UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

Case No.: 07-21088 CIV-ALTONAGA
MAGISTRATE JUDGE TURNOFF

MIAMI FOR PEACE, INC., SOUTH FLORIDA PEACE AND JUSTICE NETWORK, and HAITI SOLIDARITY, INC.

Plaintiffs,

v.

MIAMI-DADE COUNTY, a political subdivision of the State of Florida, and THE DISTRICT BOARD OF TRUSTEES OF MIAMI-DADE COLLEGE,

Defendants.
_____/

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

INTRODUCTION

Plaintiffs, Miami for Peace ("MFP"), South Florida Peace & Justice Network (SFP&JN"), and Haiti Solidarity ("HS") challenge **§ 30-274** of the Miami-Dade County Code ("M-D County Code"), the ***Parades and Processions Ordinance*** that regulates core political expression in traditional public fora, and **§ 21-31.1(b),** Miami-Dade County's ***Loitering Ordinance***. M-D County Code § 30-274 violates the First Amendment in several key respects. First the challenged code section regulating parades is an unlawful prior restraint as it requires permission from the sheriff for any "parade" or "procession" in Miami-Dade County, but contains no standards for obtaining permission. The M-D County Code does not set out a procedural process for filing a permit, sets no time by which a decision to grant or deny the requested permit must be made, and sets no standards for making the decision. In short, the M-D County Code is overbroad, vague and lacks any standards or guidelines to check the unbridled discretion of Miami-Dade County ("M-D County") officials to use content-based factors to decide who may or may not "speak" in the public fora. This law is presumptively unconstitutional, as are all prior restraints, and fails the test applied to reasonable time, place or manner regulations. In addition, M-D County's loitering ordinance is violative of First Amendment free speech and Fourteenth Amendment due process rights.

FACTUAL BACKGROUND

The relevant factual information is set out in the Verified Complaint at Paragraphs 3 through 23, and incorporated as though fully set forth herein.

LEGAL ARGUMENT

POINT 1 PLAINTIFFS HAVE STANDING TO CHALLENGE THE CODE

Plaintiffs have standing to bring a facial challenge to the subject Code sections on two bases. First, they have standing as entities subject to the requirements of the permit scheme. *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755-56 (1988); *CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1274 (11th Cir. 2006). Plaintiffs plan to engage in expressive activities covered by the Code to protest the policies of the Bush Administration and the Iraq War on April 28, 2007. Plaintiffs plan to march and protest and, as such, are subject to the provisions of the Miami-Dade County Code § 30-274. Plaintiffs have, as of yet, been unable to obtain a permit as required by § 30-274 and as a result are subject to criminal penalties for illegal assembly.

Plaintiffs also have standing because of the risk of a chilling effect on the protected expression of others not before the Court. Under this well-established exception to Article III standing, challenges may be made to "laws that are written so broadly that they may inhibit the constitutionally protected speech of third parties." *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 798 (1984). "[T]he Supreme Court and this [Circuit] consistently have permitted facial challenges to prior restraints on speech without requiring the plaintiff to show that there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional." *United States v. Frandsen*, 212 F.3d 1231 (11th Cir. 2000) (citations omitted). *Accord*, *Abramson v. Gonzalez*, 949 F.2d 1567, 1573 (11th Cir. 1992) (facial challenge proper as the rule "affects the enjoyment of freedoms which the Constitution guarantees and subjects the exercise of First Amendment freedoms to licensing requirements"). When free speech may be chilled, society's interest in reviewing an unconstitutional law offsets the usual concern of federal courts to avoid deciding constitutional questions if possible. As the Supreme Court observed in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129-130 (1992):

> [I]n the area of freedom of expression an overbroad regulation may be subject to facial review and invalidation, even though its application in the case under consideration may be constitutionally unobjectionable. . . .This exception from general standing rules is based on an appreciation that the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court.

