

ACLU of Virginia

530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8080

VIA Email

TO: Richmond City Council
FROM: Kent Willis, Executive Director, ACLU of Virginia
DATE: December 11, 2006

RE: ACLU Opposition to Proposed Richmond Ordinance on Panhandling

As you may recall, prior to your meeting on December 13, the ACLU of Virginia asked you to vote against a proposed anti-panhandling ordinance (No. 2006-200) that, among other provisions, banned panhandling after dark, within 20 feet of an outdoor restaurant, bank, ATM, or ABC store, and in the Central Business District.

Although the ACLU believes that the entire ordinance is unnecessary, we have focused our legal research on the proposed ban on all panhandling in the Central Business District (the area bounded by Belvidere Street, the Richmond-Petersburg Turnpike, and the James River), which we believe to be a violation of the First Amendment right of free speech. (Our legal memo, previously distributed to you, follows.)

After the proposed ordinance was removed from the agenda of the December 13 meeting, it was my understanding that City Council -- or the Public Safety Committee -- intended to delete the section banning panhandling in the Central Business District and reintroduce the paper at tonight's meeting.

As of this writing, we have been unable to ascertain that the proposed panhandling ordinance that appears on tonight's agenda has been amended to remove the ban on all panhandling in the Central Business District. If this proposed ordinance, without the deletion, remains on the agenda and is passed by City Council, please be aware that the ACLU of Virginia fully expects to challenge its constitutionality in federal court.

The ACLU is also concerned that the proposed ordinance lacks a mechanism for warning, rather than punishing, first-time violators. Unless the City of Richmond plans to post "No Soliciting" signs throughout the Central Business District and in other prohibited areas, it is unlikely that panhandlers, many of whom are likely to be transients, will be aware of the ordinance. You will certainly agree that it is unfair to enforce the ordinance against persons who are unlikely to know of its existence.

If you would like to discuss this matter, please feel free to call me or ACLU of Virginia Legal Director Rebecca Glenberg at 644-8080.

I thank you for your attention.

ACLU of Virginia

530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8022

MEMORANDUM

To: Kent Willis, Executive Director
From: Rebecca Glenberg, Legal Director
Date: November 6, 2006
RE: Constitutionality of Proposed Richmond Ordinance on Solicitation

I. Issue

Does proposed Richmond ordinance 2006-200, which prohibits all solicitation of money within the Central Business District, violate the First Amendment?

II. Short Answer

Yes. The proposed ordinance is unconstitutionally overbroad, both in the amount of speech it prohibits and the size of the area in which it is prohibited.

III. Discussion

The Supreme Court has held that the solicitation of money is protected speech under the First Amendment of the U.S. Constitution. See *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). This protection has been found to extend to begging. See *Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000); *Loper v. New York City Police Dept.*, 999 F.2d 699, 704 (2nd Cir. 1993) ("We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed."); *Ledford v. State*, 652 So. 2d 1254, 1255 (Fla. Dist. Ct. App. 2d Dist. 1995) ("begging is entitled to some constitutional protection"); *C.C.B. v. State*, 458 So.2d 47, 48 (Fla.App. 1984) (recognizing the "first amendment right of *individuals* to beg or solicit alms for *themselves*."); *Benefit v. City of Cambridge*, 679 N.E.2d 184 (Mass.1997) ("peaceful begging constitutes communicative activity protected by the First Amendment").

Because solicitation is constitutionally protected speech, any regulation of it must, *at a minimum*, satisfy the requirements for time, place and manner requirements; that is they must be "content neutral, [be] narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Graham*, 225 F.3d at 905 (*quoting Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983)). Accordingly, wholesale bans on begging have consistently been struck down. See, e.g., *Loper*, 999 F.2d at 705 ("Even if the state were considered to have a compelling interest in preventing the evils sometimes associated with begging, a statute that totally prohibits begging in all public places cannot be considered 'narrowly tailored' to achieve that end"); *C.C.B.*, 458 So.2d at 50 ("Protecting citizens from mere annoyance is not a sufficient compelling reason to absolutely deprive one of a first amendment right"); *Benefit*, 679 S.E.2d at 190 (invalidating ban on soliciting without a permit

and rejecting the city’s argument that the ordinance “create[d] an atmosphere where citizens may go about their way free from being accused, intimidated, or harassed.”)

Courts have upheld regulations of solicitation only when the type of speech prohibited and/or the areas in which the speech is prohibited are strictly circumscribed. For example, in *Gresham*, the court upheld an Indianapolis ban on solicitation in certain limited locations – such as on public transportation or near an ATM – and on “aggressive panhandling,” which was limited to such activities as touching, following, or blocking the way of the person solicited. the court held that “by limiting the ordinance's restrictions to only those certain times and places where citizens naturally would feel most insecure in their surroundings, the city has effectively narrowed the application of the law to what is necessary to promote its legitimate interest.” The court was careful to note that the ordinance “allows many feasible alternatives to reach both the daytime and nighttime downtown Indianapolis crowds.”

The proposed Richmond ordinance is not narrowly tailored and cannot survive constitutional scrutiny. First, the ordinance bans begging in *all* of the Central Business District, defined as the area bounded by Belvedere Street, the Richmond-Petersburg Turnpike, and the James River. This is not only a huge chunk of the City of Richmond, it is arguably the busiest part and the most effective venue for many forms of communication. I have not found any cases upholding a ban on begging in an entire downtown area. Moreover, the prohibition is not limited to “aggressive” panhandling, but includes all forms of solicitation for money.

IV. Conclusion

The proposed Richmond ordinance is unconstitutionally overbroad because it reaches all forms of solicitation within a major portion of the City.



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November 11, 2006

VIA Email

TO: Richmond City Council

FROM: Kent Willis, Executive Director
ACLU of Virginia

RE: ACLU Opposition to Proposed Richmond Ordinance on Panhandling

I am writing to ask the Richmond City Council to vote against proposed ordinance 2006-200, which among other provisions prohibits all solicitation of money within the Central Business District.

Per the enclosed memo, the ACLU believes that a total ban on panhandling in such a large area violates the First Amendment and would not withstand a legal challenge. Should the ordinance pass, we are prepared to provide legal representation to panhandlers affected by it, although we hope that will not be necessary.

The ACLU is also concerned that the proposed ordinance lacks a mechanism for warning, rather than punishing, first-time violators. Unless the City of Richmond plans to post "No Soliciting" signs throughout the Central Business District and in other prohibited areas, it is unlikely that panhandlers, many of whom are likely to be transients, will be aware of the ordinance. You will certainly agree that it is unfair to enforce the ordinance against persons who are unlikely to know of its existence.

I would also like for members of City Council to consider the necessity of this ordinance. Having worked in Richmond's Central Business District for more than 30 years and having visited many other cities across the United States, I can only say that there is comparatively little panhandling in Richmond and that what there is of it tends to be polite and passive.

I thank you for your attention.

Sincerely,

Kent Willis
Executive Director

ACLU of Virginia

530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8022

MEMORANDUM

To: Kent Willis, Executive Director
From: Rebecca Glenberg, Legal Director
Date: November 6, 2006
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