

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

CHALLENGE TO CONSTITUTIONALITY OF MUNICIPAL ORDINANCE

RHODE ISLAND HOMELESS
ADVOCACY PROJECT, KAREN
ROSENBERG, DEBORAH FLITMAN, and
FRANCIS WHITE, JR.

C.A. No. 17-

v.

CITY OF CRANSTON, by and through
DAVID CAPUANO, in his official capacity
as City Treasurer, ALLAN FUNG, in his
official capacity as Mayor of the City of
Cranston, and MICHAEL J. WINQUIST, in
his official capacity as Chief of Police of the
City of Cranston

VERIFIED COMPLAINT

1. This is an action for declaratory and injunctive relief to enjoin enforcement of uncodified Ordinance 2017-1 of the City of Cranston, Rhode Island, a copy of which is attached hereto as Exhibit 1 and hereinafter referred to as “the 2017 Prohibition,” replacing City Ordinance 10.40.070. Plaintiffs contend that Ordinance 2017-1, like its predecessor, violates their right to freedom of speech under the First Amendment to the United States Constitution and 42 U.S.C. §1983, on its face and as applied. Plaintiffs also seek nominal damages for the interference with their constitutional rights.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §1983. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 2201.
3. Venue is properly lodged in the District of Rhode Island pursuant to 28 U.S.C. § 1391(b).

PLAINTIFFS AND FACTUAL ALLEGATIONS SPECIFIC TO THEIR CLAIMS

4. Plaintiff RHODE ISLAND HOMELESS ADVOCACY PROJECT (“RIHAP”) is a charitable organization advocating for the rights and interests of Rhode Island’s homeless population. Among the issues of importance to the members of RIHAP are access to public transportation, housing, nightly outreach to homeless on the streets, and panhandling and municipal interference with panhandling. RIHAP’s members include homeless persons who rely upon panhandling as an essential source of financial support. Since the enactment of the 2017 Prohibition, members of RIHAP who had previously panhandled in the City of Cranston stopped panhandling in Cranston out of fear of prosecution under the 2017 Prohibition. RIHAP brings this action in its representative capacity on behalf of its members, and references to RIHAP as “plaintiff” hereinafter refer to its members.
5. Plaintiff KAREN ROSENBERG (“Rosenberg”) is a citizen and resident of the City of Cranston and the United States.
 - a. Rosenberg is a founding member of the Cranston Action Network (“CAN”), a loose affiliation of Cranston residents who periodically identify issues of local and national interest on which they wish to present “grass roots” advocacy to others within the Cranston community through, among other things, signage and leafletting.
 - b. Among the issues that Rosenberg and other members of CAN have identified is their opposition to the 2017 Prohibition and their support for homeless individuals whose effort to seek financial assistance from members of the public is impaired by the City’s adoption and enforcement of the 2017 Prohibition.

b. Rosenberg believes that the 2017 Prohibition adversely impacts her ability to communicate with other Cranston community members on subjects of public concern.

c. Upon information and belief, other individuals, including but not limited to individuals associated with CAN or the Rhode Island Homeless Bill of Rights Defense Committee, engaged in holding signs to oppose the 2017 Prohibition on City traffic islands at the intersection of Sockanosset Cross Road and New London Avenue on March 27, 2017 and were cited by the City with violations of State law, which were thereafter dismissed by the Rhode Island Traffic Tribunal. Among the messages on the signs were the words “Compassion and Love: Please don’t let an Ordinance Rob you of ♥Humanity♥”.

d. Upon information and belief, other individuals, including but not limited to individuals associated with CAN or the Rhode Island Homeless Bill of Rights Defense Committee, engaged in providing leaflets to occupants of vehicles to oppose the 2017 Prohibition on City traffic islands at the intersection of Sockanosset Cross Road and New London Avenue on March 27, 2017, and were cited by the City with violation of the 2017 Prohibition, which the City is currently prosecuting and as to which trial is scheduled for July 20, 2017 before the Municipal Court of the City of Cranston. A copy of the leaflet transmitted to willing recipients of motor vehicles is attached hereto as Exhibit 2 and incorporated herein. In addition, some motorists tendered donations in support of the leafleters.

