



March 8, 2021

VIA Email

Representative Sean M. Lynn
Representative Krista Griffith
Representative Franklin D. Cooke
Representative William Bush
Representative Gerald L. Brady
Representative Sherry Dorsey Walker
Representative John L. Mitchell
Representative Stephen Smyk
Representative Jeffrey N. Spiegelman
Representative Jesse R. Vanderwende
Representative Ronald E. Gray

RE: House Bill No. 58 – An Act to Amend Title 21 of the Delaware Code Relating to Pedestrian Solicitation

Dear House Judiciary Committee Members,

We write with respect to Section 4147, Title 21, Chapter 41 of the Delaware Code (the “Statute”) and the proposed amendments that are the subject of House Bill No. 58 (“Bill”). The Bill proposes to move cases involving panhandling violations to the Court of Common Pleas, purportedly to make more “social services” available to homeless defendants. However, this vulnerable segment of the Delaware population would be best served by the repeal of the Statute as it still effectively criminalizes panhandling and is plainly unconstitutional.

Since the landmark *Reed v. Gilbert* case in 2015, almost every one of the dozens of panhandling ordinances challenged in federal court including many with features similar to this Statute has been found constitutionally deficient or resulted in the repeal of that ordinance. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015); *see, e.g. Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015), *declaring ordinance unconstitutional on remand*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015)); *see also* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: A LITIGATION MANUAL (2017), <https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual>. **At least 70 additional cities have repealed their panhandling ordinances when informed of the likely infringement on First Amendment rights, including Wilmington, Delaware, whose city council repealed portions of the city code that prohibited panhandling in January 2020.** *See An Ordinance to Amend Chapter 36 to Repeal Begging and Panhandling Provisions from the city of Wilmington City Code*, <https://www.wilmingtoncitycouncil.com/wp-content/uploads/2020/01/Sub.-1-to-Ord.-19-054-4>

[747-Amend-Chapter-36-to-Repeal-Begging-and-Panhandling-Provisions-W0109105x920B6.pdf](#). The Statute not only violates the constitutional right to free speech protected by the First Amendment to the United States Constitution, it is also bad policy, and numerous examples of better alternatives now exist which Delaware could draw on. We call on Delaware to immediately repeal the Statute and instead consider more constructive alternatives.

The First Amendment protects peaceful requests for charity in a public place. *See, e.g., United States v. Kokinda*, 497 U.S. 720, 725 (1990) (“Solicitation is a recognized form of speech protected by the First Amendment.”). The government’s authority to regulate such public speech is exceedingly restricted, “[c]onsistent with the traditionally open character of public streets and sidewalks....” *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quotation omitted). As discussed below, the Statute is well outside the scope of permissible government regulation.

The Statute overtly distinguishes between types of speech based on “subject matter ... function or purpose.” *See Reed*, 135 S.Ct. at 2227 (internal citations, quotations, and alterations omitted); *Norton*, 806 F.3d at 412-13 (“Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.”); *Blich v. City of Slidell*, 260 F. Supp. 3d 656, 667 (2017) (holding unconstitutional a panhandling ordinance because it was facially content-discriminatory and “burden[ed] speech and/or conduct by its subject matter and by its purpose”); *Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882 at *4-*5 (M.D. Fla. Aug. 5, 2016) (same). Specifically, the Statute prohibits “soliciting any employment, business or contributions from the occupant of any vehicle”, “soliciting the watching or guarding of any vehicle”, and “soliciting a ride”. Furthermore, the Bill makes it clear that the persons most commonly accused under the Statute are homeless. Because the Statute allows for speech of certain content (e.g. solicitation of votes) but prohibits other content (e.g. solicitation of money), it is content-discriminatory and “plainly unconstitutional”. *See Rodgers v. Bryant*, 942 F.3d 451, 459 (8th Cir. 2019) (finding plaintiffs will likely succeed in proving Arkansas anti-loitering law violates First Amendment and granting injunction that prevents enforcement of that law); *see also Free Speech Coalition, Inc. v. Attorney General*, 825 F.3d 149, 154 (3d Cir. 2016) (finding statutes content-discriminatory). Courts use the most stringent standard – strict scrutiny – to review such restrictions. *See, e.g., Reed*, 135 S. Ct. at 2227 (holding that content-based laws may only survive strict scrutiny if “the government proves that they are narrowly tailored to serve a compelling state interest”); *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014). The Statute cannot survive strict scrutiny because neither does it serve any compelling state interest, nor is it narrowly tailored.

