HEY BROTHER, CAN YOU SPARE A DIME?

- Panhandling and such
- IMLA Spring of 2018 Seminar
- Washington D.C.

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INFO ONLY!!

- This is NOT legal advice.
- Nothing herein should be construed as anything but the rantings and ravings of a 58 year old martini drinker. Gin of course.
- I'm not your lawyer.
- I'm not your clients lawyer.
- I don't want to be anyone's lawyer……
- Fine. I'll be a lawyer but this is information only.

TWO OF MY FAVORITE PEOPLE ARE HERE TODAY!





REGULATING PANHANDLING (OR NOT) IN THE WAKE OF *REED V. TOWN OF GILBERT, ARIZ.*




NEED MONEY
FOR
BEER, DRUGS, HOOKER
(HEY, AT LEAST I'M NOT
BULLSHITTIN' YOU)


WILL Take
Verbal Abuse
for
MONEY
-God
-BLESS
Coffee Co.


FAMiLY
KiDNAPED
BY NiNJAS
NEED $ 4
KARATE
LESSONS

POP QUIZ

- *Signs*
- Pop hit
- Sign, sign, everywhere a sign. Blockin' out the scenery breakin' my mind. Do this, don't do that, can't you read the sign?!
- Name the artist
- Five Man Electrical Band

REED: FACTS

- Good News church: used signs to invite folks to their services.
- Advisory notice from the town of Gilbert, violating sign ordinance:
- because "the signs were displayed outside the statutorily-limited time period."
- Suit claiming the ordinance unconstitutional (free speech, free exercise of religion, and equal protection.)
- Yikes: city told church "no leniency under the code."

GILBERT'S SIGN CODE

- Under the ordinance:
- ***Political signs*** up to 32 square feet, displayed for many months, and unlimited in number.
- ***Ideological signs*** up to 20 square feet, displayed indefinitely, and unlimited in number.
- ***Church, non-profits, and event signs*** (temporarily directional signs) could only be 6 square feet, may be displayed for no more than 14 hours, and are limited to 4 per property.

COURT COMMENTARY: YOU GOTTA ASK WHAT THE SIGN SAYS….BOOM.

- Hypothetical involving signs for:
- A book club ***studying*** *John Locke's Two Treatises of Government*
- Versus an ***election*** of Locke's followers
- Two different sets of rules for the signs….CONTENT
- Court: "***We thus have no need to consider the government's justifications or purposes for enacting the code to determine whether it is subject to strict scrutiny."***

REED: HOLDING

- The Supreme Court of the United States held unanimously (sort of) that Gilbert's Sign Code violates the First Amendment.
- "Government regulation of speech is ***content based*** if a law applies to ***a particular speech*** because of the topic discussed or the idea or message expressed."

REED: HOLDING

- Gilbert's Sign Code ***failed strict scrutiny*** because its two ***asserted compelling interests***—preserving ***aesthetic and traffic safety***—were ***"highly underinclusive."***


If I
could
turn
back
time...

"I JOIN THE OPINION OF THE COURT BUT ADD A FEW WORDS OF FURTHER EXPLANATION." ***ALITO***

- "This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign (panhandling…) regulations."
- "I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:"

THE SORTA SIGN LIST…

- Size
- Location
- Lighting

THE SORTA SIGN LIST….HINTS OF THINGS TO COME…

- fixed or changeable messages, private or public property, commercial or residential property, on-premises or off-premises, number of signs, and time restrictions on one-time events.

