IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ERNEST GIARDINO, Plaintiff, vs. **TOWN OF CHAPIN, SOUTH CAROLINA,** Defendant.	Civil Action No: 3:25-cv-07321-MGL **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Ernest Giardino ("Giardino") brings his Motion for Preliminary Injunction against Defendant Town of Chapin, South Carolina (also "Town" or "Chapin"), and its agents, to secure relief from the Chapin Ordinance § 14.1001, *et seq.*, entitled "Parades. Demonstrating. Picketing." (also "Ordinance") as it applies to Giardino's religious signs.

STATEMENT OF FACTS

Giardino's Evangelistic Speech

Giardino is a resident of Chapin, a retiree, and an evangelical Christian who wants to share his faith with others. (Verified Complaint [VC], ¶ 12; Declaration of Ernest Giardino, attached to Motion for Preliminary Injunction [MPI] as Exhibit [Ex.] A, ¶¶ 2-3, 5-6). Evangelism is a calling for him, an essential part of his Christian faith. (Ex. A, ¶¶ 6-7). He imparts a religious message that salvation can be obtained by believing in Jesus Christ, a message known in the Christian faith as the gospel. (VC, ¶¶ 12-13; Ex. A, ¶¶ 5-6, 8).

To deliver this gospel message, Giardino displays it, by holding a 20-inch by 24-inch sign attached to a short handle while standing on a public sidewalk or public right-of-way in the town limits of Chapin, South Carolina. (VC, ¶ 14; Ex. A, ¶ 9). He uses signs so he can convey short,

pithy, and positive messages without causing a disruption (Ex. A, ¶¶ 10-12, 16), cycling through various signs, about 9 or 10 of them, some of which are double-sided, and all focusing on the gospel. (VC, ¶¶ 14-16; Ex. A, ¶¶ 14-15). The statements on his signs include "Trust Christ He paid the price," "He saved others – Jesus – He'll save you," "Give your burdens to Jesus," "He did this [referring to dying on the cross] for you," "Don't give up! There is hope in Jesus," "Seek ye the Lord while he may be found!," "Say it and mean it…God be merciful to me a sinner…," "Christ Jesus came to save sinners," "Sin – Face it now or face Him later," and "Death is Not the End, Ye Must Be Born Again." (VC, ¶ 15; Ex. A, ¶ 16; Photographs of Giardino's Signs, true and correct copies attached to MPI as Exs. "B," "C," "D," "E," "F," "G," "H," "I," "J," & "K").

Giardino considers signs a unique and irreplaceable method for sharing the gospel, facilitating a way for him to communicate his message to significant numbers of people without causing anyone to stop or speak with him—yielding a far greater impact than he could have otherwise. (VC, ¶ 18; Ex. A, ¶¶ 10-12). He does not try to convey his beliefs orally, but remains silent while holding his signs, except when approached by others. (VC, ¶ 20; Ex. A, ¶ 12). Nor does hold up signs to picket or protest. (VC, ¶ 21; Ex. A, ¶ 14). His sole purpose is to proclaim Christ Jesus and the hope found in Him. (Ex. A, ¶ 14).

Giardino seeks to hold his signs in downtown Chapin on Thursdays, almost every week, standing for a little over an hour each time—typically during rush hour or when students are let out of school. (VC, ¶¶ 19, 24; Ex. A, ¶¶ 11, 17-20). To maximize the number of people he can reach, Giardino generally displays his signs in public places where he can expect meaningful amounts of vehicular traffic, usually in one of three downtown locations, being mindful not to block pathways, disrupt traffic, or bother customers traversing in and out of businesses. (VC, ¶¶ 17, 22–23; Ex. A, ¶¶ 12-13, 17, 20-21). He chooses his specific location according to where he

believes God is leading him to go on that particular day, often switching locations because of spontaneous convictions to move to a different place. (VC, ¶ 17; Ex. A, ¶¶ 22-23).

Initially, Giardino Was Free to Use Religious Signs in Chapin

Giardino began his sign evangelism in October of 2023, and for approximately eight months, he was able to freely display his messages on the public rights-of-way in Town without interference from Chapin police or other Town officials. (VC, ¶¶ 24–25; Ex. A, ¶¶ 24-25).

Chapin Requires Giardino Obtain a Permit to Hold Religious Signs in Public Spaces

This freedom ended on Thursday, June 20, 2024 (VC, ¶ 26), when Giardino was standing at the corner of Chapin Road and Lexington Avenue, adjacent to a parking lot of a local restaurant named S&S Destination, and holding a sign stating, "Trust Christ he paid the price" on one side of the sign and "He saved others – Jesus – He'll save you" on the other side. (VC, ¶¶ 27–28; Ex. A, ¶¶ 26-27; Photograph of public right-of-way on northwest portion of the intersection of Chapin Road and Lexington Avenue, true and correct copy attached to MPI as Ex. "L"). After Giardino conducted this expressive activity without issue for about an hour, a Chapin police officer approached him and warned him that he needed to obtain a permit from the Town to display his religious messaging on public property. (VC, ¶ 28; Ex. A, ¶¶ 28-32).

Giardino acknowledged the warning and soon left, but he was taken aback by the directive to get a permit. (VC, ¶¶ 28–29; Ex. A, ¶ 33). Since Chapin allows others to display non-religious signs on public ways, and specifically, at intersection corners in Town, attaching the signs to poles or placing them in the ground, Giardino was perplexed as to why he needed a permit for his religious signs. (VC, ¶ 30; Ex. A, ¶¶ 34-36; Photograph of sign in public right-of-way on northeast portion of the intersection of Chapin Road and Lexington Avenue, true and correct copy attached to MPI as Ex. "M"; Photograph of signs in public right-of-way on southeast portion of the

intersection of Chapin Road and Amicks Ferry Road, true and correct copy attached to MPI as Ex. "N").

