

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND  
Northern Division**

MARCH ON MARYLAND, INC., *et al.*,

Plaintiffs,

v.

Civil Action No. 18-cv-701

ELLINGTON E. CHURCHILL, JR., *et al.*,

Defendants.

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs<sup>1</sup> seek a preliminary injunction prohibiting Defendants Ellington E. Churchill, Jr., Secretary of the Department of General Services (the “Department”), and Michael Wilson, Chief of the Department’s Capitol Police, from enforcing Md. Code Regs. (“COMAR”) 04.05.01.07 (the “Regulation”) during the pendency of this litigation. Plaintiffs have attempted to solicit contributions on the historic Lawyers’ Mall in Annapolis, Maryland—which is a traditional public forum that has for decades served as a venue for the public to exchange ideas and have their opinions be heard—but were prevented from doing so by the Regulation.

The Regulation—on its face and as it has been applied—infringes on Plaintiffs’ rights to free speech under the First Amendment to the United States Constitution and Article 40 of the Maryland Constitution’s Declaration of Rights. *See* Complaint (“Compl.”) ¶¶ 17–47. It imposes

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<sup>1</sup> Plaintiffs are: March on Maryland, Inc. (“March on Maryland”); Anne Arundel County Indivisible Coalition (“Indivisible”); the Caucus of African American Leaders (the “Caucus”); the Dr. Martin Luther King Jr. Committee (the “MLK Committee”); Michelle Eve Hurwitz (“Hurwitz”); Vickie Gipson (“Gipson”); Monica Lindsey (“Lindsey”); Yasemin Jamison (“Jamison”); and Carl Snowden (“Snowden”). *See* Complaint (“Compl.”) ¶¶ 7–16.

a ban on various types of solicitation on Lawyers' Mall based on the subject matter of the solicitation. As such, the Regulation constitutes a content-based restriction on free speech that cannot survive strict scrutiny. Consequently, Plaintiffs have a substantial likelihood of success on the merits. Plaintiffs, who engage in important social justice work in the community of Annapolis and beyond, are today and will continue to be irreparably harmed by the Defendants' continued enforcement of this unconstitutional restriction on speech. Finally, Plaintiffs' and the public's interest in solicitation on Lawyers' Mall far outweighs any interest Defendants may have in enforcing the Regulation's ban on solicitation.

## **I. BACKGROUND**

### **A. The Solicitation Ban**

The Regulation provides that “the soliciting of alms, money, or contributions, commercial soliciting, the display of commercial advertising, political soliciting, or the collection of private debts, is prohibited on [Department property], except as permitted by § B of this regulation.” COMAR 04.05.01.07.A. The term “soliciting” is undefined. Section B of the Regulation sets forth specific types of solicitation that are exempted from the ban, with “the prior approval of the occupying agency head for scheduling, safety, security, and traffic purposes”:

- (1) Solicitation by national or local campaigns for savings bonds, health, welfare, and charity;
- (2) Solicitations by labor organizations for membership or dues as authorized by law;
- (3) Recruitment campaigns for the Armed Forces, National Guard, and other federal or State agencies, as previously approved by the occupant agencies;
- (4) Operation of vending facilities and concessions as part of the operation of the property for the benefit of employees and the public;

- (5) Personal notices posted by employees on authorized bulletin boards; and
- (6) Activities on portions of the property leased to other individuals or organizations.

COMAR 04.05.01.07.B.

**B. Lawyers' Mall**

The Regulation applies to historic Lawyers' Mall: a public park located at the foot of the Maryland General Assembly building that features prominently a monument of Thurgood Marshall, a Maryland native and the first African American Supreme Court justice. Compl. ¶ 1. Lawyers' Mall has for decades been used by the public as a forum for the exchange of ideas through demonstrations, rallies, marches, and other protected First Amendment activity. *Id.* ¶ 2. Lawmakers can often be seen walking through Lawyers' Mall to enter and leave the General Assembly building, and therefore activists consider Lawyers' Mall an ideal location to engage in public discourse. *See* Declaration of Carl Snowden ("Snowden Decl.") ¶ 4. Because it is an ideal location for public discourse, Plaintiffs intend to continue using Lawyers' Mall in the future for their social justice work. Compl. ¶ 3.

