

TESTIMONY TO PROVIDENCE CITY COUNCIL ORDINANCE COMMITTEE ON A PROPOSED ORDINANCE RELATING TO “OPT-IN MASS DELIVERIES”

This testimony is being submitted on behalf of the Rhode Island Press Association, the New England First Amendment Coalition, and the American Civil Liberties Union of Rhode Island.

We are writing in opposition to proposed Ordinance 11096, “Opt-In Mass Deliveries.” We recognize that this proposal was introduced some months ago, but we only just learned of its consideration and are therefore hopeful you will take our comments into account before you reconsider sending it back to the full Council.

In short, we believe the ordinance unfairly targets certain First Amendment-protected speech without adequately addressing the littering problem it intends to solve. While well-intended, this type of ordinance has been ruled unconstitutional in municipalities across the country, and Providence need look no further than other cities in Rhode Island for examples of more reasonable alternatives.

The unsolicited distribution of literature or pamphleteering is deeply rooted in this country’s history. It promotes an informed citizenry, encourages political discourse and is perhaps the most effective and cost-efficient way for people to communicate with other residents. To this day, community newspapers, as well as non-profit organizations, political campaigns and others, rely on pamphleteering.

Ordinance 11096, however, singles out for-profit newspapers and similar communications while reserving the right to leave literature (and presumably to some, litter) to other interests, including non-profit newspapers. A charity or political candidate can (appropriately, in our view) leave donation solicitations at a private residence under this ordinance, but a newspaper providing coverage of local affairs is prohibited from leaving a copy in the driveway. This not only makes it difficult for newspapers to inform their communities, but it also decreases circulation and the ad revenue needed to sustain their respective newsrooms. Distinguishing between for-profit and non-profit publications raises the constitutional bar that Ordinance 11096 must overcome because ultimately the distinction is unrelated to the littering problem the city is trying to prevent.

It’s important to note that courts across the country have found similar ordinances to violate the First Amendment even when those laws didn’t discriminate between publishers. In 1999, the Georgia Supreme Court found that an ordinance prohibiting the distribution of free printed material to yards, driveways or porches violated the U.S. Constitution. The court determined that there were other ways to prevent litter that didn’t limit publishers to using the prohibitively expensive mail system. Similarly, an Illinois court in 1998 found that the First Amendment right of newspapers to deliver publications to homes of non-subscribers outweighed the risk of potential litter in communities. While Providence may

have a legitimate concern about litter, Ordinance 11096 is neither narrowly tailored to address the problem nor sufficiently protective of First Amendment rights.

In contrast, the City of Pawtucket has a littering ordinance that focuses not on the publisher or type of speech, but on the cause of litter itself: distributing material in a way where it can be carried by the elements into public roads and walkways. See City of Pawtucket Law § 263-14. This analogous law applies to both commercial and non-commercial materials. With some limitations, the law allows unsolicited distribution to private residences so long as the material is “placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places . . .” To further protect First Amendment interests, the law exempts newspapers from the limitations placed on other publications. But addressing the litter concern, the law still requires newspaper distribution in a way that prevents those papers from “being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.” While not necessarily without potential flaws, this approach aligns much more closely with the goals of Ordinance 11096 and the rights provided by the First Amendment.

While our organizations are sympathetic to residents looking to maintain litter-free neighborhoods, we believe Ordinance 11096 will prove both ineffective and harmful to First Amendment interests. We respectfully ask that you oppose the ordinance and consider other ways to address resident concerns.

Please let us know if we can be of any assistance during that process. We welcome the opportunity to help meet the city’s needs while also protecting the First Amendment rights of its citizens. Thank you for considering our views.

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