Believing, hoping, the police officer was mistaken, Giardino visited Chapin Town Hall the next day, June 21, 2024, to inquire about the permit requirement for his signs. (VC, ¶ 31; Ex. A, ¶¶ 37-38). There, he met with Chief of Police, Thomas W. Griffin ("Griffin"), and the Code Enforcement Officer at the time, John Patton ("Patton"). (VC, ¶ 32; Ex. A, ¶¶ 39-40). But to Giardino's dismay, the officials advised that his religious signs fall within the purview of Ordinance § 14.1001, *et seq*., entitled "Parades. Demonstrating. Picketing.," and that he would need an approved permit before he could display his signs. (VC, ¶¶ 33–34; Ex. A, ¶¶ 41-42). Giardino objected to this requirement because he did not intend to participate in a parade or demonstrate or picket, but Griffin and Patton insisted he obtain a permit to hold a religious sign in public. (VC, ¶ 34; Ex. A, ¶¶ 42-43). They handed Giardino a permit application entitled "PUBLIC DEMONSTRATION PERMIT APPLICATION, CHAPTER 14 – ARTICLE X. PARADES. DEMONSTRATION. PICKETING.," which included the full text of the Ordinance:

> 14.1001. - PERMIT REQUIRED. MARCHES, PICKETING, DEMONSTRATIONS.
>
> a. It shall be unlawful to demonstrate, picket, or march unless a permit to perform such actions has been secured. To secure a permit, those desiring same shall make application, duly signed by the individual organizer or by an officer of the organization, and submit it unto the Municipal Clerk. An application for a permit will be reviewed for subsequent approval by the Mayor, or Mayor Pro Tern if the Mayor is unavailable, with notice to Council. Applications must be submitted at least fourteen (14) days before the time of such demonstration, picket, or march. The application shall state the time, duration, purpose, the number of persons or vehicles to be engaged, the area in which said demonstration, picketing, or marching will occur and the individual, group of individuals or organization directing and responsible for said demonstration, picketing, or marching.
>
> b. When picketing or engaging in "demonstrations," no person shall:
>
> 1. Use on the streets or public places any verbal abuse, including curses, insults or threats, or acts of violence, directed against any person.

2. March, parade, protest or picket in any manner other than as permitted by this article, except with the express written consent and approval of the Mayor and Council.
3. Engage in riotous and loud conduct which invades the privacy of homes or businesses.
4. Damage or destroy or injure the person or property of others.
5. Block, in any manner, the streets and means of ingress and egress to places of business.
6. Interfere with, in any manner, or obstruct any official in the performance of his duties.
7. Interfere in any matter with the attendance, during school hours, of children in the public schools, by inciting or urging them to participate in demonstrations or for any other unlawful purpose or reason, or permitting them to be or remain in churches or other places used in such demonstrations.
8. Picket other than in accordance with the following principles:
   (a) In small numbers.
   (b) In a manner so as not to interfere with pedestrians or vehicular traffic.
   (c) In a manner so as not to block entrances or exits to or from picketed establishments.
   (d) No more than four (4) pickets posted at any one (1) time at any one (1) business establishment.
   (e) No more than two (2) business establishments picketed in the same block at the same time.
   (f) No picket trespassing upon the property of the business establishment being picketed.
   (g) Pickets patrolling on the sidewalk at a distance of not less than eight (8) feet from every other picket.
   (h) No person or persons, whether in sympathy with the pickets or not, shall assemble, loiter, congregate or engage in any kind of picketing of the establishment being picketed except those picketing in their official capacity.
9. "Demonstrate," other than in accordance with the following principles:
   (a) Walking not more than two (2) abreast upon the public sidewalks or in groups of not more than thirty (30) persons.
   (b) Observe all traffic control devices.
   (c) Walking close to the building line or curb so as not to interfere with or obstruct other pedestrian traffic on the sidewalk.

> (d) Assemble peacefully and speak peacefully for a period of time not exceeding thirty (30) minutes and when traffic to and from places of business or employment is not at its peak, and in such circumstances as will not unduly disrupt the public peace, and conducted in such a manner as not to deprive the public of adequate police and fire protection.
>
> c. This section shall not apply to funeral processions, the United States Armed Forces, the military forces of this state or the Police and Fire Departments of the Town.
>
> 14.1002. – SAME. ISSUANCE.
>
> Upon receipt of an application for a permit for a parade, procession or gathering, the Mayor and Council shall, in its discretion, issue a permit therefor, subject to considerations of the public convenience and public welfare.
>
> 14.1003. – IMPOSITION OF RESTRICTIONS.
>
> a. The Mayor and Council shall have the authority to impose such restrictions, conditions and safeguards upon the conduct of a parade, procession or public gathering as it shall deem fit or proper.
>
> b. Cults, masked faces or organizations practicing discrimination against anyone shall not be permitted to assemble or parade in the Town of Chapin.

(VC, ¶ 36; Ex. A, ¶¶ 43-44; Code of Ordinances for the Town of Chapin, § 14.1001, *et. seq*., true and correct copy attached to the MPI as Ex. "O").

After reading the Ordinance, Giardino noted the additional burdens attached to the permit, like the mayor's discretion to deny the permit, the fourteen-day advance notice requirement, and the need to provide identity and content of speech, along with the thirty-minute time constraint on sign use. (VC, ¶ 37; Ex. A, ¶¶ 44-48, 50; Ex. O). At the same meeting, Patton also informed Giardino that he had to move to a different sidewalk every fifteen minutes to comply with the permit. (VC, ¶ 38; Ex. A, ¶ 49).

Giardino Encounters Significant Difficulties with Permit Requirement

Giardino was baffled by the permit requirement and continued to doubt the legality of it, but he began applying for permits because he did not want to surrender his sign ministry. (VC, ¶ 39; Ex. A, ¶ 51; Permit application for sign use on 8/22/24, true and correct copy attached to MPI

as Ex. "P"; Permit application for sign use on 8/29/24, true and correct copy attached to MPI as Ex. "Q"; Permit application for sign use on 9/5/24, true and correct copy attached to MPI as Ex. "R"; Permit application for sign use on 9/12/25, true and correct copy attached to MPI as Ex. "S"). He saw the permit application requires he provide the: (i) name of a contact individual, (ii) name of the business or organization, (iii) contact information, (iv) event name or purpose, (v) date of demonstration, (vi) beginning and end time of demonstration, (vii) location of demonstration, and (viii) type of activity during demonstration. (VC, ¶ 40). As contemplated by the Ordinance, the permit application further confirmed the mayor retained the option to approve or deny the request for any reason or for no reason at all. (VC, ¶ 41; Ex. P; Ex. Q; Ex. R; Ex. S).