THE SORTA SIGN LIST….HINTS OF THINGS TO COME…

- Government…."may put up all manner of signs to promote ***safety…"***

SAFETY…

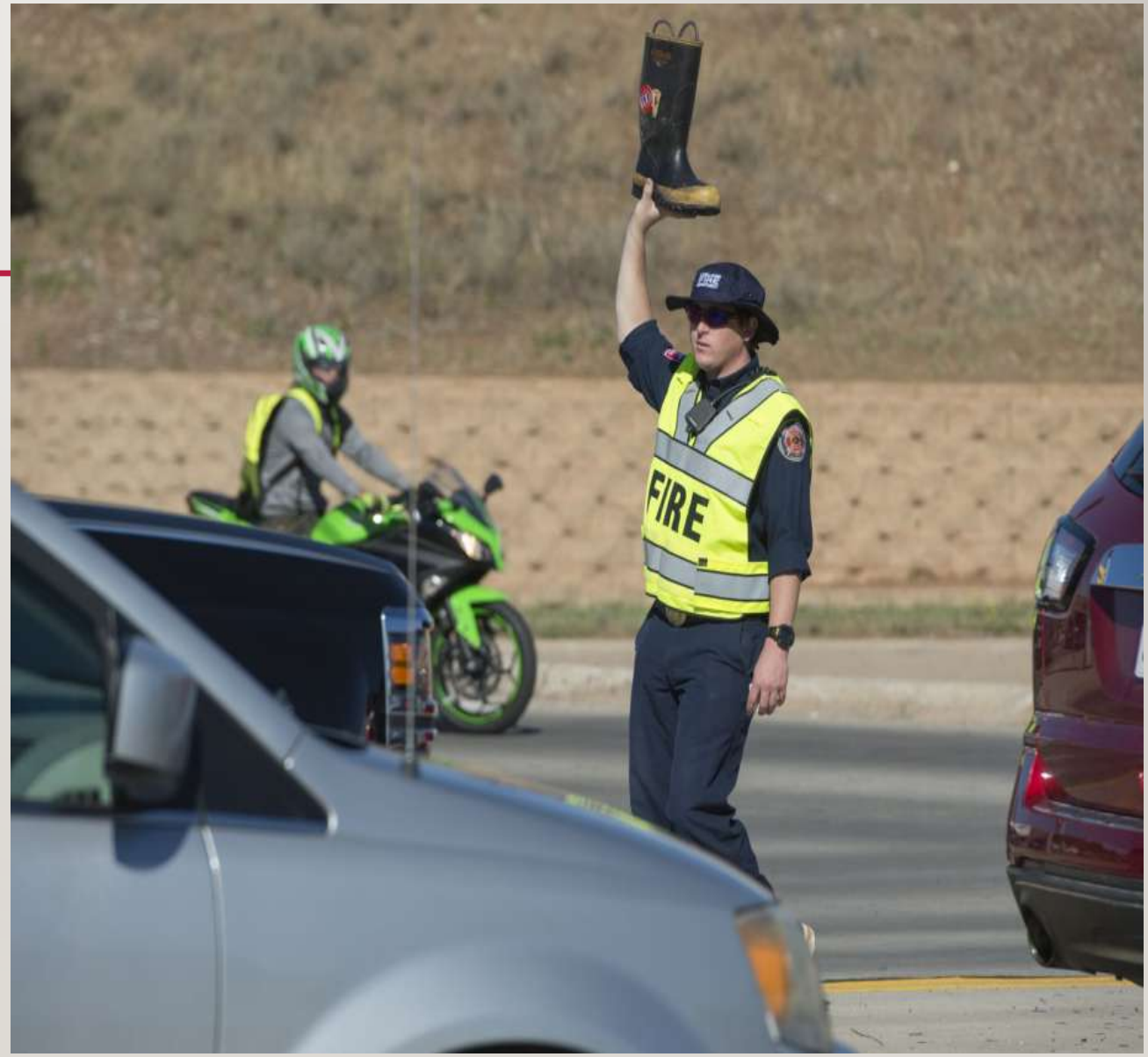
Safe signs.

Safe sex.

Safe panhandling.

Of course government is interested.

DON’T FORGET…




ROCK AGAINST RACISM
OUR MUSIC!
REGGAE SOUL
ROCK N ROLL
JAZZ FUNK
AND PUNK

WARD V. ROCK AGAINST RACISM

- NYC enacted ordinance requiring speakers to use city sound equipment and sound engineer when performing in Central Park.
- Rock Against Racism challenged the ordinance.
- SCOTUS ruled the regulation to be a valid time, place, and manner restriction on speech because it was: ***(a) content-neutral; (b) was narrowly tailored to serve governmental interest; and (c) left ample alternative channels of communication.***

WARD V. ROCK AGAINST RACISM

- This is the application of ***Intermediate Scrutiny,*** rather than Strict Scrutiny.
- Court ruled it did not have to be the least intrusive means and ***a "less-restrictive-alternative analysis" is specifically rejected.***

PANHANDLING OF ALL SORTS…



WATKINS V. CITY OF ARLINGTON, N.D. TEXAS

- A gun rights group challenged a city ordinance that prohibited pedestrians from soliciting, selling, or distributing materials to occupants of motor vehicles stopped at traffic lights.
- The ordinance was deemed a ***content-neutral regulation*** of speech, since the ordinance did not make any distinctions based upon the speaker, subject matter, or viewpoint on its face.