POINT 2 PLAINTIFFS SATISFY THE REQUISITE CRITERIA FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION

A preliminary injunction is proper if a plaintiff establishes four elements: 1) a substantial likelihood of success on the merits; 2) the likelihood of irreparable injury unless the injunction issues; 3) the balance of harms tips in favor of the moving party; and, 4) if issued, the injunction would not be adverse to the public interest. *McDonald's Corp. v. Robertson*, 147 F.3d 1301 (11th Cir. 1998). Plaintiffs readily meet each part of this test.

A. There Is a Substantial Likelihood That Plaintiffs Will Succeed on the Merits

1. Miami-Dade County's Permit Scheme is a Prior Restraint that Violates the First Amendment as an Impermissibly Overbroad Provision

"A prior restraint on expression exists when the government can deny access to a forum for expression before the expression occurs." *Frandsen*, 212 F.3d at 1236-37. The provision in M-D County Code § 30-274 that requires prior approval or notification before a march can occur places a prior restraint on free speech. There is a strong presumption against the constitutionality of prior restraints on free speech. *Bourgeois v. Peters*, 387 F.3d 1303, 1319 (11th Cir. 2004). This is so because a "[p]rior restraint upon speech suppresses the precise freedom which the First Amendment sought to protect against abridgment." *Carroll v. Pres. & Commissioners of Princess Anne,* 393 U.S. 175, 181 (1968). Ordinances that place a prior restraint on speech by requiring "before-the-fact permitting and licensing schemes" to the point that they create "an impermissible risk of suppression of ideas" will be found to be unconstitutionally overbroad. *Forsyth County*, 505 U.S. at 129.

A prior restraint must contain basic procedural safeguards to ensure that protected expression is not inhibited. At a minimum, it must allow for prompt judicial review in the event the permit is denied or unduly burdened. *Freedman v. Maryland*, 380 U.S. 51, 58-59 (1965). *See also Forsyth County,* 505 U.S. at 123. "Meaningful judicial review is the touchstone of the [prior restraint] test. 'Prompt judicial review must be available to correct erroneous denials of access to expression. '" *Bourgeois*, 387 F.3d at 1319-20. Because it lacks any time for deciding a permit application, the County's Code misses the mark completely. *See Redner v. Dean*, 29 F.3d 1495, 1502 (11th Cir. 1994) ("ordinance . . . inadequate under any interpretation of 'prompt judicial review' because it creates the risk that expressive activity could be suppressed indefinitely prior to any judicial review of the decision to deny a license").

2. The Ordinance Lacks Adequate Safeguards to Check the Unbridled Discretion of Officials in Implementing the Miami-Dade County Permit Scheme

It is black letter law that any attempt to subject "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." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). *See also Forsyth County*, 505 U.S. at 132. A law regulating speech in public fora fails if it "delegate[s] overly broad licensing discretion" to officials. *Id.* at 130. Miami-Dade County Code § 30-274 requires persons interested in planning a parade or procession to obtain a permit from the "Sheriff." However, the Code does not indicate how to apply for the permit, how long the process should take, what the basis of approval or denial of a permit is; the Code is totally bereft of any detail.

> "It is settled . . . that an ordinance which . . . makes 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."

Shuttlesworth v. City of Birmingham, 394 U.S. 147, 149–51 (1969) *quoting Staub v. Baxley*, 355 U.S. 313, 322 (1957). (emphasis added).

When there are no clear standards upon which an official can make these decisions, or standards can be applied differently to different types of gatherings, an ordinance will not be upheld. *See Bourgeois*, 387 F.3d at 1317 (holding a restriction is invalid when no standards appear anywhere, no limitations are listed, and there is "no circumscribing of the absolute power" of the decision-maker). "To curtail that risk, a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must contain narrow, objective, and definite standards to guide the licensing authority." *Forsyth County*, 505 U.S. at 130-31.

> Standards provide the guideposts that check the licensor and allow courts quickly and easily to determine whether the licensor is discriminating against disfavored speech. Without these guideposts, post hoc rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine whether the licensor is permitting favorable, and suppressing unfavorable expression. *City of Lakewood*, 486 U.S. at 758.[1]

The M-D County Code lacks the narrow and specific guidelines needed to check official discretion. So, it is not "narrowly drawn" in a manner sufficient to pass the First Amendment's dictates.

