

BROTHER, CAN YOU SPARE A DIME? PANHANDLING IN PUBLIC PARKS AND PLACES

Panhandling in public parks and on streets and sidewalks, particularly when it is perceived as aggressive or annoying, oftentimes provokes reactive legislation or prohibitive regulations. As illustrated by the following situations in Fort Lauderdale, Fla., and Cambridge, Mass., begging in public places is a form of free-speech activity protected by the First Amendment. Accordingly, the government may impose reasonable time, place, and manner restrictions on begging in public parks and places only to the extent that such regulations are content-neutral, narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication.

In Fort Lauderdale, the challenged regulation was found to be narrowly tailored to serve a significant government interest. In addition, it left open ample alternative channels of communication because it allowed "begging in streets, on sidewalks, and in many other public fora throughout the city." In contrast, the challenged statute in Cambridge was not considered content-neutral because it failed to treat begging as it did other types of communication and free-speech activities. Moreover, unlike Fort Lauderdale, Cambridge was unable to demonstrate a significant government interest that warranted a complete ban on unlicensed begging in public places.

Begging-Free Beaches

In the case of *Smith v. City of Fort Lauderdale*, No. 98-4973 (11th Cir. 1999), a group of homeless people claimed that Fort Lauderdale's "regulation proscribing begging on a certain five-mile strip of beach and two attendant sidewalks" violated their First Amendment rights. The facts of the case were as follows:

The controversy in this case began when the City of Fort Lauderdale enacted Rules and Park Regulations for City Parks and Beaches, intended "to provide citizens with a safe environment in which recreational opportunity can be maximized." Pursuant to this purpose, the City included in its regulations Rule 7.5, which prescribes regulations "to eliminate nuisance activity on the beach and provide patrons with a pleasant environment in which to recreate." Rule 7.5(c) states, "Soliciting, begging or panhandling is prohibited"...

The Fort Lauderdale Beach area is an essential part of the Fort Lauderdale tourism experience. Tourism is one of Florida's most important economic industries, and Fort Lauderdale is the premiere tourist location of Broward County. The Beach area is Fort Lauderdale's number one tourist attraction. Approximately four million tourists, many of whom are from foreign countries, visit the Fort Lauderdale area, and most of them at one time or another visit the Fort Lauderdale Beach area. City attendance records reflect that almost three million people visit the beaches annually (August 1993-- July 1994, estimated figures).

The improvement of the Beach area was a high priority in the City's plan to expand the economic base of the community by attracting new investment. Creating an attractive infrastructure was designed to encourage quality development in the Beach area.

Plaintiffs challenged the application of Rule 7.5(c) to a 5-mile strip of beach, a new 1.5-mile promenade sidewalk between that beach and Highway A1A, and the commercial-area sidewalk on the opposite side of the highway (the "Fort Lauderdale Beach area"). The federal district court granted summary judgment in favor of the city. Plaintiffs appealed.

As characterized by the federal appeals court, "the Fort Lauderdale Beach area covered by Rule 7.5(c) - consisting of beach and sidewalk spaces - is a public forum." The court noted further that "Rule 7.5(c)'s limitations on begging in the Fort Lauderdale Beach area restrict speech in a public forum." Moreover, as with "other charitable solicitation," the court recognized that "begging is speech entitled to First Amendment protection." Accordingly, to survive plaintiff's First Amendment challenge, the city's regulation of the time, place, and manner of expression in a public forum had to be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

In this particular instance, plaintiffs did not dispute whether "Rule 7.5 (c) is content-neutral and leaves open ample alternative channels of communication." Further, plaintiffs conceded that "the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach is 'a significant government interest.'" Rather, plaintiffs argued on appeal that Rule 7.5(c)'s begging restrictions are not narrowly tailored to serve that interest." The federal appeals court rejected this argument.

Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale Beach area are narrowly tailored to serve the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach. The City has made the discretionary determination that begging in this designated, limited beach area adversely impacts tourism. Without second-guessing that judgment, which lies well within the City's discretion, we cannot conclude that banning begging in this limited beach area burdens "substantially more speech than is necessary to further the governments legitimate interest."

In so doing, the federal appeals court found that "Rule 7.5 (c)'s suppression of begging in the Fort Lauderdale Beach area is materially mitigated by the allowance of begging in streets, on sidewalks, and in many other public fora throughout the City"

Plaintiffs had also argued on appeal that "the City's interest might be served by proscribing only hostile or aggressive begging or by confining begging to specific parts of the beach." The appeals court however, noted that "Rule 7.5 (c) need not be the 'least

restrictive or least intrusive means' of serving the City's interest in order to qualify as 'narrowly tailored.'"

