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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

David Hoffman,

Plaintiff,

v.

City of Tucson, Officer Matt Alexander in
his individual capacity, and Officer William
Leonard in his individual capacity,

Defendants.

CASE NO. 4:26-cv-00537-RCC

**PLAINTIFF DAVID HOFFMAN'S
MOTION FOR PRELIMINARY
INJUNCTION**

ORAL ARGUMENT REQUESTED

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1 Plaintiff David Hoffman moves under Federal Rule of Civil Procedure 65(a) for
2 a preliminary injunction against the City of Tucson’s religious speech ban at the
3 Winterhaven Festival of Lights. Without the requested preliminary injunction,
4 Hoffman will suffer irreparable injury—the loss of rights guaranteed by the United
5 States Constitution and this State’s laws.

6 INTRODUCTION

7 Hoffman is a street evangelist who tells people about Jesus Christ. For years,
8 Hoffman attended and talked about Jesus at the annual Winterhaven Festival of Lights
9 held on Tucson’s public streets. But when Hoffman talked about Jesus at the festival
10 in December 2025, police officers removed him and confirmed he’d be arrested if he
11 tried again. Hoffman seeks preliminary relief from the City’s speech restrictions, which
12 the City’s own officers agree are content-based and target religion. Without a
13 preliminary injunction, Hoffman faces the same treatment in 2026.

14 The City’s policy prohibits religious speech on public streets. Signs outside the
15 festival, which is otherwise free and open, are clear—“[n]o political, religious, or
16 commercial materials or messaging.” Decl. of D. Hoffman Ex. 2. “Religious”
17 “solicitation” is “not permitted.” Ex. 3. Uniformed Tucson police enforced the policy.
18 When Hoffman talked about Jesus inside the festival, four officers escorted him out
19 because “[y]ou can’t be inside here doing the preaching.” Decl. ¶ 23. When Hoffman
20 asked “[c]ould I ask someone if they’d like to discuss Jesus?” an officer told him “[n]o
21 . . . once you start sermonizing, that becomes a problem.” Decl. ¶ 24.

22 Hoffman will likely succeed on the merits of his claims against this
23 extraordinary speech restriction. “Public streets and sidewalks occupy a special

1 position in terms of First Amendment protection” because they are the “archetype of a
2 traditional public forum.” *Comite de Jornaleros de Redondo Beach v. City of Redondo*
3 *Beach*, 657 F.3d 936, 945 (9th Cir. 2011) (en banc). For the City to enforce a “content-
4 based exclusion on speech” in a public forum, it must be “necessary to serve a
5 compelling state interest and . . . narrowly drawn to achieve that end.” *Id.* at 940.

6 Neither is true here. Hoffman doesn’t threaten any potentially compelling
7 interest—his presence while talking about Jesus is no worse for safety, congestion, or
8 any other interest than if he or another attendee were just present while *not* talking about
9 Jesus. And the restriction isn’t narrowly tailored—it covers all areas of the festival,
10 regardless how much space an area offers to accommodate Hoffman and other
11 attendees, and all speech on religious subjects, regardless how, where, or to whom the
12 message is conveyed.

13 Hoffman will also likely succeed on the merits of his state and federal religion
14 claims. His sincerity in sharing the gospel can’t reasonably be disputed, and the City’s
15 ban on religious speech substantially burdens Hoffman’s free exercise of that belief.
16 The policy isn’t neutral because it targets religious exercise on its face, and it isn’t
17 generally applicable because it exempts secular conduct at the festival, like vendors and
18 performers, that undermines the same alleged government interests.

19 Beyond the merits, Hoffman readily establishes every other required element for
20 a preliminary injunction. The “loss of First Amendment freedoms, for even minimal
21 periods of time, unquestionably constitutes irreparable injury.” *Klein v. City of San*
22 *Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). And where, as here, a plaintiff has
23 demonstrated a “likelihood of success on the merits of a constitutional claim,” he has

1 “also established that both the public interest and the balance of the equities favor a
2 preliminary injunction.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

3 Hoffman attended and evangelized at the festival for approximately ten years
4 without objection from the City. The City’s policy stopped him in December 2025. To
5 avoid what is, as a matter of law, irreparable harm, the Court should grant a preliminary
6 injunction against this policy’s enforcement in 2026 and until this case is finally
7 resolved.

