

Aggressive Panhandling Laws

Do these statutes violate the Constitution?

In 1991 and 1992, federal courts overturned New York and California state laws that made aggressive panhandling illegal. Both cases, *Blair v. Shanahan*, 775 F. Supp. 1315 (N.D. Cal. 1991) and *NJ. Police Dept v. Loper*, 90-Civ. 7546-S.D.N.Y., are currently on appeal. The argument is that these laws are unconstitutionally vague, overbroad and deprive the homeless of their right to free speech.

So says Helen Hershkoff, associate legal director of the American Civil Liberties Union in New York City. She argues that these laws

raise serious due process concerns because they are intended to silence the homeless.

Aggressive panhandling, she argues, does not intimidate so much as create awareness about the plight of the destitute.

Not so, responds Roger Conner, director of the American Alliance for Rights and Responsibilities in Washington, D.C., the legal arm of the Communitarian movement. He believes lines can be drawn to distinguish ordinary solicitation from more menacing and intimidating behavior.

Yes: Silencing the Homeless

BY HELEN HERSHKOFF

In an effort to deal with the enormous increase in poverty and homelessness in cities across the country during the past decade, numerous municipalities are enforcing, with renewed vigor, long-dormant ordinances prohibiting the destitute from asking members of the public for money.

These ordinances, having their roots in the Elizabethan Poor Laws, are unnecessary, misguided and, finally, unconstitutional because they violate the First Amendment. The purpose of anti-begging laws is not to protect the public from harassment, intimidation or a breach of the peace. Laws criminalizing such behavior already exist. Rather, anti-begging laws seek to silence the beggar.

Although supporters of such laws seek to characterize begging as a form of conduct, begging is really a communicative act. According to Webster's Dictionary, to beg is "To ask for as a charity, especially habitually or from house to house." Begging, even "aggressive" begging, is more speech than conduct.

An anti-begging bill from Evanston, Ill., for example, defined "aggressive" begging as asking more than once. The term "aggressive" is vague and leaves too much discretion with police, who are likely to enforce it disproportionately against people who are dirty, different or of minority groups. Anti-begging laws, like Ioi-

tering laws to which they are historically related, therefore raise serious due process questions.

Begging is a form of charitable solicitation—a spoken appeal for funds made by one person to another. In its 1940 landmark decision in *Cantwell v. Connecticut*, the U.S. Supreme Court held that charitable appeals for funds were deserving of First Amendment protection. As recently as 1980, in the case of *Schaumburg v. Citizens for a Better Environment*, the Court observed, "Our cases long have protected speech even though it is in the form of... a solicitation to pay or contribute money."

Chilling Free Speech

Groups and individuals all over the United States engage in highly public fundraising for all sorts of causes and charities. Proponents of anti-begging laws argue that begging is different because beggars ask for money for themselves, whereas others solicit money for others. But that very distinction turns on words, and under the First Amendment, laws that suppress speech solely on content are presumptively invalid.

Furthermore, begging involves more than just a request for money. It communicates in a most poignant and graphic way, information to the public about poverty in our midst and the problems that destitute individuals face every day. In an affidavit filed against the New York City Transit Authority's ban on begging

in subways—a case in which the American Civil Liberties Union appeared amicus curiae—one beggar described his solicitation in detail:

"I tell them that social services in New York City are not designed to help poor people get back on their feet. I tell them you can waste a whole day trying to speak with a bureaucrat, with nothing accomplished. I tell them that the public shelters are dangerous places, where violence often occurs and the few belongings I have might easily be stolen."

Begging therefore implicates not only the beggar's right to speak, but also the public's right to know.

The real, but unstated, purpose of anti-begging laws is to push the beggars out of sight; to protect the public from the sometimes unsettling experience of being spoken to by people who live at the margins of our society. But pushing poverty to the other side of the tracks will not make it go away. And depriving beggars of their First Amendment right to speak about the issues uppermost in their minds also deprives the public of its right to hear an important message about poverty in our midst.

Many find the beggar's message unpalatable. But there is no denying that begging is speech that can produce awareness among people who might otherwise never think about the poor. Beggars, like everyone else, have the right to contribute to America's "marketplace of ideas." •

No: A Solution to Intimidation

BY ROGER CONNER

Aggressive begging laws are being advanced by some of our most progressive urban politicians—like Mayors Maynard Jackson in Atlanta and Norman Rice in Seattle. For them, this issue is not about homelessness. It is, rather, about staving off urban decline, about dealing with the latest reason citizens are avoiding downtowns: aggressive panhandlers, not all of them homeless, who use verbal and physical intimidation in place of the passive palm.

This point cannot be overemphasized: Aggressive begging is not common panhandling. It is uncommon panhandling, a type of harassment bordering on extortion that is practiced by a minority of street people. Mumbling "spare change?" or squatting on the curb with a sign is not aggressive begging. Chasing down vulnerable people is.

Some civil libertarians object that these laws are inherently vague, impinge on free speech, or deal with acts already covered by current law. Not so on all counts.

Aggressive begging laws are aimed at behavior that a reasonable person would interpret as threatening or intimidating. Examples from recently enacted statutes include: following before, after, or during the course of asking for money; touching people or screaming at them while asking for money; accosting or blocking the passage of someone while

asking for money; asking for money in a confined space such as a bank lobby or a subway tunnel; or asking for money in a clearly inappropriate, threatening or intimidating setting, such as in front of an automated teller machine.

Reasonable Retrietoiu

The Supreme Court is likely to accept these statutes as reasonable time, place, and manner restrictions. A majority of the justices are agreed that "in-person solicitations of funds, when combined with immediate receipt of that money, creates a risk of fraud and duress which is well recognized, and which is different in kind from other forms of expression or conduct." (*Krishna Consciousness v. Lee* (1992).) Justice O'Connor added, "As residents of metropolitan areas know from daily experience, confrontation by a person asking for money ... is more intrusive and intimidating than an encounter with a person giving out information."

Even Krishna dissenters agreed that bans could be justified to facilitate pedestrian traffic at "choke points," or upon "evidence of coercive conduct."

Finally, aggressive begging behavior is not covered by other, more general statutes. Most intimidating panhandlers never cross the line into formal assault or sustain their threatening barrage long enough to qualify under harassment statutes (which have themselves come under ACLU

attack).

Yet their victims—especially women, the slight, and the elderly—often feel as if they have narrowly escaped being mugged, assaulted, and robbed, and the sense of violation is not quick to abate. (Recent studies suggest that the fears are not groundless.) Thus, a very small group of frightening panhandlers can ruin a neighborhood or kill a business, robbing citizens of the feeling of security they once felt when walking down the street.

Will aggressive begging laws do any good? Not if the goal is to "throw the bums out" of the local park, or "solve the homeless problem." But they do offer some respite to urbanites who fear being cornered by menacing mendicants. Seattle and Atlanta insist that their laws have helped.

The most surprising feature of public debates over panhandling regulation has been intense opposition from some homeless advocates. Of all people, they should be most aware that high-pressure panhandlers are poisoning public sympathy for the majority of destitute, deinstitutionalized and addicted homeless.

Could some of these advocates have adopted the view that, by making urban streets much more miserable and dangerous, society will be compelled to adopt the "needed" reforms? If that is the case, then we are all victims of an entirely different kind of aggressive begging. •