

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

NO. SJC-12914

MASSACHUSETTS COALITION FOR THE HOMELESS, JOHN CORREIRA and
JOSEPH TREEFUL,

Plaintiffs/Appellants,

v.

CITY OF FALL RIVER, DISTRICT ATTORNEY OF BRISTOL COUNTY, CHIEF OF
POLICE OF FALL RIVER,

Defendants/Appellees

ON APPEAL FROM AN ORDER OF THE SUPREME JUDICIAL COURT FOR
SUFFOLK COUNTY

**BRIEF OF *AMICUS CURIAE* THE NATIONAL HOMELESSNESS LAW
CENTER
IN SUPPORT OF THE PLAINTIFFS-APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

amicus curiae the National Homelessness Law Center is a nonprofit corporation that does not have a parent corporation. It does not have stock, and thus no publicly held corporation owns 10 percent or more of its stock.

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INTEREST OF *AMICUS CURIAE*

Founded more than thirty years ago, the National Homelessness Law Center¹ (the “Law Center”) is a nonprofit organization based in Washington, D.C. It is the only national legal organization with the mission to prevent and end homelessness. In connection with this objective, the Law Center gathers information from across the country about state and local laws that impact people experiencing homelessness, and identifies best practices to safeguard their rights and to address the root causes of homelessness. In the course of this work, the Law Center has published numerous reports analyzing issues related to homelessness in the United States.² For example, in 2019, the Law Center published *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (“*Housing Not Handcuffs*”).³ In *Housing Not Handcuffs*, the Law Center examines the data obtained through its analysis of 187 city codes that effectively make it a crime for persons experiencing homelessness to engage in necessary, life-sustaining activities—such as sleeping or sitting—in public places, due to a lack of alternatives, when those activities would otherwise be lawful if conducted in one’s home.

¹ Formerly known as National Law Center on Homelessness & Poverty.

² The reports that the National Law Center has produced in recent years are available at <https://nlchp.org/publications>.

³ Nat’l Homelessness L. Ctr. (formerly Nat’l L. Ctr. on Homelessness & Poverty), *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [hereinafter *Housing Not Handcuffs*].

Because of the Law Center's expertise, federal, state, and local policymakers have asked it for advice in drafting laws and ordinances to help alleviate issues relating to homelessness. Notably, the Law Center's Founder and Executive Director, Maria Foscarinis, served as the architect for the 1987 McKinney-Vento Homelessness Assistance Act, the first major federal legislation to address homelessness. Additionally, the Law Center has consulted with multiple municipalities to create constructive alternatives to criminalizing homelessness, including temporary labor programs as an alternative to enforcement of panhandling laws such as Massachusetts Section 17A.

RULE 17 DECLARATION

Pursuant to Mass. R. App. P. 17(c)(5), *amicus* states as follows: (A) neither party's counsel authored the brief in whole or in part; (B) neither party nor their counsel contributed money that was intended to fund preparing or submitting the brief; (C) no person other than *amicus*, their members or their counsel contributed money that was intended to fund preparing or submitting the brief; and (D) counsel for *amicus* has previously represented Appellant Massachusetts Coalition for the Homeless, but only in unrelated matters.

SUMMARY OF ARGUMENT

Amicus agrees that G.L. c. 85, § 17A is an unconstitutional content-based restriction on free speech. Although it nominally prohibits panhandling, the statute effectively criminalizes homelessness. The purpose of this brief is to give the Court some insight into the growing issue of the criminalization of poverty from the perspective of an organization with a mission to end homelessness.

Unsheltered homelessness is a vast and growing national problem. The dearth of available housing is the primary cause. Persons of color disproportionately experience homelessness, due in part to racial discrimination in housing. The COVID-19 pandemic makes this situation even bleaker. (Pages 15-18)

In recent years, commensurate with the increase in unsheltered homelessness, states and municipalities have increasingly enacted laws criminalizing activities engaged in largely by people experiencing homelessness and housing insecurity. They include laws that specifically target panhandling, such as Section 17A, as well as laws that criminalize the public performance of basic human activities, including sleeping and sharing food. Such laws effectively make it illegal to *be* homeless in the affected jurisdictions. (Pages 19-27)

The criminalization of homelessness is cruel and ineffective. Laws like Section 17A fail to address underlying causes and instead punish those experiencing homelessness for their poverty. Their enforcement engenders perverse effects,

forcing people experiencing homelessness deeper into poverty, making it more difficult for them to obtain housing, eroding trust between law enforcement officials and the homeless population, and further stigmatizing an already-marginalized segment of our communities. (Pages 28-34)

Criminalization is as unnecessary as it is counter-productive. Better alternatives exist. A “Housing First” approach to homelessness focuses on pairing those experiencing homelessness with permanent housing solutions. Another approach, which has gained recognition recently, is to repurpose funds from law enforcement to focus on social services. Other municipalities have found success in day labor programs, which provide paid work in lieu of panhandling. All of these alternatives seek to avoid unnecessary interaction with law enforcement and are proven alternatives to criminalizing homelessness. (Pages 35-38)

This Court should find Section 17A unconstitutional. Courts across the country have consistently found that seeking alms is protected expressive activity. They have consistently invalidated laws similar to Section 17A, which is a content-based restriction on free speech. The result should be the same here. (Pages 40-43)

ARGUMENT

I. HOMELESSNESS IN THE UNITED STATES

A. Unsheltered Homelessness Is a Growing National Crisis

According to the United States Department of Housing and Urban Development (“HUD”), approximately 568,000 people experienced homelessness in 2019, more than a third of whom experienced “unsheltered homelessness.”⁴ Unsheltered homelessness occurs when a person’s primary nighttime residence is a public or private location “not designated for, or ordinarily used as, a regular sleeping accommodation for people (for example, the streets, vehicles, or parks).”⁵

B. The Homeless Population Is Undercounted

The HUD data underrepresents the number of people experiencing homelessness or financial insecurity driving them to panhandle. In fact, the actual homeless population could be anywhere between 2.5 and 10 times larger than HUD’s count.⁶ There are several possible explanations for the discrepancy.

First, HUD’s definition of homelessness is underinclusive. It excludes incarcerated people experiencing homelessness, those hospitalized at the time of the count, and those temporarily staying with friends and family, and it does not count

⁴ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-20-433, HOMELESSNESS: BETTER HUD OVERSIGHT OF DATA COLLECTION COULD IMPROVE ESTIMATES OF HOMELESS POPULATION 25-26 (2020), <https://www.gao.gov/assets/710/708090.pdf> [hereinafter *Better HUD Oversight*].

⁵ *Housing Not Handcuffs*, *supra* note 3, at 28.