It matters not if M-D County may never have applied the Code in a content-based manner. A facial challenge to a permit scheme that "delegates overly broad discretion to the decision-maker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so." *Forsyth*, 505 U.S. at 133 and n.10; *accord, City of Lakewood*, 486 U.S. at 757 ("mere existence of licensor's unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused"). "The First Amendment does not permit the government to place

[1] Even content-neutral time, place and manner rules require adequate standards to guide the decisionmaker's determination. *Thomas v. Chicago Park District*, 534 U.S. 316, 323 (2002).

burdens on speech and assembly in . . . an unprincipled, *ad hoc* manner[,]" *Bourgeois*, 387 F.3d at 1318, and neither this Court nor the public can "depend on the individuals responsible for enforcing [a regulation] to do so in a manner that cures [the law] of constitutional infirmities[.]" *Frandsen*, 212 F.3d at 1240.

Miami-Dade County Code § 30-274 requires permission issued by the sheriff for any "procession or parade," but contains absolutely no time for filing or time by which a permit would be decided. For nearly four decades, the United States Supreme Court has condemned similar laws imposing lengthy advance filing requirements. "[T]iming is of the essence in politics . . . and when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all." *Shuttlesworth*, 394 U.S. at 163. Here, County officials are unconstrained by any textual limits in the Code from holding a permit request until the last moment, only then to deny it for unspecified reasons, leaving no opportunity to seek prompt judicial review of the denial of a permit.

The fatal lack of a time by which to decide a permit application is compounded here because the Code is devoid of standards on other key provisions. M-D County Code § 30-274 requires permission of the sheriff to "parade," but does not state how permission is obtained. "Excessive discretion over permitting decisions is constitutionally suspect because it creates the opportunity for undetectable censorship and signals a lack of narrow tailoring." *Burk v. Augusta Richmond County*, 365 F.3d 1247, 1256 (11th Cir. 2004). Because M-D County's Code embodies "[e]xcessive discretion over permitting decision," it fails this key test of constitutional adequacy.

3. Miami-Dade County Code § 30-274 is Not a Reasonable Time, Place or Manner Regulation

The County regulates core expressive activity in virtually all public fora. "In such places, which occupy a 'special position in terms of First Amendment protection,' *United States v. Grace,* 461 U.S. 171, 180 (1983), the government's ability to restrict expressive

activity 'is very limited.' *Id.* at 177." *Boos v. Barry*, 485 U.S. 312, 318 (1988). Time, place, and manner restrictions in traditional public fora are constitutional as long as they are content-neutral,[2] are narrowly tailored to serve a significant government interest, and leave open ample alternative channels to communicate the message. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). **The failure to meet any prong is fatal to the entire law.** *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 406 U.S. 36, 45 (1983) (emphasis supplied). The City's scheme violates all three prongs.

First, Miami-Dade County Code Section 30-274 is not a content-neutral regulation. To pass constitutional muster, a time, place or manner regulation of speech in a traditional public forum must be content-neutral. *Clark v. Community for Creative Non-Violence*, 468 U.S. at 293. If the decision involves the "appraisal of facts, the exercise of judgment, and the formation of an opinion," it is content-based and the "the danger of censorship and of abridgment of our precious First Amendment freedoms is too great to be permitted." *Forsyth*, 505 U.S. at 131 [internal citations omitted]. The County's Code contains **no** standards for deciding permits. Officials may decide based on the content of the speech and, for disfavored speakers, delay or deny the permit, or impose onerous conditions. For this reason, Miami-Dade County Code § 30-274 is not content-neutral.