8 BACKGROUND

9 I. David Hoffman evangelizes in public in accordance with his faith.

10 David Hoffman sincerely believes that Christians should spread the gospel of
11 Jesus Christ—literally the “good news”—to everyone they can. Decl. ¶ 2. And he
12 believes the gospel positively changes lives. Hoffman has been evangelizing in public
13 since 2015. Decl. ¶ 3. Around the same time, he started an evangelistic nonprofit
14 organization that aims to share the gospel across the Country. Decl. ¶ 3.

15 To reach as many people as possible with his religious beliefs, Hoffman goes to
16 well-attended public events. Decl. ¶ 4. He has one-on-one conversations with people
17 willing to talk. Decl. ¶ 4. He also hands out literature, which expands and deepens
18 Hoffman’s engagement because it can be faster and more detailed than individual
19 conversations. Decl. ¶ 4. And Hoffman preaches to those around him. Decl. ¶ 4.
20 Hoffman tries not to interfere with pedestrian traffic, vendors, or anyone else’s speech.
21 Decl. ¶ 4.

II. The Winterhaven Festival of Lights is a free, public event held on public streets.

The Winterhaven Festival of Lights is held annually in December in the Winterhaven residential neighborhood of Tucson, Arizona. Decl. ¶ 7. During the festival, the general public is invited to walk through the neighborhood to enjoy Christmas and seasonal light displays. Decl. ¶ 7.

The festival receives thousands of visitors per year. Decl. ¶ 8. Vendors offer food and drinks. Decl. ¶ 8. No admission fee or ticket is required for entry. Decl. ¶ 7. As at other times of year, the neighborhood is not closed off to the public during the festival. Decl. ¶ 7. Along with light displays, some homes play amplified music or host live performances. Decl. ¶ 8. The festival organizers authorize musical performances and other entertainers inside the festival. Decl. ¶ 8. They permit party bikes or pedal pubs, which are large vehicles seating up to fifteen people, and allow them to play amplified music. Decl. ¶ 8.

Hoffman attended and evangelized at the festival, without objection from the City, for approximately ten years until his exclusion in December 2025. Decl. ¶ 6. He wishes to attend and speak at the festival in December 2026 and future years. Decl. ¶¶ 11, 29.

III. The City prohibits “religious” speech and leafleting inside the festival.

The City provides a non-exclusive use permit for the festival. The City makes policy for the festival through its permitting process. According to a police officer present at the festival in 2025, the terms of the permit allow the festival organizers to

1 exclude anyone for any reason. Decl. ¶ 20. City police officers enforce the exclusions.
2 Decl. ¶¶ 16–27.

3 In December 2025, the City prohibited religious speech inside the festival.
4 Under this policy, “[r]eligious, political, or issue-based leafleting” is prohibited. Ex. 1.
5 Signs posted at the festival prohibit “political, religious, or commercial materials or
6 messaging” and warn that “law enforcement may remove anyone violating” the policy
7 and “[r]efusal to comply may result in trespassing enforcement.” Ex. 2. The signs also
8 prohibit all “soliciting.” Ex. 2. The signs cite the “City-approved event safety plan” as
9 authority for the “removal” of anyone who was “noncompliant” with the policy. Ex. 3.

10 In conjunction with its speech prohibitions inside the festival, the City directs
11 would-be speakers to a “free expression zone” outside the festival. Ex. 3. The zone is
12 near a public sidewalk and street but separates speakers from the people walking by,
13 restricting their ability to communicate. Decl. ¶¶ 14–15, 26. Noise, including from
14 traffic, requires a speaker to shout and raise his voice, undermining any conversational
15 style. Decl. ¶ 15.

16 **IV. Uniformed City police officers enforce the policy against Hoffman.**

17 Hoffman tried to attend the festival with a small group of people on multiple
18 nights in December 2025. Decl. ¶ 16. Tucson police officers excluded him and
19 threatened him with arrest. Decl. ¶ 16.