**C. The March For Racial Justice**

In late 2017, Plaintiffs March on Maryland and Indivisible, through the efforts of Plaintiffs Hurwitz, Lindsey, and others, organized the March For Racial Justice (the "Rally"), whose mission was to raise awareness about issues affecting racial minority communities in Annapolis and beyond. *Id.* ¶¶ 28–29. The Rally was also being held in honor of the renowned civil rights activist Fannie Lou Hamer. *Id.* Hurwitz applied for and was issued a permit for the Rally by the Department. *Id.* ¶ 30. As part of the permitting process, Hurwitz and a colleague, Plaintiff Vickie Gipson, attended a walk-through of Lawyers' Mall with two members of the

Department's Capitol Police. *Id.* ¶ 31.<sup>2</sup> During that walk-through, Gipson inquired whether Plaintiffs could sell tickets to the Fannie Lou Hamer Awards, an event hosted by Plaintiff MLK Committee that was scheduled to take place nearby, shortly after the Rally. *Id.* ¶¶ 32–33. The police officers informed Hurwitz and Gipson that no fundraising was permitted at Lawyers' Mall, although they would be allowed to make an announcement providing information about the Fannie Lou Hamer Awards event, without soliciting money. *Id.* ¶ 33; Declaration of Vicky Gipson ("Gipson Decl.") ¶ 3.

The Rally was held as planned on October 1, 2017, attracting approximately 80 participants, including several speakers who expressed their views regarding racial justice issues from a raised podium at Lawyers' Mall, and activists who carried signs and placards bearing the names and faces of people of color who have been injured or killed in incidents involving police officers. Compl. ¶¶ 34; Declaration of Michelle Eve Hurwitz ("Hurwitz Decl.") ¶ 7. Based on the police officers' statements regarding solicitation, however, Plaintiffs did not make any requests for donations or engage in any fundraising at the Rally, including by refraining from selling tickets to the Fannie Lou Hamer Awards event. Compl. ¶ 35; Gipson Decl. ¶ 5. Hurwitz, who pays the costs of March on Maryland's rallies and demonstrations from her personal funds, would welcome having the ability to solicit donations during such events to defray the costs associated with the organization's work. Compl. ¶ 36; Hurwitz Decl. ¶ 12. However, the Regulation prohibits Hurwitz and March on Maryland from making such a petition on Lawyers' Mall.

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<sup>2</sup> Gipson is a member of the Caucus and the MLK Committee. Gipson Decl. ¶ 1.

#### **D. The Vigil for the Victims of the Las Vegas Shooting**

On the evening of October 1, 2017, a lone gunman in Las Vegas, Nevada, killed 58 people and injured over 800 other concert-goers. Compl. ¶ 37. One of the victims, who was seriously injured, is a native of Maryland. *Id.*; Snowden Decl. ¶ 9. After learning about this tragedy, Plaintiffs—through Hurwitz, Lindsey, Jamison, Snowden, and others—immediately began making arrangements for a vigil in support of the Las Vegas victims and their families (the “Vigil”) to be held at Lawyers’ Mall. *See* Compl. ¶ 38. Hurwitz again applied for and was issued a permit for the Vigil on October 2, 2017. *Id.*; Hurwitz Decl. ¶ 10.

Shortly after Gipson learned about the restriction on solicitation on Lawyers’ Mall, she notified Plaintiff Snowden. Compl. ¶ 40; Gipson Decl. ¶ 4. Snowden thereafter called Capitol Police Chief Michael Wilson to make further inquiries about the solicitation ban. Snowden Decl. ¶ 8. Defendant Wilson told Snowden that he would seek clarification regarding the solicitation ban. *Id.* Several days later, Snowden followed up on his inquiry via email, mentioning that he had hoped to raise funds for the Las Vegas shooting victims at the Vigil. Ex. 1 (ACLU Letter dated Jan. 12, 2018, Attachment B). After the Vigil, Wilson responded with an email that simply copied and pasted the Regulation, *id.* Ex. 1 (Attachment A); Snowden Decl. ¶ 8, indicating, by its terms, that such fundraising was prohibited.

