

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL CIVIL DIVISION
CASE NO. 11-33223 CA 25

SILVIO MEMBRENO and
FLORIDA ASSOCIATION OF
VENDORS, INC.,

Plaintiffs,

vs.

THE CITY OF HIALEAH, FLORIDA,

Defendant.

PLAINTIFFS' AMENDED COMPLAINT

This is a constitutional lawsuit to vindicate Plaintiffs' fundamental right under the Florida Constitution to earn an honest living free from unreasonable government restrictions. The City of Hialeah ("the City") has violated that right by 1) enacting an ordinance that prohibits vendors from staying in one location, 2) enacting an ordinance that prohibits the display of merchandise, and 3) purporting to enforce state statutes that do not apply within the City limits. The City of Hialeah's vending ordinance is not only irrationally destructive of economic opportunity, but it also violates the Florida Constitution and deprives consumers of the benefit of choice.

Additionally, the City's ultra vires application of state law has prevented vendors from operating in many popular vending locations throughout the City. Therefore, Plaintiffs, by and through their undersigned counsel, hereby file this Amended Complaint against the City of Hialeah, Florida and would show the following:

PARTIES

1. Plaintiff Silvio Membreno (“Membreno”) is an adult resident of Hialeah, Florida.
2. Plaintiff Membreno vends in several locations in and around the City of Hialeah, including West 49th Street and West 4th Avenue.
3. Plaintiff Membreno has operated his vending business in Hialeah for approximately sixteen years.
4. Plaintiff Membreno has a current vending license issued by the City of Hialeah.
5. Plaintiff Florida Association of Vendors, Inc. (“FAV”) is a non-profit corporation chartered, organized, and created under the laws of Florida.
6. Plaintiff FAV is composed of members, many of whom are vendors on both public and private property in the state of Florida, including the City of Hialeah, Florida.
7. Plaintiff FAV was formed for the purposes of ensuring the rights of Florida street vendors; to aid and support Florida street vendors in their fight for vendors’ rights; and to engage in any and all lawful business to accomplish these purposes.
8. Nearly all the members of Plaintiff FAV vend in Hialeah and have been affected by Hialeah’s vending ordinance.
9. Defendant City of Hialeah (the “City” or “Hialeah”) is a municipality chartered, organized, and created under the laws of the State of Florida.

JURISDICTION

10. At all times pertinent to this action, the acts complained of have occurred in or are occurring in Hialeah, Miami-Dade County, Florida.

11. This action arises under Article I, Section 2 of the Florida Constitution (Basic Rights) and Article I, Section 9 of the Florida Constitution (Due Process). Accordingly, this Court has subject matter jurisdiction over this action.

12. This Court has jurisdiction over declaratory judgment actions pursuant to Section 86.011, Florida Statutes.

13. The parties are located in this circuit, and the dispute arose in this circuit.

FACTS

Plaintiff Silvio Membreno

14. Plaintiff Silvio Membreno immigrated to the United States from Nicaragua in 1998.

15. For over fifteen years, Plaintiff Membreno has been selling flowers to support himself and his family.

16. Plaintiff Membreno chose to sell flowers because it allowed him to earn an honest living while pursuing the American dream of owning and growing his own business.

17. Plaintiff Membreno has successfully grown his flower business over the years, becoming not only a vendor but also an importer and distributor of flowers.

18. Plaintiff Membreno also operates a business that supplies flowers to approximately 30 other vendors, most of whom sell the flowers in the City.

19. In so doing, Plaintiff Membreno provides economic opportunities for many others seeking to live the American dream by earning an honest living.

20. Plaintiff Membreno's vending business not only supports him and his family, but also provides economic opportunities for many others while expanding consumer choice and generating healthy competition within the City.

21. Plaintiff Membreno buys his flowers in bulk, prepares bouquets, and sells his bouquets of flowers on foot in the City.

Plaintiff Florida Association of Vendors, Inc.

22. The members of Plaintiff FAV organized to defend the rights of vendors to pursue their lawful occupation, thereby expanding consumer choice and competition.

23. Nearly all of the members of Plaintiff FAV vend within the City of Hialeah.

24. Nearly all of the members of Plaintiff FAV have been adversely affected by Hialeah's vending ordinance, which is enforced by the City's police officers and licensing inspectors in ways that violate FAV members' constitutional rights.

