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**TESTIMONY BEFORE CRANSTON CITY COUNCIL ORDINANCE COMMITTEE ON
"PROHIBITION AGAINST DISTRIBUTION TO AND RECEIVING FROM
OCCUPANTS OF MOTOR VEHICLES"**

January 12, 2017

This proposed ordinance is designed as a substitute for the City's current ban on roadway solicitations, which the City has acknowledged is unconstitutional. However, the proposal is identical to one that was brought before the City Council in October for consideration. At that time, the ACLU wrote a letter to the Council, in which we stated that the proposal contained "many – if not more – of the First Amendment problems that the current one does." Nothing that has transpired in the past three months changes that analysis. Rather than repeat all of it, please find attached a copy of our October letter.

It is true there is one change in the way the ordinance is now being presented: it contains a new, rather self-serving, section entitled "Legislative Findings," but which only further demonstrates the tenuous nature of the proposed ordinance itself.

This lengthy preamble lists 21 intersections in the City as having a high number of motor vehicle accidents in 2016. But the "findings" make no attempt to attribute those accidents to people engaged in the activity the ordinance seeks to prohibit. Nor is it clear to us why these particular locations were chosen. To the best of our understanding, these are neither the top 21 intersections where the most accidents in the City occur nor are they all intersections where the distribution of money or other items regularly takes place. Further, a review of the accident data for the cited intersections for 2014 and 2015 shows no meaningful trends. If the intent of using 2016 data is to suggest that accidents have gone up at certain intersections since last year due to the lack of an enforceable anti-solicitation ordinance, it fails miserably. In some of those intersections, accidents have actually decreased, and others have shown no change at all.

Further, even if these intersections did have a correlation with places where more solicitation takes place (which they do not), the proposed ordinance doesn't attempt to limit its reach to those particular intersections. Instead, the proposal prohibits the peaceful exercise of this particular First Amendment activity citywide. This sort of blunderbuss approach to restricting free speech rights is precisely what was condemned by the U.S. Court of Appeals in the Portland, Maine case cited in our October letter.

As we previously testified, this is a thinly-veiled attempt to undermine the right of poor people to engage in panhandling. In doing so, the proposal harms the rights of many other people engaged in first Amendment activity, whether it is firefighters with their laudable "Fill the Boot" campaign, cheerleaders attempting to raise needed funds to attend

an out-of-state tournament, or striking employees seeking to make motorists aware of their grievances.

In short, this proposed ordinance is constitutionally problematic, fails to legitimately address the problem it is purportedly aimed at, and wields a broad brush against the exercise of peaceful and safe free speech activity. We therefore urge the Ordinance Committee to reject this proposal.

Submitted by: Steven Brown, Executive Director
American Civil Liberties Union of Rhode Island

Enclosure



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SENT VIA EMAIL

October 11, 2016

Dear Cranston City Council Members:

Because our organization is holding an event that evening, we will be unable to attend Thursday's ordinance committee meeting, at which time a revised anti-panhandling ordinance is going to be reviewed. I am therefore writing in advance to lay out the ACLU of Rhode Island's deep concerns about this proposal, which would ban the distribution of anything to or from occupants of vehicles.

As members of the Council are well aware, this past year our organization successfully challenged the constitutionality of the City's current anti-panhandling law, which bars "solicitation on roadways." In resolving that case, the City wisely and appropriately acknowledged the ordinance's unconstitutionality. We are therefore quite surprised to see serious consideration being given to this proposal, which contains many – if not more – of the First Amendment problems that the current one does.

In fact, the only significant difference between the two ordinances is that the "roadway solicitation" ban prohibited any distribution or solicitation of items *to* the occupants of a motor vehicle, while this newest proposal would ban any distribution or solicitation of items *to or from* the occupants of a motor vehicle. In other words, the new proposal seeks to prohibit even *more* First Amendment activity than the City's current unconstitutional ordinance. This step, we submit, hardly solves the free speech problems that were inherent in the ordinance prompting our previous legal challenge.

Indeed, the First Circuit appeals court decision on which we assume the City relied in conceding the unconstitutionality of the "roadway solicitation" ordinance involved a broadly worded Portland, Maine ban more similar to this proposal. When the appellate court said in that case that it was "hard to imagine a median strip ordinance that could ban more speech," the court's purpose was not to praise the ordinance, but to bury it. *Cutting v. City of Portland*, 802 F.3d 79, 89 (1st Cir. 2015). In response, we have heard some feeble attempts to justify this ordinance on the grounds that its constitutionality was upheld by a Missouri court. But that claim is both misleading (for technical reasons not worth explaining here) and, particularly in light of the First Circuit ruling, irrelevant.

At bottom, this broadly worded ordinance is a thinly-veiled attempt to undermine the right of poor people to engage in panhandling. Efforts by some City officials to label this a

“public safety” issue are quite unconvincing, and in any event, protection of public safety was also the City of Portland’s rationale in attempting to justify its ban on median speech, unsuccessfully, before the First Circuit.

This proposal is virtually identical to an ordinance recently proposed by former Mayor Joseph Paolino in Providence. Like that one, it is a direct attack on individuals who are struggling with homelessness or destitution and who seek to peacefully exercise their First Amendment right to solicit donations. Rather than addressing the problems that have forced people to engage in panhandling in the first place, this proposal instead seeks to punish them for their poverty.

To put it another way: Since harassing, assaultive or other dangerous behavior, whether done by panhandlers or any other person, is already illegal, an ordinance like this is really aimed at prohibiting an activity because of who the people are, not because of what they are doing. All an ordinance like this does is try to hide the disturbing fact that there is a population in the city financially forced to beg for handouts. To take an “out of sight, out of mind” approach in an attempt to hide this disturbing fact is harsh and ungenerous.

Further, in trying to punish the poor, efforts like this also significantly impact the First Amendment rights of all of us to engage in core political speech in public spaces. Frankly, we suspect that an ordinance like this would be selectively enforced against poor people pleading for donations, just as the roadway solicitation ban was. But to the extent we are wrong and this ordinance were evenly enforced, it would bar firefighters from continuing to engage in their long-standing charitable “Fill the Boot” campaigns. It would prohibit school teams, cheerleaders and non-profit groups from making use of this long-recognized method of obtaining needed financial support, something such groups have done for years in Cranston. It would similarly impose significant restrictions on the First Amendment rights of organized labor engaged in peaceful picketing activities. In short, it would make illegal a wide swath of First Amendment activity that has gone on for decades without serious incident, harming the free speech rights of many people, not just panhandlers.

For all these reasons, the ACLU urges the Ordinance Committee and the Council to reject this troubling and constitutionally problematic proposal. Thank you for considering our views.

Sincerely,

Steven Brown
Executive Director

cc: The Hon. Allan Fung
Christopher Rawson