e. Rosenberg believes that an effective, inexpensive, and direct way to present advocacy is in the form of presence on traffic islands and medians in the City, holding

short-message signs accompanied by providing more detailed information in the form of hand-outs or leaflets to occupants of vehicles interested in receiving them.

f. Rosenberg has experience with both door-to-door leafletting of the community as well as sidewalk and median leafletting and believes that the two forms of communication send different messages, reach different audiences and are not comparable.

g. Rosenberg seeks to engage, but has been deterred from engaging, in leafletting from sidewalks, medians and traffic islands in the City as a result of the promulgation and enforcement of the 2017 Prohibition, out of fear of citation and prosecution by the City.

6. Plaintiff DEBORAH FLITMAN (“Flitman”) is a citizen and resident of the City of Cranston and the United States.

a. Flitman believes that the 2017 Prohibition adversely impacts her ability to communicate with other Cranston community members on subjects of public concern.

b. Flitman was one of the individuals loosely associated with CAN, of which she is a founding member, who engaged in holding signs to oppose the 2017 Prohibition on City traffic islands at the intersection of Sockanosset Cross Road and New London Avenue on March 27, 2017, and was cited by the City with violation of State law, which was thereafter dismissed by the Rhode Island Traffic Tribunal.

c. Flitman was present when other individuals engaged in leafletting on City traffic islands at the intersection of Sockanosset Cross Road and New London Avenue on March 27, 2017, and were cited by the City with violation of the 2017 Prohibition. The City is actively prosecuting those individuals in Cranston Municipal Court. Flitman is not a subject of the prosecution.

d. Flitman believes that an effective, inexpensive, and direct way to present advocacy is in the form of presence on traffic islands and medians in the City, holding short-message signs accompanied by providing more detailed information in the form of hand-outs or leaflets to occupants of vehicles interested in receiving them.

e. Flitman has experience with both door-to-door leafletting of the community as well as sidewalk and median leafletting and believes that the two forms of communication send different messages, reach different audiences and are not comparable.

f. Flitman seeks to engage, but has been deterred from engaging, in leafletting from sidewalks, medians and traffic islands in the City as a result of the promulgation and enforcement of the 2017 Prohibition, out of fear of citation and prosecution by the City.

7. Plaintiff FRANCIS WHITE, JR. (“White”) is, and for approximately the past seven months has been, a resident of the City of Providence, Rhode Island. His apartment is on Elmwood Avenue not far from the City of Cranston. Before securing an apartment in Providence, White was homeless and lived in shelters or on the street in Rhode Island for approximately four to five years. White is disabled and receives assistance through food stamps, Supplemental Security Income, and housing assistance. Despite the assistance, White often has insufficient income to last to the end of each month and relies upon panhandling to seek additional support.

a. Over the past three or more years, White has panhandled in the cities of Providence, Warwick, Cranston and Johnston seeking donations from motorists.

b. When he panhandles, White always carries a sign which he displays to passing motorists, identifying himself as a person in need seeking assistance in any amount.

c. When he panhandles, White waits for the vehicle occupant to let him know, by words or actions, that he or she has received his message and has decided to help. At that point, provided that it is safe to do so, White either extends his arm or steps briefly next to the vehicle to receive a financial contribution.

d. Some of the intersections in Cranston that White has used for panhandling prior to the enactment of the 2017 Prohibition are medians where Route 10 intersects with Garfield Avenue, Chapel View median and near the Walmart in Cranston. White finds that medians and traffic islands generally provide the greatest visibility for his message to reach motorists and the greatest ease for the motorists to make a contribution without disrupting traffic. White also panhandles on sidewalks on streets falling within the coverage of the 2017 Prohibition.

e. White wants to continue panhandling directed at motorists at medians and traffic islands in Cranston for many reasons, including the desirability and proximity of locations and the kindness and generosity he has experienced from many motorists in Cranston compared to other motorists in other municipalities.

f. White last panhandled in Cranston approximately one day before the enactment of the 2017 Prohibition.

g. White has refrained from panhandling in Cranston since the enactment of the 2017 Prohibition out of fear of prosecution under the 2017 Prohibition.

