

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
CENTRO DE LA COMUNIDAD HISPANA DE :  
LOCUST VALLEY; and THE WORKPLACE :  
PROJECT, :

Plaintiffs, :

-versus- :

TOWN OF OYSTER BAY; JOHN :  
VENDITTO, Town Supervisor of the Town :  
of Oyster Bay, :

Defendants. :

**AMENDED  
COMPLAINT**

10 Civ. 2262 (DRH/ARL)

-----X

**PRELIMINARY STATEMENT**

1. This is a civil rights action about the ability of predominantly Latino, immigrant day laborers to exercise their right to solicit work on the streets and sidewalks of their towns and villages without fear of being targeted because of their race and national origin. Plaintiffs represent residents of the Town of Oyster Bay who for years have successfully obtained temporary jobs by standing on local street corners and soliciting work from homeowners, contractors and other employers who pick them up and take them to job sites. These residents' ability to seek work has been significantly curtailed by the recent passage of Chapter 205.32 of the Code of the Town of Oyster Bay (the "Ordinance"), which unlawfully prohibits speech related to employment, fails to provide adequate notice of what it prohibits, and was enacted specifically in response to and as a result of discriminatory community animus regarding this group of workers.

2. While the purported purpose of the Ordinance is to address traffic and pedestrian safety, it does nothing to accomplish that goal. Instead, it sweeps in a wide

variety of speech that has no adverse impact on traffic and pedestrian safety, fails to regulate speech that is indistinguishable from prohibited speech except in terms of the content of its communicative message, and is superfluous because the Town of Oyster Bay and the State of New York already have a range of laws and regulations in place to ensure traffic and pedestrian safety.

3. The reason for the poor fit between the Ordinance and its purported safety purpose is that, upon information and belief, such concerns did not motivate its passage. Rather, upon information and belief, the Ordinance was passed to prevent a group of predominantly Latino, immigrant day laborers from soliciting work in Oyster Bay so as to drive them out of their communities and out of the sight of residents who wish they were not there.

4. In pursuit of this true goal, the Ordinance reaches so far as to prohibit individuals and groups from engaging in general speech and advocacy intended to promote the security of employment. In addition, the text of the Ordinance fails to define key terms, thereby failing to give either law enforcement personnel or persons who might be subject to the ordinance sufficient guidance as to what conduct is and is not prohibited by the Ordinance, and further chilling protected speech.

5. Since the passage of the Ordinance, the day laborers that Plaintiffs represent have had great difficulty obtaining work. The Town has clearly signaled its intent to enforce the Ordinance by, among other things, posting warning signs, stationing law enforcement officials in areas where the day laborers have traditionally sought work, and threatening day laborers and their prospective employers. As a result, an entire community has lost its ability to earn a living wage.

6. The Ordinance thus violates the free speech, due process, and equal protection rights of the laborers that Plaintiffs represent as well as the expressive rights of the Plaintiff organizations who seek to advocate their support for such laborers, and in so doing, abridges rights under the First and Fourteenth Amendments of the U.S. Constitution. The laborers and the Plaintiffs would like to be able to exercise their right to solicit work and advocate for employment rights without fear of penalty and thus Plaintiffs ask the Court to declare the Ordinance unconstitutional and bar its enforcement.

### **JURISDICTION AND VENUE**

7. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3–4).

8. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that Plaintiffs' claims arise in the Eastern District of New York.

### **PARTIES**

9. Plaintiff CENTRO DE LA COMUNIDAD HISPANA DE LOCUST VALLEY (“Centro”) is an unincorporated membership organization located in Locust Valley, New York. Its membership consists primarily of day laborers and their families who live and work in the Town of Oyster Bay and in particular in Locust Valley. The mission of Centro is to promote the right to work with dignity, respect and justice for the Locust Valley community. In particular, Centro’s mission is to provide educational courses aimed at enhancing day laborers’ professional and language skills and thus their ability obtain work, to operate as a gathering place for day laborers to exchange ideas and come together as a community, and to engage in community political advocacy intended to secure employment and the employment-related rights of day laborers.

10. Plaintiff THE WORKPLACE PROJECT is an incorporated membership organization located in Hempstead, New York. Its membership is made up in part of Latino immigrant workers who live in Nassau County, Long Island and in particular in the Town of Oyster Bay. Its members finance the Workplace Project's activities, and elect and serve as its leadership. The mission of the Workplace Project is to end the exploitation of Latino immigrant workers on Long Island and achieve socioeconomic justice for its members in the communities in which they live. One of its core projects is a day labor organizing project, through which members push for government policies that respect the rights of day laborers to seek work in peace. The Workplace Project also engages in political advocacy that is intended to secure employment and the employment-related rights of day laborers.