⁶ *Id.*

people who—while not currently experiencing homelessness—are housing insecure and financially pressured to panhandle.⁷

Second, HUD obtains its numbers through Point In Time (“PIT”) counts, a figure derived by physically counting any person experiencing homelessness who may be found on a given night.⁸ This method inevitably misses people who were able to be indoors during the night of the count. *Martin v. City of Boise*, 920 F.3d 584, 604 (9th Cir. 2019), *cert. denied sub nom. City of Boise, Idaho v. Martin*, 140 S. Ct. 674 (2019) (“It is widely recognized that a one-night point in time count will undercount the homeless population”).

Finally, even the most well-intentioned of volunteers is unable to find and count every person experiencing homelessness. These volunteers are often under-trained and may be instructed not to visit “dangerous” areas—like large parks, alleyways, and abandoned buildings—in which people experiencing homelessness might congregate.⁹

⁷ *Id.* at 6.

⁸ *Id.*; see generally *Better HUD Oversight*, *supra* note 4, at 1-3.

⁹ Nat’l Homelessness L. Ctr. (formerly Nat’l L. Ctr. on Homelessness & Poverty), *Don’t Count on It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America* 11 (2017), <https://nlchp.org/wp-content/uploads/2018/10/HUD-PIT-report2017> [hereinafter *Don’t Count On It*]; see also *Better HUD Oversight*, *supra* note 4, at 13.

C. People of Color Are Disproportionately Homeless

“Racist housing policies contribute to disproportionate rates of homelessness among people of color, even when controlling for poverty.”¹⁰ Thus, although people of color constitute only a third of the general U.S. population, they make up more than 60% of the nation’s homeless population.¹¹ Black people are only 13% of the general population but, per HUD’s most recent PIT count, they constitute 40% of the homeless population.¹²

D. The Lack of Available Housing Is the Primary Cause of Homelessness

Racist housing policies in concert with the growing gap between income and the cost of available housing are the primary causes of homelessness. Increases in housing costs are associated with direct increases in homelessness. According to the United States Government Accountability Office, “a \$100 increase in median rental price was associated with about a 9 percent increase in the estimated homelessness rate.”¹³

Affordable housing is in short supply. There are only 36 available affordable housing units for every 100 extremely low income (“ELI”) renters.¹⁴ In many

¹⁰ *Don’t Count On It*, *supra* note 9, at 32.

¹¹ *Housing Not Handcuffs*, *supra* note 3, at 11.

¹² *Id.*

¹³ *See Better HUD Oversight*, *supra* note 4, at 30.

¹⁴ NAT’L LOW INCOME HOUS. COAL., *THE GAP: A SHORTAGE OF AVAILABLE HOMES 1* (2020), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf.

popular metropolitan areas, ELI renters face an even more barren housing desert, with only 18 available affordable housing units for every 100 ELI renters in Nevada, 23 for every 100 ELI renters in California, and 26 for every 100 ELI renters in Florida.¹⁵

Massachusetts does better, but even here there are only 48 available housing units for every 100 ELI renters.¹⁶ It is unsurprising that prospective ELI renters who were unable to beat the odds and have experienced homelessness—along with many of the 58% of ELI renters in Massachusetts who spend over 50% of their income on housing costs¹⁷—turn to panhandling to make ends meet. This reality has become even bleaker during the COVID-19 pandemic. In fact, housing insecurity amid COVID-19 is so acute that Governor Baker recently extended the Moratorium on Evictions and Foreclosures to October 17, 2020.¹⁸ Once the Moratorium expires, many residents of the Commonwealth will face renewed housing insecurity. Because this persistent lack of affordable housing is outside the control of those impacted by it, criminalizing their necessary response to it serves no societal purpose.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 8, Appendix A: State Comparisons.

¹⁷ See *Massachusetts, Nat'l Low Income Hous. Coal.*, <https://reports.nlihc.org/gap/2018/ma> (2018).

¹⁸ Governor Baker Foreclosures and Evictions Moratorium Extension Letter, July 21, 2020, <https://www.mass.gov/doc/foreclosures-and-evictions-moratorium-extension-july-21-2020>.

II. INCREASE IN LAWS CRIMINALIZING HOMELESSNESS

In recent years, as unsheltered homelessness has increased and become more visible,¹⁹ many cities and towns have initiated campaigns to punish individuals for basic survival activities in public. We refer to these punishments—including incarceration and expensive fines for acts as mundane as sitting in public and sharing food—as the “criminalization of homelessness.”²⁰

For thirteen years, the Law Center has monitored the city codes of 187 U.S. cities, including Boston, Fall River, and Worcester in Massachusetts,²¹ specifically tracking local ordinances that criminalize homelessness. It has found a significant rise in the adoption of these laws across every single category measured.²²

A. Laws Criminalizing Panhandling

Restrictions on panhandling have surged, punishing people who ask for food, public transportation fare, first aid supplies, and other necessities. As of 2019, 83% of surveyed cities had implemented at least one such law.²³ From 2006 to 2019, laws prohibiting begging in particular areas increased in number by 13%.²⁴ Within the same period, citywide laws banning panhandling rose by 103%.²⁵

¹⁹ *Housing Not Handcuffs*, *supra* note 3 at 37.

²⁰ *Id.* at 10.

²¹ *Id.* at 112.

²² *Id.* at 11.

²³ *Id.* at 13.

²⁴ *Id.* at 13-14.

²⁵ *Id.* at 13.

Cities and municipalities in Massachusetts ostensibly use such statutes and ordinances to restrict panhandling, but in doing so they effectively criminalize homelessness.²⁶ For example, Section 17A prohibits people from signaling, stopping, or “accosting” vehicles for the purpose of soliciting charitable donations for their own livelihood, but allows the same behavior by people selling newspapers, goods in other exempted categories, and those working for nonprofit organizations. This classification enables local law enforcement to discriminate against the poor and those experiencing homelessness, and that is in fact what happens.