Because he was instructed that the Regulation prohibited fundraising at Lawyers’ Mall, Snowden did not attempt to solicit donations from Vigil attendees to assist the local victim of the Las Vegas shooting. Snowden Decl. ¶ 11. In the absence of the solicitation ban, Snowden would have made an announcement asking Vigil attendees to make monetary donations into a collection box to benefit the Maryland victim and her family. *Id.*

The Vigil was held on the evening of October 4, 2017, at Lawyers' Mall. Compl. ¶ 42. Attendees at this peaceful event lit candles, some said prayers for the shooting victims and their families, and several speakers expressed their opinions and emotions in the wake of the shooting, including some who had themselves been victims of gun violence. *Id.*; Declaration of Yasemin Jamison ("Jamison Decl.") ¶ 5. The Vigil lasted approximately two hours. Jamison Decl. ¶ 5.

#### **E. Plaintiffs' Letter and Defendants' Response**

On January 12, 2018, Plaintiffs, through counsel, sent a letter to the Department and its counsel explaining Plaintiffs' concerns that the Regulation is unconstitutional and requesting that the Department cease its enforcement of the Regulation or risk legal action. Compl. ¶ 45 & Ex. 1. Plaintiffs asked the Department to respond to their request to suspend enforcement of the Regulation on or before February 1, 2018. Ex. 1. In a statement to the press, the Department's spokesman defended the Regulation, stating that it "prevents political organizations from abusing state/public property." Compl. ¶ 46 & Ex. 2 (Baltimore Sun, *ACLU of Maryland, African-American Caucus Challenge Ban on Raising Funds on State Grounds* (Jan. 16, 2018), <http://www.baltimoresun.com/news/maryland/politics/bs-md-aclu-dgs-letter-20180116-story.html>). On February 1, 2018, the Department, by letter, claimed that the Regulation "promotes a substantial government interest in protecting the safety and welfare of the public," and declined to cease its enforcement of the Regulation. Compl. ¶ 47 & Ex. 3 (Department's Letter dated Feb. 1, 2018). The letter continued to state that "[t]he regulations are narrowly tailored and are neutral in its content, and do not infringe upon anyone's First Amendment rights." *Id.* Plaintiffs dispute these claims.

## II. LEGAL STANDARD

Because a preliminary injunction is a form of equitable relief intended to prevent irreparable harm to a plaintiff while a lawsuit remains pending, *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014), to justify such relief Plaintiffs must demonstrate: (1) a substantial likelihood of success on the underlying merits of their free speech claims; (2) that they are likely to suffer irreparable injury without the entry of an injunction; (3) that the balance of hardships between Plaintiffs and Defendants warrants the relief; and (4) that the injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Metro. Reg'l Info. Sys., Inc. v. Am. Home Realty Network, Inc.*, 722 F.3d 591, 595 (4th Cir. 2013).

First, demonstrating a likelihood of success does not require a plaintiff to “establish a certainty of success;” instead, the plaintiff “must make a clear showing that he is likely to succeed at trial.” *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (quoting *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013)). Second, the loss of free speech rights, even for a small period of time, is irreparable harm. *See Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Third, the balance of hardships weighs in favor of preventing the enforcement of a potentially unconstitutional restriction on speech. *See Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (the government “is in no way harmed by issuance of a preliminary injunction [that] prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.”). Finally, “upholding constitutional rights surely serves the public interest.” *Id.* Based on these principles, Plaintiffs submit that Defendants should be enjoined from enforcing the Regulation during the pendency of this case.

### III. ARGUMENT

#### A. Plaintiffs Have A Substantial Likelihood of Success On the Merits Of Their Free Speech Claims.

The Regulation is an unconstitutional restriction on speech under the First Amendment to the United States Constitution and the Maryland Declaration of Rights.<sup>3</sup> There is no question that “solicitation is a recognized form of speech protected by the First Amendment.” *United States v. Kokinda*, 497 U.S. 720, 725 (1990); *see also Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980) (“[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.”). Furthermore, Lawyers’ Mall fits the characteristics of a traditional public forum: it is “an open public thoroughfare” like a “park or mall,” its objective use is “as a place of open public access,” it is “part of the outdoor grounds of a seat of legislative and/or executive power,” and therefore a place “which by history and tradition has been open and used for expressive activity.” *Warren v. Fairfax Cnty.*, 196 F.3d 186, 189–90 (4th Cir. 1999). “[T]he guiding First Amendment principle that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content applies with full force in a traditional public forum.” *McCullen v. Coakley*, 573 U.S. \_\_\_, 134 S. Ct. 2518, 2529 (2014) (quotation marks and citations omitted); *see also Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (restrictions on speech at a “place for expressive activity” must

