STATE OF NORTH CAROLINA COUNTY OF DARE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 233
AMI HILL and MUSE ORIGINALS LLC, Plaintiffs, v. TOWN OF KILL DEVIL HILLS, et al., Defendants.	**PLAINTIFFS AMI HILL AND MUSE ORIGINALS LLC'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes and Ordinanaces

Other Authorities

Plaintiffs Ami Hill and Muse Originals LLC, by and through their undersigned attorneys, respectfully submit this brief in support of their Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure.

INTRODUCTION

Like so many small business owners, Ami Hill was forced to shut down her brick-and-mortar art gallery when the COVID-19 pandemic struck in 2020. True to her entrepreneurial spirit, Ami found a way to pivot so that she could pay her bills. Although she was forced to close her gallery, Muse Originals OBX in Kitty Hawk, she continued to sell the work of local artists by taking her show on the road in the form of a mobile art gallery—an old school bus that she repurposed.

But defendant Town of Kill Devil Hills had other plans for plaintiff Hill and her business, Muse Originals LLC. The Town's Itinerant Vendor Ordinance bans itinerant vendors—entrepreneurs who lack a brick-and-mortar building—by default. The only way an itinerant vendor can operate is by obtaining a Special Event permit. Those who wish to sell their wares between May 1 and September 30 ("High Season") can obtain a Special Event permit only if they either: 1) agree to donate 100% of their profits to a charity (Charitable Special Event); or 2) get permission to sell for profit from defendant Board of Commissioners (Non-Charitable Special Event), whose decision process lacks any standards or criteria; it is instead entirely subject to the Board's discretion.

At the same time, the Ordinance specifically exempts from these requirements itinerant vendors who sell at events sponsored by defendant Town and/or those on county property. These vendors need not obtain a permit and can operate during the

summer without donating their profits or getting permission from the Board of Commissioners. Additionally, itinerant vendors who operate indoors are exempt from these permit requirements. Unfortunately, at least for plaintiffs Hill and Muse Originals LLC, they fall on the wrong side of these exceptions to the Town's ban; the Town picks winners and losers without regard to fairness, much less its residents' constitutional rights.

The undisputed factual record confirms that the Itinerant Vendor Ordinance, on its face and as applied to plaintiffs, violates plaintiffs' rights secured by the North Carolina Constitution in three ways. *First*, the requirement that for-profit vendors cannot sell at a charitable event during the High Season unless they donate all of their profits violates the Fruits of their Own Labor Clause because what a vendor does with her profits bears no relationship to any interest the Town might assert. Moreover, to the extent that the Town seeks to protect brick-and-mortar businesses from competition, such a protectionist interest is plainly illegitimate. Worse, the donation requirement fails to advance that interest where vendors who donate their profits are still competing with brick-and-mortar businesses.

Second, itinerant vendors who want to operate in the High Season but don't want to donate their profits must seek permission from the Board of Commissioners, who have complete discretion in granting or denying a permit in the High Season. This lack of standards results in arbitrary, discriminatory, and capricious decision-making in violation of the Law of the Land Clause.

Third, while the Itinerant Vendor ordinance bans certain itinerant vendors, it specifically exempts itinerant vendors who operate at Town-sponsored events or on county property. The Ordinance also does not apply to events featuring indoor itinerant vendors. Both of these groups can operate during the High Season and keep their profits from sales at charitable events. If it is a non-charitable event, they do not need approval from the Board of Commissioners to operate. This special treatment for certain itinerant vendors violates the Equal Protection Clause. All itinerant vendors engage in the same activity—selling their wares from a nonpermanent location—and the justifications for banning or restricting plaintiffs equally apply to these other vendors. Yet the Ordinance and defendants treat them differently.

This lawsuit challenges the application of the Itinerant Vendor Ordinance to plaintiffs and itinerant vendors like them, who want to operate during the High Season and keep their profits, whether from Charitable or Non-Charitable events. As the Ordinance currently operates, however, plaintiffs are set up to fail.

Article I, section 35 of the North Carolina Constitution reminds us: "A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." Plaintiffs respectfully ask the Court to preserve the blessings of liberty by entering summary judgment in their favor on all three of their claims.

STATEMENT OF FACTS

I. Factual Background

A. Plaintiffs Ami Hill and Muse Originals LLC

Plaintiff Ami Hill is an entrepreneur and resident of Kill Devil Hills who owns Muse Originals LLC, a North Carolina limited liability company. Hill Aff. ¶¶ 1, 3. In 2017, Ms. Hill leased and renovated commercial space in Kitty Hawk, North Carolina, turning into reality her lifelong dream of owning an art gallery, Muse Originals OBX. Hill Aff. ¶ 7. The gallery featured the work of approximately 70 local artists and artisans. *Id.* In March 2020, the Governor's shut-down order, combined with the shutdown of nonresident access into town[1], forced Muse Originals OBX to close and caused Ms. Hill to lose much-needed income. Hill Aff. ¶ 8.

Ms. Hill decided to take her business to the road. She purchased an old school bus and remodeled it from the inside out, dubbing it #Bus252. Hill Aff. ¶ 3. Ms. Hill came up with the idea of a pop-up art market event called Muse Market, which involved two aspects: 1) #Bus252 would display and sell the work of local artists just as Muse Originals OBX did; and 2) Outer Banks artists would pay a small fee to set up tables or tents nearby to sell their work in person. Hill Aff. ¶¶ 5, 9. These Muse Market vendors would keep any profits from their sales. Hill Aff. ¶ 10. The first Muse Market launched in June of 2020 in Kitty Hawk, where town staff helped Ms. Hill with the necessary permits. Hill Aff. ¶ 11.

[1] Dare County officials ordered the Virginia Dare Bridge and the William B. Umstead Bridge, two main routes into the Outer Banks, closed to all nonresidents.