Local officials, moreover, use Section 17A to target poor people in areas of high tourist interest and shopping districts. For example, in 2017, the Mayor of Brockton requested that the police in his city focus their enforcement of Section 17A in areas of downtown where “small business owners [were] trying to attract

²⁶ Little, et al., *Nowhere to Go: In many cities, it’s illegal to beg for food or money*, CSN Homelessness (July 29, 2020), <https://homeless.cnsmaryland.org/2020/06/29/illegal-to-beg-for-food/> [hereinafter *Nowhere to Go*] (“In Boston, the unhoused account for almost one of every eight [total] arrests.”); *see also, e.g.*, Rebecca Woolington and Melissa Lewis, *Portland homeless accounted for majority of police arrests in 2017, analysis finds*, The Oregonian/OregonLive (updated Jan. 30, 2019), https://www.oregonlive.com/portland/2018/06/portland_homeless_accounted_fo.html (Portland homeless individuals accounted for 50% of arrests in 2017 but represented under 3% of population); David Kroman, *In Seattle, 1 in 5 people booked into jail are homeless*, Crosscut: Equity (Feb. 19, 2019), <https://crosscut.com/2019/02/seattle-1-5-people-booked-jail-are-homeless> (“According to its own data, the Seattle Police Department (SPD) in 2018 booked just over 1,000 homeless people into jail a combined 3,211 times. That means one out of every five bookings last year was of someone struggling with homelessness, despite the homeless making up about 1 percent of the city’s population.”).

customers from outside the city.”²⁷ Likewise, although he denied that his Department’s enforcement of Section 17A was aimed at panhandlers, the Fall River Police Chief admitted that after the injunction was ordered in this case, “local police are limited for now in their ability to ‘prevent an escalation’ between motorists and panhandlers.”²⁸

The state statute is not the only discriminatory law enforcement tool available to municipalities. For example, Boston City Ordinance 16-41 prohibits verbal and nonverbal requests for immediate monetary or other valuable donations under several conditions, including solicitation “in an aggressive manner,” and in certain public areas, including public transportation stops, parking structures, outdoor cafes, lines to commercial establishments, and crosswalks.²⁹ The ordinance prohibits solicitation of immediate donations within 10 feet of ATM machines and entrances of banks or check cashing establishments, as well as solicitation “while walking on, standing on or going into any street or highway used for motor vehicle travel, or any area appurtenant thereto.”³⁰ Boston Police officers have issued citations under the ordinance, ostensibly for violations of its “aggressive manner” provision, in cases

²⁷ Brockton Police Emails at ADD2 (Oct. 26, 2017 12:36 PM).

²⁸ Amanda Burke, Police Chief: Ruling gives Fall River panhandlers ‘leeway,’ but other laws are on the books, *The Herald News* (Apr. 23, 2019 5:46 PM), <https://www.heraldnews.com/news/20190423/police-chief-ruling-gives-fall-river-panhandlers-leeway-but-other-laws-are-on-books>.

²⁹ *See* Boston Municipal Code 16-41.2.

³⁰ *Id.*

involving such innocuous behavior as “shaking a plastic cup with change in it” within 10 feet of an entrance to a bank.³¹ Enforcement of the Boston panhandling ordinance in this manner disparately impacts the poor in general, and people experiencing homelessness in particular, and eliminates large swaths of Boston public areas as potential sites for people to seek charitable donations for personal use.

B. A General Increase in Laws Criminalizing Homelessness

The recent surge of laws criminalizing homelessness is not limited to panhandling or begging statutes like Section 17A. Instead, begging laws are part and parcel of a broader, nationwide effort to “crack down”³² on individuals experiencing homelessness and to criminalize their efforts to survive.

1. Laws criminalize public sleeping

Laws against sleeping in public offer one example. In 2019, the Law Center found that 51% of surveyed cities had adopted at least one law restricting sleeping in public.³³ From 2016 to 2019 alone, the Law Center reported 22 new laws prohibiting public sleeping within certain areas, a 44% increase.³⁴

³¹ Boston Police Incident Report, Oct. 2, 2019 at ADD3 (narrative account of citation issued in violation of City Ordinance 16-41 for Aggressive Panhandling).

³² Trevor Bach, *Will Fines and Jail Time Fix the Homelessness Crisis?* U.S. News (2019), <https://www.usnews.com/news/cities/articles/2019-10-07/us-cities-are-increasingly-cracking-down-on-homelessness>.

³³ *Housing Not Handcuffs*, supra note 3, at 12.

³⁴ *Id.*

Laws prohibiting “camping” in public are also on the rise. As of 2019, 72% of cities surveyed by the Law Center prohibit public camping or the public possession of so-called “camping paraphernalia”—prohibitions that often go so far as to make it a crime to use a blanket during cold winter months.³⁵ From 2006 to 2019, the number of laws prohibiting camping in particular areas rose by 70%.³⁶ During that same time, citywide bans on “camping” rose by 92%.³⁷ These laws are particularly problematic as there are more people experiencing homelessness than there are shelter beds available. For example, although Boston added 178 shelter beds last year, the 2019 Boston Homelessness Census counted 120 people who are still experiencing unsheltered homelessness despite the additional shelter beds.³⁸ Further, the Census noted that only 45% of those seeking shelter were from Boston—35% came from other communities within the Commonwealth, and 20% were from communities outside the Commonwealth.³⁹

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ City of Boston 39th Annual Homelessness Census (2019), https://www.boston.gov/sites/default/files/document-file-05-2019/2019_homeless_census_5-15-19_190515.pdf.

³⁹ *Id.*

2. Other Types of Begging Laws Used to Target those Experiencing Homelessness

Still other laws use a different means to target those who beg to survive: prohibiting passersby from sharing food. These food-sharing laws erect a criminal barrier to a critical source of nutrition for those who otherwise lack food and refrigeration.⁴⁰ The number of cities implementing measures against public food-sharing rose by 47% from 2010 to 2014.⁴¹ In cities from El Cajon, California to Fort Lauderdale, Florida, volunteers and passersby have actually faced jail time and steep fines for merely passing food to the hungry.⁴²

These laws are often subject to disparate enforcement. For instance, food-sharing prohibitions are rarely enforced at family reunions in public parks, but they are frequently invoked against those sharing food with people experiencing homelessness.⁴³ This is typical of laws that criminalize homelessness: their vague

⁴⁰ *Housing Not Handcuffs*, supra note 3, at 46.

⁴¹ Barclay, Eliza, More Cities are Making It Illegal To Hand Out Food to the Homeless, NPR (2014), <https://www.npr.org/sections/thesalt/2014/10/22/357846415/more-cities-are-making-it-illegal-to-hand-out-food-to-the-homeless> (citing National Coalition for the Homeless, *Share No More: The Criminalization of Efforts to Feed People in Need* (2014), <https://nationalhomeless.org/wp-content/uploads/2014/10/Food-Sharing2014.pdf>).

⁴² Grace Guarnieri, *Why It's Illegal to Feed the Homeless in Cities Across America*, Newsweek (2018), <https://www.newsweek.com/illegal-feed-criminalizing-homeless-america-782861>; Hannah Levintova, Is Giving Food to the Homeless Illegal in Your City Too? Mother Jones (2014), <https://www.motherjones.com/politics/2014/11/90-year-old-florida-veteran-arrested-feeding-homeless-bans-2/>.