Second, even assuming content-neutrality, the County cannot meet its burden to prove that the permit scheme is narrowly-tailored. While "[t]he State . . . has a strong interest in ensuring the public safety and order, in promoting the free flow of traffic on public streets and sidewalks . . . ," at the same time, when First Amendment rights are at issue, the government has the burden of showing that the law is narrowly tailored and that there is evidence supporting its proffered justification. In this regard, it is important to underscore that "[courts] have never accepted mere conjecture as adequate to carry a First Amendment

[2] A content-based restriction is subject to the more stringent requirement that it be "necessary to serve a compelling state interest," and be "narrowly drawn to achieve that end." *Boos*, 485 U.S. at 321. However, it is not necessary to examine whether Section 30-274 of the Miami-Dade County Code meets this more stringent test, because as shown herein, it cannot even satisfy the less exacting standard for content-neutral time, place, and manner restrictions.

burden." *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 392 (2000). *See also Turner Broadcast System, Inc. v. F.C.C.*, 512 U.S. 622, 644 (1994) ("When the government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply posit the existence of the disease to be cured."). To prove narrowly tailoring, the County must show **actual**, not speculative harm, and that the disputed laws actually address that harm. *Id.*

Even a content-neutral law is not narrowly-tailored "[w]here the licensing official enjoys unduly broad discretion . . . to grant or deny a permit, [as] there is a risk that he will favor or disfavor speech based on its content." *Thomas*, 534 U.S. at 323, *citing Forsyth County*, 505 U.S. at 131. "A government regulation that allows arbitrary application is 'inherently inconsistent with a valid time, place and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.'" *Forsyth County*, 505 U.S. at 132 (citation omitted).

The Supreme Court "requires that a time, place and manner regulation contain adequate standards to guide the official's decision and render it subject to effective judicial review." 534 U.S. at 323, *citing Niemotko v. Maryland*, 340 U.S. 268 (1951). The ordinance in *Thomas* included express bounds on the bases for denying a permit, required officials to process applications within 28 days and explain in writing any denials. *Thomas*, 534 U.S. at 32. These were held to be sufficiently specific and objective to insulate against the exercise of the "whim of the administrator." *Id.*, *citing Forsyth County*, 505 U.S. at 133. "They provide 'narrowly drawn, reasonable and definite standards' to guide the licensor's determination. . . . And they are enforceable on review – first by appeal to the General Superintendent of the Park District, . . . and then by writ of common-law certiorari in the Illinois courts[.]" 534 U.S. at 32. By way of contrast, in the instant case Defendant Miami-Dade's Code lacks any standards and any opportunity for review.

Absent the safeguards present in *Thomas*, the County's permit scheme is unconstitutional. *See also City of Lakewood*, 486 U.S. at 769-70 (discretion impermissibly unfettered where official may impose "such other terms and conditions deemed necessary");

Shuttlesworth, 394 U.S. at 156-58 (unbridled discretion in regulation permitting decisions to grant or deny parade permit on grounds of "the public welfare, peace, safety, health"). Defendant's Code sets no time by which a permit request must be decided, enumerates no bases for granting or denying a request, and contains no standards for setting conditions on a permit. Such "[e]xcessive discretion over permitting decisions is constitutionally suspect because it creates the opportunity for undetectable censorship and **signals a lack of narrow tailoring**." *Burk*, 365 F. 3d at 1256 (emphasis added).

Third, the permit scheme fails to leave open ample alternatives for communication. It is a cardinal rule of First Amendment law that "[the] streets [and sidewalks] are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Thornhill*, 310 U.S. at 105-106 [citations omitted]. The County's Code does not allow for ample alternatives for core expression within the County. If a permit for a parade or procession is not obtained, the group is thereby foreclosed from all public fora in the County. Even the sidewalks are unavailable to Plaintiffs since they are potentially subject to arrest under the Miami-Dade County Loitering Ordinance found at M-D County Code § 21-31.1.(b).

4. The Loitering Ordinance is Impermissibly Vague and Overbroad Under the First Amendment as it Unreasonably Restricts Protected Expressive Activity in Quintessential Public For a

The ***loitering*** provisions of § 21-31.1.(b) of the Miami-Dade County Code make it unlawful to be on a public street, public sidewalk, public overpass, public bridge or public place "to hinder or impede pedestrians or vehicles." This same Section makes it a crime to "loiter[] in or about a school, college or university campus" when doing so would "hinder or impede the orderly conduct of . . . school activities." All of these restrictions are impermissible under the First Amendment.

