

**FOR IMMEDIATE RELEASE**

## **Crowell & Moring Pro Bono: Maryland ACLU Writes to AG Detailing First Amendment Violations of Gaithersburg Ordinance Targeting Day Laborers**

**Washington, D.C. – July 9, 2007:** Acting to ensure a full accounting of both the legislative intent and fatal free speech restrictions of Gaithersburg's recent anti-day laborer ordinance, the American Civil Liberties Union of Maryland, in partnership with the law firm of Crowell & Moring LLP, has written to the Office of the Attorney General offering our analysis of the law's constitutional infirmities.

The Attorney General will be issuing an opinion regarding the law's constitutionality, following the City's formal request in May. The City made its request for an opinion after the Montgomery County State's Attorney refused to prosecute offenses under the new law based on concerns about its constitutionality.

In the letter, the ACLU points out how the ordinance unconstitutionally targets day laborers and their employers, and does not serve any compelling government interest that might justify its enactment.

"We are confident that Gaithersburg's anti-solicitation ordinance cannot withstand legal scrutiny," said David Rocah, Staff Attorney for the ACLU of Maryland. "From the beginning, the City sought to ban a particular type of free speech activity engaged in by a narrowly targeted group. Such singling out of speech deemed by some to be undesirable is unacceptable in a free society."

As the ACLU's letter points out, to the extent there are legitimate concerns about traffic safety, there are already ample laws prohibiting certain behaviors, as opposed to speech, that address the problem without infringing on the Constitution.

Crowell & Moring partner Jerome A. Murphy, said, "The ordinance on its face discriminates against certain types of speech and would have the result of denying some of Gaithersburg's residents an opportunity to seek work within the city's borders. We are confident that the Attorney General will conclude that the First Amendment does not permit residents to be shut out in this way."

Rocah continued: "A desire to force day laborers to find work out of sight and out of mind is not a legitimate government interest. Individuals have as much right to ask for a job to put food on the table as they do to ask for donations for the high school band or to protest unwanted development in their neighborhood."

The ordinance was the result of recommendations by a Task Force convened in 2005 to address concerns regarding solicitation of employment of and by day laborers. Day laborers in Gaithersburg, who are predominately Hispanic, traditionally have expressed their availability for employment by standing on a public sidewalk or other public way or on private parking lots with permission. Prospective employers have typically driven to these locations, pulled into parking areas, and approached the day laborers with offers of employment.

But despite the fact that the City had acknowledged that day laborers generally assemble peaceably; that police officials had testified that no valid complaints had been received about the behavior of the day laborers for many months; and that the Task Force did not investigate or find that the day laborers posed any significant traffic hazards, the Task Force recommended in 2006 that the day laborers be permitted to gather in only one location -- a so-called "day labor center." The City was unable to settle on a suitable site for such a center within city limits. The ordinance provides that all employment solicitation is unlawful anywhere in Gaithersburg, following the opening of a center by Montgomery County outside city limits.

Attorneys Jerome A. Murphy and David L. Haga at the Washington, D.C. law firm Crowell & Moring worked pro bono with the ACLU of Maryland in preparing the legal analysis for the Attorney General.

[Click here to read the letter to the Attorney General.](#)

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