So long as the means chosen are not substantially broader than necessary to achieve the government's interests, the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative.

Plaintiffs' proffered alternatives fall far short of demonstrating that Rule 7.5 (c)'s prohibition of begging in this Fort Lauderdale Beach area is "substantially broader than necessary."

As a result, the federal appeals court held "the challenged restrictions on speech are narrowly tailored to serve the City's legitimate interests." Having determined that "Rule 7.5 (c)'s restrictions on begging in the Fort Lauderdale Beach area do not run afoul of the First Amendment," the federal appeals court affirmed the district court's grant of summary judgment for the city.

Will Surf for Food

In the case of *Benefit v. City of Cambridge*, 424 Mass. 918, 679 N.E.2d 184 (1997), plaintiff Craig Benefit claimed that a state law prohibiting unlicensed begging violated the constitutions of Massachusetts and the United States. In his complaint, Benefit asked the court to issue an order preventing the city of Cambridge from "threatening, intimidating, harassing, arresting and prosecuting" him when he is peacefully begging in public places. In pertinent part, the law at issue, General Laws c. 272, B 66, provided that "persons wandering abroad and begging, or who go about from door to door or in public or private ways, areas to which the general public is invited, or in other places for the purpose of begging or to receive alms, and who are not licensed may be imprisoned for up to six months." The facts of the case were as follows:

The plaintiff is thirty-six-years old and states that he "resides on the streets of Cambridge." He usually sleeps outside, sometimes using a tent or sleeping bag, and subsists on the money he receives from begging and on a monthly social security disability check ranging between \$460 and \$489.

The plaintiff frequently sits on sidewalks in Harvard Square, often in front of a CVS store located there, holding various signs that request help and refer to love, peace, food, or other messages about the United States government. An example of one of the signs held by the plaintiff reads as follows:

Needs Help!!

Kindred Spirit seeks HELP!

Unemployed; Cook, Window Cleaner, Bicycle Mechanic, Surfer

Can you Help PLEASE

At times, he holds a cup into which people may deposit money. The plaintiff talks with people about the messages on his signs, and sometimes, if a passerby is willing, the plaintiff discusses his homelessness, the reasons for it, and the role of the government in dealing with the homeless. The plaintiff's activity is peaceful; he does not approach or threaten anyone either physically or verbally, and he does not block any sidewalk or any store entrance. He uses the money he receives in donations to purchase the basic necessities of life.

On March 17 and June 19, 1992, officer Rudy Wolcott of the Cambridge police arrested the plaintiff for violating G. L. c. 272, B 66. On July 9, 1993, another Cambridge police officer arrested the plaintiff for violating G. L. c. 272, B 66, and also charged him with being a disorderly person in violation of G. L. c. 272, 9 53.

The trial court determined that "G. L. c. 272, B 66 is an overbroad and unconstitutional regulation of speech protected by the First Amendment to the United States Constitution." The trial court, therefore, issued an order prohibiting the city from enforcing the statute. The city appealed to the state supreme court.

The issue before the state supreme court was whether the challenged statute, G. L. c. 272, B 66, violates the First Amendment because it bans constitutionally protected speech in traditional public forums. As noted by the state supreme court, it was "beyond question that soliciting contributions is expressive activity that is protected by the First Amendment."

In so doing, the court cited the case of *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 100 S. Ct. 826, 63 L Ed. 2d 73 (1980), in which "the United States Supreme Court struck down an ordinance prohibiting solicitations by charitable organizations that did not use at least seventy-five percent of their revenues for charitable purposes."

The Court held that charitable appeals for funds, on the street or door to door, involve a variety of speech interests -- communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes - that are within the protection of the First Amendment Solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on social issues, and without solicitation the flow of such information and advocacy would likely cease.

For First Amendment purposes, the state supreme court found "little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed."

[Organized charities] are communicating the needs of others while ... [those begging for themselves] are communicating their personal needs. Both solicit the charity of others. The distinction is not a significant one for First Amendment purposes. Indeed, it would be illogical to restrict the right of the individual beggar to seek assistance for himself while protecting the right of a charitable organization to solicit funds on his behalf. Such a conclusion would require citizens to organize in order to avail themselves of free speech guarantees, a requirement that contradicts the policies underlying the First Amendment ...

Begging is generally defined as speech in which the person seeking assistance either asks for money or expresses need through some other clear form of communication such as a sign, a donation cup, or an outstretched hand. Many times a beggar's solicitations will be accompanied, as were the plaintiff's, by communications that convey social or political messages. Even without particularized speech, however, the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance.