25. The members of Plaintiff FAV sell a variety of goods, including flowers, trinkets, produce, and other items, in a variety of locations throughout Hialeah.

26. A vendor can often start his business with less capital investment than he would need for a brick-and-mortar business. Vending thus affords the opportunity to become an entrepreneur to those who would not otherwise be able to do so.

27. The members of Plaintiff FAV have chosen vending as a means to support their families and to pursue the American dream of owning their own businesses.

28. The members of Plaintiff FAV sell in a number of different ways.

29. Some members of Plaintiff FAV vend on foot. Usually, these vendors approach cars when flagged down while traffic is stopped or after the car parks near the vendor.

30. Typically, on-foot vendors stay at or near an intersection, and they return to their respective intersections with regularity so they can be reliable for their customers and develop a customer base.

31. Other members of Plaintiff FAV vend from their vehicles by parking, either on public or private property, and waiting for customers to approach on foot. Alternatively, customers approach in their vehicles, park near the vendor, and the vendor will bring the merchandise to the customer to transact business.

32. Some members of Plaintiff FAV vend on private property in Hialeah with the permission of the private property owner.

33. The members of Plaintiff FAV who vend on private property in Hialeah generally stay in one place while selling their merchandise.

34. Some members of Plaintiff FAV vend on public property in Hialeah.

35. The members of Plaintiff FAV who vend on public property in Hialeah usually remain at one intersection or parking spot for more than thirty minutes at a time while vending.

36. The members of Plaintiff FAV who vend on public property in Hialeah display their goods for customers using either their vehicles or specially made displays or carts.

37. Plaintiff Membreno and the members of Plaintiff FAV provide a service to the community of Hialeah by selling goods in the places where customers want to buy.

38. Plaintiff Membreno and the members of Plaintiff FAV provide a service by selling goods at reasonable prices to the residents of Hialeah.

39. Plaintiff Membreno and the members of Plaintiff FAV provide a service by bringing their goods to their customers in Hialeah, some of whom do not have cars or cannot drive.

40. Plaintiff Membreno and the members of Plaintiff FAV need to remain in one place in order to be reliable for their customers.

41. Plaintiff Membreno and the members of Plaintiff FAV need to remain in one place in order to grow and maintain a customer base.

42. Plaintiff Membreno and the members of Plaintiff FAV need to display merchandise in order for their customers to see the merchandise they are vending.

43. Plaintiff Membreno and the members of Plaintiff FAV need to display merchandise in order to grow and maintain a customer base.

44. Without a customer base, Plaintiff Membreno and the members of Plaintiff FAV cannot conduct business in any meaningful way.

History of the City's Vending Ordinance

45. In October 2011, Plaintiffs initiated this lawsuit against the City and alleged that three provisions of the City's vending ordinance (the "Ordinance"), sections 18-301–18-307, Hialeah Code of Ordinances, were unconstitutional.

46. Before January 2013, the Ordinance included a provision that prohibited vendors from selling within 300 feet of a store that sold the same or similar merchandise.

47. In response to this lawsuit, the City repealed the 300-foot proximity restriction on January 8, 2013.

48. But on January 8, 2013, the City also changed the definition of "peddler," expanded existing restrictions, amended several provisions of the Ordinance, and added restrictions on where vendors may vend in order to further the anticompetitive goals previously furthered by the Ordinance.

49. In amending section 18-301 of the Ordinance, the City redefined "peddlers and itinerant vendors" to include "persons going from place to place for the purpose of selling or

offering for sale[] any goods, merchandise, or wares for immediate delivery of the goods, merchandise, or wares . . . whether or not using a wagon, pushcart, or other vehicle.”

50. Most importantly, the City expanded two restrictions that are the subject of this litigation and that further the anticompetitive purpose of driving street vendors out of business by a) prohibiting standing still and b) prohibiting the display of merchandise.

Prohibition on Standing Still

51. On January 8, 2013, the City expanded section 18-302 of the Ordinance—its prohibition on standing still—by amending the provision to prohibit vendors from “stopping or remaining in any one location on private or public property with such regularity and permanency that would lead a reasonable person to believe the location is the vendor’s fixed business location.”

52. Before the amendment, section 18-302 prohibited a vendor from stopping or standing in one location for more than ten minutes.

53. The City’s January 8 amendment expanded the one-paragraph section into a page-long, confusing patchwork of conflicting restrictions.

