

Aggressive Solicitation Ordinances

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In the mid-twentieth century, every state in the United States actively enforced vagrancy laws.[1] Many states and localities had imposed outright bans on begging in public places.[2] Although many states still have laws that regulate panhandling and vagrancy (or laws that authorize localities to do the same), laws that imposed outright bans have since been found to be unconstitutional by the courts.[3] States and localities now use tools with a more narrow scope, such as aggressive solicitation ordinances, to address issues related to panhandling.

Drafting an aggressive solicitation ordinance can put even the seasoned lawyer in a difficult situation—one requiring the sensitive consideration of the possibly competing interests of the unfortunate beggars, anxious citizens, concerned business owners, and the rights protected by state or federal constitutions. Many large cities have used aggressive solicitation ordinances for a number of years, and recently, an increasing number of small and mid-sized cities have passed, or are considering, similar laws of their own.[4] The following is a basic discussion of how courts analyze aggressive solicitation ordinances.

Some courts will first address whether panhandling itself constitutes protected expression under the First Amendment. For example, in *Gresham v. Peterson*,[5] the U.S. Court of Appeals for the Seventh Circuit refused to distinguish between an appeal for money by an organized charity and a beggar asking for donations.[6] The Seventh Circuit stated that "solicitation cannot be restricted without also risking the flow of information.…Beggars at times may communicate important political or social messages in their appeals for money, explaining their conditions related to veteran status, homelessness, unemployment and disability, to name a few."[7] After concluding that panhandling was protected under the First Amendment, the court analyzed the ordinance to see if it was content-neutral. The local law in this case defined "panhandling" partly as "any vocal appeal [for money] … [w]here the person being solicited receives an item of little or no monetary value in exchange for a donation."[8] The court stated that a "[c]olorable argument could be made both for and against the idea that the [ordinance] is a content-neural time, place, or manner restriction."[9] The argument against content-neutrality was basically the fact that a government official could determine whether a violation of the ordinance occurred only after determining the specific content of the solicitor's speech (i.e., was it a plea for money, and not a request for something else?). However, the court did not independently analyze the ordinance as content-based (and, therefore, coming under a strict scrutiny standard) since the parties had previously agreed that the law was content-neutral.

If a restriction is found to be content-neutral, the ordinance is then required to be narrowly tailored to achieve a significant government purpose, and must leave open alternative channels of communication.[10] In this case, the court found that the ordinance was narrowly tailored due to the fact that it was adequately restricted by time (night) and place (such as ATMs and banks).[11] The City's purpose in promoting the safety and convenience of its citizens was a significant interest, and a panhandler could solicit during the daytime, in other places (away from the specified commercial establishments), using other methods (for example, by holding up signs or by busking).

IMLA members looking for further information on aggressive solicitation ordinances should look at IMLA's updated Aggressive Solicitation Ordinance, available online at MyIMLA. It includes a model aggressive solicitation ordinance similar to the one upheld in *Gresham*.

Notes

1. *See* Donald Saelinger, *Nowhere to Go: The Impacts of City Ordinances Criminalizing Homelessness*, 13 GEO. J. ON POVERTY L. & POL'Y 545, 550 n.48 (2006).
2. *See* Michael M. Burns, *Fearing the Mirror: Responding to Beggars in a "Kinder and Gentler America"*, 19 HASTINGS CONST. L.Q. 783, 810-811 n. 142 (1992).
3. *See* Papchristou v. City of Jacksonville, 405 U.S. 156 (1972); Loper v. New York City, 999 F.2d 699 (2d Cir. 1993).
4. Jonathan Brunt, *Spokane Considers Ban on Aggressive Panhandling*, THE SEATTLE TIMES, Nov. 18, 2008, at http://seattletimes.nwsource.com/html/localnews/2008406112_webpanhandling18m.html; *see also*, Joe Killian, *High Point Council Oks Ban on Forceful Solicitation*, NEWS-RECORD.COM, Nov. 20, 2008, at http://www.news-record.com.
5. 225 F. 3d 899 (7th Cir. 2000).
6. *Id.* at 904.
7. *Id. See also*, Roulette v. City of Seattle, 850 F. Supp. 1442, 1451 (W.D. Wash. 1994) (noting that the City did not dispute the assertion that peaceful begging, or solicitation for charitable purposes, was entitled to some First Amendment protection).
8. *Id.* at 901.
9. *Id.* at 905.
10. *Id. at* 906 (*see also*, Ward v. Rock Against Racism, 491 U.S. 781 (1989).
11. *Id.* ML

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