WATKINS V. CITY OF ARLINGTON: INTERMEDIATE SCRUTINY

- Classified as ***a time, place, and manner restriction***, it must (1) be justified ***without*** reference to the ***content of the speech***; (2) be ***narrowly tailored*** to serve a ***significant governmental purpose***; and (3) leave open ample ***alternative channels of communication.***

WATKINS V. CITY OF ARLINGTON: WHY INTERMEDIATE?

- The ordinance did not completely ban pedestrians from exercising other forms of speech at intersections controlled by traffic signs.
- They could demonstrate, advertise, hand out hand bills, or solicit money…
- Wait for it….

WATKINS V. CITY OF ARLINGTON: WHY INTERMEDIATE?

- Ready?!
- Why?
- Because the ordinance said: stay out of the roadway!
- Safety!
- SOTS! Stay. Outta. The. Street.

PEOPLE VERSUS CARS…




Columbia
Saint Charles
ILLINOIS
Desloge
MISSOURI
KENTUCKY
TENNESSEE
Desloge, MO
Copyright Sperling's BestPlaces

TRADITIONALIST AMERICAN KNIGHTS OF THE KU KLUX KLAN, ET AL. V. CITY OF DESLOGE, MISSOURI

- Like *Arlington* case, ordinance deals with ***"distribution" of items between pedestrians and motorists.***
- Distribution: "an ***exchange between the person in the roadway and an occupant of a vehicle on the roadway***, which requires an ***acceptance or rejection of the item*** being distributed."

TRADITIONALIST AMERICAN KNIGHTS OF THE KU KLUX KLAN, ET AL. V. CITY OF DESLOGE, MISSOURI

- Distribution is simple:
- the exchange of any item ***without regard for communicative content***,
- Content-neutral ordinance…
- narrowly tailored to serve the government's legitimate interest...
- but it need not be the least restrictive or intrusive means, ***so long as the means chosen are not substantially broader than necessary*** to achieve the government's interest. *Ward v. Rock Against Racism*