20 When Hoffman entered the festival and talked to people about Jesus, defendant
21 Officer Leonard and other uniformed City police officers approached him to enforce
22 the policy that this message wasn’t allowed. Decl. ¶ 23. Officer Leonard said “[y]ou
23 can’t be inside here doing the preaching”—“it’s the communicating, it’s the sending of

1 your message, which is one of the prohibited rules.” Decl. ¶ 23. Hoffman asked
2 “[c]ould I ask someone if they’d like to discuss Jesus?” Decl. ¶ 24. Officer Leonard
3 replied, “[n]o, I would say that’s still part of the sermonizing,” and “once you start
4 sermonizing, that becomes a problem.” Decl. ¶ 24.

5 Hoffman asked if he could talk to people about Jesus in a conversational style.
6 Decl. ¶ 24. Officer Leonard responded “[t]hat’s still a part of the sermonizing.” Decl.
7 ¶ 24. Hoffman asked a hypothetical question—what if someone approached him and
8 asked “[w]hat would I do if I am lost?” Decl. ¶ 24. Officer Leonard told Hoffman he
9 could only hold that conversation “outside the program.” Decl. ¶ 24.

10 Officer Leonard and other uniformed City police officers required Hoffman to
11 leave the festival because he’d discussed a prohibited message. “You have been asked
12 to leave tonight. . . . You could be subject to arrest if you are continuing to solicit.”
13 Decl. ¶ 25. Hoffman asked “if I preach while I walk out, will I be arrested?” Decl.
14 ¶ 25. Officer Leonard said “[y]eah.” Decl. ¶ 25. Four police officers escorted Hoffman
15 out of the festival. Decl. ¶ 25.

16 Police officers also confirmed that leafleting was prohibited inside the festival.
17 When Hoffman asked defendant Officer Alexander “[s]o you’re saying that somebody
18 could not literally stand over there and hand out Christian literature,” Officer Alexander
19 responded that the festival organizers “do not want that” and their wants “supersede
20 everything else because they have a permit from the City.” Decl. ¶ 20.

21 The police officers confirmed that they were enforcing City policy. Officer
22 Alexander explained that “I clarified through our department, they have gotten a permit
23 from the City of Tucson,” so “everything from the barricades in is theirs” to control.

Decl. ¶ 27. When Hoffman asked to see the permit, Officer Alexander responded that “I’m being told that the permit is in effect and I have to be able to rely on other officers and part of my agency in the city.” Decl. ¶ 27.

The officers weren’t enforcing a private policy. Aside from the officers’ repeated statements they were enforcing City policy, the City’s Special Event Guidebook also provides that Tucson police officers present at special events “are there to enforce laws. It is not the responsibility of police officers to provide the services that are the job of private security staff.” Ex. 8 at 8.¹

While Hoffman was censored, performers and vendors were allowed to enter the festival, set up equipment, and communicate their messages. Decl. ¶ 8.

Hoffman seeks a preliminary injunction against the City to restore his status quo ability to talk about Jesus and hand out leaflets inside the festival.

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.” *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 683 (9th Cir. 2023) (en banc).

ARGUMENT

The City prohibited religious speech inside the festival. Its content-based speech restriction in a public forum and targeting of religious exercise for burdens that aren’t

¹ The Guidebook is self-authenticating under Federal Rule of Evidence 902(5).

generally applicable are unconstitutional unless narrowly tailored to advance a compelling government interest. Here, that’s far from true.

Beyond the merits, Hoffman faces irreparable harm from being silenced, and the balance of equities and the public interest are better served by enforcing constitutional rights than allowing violations to continue.

I. Hoffman is likely to succeed on the merits of his First Amendment free speech claim.

A. Hoffman’s evangelism in a public forum is constitutionally protected speech.

Hoffman’s street ministry falls squarely within the First Amendment’s protection. “[S]preading one’s religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as [any other] types.” *Murdock v. Pennsylvania*, 319 U.S. 105, 110 (1943). The Constitution grants “doubl[e]” protection to religious speech through the “overlapping” safeguard of the free exercise clause. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022).