11. Defendant TOWN OF OYSTER BAY is located in Nassau County in New York State.

12. Defendant JOHN VENDITTO is the Town Supervisor of the Town of Oyster Bay.

## **FACTS**

### *The Town of Oyster Bay*

13. The Town of Oyster Bay, in Nassau County on Long Island, has a population of about 300,000 people and consists of 18 hamlets and 18 villages.

14. Based on 2000 census numbers, the Town is more than 90% white, 5% Hispanic or Latino, 4% Asian, and less than 1% African American.

15. Oyster Bay's Latino and Hispanic community has consistently grown over the last several years, raising tensions between the newcomers and those whose families

arrived before. Indeed, the Latino/Hispanic population almost doubled during the period 1990-2000; in 1990, the Town's population was only 3% Hispanic.

16. One of the Town's hamlets is Locust Valley. Based on 2000 census numbers, Locust Valley has a population of 3,521. Its population is overwhelmingly white, with 15% identifying as Hispanic or Latino.

17. Farmingdale is a village within the Town of Oyster Bay. Based on 2000 census numbers, Farmingdale has a population of 8,399. Nearly 90% of the population is white, with 12.6% identifying as Hispanic or Latino.

*The Day Laborers in Oyster Bay*

18. Day laborers have been gathering daily on the streets and sidewalks of Oyster Bay, in particular in Locust Valley and Farmingdale, for almost two decades in order to find the day work they rely upon to make a living.

19. The work the day laborers obtain, which consists mainly of short-term manual labor and construction work, constitutes their primary means of income.

20. The workers typically earn between \$75-\$125 per day for 8-12 hours of work.

21. In recent years, day laborers, especially in Farmingdale and Locust Valley, have often been subjected to harassment and intimidation by neighbors, government officials and law enforcement when they gather to seek work.

*The History of Anti-Latino and Anti-Immigrant Sentiment on Long Island*

22. As the population of Latino immigrants has grown in recent years, Latino day laborers and their supporters throughout Long Island have increasingly been subjected to discrimination, harassment, intimidation and violence.

23. For example, the area has seen the emergence of anti-immigrant groups that encourage stereotyping and hatred toward Latinos and inflame community tensions. These groups have specifically targeted day laborers; for example, in contributing to the rejection of a proposed government-sponsored day laborer hiring center in Farmingdale.

24. Day laborers and other immigrants in Long Island have been the victim of hate crimes. In a 2006 survey by Hofstra University's Center for the Study of Labor & Democracy, over 43% of Long Island's day laborers reported being targeted for slurs based on their nationality, while more than one-quarter reported having been threatened while looking for work. A similar percentage reported having been physically assaulted while looking for work, a rate that is 109 times the national average.

25. In 2003, the house of Latino immigrants in Farmingville was fire-bombed. Three years earlier in the same town, two Mexican day laborers were brutally beaten after being lured out of their home by the promise of work. And when Farmingdale residents attempted to create a hiring site for day laborers, news reports indicated that someone left a .50-caliber anti-aircraft shell and carved a depiction of a gun into a wooden picnic table at the proposed location.

26. Most recently, in 2008, Ecuadorean immigrant Marcello Lucero was stabbed to death on Long Island by seven teens who were specifically trolling for a Hispanic victim, a local practice one witness in the case described as "beaner hopping." In reference to this practice, the district attorney prosecuting the case stated, "We know for sure that there are more victims out there."

*The Introduction of the Ordinance*

27. At a March 31, 2009, Town Board meeting, several Oyster Bay residents complained about the “invasion of day laborers,” accused them of urinating and defecating in public, and called the laborers “unsafe and unsightly.” One resident stated that he felt like he did not “belong” in the neighborhood anymore.

28. Discussing this issue at that same meeting, Town Supervisor John Venditto described his background as the son of an Italian immigrant who “had to follow certain rules,” in contrast to the different sort of immigrants who started arriving “in the 1970’s.”

29. Following that meeting, the Town Board proposed an ordinance (hereinafter, “the Ordinance”) intended to prohibit the solicitation of labor from the town’s streets and sidewalks.

30. The Ordinance prohibits any person standing on a public street from stopping or attempting to stop a passing car for employment-related purposes. It also forbids drivers from stopping their cars for the same purposes.

31. The Ordinance defines “soliciting employment” to include a wide variety of speech, including “any request, offer, enticement or action” that seeks or offers work or “that seeks to . . . secure employment.” In so doing, it prohibits general advocacy designed to secure employment for workers.

32. The Ordinance also specifies particular prohibited methods of speech, including “waving arms, making hand signals, shouting . . . , jumping up and down, waving signs . . . standing in the [street], or entering the [street].”