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<sup>3</sup> Plaintiffs allege that the Regulation violates their rights under Article 40 of the Maryland Constitution’s Declaration of Rights. *See* Compl. ¶¶ 6, 5–61. For purposes of this analysis, “Article 40 of the Maryland Declaration of Rights is co-extensive with the First Amendment, and is construed in *pari materia* with it.” *See Kensington Volunteer Fire Dep’t., Inc. v. Montgomery Cnty.*, 684 F.3d 462, 468 n.3 (4th Cir. 2012); *Borzilleri v. Mosby*, 189 F. Supp. 3d 551, 557 (D. Md. 2016), *aff’d*, 874 F.3d 187 (4th Cir. 2017).

further a compelling state interest, and the government bears the burden of showing that the restrictions are “narrowly drawn to achieve that end”). In light of these principles, Plaintiffs will be able to show that the Regulation, which is a content-based restriction on speech, runs afoul of the First Amendment’s protection of free expression at Lawyers’ Mall.

**1. The Regulation Is, On Its Face, A Content-Based Restriction on Speech.**

Plaintiffs’ challenge to the Regulation is governed by the Supreme Court’s decision in *Reed v. Town of Gilbert*, 576 U.S. \_\_\_, 135 S. Ct. 2218 (2015). The Court in *Reed* examined the constitutionality of an Arizona ordinance that regulated certain categories of outdoor signs, including signs directing the public to the location of religious events. *See id.* at 2224–26. The Court concluded that the ordinance was content-based—and therefore subject to strict scrutiny—because whether the ordinance applied to a given sign depended on the message the sign conveyed. *Id.* at 2227–30. Assuming, without holding, that the town’s claimed interests in support of the ordinance were compelling, the Court held that the sign ordinance was not narrowly tailored to achieve the town’s goals. *Id.* at 2232.

Under *Reed*’s analysis, the Regulation at issue here similarly is an unconstitutional restriction on speech under the First Amendment to the United States Constitution and the Maryland Declaration of Rights. “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive.” *Id.* at 2228. To determine whether a law is content-based on its face, the Supreme Court advised: “a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.” 135 S. Ct. at 2230. A restriction on speech is content-based if it requires “enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred.” *McCullen*, 134 S. Ct. at 2531 (quotation marks and citation

omitted); *see Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Schs.*, 457 F.3d 376, 386 (4th Cir. 2006) (school district’s policy that gave a school official unbridled authority to determine which speakers could access public schools’ take-home flyer forum was unconstitutional because, “[t]he danger of such boundless discretion . . . is that the government may succeed in unconstitutionally suppressing particular protected speech by hiding the suppression from public scrutiny”).

The Regulation at issue here is a content-based restriction on speech: it restricts solicitation on certain public grounds unless that solicitation meets one of six enumerated exceptions, including solicitations for charity or by labor unions. *See* COMAR 04.05.01.07.A & B. Defendants or other Maryland authorities must scrutinize the content of speech to determine whether that speech violates the Regulation. Thus, to determine whether a solicitation is permitted under the Regulation, Defendants must determine the “subject matter” of the solicitation. *See Reed*, 135 S. Ct. at 2227 (“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.”). Accordingly, the Regulation must survive strict scrutiny to avoid its invalidation as an unconstitutional restriction on speech, and as discussed below, it cannot meet this exacting standard.

## **2. The Regulation Cannot Survive Strict Scrutiny.**

The strict scrutiny standard “requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Reed*, 135 S. Ct. at 2231 (quoting *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2817 (2011)). Defendants shoulder the burden to establish that the Regulation—which prohibits various forms of solicitation based on the subject matter of the solicitation, including political solicitation at

Lawyers' Mall—both furthers a compelling governmental interest and is narrowly tailored to achieve that goal. The Regulation itself does not identify its purpose, *see generally* COMAR 04.05 (subtitle of the Code of Maryland Regulations pertaining to public buildings and grounds), nor does any legislative or regulatory history exist that explains the Regulation's ban on solicitation.

