

April 10, 2019

Chairman Jim Adams
Henry County Board of Supervisors
P.O. Box 7
Collinsville, VA 24078

Dear Chairman Adams and the Henry County Board of Supervisors:

The American Civil Liberties Union of Virginia urges you to reconsider the ordinance banning solicitation of motorists recently passed by the Henry County Board of Supervisors on March 26, 2019. As discussed below, broad provisions prohibiting solicitation violate the First Amendment of the United States Constitution and would not withstand a legal challenge.



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As you may be aware, the Supreme Court has held that the solicitation of money is protected speech under the First Amendment of the U.S. Constitution. *See Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980). This protection has been extended to individuals who are begging. *See Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013) (recognizing that “the speech and expressive conduct that comprise begging merit First Amendment protection.”); *Smith v. City of Fort Lauderdale*, 117 F.3d 954, 956 (11th Cir. 1999) (“Like other charitable solicitation, begging is speech entitled to First Amendment protection.”); *Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000); *Loper v. New York City Police Dep’t*, 999 F.2d 699, 704 (2d Cir. 1993) (“We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed.”).

Because solicitation is constitutionally protected speech, any regulation of it must, at a minimum, satisfy the requirements for time, place, and manner restrictions; that is, they must be content neutral, be narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. *See Clatterbuck*, 708 F.3d at 555; *Gresham*, 225 F.3d at 905 (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983)).

The ordinance passed by the Henry County Board of Supervisors is not narrowly tailored to serve the County’s interest in safety and efficient traffic flow. The ordinance applies to a substantial number of situations in which no traffic problems or safety issues are likely to arise. For example, the ordinance would prohibit the solicitation of occupants of vehicles who are lawfully parked by the side of the road, or those who pull over out of traffic flow.

For similar reasons, the court in *Reynolds v. Middleton*, 779 F.3d 222 (4th Cir. 2015) found that Henrico County’s solicitation ordinance, which was

similar in nature to the one recently passed by Henry County, was not narrowly tailored to serve the County's legitimate safety interests. The court observed that the ordinance "burdens a wide range of protected speech." *Id.* at 230. Specifically, the court noted that the Henrico ordinance "prohibits all forms of leafletting, which is one of the most important forms of political speech . . . as well as soliciting any kind of contribution, whether political or charitable, or selling or attempting to sell goods or service." *Id.* at 231. "Given the absence of evidence of a county-wide problem, the county-wide sweep of the Amended Ordinance burdens more speech than necessary. . . ." *Id.* The same is true of the Henry County ordinance.

In sum, the Henry County ordinance as written is likely unconstitutional because it lacks the tailoring required of a legitimate time, place, and manner restriction. We urge the Board of Supervisors to meet with their counsel, reconsider the ordinance, and make appropriate revisions so that it protects the constitutional rights of the County's residents.

Thank you for your immediate attention to this matter. Please do not hesitate to call me if you have questions or concerns. My direct line is 804-523-2146.

Very truly yours,



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