Ms. Hill first learned about defendant Kill Devil Hills' ban on itinerant vendors in the summer of 2020, when she was invited to set up Muse Markets in town next to a local restaurant, Mama Kwan's Grill and Tiki Bar, on the owner's private property. Hill Aff. ¶¶ 12, 15. Together they advertised the event on social media. Hill Aff. ¶¶ 12–13. Defendant Elliott saw the ad. Elliott Dep. 50:24–51:2. Ms. Hill received a telephone call from Elliott warning that the event was not allowed during the summer months, and that Elliott would not issue a permit for it. Hill Aff. ¶ 13; *see also* Elliott Dep. 52:12–52:17. Elliott further warned that if Ms. Hill proceeded with the event, she would send out the police. Hill Aff. ¶ 14. Hill decided not to set up the event. Hill Aff. ¶ 14

B. The Itinerant Vendor Ordinance

Unlike Kitty Hawk, the town of Kill Devil Hills flatly bans itinerant vendors from operating in the town, with few exceptions. Kill Devil Hills, N.C. Code of Ordinances, Ch. 111, § 111.03(A). A Special Event Permit scheme, enacted in 2019, allowed an exception to the ban for certain vendors who obtain a Special Event permit. § 111.03(A), (C). However, the permit scheme doesn't actually allow itinerant vendors like plaintiffs to operate in any meaningful way for five months out of the year, during the High Season of May 1 to September 30.[2] § 111.06.

[2] This lawsuit seeks to challenge the application of the Itinerant Vendor Ordinance to plaintiffs and all itinerant vendors who wish to operate during the High Season. At least prior to their filing of this lawsuit, defendants permitted plaintiffs to operate between October 1 and April 30 ("Shoulder Season").

Chapter 111, § 111 of the Kill Devil Hills, N.C. Code of Ordinances ("Itinerant Vendor Ordinance" or "Ordinance") regulates itinerant vendors[3] operating within the Town. Under § 111.01 of the Ordinance, an itinerant vendor is "[a]ny person utilizing any cart, table, equipment, tent, or other apparatus, which is stationary, designed and intended so as to not be a permanent fixture on a lot, and which a [sic] cart, table, tent, equipment or other apparatus is used for the retail sale, display, and/or accessory advertising of merchandise or food." This version of the Ordinance, drafted in large part by defendant Guns,[4] was passed on July 10, 2019.[5] Under the Itinerant Vendor Ordinance, itinerant vendors are expressly prohibited from operating anywhere in Kill Devil Hills, even on private property. § 111.03. However, the Itinerant Vendor Ordinance allows itinerant vendors to operate if they obtain a Special Event Permit. §§ 111.03(A), (C), 111.08. The Town Zoning Administrator (defendant Elliott) is charged with administration and enforcement of the Ordinance,

[3] An itinerant vendor is distinct from a peddler under the Ordinance. Essentially, itinerant vendors are merchants who remain stationary while selling or displaying their goods, while peddlers' activities can go beyond just selling and can include "distributing, disseminating, or gathering information by written or spoken word." Moreover, peddlers "go[] from place to place whether by foot or by other means of transportation." § 111.01

[4] While in her deposition defendant Guns downplayed her role in the 2019 amendments, it is clear upon viewing the Board of Commissioners' meetings at which the proposed amended ordinance is discussed that she was more than a simple scribe. *See* Town of Kill Devil Hills, *July 10, 2019 Kill Devil Hills Board of Commissioners Meeting,* YouTube (July 10, 2019), https://tinyurl.com/mr3bcvmn (time stamped at 13:15–19:14)

[5] *See* Town of Kill Devil Hills, *supra*, https://tinyurl.com/mr3bcvmn (time stamped at 12:32–20:52).

in cooperation with the Chief of Police, the Fire Chief, and Public Services and is authorized to issue permits thereunder. §§ 111.02, 111.08(B).

The Itinerant Vendor Ordinance was specifically designed to protect brick-and-mortar businesses from competition, particularly during the High Season. Guns Dep. 61:5–61:10. This is readily apparent in the Ordinance's provisions regarding Special Event Permits.

There are two types of Special Event Permits: Charitable and Non-Charitable.

Charitable Special Events

A Charitable Special Event is defined as one in which the permit holder and any vendors donate 100% of their profits to a tax-exempt nonprofit organization recognized by the United States Internal Revenue Code. § 111.01. These Charitable Special Events may occur year-round. § 111.05. Itinerant vendors selling at such an event may only keep their profits for events occurring between October 1 and April 30. § 111.06. During the five months between May 1 and September 30, itinerant vendors are prohibited from selling at a Charitable Special Event unless they donate 100% of their profits to a recognized charity. § 111.06. Thus, for nearly half of the year, the Itinerant Vendor Ordinance prohibits itinerant vendors from keeping any of their profits from Charitable Special Events.

Applications for a Charitable Special Event permit must be submitted to the Zoning Administrator. § 111.08(B). In her deposition, defendant Elliott testified that she always uses her best judgment when ruling on Charitable Special Event applications. Elliott Dep. 24:22–24:25. Her boss, defendant Guns, sees every

application defendant Elliot approves and if she disagrees, defendant Guns would let defendant Elliot know. *See* Elliott Dep. 85:12–86:1; Guns Dep. 86:7–86:21 ("Q: If you disagreed with [a permit approval] would you have let [Elliott] know? A: Yes.")

Under the Ordinance, the Zoning Administrator must issue a Charitable Special Event permit if certain criteria are met: §§ 111.09, 111.10(B). These criteria ensure that the proposed event will not cause traffic or safety concerns. Elliott sends all Charitable Special Event applications to the Town's police, fire, and public services departments. Elliott Dep. 22:16–22:23. Where an applicant fills in a line on the application with the term "N/A" or "Not Applicable," Elliott understands that to mean that the question does not apply to the proposed event. *See, e.g.*, Elliott Dep. 64:1–64:5; 67:11–68:10; 79:23–80:19. Even when a line to a question is left blank, Elliott does not deem the application "incomplete" and deny it; instead, she approves it and provides a letter with conditions ensuring a safe event. Elliot Dep. 64:6–65:7.

Non-Charitable Special Events

Non-Charitable Special Events are defined as "Event(s) operated solely for the purpose of providing a venue for itinerant vendors to sell or offer for sale articles of merchandise, food or beverage." § 111.01.

