AMERICAN CIVIL LIBERTIES UNION of OHIO FOUNDATION

January 11, 2016

By Certified Mail, Email, and Fax
Akron Mayor Dan Horrigan,
City Council President Marilyn Keith
City of Akron
166 S. High Street
Akron, OH 44308
Fax: 330-375-2468
Email: Mayor@AkronOhio.gov
Email: Ward8@akronohio.gov

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org
COUNTY SHARES

RE: The Unconstitutionality of Akron Ordinance 135.10

Dear Mayor Horrigan and Council President Keith,

Asking a neighbor for help should not be a crime. Yet Akron Ordinance 135.10 (entitled "Unlawful Panhandling and Fraudulent Solicitation") makes it illegal for people to ask for help by imposing burdensome restrictions on when, where, and how this speech can take place.

Everybody has a First Amendment right to communicate with others about their needs, and Akron's ordinance violates this most fundamental of constitutional protections. As set forth more extensively in the attached legal memorandum, recent decisions from the Supreme Court of the United States and a dozen federal courts (including the United States Court of Appeals for the Sixth Circuit) lead to the unavoidable conclusion that Akron's anti-panhandling ordinance violates the First Amendment.

The right to speak on a sidewalk is guaranteed by the Constitution; an individual need not obtain permission from the City or passersby to exercise this right. As the Supreme Court explained, the fact that a listener on a sidewalk cannot "turn the page, change the channel, or leave the Web site" to avoid hearing an uncomfortable message is "a virtue, not a vice." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014). Thus, even if some business owners, downtown visitors, or others in the community find panhandling to be uncomfortable or annoying, this provides absolutely no basis for a City to try to silence that speech. *Id.*; *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 252 (6th Cir. 2015) (en banc) ("The Supreme Court . . . has repeatedly affirmed the principle that constitutional rights may not be denied simply because of hostility to their assertion or exercise."). If people are offended by the sight of poverty, the City should work towards real solutions, not simply try to silence our poorest neighbors.

In the event that you do not immediately repeal this unconstitutional law, we will commence preparations to file suit, at which time we will seek interim injunctive relief as well as attorney's fees as authorized by 42 U.S.C. § 1988.

I look forward to your response on or before **January 22, 2016.**

Sincerely,

Joseph Mead, Esq.
Cooperating Attorney
ACLU of Ohio

Cell Phone: [redacted]
Email: AttyJMead@gmail.com

cc:
Eve V. Belfance, Director of Law, EBelfance@AkronOhio.gov
Charles A. Brown, Deputy Mayor for Public Safety, CBrown@AkronOhio.gov
Margo Sommerville, Council Vice President, Ward3@akronohio.gov
Rich Swirsky, Councilmember, Ward1@akronohio.gov
Bruce Kilby, Councilmember, Ward2@akronohio.gov
Russel C. Neal, Jr., Councilmember, Ward4@akronohio.gov
Tara Mosley-Samples, Councilmember, Ward5@akronohio.gov
Bob Hoch, Councilmember, Ward6@akronohio.gov
Donnie Kammer, Councilmember, Ward7@akronohio.gov
Mike Freeman, Councilmember, Ward9@akronohio.gov
Zack Milkovich, Councilmember, Ward10@akronohio.gov
Jeff Fusco, Councilmember, atlarge1@akronohio.gov
Linda F. R. Omobien, Councilmember, AtLarge2@akronohio.gov
Veronica Sims, Councilmember, AtLarge3@akronohio.gov
Bob Keith, Clerk of Council, BKeith@akronohio.gov

Memorandum on the Unconstitutionality of the City of Akron's Anti-Panhandling Ordinance

By Prof. Joseph Mead, Cooperating Attorney

American Civil Liberties Union of Ohio[1]

The City of Akron's anti-panhandling ordinance singles out one type of speech—requests for charitable donations—for special restrictions that do not exist for other types of speech. Akron Ordinance 135.10. These burdens were crafted with the goal of driving a disliked form of speech from the public square, and are not narrowly tailored to further any legitimate government interest. Such content-based discrimination is offensive to the American tradition of free speech, and the ordinance is plainly unconstitutional under a long list of precedent from the Supreme Court, the Sixth Circuit, and federal courts across the country.