DEFENDANTS

8. Defendant CITY OF CRANSTON is a municipal subdivision of the State of Rhode Island, sued by and through DAVID CAPUANO, the Treasurer of the City of Cranston, in his official capacity.
9. Defendant ALLAN FUNG (“the Mayor”) is the Mayor of the City of Cranston. Pursuant to section 5.01 of the Charter of the City, the Mayor “shall actively supervise, direct and control, in accordance with the provisions of the Charter, the ordinances of the city and the laws of the state so far as applicable, the activities of all administrative departments and agencies of the city. The mayor shall be responsible...for the enforcement of the laws of the state and ordinances of the city and the preservation of the peace, health and safety of its inhabitants.”
10. Defendant MICHAEL J. WINQUIST (“the Police Chief”) is the Chief of Police for the City of Cranston. Pursuant to section 9.02 of the City Charter, the Police Chief, “[s]ubject to the supervision and control of the mayor,” “shall be in direct command of the department of police” and “shall also have power with the approval of the mayor to make regulations and orders binding on the public for the purpose of implementing and giving effect to laws and ordinances relating to the preservation of public order and the movement of traffic.”
11. With respect to all matters complained of herein, the Defendants act or have acted under color of state law within the meaning of 42 U.S.C. §1983.
12. Each Defendant is sued herein in his official capacity.
13. Defendants are hereinafter referred to collectively as “the City.”

STATEMENT OF CLAIM

14. On February 17, 2017, the City enacted Ordinance 2017-1 (the “2017 Prohibition”), a copy of which is attached hereto as Exhibit 1 and incorporated herein, to replace Title 10.40.070 of the Code of Ordinances of the City entitled “Solicitation on roadways prohibited.”
15. The 2017 Prohibition is entitled “Prohibition Against Distribution to and Receiving from Occupants of Motor Vehicles” and contains the following prohibition: “(b) 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.”
16. For many years prior to the enactment of the 2017 Prohibition and until in or about 2016, the City purported to regulate and prohibit panhandling on or near roadways through enforcement of Title 10.40.070. Title 10.40.070 provided:

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.
17. On December 16, 2015, Michael Monteiro brought suit against the City challenging Title 10.40.070 as unconstitutional under the First Amendment and the Rhode Island Constitution.
18. In response to Monteiro’s complaint, the City entered a Consent Judgment on April 13, 2016, declaring that Title 10.40.070 violates the First Amendment to the United States Constitution and Article 1, section 21 of the Rhode Island Constitution and agreeing to the entry of a permanent injunction prohibiting the City from enforcing Title 10.40.070.

The City also agreed to pay Monteiro damages, attorneys' fees and costs. A copy of the Consent Judgment entered in *Monteiro v. City of Cranston*, C.A. No. 1:15-cv-530M, is attached hereto as Exhibit 3 and incorporated herein. Former Title 10.40.070 is hereinafter referred to as "the Unconstitutional Anti-Solicitation Prohibition."

19. Upon information and belief, the City ceased enforcement of "the Unconstitutional Anti-Solicitation Prohibition" upon the filing of *Monteiro* and undertook no efforts to regulate panhandling until the passage of the 2017 Prohibition.
20. In enacting the 2017 Prohibition, the City purported to make a number of "legislative findings" designed to support a claim that the 2017 Prohibition could withstand constitutional challenge as necessary to protect public safety "by reducing the incidents of distracted driving caused by vehicle occupants seeking to receive and/or pass any item from a vehicle to a pedestrian in the roadway and also from a pedestrian in the roadway to receive and/or pass items to a vehicle occupant."
21. In enacting the 2017 Prohibition, the City recited incidents of single- and multiple-car accidents that had occurred at certain intersections during the period of January 1, 2016 through December 12, 2016, as justifying enactment of the 2017 Prohibition.
22. Upon information and belief, during some or all of the period recited, the City had ceased enforcement of the Unconstitutional Anti-Solicitation Ordinance.
23. Upon information and belief, the data recited by the City did not document that any of the cited single- or multiple-car accidents at the identified intersections were caused by, or in any respect connected to, an instance of panhandling or leafletting by a person on a sidewalk or median.

