MEMORANDUM

To: **Patrick Urich, City Manager**
Eric Echevarria, Police Chief

From: **Chrissie Kapustka, Interim Corporation Counsel**

Date: **March 29, 2022**

Re: **History and Current Status of Panhandling Laws**

Ordinance 15537 (October 7, 2003)

On October 7, 2003 the City adopted Ordinance No. 15537 amending its regulation of panhandling. It generally defined panhandling as "any solicitation made in person upon any street, public way, public place or park in the city, in which a person requests an immediate donation of money or other gratuity from another person and includes but is not limited to seeking donations." It did not include the act of passively standing with a sign. It also excluded the performance of music, singing or street performance. It defined aggressive panhandling as someone who is panhandling and touches another person, while in line waiting to be admitted to a business, blocking the path of another person or blocking an entrance to a building, following a person, using profane or abusive language or panhandling in a group of two or more persons. Panhandling was prohibited after sunset and before sunrise and at certain locations in the city including bus stops, in a sidewalk café or within 20' of an ATM machine.

Reed v. Gilbert (June 18, 2015)

The City's panhandling ordinance excluded individuals who were passively standing with a sign from the definition of panhandling. In 2015, the Supreme Court changed the scope of municipal sign regulation which affected how Illinois courts ruled on existing panhandling ordinances. Reed v. Town of Gilbert, 576 U.S. 155 (2015).

In Reed, the Town of Gilbert, Arizona, had a comprehensive sign code that prohibited the display of outdoor signs without a permit. The code exempted, three categories of signs from its permit requirement: (1) ideological signs; (2) political signs; and (3) temporary directional signs.

The Plaintiff, a church and its pastor, posted signs each Saturday bearing the church name and time and location of the next service, as its serviced were held at various locations throughout town. The church members removed the signs on Sunday. The church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. The Plaintiff's filed suit claiming the sign code violated their freedom of speech. The District Court denied their motion for a preliminary injunction and the Ninth Circuit affirmed, concluding that the code's sign categories were content neutral and satisfied the intermediate scrutiny applied to content neutral regulations of speech.

The U.S. Supreme Court, reversed, however, finding that the town's sign code violated the First Amendment. In sharp contrast to the Ninth Circuit's decision, the Supreme Court determined that the sign code was facially content based because the code defined the three categories of signs on the basis of their messages and then subjected each category to different restrictions. In addition, the code's content-based restrictions did not survive strict scrutiny because the differential treatment between the categories did not serve a compelling governmental interest in aesthetics or traffic safety and therefore, was not narrowly tailored to serve those interests.

Unless there is a legitimate compelling reason the regulation of signs must be content neutral. Content neutral regulations are commonly described as "time, place and manner restrictions." These regulations do not govern the message being communicated, but how the message is communicated. Traditionally, courts have applied a three-part test to determine the constitutionality of a content neutral restriction: (1) the restriction must serve a significant or important interest; (2) the restriction must be narrowly tailored to advance the identified public interest; and (3) the restriction must leave alternatives for the speaker to deliver their message. This is known as "intermediate scrutiny." Federal courts have held that communities have a significant or important interest concerning traffic safety, aesthetics, public safety, order, cleanliness and administrative convenience.

Historically, unless the regulation of temporary signs was clearly content based, the regulation of temporary signs was examined under intermediate scrutiny. Before Reed, the regulation of all signs under each category was considered content neutral subject only to intermediate scrutiny because the regulation was not imposed on the content of the sign but on all such signs. After Reed, however, the signs are subject to strict scrutiny because, according to the Supreme Court, simply categorizing signs for the purpose of regulating them is a content-based regulation and i. Content based regulations are subject to strict scrutiny. To survive strict scrutiny, the municipality must show that the regulation (1) serves a compelling governmental interest; and (2) is narrowly tailored to achieve that interest. The Reed decision signaled a new standard for content-neutrality and subsequently altered panhandling jurisprudence when subsequently applied by Illinois courts in *Norton v. City of Springfield.*

***Norton v. City of Springfield* (2015-2018)**

Between 2015 and 2017 the Seventh Circuit Court of Appels issued a series of opinions in *Norton v. City of Springfield*, 2018 WL 3964800 (C.D. Il. 2018). *Norton* involved a challenge to Springfield's panhandling ordinance, which prohibited panhandling in the downtown historic district (less than 2% of the City's area but containing principal shopping, entertainment and government areas). The ordinance defined "panhandling" as "an oral request for an immediate donation of money." Although the ordinance prohibited panhandling, it allowed oral pleas for deferred donations and signs requesting money.

Individuals cited under the ordinance argued that barring oral requests for money now but not regulating requests for money later was a form of content discrimination. Initially, the Seventh Circuit rejected this claim, reasoning that the ordinance regulated according to subject matter instead of content or viewpoint.

Following the Supreme Court's decision in *Reed*, the Seventh Circuit granted a petition for rehearing and ruled the Springfield ordinance unconstitutional. *Norton* noted that under *Reed* "regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." Just as the Supreme Court rejected the Town of Gilbert's justification that the sign ordinance there was neutral with respect to ideas and viewpoints, the Seventh Circuit rejected the same argument advanced by the City of Springfield. Because Springfield's panhandling ordinance regulated by topic (oral requests for donations of money), the Seventh Circuit concluded that the ordinance was content based under the Supreme Court's new test adopted in *Reed*.

Further, the Seventh Circuit upheld an award of $330,000 in attorneys' fees against the City of Springfield based on the unconstitutional ordinance.

ACLU (August 2018)

In 2018, the ACLU began lobbying 15 municipalities throughout Illinois that had panhandling ordinances on their books. The ACLU reported delivering letters to Aurora, Carbondale, Champaign, Chicago, Cicero, Danville, Decatur, East St. Louis, Elgin, Joliet, Moline, Oak Park, Peoria, Rockford and Urbana. Across the country, the ACLU demanded over 240 cities in more than 12 states repeal their panhandling ordinances based on the ruling in *Reed v. Town of Gilbert*.

We have confirmed that Aurora, Carbondale, Champaign, Chicago, Decatur, Elgin, Moline, Oak Park and Urbana swiftly repealed their panhandling ordinances.

The following cities have not repealed or amended their codes: East St. Louis (code last amended in 2013); Rockford (code last amended in 2006); Cicero (code last amended in 2016); Danville (code last amended in 2006) and Joliet (code last amended in 1993). We did not contact their respective police departments to confirm whether they were conducting any enforcement activities, we only confirmed that the panhandling or solicitation language remains in their municipal code.

Ordinance 17610 (September 11, 2018)

The City of Peoria repealed its panhandling ordinance on September 11, 2018 via Ordinance 17,610.

Criminal Code Provisions

In the Spring of 2019, the Illinois Municipal League published a list of common criminal code provisions that municipalities were reportedly adopting as local ordinances to help address panhandling. Those provisions were:

(720 ILCS 5/12-1) Sec. 12-1. Assault.

(a) A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.

(720 ILCS 5/12-2) Sec. 12-2. Aggravated assault.

(a) Offense based on location of conduct. A person commits aggravated assault when he or she commits an assault against an individual who is on or about a public way, public property, a public place of accommodation or amusement, or a sports venue.

(720 ILCS 5/12-3) Sec. 12-3. Battery.

(a) A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.

(720 ILCS 5/12-3.05) Sec. 12-3.05. Aggravated battery.

(c) Offense based on location of conduct. A person commits aggravated battery when, in committing a battery, other than by the discharge of a firearm, he or she is or the person battered is on or about a public way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter.

(720 ILCS 5/16-1) Sec. 16-1. Theft.

(a) A person commits theft when he or she knowingly: (1) Obtains or exerts unauthorized control over property of the owner; or (2) Obtains by deception control over property of the owner; or (3) Obtains by threat control over property of the owner; or

720 ILCS 5/26-1) Sec. 26-1. Disorderly conduct.

(a) A person commits disorderly conduct when he or she knowingly: (1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace;

While these violations may be applicable when there is a physical altercation or threat, they do not prohibit passive solicitation.

Aggressive Panhandling Ordinances

Some communities, like Springfield, have enacted ordinances to ban Aggressive Sales and Solicitation Tactics. These ordinances do not prohibit passive solicitation but would be applicable in where solicitors are following or continually asking certain citizens for donations.

State Statute

After *Reed* and *Norton* were decided, some municipalities reported using the State of Illinois statute which prohibited pedestrian soliciting rides or donations. The statute read:

(625 ILCS 5/11-1006) (from Ch. 95 1/2, par. 11-1006)

Sec. 11-1006. Pedestrians soliciting rides or business.

(a) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

(b) No person shall stand on a highway for the purpose of soliciting employment or business from the occupant of any vehicle.

(c) No person shall stand on a highway for the purpose of soliciting contributions from the occupant of any vehicle except within a municipality when expressly permitted by municipal ordinance. The local municipality, city, village, or other local governmental entity in which the solicitation takes place shall determine by ordinance where and when solicitations may take place based on the safety of the solicitors and the safety of motorists. The decision shall also take into account the orderly flow of traffic and may not allow interference with the operation of official traffic control devices. The soliciting agency shall be:

1. registered with the Attorney General as a charitable organization as provided by "An Act to regulate solicitation and collection of funds for charitable purposes, providing for violations thereof, and making an appropriation therefor", approved July 26, 1963, as amended;

2. engaged in a Statewide fund raising activity; and

3. liable for any injuries to any person or property during the solicitation which is causally related to an act of ordinary negligence of the soliciting agent.

Any person engaged in the act of solicitation shall be 16 years of age or more and shall be wearing a high visibility vest.

(d) No person shall stand on or in the proximity of a highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a highway.

(e) Every person who is convicted of a violation of this Section shall be guilty of a Class A misdemeanor.

(Source: P.A. 88-589, eff. 8-14-94.)

***Dumiak and Simmons v. Village of Downer's Grove* (January 11, 2021)**

While the state statute appeared to provide a solution to some communities panhandling and solicitation issues, on January 14, 2021, a federal court, issued a permanent ban on the State's panhandling law from being enforced because it violates the First Amendment. *Michael Dumiak and Christopher Simmons v. Village of Downer's Grove, et. al.*, 19-CV-5604 (January 11, 2021). Federal Judge Robert W. Gettleman entered a stipulated final order finding that as a matter of law, 625 ILCS 5/11-1006(c) is a content-based restriction on the freedom of speech that is not justified by any compelling interest and that the provision violates the First Amendment and is unconstitutional on its face under *Reed* and *Norton*.

The Village of Downers Grove and a number of their police officers were originally defendants in the suit, but the Village repealed its local ordinance that implemented the state statute and settled the counts against the Village and its officers for nominal damages. The remaining defendants, ISP and the DuPage County State's Attorney, consented to the entry of a preliminary injunction on January 11, 2021 that prohibits enforcement of the statute by those defendants.

Although the order entered by the court applied only to the parties in the litigation, any enforcement of a similar restriction would likely result in legal challenges seeking injunctive relief, monetary damages and attorneys' fees for violations of the solicitors First Amendment rights under the U.S. Constitution.

July 13, 2021 Report Back to Council

At the July 13, 2021 City Council meeting, a Report Back was provided on the status of panhandling law. The Council Communication noted that following the Court's decisions in *Reed, Norton* and *Downer's Grove* Illinois municipalities have very limited legal ground to regulate panhandling. Suggestions were made for Council to consider the following:

1. **Obstruction of Traffic**. Safety of drivers and solicitors is a valid concern when a solicitor steps into or blocks traffic. The City currently has an ordinance prohibiting vehicles from obstruction traffic. Section 28-169 reads "no vehicle shall be operated or allowed to remain upon any street in such a manner as to form an unreasonable obstruction to traffic thereon." The City could amend the ordinance to also include a prohibition against a person remaining upon a street and obstructing traffic. Keep in mind that this would have to be enforced against all persons who are obstructing traffic, it could not solely or only be targeted against panhandlers. It would include other individuals or groups who may be performing charitable fundraising and obstruct traffic (St. Jude can shakers, MDA fill the boot campaigns, little league tag days, etc.).

2. **Licensing**. Memphis, TN requires all solicitors to obtain a $10.00 permit before doing any solicitation on public streets (note that the City already has a license for a solicitor who goes door-to-door selling items). Again, this would apply to all individuals and entities who are conducting any type of solicitation on a public right-of-way (fundraising, petition signatures, red kettle campaigns, etc.).

3. **Regulate Non-Protected Speech**. The City could attempt to draft a panhandling/solicitation ordinance that only speaks to intimidating conduct or threatening speech. Threatening speech is not recognized communication under the free speech guarantees of the First Amendment. Note that there are other laws/ordinances that may apply such as disorderly conduct that could be enforced with the same effect.

Mayor Ali asked for follow-up on any ordinance that would restrict pedestrians in the roadway based on traffic studies and collision statistics. On July 23, 2021 the legal department and public works department met to discuss the traffic data needed to determine whether there were any intersections that had a high number of pedestrian and motor vehicle accidents.

Hanson Engineering Report

On or about September 3, 2021 the City received a report from Hanson Engineering regarding an analysis of the correlation between pedestrian crashes and median uses. After examining intersection pedestrian crashes at median location from 2017 through 2021, the engineering firm determined there was no clear correlation.

Subsequently, on September 16, 2021 the report was provided to the City Council via email. Council was advised that based on the report generated by Hanson Engineering, the City did not have sufficient date to move forward with an ordinance prohibiting pedestrians from occupying all or even certain medians.

House Bill 4441

On January 10, 2022, Rep. Joe Sosnowski (R, Rockford) introduced the Illinois Safe Sidewalks and Roadways Act. The proposed bill would make it unlawful for a person to panhandle after sunset or before sunrise. It would also make it unlawful to solicit money from individuals (1) at any bus or train sop; (2) while on public transportation; (3) in any vehicle on the street; or (4) on private property, unless the panhandler has permission from the property owner or occupant.

The proposed bill also makes it unlawful for any person to panhandle in any of the following manners: (1) by coming within 3' of the person solicited, until that person indicates they want to make a donation; (2) by blocking the path of the person solicited along a sidewalk or street; (3) by following a person who walks away; (4) by using profane or abusive language; (5) by panhandling in a group of 2 or more persons; or (6) by any statement, gesture or other communication that is perceived to be a threat. It would also make it unlawful for any person to knowingly make any false or misleading representation in the course of soliciting a donation.

The ACLU has already issued statements indicating that that this bill would be ripe for a lawsuit since a federal court already struck down the state statute banning panhandling last year. The bill was assigned to the Rules committee on February 18, 2022 and has no action taken since this. There appears to be little chance this will make it out of committee.

Attachments:
Ordinance No. 15537
Reed v. Gilbert, 576 U.S. 155 (2015)
Norton v. City of Springfield, 806 F.3d 411 (August 7, 2015)
Norton v. City of Springfield, 281 F. Supp.3d 743 (December 14, 2017)
Norton v. City of Springfield, 324 F.Supp.3d 994 (August 17, 2018)
Norton v. City of Springfield, 2018 WL 6601083 (December 17, 2018)
Ordinance 17610
City of Springfield Aggressive Sales and Solicitation Tactics Ordinance
Dumiak and Simmons v. Village of Downer's Grove
Hanson Engineering Pedestrian Median Crash Analysis
House Bill 4441

ORDINANCE NO. 15,537

AN ORDINANCE AMENDING CHAPTER 20 OF THE CODE OF THE CITY OF PEORIA, ILLINOIS RELATING TO PANHANDLING

WHEREAS, the City of Peoria is a home rule unit of government pursuant to Article VII, Section 6 of the Constitution of the State of Illinois 1970; and

WHEREAS, the City Council of the City of Peoria recognizes that panhandling is a First Amendment protected activity; and

WHEREAS, the City Council of the City of Peoria finds that aggressive panhandling constitutes a threat to the public safety which requires a reasonable response;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS AS FOLLOWS:

Section 1. The Code of the City of Peoria is hereby amended by adding the following Section 20-108:

Sec. 20-108. Panhandling.