While § 111.03(A) flatly prohibits all itinerant vendors, § 111.03(C) prohibits all Non-Charitable special events—that is, "events operated solely for the purpose of providing a venue for itinerant vendors"—unless approved by the Board of Commissioners. The Ordinance nowhere contains standards, guidelines, or criteria to guide or limit the Board's exercise of discretion in considering an application for a

Non-Charitable Special Event permit. Nor does any such guidance exist outside the Ordinance. When asked to identify the factors the Board of Commissioners uses to decide whether to grant or deny a Non-Charitable Special Event permit, defendants replied, "There is no set criteria that the Board of Commissioners must adhere to." Defs. Resp. to Interrogatory No. 9. Indeed, all applications "are considered on a case-by-case basis." *Id.*

The application forms for Charitable and Non-Charitable Special Events are identical. Elliott Dep. 40:13–40:16 ("Q: What is the difference between the form for a charitable special event permit and the form for a non-charitable special event permit? A: It's the same form.") However, while Elliott is responsible for processing Charitable Special Event permit requests, after she receives an application for a Non-Charitable Special Event, she forwards it to defendant Guns, who prepares it for the Board of Commissioners. Elliott Dep. 40:17–40:22.

While Charitable Special Events must satisfy specific requirements articulated in the Ordinance in §§ 111.09, 111.10(B), the Ordinance is completely silent with respect to criteria the Board must consider in deciding whether to approve or deny an application. Since 2019, the Board has considered only two Non-Charitable Special Event applications, one for the sale of Christmas trees in a parking lot over an 18-day period. Matias Aff. Exh 1. The other was for plaintiffs' pop-up art market, discussed in Section I.E., below.

In sum, itinerant vendors who wish to operate profitably during the High Season can't win: they can either donate 100% of their profits in exchange for the

right to sell at a Charitable Special Event, or they can seek approval from the Board of Commissioners for a Non-Charitable Special Event in a process left entirely up to the whims of the Board members.

C. Exemptions from the Itinerant Vendor Ordinance

While the Ordinance allows itinerant vendors to operate if they obtain a Special Event permit, it also exempts certain vendors from that requirement altogether. Vendors at the town-sponsored First Flight Market operate freely in the High Season and can keep their profits. § 111.04(C). So can indoor vendors and those selling at commercial yard sales. §§ 111.01, 111.04(B). None of these exceptions apply to plaintiffs.

First Flight Market Vendors

In the summer of 2022, defendants launched a town-sponsored local artists market called First Flight Market (FFM), made up of itinerant vendors. Guns Dep. 63:18–63:22 ("Q: What's the First Flight Market? A: It's a market that the Board of Commissioners directed in response to trying to allow itinerant vendors because we had gotten a lot of public comment about it."). First Flight Market embodies the same concept as plaintiffs' Muse Market, featuring vendors selling local arts and crafts. FFM participants fit the definition of "itinerant vendor" found in § 111.01. However, under § 111.04(C), Town-sponsored events and events on county property are specifically exempt from these restrictions even though they are identical in every way—local artists and artisans selling their wares. Because the Ordinance exempts them, FFM vendors need not obtain any kind of Special Event permit to operate, nor ask for permission each time they want to sell. They can freely and profitably sell

their products during the High Season. Guns Dep. 66:17–66:24. Thus, the Itinerant Vendor Ordinance exempts FFM vendors who directly compete with plaintiffs' business.

Indoor Vendors and Commercial Yard Sale Vendors

In addition to exempting itinerant vendors who operate at the First Flight Market, defendants exempt itinerant vendors who operate indoors from having to obtain a Special Event Permit. When Ms. Hill asked to see the permits of certain itinerant vendors operating on private property, defendant Elliott responded that these vendors were exempt from the Ordinance because they were operating indoors. Hill Aff. Exh. 5 (Bates 053). Indeed, the Ordinance's definition of itinerant vendor suggests that it does not apply to indoor vendors: "a person utilizing any cart, table, ... designed and intended so as not to be a permanent fixture on a lot ..." § 111.01.

Additionally, the Itinerant Vendor Ordinance allows brick-and-mortar businesses to host a "commercial yard sale" on their premises up to four times a year. § 111.04(B). These commercial yard sales allow itinerant vendors to operate with permission from the business and without a special event permit; they can operate regardless the time of year and can keep their profits. Guns Dep. 88:21–92:4. When asked if an itinerant vendor could, hypothetically, set up at numerous different businesses to sell at various commercial yard sales, effectively scheming to sell during the High Season and keep their profits, defendant Guns agreed that they could. Guns Dep. 91:25–93:8.

The purpose of the Ordinance's complicated scheme is, at heart, protectionist. Defendant Guns testified that the Board wanted to protect existing businesses from competition by itinerant vendors. Guns Dep. 43:4–43:15. "That's why we wrote the ordinance." *Id.* at 43:17–43:18. Thus, the Itinerant Vendor Ordinance allows defendants to pick winners and losers at the Town's whim. Applied against plaintiffs, it has violated their constitutional rights.

D. Defendants Have Denied Plaintiffs the Right to Operate for Nearly Half of the Year Where Plaintiffs Didn't Want to Donate 100% of their Profits

Between fall 2020 and winter 2022, on numerous occasions plaintiff Hill submitted Charitable Special Event applications for her pop-up artist market. Each time, defendant Elliott granted these applications for events if they occurred during the Shoulder Seasons of this period. Hill Aff., ¶ 16. During these Charitable Special Events, #Bus252 and the Muse Market vendors were allowed to keep their profits. § 111.06; Hill Aff. ¶ 16. Only the permit holder for these events, Muse Originals LLC, was required to donate profits to a charity for these events. § 111.06(B).

For example, defendant Elliott granted plaintiffs' applications for a Spring Art event at Outer Banks Brewing Station and Jack Brown's Beer and Burger Joint, and holiday markets on weekends between Thanksgiving and Christmas. The applications for each of these events were always the same. Hill Aff. ¶ 17. In April 2021, plaintiffs were invited to host a series of summer art market events (called "Brew N Art") at the Outer Banks Brewing Station. Hill. Aff. ¶ 18. Plaintiffs applied for a Charitable Special Event permit to host the event every Monday during the summer of 2021. *Id.* Defendant Guns rejected the application on the grounds that

Charitable Special Events with for-profit vendors are only permitted between September 30 and May 1. Hill Aff. ¶ 18. Defendant Guns told Ms. Hill that she could apply for a Non-Charitable Special Event permit for approval by defendant Board of Commissioners. Hill Aff. ¶ 19.

In April 2022, plaintiffs again sought permission to hold a series of Charitable Special Events on several dates in the spring, including two dates in the High Season, May 6 and May 26. Hill Aff. ¶ 20. These events, like several times before, were to be held at Jack Brown's Beer and Burger Joint. Hill Aff. ¶ 20. Defendant Elliott rejected these two dates because the Town did not "allow special events unless all of the proceeds go to a charity." Hill Aff. ¶ 20.