On July 11, 2024, Giardino filled out and submitted four separate applications, fourteen days prior to the earliest date specified for sign use, informing the Town of his purpose being "[h]olding up signs about Jesus Christ." (VC, ¶ 42; Ex. A, ¶¶ 52-53; Ex. P; Ex. Q; Ex. R; Ex. S). He specified two separate locations in the applications due to the rule that requires him to move every fifteen minutes. (VC, ¶ 43; Ex. A, ¶ 52; Ex. P; Ex. Q; Ex. R; Ex. S). In this set of applications, Giardino disclosed an intention to hold a sign for one hour and fifteen minutes, which triggered a handwritten reminder from the Mayor each time, stating, "Time is Limited to 30 Minutes." (VC, ¶ 43; Ex. A, ¶¶ 54-55; Ex. P; Ex. Q; Ex. R; Ex. S).

Despite obtaining approved permits, Giardino was stopped again in August of 2024. (VC, ¶ 44; Ex. A, ¶¶ 56-61). Giardino had been standing with a sign at the intersection of Chapin Road and Lexington Avenue, near S&S Destination, when two Chapin police officers approached him and demanded that he produce a copy of his permit. (VC, ¶ 44; Ex. A, ¶ 57). Giardino did not have a copy of the permit on him—he was unaware of a need to do so, as there was no such obligation indicated in the Ordinance or the permit application. (VC, ¶ 45; Ex. A., ¶ 58; Ex. P;

Ex. Q; Ex. R; Ex. S). Still, the police officers insisted Giardino keep a copy of the permit on his person anytime that he went out with a sign. (VC, ¶ 45; Ex. A, ¶¶ 59-60).

On another occasion, Giardino believed God was compelling him to move from the street corner near S&S Destination to the opposite corner in front of Sonic Drive-In – for a length of time that Giardino did not believe was covered by that day's permit. (VC, ¶ 46; Ex. A, ¶¶ 62-63). He subsequently learned that this relocation was providential. (VC, ¶¶ 46–47; Ex. A, ¶¶ 63-66). At the new corner, a young man came up to Giardino, handed him several bullets, and told him that he decided not to go through with a suicide attempt after seeing Giardino's sign about the gospel. (VC, ¶ 47; Ex. A, ¶¶ 64-65). Though overjoyed by how God used his sign, Giardino knew the young man's life might not have been spared had he stuck to the time specifications of the permit. (VC, ¶ 47; Ex. A, ¶ 66).

To compound the problems Giardino was facing with the permit scheme, he also encountered several instances when he was unable to display his sign on the date specified by the permit due to inclement weather or some unanticipated conflict on the scheduled date. (VC, ¶ 48; Ex. A, ¶ 67).

Giardino Seeks Relief from the Ordinance Without Litigation

Wishing to challenge the permit requirement for his signage, but wanting to avoid litigation, Giardino—through his legal counsel—sent a letter to Chapin Mayor Al Koon and Police Chief Griffin on October 24, 2024, outlining the constitutional flaws of the Ordinance on its face and as applied to Giardino's signs. (VC, ¶¶ 49–50; Ex. A, ¶¶ 67-68; First letter to Chapin Officials, true and correct copy attached to MPI as Ex. "T"). He sought written assurance by November 12, 2024, that Chapin would no longer apply the permit scheme to his signs. (VC, ¶¶ 51–52; Ex. T).

But November 12, 2024 came and went with no response from the Town. (VC, ¶ 53; Ex. A, ¶ 69). Instead, Chapin Town Administrator Nicholle Burroughs ("Burroughs"), speaking for Chapin, provided a public statement informing that "[i]n accordance with town policy, a public demonstration permit is required whenever signage [is used]." (VC, ¶¶ 53–54; Ex. A, ¶ 69; Public statement from Chapin, true and correct attached to MPI as Ex. "U"). She attempted to defend the restriction on Giardino's sings by claiming it was needed to "prevent unnecessary loitering that impact businesses[,]" and that "[s]ignage, when left unchecked, can lead to visual clutter, detracting from the aesthetic appeal of our town, obscuring important public information, and potentially causing safety concerns." (VC, ¶ 55; Ex. A, ¶ 69; Ex. U).

Looking for a more direct response to his plea for relief, Giardino, through counsel, sent another letter to Chapin officials on December 4, 2024—this time, adding Burroughs as a recipient and informing Chapin officials that failure to answer the letter within two weeks would be understood to mean that Chapin was persisting with its unconstitutional permit requirement. (VC, ¶¶ 56–57; Ex. A, ¶¶ 71-72; Second letter to Chapin Officials, true and correct copy attached to MPI as Ex. "V"). As before, Chapin neglected to respond to the letter and has not done so to date, revealing an unwillingness to relent on its permit requirement for Giardino's religious signs. (VC, ¶ 58; Ex. A, ¶¶ 73-74).

Chapin Stops Giardino From Using Signs Without Permit

Determined to continue with his sign ministry, but no longer willing to cope with the permit requirement, Giardino stood with his signs on public ways in Chapin once a week, just about every week, without having a permit for approximately four months, and was able to do so during this time without interference from Chapin officials. (VC, ¶¶ 59–61; Ex. A, ¶¶ 75-76). However, on March 27, 2025, Chapin stopped Giardino again, this time, through Planning and Zoning Manager

Reid Radtke ("Radtke"). (VC, ¶ 61; Ex. A, ¶ 77). On that day, Giardino was standing on the sidewalk and grassy space at the southeast corner of Chapin Road and Amicks Ferry Road holding a sign stating "Trust Christ, He Paid the Price," on one side, and "Death is Not the End, Ye Must Be Born Again," on the other side. (VC, ¶ 62; Ex. A, ¶ 79; Ex. N; Photograph of public way on southeast portion of intersection of Chapin Road and Amicks Ferry Road, true and correct copy attached to MPI as Ex. "W"). Like other public places in Chapin, this corner had existing signs from other groups and individuals there. (VC, ¶ 63; Ex. A, ¶ 78; Ex. N; Ex. W). But after about a half hour of sign-holding, Radtke approached and pressed Giardino about why he did not get a permit for holding his signs, informing him that the Town had received a complaint about his sign. (VC, ¶¶ 64–65; Ex. A, ¶ 80).