(a) Definitions.

1. *Panhandling:* Any solicitation made in person upon any street, public way, public place, or park in the city, in which a person requests an immediate donation of money or other gratuity from another person, and includes but is not limited to seeking donations.

a. By vocal appeal ~~or for music, singing, or other street performance~~; and

b. Where the person being solicited receives an item of little or no monetary value in exchange for a donation, under circumstances where a reasonable person would understand that the transaction is in substance a donation.

However, *panhandling* shall not include the act of passively standing or sitting ~~or performing music, singing or other street performance~~ with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry by another person.

Performing music, singing or other street performance does not constitute *panhandling* even if the performer verbally requests money.

2. *Aggressive panhandling: Panhandling* which is accompanied by one or more of the following:

a. *Panhandling* while at any time before, during or after the solicitation touching the solicited person without the solicited person's consent;

b. *Panhandling* a person while such person is standing in line and waiting to be admitted to a commercial establishment;

c. *Panhandling* while blocking the path of the person solicited or blocking the entrance to any building or vehicle;

d. *Panhandling* while following behind, alongside, or ahead of a person who walks away from the panhandler after being solicited;

e. *Panhandling* while using profane or abusive language either during the solicitation or following a refusal to make a donation, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful of his safety or to feel compelled to make a donation;

f. *Panhandling* in a group of two or more persons.

(b) It shall be unlawful to engage in an act of *panhandling* on any day after sunset or before sunrise.

(c) It shall be unlawful to engage in an act of *panhandling* when either the panhandler or the person being solicited is located at any of the following locations: At a bus stop, in any public transportation vehicle or public transportation facility; in a vehicle which is parked or stopped on a public street or alley; in a sidewalk café, or within 20 feet in any direction from an automatic teller machine or entrance to a bank.

(d) It shall be unlawful to engage in *aggressive panhandling.*

(e) Any person who shall violate any provision of this section shall be fined as provided in Section 1-5 of this Code for each offense, and the circuit court may enjoin the person from committing further violations of this chapter. Each act of *panhandling* prohibited by this section shall constitute a separate offense.

Section 2. This ordinance shall be in full force and effect 10 days after publication according to law.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this 7th day of OCTOBER, 2003.

APPROVED:

David P Ransy

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

REED ET AL. *v.* TOWN OF GILBERT, ARIZONA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13–502. Argued January 12, 2015—Decided June 18, 2015

Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. "Ideological Signs," defined as signs "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season. "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code's sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

Held: The Sign Code's provisions are content-based regulations of

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speech that do not survive strict scrutiny. Pp. 6–17.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g., R. A. V.* v. *St. Paul*, 505 U. S. 377, 395. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell* v. *IMS Health, Inc.*, 564 U. S. ___, ___–___. And courts are required to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Id.*, at ___. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be " 'justified without reference to the content of the regulated speech,' " or were adopted by the government "because of disagreement with the message" conveyed. *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791. Pp. 6–7.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. Pp. 7.

(c) None of the Ninth Circuit's theories for its contrary holding is persuasive. Its conclusion that the Town's regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410, 429. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit's conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints

is a "more blatant" and "egregious form of content discrimination," *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, but "[t]he First Amendment's hostility to content-based regulation [also] extends . . . to prohibition of public discussion of an entire topic," *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code's categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 658. This same analysis applies to event-based distinctions. Pp. 8–14.

(d) The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U. S. ___, ___. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code's distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra,* at 425. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 14–15.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 817. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—*e.g.*, warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny. Pp. 16–17.

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707 F. 3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE THOMAS delivered the opinion of the Court.

The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, §4.402 (2005).[1] The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is "Temporary Directional Signs Relating to a Qualifying Event," loosely defined as signs directing the public to a meeting of a nonprofit group. §4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

[1]The Town's Sign Code is available online at http://www.gilbertaz.gov/departments/development-service/planning-development/land-development-code (as visited June 16, 2015, and available in Clerk of Court's case file).

I

A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is "Ideological Sign[s]." This category includes any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency." Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 square feet in area and to be placed in all "zoning districts" without time limits. §4.402(J).

The second category is "Political Sign[s]." This includes any "temporary sign designed to influence the outcome of an election called by a public body." Glossary 23.[2] The Code treats these signs less favorably than ideological signs. The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and "rights-of-way." §4.402(I).[3] These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. *Ibid.*

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[2]A "Temporary Sign" is a "sign not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display." Glossary 25.

[3]The Code defines "Right-of-Way" as a "strip of publicly owned land occupied by or planned for a street, utilities, landscaping, sidewalks, trails, and similar facilities." *Id.*, at 18.

The third category is "Temporary Directional Signs Relating to a Qualifying Event." This includes any "Temporary Sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.'" Glossary 25 (emphasis deleted). A "qualifying event" is defined as any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization." *Ibid.* The Code treats temporary directional signs even less favorably than political signs.[4] Temporary directional signs may be no larger than six square feet. §4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. *Ibid.* And, they may be displayed no more than 12 hours before the "qualifying event" and no more than 1 hour afterward. *Ibid.*

B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different loca-

[4]The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as "Religious Assembly Temporary Direction Signs." App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. *Id.*, at 75–76. In 2008, the Town redefined the category as "Temporary Directional Signs Related to a Qualifying Event," and it expanded the time limit to 12 hours before and 1 hour after the "qualifying event." *Ibid.* In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. *Id.*, at 89.

tions, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there would be "no leniency under the Code" and promised to punish any future violations.

Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied the petitioners' motion for a preliminary injunction. The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. 587 F. 3d 966, 979 (2009). It reasoned that, even though an enforcement

officer would have to read the sign to determine what provisions of the Sign Code applied to it, the "'kind of cursory examination'" that would be necessary for an officer to classify it as a temporary directional sign was "not akin to an officer synthesizing the expressive content of the sign." *Id.*, at 978. It then remanded for the District Court to determine in the first instance whether the Sign Code's distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code's sign categories were content neutral. The court concluded that "the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs . . . are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign." 707 F. 3d 1057, 1069 (CA9 2013). Relying on this Court's decision in *Hill* v. *Colorado*, 530 U. S. 703 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F. 3d, at 1071–1072. As the court explained, "Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed" and its "interests in regulat[ing] temporary signs are unrelated to the content of the sign." *Ibid.* Accordingly, the court believed that the Code was "content-neutral as that term [has been] defined by the Supreme Court." *Id.*, at 1071. In light of that determination, it applied a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. *Id.*, at 1073–1076.

We granted certiorari, 573 U. S. ___ (2014), and now reverse.

II

A

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U. S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 95 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R. A. V.* v. *St. Paul*, 505 U. S. 377, 395 (1992); *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115, 118 (1991).

Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell* v. *IMS Health, Inc.*, 564 U. S. ___, ___–___ (2011) (slip op., at 8–9); *Carey* v. *Brown*, 447 U. S. 455, 462 (1980); *Mosley*, *supra*, at 95. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Sorrell*, *supra*, at ___ (slip op., at 8). Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be "'justified without reference to

the content of the regulated speech,'" or that were adopted by the government "because of disagreement with the message [the speech] conveys," *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

B

The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." Glossary 25. It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." *Id.*, at 24. And it defines "Ideological Signs" on the basis of whether a sign "communicat[es] a message or ideas" that do not fit within the Code's other categories. *Id.*, at 23. It then subjects each of these categories to different restrictions.

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.

C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

1

The Court of Appeals first determined that the Sign Code was content neutral because the Town "did not adopt its regulation of speech [based on] disagree[ment] with the message conveyed," and its justifications for regulating temporary directional signs were "unrelated to the content of the sign." 707 F. 3d, at 1071–1072. In its brief to this Court, the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be "'justified without reference to the content of the regulated speech.'" Brief for United States as *Amicus Curiae* 20, 24 (quoting *Ward, supra,* at 791; emphasis deleted).

But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati* v. *Discovery Network, Inc.,* 507 U. S. 410, 429 (1993). We have thus made clear that "'[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,'" and a party opposing the government "need adduce 'no evidence of an improper censorial motive.'" *Simon & Schuster, supra,* at 117. Although "a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary." *Turner Broadcasting System, Inc.* v. *FCC,* 512 U. S. 622, 642 (1994). In other words, an

innocuous justification cannot transform a facially content-based law into one that is content neutral.

That is why we have repeatedly considered whether a law is content neutral on its face *before* turning to the law's justification or purpose. See, *e.g.*, *Sorrell*, *supra*, at ___–___ (slip op., at 8–9) (statute was content based "on its face," and there was also evidence of an impermissible legislative motive); *United States* v. *Eichman*, 496 U. S. 310, 315 (1990) ("Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted *interest* is related to the suppression of free expression" (internal quotation marks omitted)); *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 804 (1984) ("The text of the ordinance is neutral," and "there is not even a hint of bias or censorship in the City's enactment or enforcement of this ordinance"); *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984) (requiring that a facially content-neutral ban on camping must be "justified without reference to the content of the regulated speech"); *United States* v. *O'Brien*, 391 U. S. 367, 375, 377 (1968) (noting that the statute "on its face deals with conduct having no connection with speech," but examining whether the "the governmental interest is unrelated to the suppression of free expression"). Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in *Ward* as suggesting that a government's purpose is relevant even when a law is content based on its face. That is incorrect. *Ward* had nothing to say about facially content-based restrictions because it involved a facially content-*neutral* ban on the use, in a

city-owned music venue, of sound amplification systems not provided by the city. 491 U. S., at 787, and n. 2. In that context, we looked to governmental motive, including whether the government had regulated speech "because of disagreement" with its message, and whether the regulation was "'justified without reference to the content of the speech.'" *Id.*, at 791. But *Ward*'s framework "applies only if a statute is content neutral." *Hill*, 530 U. S., at 766 (KENNEDY, J., dissenting). Its rules thus operate "to protect speech," not "to restrict it." *Id.*, at 765.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.*, the "abridg[ement] of speech"—rather than merely the motives of those who enacted them. U. S. Const., Amdt. 1. "'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.'" *Hill, supra,* at 743 (SCALIA, J., dissenting).

For instance, in *NAACP* v. *Button*, 371 U. S. 415 (1963), the Court encountered a State's attempt to use a statute prohibiting "'improper solicitation'" by attorneys to outlaw litigation-related speech of the National Association for the Advancement of Colored People. *Id.*, at 438. Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State's claim that its interest in the "regulation of professional conduct" rendered the statute consistent with the First Amendment, observing that "it is no answer . . . to say . . . that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression." *Id.*, at 438–439. Likewise, one could easily imagine a Sign Code compliance manager who disliked the Church's

substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services. Accordingly, we have repeatedly "rejected the argument that 'discriminatory . . . treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.'" *Discovery Network,* 507 U. S., at 429. We do so again today.

2

The Court of Appeals next reasoned that the Sign Code was content neutral because it "does not mention any idea or viewpoint, let alone single one out for differential treatment." 587 F. 3d, at 977. It reasoned that, for the purpose of the Code provisions, "[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted." 707 F. 3d, at 1069.

The Town seizes on this reasoning, insisting that "content based" is a term of art that "should be applied flexibly" with the goal of protecting "viewpoints and ideas from government censorship or favoritism." Brief for Respondents 22. In the Town's view, a sign regulation that "does not censor or favor particular viewpoints or ideas" cannot be content based. *Ibid.* The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise any concerns that the government is "endorsing or suppressing 'ideas or viewpoints,'" *id.*, at 27, and the provisions for political signs and ideological signs "are neutral as to particular ideas or viewpoints" within those categories. *Id.*, at 37.

This analysis conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of

content discrimination." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). But it is well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537 (1980).

Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. See *Discovery Network, supra,* at 428. The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

3

Finally, the Court of Appeals characterized the Sign Code's distinctions as turning on "'the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.'" 707 F. 3d, at 1069. That analysis is mistaken on both factual and legal grounds.

To start, the Sign Code's distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up

signs advertising the Church's meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made those signs far larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code's distinctions were truly speaker based, both types of signs would receive the same treatment.

In any case, the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content," *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 340 (2010), we have insisted that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference," *Turner,* 512 U. S., at 658. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See *Citizens United, supra,* at 340–341. Characterizing a distinction as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code's distinctions hinge on "whether and when an event is occurring." The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is "designed to influence the outcome of an election" (and thus "political") or merely "communicating a message or ideas for noncommercial purposes" (and thus "ideological"). Glossary 24. That obvious content-based

inquiry does not evade strict scrutiny review simply because an event (*i.e.*, an election) is involved.

And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. *Supra,* at 6. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem "entirely reasonable" will sometimes be "struck down because of their content-based nature." *City of Ladue* v. *Gilleo*, 512 U. S. 43, 60 (1994) (O'Connor, J., concurring).

III

Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, "'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,'" *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U. S. ___, ___ (2011) (slip op., at 8) (quoting *Citizens United*, 558 U. S., at 340). Thus, it is the Town's burden to demonstrate that the Code's differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tai-

lored to that end. See *ibid.*

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive.

Starting with the preservation of aesthetics, temporary directional signs are "no greater an eyesore," *Discovery Network*, 507 U. S., at 425, than ideological or political ones. Yet the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a "'law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,'" *Republican Party of Minn.* v. *White*, 536 U. S. 765, 780 (2002), the Sign Code fails strict scrutiny.

IV

Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an "'absolutist'" content-neutrality rule would render "virtually all distinctions in sign laws . . . subject to strict scrutiny," Brief for Respondents 34–35, but that is not the case. Not "all distinctions" are subject to strict scrutiny, only *content-based* ones are. Laws that are *content neutral* are instead subject to lesser scrutiny. See *Clark*, 468 U. S., at 295.

The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts, and portability. See, *e.g.*, §4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner. See *Taxpayers for Vincent*, 466 U. S., at 817 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, *e.g.*, *Solantic, LLC* v. *Neptune Beach*, 410 F. 3d 1250, 1264–1269 (CA11 2005) (sign categories similar to the town of Gilbert's were content based and subject to strict scrutiny); *Matthews* v. *Needham*, 764 F. 2d 58, 59–60 (CA1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs "take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *City of Ladue*, 512 U. S., at 48. At the same time, the presence of certain

signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As discussed above, they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

* * *

We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE ALITO, with whom JUSTICE KENNEDY and JUSTICE SOTOMAYOR join, concurring.

I join the opinion of the Court but add a few words of further explanation.

As the Court holds, what we have termed "content-based" laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its "topic" or "subject" favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth. See *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537 (1980).

As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:

Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be

placed. These rules may distinguish between free-standing signs and those attached to buildings.

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.

Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.*

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City* v. *Summum*, 555 U. S. 460, 467–469 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.

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*Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment. Time, place, and manner restrictions "must be narrowly tailored to serve the government's legitimate, content-neutral interests." *Ward* v. *Rock Against Racism*, 491 U. S. 781, 798 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE BREYER, concurring in the judgment.

I join JUSTICE KAGAN's separate opinion. Like JUSTICE KAGAN I believe that categories alone cannot satisfactorily resolve the legal problem before us. The First Amendment requires greater judicial sensitivity both to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as "content discrimination" and "strict scrutiny," would permit. In my view, the category "content discrimination" is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic "strict scrutiny" trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. *E.g., Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828–829 (1995); see also *Boos* v. *Barry*, 485 U. S. 312, 318–319 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all

speakers. *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 96 (1972) ("Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say"). In these types of cases, strict scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not *always* trigger strict scrutiny. To say that it is not an automatic "strict scrutiny" trigger is not to argue against that concept's use. I readily concede, for example, that content discrimination, as a conceptual tool, can sometimes reveal weaknesses in the government's rationale for a rule that limits speech. If, for example, a city looks to litter prevention as the rationale for a prohibition against placing newsracks dispensing free advertisements on public property, why does it exempt other newsracks causing similar litter? Cf. *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410 (1993). I also concede that, whenever government disfavors one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual's ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.

