

Via Email and US Mail

July 9, 2019

Mayor Todd Strange
City Hall, Room 206
103 North Perry Street
Montgomery, AL 36104

Dear Mayor Strange:

The Southern Poverty Law Center (SPLC) writes to express our concern about Ordinance No. 24-2019, entitled “An Ordinance Prohibiting Panhandling in the City of Montgomery.” We urge the Mayor to veto the Ordinance, because it both unfairly punishes people who are living in poverty and violates the First Amendment. If the Mayor does not veto the Ordinance (and the City Council does not rescind it), the SPLC will likely file a lawsuit against the City for violating the constitutional rights of its most vulnerable and needy citizens.

On July 2, 2019, the Montgomery City Council passed an ordinance that subjects homeless people to jail time for soliciting money in any public place. During City Council discussions of the Ordinance, City Council members represented that the City’s services for homeless people are adequate and that those who are soliciting money “don’t want access to city services that could help them get on their feet,” and are simply “seeking to make money to feed addictions.”¹ These statements reinforce unfounded stereotypes about homelessness, addiction, and mental illness. And the Ordinance’s criminalization of poverty will serve to exacerbate, rather than alleviate, the challenges that Montgomery’s homeless population faces. Rather than jailing people whose dire circumstances have led them to ask for financial assistance on public streets, the City should invest in additional services to support people facing housing instability, mental illness, and addiction.

Not only is the Ordinance bad public policy, but it is blatantly unconstitutional. The federal courts have long held that solicitation is protected speech under the First Amendment.² More recently, in *Reed v. Town of Gilbert*, the Supreme Court made clear that when the government prohibits speech based on its content, these prohibitions are subject to strict judicial scrutiny—the

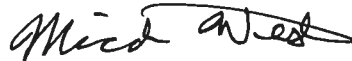
¹ Brian Edwards, *Montgomery Ramps Up Penalties for Panhandlers, Hopes to Deter Frequent Rulebreakers*, *Montgomery Advertiser* (July 2, 2019), available at <https://www.montgomeryadvertiser.com/story/news/2019/07/02/montgomery-ramps-up-penalties-panhandlers-hopes-deter-frequent-rulebreakers/1634242001/>

² *Smith v. City of Fort Lauderdale, Fla.*, 177 F.3d 954, 956 (11th Cir. 1999) (“Like other charitable solicitation, begging is speech entitled to First Amendment protection.”).

Court's most exacting standard.³ Since *Reed*, courts across the country have consistently struck down laws like the Ordinance here as unconstitutional, content-based speech restrictions. Federal courts have found panhandling prohibitions to be unconstitutional in New York, Nevada, Michigan, Virginia, Colorado, Massachusetts, and Florida, among others.⁴ Indeed, the Seventh Circuit struck down a municipal panhandling ordinance with language almost identical to the ordinance that the City Council just passed.⁵ There is little doubt that a federal court would likewise conclude that Montgomery's proposed ordinance is unconstitutional under the First Amendment.

Montgomery's ordinance banning in-person solicitations is short-sighted, unconstitutional, and counter-productive. The SPLC requests that the Mayor veto this unconstitutional ordinance or, in the alternative, that the City Council rescind it. We are happy to discuss our concerns about the Ordinance with the relevant decision-makers, and we believe that this discussion could serve as a starting point to engage in even broader conversations about how we can ensure that Montgomery is treating its homeless population in a fair and constitutional manner. If the Ordinance is enacted, however, the SPLC will likely file a lawsuit challenging the unconstitutional Ordinance and will seek attorney's fees to the extent authorized by law. Thank you for your consideration.

Sincerely,



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cc: Montgomery City Attorney Kim Fehl

³ *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015).

⁴ See, e.g., *Loper v. New York City Police Dep't*, 999 F.2d 699, 704 (2d Cir. 1993); *ACLU v. Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006); *Speet v. Schuette*, 726 F.3d 867, 875 (6th Cir. 2013); *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015); *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1289 (D. Colo. 2015); *Homeless Helping Homeless, Inc. v. City of Tampa, Fla.*, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882 (M.D. Fla. Aug. 5, 2016).

⁵ *Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015) (striking down ordinance prohibiting "oral requests for an immediate donation of money").

Montgomery City Councilmembers Charles W. Jinright (President and District 9), Tracy Larkin (President Pro Tem and District 3), Richard N. Bollinger (District 1), Brantley W. Lyons (District 2), Audrey Graham (District 4), William A. Green, Jr. (District 5), Fred F. Bell (District 6), Arch M. Lee (District 7), Glen O. Pruitt, Jr. (District 8)