⁴³ Levintova, supra note 42.

language gives little guidance (and therefore great latitude) to law enforcement about how to distinguish legal activity from illegal behavior.⁴⁴ This lack of guidance almost inevitably results in selective enforcement against disfavored groups.

C. Why This Is a Massachusetts Problem

Historically, Massachusetts has led the nation in its approach to the homelessness crisis. In 1983, Massachusetts became the first state to recognize a partial “right to shelter.”⁴⁵ More recently, HUD found that Massachusetts successfully houses 95% of residents without permanent homes.⁴⁶ As the same study notes, from 2018 to 2019, Massachusetts achieved the second-largest absolute drop in homelessness of any state.⁴⁷

Nonetheless, Massachusetts’ campaign to end homelessness is far from over. The 2019 HUD study also found that, from 2007 to 2019, Massachusetts saw the single largest rise in family homelessness of any state in the union.⁴⁸ Unaffordable

⁴⁴ *Housing Not Handcuffs*, supra 3, at 42.

⁴⁵ Mica Kanner-Mascolo, *Family homelessness rises faster in Mass. than any other state*, Spare Change News (2020), <http://sparechangenews.net/2020/03/family-homelessness-rises-faster-in-mass-than-any-other-state/>.

⁴⁶ U.S. Department of Housing and Urban Development, *The 2019 Annual Homeless Assessment Report (AHAR) to Congress* (2020), <https://files.hudexchange.info/resources/documents/2019-AHAR-Part-1.pdf>, at 12.

⁴⁷ *Id.*

⁴⁸ *Id.* at 37. As noted above, HUD data often underreports the extent of the homelessness crisis, thus the rise in family homelessness in Massachusetts is likely even *larger* than HUD reports—evidencing an even larger crisis within Massachusetts.

housing and rent continue to push families and individuals out of their homes at an alarming rate: a study by the Boston Bar Association Task Force on the Civil Right to Counsel found that 45% of households entering shelters in Massachusetts listed eviction as their reason for homelessness.⁴⁹

Laws like Section 17A are at odds with the Commonwealth's generally progressive and humane approach to the issue. They provide an outlet through which regressive pressures and discriminatory impulses may flow, giving local officials both the ability and an incentive to sweep people experiencing homelessness from public view instead of dealing forthrightly with the problems that both cause and accompany their condition. If the arrow of criminalization is removed from the governmental quiver, then people experiencing homelessness are that much more likely to be treated with compassion as fellow citizens in need (which they always are), and that much less likely to be attacked as criminals (which they almost always are not).

III. CRIMINALIZATION OF HOMELESSNESS IS CRUEL AND INEFFECTIVE

Responding to poverty- and homelessness-related offenses through criminal and civil sanctions is cruel and ineffective. We all would like to see a Massachusetts where people are not forced by circumstances to beg on the streets. But whether

⁴⁹ *Housing Not Handcuffs*, supra note 3, at 31.

examined from a legal, policy, fiscal, or moral standpoint, criminalizing any aspect of panhandling will not help us to reach this goal. To be clear—the goal is not to ensure the right to beg on the street, but to address the root causes of homelessness, rather than criminalize its unfortunate symptoms.

A. Laws Like Section 17A Fail to Address the Causes of Panhandling

Laws like Section 17A do not prevent or reduce panhandling because they do nothing to address the underlying conditions—poverty and lack of access to housing—driving people to panhandle. The two individual Plaintiffs alone have received at least 43 criminal complaints due to enforcement of Section 17A.⁵⁰ Clearly the circumstances forcing them to panhandle are still present, and more compelling than the putative deterrent effects of punishment under the statute.

Moreover, fining people for panhandling in an attempt to pay for shelter does nothing to address the root cause of their unsheltered condition: the absence of adequate housing capacity. There are far more people experiencing homelessness than there are beds. The coordinator of homeless programs in Fall River has estimated that there are approximately 120 persons *currently* experiencing unsheltered homelessness in Fall River but only approximately 72 shelter beds available.⁵¹

⁵⁰ Plaintiffs Br. at 14.

⁵¹ Deborah Allard, *Fall River Tallies Homeless Population in Annual Count for Funding, Services*, The Herald News, (Jan. 30, 2020 11:48 AM (updated)),

Enforcement of these sorts of laws, therefore, accomplishes nothing more than a temporary displacement of the symptoms of homelessness and poverty. A person experiencing homelessness might be woken up, forced to gather their belongings and leave a certain spot, or told they cannot panhandle at a specific location. That person will remain both poor and unsheltered at the end of the encounter. As explained by the Law Center:

People will return to the same locations where they have been ticketed, cited, or arrested in the past because they have family, friends, stored property, or other draws to the area that are not trumped by the risk of liability, which may exist in all parts of the city under laws punishing unavoidable life-sustaining activities citywide.⁵²

B. Laws Like Section 17A Are Barriers to Obtaining Housing and Escaping Homelessness

Enforcement of statutes like Section 17A makes it harder for people to escape homelessness.⁵³ Being arrested and jailed can force a person to take time off work or ultimately result in their termination from work. These arrests can forcibly separate a person experiencing homelessness from their property, which increases the risk of theft.

<https://www.heraldnews.com/news/20200130/fall-river-tallies-homeless-population-in-annual-count-for-funding-services>. Camara further noted that the actual number of persons experiencing unsheltered homelessness “vary by the day and time and year.” *Id.*

⁵² *Housing Not Handcuffs*, supra note 3, at 64.

⁵³ *See id.*

Fines and fees associated with arrest and conviction chip away at a person's already limited supply of capital. Inability to pay these fees can result in even more fees or further jail time. The convictions themselves make it less likely that a person experiencing homelessness can pass a background check for employment, could "make someone ineligible for federally subsidized housing," and make it more difficult to obtain social security or unemployment benefits⁵⁴ Landlords can be reluctant to lease to a person who has been incarcerated.⁵⁵ Thus, arresting people for panhandling or other acts manifesting from their homelessness is likely to have perverse effects, further entrenching them in the conditions that drove them to arrest in the first place.

C. Laws Like Section 17A Erode the Trust Between People Experiencing Homelessness and Law Enforcement and Make Communities Less Safe

Unsurprisingly, people who are repeatedly targeted, arrested, cited, and made to disperse by police are less willing to cooperate with law enforcement investigations.⁵⁶ This is a significant problem because people experiencing homelessness are highly likely to witness crimes. For example, 62% of homeless adults surveyed in five cities had at one point witnessed a violent attack.⁵⁷

⁵⁴ *See id.*

⁵⁵ *See Better HUD Oversight*, *supra* note 4, at 36.

⁵⁶ *See Housing Not Handcuffs*, *supra* note 3, at 65.