24. Upon information and belief, the number of single- or multiple-car accidents occurring in the City, according to public data maintained by the City of Accidents by Street Name and Intersecting Street by month and year, do not reflect an increase in numbers during the period of time that the City ceased enforcing the Unconstitutional Anti-Solicitation Prohibition in 2016 as compared to equivalent data for 2014 and 2015, during which time the Unconstitutional Anti-Solicitation Ordinance was in effect.
25. Upon information and belief, single- and multiple-car accidents were occurring in the City, according to public data maintained by the City of Accidents by Street Name and Intersecting Street by month and year, in the years that the City enforced the Unconstitutional Anti-Solicitation Prohibition.
26. Upon information and belief, the number of single- or multiple-car accidents occurring in the City, according to public data maintained by the City of Accidents by Street Name and Intersecting Street by month and year, decreased in numbers at many of the cited intersections during the period of time that the City ceased enforcing the Unconstitutional Anti-Solicitation Prohibition in 2016, as compared to equivalent data for 2014 and 2015, during which time the Unconstitutional Anti-Solicitation Ordinance was in effect.
27. Upon information and belief, the 2017 Prohibition was adopted to prohibit panhandling directed at motorists taking place on sidewalks and traffic islands and medians.
28. Among the legislative findings recited as justification for enacting the 2017 Prohibition, the City stated:

The Administration and members of the City Council have heard from constituents and/or personally witnessed many incidences whereby individuals (whether by themselves or collectively as a group or organization) have been standing and/or walking and/or lingering in the busy streets and/or standing and/or walking and/or lingering on the roadway medians in various busy intersections, including but not limited to those listed

above, for the purposes of soliciting from drivers and occupants of moving motor vehicles.

Additionally, our law enforcement officers have indicated that the act of individuals distributing items into and out of motor vehicles under certain conditions can give rise to reasonable suspicion that illegal narcotics transactions and/or illegal prostitution may be taking place.

29. Upon information and belief, the City enacted this prohibition that prohibited more forms of communication than panhandling upon advice of the City Solicitor that the City could not constitutionally limit its prohibition to panhandling.
30. By its terms, the 2017 Prohibition expressly prohibits individuals from entering “roadways” “for the purpose” of engaging in activities that encompass panhandling and leafletting.
31. At the same time, the 2017 Prohibition does not impede or restrict individuals from entering “roadways” for the purpose of crossing the street or many other purposes.
32. The 2017 Prohibition defines “roadway” to include all medians and traffic islands, without regard to size or expanse.
33. As a direct result thereof, the 2017 Prohibition prohibits an individual from providing a leaflet or seeking a donation from a vehicle stopped adjacent to the median or island, even where the exchange can be made without stepping off of the median or delaying traffic, and without regard to the size or expanse of the median or island.
34. Upon information and belief, the 2017 Prohibition does not prohibit any of the following:
 - a. an individual from standing on a median or island or on a sidewalk with a sign not seeking an immediate donation or to cross or enter the roadway for this purpose
 - b. a pedestrian crossing the street

- c. an individual on the median or island or sidewalk asking for, and receiving, or responding to a motorist's request for, directions or engaging in conversation not accompanied by an exchange of items
 - d. an individual soliciting prostitution or offering to sell illegal drugs, with the transaction to be completed at another location
 - e. an individual waiting to enter, and entering, a motor vehicle for purposes of obtaining a ride (when not accompanied by an exchange of items)
35. The 2017 Prohibition broadly defines "roadway" to include a substantial number of City streets, including those which have historically been utilized for panhandling.
36. The term "roadway" includes all City streets unless the street is 1) less than thirty feet wide; and 2) has no center divider and traffic is restricted to no more than one lane in each direction; and 3) has a speed limit of 25 miles per hour or less.
37. As a direct result thereof, the 2017 Prohibition prohibits an individual from providing a leaflet or seeking a donation from a vehicle stopped adjacent to a roadway, unless the exchange can be made without stepping off of the sidewalk.
38. Upon information and belief, the City's 2017 Prohibition is over-inclusive in fulfilling the stated purpose of addressing traffic safety in at least the following ways:
- a. it is geographically over-inclusive, in that it applies to all medians and traffic islands, without regard to size or expanse
 - b. it is geographically over-inclusive, in that it prohibits panhandling and leafletting at locations where there is an "absence of evidence supporting the existence of a threat to public safety and traffic flow," *see Cutting v. City of Portland*, 802 F.3d 79, 90 (1st Cir. 2015).