Nonetheless, in these latter instances to use the presence of content discrimination automatically to trigger strict scrutiny and thereby call into play a strong presumption against constitutionality goes too far. That is because virtually all government activities involve speech, many of which involve the regulation of speech. Regulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management

of ordinary government regulatory activity.

Consider a few examples of speech regulated by government that inevitably involve content discrimination, but where a strong presumption against constitutionality has no place. Consider governmental regulation of securities, *e.g.,* 15 U. S. C. §78*l* (requirements for content that must be included in a registration statement); of energy conservation labeling-practices, *e.g.,* 42 U. S. C. §6294 (requirements for content that must be included on labels of certain consumer electronics); of prescription drugs, *e.g.,* 21 U. S. C. §353(b)(4)(A) (requiring a prescription drug label to bear the symbol "Rx only"); of doctor-patient confidentiality, *e.g.,* 38 U. S. C. §7332 (requiring confidentiality of certain medical records, but allowing a physician to disclose that the patient has HIV to the patient's spouse or sexual partner); of income tax statements, *e.g.,* 26 U. S. C. §6039F (requiring taxpayers to furnish information about foreign gifts received if the aggregate amount exceeds $10,000); of commercial airplane briefings, *e.g.,* 14 CFR §136.7 (2015) (requiring pilots to ensure that each passenger has been briefed on flight procedures, such as seatbelt fastening); of signs at petting zoos, *e.g.,* N. Y. Gen. Bus. Law Ann. §399–ff(3) (West Cum. Supp. 2015) (requiring petting zoos to post a sign at every exit "'strongly recommend[ing] that persons wash their hands upon exiting the petting zoo area'"); and so on.

Nor can the majority avoid the application of strict scrutiny to all sorts of justifiable governmental regulations by relying on this Court's many subcategories and exceptions to the rule. The Court has said, for example, that we should apply less strict standards to "commercial speech." *Central Hudson Gas & Elec. Corp.* v. *Public Service Comm'n of N. Y.*, 447 U. S. 557, 562–563 (1980). But I have great concern that many justifiable instances of "content-based" regulation are noncommercial. And, worse than that, the Court has applied the heightened

"strict scrutiny" standard even in cases where the less stringent "commercial speech" standard was appropriate. See *Sorrell* v. *IMS Health Inc.*, 564 U. S. ___, ___ (2011) (BREYER, J., dissenting) (slip op., at ___). The Court has also said that "government speech" escapes First Amendment strictures. See *Rust* v. *Sullivan*, 500 U. S. 173, 193–194 (1991). But regulated speech is typically private speech, not government speech. Further, the Court has said that, "[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists." *R. A. V.* v. *St. Paul*, 505 U. S. 377, 388 (1992). But this exception accounts for only a few of the instances in which content discrimination is readily justifiable.

I recognize that the Court could escape the problem by watering down the force of the presumption against constitutionality that "strict scrutiny" normally carries with it. But, in my view, doing so will weaken the First Amendment's protection in instances where "strict scrutiny" should apply in full force.

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives,

and whether there are other, less restrictive ways of doing so. See, *e.g., United States* v. *Alvarez*, 567 U. S. ___, ___–___ (2012) (BREYER, J., concurring in judgment) (slip op., at 1–3); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 400–403 (2000) (BREYER, J., concurring). Admittedly, this approach does not have the simplicity of a mechanical use of categories. But it does permit the government to regulate speech in numerous instances where the voters have authorized the government to regulate and where courts should hesitate to substitute judicial judgment for that of administrators.

Here, regulation of signage along the roadside, for purposes of safety and beautification is at issue. There is no traditional public forum nor do I find any general effort to censor a particular viewpoint. Consequently, the specific regulation at issue does not warrant "strict scrutiny." Nonetheless, for the reasons that JUSTICE KAGAN sets forth, I believe that the Town of Gilbert's regulatory rules violate the First Amendment. I consequently concur in the Court's judgment only.

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE KAGAN, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring in the judgment.

Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter. For example, some municipalities generally prohibit illuminated signs in residential neighborhoods, but lift that ban for signs that identify the address of a home or the name of its owner or occupant. See, *e.g.*, City of Truth or Consequences, N. M., Code of Ordinances, ch. 16, Art. XIII, §§11–13–2.3, 11–13–2.9(H)(4) (2014). In other municipalities, safety signs such as "Blind Pedestrian Crossing" and "Hidden Driveway" can be posted without a permit, even as other permanent signs require one. See, *e.g.*, Code of Athens-Clarke County, Ga., Pt. III, §7–4–7(1) (1993). Elsewhere, historic site markers—for example, "George Washington Slept Here"—are also exempt from general regulations. See, *e.g.*, Dover, Del., Code of Ordinances, Pt. II, App. B, Art. 5, §4.5(F) (2012). And similarly, the federal Highway Beautification Act limits signs along interstate highways unless, for instance, they direct travelers to "scenic and historical attractions" or advertise free coffee. See 23 U. S. C. §§131(b), (c)(1), (c)(5).

Given the Court's analysis, many sign ordinances of that kind are now in jeopardy. See *ante*, at 14 (acknowledging

that "entirely reasonable" sign laws "will sometimes be struck down" under its approach (internal quotation marks omitted)). Says the majority: When laws "single[] out specific subject matter," they are "facially content based"; and when they are facially content based, they are automatically subject to strict scrutiny. *Ante*, at 12, 16–17. And although the majority holds out hope that some sign laws with subject-matter exemptions "might survive" that stringent review, *ante*, at 17, the likelihood is that most will be struck down. After all, it is the "rare case[] in which a speech restriction withstands strict scrutiny." *Williams-Yulee* v. *Florida Bar*, 575 U. S. ___, ___ (2015) (slip op., at 9). To clear that high bar, the government must show that a content-based distinction "is necessary to serve a compelling state interest and is narrowly drawn to achieve that end." *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S. 221, 231 (1987). So on the majority's view, courts would have to determine that a town has a compelling interest in informing passersby where George Washington slept. And likewise, courts would have to find that a town has no other way to prevent hidden-driveway mishaps than by specially treating hidden-driveway signs. (Well-placed speed bumps? Lower speed limits? Or how about just a ban on hidden driveways?) The consequence—unless courts water down strict scrutiny to something unrecognizable—is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter.*

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*Even in trying (commendably) to limit today's decision, JUSTICE ALITO's concurrence highlights its far-reaching effects. According to JUSTICE ALITO, the majority does not subject to strict scrutiny regulations of "signs advertising a one-time event." *Ante*, at 2 (ALITO, J., concurring). But of course it does. On the majority's view, a law with an exception for such signs "singles out specific subject matter for

Although the majority insists that applying strict scrutiny to all such ordinances is "essential" to protecting First Amendment freedoms, *ante*, at 14, I find it challenging to understand why that is so. This Court's decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen* v. *Coakley*, 573 U. S. ___, ___–___ (2014) (slip op., at 8–9) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech "based on hostility—or favoritism—towards the underlying message expressed." *R. A. V.* v. *St. Paul*, 505 U. S. 377, 386 (1992). Yet the subject-matter exemptions included in many sign ordinances do not implicate those concerns. Allowing residents, say, to install a light bulb over "name and address" signs but no others does not distort the marketplace of ideas. Nor does that different treatment give rise to an inference of impermissible government motive.

We apply strict scrutiny to facially content-based regulations of speech, in keeping with the rationales just described, when there is any "realistic possibility that official suppression of ideas is afoot." *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177, 189 (2007) (quoting *R. A. V.*, 505 U. S., at 390). That is always the case when the regulation facially differentiates on the basis of viewpoint. See *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). It is also the case (except in nonpublic or limited public forums) when a law restricts "discussion of an entire topic" in public debate. *Consolidated*

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differential treatment" and "defin[es] regulated speech by particular subject matter." *Ante*, at 6, 12 (majority opinion). Indeed, the precise reason the majority applies strict scrutiny here is that "the Code singles out signs bearing a particular message: the time and location of a specific event." *Ante*, at 14.

Edison Co. of N. Y. v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537, 539–540 (1980) (invalidating a limitation on speech about nuclear power). We have stated that "[i]f the marketplace of ideas is to remain free and open, governments must not be allowed to choose 'which issues are worth discussing or debating.'" *Id.*, at 537–538 (quoting *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 96 (1972)). And we have recognized that such subject-matter restrictions, even though viewpoint-neutral on their face, may "suggest[] an attempt to give one side of a debatable public question an advantage in expressing its views to the people." *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 785 (1978); accord, *ante*, at 1 (ALITO, J., concurring) (limiting all speech on one topic "favors those who do not want to disturb the status quo"). Subject-matter regulation, in other words, may have the intent or effect of favoring some ideas over others. When that is realistically possible—when the restriction "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace"—we insist that the law pass the most demanding constitutional test. *R. A. V.*, 505 U. S., at 387 (quoting *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 116 (1991)).

But when that is not realistically possible, we may do well to relax our guard so that "entirely reasonable" laws imperiled by strict scrutiny can survive. *Ante*, at 14. This point is by no means new. Our concern with content-based regulation arises from the fear that the government will skew the public's debate of ideas—so when "that risk is inconsequential, . . . strict scrutiny is unwarranted." *Davenport*, 551 U. S., at 188; see *R. A. V.*, 505 U. S., at 388 (approving certain content-based distinctions when there is "no significant danger of idea or viewpoint discrimination"). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must

sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See *Davenport*, 551 U. S., at 188 (noting that "we have identified numerous situations in which [the] risk" attached to content-based laws is "attenuated"). In *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating "historical, cultural, or artistic event[s]" from a generally applicable limit on sidewalk signs. *Id.*, at 792, n. 1 (listing exemptions); see *id.*, at 804–810 (upholding ordinance under intermediate scrutiny). After all, we explained, the law's enactment and enforcement revealed "not even a hint of bias or censorship." *Id.*, at 804; see also *Renton* v. *Playtime Theatres, Inc.*, 475 U. S. 41, 48 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content because it was "designed to prevent crime, protect the city's retail trade, [and] maintain property values . . . , not to suppress the expression of unpopular views"). And another decision involving a similar law provides an alternative model. In *City of Ladue* v. *Gilleo*, 512 U. S. 43 (1994), the Court assumed *arguendo* that a sign ordinance's exceptions for address signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.*, at 46–47, and n. 6 (listing exemptions); *id.*, at 53 (noting this assumption). We did not need to, and so did not, decide the

level-of-scrutiny question because the law's breadth made it unconstitutional under any standard.

The majority could easily have taken *Ladue*'s tack here. The Town of Gilbert's defense of its sign ordinance—most notably, the law's distinctions between directional signs and others—does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test. See *ante*, at 14–15 (discussing those distinctions). The Town, for example, provides no reason at all for prohibiting more than four directional signs on a property while placing no limits on the number of other types of signs. See Gilbert, Ariz., Land Development Code, ch. I, §§4.402(J), (P)(2) (2014). Similarly, the Town offers no coherent justification for restricting the size of directional signs to 6 square feet while allowing other signs to reach 20 square feet. See §§4.402(J), (P)(1). The best the Town could come up with at oral argument was that directional signs "need to be smaller because they need to guide travelers along a route." Tr. of Oral Arg. 40. Why exactly a smaller sign better helps travelers get to where they are going is left a mystery. The absence of any sensible basis for these and other distinctions dooms the Town's ordinance under even the intermediate scrutiny that the Court typically applies to "time, place, or manner" speech regulations. Accordingly, there is no need to decide in this case whether strict scrutiny applies to every sign ordinance in every town across this country containing a subject-matter exemption.

I suspect this Court and others will regret the majority's insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them "entirely reasonable." *Ante*, at 14. And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no

one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us, I concur only in the judgment.

281 F.Supp.3d 743
United States District Court, C.D. Illinois,
Springfield Division.

Don NORTON and Karen Otterson, Individually and on behalf of others similarly situated, Plaintiffs,
v.
CITY OF SPRINGFIELD, et al., Defendants.

No. 13–3316
|
Signed December 14, 2017

Synopsis
Background: Plaintiffs filed § 1983 action challenging constitutionality of city's panhandling ordinance. After entry of judgment in plaintiffs' favor, 806 F.3d 411, they moved for award of attorney fees and costs.

The District Court, Richard Mills, J., held that twenty percent reduction in attorney fee award was warranted to account for probability that local attorney would have taken case and prevailed.

Motion granted.

Attorneys and Law Firms

***745** Mark G. Weinberg, 3612 N. Tripp Ave., Chicago, IL 60641, Adele D. Nicholas, 111 W. Washington, Ste. 1500, Chicago, IL 60602, Attorneys for Plaintiffs.

Nathan Edward Rice & Steven C. Rahn, City of Springfield, Room 313 Municipal Center East, 800 E. Monroe, Springfield, IL 62701, Attorneys for Defendant.

OPINION

Richard Mills, United States District Judge

This case is about the First Amendment and attorney's fees.

Let us start at the beginning.

I. INTRODUCTION

The Plaintiffs–Don Norton and Karen Otterson–challenged the constitutionality of § 131.06(e) of the City of Springfield Municipal Code, an ordinance that made it "unlawful to engage in an act of panhandling in the downtown historic district" of Springfield. The Plaintiffs asserted the ordinance was a content-based regulation of speech in violation of their First Amendment rights.

The primary constitutional issue concerned the standard for determining whether a particular regulation is properly treated as "content-based" or "content-neutral" under the First Amendment. The Defendant, City of Springfield, defended the constitutionality of the ordinance, eventually seeking review in the United States Supreme Court. After nearly four years of litigation, the Plaintiffs obtained all of the relief they sought: (1) a determination by the Seventh Circuit that the challenged ordinance is a content-based regulation that violates the First Amendment; (2) complete repeal of the ordinance; and (3) an award of compensatory damages to the Plaintiffs.

The Parties attempted to resolve the issue of attorney's fees without the Court's involvement. Because those efforts were unsuccessful, the Plaintiffs now seek an award of attorney's fees and costs under the Civil Rights Attorney's Fee Awards Act of 1976, 42 U.S.C. § 1988. Section 1988 authorizes the Court to allow a "reasonable attorney's fee" to prevailing civil rights plaintiffs.

II. BACKGROUND

The Defendant, City of Springfield, claims that when it sought to enact a panhandling ordinance in 2007, it intended to comply with applicable law as articulated in *Gresham v. Peterson*, 225 F.3d 899 (7th Cir. 2000), wherein the Seventh Circuit upheld an Indianapolis panhandling ordinance as constitutional.

Six years later the Plaintiffs, represented by Mark G. Weinberg and Adele Nicholas, ***746** on September 3, 2013 filed this case. The claim was that the prohibition in § 131.06(e) of the Springfield Municipal Code on "vocal requests" for "immediate donation[s]" on the public walkways in the downtown historic district violated the First Amendment. The following day, the Plaintiffs filed a motion for a preliminary injunction, seeking an order preventing the City from enforcing the ordinance on the ground that the ban on panhandling was a content-based regulation of speech that was not narrowly tailored to serve a compelling government interest.

The City opposed the Plaintiffs' motion and filed a motion to dismiss on the basis that the complaint failed to state a claim for violation of the First Amendment.

The Court denied the motion for a preliminary injunction on October 25, 2013, finding that the ordinance was a reasonable, content-neutral regulation of the "time, place and manner" of speech. The Plaintiffs appealed the denial of the preliminary injunction to the Seventh Circuit. During the pendency of the appeal, the Supreme Court issued its decision in *McCullen v. Coakley*, — U.S. —, 134 S.Ct. 2518, 189 L.Ed.2d 502 (2014), clarifying the extent to which municipalities may regulate speech occurring on public sidewalks. The Plaintiffs submitted supplemental briefing to the Seventh Circuit addressing *McCullen* on June 27, 2014.

