

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RHODE ISLAND HOMELESS
ADVOCACY PROJECT, et al.

v.

CITY OF CRANSTON, by and through
DAVID CAPUANO, in his official capacity
as City Treasurer, et al.

C.A. No. 17-cv-00334-WES-PAS

CONSENT JUDGMENT

Upon stipulation and consent of the parties, by and through their respective attorneys, this Consent Judgment having been presented to the Court, and the Court having determined that this Consent Judgment is fair, adequate, and reasonable, the Court makes the following findings of fact and incorporates same in this Order.

I. FINDINGS OF FACT

- 1) The City of Cranston for over thirty years enacted and enforced an Ordinance, denominated 10.40.070, and entitled “Solicitation on roadways prohibited” which provided that “No person shall distribute literature to, request donations from, or in any other manner perform acts of solicitation of any type directed at the operator or any passenger of any motor vehicle in a travel lane, including motor vehicles stopped at intersections or in obedience to any traffic control device, or any public street or highways within the state”;
- 2) On April 13, 2016, the City agreed to the entry of Judgment declaring said Ordinance to violate the First Amendment to the United States Constitution and agreed to the entry of a permanent injunction prohibiting its enforcement in

Monteiro v. City of Cranston, et al., No. 15-cv-530-M, United States District Court, District of Rhode Island;

- 3) On February 17, 2017, the City enacted an Ordinance, also denominated 10.40.070, entitled “Solicitation on Roadways Prohibited (Prohibition against distribution to and receiving from occupants of motor vehicles)” which provided that, as to “roadways” therein defined “No person shall stand in or enter upon a roadway for the purpose of distributing anything to the occupant of any vehicle or for the purpose of receiving anything from the occupant of any vehicle”;
- 4) The stated justification for the Ordinance enacted in 2017 was to preserve the health and safety of motor vehicle drivers and occupants as well as pedestrians on and in city roadways;
- 5) The above-named Plaintiffs brought suit against the City of Cranston, by and through DAVID CAPUANO, in his official capacity as City Treasurer, Kenneth J Hopkins, in his official capacity as successor Mayor of the City of Cranston, and Michael J. Winqvist, in his official capacity as Chief of Police of the City of Cranston, hereinafter referred to collectively as “Defendant City of Cranston,” challenging the 2017 Ordinance as a violation of the First Amendment to the United States Constitution and 42 U.S.C. §1983;
- 6) On August 3, 2017, the Court granted Plaintiffs’ application for a temporary restraining order in a Memorandum and Order in which the Court concluded, among other things, that Plaintiffs had preliminarily demonstrated that they engaged in activity protected by the First Amendment by soliciting donations and leafletting on the city streets and that Plaintiffs “established a strong likelihood of success on the merits of their” claim, ECF 6, and this Order has

remained in effect, prohibiting enforcement of the 2017 Ordinance to the present;

- 7) As part of the litigation, the parties engaged in comprehensive discovery of the records maintained by the Police Department of the City concerning the existence or non-existence of any relationship between soliciting donations and leafletting on the city streets and incidents of distracted driving, causing vehicle or pedestrian accidents between 2007 and the present;
- 8) The information produced pursuant to discovery requests has not substantiated that there is any correlation between pedestrian accidents and the soliciting of donations and leafletting on the city streets between 2007 and the present, and has not substantiated any increase in the rate of vehicle or pedestrian accidents during the time frames that the earlier Ordinance was not enforced in 2016-2017, or since the 2017 Ordinance has been enjoined by the Court's Temporary Restraining Order;

NOW THEREFORE, upon stipulation and consent of the parties, by and through their respective attorneys, this Consent Judgment having been presented to the Court, and the Court having determined that this Consent Judgment is fair and reasonable

IT IS HEREBY ORDERED:

1. Cranston Ordinance 10.40.070, as enacted in 2017, in prohibiting or interfering with a person standing in or entering upon a roadway to distribute anything to the occupant of any vehicle or to receive anything from the occupant of any vehicle, is hereby declared to deny Plaintiffs' rights protected by the First Amendment to the United States Constitution and 42 U.S.C. §1983 and to violate the First Amendment to the United States Constitution.
2. Defendant City of Cranston is permanently enjoined from enforcing Ordinance 10.40.070, as

enacted in 2017, and the City is further enjoined from enacting a similar ordinance that prohibits or interferes with the First Amendment rights of a person to stand in or enter a roadway to distribute anything to an occupant of any vehicle or to receive anything from the occupant of any vehicle. After the passage of two years, the City of Cranston may move to dissolve this permanent injunction due to a change in circumstances or in the law. Further that nothing herein shall restrict, constrain or prohibit the Defendant from enforcing traffic safety ordinances or laws where the act of distributing anything to the occupant of any vehicle or the act of receiving anything from the occupant of any vehicle is not an element of the offense.

3. Defendant, City of Cranston is hereby ordered to notify all Cranston prosecutors and law enforcement officers of the issuance of this Consent Judgment and of their obligation to refrain from enforcing Ordinance 10.40.070 and the prohibitions contained in Ordinance 10.40.070.
4. Pursuant to F.R.C.P. 65(d)(2), this injunction is binding upon Defendants, their officials, officers, servants, agents, employees, successors, attorneys, and any other persons who are in active concert or participation with them.
5. Defendants shall pay Plaintiffs' counsel the total sum of \$140,000.00 in full satisfaction of Plaintiffs' claims for costs and attorneys' fees under 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d) according to the following schedule:
 - a) Payment of \$70,000.00 shall be tendered within 60 days of entry of the within Judgment;
 - b) Payment of the remaining \$70,000.00 shall be tendered no later than July 31, 2021.
6. The sharing of the tribunal-approved award with the American Civil Liberties Union Foundation of Rhode Island is consistent with this Court's decision in *RI Training School v. Martinez*, 465 F. Supp. 2d 131 (D.R.I. 2006) and Rhode Island R.P.C. 5.4(a)(4).
7. This is a final judgment that resolves all pending claims.

ENTERED as the Judgment of the Court on April 20, 2021.



William E. Smith
United States District Judge

The parties consent to the entry of this order:

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