

July 17, 2019

VIA U.S. MAIL & EMAIL

Ruth A. Schlossberg
City Attorney, Woodstock, Ill.
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Dear Ms. Schlossberg,

As you know, the ACLU of Illinois, Chicago Coalition for the Homeless, and the National Law Center on Homelessness and poverty sent letters to fifteen municipalities to warn them that their anti-panhandling ordinances were unconstitutional in light of *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015). Although we did not send a letter to Woodstock, we appreciate your prompt recognition that its ordinance suffered the same constitutional infirmities and took steps to amend it.

Unfortunately, the amended ordinance (Ordinance No. 19-O-27, February 19, 2019) is still content based and unconstitutionally overbroad.

The Ordinance is content based because it applies only to those who “make a request of any sort [to] another person,” and not to those who approach another person for any other purpose. It therefore “require[s] enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred.” *McCullen v. Coakley*, 573 U.S. 464, 479 (2014) (internal quotation marks and citation omitted). That is, the officer has to determine whether the person is making a request or, say, commenting on the weather before issuing a citation.

This content-based distinction is not narrowly tailored to serve any legitimate governmental purpose, let alone a compelling one. First, much of the proscribed conduct is or could be regulated without attaching it to solicitation – or any other speech. For example, touching without consent is the definition of battery. Similarly, Woodstock could regulate all of the following conduct without a speech component: blocking a person’s way; blocking the entrance to a building or vehicle; making “a reasonable person to be fearful of his or her safety [i.e., threats or intimidation] or to feel compelled to engage in the transaction [i.e., extortion]”; and interfering with vehicular traffic.

The ordinance also proscribes conduct that is completely innocent unless paired with other intimidating conduct (e.g., approaching within three feet of a person; approaching a person entering or leaving a commercial establishment). Innocent conduct may not be regulated just because it is paired with a “request.” The ordinance also proscribes conduct tends to be intimidating whether a person is soliciting, speaking on other matters, or not speaking at all (e.g., following a person who is walking away from an interaction). Such conduct should be regulated according to whether it would put reasonable people in fear for their life or limb, not based on the topic or purpose of constitutionally protected speech.

The ordinance is also unconstitutionally overbroad, meaning that “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010). Since the ordinance is content based, it is not clear if it

has *any* legitimate sweep. In any case, because the definition of “solicitation” is so broad (“a request of any sort [to] another person”), and because so much of the proscribed conduct is not inherently dangerous or intimidating, the vast majority of applications are unconstitutional.

For example, on its face, the ordinance prohibits a person from asking for the time within three feet of another person, or asking for directions within 20 feet of a bus stop, or working in pairs to collect petition signatures. Most likely, many Woodstock residents violate this ordinance on a regular basis. Police probably would not enforce such violations, but that is one of the problems with overbroad speech regulations. When a law regulates everyday speech in a public forum, law enforcement has the discretion to decide whom to cite. They could cite pairs of people who collect signatures for one political party but not the other. They could target panhandling but no other kind of solicitation.

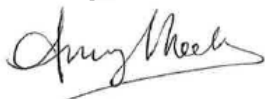
The City of Woodstock may enact laws to protect its residents from threats and intimidation. It may not do so by regulating constitutionally protected speech in a public forum.

Again, we appreciate that you and City Council acted so promptly to amend the aggressive panhandling statute once you learned that it was probably unconstitutional and a litigation magnet. We hope that you will act promptly now to repeal the solicitation ordinance.

Please respond by August 19, 2019 with your assurances that the Woodstock police will immediately stop enforcing the solicitation ordinance, that any pending charges under the ordinance, or resulting from arrests under the ordinance, will be dismissed, and that the City Council will swiftly repeal the ordinance.

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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