I. The City of Akron's Anti-Panhandling Ordinance Violates the First Amendment

"Consistent with the traditionally open character of public streets and sidewalks, we have held that the government's ability to restrict speech in such locations is very limited." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quotation omitted). Both the Supreme Court and the Sixth Circuit have repeatedly held that speech that solicits a donation is entitled to the highest level of First Amendment protection. *Planet Aid v. City of St. Johns, MI*, 782 F.3d 318, 324 (6th Cir. 2015) (collecting cases).

Laws that target speech based on its content are the most offensive to the First Amendment. As the Supreme Court clarified law year, a law is a content-based restriction on speech if *either* of the following are true: (1) the *text* of the law makes distinctions based on speech's "subject matter . . . function or purpose" *or* (2) the *purpose* behind the law is driven by an objection to the content of a message. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015) (internal citations, quotations, and alterations omitted).

These guiding principles are clearly fatal to Akron's anti-panhandling ordinance. The ordinance is unconstitutional as a content-based restriction on speech under either of *Reed*'s alternative tests by discriminating against one type of speech in both the text of the ordinance and motive behind its enactment. Akron's ordinance faces the same fate as those considered by *every single* federal court in recent years. *Norton v. City of Springfield*, Case No. 13-3581, 2015 WL 4714073, at *2 (7th Cir. Aug. 7, 2015); *Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015); *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549 (4th Cir. 2013); *Thayer v. City of Worcester*, --- F. Supp. 3d ---, 2015 WL 6872450 (D. Mass. Nov. 9, 2015); *McLaughlin v. City of Lowell*, --- F. Supp. 3d ---, 2015 WL 6453144 (D. Mass. Oct. 23, 2015); *Browne v. City of Grand Junction, Colorado*, --- F. Supp. 3d ---, 2015 WL 5728755 (D. Colo. Sept. 30, 2015); *Norton & Otterson v. City of Springfield*, Case No. 3:15-cv-03276, ECF #14 (C.D. Ill. Sept. 23, 2015); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014); *Guy v. County of Hawaii*, 2014 WL

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[1] Professor Mead can be reached at AttyJMead@gmail.com

4702289, at *5 (D. Hawaii 2014); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 631 (S.D.W.Va. 2013); *see also Planet Aid v. City of St. Johns*, 782 F.3d 318, 328 (6th Cir. 2015); *Cutting v. City of Portland, Me.*, No. 14-1421, 2015 WL 5306455, at *7 (1st Cir. Sept. 11, 2015); *First Amendment Protection of Charitable Speech*, 2015 OHIO STATE LAW JOURNAL FURTHERMORE 57 (2015).[2]

A. Akron's Panhandling Ordinance is, on its face, a Content-Based Restriction on Speech that Must Satisfy Strict Scrutiny

Any law that draws distinctions based on speech's "subject matter . . . function or purpose" is a content-based rule that is presumptively unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). Akron's anti-panhandling ordinance is clearly such a law. Whether the Ordinance's criminal prohibitions apply to a speaker depends on the content of the speech: a request for money is treated differently than any other type of speech. Under both logic and precedent, this makes the ordinance a content-based restriction. *See id.* at 2229 (citing an "improper solicitation" regulation as a content-based restriction); *Planet Aid v. City of St. Johns, MI*, 782 F.3d 318, 328 (6th Cir. 2015) (restriction on "charitable solicitation and giving" was content-based); *accord, e.g.*, *Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015) (concluding anti-panhandling law was content-based); *Thayer v. City of Worcester*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015) (same); *McLaughlin v. City of Lowell*, 2015 WL 6453144 (D. Mass. Oct. 23, 2015) (same); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755 (D. Colo. Sept. 30, 2015) (same). This alone triggers strict scrutiny, which is fatal to the ordinance here. *Reed*, 135 S. Ct. at 2228.

B. The City's Censorial Purpose of Deterring a Constitutionally-Protected Form of Speech Also Renders the Ordinance Unconstitutional

Yet an additional, independent reason why the anti-panhandling law is unconstitutional is that it was enacted with the unconstitutional purpose of silencing one type of speech, simply because some listeners did not desire to hear it.