- c. it prohibits panhandling and leafletting even when conducted in a safe manner not causing a disruption or delay of traffic
- 39. Upon information and belief, the City’s 2017 Prohibition is under-inclusive in fulfilling the stated purpose of addressing traffic safety in at least the following ways:
 - a. it does not prohibit individuals stepping out into the roadway to cross the street, retrieve items that were discarded or inadvertently dropped, or to get in or out of a car
 - b. it does not prohibit activities which have a comparable potential for distraction or temporary stoppage of traffic, such as individuals standing on the sidewalk or median holding a sign, or the exchange of conversation between an individual on the sidewalk or median and vehicle occupant, such as asking for and providing directions, so long as no item is intended to be delivered or received.
- 40. Since the enactment of the 2017 Prohibition, the City has demonstrated that it intends to enforce, and has enforced, the 2017 Prohibition.
- 41. The 2017 Prohibition regulates and prohibits certain forms, but not all forms, of communication, on the City’s streets and sidewalks, including the street and sidewalk directly adjacent to City Hall.
- 42. The streets and sidewalks, including traffic medians and islands of the City are traditional public forums.
- 43. The 2017 Prohibition regulates speech in a public forum, where the government's power to regulate speech is most constrained.
- 44. The 2017 Prohibition, both in its terms and in its purpose, is “content-based” and therefore subject to, but cannot withstand strict scrutiny, in that the prohibition cannot be shown that it is narrowly tailored to further a compelling state interest and has used the

least restrictive means to accomplish it. *See Reed v. Town of Gilbert, Arizona*, 135 S.Ct. 2218 (2015).

45. In the alternative, the 2017 Prohibition, if viewed as “content-neutral,” cannot withstand intermediate constitutional scrutiny because it is not “narrowly tailored to serve a significant governmental interest, and [because it fails to] leave open ample alternative channels for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (internal quotations, citations omitted).
46. As a direct result thereof, the Defendants have violated plaintiffs’ federal constitutional right to freedom of speech by promulgating and enforcing the 2017 Prohibition.
47. But for the enactment and enforcement of the 2017 Prohibition, each plaintiff would engage in protected speech in the form of panhandling or leafletting directed at occupants of vehicles from the City’s sidewalks, traffic medians and islands, but has refrained from engaging in such activity for fear of prosecution by the City.
48. Each plaintiff has a direct and legitimate fear of prosecution should he or she engage in panhandling or leafletting directed at occupants of vehicles from the City’s sidewalks and traffic medians and islands.
49. The suppression of protected speech, whether by direct government interference or by self-censorship to avoid exposure to prosecution, constitutes irreparable harm.
50. Plaintiffs have no adequate remedy at law.
51. Upon information and belief, there will be no harm suffered by the City if injunctive relief is granted.

COUNT I (First Amendment)

52. Plaintiffs incorporate the allegations contained in paragraphs 1 through 51 of the Complaint as if fully set forth herein.
53. The First Amendment to the United States Constitution, as applicable to the states through the Fourteenth Amendment, prohibits the making of any law that “abridge[s] the freedom of speech.”
54. The 2017 Prohibition violates the rights of the plaintiffs to free speech both on its face and as applied, in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

- (1) Grant temporary and preliminary injunctive relief restraining the City from enforcing the 2017 Prohibition of Ordinance 2017-1 pending determination on the merits;
- (2) After hearing on the merits, issue its declaratory judgment that Ordinance 2017-1 of the Ordinances of the City of Cranston is unconstitutional in violation of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment and 42 U.S.C. §1983, both on its face and as applied to Plaintiffs, and grant corresponding injunctive relief permanently enjoining the City from enforcing the 2017 Prohibition;
- (3) Award Plaintiffs their costs, including reasonable attorneys’ fees, and nominal damages; and
- (4) Grant such other and further relief as the Court deems just and proper.

