

Mayor Webber:

We write in regard to a bill you recently introduced to the Santa Fe City Council (Bill No. 2024-7) that would restrict access to all medians less than 36 inches throughout the entire City of Santa Fe. The proposed ordinance is a sweeping abridgement of the free speech rights of the people of Santa Fe who wish or need to engage in constitutionally protected speech in the municipality's medians – locations that have historically been used for free speech activities. If passed, the law will be vulnerable to a legal challenge. We encourage the City of Santa Fe (“City”) to decline to pass this legislation into law to avoid the significant financial burden of costly litigation.

The City will face an uphill battle defending this law

If passed, this vast-reaching law will prohibit people from protesting, campaigning for political causes and candidates, advertising for businesses, soliciting charity, fundraising for faith-based, sports, or other charitable groups, and engaging in other forms of protected speech. A violation of the law could result in a \$500 fine and 90 days in jail.

The government's power to restrict protected speech in traditional public forums like “public streets and sidewalks” is “very limited.” *McCullen v. Coakley*, 573 U.S. 464, 477 (2014). This is because public spaces play an indispensable role in democratic societies. These areas, ranging from city squares to public parks, and even road medians, serve as the physical platforms for the exercise of free speech and assembly. These public spaces are not merely physical locations but symbolic centers of democratic action and interaction. They underscore the democratic commitment to free expression and assembly, ensuring that every voice has the opportunity to be heard.

A city that seeks to regulate speech in such locations has the burden of proving that the restrictions are constitutional. *Doe v. City of Albuquerque*, 667 F.3d 1111, 1131 (10th Cir. 2012). The City will have to prove that the law is narrowly tailored to serve a significant government interest that leaves open ample alternative channels of communication. *See Brewer v. City of Albuquerque*, 18 F.4th 1205, 1220 (10th Cir. 2021). It will be hard-pressed to do so given that *every single median* less than 36 inches within the City's fifty-two square miles is off-limits to those who wish to engage in protected speech. Further, the City will struggle to identify adequate alternative channels where individuals who wish to engage in protected speech will be able to reach their target audiences. In particular, individuals engaging in the solicitation of charity rely on medians to engage in their protected speech and avoid sidewalks given the proximity to drivers via medians that is absent from sidewalks.

Evans v. Sandy City does not dictate a similar outcome in Santa Fe, New Mexico

It is apparent from the language of Bill No. 2024-7 that the City has attempted to model its legislation curbing speech on medians after what was held constitutional in Sandy City, Utah

pursuant to *Evans v. Sandy City*, 944 F.3d 847 (10th Cir. 2019). However, such an attempt is misguided. Since *Evans*, two anti-panhandling ordinances have been struck down by the Tenth Circuit Court of Appeals – one in Albuquerque and another in Oklahoma City. See *Brewer v. City of Albuquerque*, 18 F.4th 1205 (10th Cir. 2021); *McCraw v. City of Oklahoma City*, 973 F.3d 1057 (10th Cir. 2020). The Court in *Brewer* stated that the City of Albuquerque could not “justify [a ban on speech on medians] simply by citing to *Evans*.” *Brewer*, 1205 F.4th 1243. Further, the *Brewer* Court noted that restrictions upheld in other cases did not necessarily compel a similar conclusion in that case. *Brewer*, 18 F.4th at 1252 citing *Doe v. City of Albuquerque*, 667 F.3d 1111, 1134 (10th Cir. 2012) (“whether the restrictions at issue in other cases were narrowly tailored in the respective contexts of those cases did not compel any conclusion as to the city’s ban.”) (Internal brackets omitted.) The same can be said here. It is not a foregone conclusion that a median restriction modeled after a law that was upheld in Sandy City will be similarly upheld in Santa Fe.

Restricting panhandling does nothing to address the root causes of homelessness

While Bill 2024-7 does not single out a particular type of speech, it is obviously an attempt to curb panhandling within the City of Santa Fe. Not only would such an ordinance violate the constitutional rights of unhoused and low-income people, it would also exacerbate problems associated with homelessness and poverty. Harassing, citing, and arresting people living in poverty simply for asking for help is inhumane and counterproductive. A \$500 fine, as prescribed by the proposed ordinance, could be the difference between someone paying their rent or becoming homeless, affording their medication or going without it, or feeding their children or seeing them go hungry. Putting that same person in jail for 90 days would similarly wreak havoc on the individual’s life.

If the City truly wishes to address homelessness in a meaningful way, it would divert its resources from criminalizing people who are living on the margins to helping them secure affordable housing, accessing quality mental and physical healthcare, and investing in substance abuse programming that is accessible and of high quality. Until those needs are met, no matter how many laws the City passes, people who are struggling will continue to do what they need to do to survive. We as a society cannot sweep these problems under the rug. We must face them head-on and take the bold steps necessary to invest in housing and fund programs that actually work.

We strongly urge the City against passing Bill 2024-7. Such a law would improperly infringe on the free speech rights of Santa Feans while simultaneously subjecting the City to costly litigation, as was the case when the ACLU challenged Albuquerque’s “pedestrian safety” law, which was ultimately declared unconstitutional. Monies that would be spent defending the City

against an expensive lawsuit would be better spent on things that will actually address the root causes of homelessness and poverty.

Sincerely,

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