On May 3, 2022, plaintiff Hill filled out the same paper application she always did, this time for a Non-Charitable Special Event permit, to hold the usual pop-up art event. Hill Aff. ¶¶ 21, 23. The dates for the proposed event fell on every Monday between May 25 through September 6. Hill Aff. ¶ 21. Plaintiffs submitted a Charitable Special Event application identical to those they had submitted in times past. Hill Aff. ¶¶ 21–22. Since the application was for a Non-Charitable event, defendant Elliott forwarded the application to defendant Guns to present it to the Board of Commissioners. *See* Elliott Dep. 25:16–26:5.

E. Defendant Board of Commissioners Arbitrarily Denied Plaintiffs' Application for the Same Event that the Town Has Repeatedly Approved During the Shoulder Season

At the Board's May 25, 2022, public meeting, the Board considered plaintiffs' application for a Non-Charitable Special Event. *See* Town of Kill Devil Hills, *May 25, 2022 Kill Devil Hills Board of Commissioners Meeting,* YouTube (May 25, 2022),

https://tinyurl.com/4pkk948y (34:08–52:35). During the meeting, the Board and Town staff discussed several reasons for denying plaintiffs' permit. First, despite the fact that the very definition of a Non-Charitable Special Event is one at which itinerant vendors sell their wares, § 111.01, Town Planner Debra Diaz claimed that "there was no event associated with" the application. "This would be an itinerant vendor setting up at another place of business selling wares that we have brick and mortar stores selling the same thing." *See* Town of Kill Devil Hills, *May 25, 2022 Kill Devil Hills Board of Commissioners Meeting,* YouTube (May 25, 2022), https://tinyurl.com/4pkk948y (35:22 – 36:19). And according to defendant former Mayor Sproul, if plaintiffs would have included a "puppet show" or a "demonstration on how to make something" as part of the pop-up market, it would have constituted an "event." *Id.* at 42:17 – 42:36.

What defendants had previously approved as an "event" time and again during Shoulder Season was suddenly not an event. Both defendants Elliott and Guns knew this; Elliott was familiar with and had approved Ms. Hill's pop-up market event many times. Elliott Dep. 70:18–71:13. When asked in deposition what constitutes an "event," defendant Guns admitted that "market" and "event" were the same thing. Guns Dep. 72:19–73:3 ("Q:[Regarding the First Flight Market] What makes it an event? A: I don't know. Q: You've never heard the word 'event'? A: I think it's a market, but market and event are synonymous. … There's no difference. Q: So you think it's the same thing? A: It's no different. It's no different.").

Defendant Commissioner Terry Gray stated that the application should be denied because it was "incomplete" where, on some of the lines, plaintiffs had written in "N/A". Town of Kill Devil Hills, *May 25, 2022 Kill Devil Hills Board of Commissioners Meeting,* YouTube (May 25, 2022), https://tinyurl.com/4pkk948y (48:42–48:55). Elliott testified that in the past, she had approved plaintiffs' applications with "N/A" because she understood it to mean that the information did not apply to the particular event. Elliott Dep. 67:11–68:10; 63:22–64:23. Elliott knew Ms. Hill's event well, and that on many occasions where Hill wrote "N/A" on the application form, Elliott approved the application. Hill Aff., Exhs. 1, 3. At no time did Elliott or Guns deem those applications "incomplete."

Previously, in 2020, the Board approved as a Non-Charitable Special Event for the sale of Christmas trees in a parking lot. Matias Decl. Exh. 1. To the Board, this rose to the level of "event" even though it was nothing more than someone selling Christmas trees. No puppets or crafting demonstrations were required for the Board to approve this application. Moreover, the 2020 application included several lines filled in with "N/A" and yet the Board did not deem it "incomplete."

That the Ordinance grants complete discretion to the Board without requiring any standards for permit decisions leaves applicants like plaintiffs at the mercy of the Board's whims. This process has nothing to do with health or safety and everything to do with favoritism and protectionism.

II. **Procedural Background**

Plaintiffs filed this action on June 7, 2022, alleging unconstitutional deprivations of the fruits of their labor and due process (through the Law of the Land

Clause) as well as equal protection, all under the North Carolina Constitution, article I, sections 1 and 19. Compl. ¶¶ 55–98. Defendants filed their Answer on September 12, 2022. The parties have completed discovery. As there are no disputes as to material facts at issue, this case is ripe for summary judgment.

LEGAL STANDARD

Summary judgment is properly granted when the forecast of evidence "reveals no genuine issue as to any material fact, and when the moving party is entitled to a judgment as a matter of law." *Koontz v. City of Winston-Salem*, 280 N.C. 513, 518 (1972). Summary judgment is properly granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen.Stat. § 1A-1, Rule 56(c) (2001). "[T]he party moving for summary judgment ultimately has the burden of establishing the lack of any triable issue of fact." *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 491 (1985) (citation omitted). The burden then shifts to the nonmovant to demonstrate with specific facts that a genuine factual dispute exists for trial. *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579 (2002) (citation omitted).

ARGUMENT

Summary judgment should be granted here, since defendants cannot put forth evidence of any genuine issue of material fact. Defendants admit that the law applies to and has been applied against plaintiffs. This is not in dispute. The Itinerant Vendor Ordinance restricts plaintiffs from operating during the High Season: if they want to sell at a Charitable Special Event, they have to donate 100% of their profits. If they

don't want to donate profits, they must obtain permission from the Board of Commissioners who have full discretion in their decision-making. These requirements violate both the Fruits of Their Own Labor Clause and the Law of the Land Clause. Moreover, the Ordinance exempts certain itinerant vendors from these requirements without reasonable justification. As such, the Ordinance violates plaintiffs' rights under the Equal Protection Clause.