54. First, the section divides vendors into two categories: vendors who sell from vehicles and vendors who do not sell from vehicles, or “on-foot” vendors.

55. The section states that “No peddler or itinerant vendor soliciting or conducting sales on foot can permanently stop or remain at any one location on public property; or private property (*unless allowed for by zoning*), for the purpose of soliciting, displaying goods, merchandise or wares, or conducting sales.” (Emphasis added.)

56. Hialeah’s zoning code allows for outdoor vending in at least some locations throughout the City.

57. However, the section goes on to say that neither category of vendors—from a vehicle or on-foot—is allowed to stop, stay, or park “at any one location on private or public property with such regularity and permanency such that would lead a reasonable person to believe the location is the vendor’s fixed business location.”

58. Some members of Plaintiff FAV would like to vend where it is allowed by the zoning code but are unaware if they are allowed to do so because of the contradictions in section 18-302.

59. Also, Plaintiff Membreno and members of Plaintiff FAV are unable to ascertain how far they must move to comply with section 18-302.

60. As demonstrated during the city council meeting on January 8, 2013, even City officials are unsure how to interpret section 18-302. During that council meeting, in which the council amended the Ordinance, at least one council member asked how this provision was to be enforced, and the City ultimately gave conflicting information as to how far vendors must move to comply with section 18-302.

61. During that meeting, Councilwoman Casáls-Muñoz asked for clarification on what vendors would have to do to comply with the prohibition on standing still.

62. City Attorney Grodnick and Councilwoman Casáls-Muñoz had a discussion on the record in which Mr. Grodnick said vendors cannot stay at one intersection, and explained in vague terms that vendors had to move some distance.

63. Councilwoman Casáls-Muñoz then explained to the vendors present—in Spanish—that the vendors must leave their merchandise fully enclosed in their vehicles and continually walk, but she used the example of 49th Avenue and 16th Street to explain that vendors *are* allowed to stay within the four corners of one intersection.

64. Adding to the confusion, Councilwoman Garcia-Martinez, “for legal purposes,” so that the council wouldn’t make any mistakes, and to make the law “clear,” asked the legal department whether Councilwoman Casáls-Muñoz’s descriptions of appropriate vending were consistent with the Ordinance.

65. Despite the differing statements made by City Attorney Grodnick and Councilwoman Casáls-Muñoz, Assistant City Attorney Bravo responded that Councilwoman Casáls-Muñoz’s representations were consistent with the Ordinance.

66. Indeed, even before the Ordinance was amended, one City agent, during a deposition, represented to Plaintiffs that he used only “common sense” to interpret section 18-302 to decide how far a vendor must move, but the same agent could not describe how far a vendor must move to comply with the Ordinance. Even as amended, the section faces the same defect.

67. The City has enforced and continues to enforce section 18-302 against Plaintiff Membreno and members of Plaintiff FAV by telling vendors they must leave their vending locations without telling them how far they must move.

68. Upon information and belief, the City possesses no evidence that a stationary vendor poses a greater threat to public health or safety than a moving vendor.

Prohibition on Display of Merchandise

69. Before January 2013, section 18-304 prohibited vendors from placing any materials or merchandise on any property for the purpose of offering merchandise to the public.

70. On January 8, 2013, the City expanded the language of section 18-304 of the Ordinance without amending any of the substance of the section. The section still prohibits

vendors from displaying their merchandise, whether on public or private property, and from placing any equipment (e.g. a bucket containing flowers) on public rights of way.

71. Indeed, as amended, section 18-304 allows vendors to display “only as much of the goods, merchandise or wares as the peddler or itinerant vendor can carry on the peddler’s or itinerant vendor’s person.”

72. The amended version of section 18-304 allows vendors to display merchandise in their vehicles only when “the storage or display of goods [or merchandise] is incidental to the conduct of a sale while parked[.]”

73. The City has enforced and continues to enforce section 18-304 against Plaintiff Membreno and members of Plaintiff FAV.

74. Upon information and belief, the City possesses no evidence that displaying merchandise poses a threat to public health or safety.

Section 337.406, Florida Statutes

75. Through the course of this lawsuit, Plaintiffs have come to realize that, to discourage vendors from vending without enforcing the contested provisions of the Ordinance, the City has incorrectly enforced section 337.406, Florida Statutes.

