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**COMMENTS IN OPPOSITION TO 17-H 5210 AND H-5258,
RELATING TO MOTOR AND OTHER VEHICLES AND LOITERING
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H-5210 would make it illegal for a driver or passenger in a motor vehicle to “stop on any public highway to give any person any item.” H-5258 bans loitering on a public highway under certain circumstances. Both pieces of legislation are clearly aimed at panhandling, although they would also have a much broader impact on the exercise of First Amendment rights generally. Because they raise significant constitutional concerns, we urge their rejection.

As committee members probably know, the ACLU recently successfully sued the City of Cranston over an ordinance that banned solicitation on roadways. The court decisions are clear: panhandling is protected First Amendment activity, and attempts to ban this activity from roadways cannot withstand constitutional scrutiny. Since then, numerous alternative versions of panhandling ordinances have been considered by municipalities in an attempt to ban panhandling while meeting First Amendment concerns. However, like those proposed ordinances, we believe that these bills simply cannot withstand constitutional scrutiny.

While H-5258 at least attempts to provide a public safety rationale for its restrictions, H-5210 does not. Nor could it. It bans drivers from giving people items, but doesn’t ban people on the roadways from giving drivers items. It allows people to talk to drivers stopped on the roadway, just so long as nothing is exchanged. It is difficult to imagine a law more designed to specifically limit the activity of panhandling without mentioning the word.

H-5258 is problematic in its own way by focusing on “loitering” on highways. Is a panhandler loitering? Is a person holding a political sign? The vagueness of the term and the discretion it would allow in its enforcement raise independent First Amendment concerns.

At bottom, these bills are a thinly veiled attempt to undermine the right of poor people to engage in panhandling. These are 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, these proposals instead seek 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, bills like these are really aimed at prohibiting an activity because of who the people are, not because of what they are doing. All a law like this does is try to hide the disturbing fact that there is a population in the state 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 these also significantly impact the First Amendment rights of all of us to engage in core political speech in public spaces. To the extent that laws like these would not be selectively enforced against poor people pleading for donations, they would bar firefighters from continuing to engage in their long-standing charitable “Fill the Boot” campaigns. They 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. H-5258 would similarly impose significant restrictions on the First Amendment rights of organized labor engaged in peaceful picketing activities. In short, these bills 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 of RI oppose H-5210 and H-5258.