# CITIZENS FOR COMMUNITY VALUES

*Creating an Ohio where God's blessings of life, family, and religious freedom are treasured, respected, and protected.*

Tuesday, July 11, 2017

The Honorable Toledo City Council Members:

Steven Steel, President of Council
Tyrone Riley
Matt Cherry
Peter Ujvagi
Yvonne Harper
Tom Waniewski
Lindsay Webb
Cecelia Adams
Rob Ludeman
Sandy Spang
Larry Sykes
Kurt Young

Dear Council Members:

My name is Josh Brown and I am Legal Counsel and Director of Policy at Citizens for Community Values (CCV) a nonpartisan organization that works to protect the freedom of Ohioans. Today, we write to **oppose** proposed changes to the Toledo Municipal Code that would limit the constitutional rights of Ohioans who protest near abortion clinics.

The ordinance in question would prevent any person from "engage[ing] in a course of conduct or repeatedly commit[ting] acts within twenty feet of the premises of a Health Care Facility or Reproductive Health Care Facility when that behavior places another person in reasonable fear of physical harm, or attempt[s] to do the same." A violation would be a misdemeanor of the first degree, which carries potential fines of up to $1000 and or 180 days in jail.

CCV opposes this proposal because it is unconstitutional and intended to chill speech. We are not distracted by the pretense of public safety, as there are many laws on the books that prevent anyone from placing others in reasonable fear of physical harm. The proposal is purposely ambiguous and vague, so that in enforcement, it can be used to stifle speech. We know such a proposal is bad policy and cannot sustain legal scrutiny because it targets certain speech content, it goes beyond the city's authority to regulate speech, and it is overly vague and ambiguous.

While this may be a new ordinance for the City of Toledo, for decades, other cities have considered similar ordinances. Typically if Councils decide to enact an ordinance like this, these stories end the same way: the ordinance is legally challenged, and the courts reject these unconstitutional laws resulting in an expensive legal bill that the taxpayers must pick up.

## 1. THE PROPOSAL IS DISCRIMINATORY AGAINST SPECIFIC SPEECH CONTENT

The proposed ordinance clearly targets and attempts to silence certain speech content. As cases like this have been litigated on many occasions, we know that pro-life Americans use this public space to communicate messages of love, truth, and hope to women considering abortion. Because the proposal

*This letter was updated on 7/12/17 to correct typos.*

targets a specific type of geographic area where particular content is known to be spoken, it is clear that the proposal is intended to target particular types of speech that normally occur in that space. Such content-based targeting is un-American and undermines free speech.

## 2. THE PROPOSAL OVERSTEPS THE CITY'S AUTHORITY REGARDING ALLOWABLE "TIME, PLACE AND MANNDER RESTRICTIONS"

This proposal is not new or novel; in fact a similar law was passed and ruled unconstitutional in Massachusetts in 2007 in *McCullen v. Coakley*.[1] The Massachusetts statute made it a crime to stand on a public road or sidewalk within thirty-five feet of any abortion clinic. **The U.S. Supreme Court unanimously struck down the law as an unconstitutional violation of the First Amendment's protection of Free Speech**.

Under this doctrine, the City may "'impose reasonable restrictions on the time, place, and manner' of the protected speech, provided the restriction are justified without reference to the content of the speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of information."[2] Time, place, and manner restrictions are further limited in "traditional public forums, which is a "special position in terms of First Amendment protection" because these places have a historic role as locations traditionally open for discussion and debate.[3]

Here, this proposal goes beyond reasonable time, place, and manner restrictions. The twenty feet restriction in the proposed ordinance would certainly encompass areas such as sidewalks and public ways, which the courts have designated as "traditional public forum," because they are places that have traditionally been open for speech activities. The Courts have been clear over many cases that the government's ability to regulate such speech is very limited. Enacting this proposal—a geographic-based speech restriction that encompasses public forum—would flaunt the American free speech tradition and law. Lastly, because of the proposal's vagueness (as discussed below) it is not clear that "ample alternative channels for communication" are available.

## 3. VOID FOR VAGUENESS

The *McCullen* case, cited above, dealt with a statute that forbade anyone from entering an area that was a traditional public forum. The proposal in question here prohibits certain acts within the public forum that are already illegal, regardless of where they take place. One first must question why a duplicative statute is necessary within a particular space, especially when that space is a traditional public forum? And in so doing, why is the language so vague and ambiguous? In fact, the proposed ordinance is so vague and ambiguous that it is not clear on what type of speech is prohibited and what type of speech might lead to criminal prosecution. All this suggests an ulterior motive which is easy to guess.

---

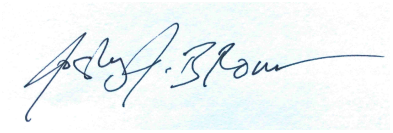
[1] *McCullen v. Coakley,* 134 S. Ct. 2518 (2014).
[2] *Ward v. Rock Against Racism*, 109 S.Ct. 2746 (1989).
[3] *United States v. Grace*, 103 S.Ct. 1702 (1983); *Pleasant Grove City v. Summum*, 129 S.Ct. 1125 (2009) (quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 103 S.Ct. 948 (1983)).

The Courts will rule a law "void for vagueness" when the average citizen cannot determine how to comply with it. Such statutes violate the notice requirements contained within the Due Process rights of Americans arising from the Fifth and Fourteenth Amendments to the U.S. Constitution and the same rights arising from Section 16, Article 1 of the Ohio Constitution.[4] Ohio courts apply much more scrutiny when reviewing the anti-vagueness requirements when fundamental rights are at stake (such as free speech).[5]

We are especially concerned that such vague laws can be enforced selectively and inconsistently. There is no guarantee for law abiding citizens that enforcement of such laws will not infringe on constitutionally protected activity. We cannot rely on citizens and police to engage in constitutional law debates on the street. The statute must be clear and constitutional and lay out specific guidance for what is allowed and what is prohibited. To selectively prosecute this particular type of speech would be a violation of Equal Protection rights.[6]

Women entering abortion clinics are often facing one of the most difficult decisions of their lives. The Toledo City Council should not – and legally cannot – stifle the rights of citizens to share compassion, truth and other choices with these women.

Thank you,



Josh Brown, Esq.
Legal Counsel & Director of Policy
Citizens for Community Values

[4] For examples of municipal ordinances ruled unconstitutional under the Ohio Constitution for vagueness, see, e.g., *City of Akron v. Rowland*, 618 N.E.2d 138, 148-49 (Ohio 1993) (municipal loitering ordinance); *City of South Euclid v. Richardson*, 551 N.E.2d 606, 606 (Ohio 1990) (ordinance prohibiting brothels); *City of Columbus v. New*, 438 N.E.2d 1155, 1155 (Ohio 1982) (falsification ordinance); *State v. Young*, 406 N.E.2d 499, 500 (Ohio 1980) (organized crime statute); *City of Columbus v. Rogers*, 324 N.E.2d 563, 563 (Ohio 1973) (ordinance prohibiting cross dressing); *City of Cincinnati v. Taylor*, 303 N.E.2d 886, 887 (Ohio 1973) (anti-prowling ordinance); *Dragelevich v. City of Youngstown*, 197 N.E.2d 334, 334 (Ohio 1964) (prohibition on exhibiting gambling machinery).

[5] *State, ex rel. Heller, v. Miller* (1980), 61 Ohio St. 2d 6, 8.

[6] See *Wayte v. United States*, 470 U.S. 598 (1985); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986).