76. Section 337.406, Florida Statutes, prohibits “any use of the right-of-way of any state transportation facility, including appendages thereto, *outside of an incorporated municipality* in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility” (emphasis added).

77. This section applies only outside incorporated municipalities.

78. However, the City, by and through its agents, instructs vendors that they may not sell on state roads.

79. In its application for a vending license, the City advises vendors that they are prohibited from vending on state roads, and in doing so, cites section 337.406, Florida Statutes. The City does not cite any other legal authority for the representation it makes in its vending-license application that vending is prohibited on state roads.

INJURIES TO PLAINTIFFS

80. The City continues to enforce sections 18-302 and 18-304 against Plaintiffs in the same manner as before the City amended those sections. The City also continues to misapply section 337.406, Florida Statutes.

81. Because of section 18-302, 18-304, and the misapplication of section 337.406, Plaintiff Membreno and members of Plaintiff FAV have suffered and continue to suffer irreparable harm.

82. Plaintiff Membreno and members of Plaintiff FAV will be unable to maintain their businesses if required to comply with sections 18-302 and 18-304 of the Ordinance.

83. Plaintiff Membreno wants to continue to sell his flowers in Hialeah from one location and to display his merchandise.

84. The members of Plaintiff FAV want to continue to sell their wares in Hialeah from one location and to display their merchandise.

Prohibition on Standing Still

85. Plaintiff Membreno often vends from one location for more than thirty minutes at a time.

86. On at least five different occasions, Plaintiff Membreno has been approached by police officers in Hialeah who have ordered him to leave his vending location because they said he was violating section 18-302.

87. Plaintiff Membreno wants to be able to assess the needs of his customers and adapt to those needs by remaining at one intersection for longer than 30 minutes if demand calls for it.

88. Despite the effect on his customers and his business, when he is instructed to move, Plaintiff Membreno leaves the intersection where he is vending and vends from a different intersection.

89. There are members of Plaintiff FAV who vend on public property and have been instructed by Hialeah authorities that they must move, but not how far they must move.

90. There are members of Plaintiff FAV who vend on private property and have been instructed by Hialeah authorities that they must move, but not how far they must move.

91. Members of Plaintiff FAV want to stay in one location to vend because their customers rely on them being in one location.

92. Some members of Plaintiff FAV differentiate their products by arranging them in different ways—for example, adding decorative flourishes—and their customers expect to see those member-vendors in their usual location.

93. Despite the effect on their customers and their businesses, when instructed by authorities to move, either from private or public property, members of Plaintiff FAV have moved or stopped vending.

94. For example, on Valentine's Day 2013, police officers enforced the prohibition on standing still by approaching members of Plaintiff FAV—who were vending on both public and private property—and instructing them to change locations every 30 minutes.

95. On Valentine's Day 2013, at least one member of Plaintiff FAV who was vending on private property with the property owner's permission was told by a police officer, "I do not want to see you here when I come back in 30 minutes."

96. On Valentine's Day 2013, police officers also documented names, vending locations, and license numbers of some members of Plaintiff FAV on a "Vendor Warning Log" and demonstrated to those members that they were documenting their violations.

97. However, on Valentine's Day 2013, many brick-and-mortar stores, including and especially flower stores, set up displays outside their brick-and-mortar locations—either on sidewalks or in parking spots—and solicited and/or conducted sales from a fixed location through displays of flowers, trinkets, balloons, and other items.

98. The brick-and-mortar stores set up these outdoor displays for several hours on Valentine's Day, but upon information and belief, were not instructed by the City to remove their displays.

99. The police officers also told the members of Plaintiff FAV that if they did not move, the police would issue a ticket to the member-vendors.

100. When approached and warned, the members of Plaintiff FAV complied with police officers' instructions to leave their vending spots.

101. Plaintiff Membreno and members of Plaintiff FAV want to be able to stay put, sell, and be safe.

102. The law prohibiting standing still prevents Plaintiffs from building up a regular, reliable clientele, and thereby prevents them from effectively pursuing and expanding their businesses.

103. If required to comply with the City's enforcement of section 18-302, Plaintiffs will be unable to operate their businesses in any meaningful way.

104. Because of section 18-302's vagueness—in 1) its conflicting provisions on whether on-foot, private-property vendors may stay in one place if zoning allows, and 2) its lack of clarity on how far vendors must move to comply with section 18-302—Plaintiff Membreno and members of Plaintiff FAV are unsure of how to operate their businesses and are in fear of selective or random enforcement by City officials.