⁵⁷ Molly Meinbresse et al., EXPLORING THE EXPERIENCES OF VIOLENCE AMONG INDIVIDUALS WHO ARE HOMELESS USING A CONSUMER-LED APPROACH, 29

Additionally, 49% of adults experiencing homelessness have been the victim of a violent attack while homeless.⁵⁸ Each unproductive arrest makes it less likely that a person experiencing homelessness will turn to law enforcement after having witnessed or fallen victim to a serious crime. Thus, as more people experiencing homelessness are arrested under Section 17A, it is likely that more violent crimes will go unreported and more investigations of violent crimes will remain unsolved. Indeed, the Fines and Fees Justice Center has found that a 1% increase in revenues from fines and fees is associated with a 6.1% decrease in the violent crime clearance rate.⁵⁹

D. Enforcing Laws Like Section 17A Is an Expensive and Inefficient Use of Resources

Criminalizing homelessness is an expensive and inefficient use of public resources. Every arrest under Section 17A wastes taxpayer dollars, incurring costs associated with ticketing, arrests, processing, incarceration, and court. Thus, for example, while the City of Los Angeles ostensibly spends more than \$100 million every year to address homelessness, more than \$87 million of that money actually

VIOLENCE & VICTIMS 122, 125 (2014), https://nhchc.org/wp-content/uploads/2019/08/vv-29-1_ptr_a8_122-136.pdf.

⁵⁸ *Id.* at 126.

⁵⁹ Fees and Fines Justice Center, *Exploitative Revenues, Law Enforcement and the Quality of Government Service*, <https://finesandfeesjusticecenter.org/articles/exploitative-revenues-law-enforcement-and-the-quality-of-government-service/>.

funds law enforcement interactions.⁶⁰ Imagine what could be accomplished if Los Angeles were able to use this money in other ways, for example to address the lack of affordable housing that is a major cause of both homelessness and the kind of the financial insecurity that drives even people who have housing to panhandle.

E. Laws Like Section 17A Stigmatize Homelessness and Lead to Increased Hate Crimes against People Experiencing Homelessness

Enforcing statutes like Section 17A promotes a culture in which law enforcement contact with people experiencing homelessness is normalized and where the wellbeing of people experiencing homelessness is considered of secondary importance.

These statutes and their enforcement serve to “banish[] homeless people from public view” and “contributes to growing vigilantism against homeless people.”⁶¹ When people like the individual Plaintiffs can be removed and displaced from the community with a simple phone call, their antagonists may feel emboldened to summon the police whenever they see a person simply experiencing homelessness, or may even attempt to “enforc[e] the laws along with local police.”⁶²

⁶⁰ Gale Holland, L.A. Spends \$100 Million a Year on Homelessness, City Report Finds, L.A. TIMES (Apr. 16, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>.

⁶¹ *Housing Not Handcuffs*, supra note 3, at 66.

⁶² *See id.*

Individually or through group action, private individuals have submitted fake eviction notices, physically assaulted people experiencing homelessness, and have destroyed homeless encampments.⁶³ They may feel justified doing so because the existence and repeated enforcement of statutes like Section 17A implant the false notion that people experiencing homelessness are public nuisances, instead of fellow community members.

IV. ALTERNATIVES TO CRIMINALIZATION OF HOMELESSNESS

A criminal justice approach to community poverty is ineffective, inefficient, and inconsistent with the principles of a just society. Applying punitive sanctions to poor people for pursuing alternative funding streams is particularly cruel against the backdrop of a global pandemic, in which there is unprecedented unemployment and financial uncertainty. Instead of creating perverse incentives to panhandle, communities like Fall River should pursue available, alternative responses that address real problems.

A. “Housing First” Response to Homelessness

A Housing First model addresses why people experience homelessness or feel that they must resort to panhandling.⁶⁴ Unlike criminalization measures like Section 17A, a Housing First model would pair people experiencing homelessness with

⁶³ *See id.* at 66-67.

⁶⁴ *See id.* at 85.

permanent housing solutions and any supportive services necessary to maintain housing stability.⁶⁵ “[P]eople experiencing homelessness—like all of us—need the safety and stability of a home in order to best address challenges and pursue opportunities.”⁶⁶ The Housing First model operates with the ultimate goal of transitioning the person experiencing homelessness to permanent housing.

Communities that have utilized Housing First have successfully ended chronic homelessness. Fall River could look to the at least 78 communities nationwide that have ended veteran homelessness with Housing First.⁶⁷ This list includes several Pennsylvania communities—Lancaster City & County, Philadelphia, Reading/Berks County, Scranton/Lackawanna County, Lehigh Valley, Delaware County, and the entire Western Pennsylvania Continuum of Care.⁶⁸ In fact, Lancaster City & County was able to end all chronic homelessness—not just homelessness among veterans—through Housing First.⁶⁹

One successful paradigm Fall River can use to promote Housing First is Permanent Supportive Housing (“PSH”). PSH incorporates voluntary support

⁶⁵ *Id.*

⁶⁶ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *Deploy Housing First Systemwide*, <https://www.usich.gov/solutions/housing/housing-first/> (last visited Aug. 27, 2020).

⁶⁷ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *Communities that Have Ended Homelessness*, <https://www.usich.gov/communities-that-have-ended-homelessness/> (last visited Aug. 27, 2020).

⁶⁸ *See id.*

⁶⁹ *See id.*

services to support people to live independently.⁷⁰ PSH has seen housing retention rates of up to 96%, “meaning that people who become housed stay housed, sustainably reducing the number of people living in public space.”⁷¹ Additionally, PSH has “helped to decrease the number of chronically homeless individuals in HUD’s PIT counts by 26% since 2007;” dramatically reduces emergency room visits, hospital admissions, and hospital stays; increases engagement in substance abuse treatment programs; and reduces community criminal justice system involvement.⁷² PSH is able to offer this array of benefits because it seeks to address why people are homeless or resort to panhandling in the first place.

B. Divesting Resources from Law Enforcement Responses to Provide Services

Currently, a national movement is calling for the general defunding of police departments to combat our overreliance on law enforcement responses for fundamentally social problems.⁷³ President Donald Trump even issued an executive order addressing the movement.⁷⁴ In this order, President Trump affirms that people

⁷⁰ See *Housing Not Handcuffs*, *supra* note 3, at 86.

⁷¹ *Id.*

⁷² See *id.*

⁷³ See, e.g., Scottie Andrew, *There’s a Growing Call to Defund the Police. Here’s What it Means*, CNN (June 17, 2020), <https://www.cnn.com/2020/06/06/us/what-is-defund-police-trnd/index.html>.