*The Purpose of the Ordinance*

33. The expressed legislative intent of the Ordinance is “to protect the health, safety and welfare of motorists and pedestrians using public rights-of-way within the Town of Oyster Bay, and persons standing in close proximity to said public rights-of-way, from the dangers of obstruction, distraction and delays of traffic caused by the solicitation of employment by pedestrians from or directed to operators or occupants of motor vehicles . . . .”

34. Despite the Ordinance’s professed focus on traffic concerns, Town Supervisor Venditto has stated in reference to the Ordinance that “My predisposition is for these people to get on the highway to citizenship; in the meantime, the ordinance is a short-term solution.” He has further explained that the purpose of the Ordinance is “to help with the plight of the day laborer. . . . We’re only asking that [the day laborers] assimilate.”

35. On May 26, 2009, the Town held a public hearing on the proposed ordinance.

36. Residents who spoke in favor of the Ordinance expressed their discomfort at having unfamiliar residents in their midst. One resident explained that “people feel uncomfortable about having groups of men who they don’t know, who they don’t recognize,” and whom they don’t perceive as their neighbors standing on the streets.

37. Later acknowledging this resident, Mr. Venditto affirmed that “people are frightened, people are afraid.”

38. Residents also expressed fear for their safety due to the presence of immigrant day laborers in their midst. One resident stated: “I just want to be safe



walking to the deli and not be surrounded by mobs of people.” Another said that she wanted to live in a “safe neighborhood.” A third resident stated that he does not want to feel intimidated driving out of his neighborhood due to the presence of day laborers on the corner.

39. Residents at the meeting also described the day laborers in derogatory terms, characterizing them as “unsightly” and stating that their presence on the street corner “doesn’t look appropriate.” One resident stated that “Someone driving through your Town and sees this, like, gee, why would I want to come to Locust Valley[?]”

40. Many residents linked their support of the Ordinance directly to their feelings about immigration policy and undocumented workers. One resident explained: “[M]y point being that my grandparents . . . came here legally. That’s the issue that I have. I don’t have any problem with the people looking for work, but I do have a problem with them looking for work in my neighborhood.”

41. Another resident explained: “My father came straight from Spain, but . . . he went to school, learned the language . . . . Don’t stand on a street corner. What will you learn there?”

42. Yet another resident praised the Town Board’s introduction of the Ordinance for trying to “straighten out what might be the failed federal policies that may have contributed to this problem.” In response, Mr. Venditto asked, “That may have?” Clarifying, the resident explained, “Well, I’m being kind.”

43. In addition to the residents, government officials who spoke at the public hearing expressly linked their support of the Ordinance to their opposition to illegal immigration.

44. For example, Mr. Venditto stated: “For the last 40 years, our government who we count on to protect us has turned its back on us . . .” and “If they can’t go on a pathway to citizenship, then they can’t stay in this country.” He admonished day laborers that “you gotta [sic] work towards blending into the society . . . . When you blend in to society nobody is going to be afraid of you anymore.”

45. At the public hearing, none of the statements made by members of the public or Town Board members indicated that a single traffic accident had occurred as a result of the day laborers’ soliciting work.

46. Furthermore, the Town Code, the New York State Vehicle and Traffic Law, and the New York State Penal Code already contain numerous provisions enabling the town to protect traffic and pedestrian safety, punish littering, control noise levels, prevent disorderly conduct, and regulate solicitation in streets.

47. The Town had no basis for concluding that the Ordinance was necessary to address traffic or pedestrian safety concerns.

48. The Town Board did not gather or examine any statistics as part of its consideration of the Ordinance.

49. The legislative record of the Ordinance presents no evidence or factual support, whether statistical or anecdotal, for the claim that there have been traffic problems presented by the day laborers’ solicitation of work.

50. The legislative record of the Ordinance presents no evidence or factual support, whether statistical or anecdotal, for the claim that existing laws are insufficient to protect traffic and pedestrian safety.

51. Upon information and belief, no traffic accident has ever been caused in Oyster Bay as a result of the day laborers' solicitation of work.

52. On September 29, 2009, the Town Board enacted the Ordinance by a unanimous vote of 7-0.

*The Consequences of the Ordinance*

53. Since the passage of the Ordinance, the Town has stationed law enforcement officers in areas where day laborers traditionally gather.

54. In areas where day laborers often gather, the Town posted signs warning about the new Ordinance, signaling its intent to enforce the law.

55. Upon information and belief, Town officials have reached out to persons affected by the Ordinance, including employers who commonly employ day laborers, to warn them about enforcement of the Ordinance.

56. As a result of the Ordinance's passage, the presence of law enforcement, and the other signals the Town has made of its intent to enforce the Ordinance, day laborers and their potential employers fear being penalized under the Ordinance.