In turn, Giardino asked Radke why Chapin never responded to the letters. (Ex. A, ¶ 81). Radke disappointingly replied that the Town did not need to respond to the letters. (Ex. A, ¶¶ 81-82). Giardino tried to explain and claim the constitutional freedoms at stake, but to no avail, Radtke reiterated to Giardino his need for a permit, reasoning: "Our permit supersedes the Constitution because it's a local ordinance." (VC, ¶¶ 67–68; Ex. A, ¶ 83). Given this impasse, Radtke and Giardino agreed to not argue the point any further. (VC, ¶ 69; Ex. A, ¶ 84).

Giardino Forgoes Sign Ministry for Fear of Enforcement of Permit Requirement

Giardino has not returned to the public ways of Chapin to hold a religious sign since his encounter with Radtke on March 27, 2024, for fear of criminal sanction without a permit. (VC, ¶¶ 70–71; Ex. A, ¶¶ 85-86). For him, each passing Thursday feels like a dereliction of the mission given to him by God, and persists in violating his constitutional rights. (VC, ¶¶ 12–13, 72; Ex. A, ¶¶ 87-92).

ARGUMENT

A preliminary injunction is warranted when the movant can show he is likely to succeed on the merits, likely to suffer irreparable harm without the preliminary injunction, the balance of equities favors a preliminary injunction, and the injunction serves the best interest of the public. *League of Women Voters of N. Carolina v. N. Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). All factors weigh in favor Giardino's requested relief.

I. GIARDINO SHOULD PREVAIL ON THE MERITS OF HIS FREE SPEECH CLAIM

Giardino asserts that Chapin's application of § 14.1001, *et seq*. to his expressive activity violates his right to free speech under the First Amendment. He should prevail on this claim. Chapin wields the Ordinance to keep Giardino from conveying protected speech while standing on public rights-of-way.

The constitutionality of speech restrictions is judged through the lens of forum analysis, (A) assessing the constitutional protection afforded the speech, (B) determining the type and nature of the venues at issue, and from which, (C) applying the appropriate level of scrutiny to the restriction at hand. *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015) (citing *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.,* 473 U.S. 788, 800). This evaluation reveals Chapin's Ordinance cannot survive scrutiny.

A. Giardino's Religious Speech is Protected by the First Amendment

The free speech clause in the First Amendment guards the freedom to express religious beliefs and ideas. *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995); *see Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 831 (1995) (religious viewpoints covered by First Amendment). Indeed, "[r]eligious expression holds a place at the core of the type of speech the First Amendment was designed to protect." *DeBoer v. Vill of Oak Park*,

267 F.3d 558, 270 (7th Cir. 2001). Giardino's means for communicating his religious message – holding a sign – is protected as well. *Boos v. Barry*, 485 U.S. 312, 318-19 (1988); *see also Cent. Radio Co. Inc. v. City of Norfolk, Va.*, 811 F.3d 625, 630 (4th Cir. 2016).

That Giardino's religious views are subject to complaints does not lessen the protection afforded the speech. *Hill v. Colorado*, 530 U.S. 703, 715 (2000). The free speech clause protects expression that "invites(s) dispute, and challenge(s) dominant ideas, even if it happens to "stir[] people to anger." *Cox v. Louisiana*, 379 U.S. 536, 551-52 (1965) (citation omitted).

B. Chapin Public Sidewalks and Rights-of-Way are Traditional Public Fora

The next step in forum analysis is to account for the property type where the speaker wants to be and speak. *Child Evang. Fellowship of MD, Inc. v. Montgomery Cnty. Pub. Sch.*, 457 F.3d 376, 381 (4th Cir. 2006) (citing *Frisby v. Schultz*, 487 U.S. 474, 479 (1988)). There are three kinds of fora to consider for speech purposes: traditional public forum, designated public forum, and nonpublic forum. *Sons of Confederate Veterans, Va. Div., v. City of Lexington*, 722 F.3d 224, 229-30 (4th Cir. 2013).

Giardino wants to share his faith on public sidewalks and ways in Chapin, spaces long recognized as traditional public fora. *See Goulart v. Meadows*, 345 F.3d 239, 248 (4th Cir. 2003) (traditional public fora are places like streets, sidewalks, and parks that have been historically used for assembly and debate); *see also Frisby*, 487 U.S. at 481 (streets and ways are deemed traditional public fora without any "particularized inquiry"). Defined by their objective characteristics, *Warren v. Fairfax Cnty.*, 196 F.3d 186, 191-92 (4th Cir. 1999) (citing *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 667 (1998)), the venues sought by Giardino fall squarely within the traditional category "regardless of the government's intent." *Forbes*, 523 U.S. at 667.

The moniker is significant. Protection for speech is peculiarly strong in traditional public fora. *Occupy Columbia v. Haley*, 738 F.3d 107, 125 (4th Cir. 2013).

C. The Ordinance is an Invalid Prior Restraint on Free Expression

Prior restraint is a term used to describe laws that regulate communications prior to their utterance. *Alexander v. United States*, 509 U.S. 544, 550 (1993); *see Ward v. Rock Against Racism*, 491 U.S. 781, 795 n. 5 (1989) ("the regulations we have found invalid as prior restraints have 'had this in common: they give public officials the power to deny use of a forum in advance of actual expression.'") (citation omitted). "An ordinance that requires individuals or groups to obtain a permit before engaging in protected speech is a prior restraint on speech." *Cox v. City of Charleston*, 416 F.3d 281, 284 (4th Cir. 2005).

This depiction is apt for § 14.1001 *et seq*.: It is undoubtedly a prior restraint. The Ordinance provides that "[i]t shall be unlawful to demonstrate, picket, or march unless a permit to perform such actions has been secured . . . . An application for a permit will be reviewed for subsequent approval by the Mayor, or Mayor Pro Tern if the Mayor is unavailable, with notice to Council." Chapin Town Code § 14.1001(a). Chapin requires applicants to seek this approval from the Mayor at least fourteen (14) days before the speech occurs. Chapin Town Code § 14.1001(a). Inhibiting speech in a quintessential public forum before it is uttered, Chapin's permit scheme amounts to a prior restraint, representing "the most serious and least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). As such, the Ordinance bears "a heavy presumption against its constitutional validity," *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963), of which Chapin must overcome. *Cox*, 416 F.3d at 284.