Tucson’s public streets are a traditional public forum. “Public streets and sidewalks occupy a special position in terms of First Amendment protection” because they are the “archetype of a traditional public forum.” *Comite de Jornaleros de Redondo Beach*, 657 F.3d at 945. So when the government “restricts access to the streets,” its actions are “subject to a particularly high degree of scrutiny” and it must carry “an extraordinarily heavy burden to regulate speech in such locales.” *NAACP, W. Region v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984).

1 The festival’s status as a permitted event doesn’t change that—public streets
 2 remain public forums even during permitted events. *Gathright v. City of Portland*, 439
 3 F.3d 573, 579 (9th Cir. 2006) (“The City cannot claim that one’s constitutionally
 4 protected rights disappear where a private party is hosting an event that remains free
 5 and open to the public.”) (alterations and quotation marks omitted). The government
 6 “may not by its own *ipse dixit* destroy the ‘public forum’ status of streets.” *United*
 7 *States v. Grace*, 461 U.S. 171, 180 (1983).² Here, the festival is held on public streets
 8 and is free and open to the public. Decl. ¶¶ 7, 9–10.

9 **B. The City’s ban on “religious” speech is content-based, isn’t a**
 10 **reasonable time, place, or manner restriction, and must satisfy strict**
 11 **scrutiny.**

12 In a public forum, the government may only restrict “the time, place, or manner
 13 of protected speech,” while “[c]ontent-based laws” are “presumptively unconstitutional
 14 and may be justified only if the government proves that they are narrowly tailored to
 15 serve compelling state interests.” *Hubbard v. City of San Diego*, 139 F.4th 843, 851
 16 (9th Cir. 2025).

17 The City’s policy is content-based. Signs outside the festival read that “[n]o
 18 political, religious, or commercial materials or messaging” is permitted. Ex. 2. The
 19 policy also prohibits “[r]eligious, political, or issue-based leafleting.” Ex. 1. Officer
 20 Leonard informed Hoffman that “[y]ou can’t be inside here doing the preaching”—“it’s
 21 the communicating, it’s the sending of your message, which is one of the prohibited

22 ² Nor do vehicle or pedestrian barriers erected for festivals change an area’s status
 23 as a public forum. *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1103 (9th
 Cir. 2003) (vehicle barricades); *McMahon v. City of Panama City Beach*, 180 F. Supp.
 3d 1076, 1085 (N.D. Fla. 2016) (pedestrian fence with access points).

1 rules.” Decl. ¶ 23; *see Comite de Jornaleros de Redondo Beach*, 657 F.3d at 945 (to be
2 permissible, a time, place, or manner restriction must be enforceable “without reference
3 to the content of the regulated speech”).

4 The targeting of other disfavored messages alongside religion changes nothing.
5 The broader prohibition on all “solicitation” doesn’t undermine the conclusion that the
6 policy is content-based because solicitation itself is content—the City didn’t ban all
7 talking, just talking (and leafleting) in that category of messages. *See Berger v. City of*
8 *Seattle*, 569 F.3d 1029, 1051 (9th Cir. 2009) (en banc) (“active solicitation ban” was
9 “content-based” because it singled out messages). Nor does targeting “political” and
10 “commercial” speech alongside religion rescue the policy from being categorized as
11 content-based. At most, each of these is another disfavored message that the City
12 targets for exclusion. *See id.* (law that targets “particular content for differential
13 treatment” is “content-based”).

14 Content-based restrictions on speech are presumed to violate the First
15 Amendment. When a policy “applies to particular speech because of the topic
16 discussed or the idea or message expressed” and “draws distinctions based on the
17 message a speaker conveys,” it’s “presumptively unconstitutional.” *Reed v. Town of*
18 *Gilbert*, 576 U.S. 155, 163 (2015); *see Hubbard*, 139 F.4th at 852 (policy that’s “not
19 content neutral . . . does not qualify as a valid time, place, and manner restriction”).

