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SENT VIA EMAIL

March 15, 2017

Dear Warwick City Council Members:

I am writing to express our organization's strong opposition to a proposed anti-panhandling ordinance being considered by the Ordinance Committee and the City Council on Monday.\*

The proposed ordinance (PCO-40-16) would make it illegal for any person to stand in any roadway "or stand on the median adjacent to the roadway." This language would prohibit a wide array of First Amendment protected activity in the City. For example, it would prohibit the use of any roadway median for panhandling, for charitable solicitation of any other kind such as the firefighters' annual "fill the boot campaign," or for the display of political signs by campaign volunteers.

Last year, our organization successfully challenged as a violation of the First Amendment a Cranston ordinance that barred "solicitation on roadways." In resolving that case, Cranston City officials wisely and appropriately acknowledged the ordinance's unconstitutionality. We are therefore quite surprised to see serious consideration being given to a proposal like this, which is even broader than the one challenged in Cranston.

In fact, the only significant difference between the two ordinances is that Cranston's "roadway solicitation" ordinance banned solicitations and the distribution of literature, while this proposed ordinance would ban any First Amendment activity whatsoever on road medians. This expanded restriction does nothing to solve the free speech problems that were inherent in the Cranston ordinance.

Indeed, the First Circuit federal court of appeals decision that doomed Cranston's 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).

\* I note that this ordinance, PCO-40-16, is labeled an ordinance "regarding pedestrians," and that Monday's Ordinance Committee and City Council dockets include discussion of a separate but as-yet undrafted ordinance, PCO 35-16, that is explicitly "regarding panhandling." Whatever the intent of the undrafted proposal, there can be little question that the "pedestrian" ordinance's main impact will fall on panhandlers as well.

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At bottom, this broadly worded ordinance is a thinly veiled attempt to undermine the right of poor people to engage in panhandling. Any efforts to label this a “public safety” issue are quite unconvincing. 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.

Like that one, this ordinance would harm 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.

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 Cranston’s roadway solicitation ban was. But to the extent we are wrong and this ordinance were evenly enforced, it would, as I noted above, bar firefighters from continuing 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. It would 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. Scott Avedisian  
Peter Ruggiero, City Solicitor