



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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Mayor Brad Winslow
Village of Corinth
260 Main Street
Corinth, New York 12822

Dear Mayor Winslow,

The New York Civil Liberties Union, Capital District Chapter, is aware that the Village Board of the Village of Corinth is contemplating the passage of a local law relating to loitering.

Loitering crimes have historically been a source of controversy. This type of crime, by its very nature, implicates conduct -- speech, association and expression -- that is afforded broad protection under the federal and state constitutions. In light of this history, the NYCLU has serious concerns with respect to legislation of this sort that, as currently drafted, would, in its application, run afoul of the U.S. Supreme Court's proscriptions against anti-loitering laws that are sufficiently vague so as to sanction the prosecution of lawful conduct. For this reason the NYCLU opposes adoption of new Chapter 95 in the Village of Corinth Village Code.

The legal issues relating to the passage of loitering laws have been addressed in a series of decisions handed down by the Supreme Court. In its 1972 landmark decision in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), a loitering law was deemed unconstitutionally vague and its enforcement prohibited. The Court stated that the anti-loitering law at issue "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute, it encourages arbitrary and erratic arrests and convictions, it makes criminal activities that by modern standards are normally innocent, and it places almost unfettered discretion in the hands of the police." *Id.* at 162.

Some twenty years later, the United States Supreme Court, decided *City of Chicago v. Morales*, 527 U.S. 41 (1999), which struck down as unconstitutionally vague a Chicago ordinance that prohibited "criminal street gang member[s]" from loitering with no apparent purpose. The ordinance directed a police officer to issue an order that such persons disperse. In its analysis of the statute, the Court stated that vagueness may invalidate a criminal law if it "fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty." The Court also noted that the "freedom to loiter for innocent purposes" is protected by the Due Process Clause

of the Fourteenth Amendment, and that this "right to remove from one place to another according to inclination" is an "attribute of personal liberty" protected by the Constitution. *Id.* at 53.

We believe that it is foreseeable and all but inevitable that proposed Chapter 95 will lead to arbitrary enforcement and the violation of fundamental liberties, for Chapter 95 prohibits:

- “obstruction” of pedestrians or vehicles on the public sidewalks or streets, § 95-2(A),
- “obstructing, molesting or interfering with any person” upon any street, sidewalk, park or other public place, § 95-2(B),
- “remaining in one location ... without being able to establish a legitimate purpose ... or by general conduct, exhibiting the absence of a lawful purpose in so remaining § 95-2(C), and
- refus[ing] to move from a location ... when requested to do so by a police officer, provided that such officer has exercised his discretion reasonably under the circumstances in order to preserve or promote public peace and order.” § 95-2(D).

How does “obstruction” manifest itself? Would a gaggle of children attending a day-care program who are being walked in a group to visit the local fire department be guilty of “loitering” when they inevitably obstruct pedestrians on the sidewalks or vehicles in the road when they are crossing the street? Or, would the police exercise their discretion to not charge these young people and their teachers?

How does one manifest a “legitimate purpose” for remaining in one location? Would individuals peacefully standing outside a military recruiting office, leafleting passers-by and counseling young people who may be planning to enter the recruiting office be deemed to have a “legitimate purpose” in remaining in that particular location? Or, would the police exercise their discretion to charge these peaceful counter-recruiters with loitering because the police are offended that counter-recruiters might try to interfere with military recruiting?

What kind of “general conduct” would “exhibit the absence of a lawful purpose?” Would a person window shopping while waiting to meet a friend for a luncheon appointment exhibit the absence of a lawful purpose? Or might the police exercise their discretion to charge or give an order to move along based on the race, gender and age of the person who is window shopping?

And, by its very terms, § 95-2(D) grants enormous discretion to the police. It invites a police officer to engage in surmise and mind-reading which may lead the officer to engage in prior restraint, in anticipation of evidence of an act that would disturb public peace and order.

This proposed law, if enacted, would make a broad range of conduct inherently suspicious and subject to police intervention. When might purely innocent “loitering”

cross the line between lawful and lawless to become the crime of loitering? This is a crime, as drafted, that exists largely in the eye of the beholder. Any person in a stationary position may become the subject of a police action: subject to being stopped, questioned, or arrested. The proposed statute leaves it unclear to the public as to when loitering may be deemed unlawful, or deemed suspicious by a police officer. The proposed rule gives the police officer little guidance as to how to discern when a person is loitering without “legitimate purpose” or when a person is potentially about to disturb public peace or order. It is this vagueness in the language of the bill that may well lead to its unconstitutional application.

We strongly urge the Village Board of the Village of Corinth to refrain from adopting proposed Chapter 95.

Sincerely,

Melanie Trimble
Executive Director

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