ACLU Illinois | CHICAGO COALITION FOR THE HOMELESS | NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

August 28, 2018

VIA EMAIL

Nicholas O. Meyer, Legal Director
Legal Department
City of Rockford
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Dear Mr. Meyer:

We write regarding Sections 19-42 and Section 24-52(a) (collectively, the "Ordinances") of the Rockford Code of Ordinances. Section 19-42 prohibits "aggressive" panhandling, and Section 24-52(a) prohibits panhandlers from "soliciting contributions from the occupants of any vehicle on roadways," but allows other speakers to do so. The Ordinances violate the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution, because they are overbroad and because they draw distinctions based on the content or viewpoint of a person's speech. We therefore ask that the Rockford Police Department immediately cease enforcement of the Ordinances, that the City Council take prompt steps to repeal them, and that any pending charges under the Ordinances be dismissed.

Courts have long recognized that requesting money is a form of constitutionally protected speech, and that laws restricting it must adhere to First Amendment norms.[1] Since the landmark ruling of *Reed v. Town of Gilbert, Ariz.*[2] in 2015, every federal court to consider the matter—including the Seventh Circuit—has struck down statutes that specifically target panhandling, including several with features similar to the Rockford Ordinances.[3] Indeed, just last week the Central District of Illinois invalidated a prohibition on "panhandling while at any time before, during, or after the solicitation knowingly approaching within five feet of the solicited person or intentionally touching the solicited person without the solicited person's consent."[4] These courts have found that laws specifically targeting panhandling are content-based, and are not narrowly tailored to serve a compelling government interest, as the First Amendment requires.

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[1] *See*, *e.g.*, *Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620 (1980) (holding charitable solicitation protected by the First Amendment); *Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000) (noting that "the Court's analysis in *Schaumburg* suggests little reason to distinguish between beggars and charities in terms of the First Amendment protection for their speech.")
[2] 135 S. Ct. 2218 (June 18, 2015).
[3] *See Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, No. CV 13-40057-TSH, 2015 WL 6872450 (D. Mass. Nov. 9, 2015); *McLaughlin v. Lowell*, No. 14-10270-DPW, 2015 WL 6453144 (D. Mass. Oct. 23, 2015) *Browne v. City of Grand Junction*, No. 14-cv-00809-CMA-KLM, 2015 WL 5728755 (D. Col. Sep. 30, 2015).
[4] *Norton v. City of Springfield*, 15-3276, 2018 WL 3964800 (C.D. Ill. Aug. 17, 2018).

Under these precedents, neither of the Ordinances is constitutional. Both overtly distinguish between types of speech based on "subject matter … function or purpose"[5] because they target solicitation for contributions, but not other forms of speech that may be equally "aggressive" (e.g., catcalling or requesting sex) or obstructive (e.g., requesting petition signatures). Moreover, both sections exempt registered, licensed charities engaged in statewide fundraising, a further content-based distinction.

Under the First Amendment, such content-based ordinances must be narrowly tailored to serve a compelling state interest. The Rockford Ordinances are not. First, the Ordinances serve no compelling state interest. Distaste for a certain type of speech, or a certain type of speaker, is not even a *legitimate* state interest, let alone a *compelling* one. Shielding unwilling listeners from messages disfavored by the state is likewise not a permissible state interest. As the Supreme Court explained, the fact that a listener on a sidewalk cannot "turn the page, change the channel, or leave the Web site" to avoid hearing an uncomfortable message is "a virtue, not a vice."[6]

Second, even if the City could identify a compelling state interest, there is no evidence to demonstrate that the Ordinances are "narrowly tailored" to such an interest. It is evident that Section 19-42 is not "narrowly tailored" because it outlaws activities that are already banned by other criminal laws.[7] Laws against assault, battery, and obstruction of pedestrian traffic apply to much of the conduct specified in Section 19-42. The only reason to have a special rule against panhandling while committing these offenses is to target homeless people. The location restrictions in Section-19-42 outlawing panhandling at bus stops, near ATMs, and other locations, are also unconstitutional. Unsurprisingly, since *Reed*, every court to consider a regulation that, like Section 19-42, bans requests for charity in particular locations has stricken the regulation.[8]

Similarly, Section 24-52(a) is unconstitutional. There is no government interest that justifies prohibiting panhandling from vehicles, but does not prohibit exactly the same conduct by registered charitable organizations, or persons collecting signatures on a petition. Moreover, even before *Reed*, courts held that similar ordinances violated the First Amendment because they were overbroad; that is, they prohibited substantially more speech than necessary to serve an important government interest. For example, in *Reynolds v. Middleton*,[9] the Fourth Circuit found that an ordinance prohibiting panhandling in the roadway violated the First Amendment because the county had not shown that less restrictive means were ineffective.

For these reasons, among others, the Ordinances cannot pass constitutional muster. Further, they are simply not good policy. Harassing, ticketing and/or arresting people who ask

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[5] *See Reed,* 135 S.Ct. at 2227.
[6] *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014); *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386 (1992) ("The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.").
[7] *See e.g. Thayer* at 236.
[8] *See, e.g.*, *Thayer v. City of Worcester,* 144 F. Supp. 3d 218, 237 (D. Mass. 2015) ("[M]unicipalities must go back to the drafting board and craft solutions which recognize an individuals… rights under the First Amendment…); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755, at *13 (D. Colo. Sept. 30, 2015) (ordinance with buffer zone around ATMs and bus stops struck down).
[9] 779 F.3d 222 (4th Cir. 2015).

for help in a time of need is inhumane and counterproductive. Unlawful anti-panhandling ordinances such as Rockford's are costly to enforce and only exacerbate problems associated with homelessness and poverty. Numerous communities have created alternatives that are more effective, and leave all involved—homeless and non-homeless residents, businesses, city agencies, and elected officials—happier in the long run.[10]

For example, Philadelphia, PA recently greatly reduced the number of homeless persons asking for change in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter.[11] In opening the Center, Philadelphia Mayor Jim Kenny emphasized, "We are not going to arrest people for being homeless," stressing that the new space "gives our homeless outreach workers and the police a place to actually bring people instead of just scooting them along." These programs are how cities actually solve the problem of homelessness, rather than merely addressing its symptoms.

The City should place an immediate moratorium on enforcement and dismiss any pending charges under the Ordinances. The City should then promptly repeal the Ordinances to avoid litigation, and instead develop approaches that will lead to the best outcomes for all the residents of Rockford, housed and unhoused alike.

Because the City's enforcement of its anti-panhandling ordinances is a serious and ongoing constitutional violation, please respond by September 28, 2018 with your assurances that the Rockford police will immediately stop enforcing the Ordinances; that any pending charges under the Ordinances, or resulting from arrests under the Ordinances, will be dismissed; and that the City Council will swiftly repeal the Ordinances. If the City does not comply, the ACLU of Illinois and the Chicago Coalition for the Homeless will be forced to consider legal options to protect the rights of panhandlers in Rockford.

Should you wish to discuss this further, please do not hesitate to contact Rebecca Glenberg at (312) 201-9740, ext. 316 or rglenberg@aclu-il.org. Thank you for your attention to this matter.

Sincerely,

Rebecca K. Glenberg
Senior Staff Counsel

Diane O'Connell
Community Lawyer
Chicago Coalition for the Homeless

Eric S. Tars
Senior Attorney
National Law Center on Homelessness & Poverty

[10] *See* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2016), https://www.nlchp.org/documents/Housing-Not-Handcuffs.
[11] *See* Nina Feldman, *Expanded Hub of Hope homeless center opening under Suburban Station,* WHYY (Jan. 30, 2018) https://whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/