Panhandling came to the City Council's attention several times following complaints by merchants and visitors about what they perceived to be too much panhandling downtown. In 2006, prior to the adoption of some of the ordinance's most severe provisions, Akron Deputy Mayor Dave Lieberth explained that restrictive anti-panhandling rules would cut down on amount of panhandling, observing that "When we survey downtown businesses, panhandling is usually the No. 1 or No. 2 complaint." Sandra M. Klepach, *Strategy targets begging in Akron: Council, mayor hope stricter rules would cut down on panhandling*, AKRON BEACON JOURNAL June 13, 2006. He testified before a Council Committee that the restrictions were needed to combat "a definite decline in downtown luncheon business" due to panhandlers. Stephanie Kist,

[2] Two recent appellate decisions initially upheld anti-panhandling ordinances, but each was subsequently vacated in light of new Supreme Court guidance, and ultimately led to a final judgment declaring the ordinances unconstitutional. *Norton v. City of Springfield, Ill.*, 768 F.3d 713 (7th Cir. 2014), *rev'd*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015), *declaring ordinance unconstitutional on remand*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015).

Panhandling issue draws impassioned testimony, AKRON LEADER ONLINE, June 22, 2006.[3] Imposing the types of restrictions that are now codified at 135.10, the Deputy Mayor explained, would have a "deterrent" effect on people soliciting donations downtown, which would, in turn, "make downtown a better place." Hr'g Tape of Public Safety Committee Meeting, 6/19/2006 (on file with the Akron Clerk of Council). Downtown businesses and institutions such as the Art Museum testified in support of the restrictions as well, explaining that being asked by a stranger for money was bad for business and needed to be stopped. *Id.* According to press reports, the Act's supporters repeatedly explained that the goal of the panhandling restrictions were to cut down on the number of panhandlers in the city. *E.g.*, Sandra M. Klepach, *Strategy targets begging in Akron: Council, mayor hope stricter rules would cut down on panhandling*, AKRON BEACON JOURNAL June 13, 2006 ("City Council will consider legislation Monday that would attempt to curtail what city officials call 'the panhandling business.'"); Phil Trexler, *New Akron law tightens panhandling*, AKRON BEACON JOURNAL, June 4, 2008 ("Two years ago, the city of Akron passed legislation hoping to get a handle on panhandlers by forcing them to register with Akron police and giving them stricter guidelines on where they can ply their trade.").

In response to these concerns, one councilmember expressed incredulity and skepticism that panhandling was protected at all by the Constitution, while other members prodded the law department to consider expanding the restrictions and increasing the deterrent effect. *Id.* To the press, Mayor Plusquellic chimed in that panhandling "is really an almost disgusting way to take advantage of someone's kindness." Sandra M. Klepach, *Council considers solicitors: Proposal to register city's panhandlers on tap Monday*, AKRON BEACON JOURNAL, June 17, 2006.

The preamble to the anti-panhandling ordinance codified this motive, explaining that "excessive and aggressive panhandling has become a concern to business and restaurant owners and their patrons," and that panhandling was needed to "protect[] . . . enjoyment of public spaces, particularly in the downtown area." Ord. 356-2006. It was in the public interest, explained the preamble, to make public areas "inviting for residents and visitors:" "persons should be able to move freely upon the streets and sidewalks of the city without undue interference from or intimidation or harassment by panhandlers." *Id.* The only evidence cited in support of the ordinance were unidentified "studies and reports" and "testimony" on the "effects of panhandling on businesses and individuals." *Id.*

The effort to drive one class of speakers from the public sphere because listeners found the speech unlikeable is the classic unconstitutional motive. "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). "The Supreme Court . . . has repeatedly affirmed the principle that constitutional rights may not be denied simply because of hostility to their assertion or exercise." *Bible*

[3] The Deputy Mayor explained that "Akron as a city has quality programs in place to manage hungry and homeless people. . . What we want people to do is give money to those programs instead." Sandra M. Klepach, *Strategy targets begging in Akron: Council, mayor hope stricter rules would cut down on panhandling*, AKRON BEACON JOURNAL, June 13, 2006. Obviously, a government's preference for some causes over others gives it no power to drive speech in support of disfavored causes from the marketplace of ideas. *E.g.*, *Riley v. Nat'l Fed'n of the Blind, Inc.*, 487 U.S. 781, 790–91 (1988).

Believers v. Wayne County, Mich., 805 F.3d 228, 252 (6th Cir. 2015) (en banc); *see also, e.g., McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) ("[T]he government may not selectively shield the public from some kinds of speech on the ground that they are more offensive than others." (internal quotations and alterations omitted)); *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386 (1992) ("The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.").