The overbreadth doctrine invalidates laws that inhibit the free exercise of First Amendment-protected activities. *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999). Peaceful protest on public sidewalks is a quintessential First Amendment activity. *See e.g., Perry*, 460 U.S. at 45; *Gregory v. City of Chicago*, 394 U.S. 111, 112 (1969). The City may not "make criminal the peaceful expression of unpopular views. . . . 'unless shown likely to produce a clear and present danger of a serious substantive evil that rises **far above public inconvenience, annoyance, or unrest**.'" *Terminiello v. Chicago*, 347 U.S. 1, 4-5 (1949).

The ability to restrict assemblies on sidewalks based on any conceivable "obstruction" is unlawful. In *Cox v Louisiana,* 379 U.S. 536 (1965), the Supreme Court overturned the convictions of civil rights activists. Two thousand students assembled peaceably at the state capitol building and marched to the courthouse, where fellow activists arrested earlier were being held. With official permission, but without a permit, they assembled on the sidewalk across the street from the courthouse and, in a lawful manner, rallied and marched. When they failed to disperse pursuant to a police order indicating that they had exceeded their time for demonstrating, they were arrested for obstructing a sidewalk.

An ordinance is overbroad where every application creates an impermissiable risk of suppression of ideas, such as when an ordinance allows unfettered discretion in one decision-maker or where the ordinance sweeps too broadly to penalize constitutionally-protected speech. *Forsyth County*, 505 U.S. at 129-30. The Supreme Court has consistently held that ordinances are unconstitutionally broad under the circumstances noted in *Cox* and *Forsyth*, as these ordinances would allow punishment for peaceful protest involving disfavored views. The Court also held that the conviction under a statute banning obstruction of public sidewalks was a clear violation of freedom of speech and assembly where the "obstruction" ordinance was coupled, as here, with the unfettered discretion of local officials to regulate the use of streets for peaceful parades and assemblies. Precedent requires that Section 21-31.1.(b) be invalidated.

5. The Anti-Loitering Ordinance is Impermissibly Vague and Restricts a Liberty Interest Under the Fourteenth Amendment Due Process Clause

Vagueness can invalidate a criminal law because either: (1) it failed to provide the kind of notice that allow ordinary persons to understand what conduct is prohibited, or (2) it authorizes or encourages arbitrary and discriminatory enforcement. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). M-D County's Loitering Ordinance is unconstitutionally vague, in part because there is uncertainty about what type of loitering would be considered criminal conduct, and which conduct would not fall within its sweep. *Id.* at 57. Courts have consistently invalidated laws or ordinances that do not join the crime of loitering with a second specific element. *Id.* at 58. Miami-Dade County's Loitering Ordinance is unconstitutionally vague because it fails to alert the public to what type of conduct is prohibited since M-D County could not "conceivably have meant to criminalize each instance a citizen stands in public." *See Id.* at 57.

Freedom to loiter "for innocent purposes" is a liberty interest protected by the Due Process Clause of the Fourteenth Amendment. *City of Chicago v. Morales*, 527 U.S. 41, 53 (1999). The Supreme Court has held that a person's decision to remain in "a public place of his choice" or to move to another place upon his own inclination is "as much a part of . . . liberty as the freedom of movement inside frontiers that is 'a part of our heritage.'" *Id. citing Kent v. Dulles*, 357 U.S. 116, 126 (1958). Miami-Dade County Code § 21-31.1(b) unconstitutionally restricts the liberty interest of Plaintiffs by criminalizing standing or remaining on public streets, sidewalks, overpasses, bridges, and places. Plaintiffs have a constitutional right to stand or remain on a public place if their conduct is not injurious or threatening. Miami-Dade County's Loitering Ordinance violates critically important due process rights guaranteed by the Fourteenth Amendment, and is invalid.