By their attorneys,
Cooperating counsel,
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF RHODE ISLAND

/s/ Lynette Labinger
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DISTRICT OF RHODE ISLAND

RHODE ISLAND HOMELESS
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his official capacity as Chief of Police of the
City of Cranston

DECLARATION OF FRANCIS WHITE, JR.

I, **FRANCIS WHITE, JR.**, hereby make the following declaration:

1. I am one of the named plaintiffs.
2. I have read the foregoing complaint and it is true and correct to the best of my knowledge, information and belief.

In accordance with 28 U.S.C. §1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on

7/14/17


FRANCIS WHITE, JR.

CITY OF CRANSTON

ORDINANCE OF THE CITY COUNCIL

**IN AMENDMENT OF CHAPTER 10.40.070 OF THE CODE OF THE CITY OF
CRANSTON ENTITLED "SOLICITATION ON ROADWAYS PROHIBITED"
(PROHIBITION AGAINST DISTRIBUTION TO AND RECEIVING FROM
OCCUPANTS OF MOTOR VEHICLES)**

**As amended by City Council 1/23/2017*

No. 2017-1

Passed: February 15, 2017

Michael J Farina, Council President

Approved: February 17, 2017

Allan W. Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

Legislative Findings

It is the intention of the City of Cranston, by and through its City Council, upon the recommendation of the Mayor, to protect the health and safety of drivers and occupants of motor vehicles and all residents, visitors and pedestrians on and in city roadways and sidewalks, by reducing the incidents of distracted driving caused by vehicle occupants seeking to receive and/or pass any item from a vehicle to a pedestrian in the roadway and also from a pedestrian in the roadway to receive and/or pass items to a vehicle occupant.

The Administration and City Council find that city roadways include a number of thoroughfares that convey large numbers of vehicles, not only at rush hour but also mid-day and throughout the evening. High traffic volume, impaired driving, speeding, red-light running and/or otherwise distracted driving have contributed to a dangerous environment on many roadways and medians as demonstrated by a high number of vehicle collisions at various intersections.

There are numerous examples of intersections throughout the city that have a high number of vehicle collisions or even single car accidents for the period from January 1, 2016 up to and including December 12, 2016:

- | | | |
|----|---|----|
| 1. | Atwood Avenue and Phenix Avenue | 58 |
| 2. | Chapel View Boulevard and New London Avenue | 23 |
| 3. | Cranston Street and Garfield Avenue | 19 |

| | | | |
|----|-----|--|----|
| 47 | 4. | Cranston Street and Park Avenue | 15 |
| 48 | 5. | Elmwood Avenue and Park Avenue | 27 |
| 49 | 6. | Meshanticut Valley Parkway and New London Avenue | 17 |
| 50 | 7. | Natick Avenue and Route 37 | 12 |
| 51 | 8. | New London Avenue and Howard Avenue | 13 |
| 52 | 9. | New London Avenue and Oaklawn Avenue | 17 |
| 53 | 10. | New London Avenue and Sockanosset Crossroad | 31 |
| 54 | 11. | Park Avenue and Cranston Street | 15 |
| 55 | 12. | Park Avenue and Dyer Avenue | 17 |
| 56 | 13. | Park Avenue and Elmwood Avenue | 28 |
| 57 | 14. | Park Avenue and Park View Boulevard | 15 |
| 58 | 15. | Park Avenue and Reservoir Avenue | 64 |
| 59 | 16. | Park Avenue and Warwick Avenue | 14 |
| 60 | 17. | Park Avenue and Wellington Avenue | 17 |
| 61 | 18. | Pontiac Avenue and Sockanosset Crossroad | 30 |
| 62 | 19. | Pontiac Avenue and Route 37 | 24 |
| 63 | 20. | Reservoir Avenue and Legion Way | 18 |
| 64 | 21. | Garfield Avenue and Route 10 | 16 |

65

66 The Administration and members of the City Council have heard from constituents
 67 and/or personally witnessed many incidences whereby individuals (whether by themselves or
 68 collectively as a group or organization) have been standing and/or walking and/or lingering in
 69 the busy streets and/or standing and/or walking and/or lingering on the roadway medians in
 70 various busy intersections, including but not limited to those listed above, for the purposes of
 71 soliciting from drivers and occupants of moving motor vehicles.