First, "any permit scheme controlling the time, place, and manner of speech must not be based on the content of the message, must be narrowly tailored to serve a significant government

interest, and must leave open ample alternatives for communication." *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). Second, the scheme "may not delegate overly broad licensing discretion to a government official," *id*., requiring "narrow, objective, and definite standards to guide the licensing authority," *Green v. City of Raleigh*, 523 F.3d 293, 300 (4th Cir. 2008) (quoting *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969)). Chapin cannot rebut the presumption of unconstitutionality in either respect.

1. Section 14.1001 *et seq*. is Not a Reasonable Time, Place, or Manner Restriction on Speech

Chapin must show its ordinance is a reasonable time, place, and manner restriction on speech. *Billups v. City of Charleston*, 961 F.3d 673, 685 (4th Cir. 2020). It falls short. The Ordinance (a) burdens substantially more speech than needed to advance any valid interest of the Town, and (b) is content based, regulating function and purpose of speech.

a. The Ordinance is not a narrowly tailored in several respects

A municipality is not at liberty to "burden substantially more speech than is necessary to further the government's legitimate interests. *Ward*, 491 U.S. at 799. In other words, a government regulation is "narrowly tailored" if it "eliminates no more . . . 'evil' [than] it seeks to remedy." *Frisby*, 487 U.S. at 485. To keep the government from sacrificing too much speech for the sake of convenience, the tailoring requirement demands a "close fit between the ends and means." *McCullen v. Coakley*, 573 U.S. 464, 486 (2014).

Thus, a speech restriction is not narrowly tailored if it covers significantly more activity than necessary to address the proffered concern. *Reynolds*, 779 F3d at 230-31. It matters not that the municipality believes its regulation is the most prudent or easiest approach to deal with a problem. *Billups*, 961 F.3d at 688. A government entity must prove "less-speech-restrictive alternatives" are unable to achieve the government interest. *Id.* at 687-88.

Chapin cannot make this showing. The Ordinance crosses the constitutional line in various ways, (1) applying the permit scheme to individual or small group expression, (2) imposing a fourteen-day advance notice requirement on speech, (3) banishing speech that occupies one location longer than fifteen minutes or lasts in its totality longer than thirty minutes, and (4) requiring speakers to divulge identity and content of message.

First, the Ordinance erroneously demands that an individual or a small group consisting of two or three people seek and obtain a permit just to hold a sign on a public way in Chapin. While a city may appropriately regulate large group expression through a permit scheme, facilitating parades, rallies, and the like, due to the practical and logistical concerns that arise with such activities, *e.g.*, *Reyes v. City of Lynchburg*, 300 F.3d 449, 454 (4th Cir. 2002), these concerns are not found with individual or small group expression. Forcing an individual or small group to secure municipal permission in advance to speak in public is chilling, inhibiting speakers from speaking at all. *See Cox,* 416 F.3d at 285 ("Both the procedural hurdle of filling out and submitting a written application, and the temporal hurdle of waiting for the permit to be granted may discourage potential speakers") (citation omitted). As the Supreme Court explained,

> [i]t is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of [his] desire to speak to [his] neighbors and then obtain a permit to do so. Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.

Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150, 165–66 (2002).

Recognizing the critical distinction between large and small group speech, the Fourth Circuit held a permit scheme enforced against fifteen individuals invalid, concluding that "the

unflinching application of the Ordinance to groups as small as two or three renders it constitutionally infirm." *Cox*, 416 F.3d at 285. This Court should follow the precedent. The *Cox* holding is in line with other federal courts entertaining this same question and they have uniformly struck down permit requirements for individuals and small groups. *See, e.g., Marcavage v. City of Chicago*, 659 F.3d 626, 635 (7th Cir. 2011) (observing growing and "powerful consensus" among circuits finding permit schemes applicable to groups of ten and under constitutionally suspect);, *Knowles v. Waco*, 462 F.3d 430, 436 (5th Cir. 2006) ("[O]rdinances requiring a permit for demonstrations by a handful of people are not narrowly tailored to serve a significant government interest."); *Parks v. Finan*, 385 F.3d 694, 705-06 (6th Cir. 2004) (holding permit scheme applicable to lone individual's expression not narrowly tailored); *Grossman v. City of Portland*, 33 F.3d 1200, 1206-07 (9th Cir. 1994) (held permit requirement for individuals "making an address" in a public place discriminated against speech); *Cmty. for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1392 (D.C. Cir. 1990) (invalidating permit requirement because it could conceivably apply to groups as small as two); *Diener v. Reed*, 232 F.Supp.2d 362, 387-88 (M.D. Pa. 2002) (held permit requirement applying to individual making public speech in park invalid); *see also Douglas v. Brownell*, 88 F.3d 1511, 1524 (8th Cir. 1996) (expressing doubt that permit requirement for speech would be constitutional for groups as small as ten). Requiring an individual or small group to obtain a permit to speak on a public way is not a narrowly tailored measure.[1]

Second, the 14-day advance notice requirement tied to the permit requirement is an inordinate burden on free expression. In Chapin, any person wishing to share an opinion with

[1] The impediment of requiring a permit to speak in public is especially troubling for citizens like Giardino who hold to religious views. *Watchtower*, 536 U.S. at 167. It negatively affects individuals with "religious scruples." *Id*.

others in public must seek permission from the Town fourteen (14) days (two full weeks) in advance of the speech—even if conducted alone, like Giardino.

