

August 22, 2019

Mayor David Smith & Members of the City
Council of Winchester, Virginia
Rouss City Hall 15 North Cameron Street
Winchester, VA 22601

Dear Mayor Smith and members of the Winchester City Council:

The American Civil Liberties Union of Virginia urges you to reconsider the ordinance banning solicitation of motorists recently passed by the Winchester City Council on June 25, 2019. As discussed below, broad provisions prohibiting solicitation are content-based restriction on speech that would not withstand a legal challenge under the First Amendment of the United States Constitution.

The Supreme Court of the United States has held that the solicitation of money is protected speech under the First Amendment. *See Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980). This protection has been extended to individuals who are begging. *See, e.g., Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013) (recognizing that “the speech and expressive conduct that comprise begging merit First Amendment protection.”); *Smith v. City of Fort Lauderdale*, 117 F.3d 954, 956 (11th Cir. 1999) (“Like other charitable solicitation, begging is speech entitled to First Amendment protection.”); *Loper v. New York City Police Dep’t*, 999 F.2d 699, 704 (2d Cir. 1993) (“We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed.”).

Because solicitation is constitutionally protected speech, any regulation of it must, at a minimum, satisfy the requirements for time, place, and manner restrictions; that is, the limitations must be content neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. *See Clatterbuck*, 708 F.3d at 555.

The language of Winchester’s newly passed ordinance prohibiting “without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of obtaining alms or an immediate donation of money” mirrors language of the Charlottesville ordinance that the Fourth Circuit struck down as unconstitutional. Winchester City Code, Sec. 16-6.2 (emphasis



Virginia

701 E. Franklin Street
Suite 1412
(804) 644-8022
Richmond VA 23219
acluva.org

Claire G. Gastañaga
Executive Director
Direct Dial: 804-523-2146
Email: claire@acluva.org



Virginia

701 E. Franklin Street
Suite 1412
(804) 644-8022
Richmond VA 23219
acluva.org

Claire G. Gastañaga
Executive Director
Direct Dial: 804-523-2146
Email: claire@acluva.org

added) *compare with Clatterbuck*, 708 F.3d 549 at 552 (prohibition defining solicitation as a “request [for] an immediate donation of money or other thing of value from another person . . . [which] may take the form of, without limitation, the spoken, written, or printed word, or by other means of communication” is unconstitutional). Like the language of the Charlottesville ordinance, Winchester’s new provision violates the First Amendment and is indicative of a “censorial intent to value some forms of speech over others to distort public debate, to restrict expression because of its message, its ideas, its subject matter, or to prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Clatterbuck*, 708 F.3d at 556. Put simply, the Winchester ordinance is a “speech restriction [...] based on a content distinction,” that violates the First Amendment. *Clatterbuck*, 708 F.3d at 556.

For all these reasons, the ACLU of Virginia encourages the Winchester City Council to consult with counsel and vote to rescind this unenforceable ordinance without delay.

Thank you for your immediate attention to this matter. Please do not hesitate to call me if you have questions or concerns. My direct line is 804-523-2146.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director