The Itinerant Vendor Ordinance can be understood as a default ban, § 111.03, that carves out exceptions for five categories: 1) itinerant vendors selling at a "charitable special event" § 111.03(A); 2) itinerant vendors selling at a "non-charitable special event" subject to approval by the Board of Commissioners, § 111.03(C); 3) itinerant vendors operating at town-sponsored events or on county property, § 111.04(C); 4) itinerant vendors operating indoors, Hill Aff. Exh. 5; and 5) itinerant vendors selling at commercial yard sales of brick-and-mortar businesses, § 111.04(B). While the latter three exceptions appear broad at first glance, they still manage to exclude plaintiffs from exercising their fundamental rights. As itinerant vendors who want to operate for profit during the High Season, plaintiffs have two choices: sell at a Charitable Special Event and donate all profits, or ask for permission from the Board of Commissioners, whose decision-making is unconstrained by any uniform criteria. The Ordinance and the situation it leaves plaintiffs in violates plaintiffs' constitutional rights to the fruits of their labor, due process ("law of the land"), and equal protection of the laws.

I. Application of the Itinerant Vendor Ordinance to Plaintiffs During the High Season Violates the Law of the Land Clause by Denying the Fundamental Right to the Fruits of their Own Labor (Art. 1, §§ 1, 19)

Article I, section 19, of the North Carolina Constitution declares that no person shall be "in any manner deprived of his life, liberty or property but by law of the land." N.C. Const. art. I, § 19. "Law of the Land" is synonymous with due process. *State v. Ballance*, 229 N.C. 764, 769 (1949). The North Carolina Supreme Court has recognized that the "fundamental guaranties" in sections 1 and 19 "are very broad in scope and are intended to secure each person subject to the jurisdiction of the State extensive individual rights." *Tully v. City of Wilmington*, 370 N.C. 527, 534 (2018) (quoting *Ballance*, 229 N.C. at 769).

The "Law of the Land" Clause is North Carolina's analogue to the federal substantive Due Process Clause. *Howell v. Cooper*, 290 N.C. App. 287, 296 (2023), *rev. granted* 900 S.E.2d 928 (mem.) (May 30, 2024). However, North Carolina courts have long provided greater protections under the state constitutional provision than federal courts under the analogous provision of the U.S. Constitution. *See State v. Womble*, 277 N.C. App. 164, 185 (2021). In protecting plaintiffs' rights under this clause, this court must ensure that the Town's exercise of its police powers is consistent with the Law of the Land.

"[T]he power to regulate a business or occupation does not necessarily include the power to exclude persons from engaging in it. When this field has been reached, the police power is severely curtailed." *State v. Harris,* 216 N.C. 746, 759 (1940) (citations omitted). *See also In re Certificate of Need for Aston Park Hosp. Inc.*, 282

N.C. 542, 551 (1973) (power to regulate a business does not necessarily include the power to ban persons from engaging in it). The police power "must not invade personal and property rights guaranteed and protected by" the North Carolina Constitution. *Roller v. Allen*, 245 N.C. 516, 525 (1957). This includes rights guaranteed under article I, sections 1 and 19.

Here, the Itinerant Vendor Ordinance is inconsistent with article I, sections 1 and 19 in several ways. First, by requiring plaintiffs who sell at Charitable Events during the High Season to donate 100% of their profits, the Ordinance infringes on their right to the fruits of their own labor and the fundamental right to earn a living, which are protected by the Law of the Land Clause. Alternatively, if plaintiffs want to keep their profits by selling at a Non-Charitable Special Event during the High Season, they must go through the Board of Commissioners, whose arbitrary decision-making violates their right to procedural due process under the Law of the Land Clause.

Plaintiffs anticipate that defendants will argue that because N.C. Gen. Stat. § 160A-178 authorizes cities and towns to "regulate, restrict or prohibit … the business activities of itinerant merchants ….", they have a free pass to do what they want with respect to regulating itinerant vendors. *See* Defs. Answer ¶ 23 and Defs. Responses to Plaintiffs First Set of Interrogatories No. 13. However, this position ignores a fundamental truth about a municipality's police powers: they are constrained by the Constitution. A municipality has no power on its own; it only obtains its power granted by the state through the General Assembly. *See King v.*

Town of Chapel Hill, 367 N.C. 400, 404 (2014). A state cannot grant a municipality power it does not have, and that includes the power to infringe on the rights of its citizens. Thus, an ordinance is invalid if it "infringes a liberty guaranteed to the people by the State [] Constitution." N.C. Gen. Stat. § 160A-174(b)(1) (2023).

A. Fruits of their Own Labor Is a Fundamental Right

The North Carolina Constitution declares: "We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness." N.C. Const. art. I, § 1. While much of this provision, added to the constitution in 1868, echoed the Declaration of Independence, it explicitly added the "inalienable right" to the fruits of one's labor. *See Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418, 424 (2024). The time-tested principle behind the Fruits of their Own Labor Clause is that "government may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations." *Cheek v. City of Charlotte*, 273 N.C. 293, 296 (1968) (quoting *Lawton v. Steele*, 152 U.S. 133, 137 (1894)).

North Carolina courts have long recognized that the Fruits of Their Own Labor Clause protects one's fundamental right to earn a living. *See, e.g.*, *Kinsley*, 386 N.C. 418, 424; *N.C. Bar & Tavern Ass'n v. Cooper,* 293 N.C. App. 402, 417–18 (2024); *Howell,* 290 N.C. App. at 296, *rev. granted by* 901 S.E.2d 232 (mem.) (June 5, 2024); *Tully*, 370 N.C. at 534*; King v. Town of Chapel Hill,* 367 N.C. 400, 408 (2014); *Treants Ent. Inc. v. Onslow Cnty.*, 83 N.C. App. 345, 354 (1986); *Ballance,* 229 N.C. at 769.

Where a challenged law restricts a fundamental right—i.e., one that is "a part of every individual's liberty," *State v. Dobbins*, 277 N.C. 484, 497 (1971)—it is subject to strict scrutiny. *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 180 (2004). *See Halikierra Cmty. Servs. LLC v. N.C. DHHS*, 385 N.C. 660, 663 (2024).

Here, the Itinerant Vendor Ordinance restricts plaintiffs' only options for selling during the High Season to either: a Charitable Special Event, where they would have to donate all their profits, or a Non-Charitable Special Event, which is subject to the Board of Commissioners whims. In both ways, the Itinerant Vendor Ordinance violates plaintiffs' fundamental right to the fruits of their own labor by preventing plaintiffs from earning a living by selling local art and wares.