20 Such restrictions can stand only if they pass strict scrutiny. “Content-based laws
21 . . . may be justified only if the government proves that they are narrowly tailored to
22 serve compelling state interests.” *Reed*, 576 U.S. at 163. Only on “rare” occasions can
23 a content-based restriction prove permissible. *Berger*, 569 F.3d at 1052. If a “less

1 restrictive alternative would serve the Government’s purpose,” it “must use that
2 alternative.” *Meinecke v. City of Seattle*, 99 F.4th 514, 525 (9th Cir. 2024).

3 **C. The policy fails strict scrutiny because it doesn’t serve a compelling**
4 **government interest.**

5 No government interest related to congestion, safety, or traffic applies here. The
6 Ninth Circuit already rejected these interests as justifications for restricting speech in
7 similar circumstances. In *Kuba v. I-A Agricultural Association*, the court held that a
8 state-backed association couldn’t limit protestors to “free expression zones” outside
9 events in the name of “preventing traffic congestion and ensuring the safety of
10 pedestrians and drivers alike.” 387 F.3d 850, 858, 862 (9th Cir. 2004). Just citing those
11 interests isn’t enough because the government must “show that the proposed
12 communicative activity endangers those interests,” meaning it must prove with
13 “sufficient precision” how the plaintiff “would contribute significantly to the
14 congestion and traffic danger.” *Id.* at 859–60.

15 That showing isn’t possible here. The festival attracts thousands of patrons.
16 Decl. ¶ 8. Vendors line the streets to sell food and drinks. Decl. ¶ 8. Performers and
17 other entertainers perform in the streets. Decl. ¶ 8. And visitors ride through on “pedal
18 pubs”—drinking and playing music over speakers as they go. Decl. ¶ 8. By design,
19 festivalgoers congregate, stop, and watch performances or light displays. Decl. ¶ 8. They
20 pause to purchase things from vendors. Decl. ¶ 8. All this activity is routine at the festival.

21 In contrast, all Hoffman seeks to do is use his voice to preach and pass out
22 leaflets sharing his faith. Decl. ¶¶ 4, 11. Speaking and handing out leaflets cause no
23 more congestion than any performer or vendor on the street.

1 There’s also no government interest in preventing speech the festival organizers
 2 disagree with. “The City cannot claim that one’s constitutionally protected rights
 3 disappear where a private party is hosting an event that remains free and open to the
 4 public.” *Gathright*, 439 F.3d at 579 (alterations and quotation marks omitted).

5 **D. The policy independently fails strict scrutiny because the speech**
 6 **restrictions aren’t narrowly tailored to serve any interest the City**
 could assert.

7 The City’s policy is overbroad—prohibiting all religious messages when far
 8 narrower measures would suffice. When the government implements content-based
 9 speech restrictions, as here, it must use the “least restrictive means among available,
 10 effective alternatives.” *United States v. Alvarez*, 567 U.S. 709, 729 (2012).

11 The City’s policy is overbroad because it prohibits all speech on a subject with
 12 no consideration of how that speech affects others. It prohibits speech ranging from
 13 disruptive to imperceptible, so long as it’s “religious.” The policy doesn’t just prohibit
 14 mass demonstrations or blaring amplification, but barely audible one-on-one
 15 conversations and silently offering pamphlets while standing on a corner. *See* Decl.
 16 ¶¶ 20–21. The prohibition doesn’t “sufficiently match [any] stated interest” the City
 17 could identify. *Kuba*, 387 F.3d at 862.

18 The City’s policy is also overbroad in its indiscriminate coverage of all festival
 19 areas. The festival contains streets of varying sizes, corners, and alleys. Decl. ¶ 10.
 20 Here, as in *Kuba*, not all festival areas outside the “free expression zone” “pose a []
 21 risk of congestion and safety hazard.” 387 F.3d at 862. So the policy doesn’t
 22 “sufficiently match” an “interest of preventing congestion.” *Id.* And it’s “not narrowly
 23 tailored to serve the government’s interest.” *Id.*

The policy also isn't narrowly tailored to advance any alleged interest in avoiding implicit agreement with Hoffman's speech. A "policy of allowing permittees unfettered discretion to exclude private citizens on any (or no) basis is not narrowly tailored" to protect alleged speech rights. *Gathright*, 439 F.3d at 577; *see Dietrich v. John Ascuaga's Nugget*, 548 F.3d 892, 899 (9th Cir. 2008) (policy "not narrowly tailored" because there was "little chance that the public would have viewed Plaintiff's petitioning activities as endorsed by the [organizers]").