⁷⁴ See Exec. Order No. 2020-13449, *Safe Policing for Safe Communities*, 85 FR 37325 (2020), <https://www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-13449.pdf>.

experiencing homelessness should be met with social services.⁷⁵ President Trump suggests that officers should be properly trained to respond to people experiencing homelessness because contacts with people experiencing homelessness will naturally occur during the course of an officer's duties.⁷⁶

While some contact between people experiencing homelessness and the police is likely, it does not have to be the default response. Instead of spending money enforcing statutes like Section 17A and using police officers to respond to a fundamentally non-criminal problem, Fall River could invest in community responses that are more efficient and more effective. For example, Fall River could adopt a street outreach program like the Crisis Assistance Helping Out on the Streets ("CAHOOTS") program in Eugene, Oregon.⁷⁷ The CAHOOTS model relies on teams consisting of a medic and a mental health professional to respond to calls involving people experiencing homelessness instead of law enforcement personnel. These teams can offer services and address the needs of a person experiencing homelessness without the risk of criminality or escalation.

C. Short-Term Panhandling Day Labor Programs

In tandem with permanent solutions, Fall River can offer people who panhandle opportunities to obtain income in other ways. A person who lacks housing

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *See Housing Not Handcuffs, supra* note 3, at 97.

or employment still has bills to pay, such as for medication, transportation, and food. Instead of criminalizing a person under Section 17A for attempting to meet their needs, Fall River could implement day labor programs “to provide income and access to services for people who would otherwise beg.”⁷⁸

For example, Albuquerque, New Mexico offers day labor “which typically includes landscaping work under the supervision of the city’s Solid Waste Department.”⁷⁹ In Syracuse, New York, three days a week panhandlers are picked up and offered “lunch, access to a social worker, and \$50 cash at the end of a day of labor.”⁸⁰ People panhandling in Portland, Maine are offered \$10.68 an hour to clean city parks.⁸¹

A day labor program would benefit Fall River and offer people in need of employment a source of earned income as well as prospective employment opportunities. Day labor programs would not satisfy a person’s need for housing or sustainable employment, but these options nevertheless constructively address the immediate needs of people who are currently being arrested and punished under statutes like Section 17A.

⁷⁸ *Id.* at 102.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *See, e.g.,* Irina Ivanova, *A City That Puts Panhandlers to Work*, CBS NEWS (Mar. 9, 2017), <https://www.cbsnews.com/news/portland-experimenting-with-putting-panhandlers-to-work/>.

V. COURTS ACROSS THE COUNTRY ARE FINDING LAWS PROHIBITING PANHANDLING UNCONSTITUTIONAL

A. Panhandling Laws Implicate First Amendment Considerations that Disproportionately Impact People Experiencing Homelessness

This Court has long recognized that panhandling, or soliciting alms, “is expressive activity that is protected by the First Amendment.” *Benefit v. City of Cambridge*, 424 Mass. 918, 922 (1997). Laws prohibiting this protected expression necessarily affect people experiencing homelessness far more severely, and in far greater numbers, than people who have ample shelter and other basic necessities. Though the parties agree that panhandling is protected speech under the First Amendment, Appellee Fall River argues that because Section 17A is not a blanket ban on panhandling, it is a reasonable restriction on speech.⁸² *Amicus* agrees with Plaintiffs that Section 17A is invalid as it is a content- and viewpoint-based restriction on speech.⁸³

B. Since *Reed* and *Norton* Dozens of Courts have Invalidated Panhandling Laws

Since *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) and *Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015), approximately two dozen courts, including federal courts within Massachusetts and the First Circuit, have struck down laws

⁸² See Appellee Fall River Br. at 6-7.

⁸³ See Plaintiffs’ Br. at 7-8.

prohibiting panhandling, concluding that such laws were facially invalid, as unconstitutional regulations on protected speech.⁸⁴

For example, the City of Lowell enacted an ordinance limiting panhandling in the downtown area to only nonverbal “passive” panhandling, while prohibiting “aggressive” panhandling throughout the city. *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 182 (D. Mass. 2015). Although the ordinance provided certain exceptions to those who panhandled “passively” and without vocal requests, this exception did not apply in all locations, *e.g.*, within a twenty foot buffer zone of a bank, ATM, or mass transportation facility. *Id.* at 182-83. The court found the ordinance eschewed neutrality on its face, and thus was “subject to the most searching scrutiny.” *Id.* at 187. The court found that the City’s justifications for this ordinance, tourism and economic revitalization, were not compelling enough to

⁸⁴ See, *e.g.*, *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177 (D. Mass. 2015); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218 (D. Mass. 2015); *McCraw v. City of Oklahoma City*, No. 19-6008, 2020 U.S. App. LEXIS 27710 (10th Cir. Aug. 31, 2020) ; *Rodgers v. Bryant*, 942 F.3d 451 (8th Cir. 2019); *Brown v. Government of District of Columbia*, 390 F. Supp. 3d 114 (D.D.C. 2019); *Blitch v. City of Slidell*, 260 F. Supp. 3d 656 (E.D. LA 2017); *Champion v. Commonwealth*, 520 S.W.3d 331 (Ky. 2017); *Petrello v. City of Manchester*, No. 16-cv-008-LM, 2017 U.S. Dist. LEXIS 144793 (D.N.H. Sept. 7, 2017); *City of Lakewood v. Willis*, 186 Wash. 2d 210 (Wash. 2016); *Browne v. City of Grand Junction Colo.*, 136 F. Supp. 3d 1276 (D. Colo. 2015); see also *Nowhere to Go*, *supra* note 26 (“[Courts] have found more than two dozen anti-panhandling ordinances in violation of the First Amendment since 2015, when the Supreme Court imposed strict limits on local government’s power to restrict speech based on its purpose or content.”).

“trump the speech rights of others.” *Id.* at 190. Public safety, an interest that the court did find compelling, was still insufficient to withstand strict scrutiny. *See id.* at 191-96.

In 2013, the City of Worcester adopted two ordinances, one targeting panhandling “in an aggressive manner” (the panhandling ordinance), and the other prohibiting standing or walking on a traffic island or roadway, unless for some “lawful purpose.” *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 228-230 (D. Mass. 2015). The court, without “protracted discussion,” concluded that the Supreme Court’s decision in “*Reed* mandate[d] a finding that [the panhandling ordinance] is content based,” and therefore subject to strict scrutiny *Id.* at 233 n.2. Although the City of Worcester had a legitimate interest in the safety and welfare of its citizens, the court held that the panhandling ordinance wasn’t narrowly tailored enough to survive strict scrutiny. *Id.* at 237.

