

May 11, 2018

Nancy Vaughan, Mayor  
Yvonne Johnson, Mayor Pro Tem  
Marikay Abuzuaiter, Council Member  
Sharon Hightower, Council Member  
Nancy Hoffmann, Council Member  
Michelle Kennedy, Council Member  
Justin Outling, Council Member  
Tammi Thurm, Council Member  
Goldie Wells, Council Member  
City of Greensboro  
300 W. Washington St.  
Greensboro, N.C. 27401



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

North Carolina

cc: Tom Carruthers, City Attorney

*Via email*

**Re: Recent revisions to Section 20-1, Regulations of Solicitation in Public Places**

Dear Mayor Vaughan and council members:

On behalf of the American Civil Liberties Union of North Carolina Legal Foundation, I write to commend the council for repealing its previous solicitation ordinance and to express constitutional concerns about the revised ordinance the city has adopted in its place, Section 20-1, which creates a misdemeanor offense for “aggressive” solicitation.

The U.S. Supreme Court has repeatedly stated that solicitation is protected speech under the First Amendment to the U.S. Constitution.<sup>1</sup> In 2015, the Supreme Court issued a decision in *Reed v. Town of Gilbert* that further clarified the law on freedom of speech.<sup>2</sup> As a result of the Supreme Court’s decision in *Reed*, federal courts have begun categorically subjecting ordinances regulating solicitation to the highest level of scrutiny in court, called strict scrutiny. In order to survive strict

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<sup>1</sup> For example, the Supreme Court discussed solicitation as a protected First Amendment freedom in *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980); and *United States v. Kokinda*, 497 U.S. 720, 725 (1990).

<sup>2</sup> 135 S. Ct. 2218. In *Reed*, the Supreme Court said that a restriction on speech is considered “content based” if it “cannot

<sup>2</sup> 135 S. Ct. 2218. In *Reed*, the Supreme Court said that a restriction on speech is considered “content based” if it “cannot be justified without reference to the content of the speech” or is “targeted at specific subject matter.” Lower courts have interpreted this language to mean that regulation of solicitation is content based, because it pertains only to people who are engaged in asking for donations. Because restrictions on solicitation are considered content based after *Reed*, they are subject to strict scrutiny in court.



scrutiny, a city ordinance restricting solicitation must be narrowly tailored to a compelling government interest, and there must be no less restrictive alternative option that would achieve the same goal.

Since the Supreme Court’s decision in *Reed*, federal courts have considered city ordinances restricting “aggressive” solicitation in Lowell and Worcester, Massachusetts, and Grand Junction, Colorado.<sup>3</sup> Those three ordinances looked remarkably like Greensboro’s revised ordinance. All three ordinances were struck down in federal court because they were not narrowly tailored to compelling government interests, and there were less restrictive alternatives available for meeting the city’s goals. For easy comparison, here’s how the prohibitions in those three unconstitutional ordinances stack up against the prohibitions in subsection (c) of Greensboro’s current revised ordinance:

Greensboro prohibitions	Worcester <sup>4</sup>	Lowell <sup>5</sup>	Grand Junction <sup>6</sup>
(1) Approaching in a way that causes a reasonable fear of imminent bodily harm or crime	X	X	
(2) Intentionally touching or causing physical contact without consent	X	X	
(3) Intentionally blocking or interfering with safe or free passage	X	X	X
(4) Using violent or threatening gestures	X	X	
(5) Soliciting from anyone waiting in line	X	X	X
(6) Continuing to solicit or following after a person says no, or blocking their passage	X	X	X
(7) Soliciting within 20 feet of an ATM	X	X	X

X = provision challenged and struck down by a federal district court<sup>7</sup>

<sup>3</sup> Those cases were *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 229 (D. Mass. 2015); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 182 (D. Mass. 2015); and *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1281 (D. Colo. 2015).

<sup>4</sup> See *Thayer*, 144 F. Supp. 3d at 229 (listing prohibitions contained in the ordinance).

<sup>5</sup> See *McLaughlin*, 140 F. Supp. 3d at 182 (listing prohibitions contained in the ordinance).

<sup>6</sup> See *Browne*, 136 F. Supp. 3d at 1281 (listing prohibitions contained in the ordinance).

<sup>7</sup> The Grand Junction ordinance also contained provisions similar to Greensboro’s provisions (1), (2), and (4), but the plaintiffs in the Grand Junction case didn’t challenge those provisions, so the court did not analyze them. Because those



If challenged in court, Greensboro’s revised ordinance is likely to meet the same fate as the substantially similar ordinances in Worcester, Lowell, and Grand Junction. For that reason, we strongly encourage the city to repeal its ordinance at the first opportunity, and until then not to enforce it.

Looking at the bigger picture, municipal regulation of solicitation raises not just legal issues, but also underlying issues of morality and how to best allocate public resources for the greatest public benefit. As this council well knows, ordinances restricting residents’ constitutional freedoms do not help cure poverty or provide a helping hand for individuals with substance abuse or mental health issues. With that in mind, instead of devoting city resources to imposing new criminal penalties or fines for those in need of help in public spaces, we encourage the city to work with motivated and knowledgeable groups like the Homeless Union and National Law Center on Homelessness & Poverty to address the underlying causes of poverty and homelessness. As the city considers next steps in tackling these larger issues, we also invite collaboration between the city and the ACLU of North Carolina in identifying approaches that will respect the rights of Greensboro’s most vulnerable residents. I appreciate your consideration of our concerns and encourage you to reach out if I can be of further assistance.

Sincerely,

*/s/Emily E. Seawell*

Emily E. Seawell  
Staff Attorney  
ACLU-NC Legal Foundation  
P.O. Box 28004  
Raleigh, NC 27611  
Phone: 919-256-5891  
Email: [eseawell@acluofnc.org](mailto:eseawell@acluofnc.org)

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provisions weren’t challenged in that case, they were neither upheld in court nor struck down.