Unsurprisingly, every court to consider a regulation that, like the Statute, bans requests for charity within an identified geographic area has stricken the regulation. *See, e.g., Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015); *Cutting v. City of Portland, Maine*, 802 F.3d 79 (1st Cir. 2015) (holding unconstitutional an ordinance prohibiting all expressive activity on median strips); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 949 (9th Cir. 2011) (en banc) (striking down an ordinance that prohibited, among other things, solicitation of contributions on streets and highways); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 237 (D. Mass. 2015) (“[M]unicipalities must go back to the drafting board and craft solutions which recognize an individuals [sic] . . . rights under the First Amendment”); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d

177, 189 (D. Mass. 2015) (striking down an ordinance that banned vocal panhandling in a city's downtown area, as well as within twenty feet of a bank, ATM, check-cashing business, transit stop, public restroom, pay telephone, theater, outdoor seating area, and associated parking areas); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755, at *13 (D. Colo. Sept. 30, 2015).

For these reasons, among others, the Statute cannot pass constitutional muster. Further, it is simply not good policy. Harassing, ticketing and/or arresting people who ask for help in a time of need is inhumane and counterproductive. Unlawful anti-panhandling ordinances such as Pedestrians Soliciting Rides or Business are costly to enforce and only exacerbate problems associated with homelessness and poverty, regardless of which judicial body hears the case. Numerous communities have created alternatives that are more effective, and leave all involved—homeless and non-homeless residents, businesses, city agencies, and elected officials—happier in the long run. See National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2016), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>.

For example, Philadelphia, PA recently greatly reduced the number of homeless persons asking for change in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter. See Nina Feldman, *Expanded Hub of Hope homeless center opening under Suburban Station*, WHYY (Jan. 30, 2018) <https://whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/>. In opening the Center, Philadelphia Mayor Jim Kenny emphasized “We are not going to arrest people for being homeless,” stressing that the new space “gives our homeless outreach workers and the police a place to actually bring people instead of just scooting them along.” These programs are how cities actually solve the problem of homelessness, rather than merely addressing its symptoms.

We can all agree that we would like to see a Delaware where homeless people are not forced to beg on the streets. But whether examined from a legal, policy, fiscal, or moral standpoint, criminalizing any aspect of panhandling is not the best way to get to this goal. In the interest of protecting the homeless population, and the constitutional rights of all Delaware citizens, Delaware should place an immediate moratorium on enforcement and then proceed with a rapid repeal, and then develop approaches that will lead to the best outcomes for all the residents of Delaware, housed and unhoused alike.

Sincerely,

ACLU of Delaware
Campaign for Smart Justice
Congregation Beth Emeth
DE Campaign to End Debtors' Prisons
Delaware Center for Justice
Delaware Civil Rights Coalition
Delaware Community Legal Aid Society, Inc.
H.O.M.E.S. Campaign
HerStory Ensemble, LLC.
Housing Alliance Delaware

Latino Initiative on Restorative Justice, Inc.
National Homelessness Law Center
Network Delaware
Nonprofit Housing Agenda
Project New Start, Inc.
Safe Communities
The Delaware Poor People's Campaign
The Southern Delaware Alliance for Racial Justice
The Springboard Collaborative, Inc.
Unitarian Universalist Delaware Advocacy Network
Votamos We Vote Coalition