72

73 Additionally, our law enforcement officers have indicated that the act of individuals
 74 distributing items into and out of motor vehicles under certain conditions can give rise to
 75 reasonable suspicion that illegal narcotics transactions and/or illegal prostitution may be taking
 76 place.

77

78 Whereby, this Administration and members of the City Council find that numerous
 79 roadways and intersections within the city present dangerous conditions that are exacerbated by
 80 the presence of pedestrians within the roadway and by acts that promote distracted driving.
 81 Further, the Administration and members of the City Council recognize that legal transactions
 82 can be and should be performed in safe areas such as from a sidewalk and/or public park and/or
 83 public parking area and particularly from non-moving vehicles ***and that the following**
 84 **restrictions are authorized pursuant to Rhode Island General Law §31-18-2 Local**
 85 **Ordinances and such restrictions are consistent in subject matter and intent with several**
 86 **provisions of state law designed to protect public safety upon roadways including without**
 87 **limitation: §31-18-5 Crossing Other Than at Crosswalks; §31-18-10 Walking in Street**
 88 **Prohibited; §31-18-11 Walking, Jogging, Or Running on Left; §31-18-12 Hitchhiking in**
 89 **Road; and §31-18-17 Pedestrians on Freeways.**

90

91 Therefore the following restrictions are warranted to protect the public health and safety
 92 of all drivers and occupants of motor vehicles and all residents, visitors and pedestrians on and in
 93 city roadways and sidewalks.

94
 95 **Section 1.** Title 10.40.070 of the Code of the City of Cranston, entitled “Solicitation on
 96 roadways prohibited” is hereby amended as follows:

97
 98
 99 By deleting:

100 [Solicitation on roadways prohibited]

101 [No person shall distribute literature to, request donations from, or in any other manner
 102 perform acts of solicitation of any type directed at the operator or any passenger of any motor
 103 vehicle in a travel lane, including motor vehicles stopped at intersections or in obedience to any
 104 traffic control device, or any public street or highways within the state.]

105
 106 And adding the following:

107
 108 Prohibition Against Distribution to and Receiving from Occupants of Vehicles.

109
 110
 111 (a) Definitions. For the purposes of this section:

112
 113 Roadway shall mean: The portion of a public street, road, or highway improved,
 114 designed or ordinarily used for vehicular travel and extending from one (1) curb or
 115 edge of pavement to the opposite curb or edge of pavement, including lanes
 116 commonly used for parking and including center medians and lane dividers*;
 117 **provided, however, that the term Roadway shall not include any street, road, or**
 118 **highway; 1) having a paved surface width no greater than thirty (30) feet as**
 119 **measured from one edge of pavement to the opposite edge of pavement (which**
 120 **measurement shall not include sidewalk areas); 2) is an undivided roadway on**
 121 **which traffic flow is restricted to a single lane of travel in opposing directions or**
 122 **a single lane of travel in one direction; and 3) upon which the legal speed limit**
 123 **does not exceed twenty five (25) miles per hour.**

124
 125 Sidewalk shall mean: That portion of a public right-of-way between the curb lines or
 126 the lateral lines of pavement on the roadway and the adjacent property lines, intended
 127 for use by pedestrians.

128
 129 (b) No person shall stand in or enter upon a roadway for the purpose of distributing
 130 anything to the occupant of any vehicle or for the purpose of receiving anything from
 131 the occupant of any vehicle.

132
 133 (c) The distribution or receiving described in Subsection (b) is permissible to an
 134 occupant of a non-moving vehicle on the roadway adjacent to the sidewalk and if the
 135 person doing so is on the adjacent sidewalk.

137 (d) Nothing contained herein is intended to prohibit distribution by any person on a
138 sidewalk, to another person on the sidewalk, or by and among persons in a city
139 parking lot or city park.

141 **Section 3.** This Ordinance shall take effect upon its final adoption.

142
143
144 Positive Endorsement Negative Endorsement (attach reasons)

145
146
147 _____
148 Christopher M. Rawson, Solicitor Date Christopher M. Rawson, Solicitor Date

149
150
151
152 Sponsored by: Mayor Fung
153 Referred to Ordinance Committee January 12, 2017

Criminalizing Panhandling Does NOT Make our Communities Safer or Better!