The only justifications Defendants have offered for the Regulation's ban on solicitation are *post hoc* statements to the press and to Plaintiffs' counsel. After Plaintiffs' counsel explained why the Regulation is unconstitutional, *see* Compl. ¶ 45 & Ex. 1, the Department's spokesman stated to the press that the Regulation "prevents political organizations from abusing state/public property. The organization is more than able to host demonstrations but cannot raise money." *Id.* ¶ 46 & Ex. 2. Thereafter, in its February 1, 2018 letter to Plaintiffs' counsel, Defendants stated that the Regulation promotes "a substantial government interest in protecting the safety and welfare of the public." *Id.* ¶¶ 21, 47 & Ex. 3. These *post hoc* assertions—which even Defendants do not describe as compelling—are of no avail to the Department. *See, e.g., Shaw v. Hunt*, 517 U.S. 899, 908 n.4 (1996) ("To be a compelling interest, the State must show that the alleged objective was the legislature's 'actual purpose' for the discriminatory classification, and the legislature must have had a strong basis in evidence to support that justification." (emphasis added and citation omitted)); *see also McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 190 (D. Mass. 2015) ("[A]fter-the-fact explanations cannot help a law survive strict scrutiny."). Defendants' attempts to justify the Regulation are conclusory and devoid of any analysis that would support a government interest or show that the Regulation is narrowly tailored to that end.

### 3. The Weight of Authority Supports Plaintiffs' Free Speech Claim.

The Regulation is a content-based restriction on speech that prohibits only certain types of solicitation, with the purported goal of protecting the public welfare or preventing abuse of public grounds. The cases rejecting as unconstitutional similar speech restrictions support the entry of an injunction in favor of Plaintiffs in this case. In *Cahaly v. Larosa*, the Fourth Circuit struck down as unconstitutional a South Carolina anti-robocall statute that prohibited political speech. 796 F.3d 399, 406 (4th Cir. 2015). The Fourth Circuit concluded that the anti-robocall statute was content-based on its face, because it applied to calls containing a commercial or political message but not calls made for other purposes. *Id.* at 405. Furthermore, the statute was not narrowly tailored to serve the government's stated purpose to "protect residential privacy and tranquility from unwanted and intrusive robocalls," because the government could have applied "less restrictive alternatives" such as "time-of-day limitations, mandatory disclosures of the caller's identity, or do-not-call lists." *Id.*

Furthermore, courts have held that local ordinances prohibiting solicitation of charitable funds encroach on free expression protected by the First Amendment. For example, in *Thayer v. City of Worcester*, a Massachusetts federal district court invalidated an anti-solicitation ordinance, finding that it was a content-based restriction on its face because it prohibited speech intended to elicit donations or other things of value and was insufficiently tailored to achieve the government's stated interest in protecting the public's safety and welfare. 144 F. Supp. 3d 218, 229, 233 (D. Mass. 2015). The court cautioned that,

[p]ost *Reed*, municipalities must go back to the drafting board and craft solutions which recognize an individual's right to continue to solicit in accordance with their rights under the First Amendment, while at the same time, ensuring that their conduct does not threaten their own safety, or that of those being solicited. In doing so, they must define with particularity the threat to public safety

they seek to address, and then enact laws that precisely and narrowly restrict *only* that conduct which would constitute such a threat.

*Id.* at 237.

A Massachusetts federal district court similarly struck down certain anti-panhandling ordinances, finding that under *Reed*, the provisions were “plainly content-based” because they “target[ed] a particular form of expressive speech—the solicitation of immediate charitable donations,” and because “a police officer would have to listen to a person’s solicitation and determine whether he was asking for an immediate donation before finding a violation.” *McLaughlin*, 140 F. Supp. 3d at 185, 186. Declining to find that the city’s stated interest in promoting tourism and business constituted a “sufficiently important interest to allow content-based restrictions on speech,” the court invalidated the city’s ordinances. *Id.* at 188–90.

Similarly, the Seventh Circuit in *Norton v. City of Springfield* struck down an anti-panhandling ordinance, rejecting the city’s contention that the ordinance, which prohibited requests for immediate donations on public grounds, was content-neutral. The *Norton* Court ruled that “‘regulation of speech is content based if a law applies to particular speech because of the topic discussed *or* the idea or message expressed.’ [The city’s] ordinance regulates ‘because of the topic discussed.’” 806 F.3d 411, 412 (7th Cir. 2015) (quoting *Reed*, 135 S. Ct. at 2227). And because the city “ha[d] not contended that its ordinance [was] justified,” the Seventh Circuit remanded the case to the district court for the entry of an injunction. *Id.* at 413.