No rationale the City can assert requires prohibiting all religious expression on public streets.³

* * *

Hoffman is likely to succeed on the merits of his First Amendment speech claim.

II. Hoffman is also likely to succeed on his state and federal religion claims.

A. The ban on religious messages violates the Arizona Free Exercise of Religion Act.

The City's ejection of Hoffman from the festival also trampled Hoffman's rights under Arizona's Free Exercise of Religion Act. The Act provides that "government

³ Courts across the country have held that broad speech prohibitions on public streets and sidewalks aren't narrowly tailored to advance interests in public safety, order, or traffic control. *Bays v. City of Fairborn*, 668 F.3d 814, 823–25 (6th Cir. 2012) (ordinance failed narrow tailoring when it facially prohibited "any solicitation of causes" including "leafletting" and "one-on-one conversations" that contained a "religious message"—and restriction was greater than necessary for "crowd control" because it didn't address "whether the speaking is [even] designed to gather crowds"); *Lederman v. United States*, 291 F.3d 36, 45 (D.C. Cir. 2002) (no narrow tailoring where "banned activities" "could [not] reasonably be expected to interfere with the stated objectives of traffic control and safety"); *see also Grace*, 461 U.S. at 182 ("total ban" on carrying flags on sidewalks outside Supreme Court not narrowly tailored because it was "no more necessary for the maintenance of peace and tranquility on the public sidewalks surrounding the building than on any other sidewalks in the city").

1 shall not substantially burden a person’s exercise of religion even if the burden results
2 from a rule of general applicability.” Ariz. Rev. Stat. Ann. § 41-1493.01(B).⁴

3 Under the Act, “the party raising a free exercise claim must prove that: (1) [his]
4 action or refusal to act is motivated by a religious belief, (2) the religious belief is
5 sincerely held, and (3) the government’s regulation substantially burdens the free
6 exercise of the[] religious beliefs.” *Brush & Nib Studio, LC v. City of Phoenix*, 448
7 P.3d 890, 918 (Ariz. 2019), *abrogated in other part by Ctr. for Arizona Policy Inc. v.*
8 *Arizona Sec’y of State*, 592 P.3d 75, 89 (Ariz. 2026). Once Hoffman “proves these
9 elements, then the burden shifts to the government” to satisfy strict scrutiny. *Id.*

10 Every required element of a claim under the Act is plainly met here. Hoffman’s
11 sincerely held faith compels him to share the gospel inside the festival, as he has for the
12 past decade. Decl. ¶¶ 2–4. And the City’s prohibition on religious speech inside the
13 festival substantially burdens Hoffman’s free exercise of his religious beliefs, forcing
14 him “to choose between following the precepts of [his] religion” and facing adverse
15 action. *Brush & Nib Studio*, 448 P.3d at 919; *FCA*, 82 F.4th at 686 (treating comparable
16 secular activity more favorably than religion triggers strict scrutiny). Once those
17 elements are met, the policy can only be justified by passing strict scrutiny.

18 As explained in Part I, *supra*, the City’s policy can’t survive strict scrutiny. Any
19 government interest the City could conceivably assert runs into the problems identified

20
21 ⁴ Arizona law is even more protective of religious exercise than the federal First
22 Amendment. Unlike the First Amendment, Arizona law doesn’t require plaintiffs to
23 show that the government policy isn’t neutral or generally applicable. *See Fulton v.*
City of Philadelphia, 593 U.S. 522, 533 (2021). Instead, any government action violates
the Act if it substantially burdens sincere religious exercise and isn’t narrowly tailored
to serve a compelling government interest. *Brush & Nib Studio*, 448 P.3d at 918.

there—the policy is broader than needed to address any alleged interest. That’s doubly true for the religion claims because strict scrutiny of laws burdening religion requires the government to justify its actions with respect to each plaintiff. Ariz. Rev. Stat. Ann. § 41-1493.01(C) (“application of the burden *to the person*” must satisfy strict scrutiny) (emphasis added); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430–31 (2006) (government must show “compelling interest” as to “*the particular claimant*” whose religious exercise is burdened) (emphasis added).

