit invalidated a ban—narrower than
 19 Glendale’s—on the use of medians “not suitable for pedestrian[s],” defined as “less than
 20 six feet in width” on a road with a “speed limit of 30 miles per hour or faster or located
 21 within 25 feet of an intersection.” 18 F.4th 1205, 1210–11 (10th Cir. 2021). The Court
 22 explained the “fit” to the public safety goal was “impermissibly poor” when “expansive

1 restrictions on speech . . . are juxtaposed against the paltry record evidence of real, non-
2 speculative harms ameliorated by the Ordinance.” *Id.* at 1226. Similarly, in *McCraw v.*
3 *City of Oklahoma City*, the Tenth Circuit invalidated an ordinance that “outlawed
4 pedestrian presence on medians in all streets with a speed limit of forty miles per hour or
5 more.” 973 F.3d 1057, 1063 (10th Cir. 2020). The court found that ordinance placed an
6 impermissibly “severe burden on plaintiffs’ speech” because it “entirely prohibits
7 plaintiffs’ presence on the more than four hundred affected medians.” *Id.* at 1074.

8 For the same reasons, Glendale’s Street and Median Ordinance burdens
9 significantly more speech than necessary. As in *Brewer* and *McCraw*, panhandlers are
10 barred from “the most effective place for their communication.” *McCraw*, 973 F.3d at
11 1074. People in Glendale have long taken to medians and roadways as a safe, cost-
12 effective way to reach a large audience. People use these areas to circulate petitions,
13 demonstrate in support of the Second Amendment, preach, distribute religious materials,
14 raise money for youth sports teams, protest for racial justice, and countless other
15 expressive purposes. Glendale’s paltry evidence cannot support banning all this speech.

16 Glendale also has more effective, less speech-restrictive alternatives at its disposal
17 to address any traffic safety problems that may exist. Although under intermediate
18 scrutiny a restriction on speech need not be the “least restrictive means” of protecting the
19 government interest, *see Ward v. Rock Against Racism*, 491 U.S. 781, 798–99 (1989), a
20 failure to consider alternatives is evidence that Glendale “did not meaningfully tailor the
21 Ordinance to address the interests or harms identified.” *Brewer*, 18 F.4th at 1226.

22 In *McCraw*, the Tenth Circuit found the city failed to meet its burden “[b]ecause

1 the City presents us with no evidence that it contemplated the relative efficacy or burden
2 on speech of any alternatives” and “the only way for the City to evaluate alternatives is to
3 consider them[.]” *McCraw*, 973 F.3d at 1075. *See also Reynolds v. Middleton*, 779 F.3d
4 222, 231–32 (4th Cir. 2015).

5 The same is true here. When the Glendale City Council was presented with the
6 Street and Median Ordinance, it considered no other strategies to promote traffic safety.
7 Rather than considering and implementing empirical solutions which would have no
8 effect on speech, Glendale adopted arguably the most speech restrictive solution possible.

9 **3. No adequate alternative channels of communication are**
10 **available.**

11 Finally, to survive intermediate scrutiny, a regulation of expression must “leave
12 open ample alternative channels of communication.” *Ward*, 491 U.S. at 802. *See also*
13 *McCraw*, 973 F.3d at 1078. The Street and Median Ordinance does not provide adequate
14 alternative channels for Plaintiffs and others. They cannot pick up and move to a new
15 location because the ordinance applies to every location that meets their needs. *See*
16 *McCraw*, 973 F.3d at 1079 (finding no adequate alternatives to medians because “neither
17 roadsides nor sidewalks would provide safe and direct access.”). Thus, the ordinance not
18 only cuts off access to a public forum Plaintiffs and others regularly rely on, but it does
19 so in such a sweeping manner that no adequate alternative forums remain.

20 **E. Both ordinances are vague and substantially overbroad and**
21 **should be invalidated on their face.**

22 “It is established that a law fails to meet the requirements of the Due Process
Clause if it is so vague and standardless that it leaves the public uncertain as to the

1 conduct it prohibits.” *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). Both
2 ordinances here fail that test.

3 First, they fail to adequately define the conduct that is prohibited. For
4 example, the Panhandling Ordinance prohibits “continuing to solicit within five (5)
5 feet of the person being solicited after the person has made a negative response, if
6 continuing the solicitation ... is intended to or reasonably likely to intimidate the
7 person being solicited into responding affirmatively[.]” but defines “solicit” to
8 include the use of signs, and does not define “intimidate” or explain whether an
9 individual must stop displaying a sign once a passerby has “given a negative
10 response.” § 26-74(c). Similarly, the Street and Median Ordinance does not define
11 “median” or “traffic island,” but prohibits stopping “in any painted or raised traffic
12 island or median not designated for use by pedestrians except to wait to cross the
13 roadway at the next pedestrian signal[.]” § 24-161(b). The ordinance does not
14 explain how anyone should know whether a traffic island that is raised and adjacent
15 to, or surrounding, a crosswalk was “designated for use by pedestrians[.]” *Id.*

16 Second, the vagueness of these ordinances allows arbitrary police
17 enforcement. Because it is unclear whether the continued display of a sign after
18 receiving a “negative response,” or standing on a traffic island next to a crosswalk,
19 are violations of the ordinances, it is up to individual police officers to determine
20 whether the ordinances have been violated. Glendale’s use of vague and undefined
21 terms in the challenged ordinances affords police virtually unbridled discretion to
22 decide when the ordinances have been violated. *See, e.g., City of Houston v. Hill*,

1 482 U.S. 451, 467 (1987).

2 Finally, these concerns about discriminatory enforcement are not merely
3 hypothetical. The City demonstrated its intent to enforce the ordinances selectively,
4 while allowing some speakers to violate the ordinances without repercussions. *See,*
5 *e.g., Sep. 13, 2022 City Council Workshop*, 27:18–29:10, 14:22–15:00.

6 **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IN THE**
7 **ABSENCE OF A PRELIMINARY INJUNCTION.**

8 “The loss of First Amendment freedoms, for even minimal periods of time,
9 unquestionably constitutes irreparable injury” that supports a preliminary
10 injunction. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). This rule
11 is particularly appropriate here because panhandlers are soliciting for everyday
12 necessities such as food, gas, and shelter.

13 **III. THE BALANCE OF EQUITIES IS IN THE PLAINTIFFS’ FAVOR**
14 **AND A PRELIMINARY INJUNCTION WILL SERVE THE PUBLIC**
15 **INTEREST.**

16 Upholding the First Amendment is always in the public interest. *See, e.g.,*
17 *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009); *Melendres v.*
18 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Especially here, panhandlers depend
19 upon this activity to meet their basic human needs. It is imperative for this Court to
20 act quickly to lift these invalid restrictions.

21 **CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that this Court
grant a preliminary injunction prohibiting the City from enforcing Glendale City
Code sections 24-161(b) and 26-74.

Respectfully submitted this 30th day of July 2025,

**ASU SANDRA DAY O’CONNOR COLLEGE OF LAW
FIRST AMENDMENT CLINIC, PUBLIC INTEREST LAW FIRM**

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