Following oral argument, the Seventh Circuit on September 25, 2014 affirmed this Court's decision denying the Plaintiffs' motion for a preliminary injunction, finding the City's ordinance to be a content-neutral regulation which imposed a reasonable time, place or manner restriction on speech. *See Norton v. City of Springfield*, 768 F.3d 713 (7th Cir. 2014).

The Plaintiffs petitioned for rehearing *en banc* in the Seventh Circuit on October 9, 2014. Attorneys from Latham & Watkins filed additional appearances on the Plaintiffs' behalf in the Seventh Circuit. While the *en banc* petition was pending, the U.S. Supreme Court issued its decision in *Reed v. Town of Gilbert*, — U.S. —, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015). In *Reed*, the Supreme Court held that "a speech regulation targeted at specific subject matter is content based even if it does not

discriminate among viewpoints within that subject matter." *Id.* at 2230. Subsequently, the Supreme Court remanded *Thayer v. Worcester*, 755 F.3d 60 (1st Cir. 2014), —— U.S. ——, 135 S.Ct. 2887, 192 L.Ed.2d 918 (2015)–a case wherein the First Circuit had upheld a municipal panhandling law as a content-neutral regulation of the "time, place and manner" of speech–for reconsideration in light of *Reed.* The Seventh Circuit requested supplemental briefing from the parties on the effect of *Reed* and *Thayer* on its consideration of the constitutionality of Springfield's panhandling ordinance. The Plaintiffs filed their supplemental brief on July 13, 2015.

The Seventh Circuit panel issued a unanimous decision granting the Plaintiffs' petition for rehearing on August 7, 2015, finding that Springfield's panhandling ban was a form of impermissible "content discrimination" under *Reed* and the Plaintiffs, therefore, were entitled to a preliminary injunction. *See Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015). The case was remanded to this Court.

On December 1, 2015, the City filed a petition for a writ of certiorari to the U.S. Supreme Court, asserting that the Seventh Circuit misapplied *Reed.* The Plaintiffs responded on January 4, 2016, and the Defendants replied. The Supreme Court denied the petition for a writ of certiorari on March 1, 2016.

***747** On remand, this Court entered an order granting a preliminary injunction on September 17, 2015. The City sought to defend the ordinance under a strict scrutiny standard. While the injunction was in place, the parties conducted discovery. At the conclusion of discovery, the parties agreed to mediation. Following two settlement conferences with United States Magistrate Judge Tom Schanzle–Haskins, on November 4, 2016, and January 13, 2017, the parties reached an agreement concerning repeal of the ordinance and the Plaintiffs' damages.

The City repealed the ordinance on February 23, 2017. On March 24, 2017, the parties entered into a stipulation wherein the City agreed to pay each Plaintiff compensatory damages of $2,500 and agreed that the Plaintiffs shall be deemed "prevailing parties" for purposes of determining the attorney's fees Plaintiffs are entitled to recover.

III. LODESTAR METHOD AND HOURLY RATES

The Stipulation of Dismissal identifies the Plaintiffs as the "prevailing party in the lawsuit for the purpose of determining the amount of reasonable attorneys' fees." Under § 1988, therefore, the Plaintiffs are entitled to "reasonable" attorney's fees as the "prevailing party" in a § 1983 action.

In determining an award of attorney's fees, courts typically employ the "lodestar method," which is "the product of the hours reasonably expended on the case multiplied by a reasonable hourly rate." *Montanez v. Simon*, 755 F.3d 547, 553 (7th Cir. 2014). "Although the lodestar yields a presumptively reasonable fee, the court may nevertheless adjust the fee based on factors not included in the computation." *Id.* (internal citation omitted).

The Seventh Circuit noted that "[a] reasonable hourly rate is based on the local market rate for the attorney's services." *Id.* The best indicator of the market rate is the amount actually billed by the attorney for similar work. *See id.* If that rate cannot be determined, a court may consider "evidence of rates charged by similarly experienced attorneys in the community and evidence of rates set for the attorney in similar cases." *Id.* The prevailing party has the burden of establishing the market rate for the work; if the attorneys fail to meet that burden, the district court can independently determine the appropriate rate. *See id.*

The Plaintiffs seek a total award of $417,288.50. The Plaintiffs' attorneys have filed declarations describing their experience and noting their hourly rates. Counsel have also provided an itemized list of services performed. The City acknowledges that Plaintiffs are entitled to be awarded reasonable attorney's fees.

Attorney Mark Weinberg has billed 356.9 hours at an hourly rate of $450.00, resulting in a total of $160,605.00. Attorney Adele Nicholas billed 293.4 hours at an hourly rate of $375.00, resulting in a total of $110,025.00. Mr. Weinberg and Ms.

Nicholas work at Chicago law offices.

The other attorneys for the Plaintiffs are from Latham & Watkins in Washington DC, who entered the case as specialized appellate counsel, in order to assist Mr. Weinberg and Ms. Nicholas with the significant First Amendment issues at the center of this case. As noted below, the hourly rates for each of the four Latham attorneys increased during the course of this litigation.

Attorney Matthew Brill has billed as follows: 16.1 hours at an hourly rate of $975.00, resulting in a total of $15,697.50; 21.3 hours at an hourly rate of $1,025.00, resulting in a total of $21,832.50; and 1.0 ***748** hour at an hourly rate of $1,075.00, resulting in a total of $1,075.00.

Attorney Matthew Murchison billed 55.0 hours at an hourly rate of $755.00, resulting in a total of $41,525.00; 45.6 hours at an hourly rate of $835.00, resulting in a total of $38,076.00; and 1.9 hours at an hourly rate of $905.00, resulting in a total of $1,719.50.

Attorney Noel Miller billed 12.0 hours at an hourly rate of $495.00, resulting in a total of $5,940.00; 25.3 hours at an hourly rate of $595.00, resulting in a total of $15,053.50 and .6 hours at an hourly rate of $695.00, resulting in a total of $417.00.

Attorney Bridget Reineking billed 9.5 hours at an hourly rate of $495.00, resulting in a total of $4,702.50 and 1.0 hour at an hourly rate of $620.00, resulting in a total of $620.00.

The total amount billed by the Plaintiffs' attorneys is $417,288.50.

IV. DISCUSSION

"The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (internal quotation marks omitted). Congress sought to ensure that "competent counsel was available to civil rights plaintiffs." *Blanchard v. Bergeron*, 489 U.S. 87, 93, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989). The United States Supreme Court has explained that a "reasonable attorney's fee" under § 1988 "contemplates reasonable compensation, in light of all the circumstances, for the time and effort expended by the attorney for the prevailing plaintiff, no more and no less." *Id.*

The Plaintiffs' motion is supported by declarations from the attorneys. Based on those declarations, the Plaintiffs allege the hourly rates sought for each of their attorneys are reasonable and fair given their experience, the rates charged to paying clients in similar cases and rates awarded to civil rights attorneys with comparable experience. These are relevant considerations in determining an appropriate fee. *See Gautreaux v. Chicago Housing Auth.*, 491 F.3d 649, 659 (7th Cir. 2007).

The City claims there are extraordinary circumstances existing which justify an attorney's fee award significantly less than that requested by the Plaintiffs. Specifically, the Court should consider the City's good faith efforts to comply with the applicable constitutional requirements at the time the ordinance was adopted, in addition to the fact that the outcome of this case was significantly influenced by an unrelated Supreme Court decision. The City alleges these factors warrant an equitable reduction in fees.

A. Counsel's background, qualifications and experience

Mark G. Weinberg is a 1988 graduate of the University of Chicago Law School who since 2001 has been a solo practitioner

with a focus on civil rights law. He has extensive experience with First Amendment issues, including multiple cases involving the legal rights of individuals to panhandle in the public way.

Adele D. Nicholas is a 2008 graduate of The John Marshall Law School. During her legal career, she has focused on representing victims of government misconduct and constitutional violations. Ms. Nicholas has successfully resolved more than one hundred § 1983 cases in her client's favor through trial, summary judgment or settlement. At least two of those cases concern the legal rights of individuals to panhandle. She has conducted more than a dozen trials and has been counsel of record on eleven Seventh Circuit appeals. She has ***749** also taught CLE courses concerning aspects of § 1983 litigation.

Matthew Brill is a partner at Latham & Watkins LLP and is the global chair of the firm's Communications practice group and also a member of the firm's Supreme Court and Appellate practice group. He is a 1996 *magna cum laude* graduate of Harvard Law School. Mr. Brill has extensive experience with appellate proceedings, with a particular focus on First Amendment issues. He oversees a number of junior partners, counsel and associates. Mr. Brill has more than 20 years experience litigating First Amendment issues, including appeals of judicial decisions and challenges to orders adopted by the Federal Communications Commission. He supervised a team in this case that included another attorney with substantial experience litigating First Amendment matters, Matthew Murchison, who is currently a partner at Latham but was a senior associate during the appellate proceedings in this case. Mr. Murchison has extensive experience on First Amendment issues and has drafted the First Amendment sections of briefs filed in federal appellate courts and the U.S. Supreme Court. Noel E. Miller and Bridget R. Reineking were junior litigation associates on the team and had a significant role researching First Amendment precedent and developing arguments on appeal.

B. Hourly rates and market rates for Chicago attorney services

When the prevailing party's attorney "maintains a contingent fee or public interest practice," and thus does not possess billing records showing the hourly rate he or she charges, a court "should look to the next best evidence–the rate charged by lawyers in the community of reasonably comparable skill, experience, and reputation." *People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996) (internal quotation marks omitted). The Plaintiffs contend the rates of Mr. Weinberg and Ms. Nicholas are consistent with those regularly awarded to civil rights attorneys of similar experience and skill. Attached to the Plaintiffs' motion is the Declaration of Attorney Lawrence V. Jackowiak, who has practiced civil rights law for over 20 years in Chicago and is familiar with the work of Mr. Weinberg and Ms. Nicholas. Mr. Jackowiak states that the rates sought by both attorneys are reasonable and commensurate with rates awarded to attorneys of similar skill, reputation and experience.

The Plaintiffs claim that courts have routinely awarded attorneys of similar experience, reputation and skill an hourly rate comparable to Mr. Weinberg's hourly rate of $450.00. They cite three cases from the Northern District of Illinois as examples. Additionally, the Plaintiffs allege courts have awarded attorneys of comparable skill and experience to Ms. Nicholas an hourly rate similar to her rate of $375.00. The Plaintiffs cite cases from the Northern District of Illinois and Eastern District of Wisconsin.

C. Hourly rates for Latham attorneys

The Plaintiffs assert that the Latham firm's customary billing rates for appellate litigation matters are consistent with rates charged by similar firms for the same type of work. Mr. Brill's Declaration states that in its capacity as specialized appellate counsel, Latham had a prominent role advising Mr. Weinberg and Ms. Nicholas on case strategy and drafting briefs in the appeal. In particular, the Latham attorneys worked on the Plaintiffs' Reply Brief (filed February 26, 2014); the Plaintiffs' Petition for Rehearing *En Banc* (filed October 9, 2014); Plaintiffs' Supplemental Brief requested by the Seventh Circuit to ***750** address intervening Supreme Court rulings (filed July 13, 2015); and Plaintiffs' Brief in Opposition to Defendants' Petition for a Writ of Certiorari before the U.S. Supreme Court (filed January 4, 2016).

D. Nature of the claims and availability of local counsel

The Plaintiffs' attorneys typically practice in the Chicago and Washington, D.C. markets. The hourly rates in those locations tend to be higher than those for attorneys practicing in Springfield, Illinois. The City asserts the rates claimed by the Plaintiffs' attorneys are excessive for attorneys typically appearing in federal courts in Central Illinois. In support of that assertion, the City has attached the affidavit of attorney Carl R. Draper, a well-known and very well-respected member of the bar of this Court, who opines that the reasonable hourly fee for an experienced civil rights litigation attorney in this federal district ranges from $300–350 per hour. A reasonable rate for a less experienced associate ranges from $200–250 per hour. To the extent that the City contends the Court should reduce the award on that basis, the Plaintiffs note the Seventh Circuit has stated "just because the proffered rate is higher than the local rate does not mean that a district court may freely adjust that rate downward." *Mathur v. Board of Trustees of Southern Illinois University*, 317 F.3d 738, 743 (7th Cir. 2003). "[I]f an out-of-town attorney has a higher hourly rate than local practitioners, district courts should defer to the out-of-town attorney's rate when calculating the lodestar amount, though if local attorneys could do as well, and there is no other reason to have them performed by the former, then the judge, in his discretion, might allow only an hourly rate which local attorneys would have charged for the same service." *Id.* at 744 (internal quotation marks omitted); *see also Jeffboat, LLC v. Director, Office of Workers' Compensation Programs*, 553 F.3d 487, 490 (7th Cir. 2009) ("[O]ur cases have consistently recognized that an attorney's actual billing rate for comparable work is presumptively appropriate for use as a market rate when making a lodestar calculation."). Although the plaintiff in *Mathur* was from southern Illinois, the court stated it was reasonable for him to search for an attorney in Chicago when his efforts in southern Illinois were unsuccessful. *See id.* Additionally, it concluded the district court abused its discretion in simply stating "that the lower rate was appropriate because of the prevailing local rates in southern Illinois, without regard to the quality of service rendered by the appellants." *Id.*

The Supreme Court has held that "the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. § 1988." *Hensley*, 461 U.S. at 440, 103 S.Ct. 1933. If a plaintiff "has obtained excellent results, his attorney should recover a fully compensatory fee." *Id.* at 435, 103 S.Ct. 1933. The City has not made any specific objections to the amount of time that Plaintiffs' counsel invested in this case.

Accordingly, the Plaintiffs contend their counsel should be awarded fees based on their customary hourly rates in the Chicago and Washington, D.C. markets where they typically practice. This is appropriate for three reasons: (1) the unavailability of counsel skilled in First Amendment litigation in the Springfield market; (2) counsel's particular experience and expertise in First Amendment litigation affecting the rights of the indigent; and (3) the complexity and importance of the constitutional issues raised in this litigation.

Plaintiffs Don Norton and Karen Otterson both claim they were ticketed and ***751** arrested numerous times for violating the City's ban on panhandling in the downtown historic district of Springfield. In 2012, they began looking for a local attorney to bring a lawsuit on their behalf. Mr. Norton's Declaration provides that he spoke to several Springfield attorneys about the possibility of filing a lawsuit against the City. Specifically, he spoke to two well-respected local firms in Springfield, and a member of the city council–an alderman who is also an attorney; and attorneys at the ACLU in Washington D.C., none of whom were willing to take Mr. Norton's case. The City contends these firms do not represent the extent of attorneys with extensive civil rights experience in Springfield. The two law firms are known primarily for their personal injury practices. The attorney who was an alderman would have been disqualified from participating in this case.

In 2013, Norton's friend and fellow Springfield resident, Barb Olson, helped him conduct research about attorneys and suggested that he contact Mark Weinberg, who had represented panhandlers in Chicago. Plaintiff Norton sent Attorney Weinberg a letter requesting representation. He enclosed the Springfield ordinance and copies of tickets he had received for panhandling.

The Plaintiffs allege that, because of the unavailability of local counsel who were willing to take on this case, it was reasonable and necessary for them to hire attorneys from outside of the Springfield area. The City asserts that, given the number of qualified attorneys in downstate Illinois, there is no substantial reason a litigant would be required to seek Chicago counsel.

The Court cannot say for certain whether a local attorney could have achieved the same result–that being total victory–as the Plaintiffs' very able attorneys ultimately did. It would be speculative for the Court to conclude that such an attorney would take the case and have the same degree of success. However, it is worth noting that in more than 50 years as both a state and federal judge, the Court has been privileged to preside in numerous cases in which a party or parties were represented by excellent attorneys from Springfield and Central Illinois.

