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Public Safety, Panhandling, and Protecting Free Speech

July 26, 2018

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City governments across the country have met opposition from the courts when attempting to pass panhandling ordinances.^[2] Panhandling is defined as “any in-person solicitation for immediate charitable giving of either cash or goods for the purpose of benefitting the person doing the soliciting.”^[3] In the past couple years, municipalities located in Illinois, Colorado, Florida, Maine, Massachusetts, Ohio, and elsewhere have been unsuccessful in passing panhandling ordinances because the courts have deemed these unconstitutional.^[4] The main reasons cited for these rejections are issues surrounding the First Amendment of the United States Constitution and protection of free speech.^[5] After the case of *Reed v. Town of Gilbert*,^[6] the courts of many states have begun to reevaluate the permissibility of ordinances that may affect free speech on a less obvious level. In *Reed*, the town ordinance attempted to restrict the placement of religious services signs to only certain locations.^[7] The Supreme Court ruled that because the town’s sign code imposed “content-based restrictions” on speech, and the restrictions failed to survive strict scrutiny requiring the government “to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest”, the ordinance was in violation of First Amendment rights to freedom of speech.^[8]

While the *Reed* case is dissimilar in some context to the issue of panhandling, it has been interpreted and applied to cases in which the panhandling ordinances many cities have attempted to pass, or which have already been in place, have been rejected by the courts.^[9] For example, in February 2017, the Kentucky Supreme Court ruled that a decade-old Lexington municipal law prohibiting begging in streets and intersections was a violation of the First Amendment.^[10] In that case, *Champion v. Commonwealth*,^[11] the defendant had been arrested for violating the begging ordinance through the act of holding a sign and begging for financial assistance at a major intersection.^[12] The Kentucky Supreme Court held that the language of the municipal ordinance was “unambiguously content-based” and in violation of the First Amendment because it prohibited public discussion in a public forum only for a certain topic, that topic being the message panhandlers convey when soliciting for immediate charitable giving.^[13] Furthermore, for Lexington to be able to overcome the content-based issue, the city had the burden of proof of showing a “compelling public interest” in order to survive the court’s strict scrutiny.^[14] The purported interest of the city in enforcing the ordinance was the promotion of public safety as well as the free flow of traffic.^[15] Ultimately, the Kentucky Supreme Court recognized that public safety may be a legitimate compelling interest, but that the city had failed to provide substantial evidence that prohibiting panhandling furthered this interest to the degree that the ordinance could survive strict scrutiny over the content-based language issue.^[16]



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As in the example of Lexington's municipal ordinance to prevent panhandling, the reason behind rejection of such ordinances is mainly because "content-based" language threatens the Constitutional right of freedom of speech.^[17] In the decision of the Kentucky Supreme Court, and those from other states, this has been the primary reason for rejecting ordinances that would curtail the ability of people to participate in panhandling at major arterial roadways and intersections.^[18] However, the Kentucky Supreme Court actually instructed Lexington's municipal government on how the ordinance might be rephrased in order to prevent a blatant violation of Constitutional rights.^[19] In the municipality's attempt to enact an ordinance for the same original purpose, the language was changed to include all pedestrians, not just people who are begging, and prohibits pedestrians from being "in" the public roadways.^[20] Furthermore, Lexington's jaywalking ordinance now reads as preventing all pedestrians from crossing the street "at any place except the crosswalk."^[21] Effectively, this means panhandlers may not walk or step into the street from the sidewalk in order to accept money from a motorist stopped at a traffic light, nor may they leave the crosswalk. In this careful re-structuring of the municipal ordinance, there appears to be the same underlying purpose of preventing panhandling, perhaps along with increasing public safety.

Kentucky's Supreme Court found that there was a lack of supporting evidence for the "compelling interests" of Lexington's government to promote public safety and prevent pedestrians from being harmed.^[22] To overcome the issue of content-based language, there must be a legitimate "public safety concern" and strong evidence that this concern is of high importance.^[23] This is where Lexington's most recent ordinance raises questions about the actual purpose of promoting bans on panhandling. As the court stated in *Champion*, "no evidence of traffic delays or auto accidents resulting from pedestrians—panhandlers in particular—approaching stopped motorists" was provided in support of a compelling government interest in enforcing the ordinance.^[24] Another underlying but unspoken issue is the fact that there have been more complaints from the public about panhandlers' presence, and concerns about increases in aggressive and harassing behavior.^[25] There is little statistical data from Lexington itself, rather than from national databases, to support pedestrian safety issues as the purpose behind the ordinance. It is difficult to say whether the general grievances of Lexingtonians about the increased number of panhandlers play a significant role in promoting a panhandling ordinance, or whether there is a genuine and significant public safety concern. With the recent approval of a revised ordinance just last year, which bans all pedestrians from entering arterial roadways or leaving the crosswalk, the city might now consider publishing updated statistics to reflect how this ordinance might be serving the public interest and promoting pedestrian safety.

^[1] J.D. expected May 2019.

^[2] J.B. Wogan, *The Unexpected Reason Panhandling Bans Are Being Struck Down Across the Country*, GOVERNING (Jul. 25, 2017), <http://www.governing.com/topics/health-human-services/gov-panhandling-homeless-supreme-court-reed-gilbert.html>.

^[3] Anthony D. Lauriello, *Panhandling Regulation after Reed v. Town of Gilbert*, 116 COLUM. L. REV. 1105, 1107 (2016).

^[4] Wogan, *supra* note 2.

^[5] *Id.*; U.S. CONST. amend. I.

^[6] *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015).

^[7] *Id.* at 2221.

^[8] *Id.* at 2231–33.

^[9] Beth Musgrave, *A right to beg? Lexington's panhandling ban goes to Supreme Court this week*, LEXINGTON HERALD LEADER (Oct. 10, 2016), <http://www.kentucky.com/news/local/counties/fayette-county/article107323002.html>.

^[10] Bruce Schreiner, *Right to Beg: Kentucky Court Strikes Down Panhandling Law*, U.S. NEWS (Feb. 16, 2017), <https://www.usnews.com/news/kentucky/articles/2017-02-16/right-to-beg-kentucky-court-strikes-down-panhandling-law>.

^[11] *Champion v. Commonwealth*, 520 S.W.3d 331 (2017)

^[12] *Id.* at 333.

^[13] *Id.* at 338

^[14] *Id.*

^[15] *Id.* at 339.

^[16] *Id.*

^[17] *Id.*

^[18] *Id.*; Wogan, *supra* note 2.

^[19] Beth Musgrave, *Ordinance would ban panhandlers from approaching cars on major Lexington streets*, LEXINGTON HERALD LEADER (April 27, 2017), <http://www.kentucky.com/news/local/counties/fayette-county/article147212379.html>

^[20] *Id.*

^[21] *Id.*

^[22] *Champion*, 520 S.W.3d at 338.

^[23] *Id.*

^[24] *Id.* at 339.

^[25] WKYT News Staff, *New panhandling ordinance on agenda for Lexington council meeting*, WKYT (May 2, 2017), <http://www.wkyt.com/content/news/New-panhandling-ordinance-on-agenda-for-Lexington-council-meeting-421018454.html>.

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