As a result, the state supreme court concluded that "there is no distinction of constitutional dimension between soliciting funds for oneself and for charities and therefore that peaceful begging constitutes communicative activity protected by the First Amendment. In so doing, the court rejected the City's argument that the statute's prohibition against begging targets speech, not conduct."

Communication is an inherent aspect of begging: a beggar's activities (sitting or walking in a public place) would be legally permissible under the statute but for their communicative aspects. When the government prohibits begging, the only conduct which it seeks to punish is the fact of communication.

The state supreme court then considered whether the statute's "broad ban on begging ... by its terms makes distinctions based on the content of the message conveyed." As noted by the court, "laws that distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content-- based." Moreover, the court noted that "[c]ontent-based regulations are presumptively invalid. Applying these principles to the facts of the case, the state supreme court found G. L. c. 272, B 66 was "necessarily content based because the content of the individual's message determines criminal guilt or innocence."

Under the statute, only communicative activity that asks for direct, charitable aid for the beggar constitutes a crime. The statute permits speech by those who ask in public places for money for other purposes, such as money for parking meters, change for the bus, money to make a telephone call, assistance where a wallet has been lost, donations for school teams and activities, money for all kinds of political and social causes, and money for newspapers and articles sold on the street.

The conduct by the solicitor in all of these examples is the same: "wandering about" (in the parlance of the statute) in a public place, communicating with strangers, and requesting assistance of some kind. By prohibiting peaceful requests by poor people for personal financial aid, the statute directly targets the content of their communications, punishing requests by an individual for help with his or her basic human needs while shielding from government chastisement requests for help made by better-dressed people for other, less critical needs.

The statute may also be fairly characterized as viewpoint-based because it favors the view that poor people should be helped by organized groups and should not be making public requests for their necessities. When the government prohibits begging, it takes one position among several existing views on charity and prohibits speech that implicitly promotes a contrary viewpoint.

The statute directs its ban statewide at all public places, and thus includes the public sidewalks where the plaintiff conducted his activity as well as public parks and other areas. These sites fall within the category of property traditionally held open to the public for expressive activity. Since we are concerned with a content-based prohibition on communicative activity occurring in what have historically been considered public forums, the statute must be subjected to strict scrutiny.

The state supreme court then considered whether G. L. c. 272, B 66 was constitutional because it was "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." The city had argued that "the statute supports the Commonwealth's compelling interest in preventing crime and in providing safe streets." The state supreme court rejected this argument.

There is no basis whatsoever in the record to support the assumption that those who peacefully beg are likely to commit crimes. It cannot be seriously contended that because a person is without employment and without funds he constitutes a "moral pestilence." Poverty and immorality are not synonymous.

According to the court, "the government cannot make communicative activity criminal solely on the ground that the person engaging in the activity might commit a future crime."

A presumption that people who might walk or loaf or loiter or stroll or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards -- that crime is being nipped in the bud - is too extravagant to deserve extended treatment

In so doing, the state supreme court rejected the city's argument that the statute was "justified" because it created an atmosphere where citizens may go about their way free from being accused, intimidated, or harassed."

A listener's annoyance or offense at a particular type of communicative activity does not provide a basis for a law burdening that activity, especially because people are free to ignore or walk away from the beggar's request for money or attention ... [S]olicitation is protected speech and that preventing an "annoyance" is not sufficient to justify interference with First Amendment rights ... [P]ublic intolerance or animosity cannot be the basis for abridgment of constitutional freedoms.

The state supreme court, therefore, concluded "no compelling State interest has been demonstrated that would warrant punishing a beggar's peaceful communication with his or her fellow citizens in a public place."

The statute intrudes not only on the right of free communication, but it also implicates and suppresses an even broader right - the right to engage fellow human beings with the hope of receiving aid and compassion. The streets and public areas are quintessential public forums, not because they are a particularly convenient platform for expression, but because they are the necessary, essential public spaces that connect our individual private spaces, from which we legitimately may exclude others and likewise be excluded, but from which we almost all must inevitably emerge from time to time. If such a basic transaction as peacefully requesting or giving casual help to the needy may be forbidden in all such places, then we may belong to the government that regulates us and not the other way around.

There is ample authority available to the government to deal with beggars who transgress peaceful limits. Depending on the nature of the transgression, charges may be brought for disorderly conduct, trespass, assault, assault and battery, and other offenses that may result from peaceful activity turned aggressive.