B. The ban on religious messages violates the First Amendment’s free exercise clause.

Hoffman’s First Amendment free exercise of religion claim has the same elements as his state-law claim with the addition that, to demonstrate a violation of the First Amendment, he must show the City’s policy isn’t neutral or generally applicable. “A government policy will not qualify as neutral if it is specifically directed at . . . religious practice,” including if “a religious exercise is . . . its object.” *Kennedy*, 597 U.S. at 526. And it “will fail the general applicability requirement if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Id.* Each is clearly met here because the policy targets “religious” messages for special enforcement and permits secular activities that undermine the same government interests. Ex. 1–3; Decl. ¶ 8.

When City police officers removed Hoffman from the festival, they confirmed he couldn’t “be inside here doing the preaching,” couldn’t “ask someone if they’d like to discuss Jesus,” and “could not literally stand over there and hand out Christian literature.” Decl. ¶¶ 20, 23–24. Posted signs also prohibited “religious” speech.

Ex. 2–3. So the policy was “specifically directed at” religious practice as “its object,” which isn’t “neutral.” *Kennedy*, 597 U.S. at 526. And the policy ignores the presence of performers, vendors, and vehicles that “undermine[] the government’s asserted interests in a similar way,” so it isn’t “generally applicable.” *Id.*; *see* Decl. ¶ 8.

* * *

Hoffman is likely to succeed on the merits of his Arizona Free Exercise of Religion Act and First Amendment free exercise of religion claims.

III. Hoffman will suffer irreparable harm absent a preliminary injunction.

Both the Ninth Circuit and the Supreme Court have “repeatedly held that” the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Klein*, 584 F.3d at 1207–08 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). That principle applies here. Hoffman wants to talk about Jesus at the upcoming festival—as he did for years until the City stopped him—but can’t do so without being removed and arrested. Only a preliminary injunction can prevent this irreparable harm. *See id.*

IV. The balance of equities and the public interest favor Hoffman.

Granting an injunction would best balance the equities between the parties. When, as here, a plaintiff has demonstrated “a likelihood of success on the merits of a constitutional claim,” he has “also established that both the public interest and the balance of the equities favor a preliminary injunction.” *Baird*, 81 F.4th at 1042. That’s because “it is always in the public interest to prevent the violation of a party’s constitutional rights,” whereas the government “cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional

1 violations.” *Id.* When a plaintiff “raise[s] serious First Amendment questions, that
2 alone compels a finding that the balance of hardships tips sharply in [his] favor.” *FCA*,
3 82 F.4th at 695.

4 The benefits of an injunction run beyond Hoffman himself—the injunction
5 would benefit the public. The Ninth Circuit has “consistently recognized the significant
6 public interest in upholding free speech principles.” *Klein*, 584 F.3d at 1208. The
7 City’s constitutionally infirm policy—with criminal penalties for its violation—
8 infringes not just Hoffman’s rights, but those of all who want to speak to people
9 attending the festival. *See id.* So the law “clearly favors granting preliminary
10 injunctions to a plaintiff . . . who is likely to succeed on the merits of his First
11 Amendment claim.” *Id.*; *see Cuiello v. City of Vallejo*, 944 F.3d 816, 834 (9th Cir.
12 2019) (it’s “well within the public interest to issue a preliminary injunction” where
13 plaintiff “raised a colorable free speech claim” and demonstrated irreparable harm).

14 CONCLUSION

15 The Court should grant a preliminary injunction that prohibits the City from
16 restricting Hoffman’s religious speech or leafleting at the Winterhaven Festival of
17 Lights.

1 Dated: October 8, 2026

Respectfully submitted,

2
3 /s/ Andrew W. Gould

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CERTIFICATE OF SERVICE

I will cause service to be completed on the defendants in this case, who have not yet appeared.

/s/ Andrew W. Gould
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