Constitutional Challenges to Panhandling Statutes

Young v. New York City Transit Authority (1990) (Second Circuit) (903 F.2d 146)- Court upheld a statute prohibiting begging and panhandling in the New York subway system under a First Amendment challenge, holding that begging was not within the scope of protected speech, and even if it were, the statute would be constitutional in that it met the standard for prohibition of expressive conduct, served legitimate governmental interests totally unrelated to the suppression of free expression, and the subway system was not a public forum.

Blair v. Shanahan (1991) (Northern District of CA) (775 F. Supp. 1315)- Court struck down a statute prohibiting "[accosting] other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms" under First and Fourteenth Amendment challenges, holding that the statute discriminated against different types of solicitation speech, and that begging for oneself was entitled to the same protection as charitable solicitation. The case of **Ulmer v. Municipal Court** (1976) (Court of Appeal of CA) (55 Cal. App. 3d 263) found this statute constitutional under the First and Fourteenth Amendments.

Seattle v. Webster (1990) (Supreme Court of WA) (115 Wn.2d 635)- Court upheld a statute making it criminal to engage in aggressive begging with an intent to intimidate another person into giving money or goods, and that blocked passage of another person, or that required another person to take evasive action to avoid physical contact. They ruled that the statute was not overbroad because it did not prohibit innocent or constitutionally protected intentional acts but only prohibited such intentional interference that sought to block passage or required another to take evasive action, and was not vague because it required intent. Lastly, that it did not violate equal protection, as it applied to all persons irrespective to economic or residential status.

Gresham v. Petersen (2000) (Seventh Circuit) (225 F.3d 899)- Court upheld a statute limiting street begging in public places and prohibiting aggressive panhandling as not unconstitutionally vague or overbroad. The court recognized that panhandling involves a variety of speech interests, some of which would be protected by the First Amendment, but that the statute at issue represents a "reasonable regulation" with "due regard" for the constitutional issue at stake (specifically by imposing only time, place, and manner restrictions, rather than prohibiting the speech entirely).

Roulette v. City of Seattle (1994) (Western District of WA) (850 F. Supp. 1442)- Court upheld two statutes; one prohibiting sitting or lying on public sidewalks and one prohibiting "aggressive begging" against a challenge on First Amendment grounds. The court held that the sidewalk provision was not unconstitutionally vague as it clearly described the proscribed behavior, also that free speech is not implicated because the statute prohibits conduct only, with no expressive element. Although recognizing that some panhandling falls under the protections of free speech, the court upheld the second statute because it dealt only with "aggressive begging," and so was not overbroad.

Smith v. City of Fort Lauderdale (1999) (Eleventh Circuit) (177 F.3d 954)- Court upheld a statute restricting begging within a certain mile radius of beaches and sidewalks against a First Amendment challenge. The Court held that the city was within its power to enact the statute, as it regulated only the time, place, and manner of begging, was content neutral, narrowly tailored to serve a significant government interest (providing a safe, pleasant environment and in eliminating nuisance activity on the beach), and left ample alternative channels of communication (begging was allowed elsewhere in the city).

Loper v. New York City Police Dep't (1992) (Southern District of NY) (802 F. Supp. 1029)- Court struck down a statute that stated that a person was guilty of loitering when he wandered in a public place to beg under a First Amendment challenge. The court recognized that begging was subject to free speech protections and that prohibitions on begging were a content restriction on speech, as New York's licensing scheme exempted charities soliciting donations from the statute. Also, the statute institutes a total ban on begging, rather than a time, place, or manner restriction.

C.C.B. v. State of Florida (1984) (Court of Appeal of FL) (458 So. 2d 47)- Court struck down a statute imposing a complete prohibition on begging or soliciting for alms for an individual's personal use (while allowing exemptions for charitable organizations or groups) under the First and Fourteenth Amendments. The court held the total prohibition upon begging for oneself to be an unconstitutional abridgement of the right to free speech, with no compelling reason.

***Henry v. City of Cincinnati** (2006) (Southern District of OH) (2006 U.S. Dist. LEXIS 94704)- Court refused to dismiss a First Amendment challenge to a statute limiting the time, place, and manner in which the vocal solicitation of funds was allowed within the City of Cincinnati, and makes it unlawful to solicit without a registration from the police. The statute at issue in this case excluded passively sitting with a sign requesting a donation.

***Hobbs v. County of Westchester** (2002) (Southern District of NY) (2002 U.S. Dist. LEXIS 24569)- Court struck down a county ban on solicitation in parks, as applied to public fora and not the non-public forum of the amusement park that the county ran for profit, under a First Amendment challenge. The ban prohibited solicitation of "alms, subscriptions or contributions for any purpose" in any Westchester County park. The court ruled that the county's total ban on solicitation is a content based restriction on speech, imposed without articulating a compelling state interest.

***Chad v. City of Fort Lauderdale** (1998) (Southern District of FL) (66 F. Supp. 2d 1242)- Court granted summary judgment for city, upholding the city's prohibition on begging or panhandling on the city's beach and adjacent sidewalk against a First Amendment challenge. The court held that the language was sufficiently clear, and narrowly tailored to serve the significant government interest of promoting and protecting the safety and aesthetics of the city's beach.

***Church of the Soldiers of the Cross of Christ of the State of California v. The City of Riverside** (1995) (Central District of CA) (886 F. Supp. 721)- Court struck down an ordinance prohibiting solicitors from coming within 10 feet of the person solicited or soliciting in a group of two or more persons under a First Amendment challenge. The court held the ordinance unconstitutional because it impermissibly singled out speech involving soliciting donations and applied only to noncommercial speech.

Fifth Circuit Cases-

***Government of Canal Zone v. Castillo** (1978) (Fifth Circuit) (568 F.2d 405)- Court upheld the Canal Zone vagrancy statute against a challenge that it was unconstitutionally vague under the Fifth Amendment due process requirements. The ordinance at issue prohibited "loitering about a building or structure, or a vessel, railroad car, or storage yard, without authority or permission so to be or to do so." *Vagrancy, not panhandling.*

***Castello v. City of New Orleans** (2004) (Eastern District of LA) (2004 U.S. Dist. LEXIS 20909)- Court refused to grant summary judgment for defendant on a challenge that the New Orleans ordinance against begging was unconstitutional as applied to him. Defendant contends that he was not begging, but selling original poetry books, an activity for which he attempted to acquire the requisite license but was unable because the permit failed to provide for that activity. The city contended the accuracy of this assertion, so the court ruled that summary judgment was inappropriate, as issues of material fact remained.