HOMELESS,
HUNGRY, and
SOBER... PLEASE HELP
MARINER
PAUL'S

REYNOLDS V. MIDDLETON

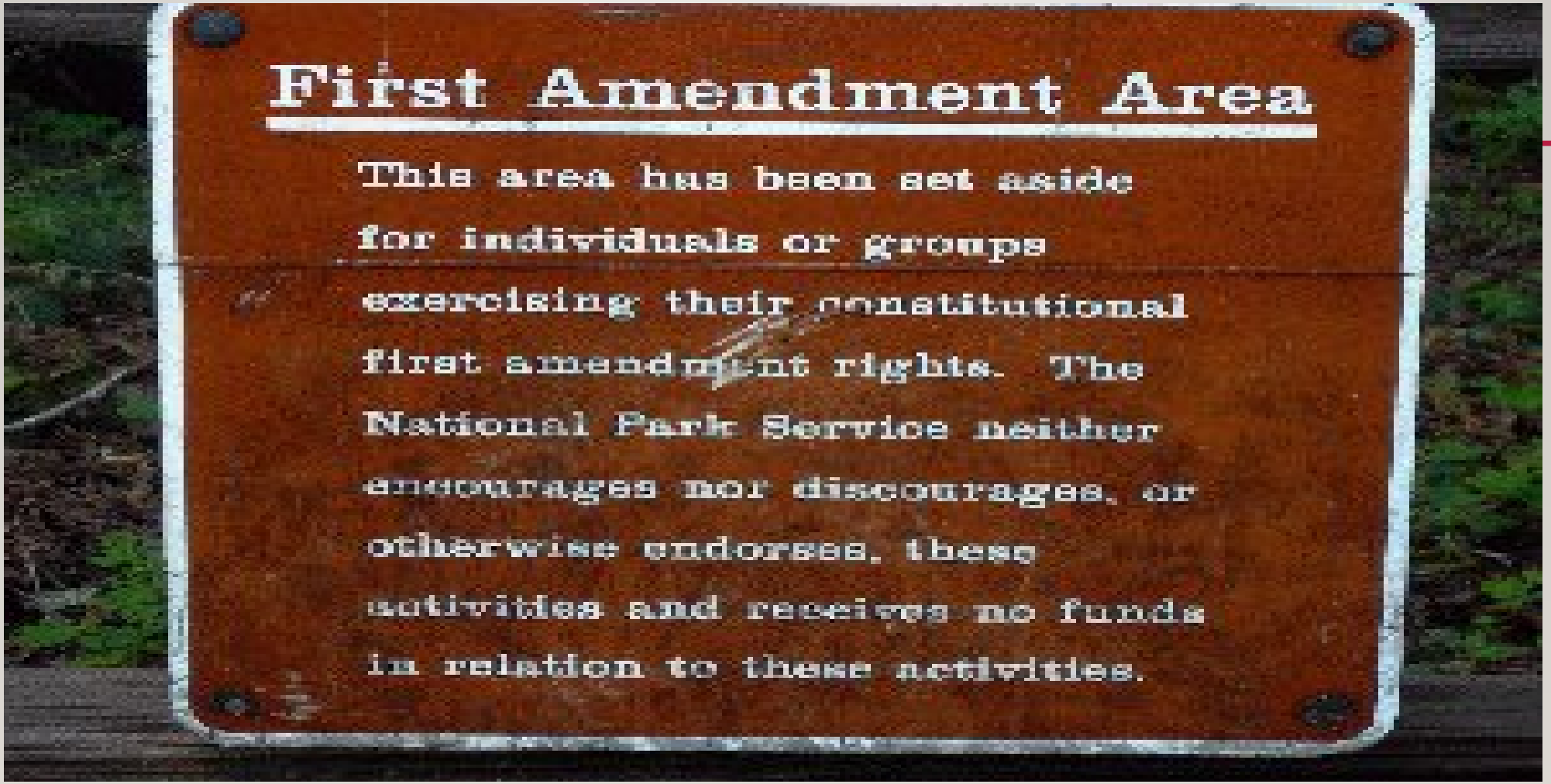
- Ordinance prohibited solicitation on all county highways.
- Definition of highway included the ***shoulder, the median, and the area between the travel lane and the back of the curb.***
- Bad move by Plaintiff…didn't argue ***Reed!***

REYNOLDS V. MIDDLETON

- Co***urt applied Intermediate Scrutiny*** as used in *Ward v. Rock Against Racism.*
- County argued: solicitation activities ***could obstruct traffic and were dangerous to drivers and solicitors alike*** and
- furthers the County's interest in ***safety and unobstructed use of its highways.***
- Bad move by County: evidence, at most, showed a problem at busy intersections west of town, ***not a county-wide problem*** and therefore ***failed to be narrowly tailored***.

LESSONS

- Good evidence needed.
- Statistics are about the only way to do that.
- Don't ignore the obvious …..there really isn't a problem!
- My "friend" at the ACLU: "Get over it! Folks have got to understand that some people talk ugly, stink and have the first amendment right to beg on the streets!"
- Or something like that.


First Amendment Area
This area has been set aside
for individuals or groups
exercising their constitutional
first amendment rights. The
National Park Service neither
encourages nor discourages, or
otherwise endorses, these
activities and receives no funds
in relation to these activities.

CUTTING V. CITY OF PORTLAND, MAINE

- City ordinance ***prohibited persons from standing, sitting, staying, driving, or parking on median traffic strips*** in the city.
- The median traffic strips were considered ***traditional public fora***.
- The ordinance was ***deemed content-neutral, however was seen as too broad*** and imposed a serious burden on speech and was, thus, unconstitutional.