A censorial purpose is an unconstitutional purpose; a censorial purpose is fatal to the ordinance. *E.g., Minneapolis Star and Tribune Co. v. Minnesota Com'r of Revenue*, 460 U.S. 575, 580 (1983).[4]

Contrary to the concerns of the City Council, the fact that a listener on a sidewalk cannot "turn the page, change the channel, or leave the Web site" to avoid hearing an uncomfortable message is "a virtue, not a vice." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) ("To be clear, the Act would not be content neutral if it were concerned with undesirable effects that arise from "the direct impact of speech on its audience" or "[l]isteners' reactions to speech." If, for example, the speech outside Massachusetts abortion clinics caused offense or made listeners uncomfortable, such offense or discomfort would not give the Commonwealth a content-neutral justification to restrict the speech."). Restricting a category of speech because some members of the community would prefer not to hear it is exactly what the First Amendment does not allow. *McLaughlin v. City of Lowell*, 2015 WL 6453144, at *7 (D. Mass. Oct. 23, 2015) ("The First Amendment does not permit a city to cater to the preference of one group, in this case tourists or downtown shoppers, to avoid the expressive acts of others, in this case panhandlers, simply on the basis that the privileged group does not like what is being expressed."); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014) ("Business owners and residents simply not liking panhandlers in acknowledged public areas does not rise to a significant governmental interest.").

Instead of trying to silence citizens speaking about their needs, the City would be better served by trying to address those needs. Yet, as Brian Davis of the Northeast Ohio Coalition on Homelessness recently explained, the Akron community provides only minimal support for the homeless. There is no guaranteed access to emergency shelter, and virtually no outreach assistance. The primary charity that serves downtown homeless requires clients to satisfy religious obligations that some will not be able or willing to fulfill. https://havenofrest.org/do-you-need-help/ But even if the City chooses to remain indifferent to the homeless population, it has no authority to try to silence its citizens who are in need.

C. Ordinance Falls Well Short of Meeting Demands of Strict Scrutiny.

Content-based laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v.*

[4] Under the strict scrutiny analysis, a City cannot invent new, post-hoc rationalizations for a law. *McLaughlin v. City of Lowell*, 2015 WL 6453144, at *7 (D. Mass. Oct. 23, 2015). To be sure, the preamble to the ordinance also contains unadorned references to "safety and order," but, as discussed more fully below, the provisions of the ordinance fail to further, in a narrowly tailored manner, any of these *potentially* valid objectives.

Town of Gilbert, Ariz., 135 S. Ct. 2218, 2226 (2015). This means that the government must point to a compelling (and non-censorial) governmental objective (such as protection of human life) that cannot be furthered with a more specific law. This is "the most demanding test known to constitutional law." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015) (quotation omitted). "The burden for justifying such restrictions on speech falls entirely upon the government." *Id.* Plaintiffs challenging a content-based restriction are "deemed likely to prevail"—and therefore entitled to a preliminary injunction—unless the Government comes forward with proof that there is no less restrictive alternative that will fulfill its compelling interests. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666, 671 (2004).

This presumption of unconstitutionality is exceedingly difficult to overcome. Virtually every law fails to survive the strict scrutiny analysis. *United States v. Alvarez*, 132 S.Ct. 2537, 2544 (2012) ("[C]ontent-based restrictions on speech have been permitted, as a general matter, only when confined to the few 'historic and traditional categories [of expression] long familiar to the bar'" (internal quotations omitted)). Over the past few years, the Sixth Circuit has *twice* struck down laws that impose restrictions on charitable solicitation. *Planet Aid v. City of St. Johns*, 782 F.3d 318, 328 (6th Cir. 2015); *Speet v. Schuette*, 726 F.3d 867, 880 (6th Cir. 2013).