In support of their assertion that local attorneys were not available or were unwilling to take on this case, the Plaintiffs note they conducted an unscientific search which showed that few attorneys in the Central District of Illinois seem to take on First Amendment cases. Specifically, the Plaintiffs state that of the first 100 results returned in response to a Google Scholar search for "First Amendment" in this district between 2013 and 2017, only seven individuals were represented by counsel. The remaining 93 plaintiffs proceeded on a pro se basis. Additionally, the Plaintiffs allege the unavailability of local counsel willing to take on this case is also supported by the fact that the ordinance at issue was passed in 2007 and was in place for six years without any local attorney bringing a constitutional challenge to it.

Based on the foregoing, there is reason to question whether the Plaintiffs could have obtained local counsel to successfully prosecute this case. However, the Plaintiffs did not contact any local attorneys who have significant experience with civil rights actions.

Given the number of quality attorneys in the Springfield area, the Court believes that if the Plaintiffs had inquired of a few attorneys who have an extensive civil rights practice, there is a significant likelihood they would have found a local attorney to take the case and achieve the same degree of success as the Plaintiffs' counsel ultimately achieved. Of course, the ***752** Court recognizes that when Mr. Norton was looking for an attorney, it is extremely unlikely that one of his considerations was the amount of attorney's fees to be awarded in the event that he were to eventually prevail in the case. He simply wanted to find an attorney who would successfully vindicate his First Amendment rights. However, the availability of local attorneys is a relevant factor that the Court may consider in determining an appropriate attorney's fees amount. *See Mathur*, 317 F.3d at 744.

The City asks the Court to adopt hourly rates for counsel as testified by Mr. Draper. Those would be $350 per hour for Weinberg and Brill, $300 per hour for Nicholas, $250 per hour for Murchison, and $200 per hour for new attorneys Miller and Reineking. This would result in an adjusted claim of $261,680.00. The City asks the Court to reduce this amount by an additional 50% to $130,840, based on the City's good faith and the fact that the ordinance was constitutional under then-existing law when it was adopted. In reply, the Plaintiffs contend that the City has not provided sufficient justification for a 70% reduction in attorney's fees.

The Plaintiffs further state that a recent Central District of Illinois fee decision suggests that the market rates for complex civil rights litigation are more in line with those sought by the Plaintiffs than those cited by Mr. Draper. *See Moore v. Madigan*, 2014 WL 6660387, at *15 (C.D. Ill. Nov. 24, 2014) (Myerscough, J.) (awarding $500 per hour to Plaintiffs' lead counsel and $420 per hour to another attorney in a Second Amendment case in which Plaintiff obtained injunctive relief).

The Court has no doubt that the City acted in good faith in defending an ordinance it believed was constitutional based on applicable Seventh Circuit precedent. However, the Court does not believe that the City's lack of bad faith is an appropriate reason to significantly reduce the amount of attorney's fees. The Seventh Circuit has held that "the good faith of the defendant is irrelevant" to an attorney's fees determination under § 1988. *See Lampher v. Zagel*, 755 F.2d 99, 104 (7th Cir. 1985). The Court notes the constitutionality of anti-panhandling ordinances was an evolving area of the law at the time. The Plaintiffs' attorneys also acted in good faith in challenging the ordinance. Even assuming that the City's good faith was an appropriate consideration, the Plaintiffs' good faith in prosecuting the action would also be at least as significant of a factor.

The City does not contend that the case was over-litigated or over-staffed. An attorney who opposes fees must raise objections with particularity and clarity. *See Hutchison v. Amateur Electronic Supply, Inc.*, 42 F.3d 1037, 1048 (7th Cir. 1994). Because the City has not raised any specific or particular objections to the fees sought by the Plaintiffs' counsel, the Court finds no basis to make the significant reductions sought by the City to the Plaintiffs' claimed attorney's fees.

The Court earlier noted that the Plaintiffs' attorneys had provided evidence relating to the reasonableness of their rates. This included (1) evidence of hourly rates charged to paying clients in civil rights cases; (2) affidavits noting their relevant

experience and skill with matters concerning the First Amendment rights of indigent people; (3) citations to cases in which rates similar to those sought here were awarded to attorneys of similar skill, experience and reputation in civil rights cases; and (4) the affidavit of an experienced civil rights attorney familiar with the work performed by counsel and the rates charged by other civil rights attorneys for similar work.

***753** The Plaintiffs further assert that the constitutional issues implicated in this case were complex and critically important. In particular, this included the standard for determining whether a particular law is properly treated as content-based under the First Amendment. The proceedings here took nearly four years. There was extensive briefing of these issues before both the Seventh Circuit and the U.S. Supreme Court. The Plaintiffs further note that the applicable legal standards were evolving and open ended, given that the Supreme Court had never considered a case involving the legal rights of panhandlers.

Additionally, the Plaintiffs assert the legal issues implicated in this case were (and are) of national importance. Municipalities across the country seek to impose regulations on panhandling activity. Accordingly, they have a significant interest in knowing the limits of their authority to impose restrictions. The Plaintiffs cite a number of federal district court and state court decisions that relied on the Seventh Circuit's rehearing decision in this case to strike down regulations of panhandling on First Amendment grounds. They also note that the case has been discussed in a number of law review articles.

The Plaintiffs further contend that, because of the complexity and importance of the issues raised in this case, it was appropriate and necessary for them to obtain counsel experienced in First Amendment litigation. As previously discussed, Mr. Weinberg and Ms. Nicholas have extensive experience representing indigent plaintiffs in cases implicating the First Amendment. Moreover, the Latham attorneys are respected appellate litigators who have successfully litigated a number of significant First Amendment cases in the federal appellate courts.

Certainly, the Plaintiffs benefitted by hiring attorneys who are First Amendment and appellate specialists. The law concerning what constituted an unlawful content-based regulation was somewhat muddled and there was a risk that Plaintiffs would not prevail. The fact that the state of the law was unsettled likely contributed to the duration of the case. Ultimately, the Supreme Court's decision in *Reed* settled the issue. However, that was only after many hours were expended by multiple attorneys in this case.

For a number of reasons, the Court is unable to find that the attorney's fees award should be reduced to the extent requested by the City. The City does not dispute the reasonableness of the time the Plaintiffs' counsel spent on the case. The Plaintiffs have met their burden of substantiating the reasonableness of Plaintiffs' counsel's hourly rates. Finally, this was a complex case implicating important constitutional rights. Certainly, the Court does not want to discourage able counsel such as the Plaintiffs' attorneys here from representing plaintiffs when significant rights are at stake. The Court benefits just as a party does when the case is litigated by skilled attorneys. Accordingly, it is important that Plaintiffs' counsel are compensated fairly for extensive work performed over nearly four years.

It is also noteworthy that counsel did not seek fees for the preparation of Plaintiffs' reply brief in support of their petition for attorney's fees. Counsel also excluded from their fee petition a request for compensation for paralegals' time. Additionally, the Plaintiffs seek reimbursement of only the $400 in costs to account for the filing fee. The Plaintiffs do not seek the more than $7,000 in costs related to responding the City's petition for a writ of certiorari. Certainly, this is evidence of ***754** good faith on the part of the Plaintiffs and counsel.

The only basis why a lower rate should be awarded in this case is to account for the probability that a Springfield or Central Illinois attorney would have taken the case and prevailed. The Court believes that a 20% reduction is appropriate based on the likelihood–uncertain though it is—that a local civil rights attorney would have taken the case and achieved a favorable result for the Plaintiffs.

For all of these reasons, the Court concludes that Plaintiffs are entitled to attorney's fees in the amount of $333,830.80. Each attorney's claimed amount shall be adjusted proportionately.

E. Cost and expenses

Given their status as a prevailing party in a civil rights case, the Plaintiffs are entitled to recover litigation expenses incurred in prosecuting the case pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988. *See Downes v. Volkswagen of America, Inc.*, 41 F.3d 1132, 1144 (7th Cir. 1994). ("[E]xpenses of litigation that are distinct from either statutory costs or the costs of the lawyer's time reflected in hourly billing rates ... are part of the reasonable attorney's fee allowed by the Civil Rights Attorney Fees Awards Act.").

Although the Plaintiffs incurred nearly $7,400 in costs related to responding to the City's petition for a writ of certiorari, the Plaintiffs are not seeking the reimbursement of those expenses. They seek reimbursement of only $400 in costs, for the filing fee in this case.

Ergo, the Plaintiffs' Petition for Attorney's Fees is ALLOWED.

The Plaintiffs are hereby awarded attorney's fees in the amount of $333,830.80 and costs in the amount of $400.00.

The amount of attorney's fees for each attorney shall be reduced by 20% from the amount the attorney has claimed, as provided in this Order.

The Clerk will enter Judgment and terminate this case.

All Citations

281 F.Supp.3d 743

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324 F.Supp.3d 994
United States District Court, C.D. Illinois,
Springfield Division.

Don NORTON, et al., Plaintiffs,
v.
CITY OF SPRINGFIELD, Defendant

Case No. 15-3276
|
Signed August 17, 2018

Synopsis

Background: Individuals who regularly panhandled on public sidewalks in city brought action asserting municipal code's prohibition on "panhandling while at any time before, during, or after the solicitation knowingly approaching within five feet of the solicited person" violated the First Amendment. Plaintiffs moved for summary judgment.2

Holdings: The District Court, Richard Mills, J., held that:

plaintiffs suffered an injury-in-fact by refraining from protected speech in response to threat of enforcement of city ordinance;

fact that ordinance was never put into effect and city eventually repealed the law did not moot suit;

ordinance was content based on its face, and thus was subject to strict scrutiny;

city failed to provide a compelling government interest sufficient to justify content-based regulation; and

ordinance's city-wide ban on approaching within five feet of pedestrians while panhandling was not narrowly tailored to serve any compelling government interest.

Motion granted.

Attorneys and Law Firms

*997 Mark G. Weinberg, Law Office of Mark G. Weinberg, Adele D. Nicholas, Jackowiak Law Offices, Chicago, IL, for Plaintiffs.

Steven C. Rahn, City of Springfield Office of Corporation Counsel, Springfield, IL, for Defendant.

OPINION

RICHARD MILLS, United States District Judge:

The Plaintiffs claim that § 131.06(a)(2)(a) of the Springfield Municipal Code violates the First Amendment and move for summary judgment.

I. INTRODUCTION

On September 22, 2015, the Springfield City Council amended its "aggressive panhandling" ordinance, adding a clause that made it unlawful for any individual to "Panhandl[e] while at any time before, during, or after the solicitation knowingly approaching within five feet of the solicited person." Springfield Muni. Code § 131.06(a)(2)(a) ("the Ordinance").

Following the repeal of § 131.06 on February 23, 2017, Defendant City of Springfield filed a motion for summary judgment on mootness grounds. Because the Plaintiffs' Complaint sought an award of nominal damages for an alleged violation of their First Amendment rights, the Court denied the Defendant's summary judgment motion. The Plaintiffs now seek summary judgment on their claim that the Ordinance violates the First Amendment.

II. FACTUAL BACKGROUND

Section 131.06 of the Springfield Municipal Code (titled "General Offenses") defined "panhandling" as making a "vocal appeal[ ] ... for immediate donation[ ] of money or other gratuity." Springfield Muni. Code § 131.06(a)(1). The Code prohibited what it defined as "aggressive panhandling" anywhere within the City. § 131.06(d). Historically, the Code defined intimidating behaviors such as "using profane or abusive language ... which would cause a reasonable person to be fearful of his safety;" "touching the solicited person without the solicited person's consent;" and "blocking the path of the person solicited" as "aggressive panhandling." § 131.06(a).

On September 22, 2015, the City Council amended § 131.06(a)(2)(a) of the Code, adding the italicized language to the definition of aggressive panhandling: "panhandling while at any time before, during, or after the solicitation *knowingly approaching within five feet of the solicited person or intentionally* touching the solicited person without the solicited person's consent." § 131.06(a)(2)(a) (emphasis added).

Section 131.06(f) subjected anyone who violates the Ordinance to a fine of "not less than $25 nor more than $100, or public or community service of not less than eight hours nor more than 40 hours for each violation." § 131.06(f).

Plaintiffs Don Norton, Karen Otterson and Jessica Zenquis, who regularly panhandle on the public sidewalks in the City of Springfield, filed their Complaint and motion for a preliminary injunction on September 25, 2015. After the City agreed to delay the enforcement of the amendment to § 131.06, the Court allowed the Parties' stipulation to withdraw the preliminary injunction motion on December 15, 2015. Although the Plaintiffs state that the Ordinance's ban on panhandling while "approaching ***998** within five feet" of the person being solicited was never put into effect, it actually was in effect from September 22, 2015 to December 15, 2015, when the City agreed not to enforce the Ordinance.

On February 23, 2017, the City repealed the Ordinance regulating panhandling in the City in its entirety, replacing it with a new Ordinance—§ 131.11 of the Municipal Code—which regulates all forms of solicitation (not just panhandling) on the public sidewalks in Springfield. Although the Plaintiffs' claims for injunctive relief are moot, the Plaintiffs seek declaratory relief as a predicate to an award of nominal damages and attorney's fees.

The City identified the following as its rationales for enactment of the Ordinance: "public safety," "privacy," "orderly

regulation of commercial endeavors," "protecting listeners from unwanted communication" and "specific guidance to law enforcement authorities serves the interest in evenhanded application of the law."

The City identified Springfield Police Sergeant Robert Davidsmeyer as an expert witness to testify concerning the City's safety rationales for the Ordinance. Davidsmeyer opined that "it is advisable to maintain a reactionary gap of six feet or more between two persons of unknown intent in order to maintain personal safety." In reaching this conclusion, Davidsmeyer did not distinguish between individuals engaged in panhandling and individuals engaged in other types of interactions that occur on public sidewalks. Rather, Davidsmeyer believes it is advisable to maintain a six-foot reactionary gap between any citizen and "any person they don't know." Davidsmeyer testified that the risks posed by unknown persons' approaching within five feet of one another are the same whether the people are panhandling, passing out leaflets, selling something or protesting. He agreed there is nothing inherently dangerous about people approaching other people for the purpose of requesting a donation. However, Davidsmeyer suggested that a person approaching another person could be dangerous until the person's intent was clear.

Davidsmeyer testified that the enforcement of the state disorderly conduct statute would be one way to adequately respond to inappropriate behavior that occurs while someone is engaged in street solicitation. However, Davidsmeyer did not know how effective the statute would be in deterring inappropriate behavior associated with panhandling.

The Plaintiffs allege the City did not identify any testimony, evidence, studies or data that supported a need for the imposition of the five-foot buffer zone between people who panhandle and the individuals from whom they are requesting donations. Moreover, the City did not identify any evidence showing that "allowing individuals who panhandle to approach within five feet of the person solicited causes any harm to the City's interests." The City disputes these assertions and points to Davidsmeyer's testimony. Davidsmeyer testified that while two friends might be comfortable being within three feet of each other when talking, individuals who do not know each other should generally maintain a reactionary zone of six feet due to safety concerns.

The City did not identify any incidents of harm to the City's interests resulting from the non-enforcement of the Ordinance, or any evidence (police reports, complaints, data or testimony) supporting the existence of any harm to the City's interests resulting from the non-enforcement of the Ordinance. The period of non-enforcement of the Ordinance extended from December 15, 2015, when the Court formally enjoined its enforcement to February ***999** 23, 2017, when the City formally rescinded it.

The City did not consider enacting any less restrictive alternatives to the restrictions imposed under the Ordinance.

