

ACLU of Virginia

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

VIA Fax and Email

TO: Richmond City Council Public Safety Committee
FROM: Kent Willis, Executive Director
DATE: January 13, 2009

RE: ACLU Opposition to Proposed Richmond Ordinance on Panhandling

I am writing to ask the members of the Public Safety Committee to vote against proposed ordinance 2008-195, which makes it a Class 4 misdemeanor for pedestrians to solicit contributions from drivers or passengers of vehicles.

Per the enclosed legal memo, the ACLU believes that the proposed ordinance violates the First Amendment right to free speech. Should the ordinance pass, we are prepared to provide legal representation to panhandlers affected by it.

I thank you for your attention. If you would like to discuss this with me or ACLU of Virginia Legal Director Rebecca Glenberg, please call 644-8080. You may email me at kwillis@acluva.org or Ms. Glenberg at rglenberg@acluva.org.

ACLU of Virginia

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MEMORANDUM

To: Kent Willis, Executive Director
From: Rebecca Glenberg, Legal Director
Date: January 12, 2009
RE: Constitutionality of Proposed Richmond Ordinance on Solicitation

I. Issue

Does proposed Richmond ordinance 2008-195, which makes it unlawful “to solicit . . . contributions of any nature from the drivers of motor vehicles or passengers therein” violate the First Amendment?

II. Short Answer

Yes. The proposed ordinance is unconstitutional because it is not adequately tailored to serve any legitimate interests of the City.

III. Discussion

A. Panhandling is Constitutionally Protected Speech.

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”).

B. The Proposed Ordinance is Not a Legitimate Time, Place and Manner Restriction.

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)).

The ordinance here is not narrowly tailored to serve the City's interest in safe and efficient traffic flow. The ordinance applies in a substantial number of situations in which no traffic problems are likely to arise. For example, the ordinance would prohibit the solicitation of occupants of vehicles who are lawfully parked by the side of the road, or who could easily pull over to the side of the road.

For similar reasons, the court in *Comite De Jornaleros De Redondo Beach v. City of Redondo Beach*, 475 F.Supp.2d 952 (C.D.Cal. 2006), struck down an ordinance that prohibited the solicitation of employment from the occupants of vehicles. The court observed that, for example, "the Ordinance would reach an individual standing well away from the flow of traffic and who merely holds up a sign inviting the occupants of vehicles to drive to a private location to confer." 475 F.Supp. at 965. The same is true of the Richmond ordinance.

IV. Conclusion

The proposed Richmond ordinance is unconstitutional because it lacks the tailoring required of a legitimate time, place and manner restriction.