105. Prohibiting vendors from remaining in one consistent location means that Plaintiff Membreno and members of Plaintiff FAV will be unable to build up a customer base, and therefore, will lose money.

106. Prohibiting Plaintiff Membreno and members of Plaintiff FAV from remaining in one location means that consumers suffer because they are not able to count on the goods or services provided by a consistent vendor.

107. If vendors cannot maintain their businesses in Hialeah, consumers are stripped of choice, and the quality of goods or services rendered will fluctuate unpredictably.

108. But for section 18-302 Ordinance, Plaintiff Membreno and some members of Plaintiff FAV would remain in one location on public or private property for the purpose of facilitating the offering or sale of their merchandise to the public.

Prohibition on Display of Merchandise

109. Plaintiff Membreno has, on several occasions, been told by Hialeah police that he must keep his flowers inside his van and cannot display them on the ground on public or private property.

110. Storing flowers inside a hot vehicle has caused the flowers sold by Plaintiff Membreno to wilt and become unsellable.

111. Plaintiff Membreno wants to be able to display his flowers for sale in Hialeah.

112. But for the Ordinance, Plaintiff Membreno would display his flowers, either on public or private property, for sale in Hialeah.

113. The members of Plaintiff FAV want to display their wares for sale either on public or private property in Hialeah.

114. Currently, some members of Plaintiff FAV display their wares, on public or private land, for sale in Hialeah in violation of the Ordinance, but those member-vendors hide the merchandise when they receive warnings from police or when they fear police enforcement.

115. For example, Plaintiff Membreno and some members of Plaintiff FAV want to put buckets of flowers on the ground, on public or private property, to display their merchandise and to store excess merchandise they cannot carry on their person.

116. Some members of Plaintiff FAV hide their merchandise, on public or private land in Hialeah, from the view of the public at all times because they have been told by City police to keep their merchandise hidden from view of the public.

117. Some members of Plaintiff FAV have been warned by City police that they may not display their merchandise on public or private property in Hialeah.

118. On several occasions, including Valentine's Day 2013, City police have instructed Plaintiff Membreno or the members of Plaintiff FAV that they may not leave any merchandise on or around their vehicles and that their vehicle doors must remain closed if they are storing their merchandise within.

119. On several occasions, including on Valentine's Day 2013, City police have instructed Plaintiff Membreno or the members of Plaintiff FAV that they must keep all of their wares hidden from the public except what they can carry.

120. On Valentine's Day 2013, police officers approached some members of Plaintiff FAV and instructed them to hide their merchandise.

121. On Valentine's Day 2013, these warnings were given to members of Plaintiff FAV who were on-foot and members who were vending from vehicles.

122. On Valentine's Day 2013, these warnings were given to members of Plaintiff FAV who were vending on public property and members who were vending on private property.

123. Prohibiting members of Plaintiff FAV from displaying merchandise prevents some customers from knowing the member-vendors are at their usual locations. It also prevents member-vendors from attracting new customers and from displaying the different types of wares they have to offer.

124. Despite the effect on their customers and on their business, when given these warnings, members of Plaintiff FAV complied by hiding their merchandise from public view.

125. On Valentine's Day 2013, City police documented these warnings in their "Vendor Warning Logs."

126. If Plaintiff Membreno or the members of Plaintiff FAV choose not to store their merchandise within a vehicle because it may be ruined, or if they are not able to store their merchandise within a vehicle because they do not own a vehicle, Plaintiff Membreno or the members of Plaintiff FAV are left with no choice but to carry their inventory, which means they will not have enough inventory to sell to have a viable business.

127. But for section 18-304 Ordinance, Plaintiff Membreno and some members of Plaintiff FAV would display their merchandise on either public or private property for the purpose of facilitating the offering or sale of their merchandise to the public.

128. But for section 18-304 Ordinance, Plaintiff Membreno and some members of Plaintiff FAV would display their merchandise in containers, stands, cars, or boxes on public or private property—without obstructing rights-of-way—for the purposes of soliciting sales from customers.

