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

July 17, 2019

VIA U.S. MAIL & EMAIL

Jim Schrempf, Village Attorney
Mayor's Office
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RE: Village of Glen Carbon Ordinance 7-1-5 "Solicitation of Funds on Public Ways"

Dear Mr. Schrempf:

We write with respect to Village of Glen Carbon Ordinance 7-1-5 "Solicitation of Funds on Public Ways" (the "Ordinance"), which prohibits panhandling along roads, public ways, and intersections. Since the landmark *Reed v. Gilbert* case in 2015, every panhandling ordinance challenged in federal court – at least 25 of 25 to date – including many with features similar to the ones in the Village of Glen Carbon ("the Village"), has been found constitutionally deficient or resulted in the repeal of that ordinance. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015); *see, e.g. Norton v. City of Springfield*, 324 F. Supp. 3d 994, 1002 (C.D. Ill. 2018); *Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015), *declaring ordinance unconstitutional on remand*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015)); *see also* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: A LITIGATION MANUAL (2017), https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual. At least 31 additional cities have repealed their panhandling ordinances when informed of the likely infringement on First Amendment rights – including eight municipalities in Illinois in the past year alone. The Village's ordinance not only almost certainly violates the constitutional right to free speech protected by the First Amendment to the United States Constitution, it is also bad policy, and numerous examples of better alternatives now exist which the Village could draw on. We call on the Village to immediately repeal the Ordinance and instead consider more constructive alternatives or risk potential litigation.

The First Amendment protects peaceful requests for money in a public place. *See, e.g., United States v. Kokinda*, 497 U.S. 720, 725 (1990) ("Solicitation is a recognized form of speech protected by the First Amendment."). The government's authority to regulate such public speech is exceedingly restricted, "[c]onsistent with the traditionally open character of public streets and sidewalks…." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quotation omitted). As discussed below, the Ordinance is well outside the scope of permissible government regulation

The Ordinance overtly distinguishes between types of speech based on "subject matter … function or purpose." *See Reed*, 135 S.Ct. at 2227 (internal citations, quotations, and alterations omitted); *Norton*, 806 F.3d at 412-13 ("Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification."); *Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 667 (2017) (holding unconstitutional a panhandling ordinance because it was

facially content-discriminatory and "burden[ed] speech and/or conduct by its subject matter and by its purpose"); *Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882 at *4-*5 (M.D. Fla. Aug. 5, 2016) (same). The Ordinance prohibits any person from standing on a highway, road, street or any public way for the purpose of soliciting funds or contributions, except for one preapproved charitable organization per day within the narrow requirements set by the Village. The Ordinance is content-based because it restricts the content of a person's speech – asking for money. It is not neutral because other types of speech, such as political campaigning, catcalling, evangelizing, or asking for signatures are not restricted by the Ordinance.

As a result, the Ordinance is a "content-based" restriction on speech that is presumptively unconstitutional. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2232 (2015); *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). Courts use the most stringent standard – strict scrutiny – to review such restrictions. *See, e.g., Reed*, 135 S. Ct. at 2227 (holding that content-based laws may only survive strict scrutiny if "the government proves that they are narrowly tailored to serve a compelling state interest"); *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014). The Ordinance cannot survive strict scrutiny because neither does it serve any compelling state interest, nor is it narrowly tailored.

First, the Ordinance serves 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." *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."); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (holding that a city's interest in promoting tourism and business was not sufficiently compelling to justify a content-based prohibition on solicitation); *Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882 at *4-*5 (M.D. Fla. Aug. 5, 2016) (striking down a solicitation ban on the grounds that the city's interest in promoting tourism and economic activity its downtown area and historic district was not sufficiently compelling to survive strict scrutiny).

Second, even if the Village could identify a compelling state interest, there is no evidence to demonstrate that the Ordinance is "narrowly tailored" to such an interest. Theoretical discussion is not enough: "the burden of proving narrow tailoring requires the County to prove that it actually *tried* other methods to address the problem." *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015). The Village may not "[take] a sledgehammer to a problem that can and should be solved with a scalpel." *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1294 (D. Colo. 2015) (holding ordinance restricting time, place, and manner of panhandling was unconstitutional).

The location restrictions in the Ordinance, which outlaws panhandling at intersections and on median strips, are also unconstitutional. Unsurprisingly, every court to consider a regulation that, like the Ordinance, bans requests for money within an identified geographic area has stricken the regulation. *See, e.g., Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015); *Cutting v. City of Portland, Maine*, 802 F.3d 79 (1st Cir. 2015) (holding unconstitutional an ordinance prohibiting all expressive activity on median strips); *Comite de Jornaleros de Redondo Beach v.*

City of Redondo Beach, 657 F.3d 936, 949 (9th Cir. 2011) (en banc) (striking down an ordinance that prohibited, among other things, solicitation of contributions on streets and highways); *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 [sic] . . . rights under the First Amendment . . . ."); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015) (striking down an ordinance that banned vocal panhandling in a city's downtown area, as well as within twenty feet of a bank, ATM, check-cashing business, transit stop, public restroom, pay telephone, theater, outdoor seating area, and associated parking areas); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755, at *13 (D. Colo. Sept. 30, 2015).

In addition, the Ordinance's requirement that prior approval be granted, by discretion of the Village Board, before any person may solicit contributions on a public way is an unconstitutional prior restraint on speech. Because of the risk of censorship, there is a heavy constitutional presumption against any ordinance that requires preapproval before authorizing speech in a public forum (such as a public way). *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559, (1975). The First Amendment prohibits a system, like the Ordinance, which vests unbridled discretion in government officials to grant or deny such preapproval. *See Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 133 (1992).

For these reasons, among others, the Ordinance cannot pass constitutional muster. Further, it is simply not good policy. Harassing, ticketing and/or arresting people who ask for help in a time of need is inhumane and counterproductive. Unlawful anti-panhandling ordinances such as this one 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, municipal agencies, and elected officials—happier in the long run. *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.

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. *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/. 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.

Please respond by August 19, 2019 with your assurances that the Glen Carbon police will immediately stop enforcing the Ordinance, that any pending charges under the Ordinance, or resulting from arrests under the Ordinance, will be dismissed, and that the Village Board will swiftly repeal the Ordinance. If the Village 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 Glen Carbon.

Should you wish to discuss this further, please do not hesitate to contact Amy Meek at (312) 201-9740, ext. 341 or ameek@aclu-il.org. Thank you for your attention to this matter.

Sincerely,

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Chicago Coalition for the Homeless

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