The City alleges the Plaintiffs have not produced any evidence that they would have been inhibited in delivering their message, nor evidence that they would have been required to "shout" their requests "from a distance" of five feet, as alleged in paragraph 12 of their Complaint. Relying on the declarations of Don Norton and Karen Otterson, the Plaintiffs dispute the assertion. Norton and Otterson say they feared being ticketed or arrested for violation of the Ordinance and constrained their otherwise lawful panhandling activities for those reasons.

The City also alleges Davidsmeyer testified that persons distributing leaflets would demonstrate a different apparent intention that may not require a reactionary gap. The Plaintiffs dispute this assertion, noting Davidsmeyer had earlier agreed that "it's advisable for all citizens to maintain a reactionary gap of six feet or more between themselves and any person they don't know." He further testified that would apply equally to someone who is panhandling as to someone who is trying to sell you something. When asked about leaflets, Davidsmeyer testified, "I guess you could apply to that also." Davidsmeyer went on to discuss the intent of the person distributing the leaflet and how, if the individual knows the intent of the distributor, the six-foot reactionary gap might not be necessary.

The Plaintiffs seek the entry of summary judgment on their claim that § 131.06(a)(2)(a) of the Springfield Municipal Code's prohibition on "panhandling while at any time before, during or after the solicitation knowingly approaching within five feet of the solicited person" violates the First Amendment. The Plaintiffs claim that the undisputed facts establish that the Ordinance is a content-based regulation that curtails speech in a traditional public forum and that the Ordinance is not narrowly tailored to advance a compelling state interest.

The City contends the Plaintiffs' constitutional challenge to the Amendment to the City's now-repealed panhandling Ordinance is moot. Alternatively, the City alleges the Amendment, which prohibited panhandlers from knowingly approaching within five feet of their target without permission did not violate the First Amendment because it was a reasonable time, place and manner restriction that was content neutral, narrowly tailored and left open alternative means of communication.

III. DISCUSSION

A. Standard of review

Summary judgment is appropriate if the motion is properly supported and "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See* Fed. R. Civ. P. 56(a). The Court construes all inferences in favor of the non-movant. *See Siliven v. Indiana Dept. of Child Services*, 635 F.3d 921, 925 (7th Cir. 2011). To create a genuine factual dispute, however, any such inference must be based on something more than "speculation or conjecture." *See Harper v. C.R. England, Inc.*, 687 F.3d 297, 306 (7th Cir. 2012) (citation omitted). Because summary judgment "is the put up or shut up moment in a lawsuit," a "hunch" about the opposing party's motives is not enough to withstand a properly supported motion. *See Springer v. Durflinger*, 518 F.3d 479, 484 (7th Cir. 2008). Ultimately, there must be enough evidence in favor of the non-movant to permit a jury to return a verdict in its favor. *See id.*

*1000 B. Mootness

The City alleges the Plaintiffs' motion is moot on the basis that the repeal of a challenged statute renders the challenge moot. The Plaintiffs acknowledge their claims for injunctive relief are moot but seek declaratory relief as a predicate to an award of nominal damages and attorney's fees.

The City claims that the Ordinance was never put into effect. The Plaintiffs were never cited, nor were their actions ever constrained by any threat of citation.

The record shows that the amended Ordinance was passed on September 22, 2015. On December 15, 2015, the Parties agreed that the Ordinance would not be enforced. The Court entered an Order on that date pursuant to the Parties stipulated agreement. For almost three months, therefore, the Plaintiffs were subject to the law and at risk of having it enforced against them. Plaintiffs Norton and Otterson submitted Declarations, wherein they both say they continued to panhandle during that period but were fearful of being ticketed for violating the five-foot restriction. Therefore, they took measures to avoid coming within five feet of pedestrians on the public way. Norton and Otterson say that over the years, they each have been ticketed a dozen or more times for violating § 131.06 of the Springfield Municipal Code.

The United States Court of Appeals for the Seventh Circuit has recognized that the repeal of a law does not necessarily moot a claim for damages. *See Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795, 804 (7th Cir. 2016). "So long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case." *Holder v. Illinois Dept. of Corrections*, 751 F.3d 486, 498 (7th Cir. 2014) (quoting *Buckhannon Board & Care Home, Inc. v. W.Va. Dept. of Health and Human Resources*, 532 U.S. 598, 608-09, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001)). The act of "refrain[ing] from protected speech in response to the City's unconstitutional ordinances ... describes an injury-in-fact." *Six Star Holdings*, 821 F.3d at 803 (citing *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988)).

Based on their representations, the Plaintiffs did refrain from protected speech because of the threat of enforcement of the Ordinance. This is sufficient to constitute an injury-in-fact, even though the City eventually repealed the law.

The Court further concludes that Plaintiffs' claim for nominal damages means that the City's mootness argument fails. The Seventh Circuit has observed that "nominal damages are appropriate when a plaintiff's rights are violated but there is no monetary injury." *Six Star Holdings*, 821 F.3d at 805.

Because this is a case that would support an award of nominal damages, the Court concludes that the City's argument as to mootness must be rejected. Accordingly, the Court will proceed to examining the substance of the Ordinance under the First Amendment.

C. Ordinance and the First Amendment

(1)

In drafting the Ordinance, the City relied on the United States Supreme Court's decision in *Hill v. Colorado*, 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000). The Court in *Hill* considered the constitutionality of a Colorado statute which made it "unlawful, [within 100 feet of the entrance to a health care facility] to knowingly approach within eight feet of another person, without that person's consent, for the purpose of passing a leaflet or handbill ***1001** to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person." *Id.* at 707, 120 S.Ct. 2480. The Supreme Court found that the regulation was "content neutral." *See id.* at 725, 120 S.Ct. 2480. It did not restrict or prohibit "either a particular viewpoint or any subject matter that may be discussed by a speaker." *Id.* at 723, 120 S.Ct. 2480. Rather, the regulation established a "minor place restriction on an extremely broad category of communications" and applied "equally to used car salesmen, animal rights activists, fundraisers, environmentalists, and missionaries." *Id.* The Court determined the regulation was a "valid time, place, and manner regulation" because it is "narrowly tailored." Moreover, it served government interests that are "significant and legitimate." The Court emphasized that individuals attempting to enter health care facilities "are often in particularly vulnerable physical and emotional conditions" and concluded that the restriction is "reasonable and narrowly tailored." *Id.* at 729-30, 120 S.Ct. 2480.

The Ordinance in this case differs significantly from that at issue in *Hill*. While the regulation in *Hill* addressed only areas within "100 feet" of the entrances to health care facilities, the Ordinance in this case applied to all requests for donations anywhere in the City. The restriction on "approaching within five feet" for the purpose of requesting a donation applied citywide.

Another difference between the two regulations is that the one at issue in *Hill* was content-neutral and prohibited individuals from approaching to within eight feet of one another within the 100-foot zones regardless of what they sought to discuss. *See Hill*, 530 U.S. at 708, 120 S.Ct. 2480 (noting the statute does not "place any restriction on the content of any message that anyone may wish to communicate to anyone else, either inside or outside the regulated areas."). Conversely, the regulation in this case is content-based because it applied only to a particular type of communication—a request for "an immediate donation." The regulation did not prohibit individuals from approaching within five feet of one another to communicate any other message or engage in any other kind of solicitation. Accordingly, the City's argument that the amendment is not content-based is without merit.

The Colorado regulation at issue in *Hill* was also different in that it was aimed at protecting a "captive audience"—people who were seeking to enter health care facilities for the purpose of obtaining treatment—who could not simply walk away from or avoid unwanted communication. *See Hill*, 530 U.S. at 718, 120 S.Ct. 2480. The Court stated, "The recognizable privacy interest in avoiding unwanted communication varies widely in different settings. It is far less important when strolling through Central Park than when in the confines of one's home, or when persons are powerless to avoid." *Id.* at 716, 120 S.Ct. 2480 (internal quotation marks omitted). The Ordinance here applies on all of the City sidewalks, parks and public ways in Springfield. Accordingly, it is not directed at protecting a "captive audience" from unwanted communication. The

individual can simply avert his eyes or walk away to avoid an unwanted request for "an immediate donation."

The City's argument that the Ordinance is not a "regulation of speech" but is a "regulation of activity" with an "incidental effect" on speech is not persuasive. The Ordinance was not a generally applicable regulation of conduct. Its application hinged on the message communicated. An individual could not request an immediate donation while approaching within five feet of another person. He or she could communicate any other message. Because one would have to examine the content of the ***1002** communication to determine if a violation occurred, the Ordinance is content-based. In the previous case involving some of the same parties, the Seventh Circuit found that a regulation that applies solely to panhandling must be analyzed as a "content based" law that is subject to strict scrutiny under *Reed v. Town of Gilbert*, —— U.S. ——, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015), given that it "regulates because of the topic discussed." *Norton v. City of Springfield*, 806 F.3d 411, 412 (7th Cir. 2015) (quoting *Reed* at 2227-28). Accordingly, the Court is not persuaded by the City's argument that the Ordinance should be upheld under a "time, place, and manner" restriction of behavior analysis.

The Springfield Ordinance did not prohibit all citizens from approaching within five feet of one another regardless of their reason for doing so. It was a crime to approach within five feet of another person only if one made a "request for an immediate donation." This was the only form of solicitation that was a crime under the Ordinance. The Ordinance did not prohibit an individual from approaching within five feet of another to pass out a leaflet, to ask for a signature, to say hello, to engage in prayer or proselytization, to protest, to sell a product, to advertise a service, or to request a future donation. Because the Ordinance distinguished these forms of communication from a "request for an immediate donation," it was a content-based regulation of speech and not a content-neutral regulation of conduct.

(2)

Because it is a content-based restriction, the Ordinance is subject to strict scrutiny. "Content-based" regulations are presumptively invalid under the First Amendment. *See Reed*, 135 S.Ct. at 2227. In order to satisfy strict scrutiny, the Government must show that the regulation of speech is "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).

The City identified five interests it claimed are served by the Ordinance: (1) "public safety," (2) "protecting listeners from unwanted communication;" (3) "privacy;" (4) "[providing] specific guidance to law enforcement authorities [to promote] even-handed application of the law;" and (5) "orderly regulation of commercial endeavors." However, the City is unable to show that the Ordinance is necessary to address any of these interests.

The City did not produce any evidence of public safety being compromised by a panhandler approaching within five feet of someone. Sergeant Davidsmeyer was not "aware of any injuries having resulted from a person asking for a donation approaching within five feet of another person." Davidsmeyer testified the risks of an unknown person approaching within five feet of another are the same whether the unknown individuals are panhandling or engaged in another activity. Accordingly, the City's interest in "public safety" does not amount to a compelling interest sufficient to justify an Ordinance's content-based restriction.

It is also not a compelling state interest for a government to protect listeners from "unwanted communication" and to protect unwilling listeners' privacy interests in a public forum. "[T]he mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense." *Cohen v. California*, 403 U.S. 15, 21, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971). The Supreme Court further stated that the government's authority "to shut off discourse solely to protect others from hearing it is ... dependent upon a showing that substantial privacy interests are ***1003** being invaded in an essentially intolerable manner." *Id.*

More recently, the Supreme Court noted that areas such as the public streets and sidewalks occupy a "special position in terms of First Amendment protection." *See McCullen v. Coakley*, —— U.S. ——, 134 S.Ct. 2518, 2529, 189 L.Ed.2d 502

(2014). Accordingly, "the government's ability to restrict speech in such locations is very limited." *Id.*

Of course, the Court recognizes that many individuals do not welcome a solicitation or request from a stranger for an "immediate donation." However, this does not mean that the regulation is necessary or that the government interest is compelling. The individual in most cases can simply avert his eyes or walk away if he wishes to avoid such an encounter.

The City has failed to show that it has a compelling interest in promoting an individual's privacy interests in a public forum or "protecting unwilling listeners from unwanted communication" sufficient to justify the Ordinance's restrictions.

Another justification offered by the City is to provide clear guidance to law enforcement authorities to promote even-handed application of the law. The City does not explain how the Ordinance provides clear guidance to law enforcement authorities. Although bright line rules have merit in some circumstances, the Court believes it would be very difficult for police officers routinely to monitor sidewalk encounters between individuals and determine whether anyone unlawfully "approached" within five feet of someone else. The officer would also have to determine whether the approaching individual made a request for an "immediate donation," as opposed to saying something else. Accordingly, the Court does not believe the Ordinance would provide "specific guidance" to promote "even-handed enforcement of the law." Even if it did, however, "the prime objective of the First Amendment is not efficiency." *McCullen*, 134 S.Ct. at 2540. Therefore, providing guidance to law enforcement to promote even-handed application of the law is not a compelling a government interest.

The City also alleges that the "orderly regulation of commercial endeavors" is a compelling government interest served by the challenged part of the Ordinance. However, the part of the Ordinance at issue does not apply to those who sell items or solicit business. It applies only to those individuals who request immediate donations. Because the Ordinance does not regulate commercial endeavors, the City's interest in the "orderly regulation of commercial endeavors," does not provide a compelling government interest sufficient to justify the Ordinance's content-based regulation of requests for donations.

Because it has not identified any compelling government interest served by the Ordinance, the City is unable to show that the Ordinance did not violate the First Amendment.

(3)

The Court has already determined that the Ordinance is a content-based regulation that is not necessary to serve any compelling Government interest. Therefore, the Court need not consider whether the Ordinance is "narrowly tailored" to serve any of the City's interests. Even assuming the City could show that a compelling interest exists which would justify the Ordinance, it is apparent that the Ordinance is not "narrowly tailored" to serve any of the City's interests.

A City-wide ban on "approaching within five feet of" pedestrians while panhandling is not narrowly tailored because there a number of alternative ways for the ***1004** City to address the particular harms at issue. Many of these alternatives are included in the Springfield Municipal Code, which prohibits various types of "aggressive" panhandling. The enforcement of the state disorderly conduct statute is another potential way to address some of the harms associated with panhandling. Because there are "alternative measures" that burden less speech and could provide adequate means for law enforcement to respond to the harms posed by panhandlers, the Court concludes that the Ordinance is not narrowly tailored to address those harms.

IV. CONCLUSION

In the Complaint, the Plaintiffs sought a declaration that § 131.06(a)(2)(a) violates their First Amendment rights and an

award of nominal damages for the violation. Because the Ordinance was in effect almost three months and the Plaintiffs refrained from protected speech due to the threat of enforcement, the Plaintiff's motion is not moot. The Court further finds that the Ordinance is a content-based restriction. Because the City has not shown that the Ordinance is necessary to serve a compelling interest and is narrowly drawn to achieve that end, the City has not shown that § 131.06(a)(2)(a) of the Springfield Municipal Code is constitutional.

Accordingly, the Plaintiffs are entitled to summary judgment on their claim that § 131.06(a)(2)(a) of the Springfield Municipal Code's prohibition on "panhandling while at any time before, during or after the solicitation knowingly approaching within five feet of the solicited person" violates the First Amendment.

Ergo, the Plaintiffs' Motion for Summary Judgment [d/e 29] is ALLOWED.

Summary judgment is hereby entered on the Plaintiffs' claim that § 131.06(a)(2)(a) of the Springfield Municipal Code's prohibition on "panhandling while at any time before, during, or after the solicitation knowingly approaching within five feet of the solicited person" violates the First Amendment.

All Citations

324 F.Supp.3d 994

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806 F.3d 411
United States Court of Appeals,
Seventh Circuit.

Don NORTON and Karen Otterson, Plaintiffs–Appellants,
v.
CITY OF SPRINGFIELD, ILLINOIS, et al., Defendants–Appellees.

No. 13–3581.
|
Aug. 7, 2015.

Synopsis

Background: Plaintiffs cited for panhandling in violation of city ordinance filed action challenging the constitutionality of the ordinance. Plaintiffs moved for preliminary injunction. The United States District Court for the Central District of Illinois, Richard Mills, J., 2013 WL 5781663, denied motion. Plaintiffs appealed. The Court of Appeals, Easterbrook, Circuit Judge, affirmed, 768 F.3d 713.