"Any notice period is a substantial inhibition on speech." *American-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 605 (6th Cir. 2005). Citizens not only enjoy a right to speak, but also a right to speak spontaneously. *Watchtower*, 536 U.S. at 167-68. The delay imbedded in advance notice requirements prevents individuals and small groups from conveying viewpoints in a timely manner and effectively eliminate spontaneous speech. *See Grossman*, 33 F.3d at 1206 ("Spontaneous expression, which is often the most effective kind of expression, is prohibited by [permit requirement]); *see also Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 182 (1968) ("A delay of even a day or two may be of crucial importance in some instances"). "[B]ecause of the delay caused by complying with the permitting procedures, immediate speech can no longer respond to immediate issues." *Cox*, 416 F.3d at 285 (citations omitted). It follows then, that advance notice requirements like Chapin's, are unconstitutional. *See, e.g.*, *Brownwell*, 88 F.3d at 1511 (striking down five-day advance notice requirement); *Grossman*, 33 F.3d at 1206 (invalidating a seven-day advance notice requirement to participate in organized demonstration in public park as an unconstitutional prior restraint). Imposing a notice period on one or a few individuals is especially infirm. *See Rosen v. Port of Portland*, 641 F.2d 1243 (9th Cir. 1981) (stating that even if a 24-hour advance notice requirement were justified for large groups, it sweeps too broadly in regulating small groups); *see also Boardley v. U.S. Department of Interior*, 615 F.3d 508, 523 (D.C. Cir. 2010). Small groups do not generate a need for notice in advance—particularly a two-week notice to stand on a sidewalk. *See, e.g.*, *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1034, 1039 (9th Cir. 2006)

(explaining that advance notice requirements only further traffic, congestion, and security interests when applied to large groups).

Practically, Chapin's advance notice mandate deprives Giardino of flexibility to pivot to an alternative spot or day to follow spontaneous spiritual convictions or avoid issues with weather, family emergencies or any other last-minute conflicts. Aside from the permit requirement itself, the 14-day advance notice is not narrowly tailored.

Third, § 14.1001, *et seq.* contains dubious time restraints on speech, cutting off communication taking place in one location for fifteen minutes or lasting in total for thirty minutes. These time limits capping free speech are novel, apparently unique to Chapin. Federal courts usually scrutinize time restraints when they involve restrictions on the time of day that marches, parades, or demonstrations take place. *E.g. Abernathy v. Conroy*, 429 F.2d 1170, 1174 (4th Cir. 1970) (upholding an ordinance limiting parades to the hours between 8:00 a.m. and 8:00 p.m.). In these more typical contexts, courts are guided by common sense, requiring good reason for prematurely ending speech. *See Beckerman v. City of Tupelo, Miss.*, 664 F.2d 502, 512 (5th Cir. 1981) (striking down an ordinance that forbade parades after 6:00 p.m. because "it remains light in Tupelo well past 6:00 p.m."); *Christ v. Town of Ocean City, Maryland*, 312 F.Supp.3d 465 (D. Md. 2018) (relying on "a healthy dose of common sense" the court found an ordinance prohibiting street performances prior to 10:00 a.m. insufficiently tailored due to lack of evidence or reasoning to show public safety was of a heightened concern prior to 10:00 a.m.).

Common sense would be welcome here too. If an ordinance prohibiting a parade after 6:00 p.m. or a street performance before 10:00 a.m. is not narrowly tailored to a legitimate government interest, neither can one that haphazardly shuts down speech following a brief amount of time. It is difficult to imagine how Chapin could possibly justify a time cap on a single, stationary

individual or a small group that desires to stand in silence and hold small signs—to fifteen minutes per location or thirty minutes in total. Giardino's religious signs are innocuous, they do not impede the flow of vehicular or pedestrian traffic and they do not become any more problematic with the passage of time. Severely limiting Giardino's time to hold a sign in a public way does not advance any legitimate government interest.

Fourth, Chapin's permit application prompts would-be speakers to reveal identity and information about the speech. This requirement infringes on the right to anonymous speech.

The First Amendment protects the right to speak with anonymity. *Buckley v. Am. Constitutional Law Found., Inc*., 525 U.S. 182, 199-200 (1999). In *Watchtower,* the Supreme Court invalidated a permit requirement because the application sought the identity of the speaker, finding the forced disclosure created an improper deterrent on speech. 536 U.S. at 678. *See also McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-42 (1990) ("The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible."); *Boardley*, 615 F.3d at 523-24 (explaining how permit/notice requirements inflict a severe loss of anonymity on individuals and small groups). Obliging a permittee to supply his identity and the content of his speech to possibly gain the opportunity to speak is not a narrowly tailored imposition. *See McGlone v. Bell*, 681 F.3d 718, 734-35 (6th Cir. 2012) (held requirement to divulge identity and content of speech on permit application not narrowly tailored).

In the same way, the compulsion to disclose identity and content of message is unconstitutional in this matter. The information Chapin seeks is not needed for appropriate reasons and can only be used for nefarious ones. No one should be compelled to forsake anonymity for the

right to speak her mind. Chapin's demand for private information in the permitting process is not narrowly tailored.

b. The Ordinance is an invalid content-based restriction

Content-based laws are disfavored and are invariably unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). Aside from explicitly targeting content, laws that regulate expression by virtue of its "function or purpose" are content based. *Reed*, 576 U.S. at 163–164; *see City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 74 (2022) (affirming the "function or purpose" test for content-based restrictions); *see, e.g., People for the Ethical Treatment of Animals, Inc. v. N. Carolina Farm Bureau Fed'n, Inc.*, 60 F.4th 815, 830 (4th Cir. 2023) (finding restriction that distinguishes among different types of speakers, though not specifying subject matter, an impermissible regulation of speech). Regulating function and purpose of speech, § 14.1001 *et. seq.* is content based.

In *Reed*, the town of Gilbert, Arizona adopted a sign code to regulate categories of signs premised on the type of information conveyed, subjecting each category to a different restriction. 576 U.S. at 159. A local church advertised the time and location of its services by placing temporary signs in the public rights-of-way of Gilbert, and since these signs fell into the category of "Temporary Directional Signs Relating to a Qualifying Event," they were dealt with more stringently than signs conveying other messages, like those found on "Political Signs" or "Ideological Signs." *Id*. Applying the "function or purpose" test, the Supreme Court held the restrictions on directional signs were impermissibly content based. *Id*. at 164.