Section 337.406, Florida Statutes

129. To be a vendor in Hialeah, Plaintiff Membreno and members of Plaintiff FAV were made to sign, as part of the City’s “Application to Obtain a Business Tax Receipt,” an acknowledgement that vending on certain listed state roads is not allowed. As authority for this state-road ban, the Application cites section 337.406, Florida Statutes.

130. However, City officials have been erroneously applying section 337.406, Florida Statutes, because the statute applies only *outside* incorporated municipalities, and Hialeah is an incorporated municipality.

131. Even so, on more than one occasion, Plaintiff Membreno and members of Plaintiff FAV have been instructed by City police that they may not vend on state roads in Hialeah.

132. When they are instructed to do so, Plaintiff Membreno and members of Plaintiff FAV have complied with the City’s instructions.

133. For example, on Valentine’s Day 2012, City police officers drove around the City and verbally instructed vendors—including Plaintiff Membreno and many members of Plaintiff FAV—to refrain from selling flowers on any major road in Hialeah.

134. On Valentine's Day 2012, City police officers instructed vendors that they could not sell on any one of the following roads: Okeechobee Road, West 16th Avenue, West 4th Avenue, West 84th Street, West 49th Street, West 21st Street, East 21st street, East 25th Street, Hialeah Drive, or East 8th Avenue.

135. On Valentine's Day 2012, the City police also passed out copies of the City's "Application to Obtain a Business Tax Receipt," which lists the same roads as places on which vendors may not sell and cites to section 337.406, Florida Statutes, as authority for that prohibition.

136. Plaintiff Membreno and the members of Plaintiff FAV complied with the City officials' instructions to stop vending on state roads.

137. Many members of Plaintiff FAV, including Plaintiff Membreno, were prohibited from continuing sales of their merchandise as a result of the City's enforcement efforts on Valentine's Day 2012.

138. The roads erroneously prohibited by the City include the most popular roads for vendors. Thus, when the City erroneously and arbitrarily prevents vendors from selling on these roads, Plaintiffs lose business and money.

139. The listed roads are popular vending locations because they are some of the most visible and convenient locations in the City. As such, Plaintiff Membreno and members of Plaintiff FAV vend on these roads when they are able, despite the City's position that vending is not allowed on these roads.

140. Because of the ultra vires enforcement of section 337.406, Florida Statutes, Plaintiffs have lost and will continue to lose business.

141. But for the ultra vires enforcement of section 337.406, Florida Statutes, Plaintiffs would vend on state roads within the City.

Effect on Plaintiffs

142. Hialeah police have been more aggressive in enforcing Ordinance sections 18-302 and 18-304 and section 337.406, Florida Statutes against flower vendors such as Plaintiff Membreno and some members of Plaintiff FAV on holidays such as Mother’s Day and Valentine’s Day, when brick-and-mortar stores face greater competition from vendors, and when the most harm is done by enforcing these laws.

143. Even on these important vending days, Plaintiff Membreno and members of Plaintiff FAV have complied with officials’ instructions to obey Ordinance sections 18-302 and 18-304 and section 337.406, Florida Statutes.

144. Because of the City’s enforcement of Ordinance sections 18-302 and 18-304 and section 337.406, Florida Statutes in Hialeah, Plaintiff Membreno and a substantial number of members of Plaintiff FAV have lost money, business, and merchandise, including on important vending holidays.

145. If vendors cannot remain in a consistent location and display merchandise, Plaintiff Membreno and the members of Plaintiff FAV will not be able to operate viable businesses.

COUNT I—Declaratory Judgment

Violation of Florida Constitution’s Guarantee of Due Process

146. Plaintiffs incorporate Paragraphs 1 through 145 by reference.

147. The due process guarantee of Article I, Section 9 protects individuals from unreasonable or arbitrary use of the government’s police power.

148. Among the liberties secured by this provision are the right to earn an honest living in the occupation of one's choice and the right to bargain for goods or services rendered.

149. Plaintiff Membreno and members of Plaintiff FAV cannot effectively sell their products if they cannot stay in one location to vend.

150. There is no legitimate purpose served by the prohibition contained in section 18-302.

151. Accordingly, section 18-302 violates the liberty to pursue a lawful occupation and the public's right to bargain for goods or services rendered, both of which are protected by Article I, Section 9 of the Florida Constitution.

152. Plaintiff Membreno and members of Plaintiff FAV cannot effectively sell their products if they cannot place merchandise or equipment on the ground and if they cannot display or store merchandise temporarily away from their person.