1. Defendants' asserted purposes for the law are not proper

The North Carolina Supreme Court recently addressed the appropriate inquiry for a law alleged to violate the Fruits of Their Own Labor Clause. The court must ask: "'(1) is there a proper governmental purpose for the statute, and (2) are the means chosen to effect that purpose reasonable?'" *Kinsley,* 386 N.C. at 424 (quoting *Poor Richard's, Inc. v. Stone*, 322 N.C. 61, 64 (1988)). In assessing these questions, the court must look at the actual purpose, not the one necessarily put forward by the state. 386 N.C. at 425.

Here, defendants have asserted three purposes to justify the Ordinance: 1) protecting brick & mortar businesses from competition; 2) ensuring the safety of

residents and visitors; 3) dealing with increased traffic.[6] *See* Defendants' Responses to Plaintiffs' First Set of Interrogatories, Nos. 11, 14–15. None of these are proper purposes under the Fruits of Their Own Labor Clause.

Defendants' first purpose, protecting brick and mortar businesses from competition, is consistently raised by defendants in support of the Ordinance. For example, when asked for factual evidence that requiring itinerant vendors to donate all profits serves interests in health, safety, and welfare, defendants responded that "there are permanent commercial structures that rely on the high season for their success. Additional competition with no overhead cost or property taxes is not an option the Town has chosen to grant in the high season."[7] Defs. Resp. to Int. No. 14. And defendant Guns testified in her deposition that the Board's goal in adopting the 2019 Ordinance was to not allow itinerant vendors in peak season "so that the brick-and-mortar businesses could do the best they could do in our high tourist season." Guns Dep. 61:5–61:10; 43:2–44:11. Defendant Guns also testified about her concern that if plaintiffs were approved for a Non-Charitable Special Event permit, other

[6] While defendants asserted an interest in "controlling commerce" in response to Interrogatory Nos. 11 and 15, when asked what this term meant, defendant former Mayor Ben Sproul had no idea. Sproul Dep. 69:7–70:13. Assuming it has something to do with protecting brick and mortar businesses from competition, we address this in the following section..

[7] Notably, defendants had no real evidence that brick and mortars needed their protection. When defendant Guns was asked whether any business complained about competition from an itinerant vendor, she could only recall one "a long time ago" when an ice cream shop complained about an ice cream truck going through the neighborhoods. Guns Dep. 62:10–62:25. But under the Town's own definitions, an ice cream truck is a peddler and not an itinerant vendor. § 111.01

itinerant vendors would want to make "an event of themselves," contrary to the Board's desire to prohibit "events all over town that were competing with brick-and-mortar businesses." Guns Dep. 88:6–88:9. Since itinerant vendors allegedly "do not pay overhead, taxes, and do not meet any of the town codes" like brick-and-mortar businesses, they are not allowed to operate for profit in the High Season. Guns Dep. 61:25–62:3.

Under *Kinsley*, a proper purpose is one that seeks to accomplish in the public good or prevent a public harm. 386 N.C at 425. A purpose is in the public good if it is broad enough that it serves the public welfare generally, rather than private interests. *Id.* However, if it addresses "the interests of a particular class rather than the good of society as a whole," it is not a proper purpose. *Id.* (quoting *Ballance*, 229 N.C. at 772.) Here, defendants quite blatantly seek to shield a particular class—brick and mortar businesses—from summertime competition by itinerant vendors. Rather than protecting the public welfare, the Town has chosen to protect particular private interests.

This economic protectionism—shielding some businesses at the expense of others—is not a proper purpose. *See, e.g.*, *Proctor v. City of Jacksonville,* 910 S.E.2d 269, 277–78 (N.C. App. 2024) (ordinance intended to protect restaurant businesses from food trucks was justified by an improper purpose). This fundamental principle is also enshrined in the Anti-Monopoly Clause found in article I, section 34, of the North Carolina Constitution. *See Shuford v. Town of Waynesville*, 214 N.C. 135, (1938). Several federal courts have held that economic protectionism is not a

legitimate government interest. *See St. Joseph Abbey v. Castille*, 712 F.3d 215, 222 (5th Cir. 2013); *Merrifield v. Lockyer*, 547 F.3d 978, 991 n.15 (9th Cir. 2008); *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002). Because North Carolina courts afford even stronger protection of individual rights than federal courts do, *Womble*, 277 N.C. App. at 185, defendants' asserted interest in protecting certain businesses is not a proper purpose.

Defendants also claim that the Ordinance is supported by interests in ensuring safety and managing traffic congestion. To support these purposes, defendants offered up census data, Dare County tourism statistics, and North Carolina Department of Transportation traffic studies. Defs'. Resp. to Interrog. No. 14. When asked about the relationship between this data as evidence of defendants' interest in the health, safety, and welfare of the community and requiring itinerant vendors to donate their profits, defendant former Mayor Sproul testified that they were "unrelated." Sproul Dep. 96:2–96:5. Even assuming these are defendants' actual purposes,[8] the means chosen—requiring itinerant vendors to donate 100% of their profits—bears no relationship to keeping residents and visitors safe or minimizing problems with traffic.[9]

---

[8] The court must identify the state's actual purpose. *Kinsley*, 386 N.C. at 424–25. After the defendant asserts its purpose, "the Plaintiff may rebut that assertion with evidence demonstrating that the state's asserted purpose is not the true one, and instead the state is pursuing a different, unstated purpose."

[9] Defendants' concerns about traffic and safety are also already addressed in the Special Event application process. Under § 111.09, before approving an event, the Zoning Administrator must consider, among other things, adequacy of security for the event, traffic control, crowd control, and health and safety conditions for attendees.