The instant case presents a like concern. Chapin does not impose a permitting process on all signs displayed in the town, but certain types of signs, according to the "function or purpose" of the speech, namely, that associated with demonstrations, marches, pickets, or protests. Section 14.1001(a). A "demonstration" requires more than putting words on a sign. By definition, it concerns a "public display of group feelings toward a person or cause."[2] Chapin believes Giardino meets this definition, apparently because his signs depict his feelings about a person (Jesus Christ) and a cause (Christianity).[3] And upon placing Giardino's signs in this category, Chapin sets his signs apart for regulation. Whereas Giardino's religious signs are subject to a permit, a 14-day advance notice requirement, and onerous time limitations, other signs not involving a demonstration or picket, like a notice for a club meeting or puppies for sale, go unregulated. (VC, ¶ 30; Ex. C). As in *Reed*, the application of the Ordinance "depend[s] entirely on the communicative content of the sign." 576 U.S. at 164.[4]

An ordinance, even if facially neutral, is considered a content-based regulation if it cannot be enforced "without reference to the content of the regulated speech." *Cent. Radio Co. Inc. v.*

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[2] *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/demonstration. Accessed June 17, 2025.

[3] Since evangelism is not customarily considered a demonstration, this application to Giardino further raises due process concerns. *See infra*.

[4] Additionally, as part of Giardino's facial clam, he challenges the Ordinance for discriminating on the basis of the speaker's identity. Operating as a blanket denial of permission, § 14.1003(b) states that "organizations practicing discrimination against anyone shall not be permitted to assemble or parade in the Town of Chapin." Restrictions that impose greater burdens on one speaker versus another are content based and are "as repugnant to the First Amendment as are restrictions distinguishing between viewpoints." *People for the Ethical Treatment of Animals*, 60 F.4th at 831 (finding that an ordinance which punishes an employee from placing an unattended camera inside of a facility, but not other persons, was impermissibly content based because it treated different speakers unequally). "As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simpy a means to control content." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010).

City of Norfolk, Va., 811 F.3d 625, 632 (4th Cir. 2016) (quoting *Ward*, 491 U.S. at 781, 791). This concern is found with § 14.1001 *et seq*. Any police officer in Chapin applying the Ordinance must necessarily inquire into the content of a sign to determine whether the messaging requires a permit, marking the Ordinance a content-based restriction on speech.

Strict scrutiny is used to assess the propriety of content-based restrictions. *Reed*, 576 U.S. at 163. That is, the restriction must be narrowly drawn to serve a compelling government interest. *Id*. The standard is a "demanding" one. *Brown v. Enm't Merchants. Ass'n*., 564 U.S. 786, 799 (2011). So much so, it is rare for a court to ever uphold a regulation restricting content. *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 816 (2000). The Ordinance is no exception to this rule. To overcome the high scrutiny, the Town "must specifically identify an actual problem in need of solving… and the curtailment of free speech must be actually necessary to the solution." *Brown*, 564 U.S. at 799 (internal citations and quotation marks omitted). Chapin cannot make either showing.

2. Section § 14.1001, *et seq*., Gives Undue Discretion to the Decision-Maker

An ordinance regulating speech should not be "left to the whim of the administrator." *Forsyth Cnty.*, 505 U.S. at 133 (county ordinance was held unconstitutional prior restraint where no articulated standards were present and the administrator was not required to rely on any objective factors or supply any explanation for decision on permit fee); *see Davenport v. City of Alexandria, Va*., 710 F.2d 148 (4th Cir. 1983) (as part of the courts constitutional analysis, determining whether or not a permit scheme "bestows limitless discretion on city officials to govern content of public expression"). Delegating a substantial amount of deference to a permit decision-maker is "inherently inconsistent with a valid time, place, and manner regulations because such discretion has the potential for becoming a means of suppressing a particular point

of view." *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981). A permit requirement, being a prior restraint on speech, should contain "narrow, objective, and definite standards to guide the licensing authority." *Shuttlesworth*, 394 at 150–151. Otherwise, a permit scheme would embolden governmental officials to use their own judgment in deciding who may and who may not speak. *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 763–64 (1988); "[T]he danger of censorship and of abridgement of our precious First Amendment freedoms is too great where officials have unbridled discretion over a forum's use." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975).

In *Shuttlesworth*, the Supreme Court examined an ordinance akin to Chapin's—making it unlawful to organize, hold, assist, or participate in a parade or public demonstration on the streets or public ways without a permit. 394 U.S. at 149. Under that ordinance the reviewing authority "grant[ed] a written permit for such parade, procession or other public demonstration . . . unless in its judgement the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused." *Id*. at 149–150. The Supreme Court condemned the process as unconstitutional, reasoning:

> There can be no doubt that the . . . ordinance, as it was written, conferred upon the City Commission virtually unbridled and absolute power to prohibit any 'parade,' 'procession,'[1] or 'demonstration' on the city's streets or public ways. For in deciding whether or not to withhold a permit, the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience.' This ordinance as it was written, therefore, fell squarely within the ambit of the many decisions of this Court over the last 30 years, holding that a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional. 'It is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be

> granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.

Id.

Chapin's Ordinance suffers from the same flaw, offering no semblance of "narrow, objective, and definite standards" to guide the Mayor in making the permit decision. Per § 14.1002, the Mayor can ultimately approve or deny on a permit application based on the his own vague notions of "public convenience and public welfare"—language even more nebulous than that condemned in *Shuttlesworth,* leaving Giardino's right to speak hanging on "the whim of the administrator." *Forsyth Cnty*., 505 U.S. at 133.

Moreover, the Ordinance fails to provide a fixed and reasonable time frame for the Mayor to decide to grant or deny a permit, allowing the application to sit indefinitely. This prospect represents another form of unfettered discretion. A scheme that omits a suitable time period for permit decisions creates the risk of suppressing otherwise permissible speech. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 227 (1990); *see Chesapeake B & M, Inc. v. Harford Cnty*., 58 F.3d 1005, 1009-10 (4th Cir. 1995) (unbridled discretion exists in absence of time limits). Undue delay can amount to an arbitrary denial.