All of the cases discussed above establish that Defendants’ claim that the Regulation is “neutral in its content,” Compl. ¶ 47 & Ex. 3, is of no avail under the Supreme Court’s binding analysis in *Reed*, because the Regulation prohibits only certain types of solicitation based on the message conveyed in the solicitation, *see* COMAR 04.05.01.07.B (allowing solicitation by,

among others, unions for membership dues and by national and local campaigns for charity). Plaintiffs will be able to show that the Regulation constitutes an unconstitutional restriction on free speech and, therefore, a preliminary injunction should be entered at this stage.

**B. The Regulation Is Unconstitutional As Applied To Plaintiffs.**

Plaintiffs will be able to establish that the Regulation is unconstitutional as applied to them and their activities on Lawyers' Mall. In contrast to a facial challenge, "an as-applied challenge is 'based on a developed factual record and the application of a statute to a specific person.'" *Educ. Media Co. at Va. Tech. Inc. v. Insley*, 731 F.3d 291, 298 n.5 (4th Cir. 2013) (quoting *Richmond Med. Ctr. For Women v. Herring*, 570 F.3d 165, 172 (4th Cir. 2009) (en banc)). While Plaintiffs maintain that the Regulation is facially unconstitutional, Plaintiffs will be able to establish a factual record establishing that by applying the Regulation to them the Department impermissibly denied Plaintiffs the ability to engage in soliciting—a protected form of speech under the First Amendment—during the Rally, *see* Compl. ¶¶ 28–36; Hurwitz Decl. ¶ 3–8; Gipson Decl. ¶ 2–5; Snowden Decl. ¶ 5–7, and the Vigil, Compl. ¶¶ 38–45, Jamison Decl. ¶ 4–5; Snowden Decl. ¶ 9–11; Hurwitz Decl. ¶ 9–10. These restrictions prohibited lawful solicitation by Plaintiffs on Lawyers' Mall, *see* Compl. ¶¶ 32, 39, which as a traditional public forum is subject to the strictest protections under the First Amendment, *McCullen*, 134 S. Ct. at 2529. Given Plaintiffs' likelihood of success on their as-applied challenge, a preliminary injunction should be entered to prevent recurrent violations of Plaintiffs' constitutional rights while the Court considers the merits.

**C. Plaintiffs Have And Will Continue To Suffer Irreparable Harm.**

Given the strong likelihood of success on the merits of Plaintiffs' free speech claims, a preliminary injunction should be entered to protect Plaintiffs from Defendants' ongoing

encroachment upon their right to free expression. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality); *see also Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 190–91 (4th Cir. 2013) (“[I]n the context of an alleged violation of First Amendment rights, a plaintiff’s claimed irreparable harm is inseparably linked to the likelihood of success on the merits of plaintiff’s First Amendment claim.”). Here, Plaintiffs intend to continue using Lawyers’ Mall in the future for their social justice work and wish to solicit funds to support that work. Compl. ¶ 3; Hurwitz Decl. ¶ 11; Gipson Decl. ¶ 6; Jamison Decl. ¶ 6; Snowden Decl. ¶ 12. Plaintiffs have already been, and will continue to be, deprived of opportunities to engage in solicitation at Lawyers’ Mall without the entry of an injunction.

**D. The Balance of Hardships and Public Interest Weigh In Favor of Entering a Preliminary Injunction.**

Defendants cannot point to any interest in violating Plaintiffs’ First Amendment rights by continuing their enforcement of the Regulation, and as the Fourth Circuit has stated, “[the] state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional.” *Giovani Carandola*, 303 F.3d at 521. And because it is always in the public’s interest to avoid violations of a party’s constitutional rights, *see id.*, the Court should issue a preliminary injunction to prevent Defendants’ continued enforcement of the Regulation.

**IV. CONCLUSION**

Plaintiffs will be able to establish that COMAR 04.05.01.07 is an unconstitutional restriction on protected speech, and it would run counter to the public interest and Plaintiffs’ rights under the First Amendment and the Maryland Constitution should Defendants not be enjoined from enforcing the Regulation during the pendency of this litigation. Plaintiffs

respectfully request that that Court enter a preliminary injunction barring Defendants from enforcing COMAR 04.05.01.07, and entering any other relief as the Court deems just and fair.

Dated: March 8, 2018

Respectfully submitted,

/s/ Scott H. Christensen

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