2. Requiring Vendors to Donate 100% of Profits Is Not a Reasonable Means to Effect a Proper Purpose

Under the second prong of *Kinsley* test, the court must ask whether the Ordinance's demand that itinerant vendors donate 100% of profits for Charitable Events during the High Season "is a reasonable means to effect the government purpose." *Kinsley*, 386 N.C. at 426. The court must balance the *public* good (not just the benefit to a limited class) likely to result from the donation requirement against the burdens imposed on the targeted itinerant vendors. *Id.* Ultimately, the question for the court is whether the challenged law is a reasonable approach given all the options available to advance the asserted governmental purpose. *Id.*

King v. Town of Chapel Hill, 367 N.C. 400 (2014), is instructive. There, the town had enacted an ordinance regulating towing businesses, including a cap on the fees a business could charge. *Id.* at 402. The town justified its regulations based on a general enabling statute. *Id.* at 405. The North Carolina Supreme Court began its analysis by declaring that while the town had the authority to regulate private towing, municipalities are not endowed with "omnipotence." *Id.* at 407. An enabling statute is "limited by individual rights and by the laws and constitutions of state and federal governments." *Id.* And because the challenged ordinance implicated the fundamental right to earn a living, the Court's "duty to protect fundamental right includes preventing arbitrary government actions that interfere with the right to the fruits of one's own labor." *Id.* at 408. The Court declared that the amount citizens pay for towing fees was "wholly unrelated" to public health, safety, or welfare of the community. *Id.* at 409. There being no real or substantial relationship between

regulating fees and any proper government interest, the Court struck down the fee cap. *Id.*

Here, defendant Town also seeks to justify its profit donation requirement based upon a general enabling statute, N.C. Gen. Stat. § 160A-178. Defs. Resp. to Int. Nos. 12–13, 16. However, as in *King*, the donation requirement during the High Season is "wholly unrelated" to any concern about traffic, safety, or any matter of general welfare. When pressed to identify the relationship between what an itinerant vendor does with her profits and the impact on traffic or safety, Guns initially refused to answer. *See* Guns Dep. 59:13–59:22. Guns did finally acknowledge that the strain on public services during the High Season is no different if vendors donate their profits or keep them. Guns Dep. 60:22–61:1. ("Q: Okay. And if a town allows an event involving itinerant vendors is the burden on public services different depending on whether they donate their profits to charity? A: Not that I'm aware of."). And when defendant former Mayor Sproul was asked about the relationship between an itinerant vendor donating profits and any advancement of traffic or safety (or any other legitimate) interest, Sproul responded that they are "unrelated." Sproul Dep. 95:12–97:2.

The core principle behind Fruits of Their Own Labor Clause is that government cannot arbitrarily interfere with private business by imposing upon otherwise lawful business unnecessary restrictions under the guise of the public interest, particularly where they bear no relation to achievement of that interest. *See Cheek*, 273 N.C. at 296. Scrutinizing the defendants' interest in traffic and safety, this court will find no

connection between increased traffic or public safety issues and how itinerant vendors use their profits during the High Season. Defendants have failed to produce any evidence of a fit between the donation requirement and a proper government purpose for a very simple reason: such a relationship does not exist. Likewise, there is no connection between what a vendor does with profits and protecting brick and mortar businesses from competition. Indeed, an itinerant vendor who operates in the High Season and donates profits still competes with a brick-and-mortar business.

II. The Non-Charitable Special Event Permit Process Violates Plaintiffs' Right to Due Process Under Art. I, § 19

While the donation requirement for Charitable Special Events during the High Season flatly prevents itinerant vendors from reaping the fruits of their own labor, the process for obtaining a Non-Charitable Special Event permit fares no better constitutionally. Non-Charitable Special Events are, by definition, specifically designed to give itinerant vendors a way to sell their wares § 111.01. The Ordinance, by its silence on the matter, leaves it entirely up to the Board of Commissioners to grant or deny an application. *See also* Defs. Resp. to Int. No. 9 ("There is no set criteria that the Board of Commissioners must adhere to …"). This complete lack of uniform criteria to guide decision-making violates plaintiffs' rights to due process.

In plaintiffs' case, a lack of uniform criteria left the Board to make up *ad hoc* reasons to deny the application for a Non-Charitable Special Event. First, the Board claimed that plaintiffs didn't have an "event" but rather that plaintiffs just wanted to set up at someone's business and sell things. Defendant former Mayor Sproul stated that had plaintiffs only included a puppet show or craft demonstration, it

might be considered an "event." Of course, the event that plaintiffs proposed was the very thing defendants had granted special event permits for in the past: a pop-up art market. Indeed, Elliott knew Ms. Hill and her market well because she had approved her many times before. Elliott Dep. 70:1–71:13. Plaintiffs' pop-up market embodied the same concept as the First Flight Market: local artists and artisans selling their wares. When asked about the difference between a "market" and an "event," defendant Guns testified there is no difference. Guns Dep. 72:19–73:3.

The real issue here, however, is not the specific pretextual reasons the Board gave for denying plaintiffs; it is the fact that the Ordinance allows the Board complete discretion to decide. Where the Board of Commissioners operates without uniform standards and with full discretion, it is in a position to act arbitrarily and can deny an application for any reason, legitimate or not. "[I]n so doing they demonstrate[] the ordinance's offense against the due process clauses of the federal and state constitutions." *Application of Ellis*, 277 N.C. 419, 425–26 (1970).

> [I]f an ordinance is passed by a municipal corporation which, upon its face, restricts the right of dominion which the individual might otherwise exercise without question, not according to any general or uniform rule, but so as to make the absolute enjoyment of his own depend upon the arbitrary will of the governing authorities of the town or city, it is unconstitutional and void, because it fails to furnish a uniform rule of action and leaves the right of property subject to the despotic will of aldermen who may exercise it so as to give exclusive profits or privileges to particular persons.
>
> *State v. Tenant*, 110 N.C. 609, 612 (1892).

Here, the Board of Commissioners lacks any uniformly applicable standards, rules, and regulations for granting or denying non-charitable special event

applications. Def's Resp. to Int. No. 9. The Board cannot constitutionally act on special event permits based on an arbitrary exercise of discretion; rather, it must "proceed under standards, rules, and regulations, uniformly applicable to all who apply for permits." *Application of Ellis*, 277 N.C. at 425. Because the Itinerant Vendor Ordinance lacks any guidance for the Board, its decision-making process on Non-Charitable Special Events violates plaintiffs' rights to due process.

III. Enforcing the Itinerant Vendor Ordinance Against Plaintiffs While Exempting Other Itinerant Vendors Violates Equal Protection Under Article 1, Section 1

Article 1, section 19 of the North Carolina Constitution guarantees, in relevant part, that "[n]o person shall be denied the equal protection of the laws." To that end, government action is void "when persons who are engaged in the same business are subject to different restrictions or are treated differently under the same conditions." *Poor Richard's, Inc.*, 322 N.C. at 67 (citing *Cheek*, 273 N.C. at 298). The Itinerant Vendor Ordinance applies to certain itinerant vendors, including plaintiffs, while excluding others, namely, itinerant vendors who sell at Town sponsored events or on county property, § 111.04(C), those selling at indoor events. Hill Aff. ¶ Exh. 5, and those selling at commercial yard sales. § 111.04(B).