153. There is no legitimate purpose served by the prohibition contained in section 18-304.

154. Accordingly, section 18-304 violates the liberty to pursue a lawful occupation and the public's right to bargain for goods or services rendered, both of which are protected by Article I, Section 9 of the Florida Constitution.

Vagueness

155. The due process guarantee of Article I, Section 9 also protects individuals against the harm inherent in vague laws.

156. An ordinary person of average intelligence would either be unaware of or unable to ascertain the scope of section 18-302.

157. As such, section 18-302 is vague in violation of the due process guarantee of Article I, Section 9 of the Florida Constitution.

158. Plaintiffs have incurred costs associated with this lawsuit and are entitled to an award of costs.

WHEREFORE Plaintiffs respectfully request relief as follows:

- i. a declaratory judgment by this Court that the prohibition on standing still contained in section 18-302 of the Ordinance violates Article I, Section 9 of the Florida Constitution;
- ii. a declaratory judgment by the Court that the prohibition on display of merchandise contained in section 18-304 of the Ordinance violates Article I, Section 9 of the Florida Constitution;
- iii. a declaratory judgment by the Court that section 18-302 is unconstitutionally vague;
- iv. an award of costs; and
- v. such other and further relief as this Court deems just and proper.

COUNT II—Declaratory Judgment

Ultra Vires Application of Section 337.406, Florida Statutes

159. Plaintiffs incorporate Paragraphs 1 through 145 by reference.

160. The City's enforcement of section 337.406, Florida Statutes, within a municipality exceeds statutory authority and is therefore invalid.

161. Plaintiffs have incurred costs associated with this lawsuit and are entitled to an award of costs.

WHEREFORE Plaintiffs respectfully request relief as follows:

- i. a declaratory judgment by this Court that the City is enforcing section 337.406, Florida Statutes, in a manner that exceeds statutory authority and is therefore invalid;
- ii. an award of costs; and
- iii. such other and further relief as this Court deems just and proper.

COUNT III—Permanent Injunction

162. Plaintiffs incorporate Paragraphs 1 through 145 by reference.

163. Plaintiffs have suffered irreparable harm and will continue to suffer irreparable harm if the contested ordinances are not invalidated and if the City continues to misapply the contested statute because, if the laws continue to be enforced, Plaintiffs will not be able to vend in any effective manner, maintain their businesses without fear of arbitrary enforcement, nor grow their businesses.

164. The City will not be harmed by a permanent injunction enjoining the enforcement of the contested ordinances and statute.

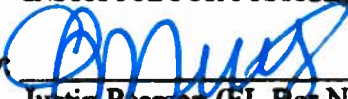
165. Plaintiffs have incurred costs associated with this lawsuit and are entitled to an award of costs.

WHEREFORE Plaintiffs respectfully request relief as follows:

- i. a permanent injunction enjoining enforcement of sections 18-302 and 18-304 of the Ordinance and, within the city limits of Hialeah, enforcement of section 337.406, Florida Statutes;
- ii. an award of costs; and
- iii. such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 8^{pm} day of May, 2013.

INSTITUTE FOR JUSTICE, FLORIDA CHAPTER

By 
Justin Pearson (FL Bar No. 0597791)
Claudia S. Murray (FL Bar No. 92499)
999 Brickell Avenue, Suite 720
Miami, FL 33131
Tel: (305) 721-1600
Fax: (305) 721-1601
Email: cmurray@ij.org, jpearson@ij.org

INSTITUTE FOR JUSTICE
William H. Mellor*
Robert J. McNamara*
Clark M. Neily, III*
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
Email: wmellor@ij.org, rmcnamara@ij.org, cneily@ij.org
Attorneys for Plaintiffs

* *Admitted pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8^{pm} day of May, 2013, a true and correct copy of the foregoing Amended Complaint was served via Email on the following counsel of record:

Mr. Michael Fertig, Esq., at michael.fertig@akerman.com
Ms. Jennifer Cohen Glasser, Esq., at jennifer.glasser@akerman.com
merari.motola@akerman.com
jennifer.rodriquez@akerman.com
Akerman Senterfitt
One Southeast Third Avenue
25th Floor
Miami, FL 33131

Attorneys for Defendant



Claudia S. Murray (FL Bar No. 92499)
INSTITUTE FOR JUSTICE, FLORIDA CHAPTER