B. Irreparable Injury Will Occur if the Preliminary Injunction is Not Granted

The loss of First Amendment freedoms *unquestionably* constitutes irreparable injury. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006), *quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976) (emphasis added). The Eleventh Circuit has held that there is a finding of irreparable harm when First Amendment rights are violated on an ongoing basis because the plaintiffs cannot be made whole by money damages when their free speech is chilled. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) *citing Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of America v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990). As noted above, Miami-Dade County Code § 30-274 constitutes an impermissible prior restraint on free speech, and accordingly violates the First Amendment.

C. The Balance of Hardships Favors Plaintiffs

The injury to the Plaintiffs as a result of the provisions requiring advance permitting and unbridled discretionary authority is the violation of their First Amendment right to free speech, assembly and association. Such an egregious violation of civil rights poses a grave hardship to Plaintiffs seeking to convey their political and social justice messages. The Defendants are not similarly harmed. M-D County and Miami-Dade College may need to add additional law enforcement officers to enhance security, but such a hardship is no greater than any other increase in security a municipality or university might face when large numbers of people gather together, such as at a concert or sporting event. Defendants are still free to maintain the peace by enforcing existing criminal laws to keep an area secure. The granting of injunctive relief to Plaintiffs will not alter this prerogative. As a result, when

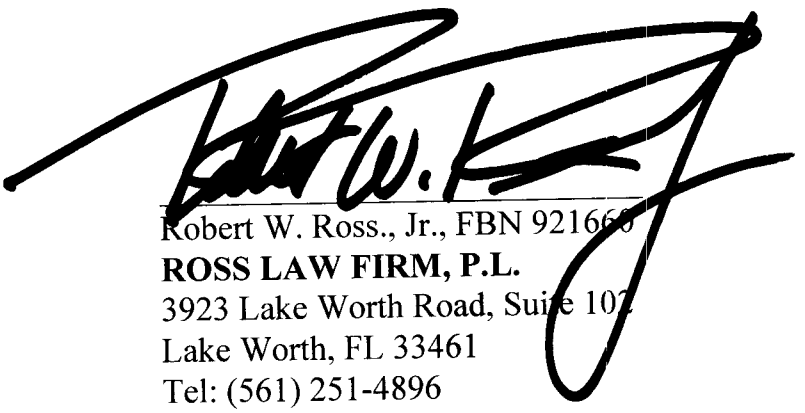
balancing the hardships, it is clear that the greater injury is to the Plaintiffs who are faced with restrictions on First Amendment-protected activity.

D. Granting Plaintiffs' Preliminary Injunction is in the Public Interest

A preliminary injunction is in the public interest in the case *sub judice*. "[T]he public interest is always served when constitutional rights, especially free speech rights, are vindicated." *University Books & Videos, Inc. v. Metropolitan Dade County*, 33 F. Supp.2d 1364, 1374 (S.D. Fla. 1999). "The public has no interest in enforcing an unconstitutional ordinance." *KH Outdoor, LLC v. City of Trussville*, 458 F.3d at 1272. Furthermore, it is not in the public interest to support a governmental entity's expenditure of time, effort and money in order to enforce an unconstitutional ordinance. *Fla. Businessmen for Free Enter. v. City of Hollywood*, 648 F.2d 956, 959 (5th Cir. 1981). The public interest is clearly in favor of Plaintiffs and, thus, injunctive relief should be granted.

CONCLUSION

Miami-Dade County Code § 30-274 violates the First Amendment in several key respects. The ***Parades and Processions Ordinance*** is an unlawful prior restraint. The Code is overbroad, vague and lacks any standards or guidelines to check the unbridled discretion of the County officials to use content-based factors to decide who may or may not "speak" in the public fora. The ***Loitering Ordinance***, M-D County Code § 21.31.1(b), is unconstitutionally vague and overbroad and thereby violates First Amendment free speech and Fourteenth Amendment due process rights. For the reasons mentioned hereinabove, the enforcement of both code provisions should be enjoined by this tribunal.



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