Cranston recently passed an ordinance that illegalizes panhandling in certain areas. They said it is about public safety. In reality, it is about those in power deciding who is deserving and trying to push those who are poor out of sight.

Here are the facts:

■ **Criminalization costs taxpayer money.**

Ordinances similar to this one have lost legal challenges. Costly lawsuits don't help anyone.

■ **Criminalizing people is both unconstitutional and immoral.**

Asking for money is protected by the First Amendment. Rather than blaming the victim, we should work to create communities that work for all members.

■ **People don't get rich panhandling or do it for fun. They do it to survive.**

Panhandling is a manifestation of what happens when we don't create an economy or social safety net that provides for our most vulnerable. Many people cannot get jobs, the waiting time for Social Security benefits and affordable housing is often years, and we don't have enough social services.

■ **There is no data that shows a link between people panhandling near roadways and traffic accidents.**

There were actually fewer accidents in Cranston after the police stopped enforcing the old anti-panhandling ordinance.

What can you do?

Say hello to the people you see panhandling.

Give money or items if you want to, but the most important thing is to take a moment to acknowledge their humanity. We should all have the right to be charitable.

Call your elected officials.

Tell Mayor Fung, your city councilmen, and your state senators and representatives that this kind of legislation does not reflect the kind of community and state you want to live in.

Watch these videos.

Hear why people panhandle from the folks who do – then share the truth with others.



<http://bit.ly/2mxiPPf>



<http://bit.ly/2mVPrxs>

EXHIBIT 2

**For more
information:
Email us at
rihbor@gmail.com**

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

MICHAEL MONTEIRO, :
Plaintiff, :

v. :

CITY OF CRANSTON, :
ALLAN FUNG, in his official :
capacity as Mayor, DAVID CAPUANO :
in his official capacity as Treasurer, and :
MICHAEL J. WINQUIST, :
in his official capacity as :
Chief of Police, :
Defendants. :

C.A. No. 1:15-cv-530M

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 and reasonable, IT IS HEREBY ORDERED:

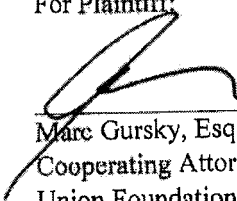
1. Cranston Ordinance 10.40.070 is hereby declared to violate the First Amendment to the United States Constitution and Article 1, section 21 of the Rhode Island Constitution.
2. Defendant, City of Cranston, is permanently enjoined from enforcing Ordinance 10.40.070 and shall notify all Cranston law enforcement officers of the issuance of this Consent Judgment and their obligation to refrain from enforcing Ordinance 10.40.070.
3. Pursuant to F.R.C.P. 65(d)(2), this injunction is binding upon Defendant, City of Cranston, its officials, officers, servants, agents, employees and any other persons who are in active concert with them.
4. Within thirty (30) days of the entry of this Consent Judgment, the sum of one thousand, five hundred (\$1500.00) dollars shall be paid by Defendant, City of Cranston, to

plaintiff as compensatory damages for pain and suffering associated with the deprivation of his constitutional rights.

5. Within thirty (30) days of the entry of this Consent Judgment, a counsel fee in the amount of four thousand, five hundred and seventy-five (\$4,575.00), plus reimbursement for Court costs in the amount of four hundred (\$400) dollars, for a total of four thousand nine hundred and seventy-five (\$4,975.00) dollars, shall be paid by Defendant, City of Cranston, to Gursky|Wiens Attorneys at Law, Ltd.

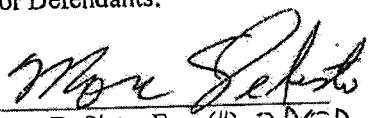
ASSENTED TO:

For Plaintiff:



Marc Gursky, Esq. (#2818)
Cooperating Attorney, American Civil Liberties
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For Defendants:



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Tel. (401) 272-4442
Fax. (401) 272-9937
marc@desistolaw.com

ENTER:



Barbara Basletta

4/13/16

PER ORDER:



McConnell, J.
United States District Judge

4/13/16