In fact, *every single federal court* to consider the matter has found anti-panhandling ordinances—even ones less restrictive of speech than Akron's—to fail strict scrutiny. *E.g.*, *Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015); *McLaughlin v. City of Lowell*, 2015 WL 6453144 (D. Mass. Oct. 23, 2015); *Browne v. City of Grand Junction, Colorado*, No. 14-CV-00809-CMA-KLM, 2015 WL 3568313, at *1 (D. Colo. June 8, 2015); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014) ; *Guy v. County of Hawaii*, 2014 WL 4702289, at *5 (D. Hawaii 2014); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 631 (S.D.W.Va. 2013). Recognizing the futility of the argument, other cities have not even bothered to defend their laws against a strict scrutiny analysis. *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 413 (7th Cir. 2015); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 797 (9th Cir. 2006) ("As the City concedes, the solicitation ordinance cannot survive strict scrutiny.").[5]

The scope of the anti-panhandling ordinance's restrictions bear little relationship to any compelling, non-censorial government interest. (This makes sense, since, as noted above, the stated purpose of the restrictions were simply to drive a form of disliked speech out of the City).

[5] Indeed, Akron's anti-panhandling ordinance is so ill-suited to further any legitimate government purpose that it would fail even under the more friendly intermediate scrutiny. Under the more forgiving standard, a law "still must be narrowly tailored to serve a significant governmental interest." *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014) (quotation omitted). "As the Court explained in *McCullen*, however, the burden of proving narrow tailoring requires the County to *prove* that it actually *tried* other methods to address the problem." *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015) (emphasis in original). Akron's anti-panhandling ordinance falls well short of satisfying even this easier test. *See also, e.g.*, *Cutting v. City of Portland, Me.*, No. 14-1421, 2015 WL 5306455, at *7 (1st Cir. Sept. 11, 2015) (striking down content-neutral restrictions used against panhandlers); *Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015) (same); *Thayer v. City of Worcester*, 2015 WL 6872450, at *14 (D. Mass. 2015) (same).

Consider, for example, the ordinance's time restrictions, which ban solicitation after sunset. Akron Ord. 135.10(B). During winter months, this can mean that solicitation in the city must stop as early as 5 in the afternoon. This explicitly includes solicitation that takes place on private property, thus making it illegal for the food bank, the art museum, the University of Akron, or anyone else in the city to request a donation after sunset even on their own property. There has been no evidence before, during, or after the ordinance's enactment which would explain how such a broad and clumsy ban is carefully written to further a compelling interest. Indeed, both the Supreme Court and the Sixth Circuit have struck down such time restrictions on solicitation. *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 580 (6th Cir. 2012) (striking down 6 pm curfew for door-to-door solicitation); *City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547, 1558 (7th Cir. 1986) ("Watseka has failed to offer evidence that its 5 p.m. to 9 p.m. ban on solicitation is narrowly tailored to achieve Watseka's legitimate objectives. Watseka failed to show both the necessary relationship between the ban and its objectives, and that it could not achieve its objectives by less restrictive means."), *aff'd without opinion*, 479 U.S. 1048 (1987).[6]

Another illustration of Section 135.10's plainly unconstitutional sweep comes from the ordinance's "place" restrictions in Akron Ord. 135.10(C). This outlaws solicitation in various solicitation-free zones around churches, the Akron Art Museum, the Lock 3 Park, the Akron Civic Theater, Canal Park Stadium, outdoor restaurants, and various other landmarks within the City. No valid government objective is served by these zones; they can be explained only by the censorial goal of sparing churchgoers, museum patrons, and park visitors the indignity of being exposed to one type of speech.[7] This is not a valid goal of government, and such restrictions are not narrowly suited to further any compelling interest. As a result, geographic bans on charitable solicitation have been repeatedly struck down. *See, e.g.*, *Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 949 (9th Cir. 2011) (en banc); *Thayer v. City of Worcester*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015); *McLaughlin v. City of Lowell*, 2015 WL 6453144 (D. Mass. Oct. 23, 2015); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755, at *13 (D. Colo. Sept. 30, 2015); *Wilkinson v. Utah*, 860 F.Supp.2d 1284, 1290 (D. Utah 2012).

Similarly unconstitutional are the ordinance's provisions that proscribe the manner in which panhandlers may ask for donations. Akron Ord. 135.10(D). The ordinance prohibits a panhandler from "blocking the path" of a person or asking a person to reconsider a "no" answer. These provisions are not sufficiently related to the City's goal of public safety (or any other compelling interest) to be justified. The City can regulate "true threats," *Virginia v. Black*, 538 U.S. 343, 359 (2003), but standing in the middle of a sidewalk or asking a person who said "no" to reconsider hardly meets this standard. *See, e.g.*, *Thayer v. City of Worcester*, 2015 WL 6872450 (D. Mass. Nov. 9, 2015) (striking down provisions against blocking path and following a person after they gave a negative response); *McLaughlin v. City of Lowell*, 2015 WL 6453144, at *9 (D. Mass. Oct. 23, 2015) ("The bans on following a person and panhandling after a person

