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OPEN LETTER REGARDING PANHANDLING ORDINANCE

August 20, 2013

Via email bdhagg@aol.com
and regular mail
Mr. Bryan D. Haggerty
City Attorney
City of Slidell
PO Box 828
Slidell, LA 70459

Dear Mr. Haggerty:

The ACLU of Louisiana has learned that the City of Slidell is arresting panhandlers under a City ordinance that prohibits street peddling. That ordinance is unconstitutional on its face, and the City's enforcement of the ordinance against people standing on public property asking for money – expressive behavior long-protected by the First Amendment – is unlawful. We request that the City immediately cease that enforcement.

I. Background

As we understand it, the City of Slidell is arresting panhandlers under City Ordinance §20-3, which prohibits "peddling." §20-2 defines peddling as follows:

> ". . . any person, whether a resident of the city or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house, from business establishment to business establishment, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, *or soliciting funds or promoting political and/or religious ideologies*, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car, or their vehicle or conveyance, and further provided that one solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this chapter shall be deemed a peddler subject to the prerequisites of this chapter. The word 'peddler' shall include the words 'hawker' and 'huckster.'" [emphasis added].

The emphasized terms of §20-2 are not only overbroad both facially and as applied, they also impose an unlawful content-based restriction on expressive activity protected by the First Amendment.

II. Legal Analysis

A. §20-3 is an unlawful content-based restriction on protected speech

Enforcement of §20-2 against panhandlers violates the First Amendment, as begging is protected speech. *See Speet v. Schuette*, ___ F.3d. ___, ___; No. 12-2213, slip op. at 13 (6th Cir. Aug. 14, 2013) (striking down a Michigan anti-panhandling statute and holding that "begging, or the soliciting of alms, is a form of solicitation that the First Amendment protects."); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013) (calling it "relatively uncontroversial" that "begging [on a public street] constitutes expressive activity in a traditional public forum, which garners the full protective force of the First Amendment."); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 940 (9th Cir. 2011) (*en banc*) *cert. denied*, 132 S.Ct. 1566 (2012) (striking down an ordinance that prohibited solicitations from occupants of motor vehicles); *Gresham v. Peterson et al.*, 225 F.3d 899, 903 (7th Cir. 2000) (admonishing that "While some communities might wish all solicitors, beggars and advocates of various causes be vanished from the streets, the First Amendment guarantees their right to be there, deliver their pitch and ask for support."); *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999) (noting that "Like other charitable solicitation, begging is speech entitled to First Amendment protection."); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 1993) (explaining, "It is beyond dispute that solicitation is a form of expression entitled to the same constitutional protections as traditional speech."); *Loper v. New York City Police Dep't*, 999 F.2d 699, 704 (2d Cir. 1993) (remaking, "We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed."); *Benefit v. City of Cambridge*, 679 N.E.2d 184 (Mass. 1997) (voiding Massachusetts anti-begging statute as violating First Amendment); *Ledford v. State*, 652 So. 2d 1254 (Fla. Dist. Ct. App. 1995) (striking ordinance barring begging as an unconstitutional interference with free speech).

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Not only is begging protected speech, Slidell's public streets, like all public streets, are traditional public forums in which any content-based regulation of speech is presumptively invalid. *See Service Employees, Local 5 v. City of Houston*, 595 F.3d 588, 595 (5th Cir. 2010) (noting that the traditional public forum consists of places like public streets and parks, "which by long tradition or by government fiat have been devoted to assembly and debate."); Rangra v. Brown, 566 F.3d 515 (5th Cir. 2009) (content-based restrictions on speech in public forums are presumptively invalid and subject to strict scrutiny).

B. §20-2 is unconstitutionally overbroad.

Not only does §20-2 criminalize protected speech on its face, but we understand that several individuals already have been arrested and jailed by the Slidell Police Department under the ordinance for engaging in lawful activity. §20-2 is thus unconstitutionally overbroad, both substantially and as applied to panhandlers.

When a law "prohibits a substantial amount of protected speech[,] not only in an absolute sense but also relative to the statute's plainly legitimate sweep," it violates the First Amendment. *United States v. Williams*, 535 U.S. 285, 292 (2008); *Hill v. City of Houston, Tex.*, 764 F.2d 1156, 1161 (5th Cir. 1985). "An overbroad statute is invalid on its face, not merely as applied, and cannot be enforced until it is either re-drafted or construed more narrowly by a properly authorized court." *Id*. To be sure, a declaration of overbreadth is "strong medicine" applied "sparingly and only as a last resort," *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973), and the overbreadth of the ordinance "must not only be real, but substantial as well," in relation to its "plainly legitimate sweep." *Id*. at 615. But where a statute's deterrent effect on legitimate expression is indeed both "real and substantial," it must be invalidated. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216 (1975).

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Here, regulation of the sale of goods by traveling salespersons arguably represents §§20-2 and 20-3's "legitimate sweep." However, §20-2 defines peddling to include far more than the regulation of traveling salespersons, outlawing a wide variety of activities protected by the First Amendment, including panhandling as well as protected religious and political activities.

For the those reasons, we request that the City of Slidell immediately discontinue enforcement of this unlawful ordinance, terminate any and all pending prosecutions and expunge all arrests under §20-3 from the records of anyone unlawfully arrested under this ordinance. We reserve the right to take appropriate action without further notice to the City of Slidell.

Sincerely,

Marjorie R. Esman
Executive Director