



February 15, 2022

VIA E-MAIL TRANSMISSION

State Attorney Dave Aronberg
Office of the State Attorney
Fifteenth Judicial Circuit
401 North Dixie Highway
West Palm Beach, FL 33401
(561) 355-7100
dave@sa15.org

**RE: PALM BEACH COUNTY MUNICIPAL ORDINANCE §18-7
(SOLICITATION AND DISTRIBUTION ON PUBLIC ROADS)**

Dear Mr. Aronberg:

We write with respect to your office's prosecution of individuals under Palm Beach County's ordinance concerning solicitation and distribution on public roads. PBC ORDINANCE 2015-025, §18-7. This ordinance prohibits the solicitation of donations from vehicle occupants while standing on any "roads, streets, roadbeds, ramps, medians, traffic islands and all other ways open to travel by operators of motorized vehicles within unincorporated Palm Beach County." *Id.* at §18-7(c). As recently decided by County Court Administrative Judge for the Criminal Division, Hon. Sherri Collins, the ordinance, on its face, unconstitutionally criminalizes protected speech and expression in violation of the First Amendment. *See Exhibit 1*. Despite this Order, your office has continued to prosecute these charges, largely against the homeless population in this County, without regard for the clear constitutional infirmities in the law. We therefore urge your office to cease prosecution of these charges immediately.

When these charges are heard at First Appearance or addressed pursuant to a capias warrant at a failure to appear hearing, judges often give the defendants a choice: 1) plead guilty and receive credit for time served, and, in the case of a custodial arrest, be released immediately from jail; or 2) challenge the constitutionality of the ordinance and stay in jail until a future court date. This results in numerous people pleading guilty, or being jailed, pursuant to unconstitutional charges. It is therefore incumbent upon your office to *nolle prosequere* these charges at First Appearance hearings to ensure this doesn't happen.

The ordinance penalizes certain types of solicitation by imposing a criminal penalty *only* on those who are "distributing materials or good or soliciting business or charitable contributions of any kind," to the exclusion of other kinds of speech. This type of content-based restriction on speech fails to survive strict scrutiny and has repeatedly been found unconstitutional.

Notably, since the U.S. Supreme Court holding in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), panhandling ordinances across the country similar to the one being enforced in Palm Beach County have been found unconstitutional. *See, e.g., Fernandez v. St. Louis Cnty.*, 461 F. Supp. 3d 894, 898 (E.D. Mo. 2020);

Rodgers v. Bryant, 301 F.Supp.3d 928, 934 (E.D. Ark. 2017); *Thayer v. City of Worcester*, 144 F.Supp.3d 218 (D. Mass. 2015); *Browne v. City of Grand Junction*, 136 F.Supp.3d 1276 (D. Colo. 2015). Federal and State courts in Florida have also found such solicitation and panhandling laws unconstitutional. Most recently, in *Messina v. City of Fort Lauderdale*, Case No. 21-cv-60168, 2021 WL 2567709 (S.D. Fla., June 23, 2021), Judge Roy K. Altman entered a preliminary injunction, finding that the City of Fort Lauderdale’s panhandling and roadside solicitation ordinances likely violate the First Amendment, in that they include content-based restrictions on speech that are not narrowly tailored to serve a compelling interest. **See Exhibit 2.** *See also Vigue v. Shoar*, 494 F. Supp. 3d 1204 (M.D. Fla. 2020) (finding provisions in state statute banning charitable solicitations unconstitutional); *Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882, at *6 (M.D. Fla. Aug. 5, 2016) (permanently enjoining the City of Tampa from enforcing an ordinance that banned charitable solicitation in certain areas). Similarly, Florida’s Second DCA, examining a content-based ordinance enacted in Fort Myers, reversed the trial court’s denial of a Motion to Dismiss, finding that the ordinance “cannot withstand strict scrutiny in this instance.” *Watrous v. State*, 325 So. 3d 1017, 1019 (Fla. 2nd DCA 2021). Significantly, in that case Florida’s Attorney General conceded that the ordinance was unconstitutional, stating:

[I]t does not appear that the ordinance, as written, survives strict scrutiny because it is not narrowly tailored to further a compelling government interest; the restricted speech was no more harmful to public or traffic safety than non-regulated speech in the same forums.

See Exhibit 3, *Watrous v. State of Florida*, No. 2D21-1065, Amended Answer of Appellee (May 25, 2021 2nd DCA). *See also Toombs v. State of Florida*, 25 Fla. L. Weekly Supp. 505a, No. 15-220 AC (Fla. 11th Jud. Cir. 2017) (holding City of Miami panhandling ordinance unconstitutional). The Palm Beach County ordinance fails constitutional scrutiny for the same reasons.

However, in Palm Beach County, even though a county court judge has found the ordinance unconstitutional, and no appeal of the decision was ever taken, the State Attorney’s Office continues to prosecute these charges, many of which have resulted in defendants entering a guilty plea and being subjected to fines and court costs. Such prosecutions create inconsistencies in the application of criminal penalties and laws within this judicial circuit, and importantly trample on the constitutional rights of Palm Beach County residents to be free from selective and unjust prosecutions. We therefore ask that your office *nolle prosequere*—at First Appearance hearings or earlier—any charges brought under §18-7.

If you’d like to discuss this matter further, we are happy to do so. We hope to receive your response before February 22, 2022.

Sincerely,

/s/ Sabarish P. Neelakanta
Sabarish P. Neelakanta, Esq.
SPN Law

/s/ Dante Trevisani
Executive Director
Florida Justice Institute