Finally, in *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015), the First Circuit struck down a facially content-neutral (although not neutrally applied) ordinance that prohibited persons from “stand[ing], sit[ing], stay[ing], driv[ing] or park[ing] on a median strip” except for pedestrians “us[ing] median strips only in the course of crossing from one side of the street to the other.” *Id.* at 81-82. As the First Circuit noted, the ordinance “impose[d] serious burdens on speech,” as it “prohibit[ed] virtually all activity on median strips.” *Id.* at 88-89. Moreover, the

broad definition of “median strips” meant that the prohibition applied to locations that presented no public safety concerns, such as a raised grassy median that contained a park bench. *See id.* at 88. Thus, the First Circuit concluded that the ordinance was geographically over-inclusive, and the City’s legitimate interest of public safety did not overbalance the right of freedom of expression. *Id.* at 89, 93.

C. Section 17A Implicates Similar First Amendment Considerations and Is Similarly Unconstitutional

The result should be the same here. Section 17A is a facially content-based restriction on speech occurring across large swaths of traditional public fora: “any public way.” Similarly, the Commonwealth has only one interest that may be served by this statute—public safety. Although that may be a legitimate state concern when it comes to *certain* activities taking place in *certain* “public ways,” the Statute cannot survive strict scrutiny in this instance, where it is both over-inclusive (because it applies to all “public ways,” even those in which safety is not a valid concern) and under-inclusive (because it prohibits only some activities that might threaten public safety, and makes the distinction on the basis of the content of the actor’s speech rather than the threat posed by his conduct). *See, e.g., Cutting*, 802 F.3d at 79, 89, 93; *McLaughlin*, 140 F. Supp. 3d at 191-96; *Thayer*, 144 F. Supp. 3d at 237.

Since *Reed* and *Norton* nearly all challenges to panhandling laws as unconstitutional restrictions on free speech have been successful.⁸⁵ So too here, Section 17A, as aptly stated in Appellants’ briefing, is both under- and over-inclusive and disparately impacts those experiencing homelessness.⁸⁶

D. Section 17A Also Violates International Human Rights Obligations

In 2012, the U.S. Interagency Council on Homelessness (USICH) issued a report, *Searching Out Solutions*, stating: “In addition to violating domestic law, criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”⁸⁷ Supreme Court cases, as well as rulings by lower federal and state courts, have particularly relied on international standards and rulings as persuasive authority, as sources of the “opinions of mankind” in evaluating “evolving standards of decency” in interpreting the Constitution.⁸⁸ Under the Constitution, human rights treaties have the same binding force as federal law, “and the Judges in every State shall be bound thereby, any Thing in the Constitution or

⁸⁵ See *supra* note 84.

⁸⁶ See, e.g., Plaintiffs Br. at 20-28.

⁸⁷ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS*, 8 (2012), <https://www.usich.gov/tools-for-action/searching-out-solutions>.

⁸⁸ See, e.g. *Roper v. Simmons*, 125 S. Ct. 1183, 1198 (2005).

Laws of any State to the Contrary notwithstanding.”⁸⁹ This Court has found international law to be persuasive, emphasizing that the court should “join a world community” with its interpretations, citing human rights treaties and to the author of the Massachusetts Constitution, John Adams, who was a proponent of learning from other nations.⁹⁰

The International Covenant on Civil and Political Rights (ICCPR), ratified by the U.S. in 1992, is one of the foundational treaties of modern international human rights law.⁹¹ In Article 19, the ICCPR protects the right of free expression, closely parallel to our own First Amendment.⁹² In its March 2014 review of U.S. compliance with the ICCPR, the Human Rights Committee, which oversees the implementation of the treaty, stated:

[T]he Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment...the State party should...abolish the

⁸⁹ U.S. Const. art. VI, § 2; *Id.* art. II, § 2, cl. 2.

⁹⁰ *Diatchenko v. District Att’y*, 466 Mass. 655, n. 16 (2013).

⁹¹ International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 12, 99 U.N.T.S. 171 (entered into force 1976); U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992).

⁹² International Covenant on Civil and Political Rights, *supra* note 91, at Art. 19(2), (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”).

criminalization of homelessness laws and policies at the state and local levels...”⁹³

Numerous other U.N. human rights monitors have addressed criminalization of homelessness as violations of human rights standards, providing evidence of an international norm that can guide judges to make similar findings domestically.⁹⁴

The Committee on the Elimination of Racial Discrimination (CERD), also specifically condemned the criminalization of homelessness in the U.S. and called on the U.S. to “[a]bolish laws and policies making homelessness a crime.” The

⁹³ U.N. Human Rights Committee, *Concluding Observations on the Fourth Report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

⁹⁴ *See id.*; U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, Raquel Rolnik, Mission to the United States of America, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012); U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *USA: “Moving Away from the Criminalization of Homelessness, A Step in the Right Direction”* (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>; UNHRC, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum, Mission to the United States of America*, A/HRC/18/33/Add.4, Aug. 2, 2011; U.N. Human Rights Council, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009).

Committee Against Torture, considered such recommendations at its review of U.S. compliance in November 2014, and asked the U.S. to address the issue at its next review.⁹⁵ The U.S. also received, and accepted, a recommendation from its 2015 Universal Periodic Review by the U.N. Human Rights Council to “amend laws that criminalize homelessness and which are not in conformity with international human rights instruments.”⁹⁶

From Massachusetts’ founding, John Winthrop called on the Massachusetts Bay colonists to be a shining “city upon a hill” knowing “the eyes of all people are upon us.”⁹⁷ When the world, through its human rights monitors, has looked at the criminalization of homelessness in the U.S., they have found a clear and consistent standard establishing that criminalization of homelessness violates human rights

⁹⁵ Committee Against Torture, Summary Record of the 1264th Session, CAT/C/SR.1264, ¶ 37, Nov. 17, 2014, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT_C_SR_1264_22881_E.pdf; Committee Against Torture, List of Issues Prior to Submission of the Sixth Periodic Report of the United States of America, CAT/C/USA/QPR/6, ¶ 46, Dec. 19, 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQPR%2f6&Lang=en.

⁹⁶ U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, United States of America*, A/HRC/30/12, ¶ 176.309 (July 20, 2015); U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, United States of America, Addendum, Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, A/HRC/30/12/Add.1, ¶ 12 (Sept. 14, 2015).

⁹⁷ John Winthrop, *A Modell of Christian Charity* (1630) Collections of the Massachusetts Historical Society (Boston, 1838), 3rd series 7:31-48, <https://history.hanover.edu/texts/winthmod.html>.

norms. The Court should ensure its decision is consistent with these findings, and once again lets America's example shine proudly to the world.