57. Because of the Ordinance, many of the day laborers in Oyster Bay, including members of the Plaintiff organizations, have not been able to obtain work.

58. Some day laborers, including members of the Plaintiff organizations, have been afraid to return to the public areas from which they solicited work in the past.

59. Of the day laborers who have continued to attempt to solicit work, many have been unable to find work because their prospective hirers have been intimidated by the law to avoid hiring the day laborers and because they themselves have been intimidated by the law to avoid soliciting jobs.

60. In addition to loss of wages the day laborers have also been subjected to harassment by law enforcement and government officials.

61. Officers have approached the day laborers, questioned them about why they are standing on the street corner, photographed them, and threatened to ticket them if they return.

62. A Town agent driving a blue truck with the Town seal on its side has driven by one of the hiring sites frequently and intimidated and shouted at the day laborers, telling them to leave the area.

63. Some of the day laborers have experienced passersby yelling racial epithets at them, yelling at them to leave the area, photographing them in an intimidating manner, and throwing things at them, like soda cans and cups of ice, as they drive by in vehicles.

64. Because of the broad scope and vague terms of the Ordinance, Plaintiffs fear that some of the advocacy work in which their members regularly engage may be considered unlawful under the Ordinance by law enforcement officers.

65. The Ordinance offers no guidance to persons such as Plaintiffs, their members, and other day laborers as to whether such advocacy work could be construed as an “attempt to stop” a vehicle for the purpose of “securing employment.”

66. Because the Ordinance offers no guidance to law enforcement officers as to what it prohibits, Plaintiffs fear that those of their members who are or appear to be Latino or of Central or South American origin will be subject to arrest merely because they are standing on public sidewalks in Oyster Bay.

67. As a result, Plaintiffs fear that their members who advise day laborers of their rights while they stand on the sidewalks in Oyster Bay will be reluctant to do so because they fear being arrested under the Ordinance.

**FIRST CAUSE OF ACTION  
(First Amendment)**

68. Defendants' actions violate the rights of Plaintiffs and their members under the First Amendment, as incorporated by the Fourteenth Amendment, of the U.S. Constitution and secured by 42 U.S.C. §1983.

**SECOND CAUSE OF ACTION  
(First Amendment Vagueness)**

69. The ordinance is unconstitutionally vague in violation of the First Amendment, as incorporated by the Fourteenth Amendment, of the U.S. Constitution and secured by 42 U.S.C. §1983, because its terms do not distinguish between those who engage in the prohibited activity of soliciting employment and those who seek to exercise their right to counsel day laborers.

**THIRD CAUSE OF ACTION  
(Equal Protection)**

70. Defendants' actions violate the rights of Plaintiffs and their members to equal protection of the laws under the Fourteenth Amendment of the U.S. Constitution and secured by 42 U.S.C. §1983.

**FOURTH CAUSE OF ACTION  
(Due Process/Vagueness)**

71. The ordinance is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution and secured by 42 U.S.C. §1983, because (1) it fails to give law enforcement guidance as to which persons standing on the sidewalk are and are not engaged in prohibited activity and (2) because it fails to apprise ordinary persons of what activity is and is not prohibited.

WHEREFORE, the plaintiffs request that this Court:

- (1) Declare Chapter 205.32 of the Code of the Town of Oyster Bay unconstitutional because it violates the First Amendment, as incorporated by the Fourteenth Amendment, and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution;
- (2) Enter a preliminary injunction that enjoins defendants from enforcing Chapter 205.32;
- (3) Enter a permanent injunction that enjoins defendants from enforcing Chapter 205.32 of the Code of the Town of Oyster Bay in perpetuity;
- (4) Award the Plaintiffs attorneys' fees and costs pursuant to 42 U.S.C. §1988;  
and
- (5) Grant any other relief the Court deems appropriate.

Respectfully submitted,

                    
/Corey Stoughton  
COREY STOUGHTON (CS-101)  
ARTHUR EISENBERG (AE-2012)  
ADRIANA PINON (AP-0798)  
New York Civil Liberties Union  
125 Broad Street, 19<sup>th</sup> Floor  
New York, NY 10004  
(212) 607-3300

ALAN LEVINE (AL-5297)  
CHRISTINA ITURRALDE (CI-6051)  
LatinoJustice PRLDEF  
99 Hudson Street, 14<sup>th</sup> Floor  
New York, NY 10013  
(212) 219-3360

LEE GELERNT (LG-8511)  
American Civil Liberties Union  
125 Broad St., 17<sup>th</sup> Floor  
New York, NY 10004  
(212) 549-2500

*Counsel for Plaintiffs*

Dated: September 28, 2011  
New York, NY