CUTTING V. CITY OF PORTLAND, MAINE

- The Court found that ***some medians*** in Portland were ***extremely large up to 50 feet in width and even contained park benches.***
- ***Plaintiffs argue that medians allow for more speech than do sidewalks*** due to two way traffic, cars parked along sidewalks blocking drivers' views, and other distractors.
- This included the act of panhandling.

LESSONS…

- Know your fora!
- And your medians!
- ***You can sit on a bench but not walk on the land the bench is on…..just sayin', that won't work!***

AGGRESSIVE PANHANDLING…



AGGRESSIVE PANHANDLING…





THAYER V. CITY OF WORCESTER

- 2 ordinances, ***1 for aggressive panhandling and 1 that prohibits standing or walking on a traffic island or roadway except for the purpose of crossing at an intersection***.
- In 2013, ***the district court ruled in favor of the city*** to which the plaintiff appealed. Then in 2014 the ***First Cir. Affirmed*** the decision.

THAYER V. CITY OF WORCESTER

- Writ of certiorari to SCOTUS.
- Vacated the ruling and remanded the case for further consideration in light of *Reed*.
- Much like in *Cutting*, the court decided that ***banning use of all medians was overreaching and burdened more speech that necessary to fit the narrow tailored requirements*** of a content-neutral law.

LESSONS…

- Learn how to pronounce Worcester!
- Draft very carefully.
- Take nothing for granted.
- And for crying out loud take an actual look at your streets and medians!!

HISTORIC DISTRICT PANHANDLING…ALMS FOR THE POOR!



NORTON V. CITY OF SPRINGFIELD, ILL.

- The Ordinance banned panhandling in the City's "downtown historic district."
- Panhandling was defined as "[a]ny solicitation made in person ... in which a person requests an immediate donation of money or other gratuity."
- The court ***first ruled*** that Springfield's anti-panhandling ordinance did not draw lines based on the content of anyone's speech.

NORTON V. CITY OF SPRINGFIELD, ILL.

- The rehearing in this case was deferred until the Supreme Court decided *Reed*.
- ***Applying Reed, the court found the Ordinance unconstitutional***, holding that the Ordinance ***defining panhandling as an oral request for an immediate donation of money was a form of content discrimination.***
- Failed strict scrutiny.

LESSONS…

- Old or new, historic or modern…
- Draft precisely!
- No content.
- Know your medians, even the old ones.

NOT KIDDING…



PETRELLO V. CITY OF MANCHESTER

- Ordinance ***banned passing items*** to or from the occupant of a motor vehicle.
- 2 Scenarios: panhandling while the ***light is green and panhandling while the light is red.***
- Both scenarios, Petrello's ***conduct would be the same: standing by the side of the road holding her sign, never stepping into the road.***

PETRELLO V. CITY OF MANCHESTER

- The only way to ensure Petrello isn't charged with a crime is to leave the sidewalk and stop panhandling, which would be a De Facto Ban on panhandling.
- Court said the ordinance restricted the physical exchange of money on a sidewalk, ***a First Amendment protected activity that was in a traditional public forum.***

LESSON…

- Don’t.
- Do.
- That red light green light thingy.

HOMELESS HELPING HOMELESS



HOMELESS HELPING HOMELESS, INC. V. CITY OF TAMPA, FLORIDA

- Ordinance ***banned the solicitation of donations or payments*** in downtown Ybor City, public transit stops, sidewalk cafes, or areas within fifteen (15) feet of an ATM machine or entrance of a financial institution.
- Under Reed, the ordinance that bans the solicitation of "donations or payment" ***unconstitutionally infringes on the right of free speech under the First Amendment***.
- Ordinance singled out a specific type of speech for its penalties, i.e. soliciting and requesting donations

HOMELESS HELPING HOMELESS, INC. V. CITY OF TAMPA, FLORIDA

- Political Speech, Petitioning, Leafleting, and all other types of speech remained open. (really?!)
- ***Differentiating amongst speech resulted in the court applying strict scrutiny.***
- City had to demonstrate that the Ordinance constituted the least restrictive means of advancing a compelling government interest.

LESSON

- It is constitutionally permissible to beg for money and stuff.
- That's it.

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