Section 111.04 specifically exempts itinerant vendors who sell at a Town-sponsored event or on county property from permit requirements. This includes all vendors at the Town's First Flight Market. Additionally, defendants have stated that these requirements don't apply to itinerant vendors who sell indoors. Hill Aff. Exh. 5. Finally, itinerant vendors who sell at a business's "commercial yard sale" are exempt from Special Event permit requirements. § 111.04(B). Thus, exempt vendors can sell

year-round and keep their profits. Like plaintiffs, all of these vendors compete with brick-and-mortar businesses. None carry overhead like brick-and-mortars, nor do they pay property taxes like brick-and-mortars businesses—things that defendants claim make allowing itinerant vendors to operate during the High Season unfair for brick-and-mortar businesses. Guns Dep. 61:25–62:3. Yet unlike plaintiffs, they are allowed to keep the fruits of their own labor.

A. Strict Scrutiny Applies to Classifications that Burden Fundamental Rights

Where government action impedes the exercise of a fundamental right, the court must evaluate the challenged action under strict scrutiny. *Rhyne*, 358 N.C. at 180. *See also Halikierra*, 385 N.C. at 665 (equal protection claims entitled to strict scrutiny where fundamental right restricted); *N.C. Bar & Tavern Ass'n v. Cooper*, 293 N.C. App. 402, 426 (2024) (same).

Under strict scrutiny, a classification justifying differential treatment must bear a real, substantial relationship to the legitimate purpose of the ordinance. *Cheek*, 273 N.C. at 299. The court must strike down the challenged exemptions unless they are "reasonable and founded on material differences and substantial distinctions which bear a proper relation to" the government purpose. *State v. Glidden*, 228 N.C. 664, 666–67 (1948). "If persons under the same circumstances and conditions are treated differently, there is arbitrary discrimination and not classification." *Id.*

B. Defendants Cannot Justify Treating Plaintiffs Differently than Exempt Vendors Absent a Substantial Relationship to a Legitimate Purpose

Recent cases from North Carolina Courts of Appeals provide strong guidance on how equal protection claims are evaluated. For example, in *N.C. Bar & Tavern Ass'n v. Cooper*, plaintiffs challenged the fact that Governor Cooper ordered pandemic-era shutdowns of certain bars but not restaurants, even though both served alcohol. 293 N.C. App. 402, 419 (2024). The Governor argued that the discriminatory shutdowns were necessary to protect public health and safety. *Id.* at 420. He relied on evidence including general news articles and studies published after the shutdown order. *Id.* at 421–22. The court stated that the evidence did not support different treatment because it failed to address the difference in risk by allowing some bars to open but not others. *Id.* at 423. This unequal treatment was "illogical and not rationally related to Defendants' stated objective" of health and safety. *Id.* The court held it "arbitrary to attempt to achieve Defendant's health outcomes by applying different reopening standards to similarly situated businesses." *Id.* at 427. "The unequal treatment of Plaintiffs had the effect of denying their fundamental right to earn a living by the continued operation of their businesses." *Id.*

In *Proctor v. City of Jacksonville*, two food truck vendors and a business owner challenged the town's Unified Development Ordinance (UDO), which prohibited food trucks from operating within 250 feet of a brick-and-mortar restaurant and other parts of the town, adding up to 96% of the town's area. 910 S.E.2d 269, 272 (N.C. App. 2024). Plaintiffs based their claims for violations of the Fruits of Their Own Labor Clause and the Equal Protection Clause on the fact that other providers of food and

drink such as restaurants, produce stands, and specialty eating places were not subject to the same restrictions under the UDO. *Id.* at 275. The Court of Appeals, reversing the trial court's dismissal, agreed, holding that where plaintiffs had alleged different treatment of businesses engaging in the same activity, they had sufficiently established an equal protection claim. *Id.* at 276. Equal protection requires that differential classifications must be rationally related to the purpose of the ordinance and based on a permissible purpose. *Id.*

Here, defendants cannot identify any sufficiently distinguishing features of the town-sponsored vendors, indoor vendors, or commercial yard sale vendors to justify exempting them from the Ordinance. Nor can they explain how treating these vendors differently is rationally related to—much less based on—permissible purposes of controlling traffic and ensuring safety during the High Season. (They certainly cannot explain how allowing these vendors to operate outside of the Ordinance protects brick-and-mortars from competition). Like the defendants in *N.C. Bar & Tavern* and *Proctor*, defendants' discriminatory treatment of plaintiffs is arbitrary, irrational, and capricious. As such, it cannot stand. *Proctor*, 910 S.E.2d at 276. "[M]unicipalities have broad powers to enact ordinances regulating the health, safety, and welfare of their constituents; however, that power ends where unlawful differential and preferential treatment of certain citizens and entities at the expense of others begins." *Id.* at 273. The Ordinance must be struck down where it violates equal protection.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully ask this court to grant summary judgment in their favor on all claims.

DATED: March 13, 2025.

Respectfully submitted,

/s/ Adam Griffin
ADAM GRIFFIN
N.C. Bar No. 55075
Pacific Legal Foundation
3100 Clarendon Blvd. Suite 1000
Arlington, VA 22201
AGriffin@pacificlegal.org

DONNA G. MATIAS*
CA. Bar No. 154268
CALEB R. TROTTER*
CA. Bar No. 305195
Pacific Legal Foundation
555 Capitol Mall, Ste 1290
Sacramento CA 95814
Tel: (916) 419-7111
Fax: (916) 419-7747
DMatias@pacificlegal.org
CTrotter@pacificlegal.org

B. Tyler Brooks
N.C. Bar No. 37604
Law Office of B. Tyler Brooks, PLLC
100 East Lake Drive, Suite 6
Greensboro, NC 27403
Tel: (336) 707-8855
btb@btylerbrookslawyer.com

**Pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2025, the undersigned has served the foregoing upon the parties to this action via email:

Casey C. Varnell
Sharp Graham Baker & Varnell, LLP
Post Office Drawer 1027
Kitty Hawk, NC 27949
varnell@ncobxlaw.com

Attorney for Defendants

/s/ Adam Griffin
ADAM GRIFFIN