Holding: On Petition for rehearing, the Court of Appeals, Easterbrook, Circuit Judge, held that city's anti-panhandling ordinance was not content-neutral, and thus violated free speech rights under the First Amendment.

Reversed and remanded.

Manion, Circuit Judge, filed concurring opinion.

Attorneys and Law Firms

***411** Mark G. Weinberg, Law Office of Mark G. Weinberg, Adele D. Nicholas, Chicago, IL, Matthew A. Brill, Noel E. Miller, Matthew Murchison, Latham & Watkins LLP, Washington, DC, for Plaintiffs–Appellants.

Steven C. Rahn, Matthew Robert Trapp, Office of the Corporation Counsel, Springfield, IL, for Defendants–Appellees.

Before EASTERBROOK, MANION, and SYKES, Circuit Judges.

Opinion

EASTERBROOK, Circuit Judge.

Our first decision in this appeal concluded that Springfield's anti-panhandling ordinance does not draw lines based on the content of anyone's speech. Because the litigants agreed that the ordinance's validity depends on this issue, we affirmed the district court's decision. 768 F.3d 713 (7th Cir.2014). We deferred consideration of the petition for rehearing until the Supreme Court decided *Reed v. Gilbert,* —— U.S. ——, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015). Shortly after deciding *Reed,* the Court remanded *Thayer v. Worcester,* 755 F.3d 60 (1st Cir.2014), a panhandling-ordinance decision on which our first opinion ***412** had relied, for further consideration in light of *Reed.* —— U.S. ——, 135 S.Ct. 2887, ——L.Ed.2d —— (2015). At our request, the parties filed supplemental memoranda discussing *Reed.* We now grant the petition for rehearing and apply *Reed* to Springfield's ordinance.

As our first opinion explained, § 131.06 of Springfield's Municipal Code

> prohibits panhandling in its "downtown historic district"—less than 2% of the City's area but containing its principal shopping, entertainment, and governmental areas, including the Statehouse and many state-government buildings. The ordinance defines panhandling as an oral request for an immediate donation of money. Signs requesting money are allowed; so are oral pleas to send money later. Springfield evidently views signs and requests for deferred donations as less impositional than oral requests for money immediately, which some persons (especially at night or when no one else is nearby) may find threatening.

768 F.3d at 714. Plaintiffs contend that the ordinance's principal rule—barring oral requests for money now but not regulating requests for money later—is a form of content discrimination.

The panel disagreed with that submission for several reasons. We observed that the ordinance does not interfere with the marketplace for ideas, that it does not practice viewpoint discrimination, and that the distinctions that plaintiffs call content discrimination appear to be efforts to make the ordinance less restrictive, which should be a mark in its favor. We summed up: "The Court has classified two kinds of regulations as content-based. One is regulation that restricts speech because of the ideas it conveys. The other is regulation that restricts speech because the government disapproves of its message. It is hard to see an anti-panhandling ordinance as entailing either kind of discrimination." 768 F.3d at 717 (citations omitted). We classified the ordinance as one regulating by subject matter rather than content or viewpoint.

Reed understands content discrimination differently. It wrote that "regulation of speech is content based if a law applies to particular speech because of the topic discussed *or* the idea or message expressed." 135 S.Ct. at 2227 (emphasis added). Springfield's ordinance regulates "because of the topic discussed". The Town of Gilbert, Arizona, justified its sign ordinance in part by contending, as Springfield also does, that the ordinance is neutral with respect to ideas and viewpoints. The majority in *Reed* found that insufficient: "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." 135 S.Ct. at 2228. It added: "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id.* at 2230.

Three Justices concurred only in the judgment in *Reed*. 135 S.Ct. at 2236–39 (Kagan, J., joined by Ginsburg & Breyer, JJ.). Like our original opinion in this case, these Justices thought that the absence of an effort to burden unpopular ideas implies the absence of content discrimination. But the majority held otherwise; that's why these three Justices wrote separately. The majority opinion in *Reed* effectively abolishes any distinction between content regulation and subject-matter regulation. Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.

Our observation, 768 F.3d at 717, that Springfield has attempted to write a narrowly ***413** tailored ordinance now pertains to the justification stage of the analysis rather than the classification stage. But Springfield has not contended that its ordinance is justified, if it indeed represents content discrimination. As we said at the outset, the parties have agreed that the ordinance stands or falls on the answer to the question whether it is a form of content discrimination. *Reed* requires a positive answer.

The judgment of the district court is reversed, and the case is remanded for the entry of an injunction consistent with *Reed* and this opinion.

MANION, Circuit Judge, concurring.

I join the opinion of the court in full, but write separately to underscore the significance of the Supreme Court's recent decision in *Reed v. Town of Gilbert,* which held that a speech regulation targeted at specific subject matter is content-based

even if it does not discriminate among viewpoints within that subject matter. — U.S. ——, 135 S.Ct. 2218, 2230, 192 L.Ed.2d 236 (2015). *Reed* injected some much-needed clarity into First Amendment jurisprudence and, in doing so, should eliminate the confusion that followed from *Ward v. Rock Against Racism,* 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). While *Ward* is well-recognized as the Court's seminal time, place, and manner First Amendment case, it also described a standard for content-neutrality that was in tension with the Court's developing content-based regulation of speech doctrine. *Reed* resolved this uncertainty.

Ward stated that "[t]he principal inquiry in determining content neutrality ... is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." 491 U.S. at 791, 109 S.Ct. 2746. Over time, courts interpreted this statement to mean that it did not matter if a law regulated speakers based on what they said, so long as the regulation of speech was not imposed because of government disagreement with the message. Under this approach, if an ordinance was not viewpoint-based, then it was content-neutral. For example, a local government's decision to eliminate religious speech or abortion-related speech was considered content-neutral because it was not viewpoint-based—as, for instance, a regulation prohibiting "Christian speech" or "pro-life speech" was and remains. *Reed* eliminates this distinction. 135 S.Ct. at 2227 (concluding that a speech regulation is content-based if it prohibits the topic discussed or the idea or message expressed); *ante* at 412 ("*Reed* effectively abolishes any distinction between content regulation and subject-matter regulation."). On this point, *Reed* overrules *Ward.*

Reed saw what *Ward* missed—that topical censorship is still censorship. Rejecting the idea that the government may remove controversial speech from the marketplace of ideas by drafting a regulation to eliminate the topic, *Reed* now requires any regulation of speech implicating religion or abortion to be evaluated as content-based and subject to strict scrutiny, just like the aforementioned viewpoint-based restrictions covering more narrow contours of speech. 135 S.Ct. at 2228, 2230. Few regulations will survive this rigorous standard.

Because the court has faithfully applied *Reed* to the City's ordinance, I concur.

All Citations

806 F.3d 411

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2018 WL 6601083
Only the Westlaw citation is currently available.
United States District Court, C.D. Illinois,
Springfield Division.

Don NORTON, Karen Otterson and Jessica Zenquis, Plaintiffs,
v.
CITY OF SPRINGFIELD, Defendant.

Case No. 15-3276
|
Signed 12/14/2018
|
Filed 12/17/2018

Attorneys and Law Firms

Mark G. Weinberg, Law Office of Mark G. Weinberg, Adele D. Nicholas, Jackowiak Law Offices, Chicago, IL, for Plaintiffs.

Steven C. Rahn, City of Springfield Office of Corporation Counsel, Springfield, IL, for Defendant.

OPINION

Richard Mills, United States District Judge

***1** In an Opinion entered on August 17, 2018, the Court allowed the Plaintiffs' motion for summary judgment on Plaintiffs' claim that § 131.06(a)(2)(a) of the Springfield Municipal Code's prohibition on "panhandling while at any time before, during, or after the solicitation knowingly approaching within five feet of the solicited person" violates the First Amendment.

Pending is the Plaintiffs' Petition for Attorney's Fees.

Based on the Court's conclusion that Plaintiffs were entitled to "a declaration that § 131.06(a)(2)(a) violates their First Amendment right and an award of nominal damages for the violation," the Plaintiffs have obtained all of the relief they sought and now request an award of reasonable attorney's fees and costs under the Civil Rights Attorney's Fee Awards Act of 1976, 42 U.S.C. § 1988. Under § 1988, the Plaintiffs are entitled to "reasonable" attorney's fees as the "prevailing party" in a § 1983 action.

I.

In determining an award of attorney's fees, courts typically employ the "lodestar method," which is "the product of the hours

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reasonably expended on the case multiplied by a reasonable hourly rate." *Montanez v. Simon*, 755 F.3d 547, 553 (7th Cir. 2014). "Although the lodestar yields a presumptively reasonable fee, the court may nevertheless adjust the fee based on factors not included in the computation." *Id.* (internal citation omitted).

The Seventh Circuit noted that "[a] reasonable hourly rate is based on the local market rate for the attorney's services." *Id.* The best indicator of the market rate is the amount actually billed by the attorney for similar work. *See id.* If that rate cannot be determined, a court may consider "evidence of rates charged by similarly experienced attorneys in the community and evidence of rates set for the attorney in similar cases." *Id.* The prevailing party has the burden of establishing the market rate for the work; if the attorneys fail to meet that burden, the district court can independently determine the appropriate rate. *See id.*

Attorney Mark Weinberg has billed 58.2 hours at a $450.00 hourly rate for a total of $26,190.00. Attorney Adele Nicholas has billed 76.0 hours at a $375.00 hourly rate for a total of $28,500.00. Mr. Weinberg and Ms. Nicholas work at Chicago law offices. The total amount billed by the attorneys is $54,690.00.

"The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (internal quotation marks omitted). Congress sought to ensure that "competent counsel was available to civil rights plaintiffs." *Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989). The United States Supreme Court has explained that a "reasonable attorney's fee" under § 1988 "contemplates reasonable compensation, in light of all the circumstances, for the time and effort expended by the attorney for the prevailing plaintiff, no more and no less." *Id.*

The Plaintiffs' motion is supported by declarations from the attorneys. Based on those declarations, the Plaintiffs allege the hourly rates sought for each of their attorneys are reasonable and fair given their experience, the rates charged to paying clients in similar cases and rates awarded to civil rights attorneys with comparable experience. These are relevant considerations in determining an appropriate fee. *See Gautreaux v. Chicago Housing Auth.*, 491 F.3d 649, 659 (7th Cir. 2007).

***2** The City contends that rates requested by the Plaintiffs' attorneys are substantially excessive for attorneys typically appearing before federal courts in the Central District of Illinois. In support of that assertion, the City refers to the affidavit of attorney Carl Draper,[1] a well-respected member of the bar of this Court, who opines that the reasonable hourly fee for an experienced civil rights litigation attorney in this federal district ranges from $300-350 per hour. A reasonable rate for a less experienced associate ranges from $200-250 per hour.

The City asks the Court, if it does award fees, to reduce the Plaintiffs' attorneys' claimed fees to $300 per hour for Mr. Weinberg (an award of ($17,460 total) and $250 per hour for Ms. Nicholas (an award of $19,000 total).

The Seventh Circuit has stated "just because the proffered rate is higher than the local rate does not mean that a district court may freely adjust that rate downward." *Mathur v. Board of Trustees of Southern Illinois University*, 317 F.3d 738, 743 (7th Cir. 2003). "[I]f an out-of-town attorney has a higher hourly rate than local practitioners, district courts should defer to the out-of-town attorney's rate when calculating the lodestar amount, though if local attorneys could do as well, and there is no other reason to have them performed by the former, then the judge, in his discretion, might allow only an hourly rate which local attorneys would have charged for the same service." *Id.* at 744 (internal quotation marks omitted); *see also Jeffboat, LLC v. Director, Office of Workers' Compensation Programs*, 553 F.3d 487, 490 (7th Cir. 2009) ("[O]ur cases have consistently recognized that an attorney's actual billing rate for comparable work is presumptively appropriate for use as a market rate when making a lodestar calculation."). Although the plaintiff in *Mathur* was from southern Illinois, the court stated it was reasonable for him to search for an attorney in Chicago when his efforts in southern Illinois were unsuccessful. *See id.* Additionally, it concluded the district court abused its discretion in simply stating "that the lower rate was appropriate because of the prevailing local rates in southern Illinois, without regard to the quality of service rendered by the appellants." *Id.*

The Supreme Court has held that "the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. § 1988." *Hensley*, 461 U.S. at 440. If a plaintiff "has obtained excellent results, his attorney should recover a fully compensatory fee." *Id.* at 435. The City has not made any specific objections to the amount of time that Plaintiffs' counsel invested in this case.

The Court earlier noted that the Plaintiffs' attorneys had provided evidence relating to the reasonableness of their rates. This included (1) evidence of hourly rates charged to paying clients in civil rights cases; (2) affidavits noting their relevant experience and skill with matters concerning the First Amendment rights of indigent people; (3) citations to cases in which rates similar to those sought here were awarded to attorneys of similar skill, experience and reputation in civil rights cases; and (4) the affidavit of an experienced civil rights attorney familiar with the work performed by counsel and the rates charged by other civil rights attorneys for similar work.

***3** Mr. Weinberg and Ms. Nicholas have extensive experience representing indigent plaintiffs in cases implicating the First Amendment. Certainly, the Plaintiffs benefitted by hiring attorneys who are First Amendment and appellate specialists. The law concerning what constituted an unlawful content-based regulation was somewhat muddled and there was a risk that Plaintiffs would not prevail.

II.

The Court declines to reduce the attorney's fees award to the extent requested by the City. The Court has reviewed the affidavits of counsel as well as their time sheets. The City does not dispute the reasonableness of the time the Plaintiffs' counsel spent on the case. The Plaintiffs have met their burden of substantiating the reasonableness of Plaintiffs' counsel's hourly rates. This was a complex case implicating important constitutional rights. Certainly, the Court does not want to discourage able counsel such as the Plaintiffs' attorneys here from representing plaintiffs when significant rights are at stake. The Court benefits just as a party does when the case is litigated by skilled attorneys. Accordingly, it is important that Plaintiffs' attorneys are compensated fairly for extensive work performed over the course of three years.

As this Court held in *Norton v. City of Springfield*, 3:13-cv-3316-RM-TSH, (*Norton I*), at Doc. No. 55, the only basis why a lower rate should be awarded in this case is to account for the probability that a Springfield or Central Illinois attorney would have taken the case and prevailed. The Court believes that a 20% reduction is appropriate based on the likelihood–uncertain though it is--that a local civil rights attorney would have taken the case and achieved an equally favorable result for the Plaintiffs.

Consistent with its prior holding in *Norton I* and for the additional reasons stated in that Opinion, the Court will reduce each attorney's fees and claimed amount by 20%. Mr. Weinberg's rate of $450.00 per hour will be reduced to $360.00 per hour. For 58.2 hours billed, Mr. Weinberg is entitled to an attorney's fee award of $20,952.00.

Ms. Nicholas's rate of $375.00 per hour will be reduced to $300.00 per hour. For 76 hours billed, Ms. Nicholas is entitled to an attorney's fee award of $22,800.00.

The total amount of attorney's fees to be awarded is $43,752.00.

III.

Given their status as a prevailing party in a civil rights case, the Plaintiffs are entitled to recover litigation expenses incurred in prosecuting the case pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988. *See Downes v. Volkswagen of America, Inc.*, 41 F.3d 1132, 1144 (7th Cir. 1994). ("[E]xpenses of litigation that are distinct from either statutory costs or the costs of the lawyer's time reflected in hourly billing rates ... are part of the reasonable attorney's fee allowed by the Civil Rights Attorney Fees Awards Act.").

The Plaintiffs have provided proof of costs incurred of $697.30 (comprising $297.30 for a deposition and the $400.00 United States District Court filing fee). The Court will award costs in that amount.

