

VIA EMAIL AND U.S. MAIL

November 5, 2019

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Dear Mayor Strange and City Councilmembers,

The Southern Poverty Law Center (SPLC), American Civil Liberties Union of Alabama (ACLU), and National Law Center on Homelessness & Poverty (NLCHP) write to reiterate our opposition to Ordinance No. 24-2019 criminalizing panhandling in the City of Montgomery. The Amendment to the Ordinance that the City Council will consider at its November 5, 2019, meeting accentuates the original Ordinance's moral and constitutional failings. The SPLC, ACLU, and NLCHP will consider all available options—including litigation—if the City adopts the Amendment and does not rescind the original Ordinance.

On July 2, 2019, the Montgomery City Council unanimously passed an ordinance that makes it “unlawful for any person to engage in panhandling” and requires a mandatory jail sentence for anyone that violates the law. SPLC and NLCHP wrote letters to Mayor Strange after its passage, which urged the Mayor to veto the Ordinance because it is inhumane and unconstitutional to criminalize homelessness. The Ordinance went into effect as a matter of law because Mayor Strange neither vetoed nor signed the Ordinance. He promised, however, that the City would not enforce the Ordinance for 60 days while it considered these concerns. Those 60 days are now over.

The Amendment that the City Council will consider at its November 5, 2019, meeting is extreme, alarming, and inconsistent with Montgomery’s values. It does not address any of the moral or constitutional shortcomings in the original law. The Amendment continues to criminalize any homeless person who “accept[s]” food, water, or money from a person in a car. But it goes even further than the original law by also criminalizing any good Samaritan that “give[s]” food, water, or money to the needy. That’s not all: the amendment criminalizes anyone who “sit[s]” or “stand[s]” “on any unpaved median” like those that extend along Thomas Avenue in Cloverdale or South Capitol Parkway in Capitol Heights. If enacted, the Amendment would subject violators—people experiencing homelessness, children, dogwalkers, food truck proprietors, and do-gooders—to fines and a minimum two days in jail (with escalating penalties for each subsequent conviction). Montgomery does not need this draconian, cold-hearted law.

The proposed Amendment does not shelter the City from liability because it, too, is unconstitutional. Although the Amendment removes the word “panhandling” from Section 2 of the Ordinance, in practice, the Amendment will prohibit anyone from giving or receiving aid. Courts have almost uniformly invalidated ordinances nearly identical to the proposed Amendment. *See, e.g., Rodgers v. Stachey*, 382 F. Supp. 3d 869, 884–85 (W.D. Ark. 2019) (permanently enjoining ordinance that makes it unlawful “to make physical contact” between a pedestrian and occupant of a motor vehicle); *Martin v. City of Albuquerque*, No. CIV 18-0031, 2019 WL 3557548, at *2 (D.N.M. Aug. 5, 2019) (declaring unconstitutional ordinance that would make it “unlawful for any pedestrian to engage in any physical interaction or exchange with the driver or occupants of any vehicle within a travel lane”); *Petrello v. City of Manchester*, No. 16-CV-008, 2017 WL 3972477, at *22 (D.N.H. Sept. 7, 2017) (granting permanent injunction against City for enforcing ordinance making it unlawful to pass “items to or from the occupant of a motor vehicle”); *Rhode Island Homeless Advocacy Project v. City of Cranston*, No. CV 17-334, 2017 WL 3327573, at *1 (D.R.I. Aug. 3, 2017) (granting temporary restraining order preventing City from enforcing ordinance prohibiting “distribution to and receiving from occupants of motor vehicles”); *Cutting v. City of Portland*, 802 F.3d 79, 92 (1st Cir. 2015) (affirming permanent injunction against enforcement of ordinance prohibiting “sitting, staying, driving, or parking on median strips”); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 237–38 (D. Mass. 2015) (granting summary judgment enjoining ordinance prohibiting “standing or walking on a traffic island or roadway except for the purpose of crossing at an intersection or crosswalk”).

Although the text of the Ordinance states that its purpose is to promote the City’s “health” and “prosperity,” the Amendment will undermine those goals by making it more difficult for people to exit homelessness. Montgomery, Ala., Ordinance 24-2019. For example, the law may result in a criminal record that makes it more difficult to obtain a job or create barriers to federal housing

subsidies and other benefits. Studies show that it costs two or three times less to provide people experiencing homelessness with housing, healthcare, and other services than cycling them through the criminal legal system. A 2014 study in Central Florida, for example, found that providing people experiencing chronic homelessness with permanent housing and case managers would cost approximately \$10,000 per person per year—\$21,000 less per person than the region was spending on law enforcement and medical costs for these individuals. The study estimated that this “housing first” approach would save taxpayers \$149 million over the next decade.¹ Alabama cities like Dothan are also exploring a housing first model to connect people experiencing homelessness with housing, employment, and healthcare rather than jail.² Montgomery officials should do the same.

Over the last year, Montgomery has made national headlines for our museums and memorials that reckon with our history of racialized violence. The City is beginning to grapple with that history and build a new legacy of fairness and equity. This Ordinance is another inflection point. The outgoing City Council and administration can adopt the Amendment and bring national shame to Montgomery in its last week in office—by continuing to deny people basic dignity and by passing a law rooted in a Jim Crow history of racial segregation.³ Or it can reject the Amendment, rescind the Ordinance, and convene a group of stakeholders—politicians, business leaders, providers, directly impacted people, and advocates—to learn more about how it can support and meet the needs of the City’s most underserved population. The City can and should do better than this cruel and unconstitutional law.

What do we want our legacy to be?

Sincerely,



Micah West
Ellen Degnan
Clara Potter

¹ Gregory A. Shinn, *The Cost of Long-Term Homelessness In Central Florida: The Current Crisis & The Cost of Providing Sustainable Housing Solutions*, (2014), <http://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>

² Jay Hare, *Dothan community leaders discuss big plans to end homelessness*, *Dothan Eagle* (Oct. 22, 2019) (“There is such a need here for those who are homeless and want out of it . . . If we could find them a sense of home, and a sense of community, and a sense of love, we could get them into stable and permanent housing, which would benefit our community incredibly.”), https://www.dothaneagle.com/news/education/dothan-community-leaders-discuss-big-plans-to-end-homelessness/article_5456b918-5b44-5a9e-b5b6-3d5eec29f306.html

³ Ortiz, Javier and Dick, Matthew and Rankin, Sara, *The Wrong Side of History: A Comparison of Modern and Historical Criminalization Laws* (May 4, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602533; see also Risa L. Goluboff, *Before Black Lives Matter*, *Slate.com* (Mar. 3, 2016), <https://slate.com/news-and-politics/2016/03/vagrancy-laws-and-the-legacy-of-the-civil-rights-movement.html>.

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