II. GIARDINO SHOULD PREVAIL ON THE MERITS OF HIS SOUTH CAROLINA RELIGIOUS FREEDOM ACT CLAIM

Giardino is also likely to succeed on the merits of his claim against Chapin under the South Carolina Religious Freedom Act ("SCRFA"). In situations where religious exercise is compromised, the SCRFA was expressly enacted to "restore the compelling interest test as set forth in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963), and to guarantee that a test of compelling state interest will be imposed on all state and local laws and ordinances in all cases in which the free exercise of religion is substantially burdened." S.C.

Code Ann. § 1-32-30 (1999). Hence, "[t]he State may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is: (1) in furtherance of a compelling state interest; and (2) the least restrictive means of furthering that compelling state interest." S.C. Code Ann. § 1-32-40.

Applying this standard, "substantial burden . . . requires 'substantial pressure on an adherent to modify his behavior and to violate his beliefs'" *Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 100 (4th Cir. 2013) (quoting *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 718 (1981). "[T]he infringement upon free exercise is nonetheless substantial" if the pressure is indirect or incidental. *Thomas*, 450 U.S. at 718. *See Shelley v. Stirling*, 2024 WL 1363946, at *5–6 (D.S.C. Jan. 26, 2024), *report and recommendation adopted*, 2024 WL 1327299 (D.S.C. Mar. 28, 2024) (granting plaintiff's motion for injunctive relief where state prison could not show that religious activity is "presumptively dangerous to the health or safety of that prisoner" or that it "poses a direct threat to the health, safety, and security of other prisoners, correctional staff, or the public" pursuant to S. C. Code Ann. § 24-27-500(A)). The required pressure is demonstrated here with Giardino. He firmly believes – as a matter of religious conviction – that he is called to share the gospel with people in public and the Ordinance interferes with his ability to carry out this calling.

Chapin is thus obliged to show its permit requirement on Giardino's religious signs is narrowly drawn to meet a compelling government interest. It cannot do so. Even assuming the Town has a compelling interest in addressing traffic or congestion concerns, Chapin's application to religious signs on public ways is not narrowly drawn to achieve any such interest. *See United Broth. of Carpenters and Joiners of America Local 586 v. N.L.R.B*, 540 F.3d 957, 968-69, 971 (9th

Cir. 2008) (holding regulation on sign display not narrowly tailored to prevent traffic flow diverting from sidewalk into street); *Foti v. City of Menlo Park*, 146 F.3d 629, 642 (9th Cir. 1998), as amended on denial of reh'g (July 29, 1998) (restriction on stationary display of signs on public sidewalk not narrowly tailored to address congestion because pedestrians could easily pass a stationary person holding a sign).[5]

III. GIARDINO SHOULD PREVAIL ON THE MERITS OF HIS DUE PROCESS CLAIM

The Due Process clause of the Fourteenth Amendment requires laws and ordinances offer citizens of ordinary intelligence "fair notice" that their behavior that could subject them to criminal sanction. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Laws that are uncertain or vague give enforcing officials undue discretion in enforcement, invariably leading to arbitrary and discriminatory decisions. *Id*.; *see City of Lakewood v. Plain Dealer Pub'g Co.*, 486 U.S. 750, 760, 763–64 (1988) (noting how lack of explicit standards let officials discriminate on basis of viewpoint). The need for clarity in laws is especially great when restrictions affect expressive activity (as here) because "[u]ncertain meaning inevitably lead citizens to steer far wider of the unlawful zone" and chill constitutionally protected speech. *Grayned*, 408 U.S. at 109; *see Hoffman Estate v. Flipside, Hoffman Estates*, 455 U.S. 489, 499 (1982) (vagueness concerns are heightened when restriction covers expression).

The vague language and interpretations of § 14.1001, *et seq*., violate Giardino's right to due process. A plain reading of the Ordinance suggests Giardino's evangelistic religious speech falls outside of its scope. It purports to regulate demonstrations, picketing, parading, and marching and Giardino does not engage in any of these activities as they are commonly understood.

[5] For the same reasons, Giardino is likely to succeed on the merits of his free exercise of religion claim.

Therefore, the Ordinance does not give Giardino fair warning that he needs a permit for his evangelism or that the failure to obtain a permit will result in a criminal penalty.

In *Lytle v. Doyle*, the Fourth Circuit held a city's application of a statute prohibiting "loitering" on an overpass was unconstitutionally vague as applied to an organized protest because no reasonable definition of "loitering" could shoehorn this activity, a term that presupposes "aimless" conduct. 326 F.3d 463, 469 (4th Cir. 2003). Similarly, Chapin is shoehorning Giardino's religious speech into an ordinance dealing with parades, demonstrations, marches, and picketing—activities traditionally associated with large groups of people, noisemaking, obstructions, and/or protests and are far more suitable for a permitting process. The unexpected application of the Ordinance to Giardino is violative of his right to due process.

V. GIARDINO IS SUFFERING IRREPARABLE HARM

The ongoing enforcement of the Ordinance keeps Giardino from sharing his evangelistic message in public spaces. This effect violates his constitutional rights, causing him to suffer irreparable harm. *See Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir. 1978) ("Violations of first amendment rights constitute per se irreparable injury.") (citations omitted).

VI. BALANCE OF EQUITIES FAVORS INJUNCTION

Inversely, Chapin will suffer no harm from if it is enjoined from enforcing § 14.1001, *et seq.*, against Giardino's religious speech. No harm can come from the inability to impose an unconstitutional law on citizens. *Newsom v. Albemarle County Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). And Chapin remains free to apply the ordinance to actual demonstrations, parades, and pickets. The balance of harms weighs in favor of granting Giardino's requested injunction.

VII. PUBLIC INTEREST IS BEST SERVED BY INJUNCTION

"Surely, upholding constitutional rights serves the public interest." *Newsom*, 354 F.3d at 261. The public interest favors fastidious protection of constitutional rights and the legal action necessary to ensure this outcome.

CONCLUSION

For all the reasons set out herein, Giardino respectfully requests that this Court grant his Motion for Preliminary Injunction.

Respectfully submitted this 16th day of July 2025

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CERTIFICATE OF SERVICE

On July 16, 2025, the foregoing document was filed electronically with the Clerk of the Court by using the CM/ECF system, and that a copy of the foregoing will be sent electronically to all counsel of record by operation of the Court's CM/ECF system.

/s/ Henry P. Wall
Attorney for Plaintiff Ernest Giardino