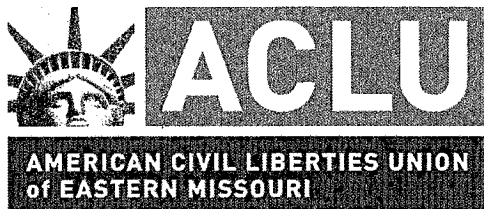


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October 2, 2012

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Arnold, Missouri 63010

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Re: Code of Ordinances § 11-109

Dear Mr. Shockey:

We have received a complaint about City of Arnold Code of Ordinances § 11-109. Because the ordinance violates the First Amendment, we are writing to demand that the City agree, in writing, to suspend enforcement of the ordinance until it can be repealed.

Our research indicates that § 11-109 was adopted in 1975. It provides as follows:

Sec. 11-109. - Placing handbills on vehicles.

No person shall throw or deposit any commercial handbill in or upon any vehicle; however, it shall not be unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

In *Krantz v. City of Fort Smith*, 160 F.3d 1214 (8th Cir. 1998), the court held that a substantially similar ordinance was unconstitutional. In pertinent part, the Court held that the government's interest in preventing litter was not compelling enough to outweigh a citizen's right to free speech and that, even so,

a ban on leafleting of vehicles is not narrowly tailored. The Seventh Circuit agrees, but has also held that such a ban fails to allow ample alternative channels. *Horina v. City of Granite City, Ill.*, 538 F.3d 624 (7th Cir. 2008). The Ninth Circuit reached the same result in the preliminary injunction context and the Supreme Court denied review. *Klein v. City of San Clemente*, 584 F.3d 1196 (9th Cir. 2009), *cert. denied* 130 S.Ct. 1706 (2010).

In 2010, we litigated this issue with the City of St. Louis. That suit resulted in entry of a consent judgment under which the City is enjoined from enforcing or threatening to enforce its nearly identical ordinance. Later that year, the City of Kirkwood repealed its similar ordinance after we brought the unconstitutionality of the ordinance to the City's attention. Several weeks ago, our efforts to contact the City of Cape Girardeau about their handbill ordinance were unsuccessful and we were required to file suit. Last week, the Court entered a preliminary injunction preventing enforcement of the ordinance. *Traditionalist Am. Knights of the Ku Klux Klan v. City of Cape Girardeau, Mo.*, 1:12CV0151JAR, 2012 WL 4464868 (E.D. Mo. Sept. 27, 2012).

Section 11-109's conflict with the First Amendment is well-established; thus, litigation would be a waste of resources. Accordingly, please notify us in writing that the City of Arnold agrees not to enforce § 11-109 until it can be repealed. We note that the Council is scheduled to meet on Thursday, October 4, so please respond no later than noon on Friday, October 5. If we do not receive your assurance that the ordinance will not be enforced, then will consider other options, up to and including seeking injunctive relief in court.

Thank you for giving this matter your immediate attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony E. Rothert', with a stylized, flowing script.

Anthony E. Rothert  
Legal Director