Ergo, the Plaintiffs' Petition for Attorney's Fees [d/e 39] is ALLOWED in part, as provided in this Order.

The amount of attorney's fees for each attorney shall be reduced by 20% from the amount the attorney has claimed.

The Plaintiffs are hereby awarded attorney's fees in the amount of $43,752.00, as follows:

Attorney Mark G. Weinberg is awarded $20,952.00;

***4** Attorney Adele Nicholas is awarded $22,800.00.

The Plaintiffs are awarded costs of $697.30

The Clerk will enter Judgment and terminate this case.

All Citations

Slip Copy, 2018 WL 6601083

Footnotes

1 Mr. Draper's affidavit is attached as Exhibit B to the City's response to the motion for summary judgment in *Norton v. City of Springfield*, Case No. 3:13-cv-3316-RM-TSH, Doc. No. 52-2.

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ORDINANCE 17,610

AN ORDINANCE REPEALING SECTION 110 OF ARTICLE VI OF CHAPTER 20 OF THE CODE OF THE CITY OF PEORIA RELATING TO PANHANDLING

WHEREAS, the City of Peoria is a home rule municipality pursuant to Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, on October 7, 2003, the City adopted Ordinance No. 15537 regulating panhandling; and

WHEREAS, on August 17, 2018 the federal court for the Central District of Illinois ruled that there can be no express prohibition on "handling" as to do so would violate the First Amendment (*Norton v. City of Springfield*, 2018 WL 3964800 (C.D.Il.2018));

WHEREAS, the City Council of the City of Peoria, Illinois, desires to update the Code of the City of Peoria to be fully compliant with the decision in *Norton v. City of Springfield* that expanded free speech protections for panhandlers by repealing Section 110 of Article IV of Chapter 20 of the City Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS, as follows:

Section 1: Section 110 (Panhandling) of Article VI of Chapter 20 of the Code of the City of Peoria is repealed in its entirety.

Section 2. This Ordinance shall be in full force and effect immediately after its passage and publication in pamphlet form.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this 11th day of September, 2018.

APPROVED:
/s/ James E. Ardis, III
Mayor

ATTEST:
/s/ Beth Ball
City Clerk

EXAMINED AND APPROVED:

/s/ Donald B. Leist
Corporation Counsel

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§ 131.12. - Aggressive sales and solicitation tactics prohibited.

(a) Definitions.

(1) *Solicitation:* Any act in which an individual (the "solicitor") initiates or attempts to initiate a transaction with another person (the "solicited person") where either party transfers to the other money or other consideration, or promises to transfer money or other consideration in the future, whether such transfer is in exchange for goods or services or gratuitously for no exchange consideration, where the transaction is initiated upon or within any street, public way, public place, or park in the city.

(2) *Aggressive solicitation:* Soliciting in an aggressive manner, which includes any of the following actions by the solicitor:

a. Intentionally touching the solicited person without the solicited person's consent;

b. Knowingly and intentionally approaching within five feet of the solicited person without the solicited person's consent;

c. Continuing to solicit from a solicited person after the solicited person has given a negative response to such solicitation;

d. Soliciting while the solicited person is standing in line and waiting to be admitted to a commercial establishment;

e. Soliciting within ten feet of the entrance to a commercial establishment while the solicited person is entering or exiting such establishment.

f. Blocking the path of the solicited person or blocking the entrance to any building or vehicle.

g. Following behind, alongside, or ahead of the solicited person while the solicited person walks away from the solicitor after being solicited.

h. Soliciting where the solicited person is a minor.

i. Using profane or abusive language either during the solicitation or following a solicited person's refusal to engage in the transaction, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful of his or her safety or to feel compelled to engage in the transaction.

j. Soliciting in a group of two or more persons.

(b) It shall be unlawful to engage in an act of solicitation when either the solicitor or the solicited person is located at any of the following locations: In a vehicle which is parked or stopped on a public street or alley; in a sidewalk cafe, or within 20 feet of the entrance to or parking area of any bank, automated teller machine, automated teller machine facility, check cashing business, mass transportation facility, mass transportation stop, public restroom, pay telephone or theatre or place of public assembly, any youth education program facility or outside activities of such programs, or of any outdoor seating area of any cafe, restaurant or other business.

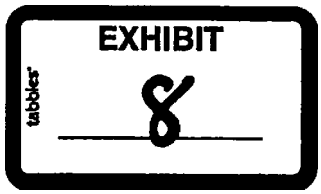
(c) It shall be unlawful to engage in aggressive solicitation.

(d) It shall be unlawful to engage in an act of solicitation on any day after sunset or before sunrise.

(e) The following actions shall not be violations of this section:

(1) Passively standing or sitting with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry by another person.

(2) Performing music, singing or other street performance without approaching any persons and without any vocal request for a donation other than in response to an inquiry by another person.



(3) Selling goods or services or soliciting contributions or pledges while the solicitor is seated or standing at a table or other temporary structure which is part of a permitted event of a fixed, specified duration such as a farmers' market, street festival, fair, etc.

(f) Any person who shall violate any provision of this section shall, on conviction thereof, be punished by a fine of not less than $25 nor more than $100, or public or community service of not less than eight hours nor more than 40 hours for each violation, and the circuit court may enjoin the person from committing further violations of this chapter. Each act of solicitation declared unlawful by this section shall constitute a separate offense.

(g) If the city recommends, or the court on its own motion orders, a sentence of public or community service, the city shall provide to the court the name and addresses of contact persons for three not-for-profit organizations or public bodies that agree to accept public or community service from offenders and to report on the progress of the offender and the public or community service to the court or to the corporation counsel. If the court orders a sentence of public or community service, it shall direct the offender to report to one of those contact persons or to the contact person for any other not-for-profit organization or public body the court deems appropriate. For the purposes of this subsection, public or community service shall have the meaning ascribed to it in the Probation Community Service Act (730 ILCS 115/0.01 et seq.).

(Ord. No. 081-02-17, § 1(Exh. A), 2-21-17)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL DUMIAK and CHRISTOPHER SIMMONS, Plaintiffs, v. VILLAGE OF DOWNERS GROVE, JEFFREY GIERMANN, ROBERT JACOBS, JAY JOHNSON, KENNETH LISTER, ALESSIA MAROCCO, and JOSHUA NELSON, Downers Grove Police Officers in their individual and official capacities; BRENDAN KELLY, Acting Director of the Illinois State Police, in his official capacity; and ROBERT BERLIN, DuPage County State's Attorney, in his official capacity, Defendants.	)	No. 19-cv-5604 Honorable Robert W. Gettleman

FINAL ORDER ENTERING
PERMANENT INJUNCTION PURSUANT TO SETTLEMENT

Plaintiffs Michael Dumiak and Christopher Simmons ("Plaintiffs"), and Defendants, Brendan Kelly, Director of the Illinois State Police, in his official capacity; and Robert Berlin, DuPage County State's Attorney, in his official capacity ("Defendants"), have agreed to resolve the above-captioned litigation (the "Litigation") and any potential claim by Plaintiffs pursuant to 42 U.S.C. § 1988 for attorneys' fees and costs incurred to date in connection with the Litigation.

Pursuant to that agreement, Plaintiffs and Defendants (collectively "the Parties") have filed an Agreed Motion for Entry of a Final Order and Permanent Injunction. Based on the agreement of the parties and lack of opposition to the proposed injunction and its terms, the Court has determined that entry of a Final Order and Permanent injunction (the "Final Order") is proper.

Findings of Facts and Conclusions of Law:

1. The Parties understand and agree that the Court has jurisdiction over this matter and that venue is proper.

2. Defendants Kelly and Berlin have agreed to waive the entry of findings of fact and conclusions of law for the purposes of this Order pursuant to Rules 52 and 65 of the Federal Rules of Civil Procedure.

3. Plaintiffs also have agreed to waive the entry of findings of fact, and further have agreed to waive any specific finding of liability against the Defendants.

4. Plaintiffs do seek a specific conclusion of law that 625 ILCS 5/11-1006(c), as amended by P.A. 88-589, §10, eff. August 14, 1994, is unconstitutional under the First Amendment. Defendants do not oppose such a finding, though they have not expressly stipulated to it.

5. Based on the lack of opposition, and for the reasons explained in the Court's previous memorandum and opinion dated July 29, 2020, see ECF #52 at 4, the Court agrees such a conclusion of law is appropriate. The Court therefore concludes, as a matter of law, that 625 ILCS 5/11-1006(c) is a content-based restriction on the freedom of speech that is not justified by any compelling interest and that the provision violates the First Amendment and is unconstitutional on its face under clearly established law, specifically, the controlling Supreme Court decision of Reed v. Town of Gilbert, 576 U.S. 155 (2015), and the controlling Seventh Circuit decision of Norton v. City of Springfield, 806 F.3d 411 (7th Cir. 2015).

Accordingly, it is ORDERD:

1. Defendant Kelly, his successors, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of the Illinois State Police, are permanently

enjoined from enforcing 625 ILCS 5/11-1006(c), as amended by P.A. 88-589, §10, eff. August 14, 1994.

2. Defendant Berlin, his successors, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of the DuPage County State's Attorney's Office, are permanently enjoined from enforcing 625 ILCS 5/11-1006(c), as amended by P.A. 88-589, §10, eff. August 14, 1994.

3. Defendants have agreed not to appeal or otherwise attack the validity or enforceability of this Final Order and the permanent injunction, and have agreed that it is binding and enforceable as to each Defendant; any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of each Defendant; and all those acting in concert or participation with each Defendant. See Fed. R. Civ. 65(d)(2).

4. Any claim for attorneys' fees and costs related to this Litigation and incurred through the date of entry of this Final Order has been resolved between the parties by agreement that the Defendants will pay a portion of Plaintiffs' attorneys' fees in an amount to be agreed to by the parties, and therefore the issue is hereby disposed of by this Order. Nothing herein shall be construed to prohibit Plaintiffs from seeking its attorneys' fees and costs in this Court in connection with any actions taken to enforce this Final Order.

5. Plaintiffs' remaining claims related to any other provision of 625 ILCS 5/11-1006, and all other claims for relief not addressed herein, are hereby dismissed with prejudice.

6. This matter is dismissed without prejudice and with leave to reinstate within one year from the date of this Order. Such dismissal without prejudice shall automatically convert to a dismissal with prejudice and without leave to reinstate upon payment pursuant to Defendants'

agreement to pay a portion of Plaintiffs' attorneys' fees or within one year from the date of this Order, whichever is earlier.

7. Plaintiffs are authorized to seek to enforce the terms of this Final Order in this Court.

It is so Ordered.

Dated: January 11, 2021

Robert W. Gettleman
U.S. District Judge

The foregoing Final Order and Permanent Injunction has been agreed to and consented to by all the parties.

Michael Dumiak and Christopher Simmons

By: */s/ Christopher L. Gerardi Jr.*
One of their Attorneys

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HANSON

MEMORANDUM

TO:	Cindy Loos
FROM:	Nada Naffakh E.I.
DATE:	September 3, 2021
SUBJECT:	Pedestrian Median Crash Analysis

The City of Peoria requested an analysis of the correlation between pedestrian crashes and median use. The results of this analysis showed no clear correlation.

Hanson was provided with a list of crashes from 2017 through 2021 with location information and crash type. To begin the analysis, only pedestrian crashes at intersections were reviewed. The resulting list of crashes was cross checked for median locations and all crashes at intersections without medians were eliminated from the analysis. The result was a list of 40 crashes that met the initial review criteria.

Intersection Pedestrian Crashes

	Total	At Median Locations	Percentage
2017	41	5	12%
2018	57	8	14%
2019	51	11	22%
2020	48	8	17%
2021	31	8	26%

A more detailed review was performed once police crash reports were provided by the City. After reading each police report, it was found that the crashes each fit into one of four general categories:

- Bicycle crashes that were initially miscategorized as pedestrian crashes (13)
- Lawful pedestrian crossing crashes, which involved pedestrians having evident right of way when struck by a vehicle (4)
- Non-median crashes, which includes all crashes that did not involve a median (16)
- Median related crashes, which encompasses all crashes that involved pedestrian unlawfully using a center median to cross the roadway (7)

Of the remaining seven crashes, two were caused by students from Richwoods High School improperly crossing the road not at the intersection. There was no correlation amongst the last five crashes with respect to time location or cause of the crash. Based on the results of this review, it seems that there is no relationship between crash risk and pedestrians at medians.

EXHIBIT
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HB4441

LRB10221786RLC30905b

102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4441

Introduced 1/21/2022, by Rep. Joe Sosnowski

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Safe Sidewalks and Roadways Act. Makes it unlawful for a person to panhandle after sunset or before sunrise. Makes it unlawful for a person to panhandle when the person solicited is in any of the following places: (1) at any bus stop or train stop; (2) in any public transportation vehicle or facility; (3) in any vehicle on the street; or (4) on private property, unless the panhandler has permission from the owner or occupant. Makes it unlawful for any person to panhandle in any of the following manners: (1) by coming within 3 feet of the person solicited, until that person has indicated that he or she wishes to make a donation; (2) by blocking the path of the person solicited along a sidewalk or street; (3) by following a person who walks away from the panhandler; (4) by using profane or abusive language, either during the solicitation or following a refusal; (5) by panhandling in a group of 2 or more persons; or (6) by any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat. Makes it unlawful for any person to knowingly make any false or misleading representation in the course of soliciting a donation. Provides that any person who commits a first or second violation of the Act is guilty of a petty offense and shall for a first violation be fined $100 and for a second violation be fined $500. Provides that a third or subsequent violation is a Class C misdemeanor. Defines "panhandle". Contains a severability provision. Effective immediately.

LRB102 21786 RLC 30905 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning criminal law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois Safe Sidewalks and Roadways Act.

Section 5. Findings and policy. The General Assembly finds and declares that while panhandling is a constitutionally-protected free speech right, aggressive and violent actors across the State approaching passersby on the sidewalk or standing in hazardous positions on the roadway require the need for time, place, and manner restrictions so that the citizens of and visitors to this State can freely walk on sidewalks and drive on roadways without fearing for their safety or the safety of a person blocking a roadway.

Section 10. Definition. In this Act, "panhandle" means to solicit in person a request for an immediate donation of money. Purchase of an item for an amount far exceeding its value, under circumstances in which a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this Act. "Panhandle" does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing

any solicitation to any specific person other than in response to an inquiry by that person.

Section 15. Time of panhandling. It is unlawful for any person to panhandle after sunset or before sunrise.

Section 20. Place of panhandling. It is unlawful for any person to panhandle when the person solicited is in any of the following places:

(1) at any bus stop or train stop;

(2) in any public transportation vehicle or facility;

(3) in any vehicle on the street; or

(4) on private property, unless the panhandler has permission from the owner or occupant.

Section 25. Manner of panhandling. It is unlawful for any person to panhandle in any of the following manners:

(1) by coming within 3 feet of the person solicited, until that person has indicated that he or she wishes to make a donation;

(2) by blocking the path of the person solicited along a sidewalk or street;

(3) by following a person who walks away from the panhandler;

(4) by using profane or abusive language, either during the solicitation or following a refusal;

(5) by panhandling in a group of 2 or more persons; or

(6) by any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.

Section 30. False or misleading solicitation. It is unlawful for any person to knowingly make any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

(1) stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;

(2) stating that the donation is needed to meet a need which does not exist;

(3) stating that the solicitor is from out of town and stranded, when that is not true;

(4) wearing a military uniform or other indication of military service, when the solicitor is neither a present nor former member of the service indicated;

(5) wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;

(6) use of any makeup or device to simulate any deformity; or

(7) stating that the solicitor is homeless, when he or she

is not homeless.

Section 35. Penalties. Any person who commits a first or second violation of this Act is guilty of a petty offense and shall for a first violation be fined $100 and for a second violation be fined $500. A third or subsequent violation is a Class C misdemeanor.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect upon becoming law.