[6] "[L]ower courts are bound by summary decisions by this Court until such time as the Court informs them that they are not." *Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975) (internal alterations and quotations omitted).
[7] This purpose is confirmed by the reasons witnesses put forward to justify these buffer zones. Hr'g Tape of Public Safety Committee Meeting, 6/19/2006 (on file with the Akron Clerk of Council).

has given a negative response are not the least restrictive means available"); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755, at *12-13 (D. Colo. Sept. 30, 2015) ("[T]he Court does not believe[] that a repeated request for money or other thing of value necessarily threatens public safety.").

The ordinance's ban on so-called "false and misleading" panhandling is also unconstitutional. Akron Ord. 135.10(E). False speech is not automatically outside constitutional protection, *United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012), and the City must do more than make certain types of statements illegal by declaring them to be "false" or "misleading" in a content-discriminatory fashion. An example of the ordinance's unconstitutional sweep comes in its regulation of costumes: by restricting use of makeup and "indicia of physical disability," Akron Ord. 135.10(E)(4)-(6), it becomes illegal for trick or treaters to ask for donations to a charity while dressed as, for instance, a one-eyed, hook-handed, or peg-legged pirate. In any event, even the City's general interest in preventing actual fraud would not justify *content-based* prohibitions on fraud. For example, even though a state may regulate obscenity, "it may not prohibit . . . only that obscenity which includes offensive *political* messages." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992) (striking down content-based statute that regulated fighting words, even though government could have outlawed the same conduct in a content-neutral manner). Here, the City has no compelling interest for treating fraud that is carried out in connection with an immediate charitable solicitation different than fraud carried out in, for example, a business transaction. *McLaughlin v. City of Lowell*, 2015 WL 6453144, at *9 (D. Mass. Oct. 23, 2015) (striking down law against coercive panhandling).

Finally, perhaps the most odious provision of the ordinance is its mandate that all solicitors pre-register with the police by visiting a downtown police station, filling out an application, being photographed and fingerprinted, and obtaining a license before asking anyone for help. Akron Ord. 135.10(F). "It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so." *Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002). "It is therefore not surprising that we and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum." *Berger v. City of Seattle*, 569 F.3d 1029, 1039 (9th Cir. 2009) (en banc). In fact, shortly before Akron adopted its registration mandate, the City of Cincinnati repealed its panhandler registration rules following an adverse court decision. *Henry v. City of Cincinnati, Ohio*, 2005 WL 1198814, at *10 (S.D. Ohio 2005). Even the City of Canton's law director explained that a permit requirement for panhandlers would be unconstitutional. Kelly Byer, *Panhandlers give their side; regulations, opinions differ*, CantonRep.com, http://cantonrep.com/article/20140707/NEWS/140709530.

The unconstitutionality of the registration mandate is underscored by the motive for enacting it. As Akron police captain Daniel Zampelli explained to City Council, the registration requirement would increase the "hassle factor" by "mak[ing] it easier for police to approach and question panhandlers, check for outstanding warrants and make sure they're in compliance, even

if they're not being aggressive." *Council tightens restrictions on beggars: City hopes to satisfy merchants while avoiding free speech suit*. AKRON BEACON J., 7/11/2006. Or, as the Act's chief proponent, Deputy Mayor Lieberth, put it: "By requiring registration, we make it difficult for people to come into Akron and panhandle and then go back to their communities." Sherry Karabin, *Business owners weigh in on the city's panhandling ordinance*, AKRON LEGAL NEWS, May 27, 2011, *available at* http://www.akronlegalnews.com/editorial/233; *see also* Phil Trexler, *New Akron law tightens panhandling,* AKRON BEACON JOURNAL, June 4, 2008 ("Akron police say registration has helped keep the number of beggars constant."). Clearly, "hassl[ing]" speakers and "mak[ing] it difficult" to speak are not legitimate government interests. Like the remainder of the ordinance, this provision is supported simply by a desire to censor instead of any valid government purpose.

Conclusion

In sum, the consistent and overwhelming precedent from federal courts at every level leads to one unavoidable conclusion: Akron Ordinance 135.10 is an unconstitutional infringement on the freedom of speech.