CONCLUSION

Section 17A is an unconstitutional content- and viewpoint-based restriction on protected speech. The implications of criminalizing speech such as panhandling are far-reaching, as growing numbers of Americans are experiencing homelessness, unemployment, and housing insecurity. Lacking jobs and affordable housing, many members of our communities are forced to beg to obtain their basic human necessities—food, clothing, housing, medical care, and transportation. Section 17A and other laws that criminalize homelessness perpetuate a cycle of poverty and negative contact with the criminal justice system, and actually prevent people experiencing homelessness from obtaining permanent housing and steady employment.

Laws like Section 17A do not solve the issue of panhandling. They do not address the issues of homelessness, housing insecurity, or the lack of affordable housing. Instead, these laws criminalize homelessness and poverty, disproportionately impacting people experiencing homelessness and people of color. There are far better alternatives to these laws that address the underlying issues related to homelessness and panhandling.

People experiencing homelessness should be met with compassion and empathy, not criminal sanctions and further stigmatization. Instead of pouring money into the criminal justice system, the Commonwealth should address the underlying causes of homelessness. Section 17A is not *just* unconstitutional, it is cruel, ineffective, and expensive. We can and should do better.

Dated: September 17, 2020

Respectfully submitted,

/s/ Courtney Herndon

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MASS R. APP. P. 16(K) CERTIFICATION

I, Courtney Herndon, hereby certify that this brief complies with the rules of the Court that pertain to the filing of briefs, including, but not limited to:

Mass. R. App. P. 16 (e) (references to the record);

Mass. R. App. P. 17 (c) (cover, length, content)

Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. App. P. 20(a)(2)(c) because it was produced in the monospaced font Times New Roman at size 14, 10.5 characters per inch, and contains 7,377 words.

/s/ Courtney Herndon

CERTIFICATE OF SERVICE

I, Courtney Herndon, do certify under the penalties of perjury that on this 17th day of September, 2020, I caused a true copy of the foregoing document to be served by electronic mail, via e-file, on the following counsel:

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/s/ Courtney Herndon

ADDENDUM

From: **Mark Porcaro** <mporcaro@brocktonpolice.com>
Date: Fri, Oct 27, 2017, 1:56 PM
Subject: Directed Patrols: Panhandlers
To: Sworn <sworn@brocktonpolice.com>

Shift Commanders and Supervisors of the Uniform Patrol Division,

Regarding Sergeant Schlieman's email yesterday, please instruct the officers on your shifts to conduct Directed Patrols in the mentioned areas for panhandlers. The law that is in play here would be MGL c. 85, s. 17A, but I'm sure other laws could apply, as well, given the situation. Please become familiar with this law and pass it along to your officers for enforcement action.

The areas that were mentioned are:
North Montello and Howard Streets
Warren Avenue (from Pleasant to Spring Streets)
Reynold Memorial Highway
Various downtown intersections.

Thank you,
Capt. Porcaro

----- Forwarded message -----

From: **William Schlieman** <wschlieman@brocktonpolice.com>

Date: Thu, Oct 26, 2017 at 12:36 PM

Subject: Panhandlers

To: Mark Porcaro <mporcaro@brocktonpolice.com>, David Dickinson <ddickinson@brocktonpolice.com>, Brian Benvie <bbenvie@brocktonpolice.com>, Bryan Maker <bmaker@brocktonpolice.com>, Emanuel Gomes <egomes@brocktonpolice.com>, Bruce Zeidman <bzeidman@brocktonpolice.com>
Cc: John Crowley <jcrowley@brocktonpolice.com>

Gentlemen,

I have been attending weekly quality of life meetings at city hall. Today, the mayor asked me to reach out to the shift commanders and ask them to have the patrol officers enforce the state law regarding pedestrians panhandling in the street (court complaint). He specifically mentioned the intersection of North Montello Street and Howard Street, Warren Ave between Pleasant and Spring Streets, and several other intersections in the downtown area. I know that Reynolds Memorial Highway has also been a hot spot of activity for years. Some of the panhandlers will push the pedestrian crosswalk button to trigger the traffic lights to cycle to red, forcing cars to stop.

The mayor relayed that he has received several complaints of aggressive panhandling recently and he said that it is especially problematic for the small business owners trying to attract customers from outside of the city.

Thank you,
Sgt. Schlieman



Boston Police Department

192079813 - Offense/Incident Report

REPORTED ON DATE / TIME Oct 2, 2019 21:17	DISTRICT / SECTOR / REPORTING AREA A1 / A441	OCCURRED FROM DATE / TIME - OCCURRED TO DATE / TIME Oct 2, 2019 21:04
REPORTING OFFICER ROY GAVA #010264	WEATHER Cloudy/Partly Cloudy	
REPORT TAKEN LOCATION UNION ST & NORTH ST, BOSTON, MA 02108		

NARRATIVE

ABOUT 9:00PM WHILE ACTIVELY PATROLLING THE NORTHEAST AS THE A321F OFFICER GAVA OBSERVED ABOVE DESCRIBED SUSPECT AT NORTH/UNION ST. FURTHER INVESTIGATION REVEALED SUSPECT WAS SITTING ON GROUND SHAKING A PLASTIC CUP WITH CHANGE IN IT. SUSPECT WAS WITHIN TEN FEET OF T.D. BANK SUSPECT EXPLAINED HE WAS IN VIOLATION OF CITY ORDINANCE 16-41 AGGRESSIVE PANHANDLING AND WAS ISSUED HEARING NOTICE.

OFFENSE-1

OFFENSE CODE VIOLATION - CITY ORDINANCE			
OCCURRED FROM DATE/TIME Oct 2, 2019 00:00			
OFFENSE LOCATION			
CITY BOSTON	STATE MA	ZIP 02108	COUNTRY CODE US
INTERSECTION STREET UNION ST		INTERSECTION STREET 2 NORTH ST	
LOCATION CATEGORY Bank - Savings and Loan	DISTRICT / SECTOR / REPORTING AREA A1 / A441	PUBLIC / PRIVATE Private	

VICTIMS 1

VICTIMS- NAME
V-1 Commonwealth of Massachusetts

SUSPECTS 1

SUSPECTS- NAME (LAST, FIRST MIDDLE) S-1 Leate, Michael		DOB / ESTIMATED AGE RANGE [REDACTED]
SEX Male	RACE / ETHNICITY White / Not of Hispanic Origin	
HOME ADDRESS [REDACTED]		

REPORTING OFFICER SIGNATURE / DATE ROY GAVA #010264 Oct 2, 2019 21:30 (e-signature)	SUPERVISOR SIGNATURE / DATE MICHAEL O'HARA #008269 Oct 2, 2019 21:48 (e-signature)
PRINT NAME ROY GAVA #010264	PRINT NAME MICHAEL O'HARA #008269