

Cleveland State University

From the Selected Works of Joseph Mead

2015

The First Amendment Protection of Charitable Speech

Joseph Mead



Available at: https://works.bepress.com/joseph_mead/6/

The First Amendment Protection of Charitable Speech

JOSEPH MEAD*

TABLE OF CONTENTS

I.	INTRODUCTION	57
II.	MISTAKEN ARGUMENT #1: THE FIRST AMENDMENT DOES NOT APPLY BECAUSE ASKING FOR MONEY IS CONDUCT, NOT SPEECH.....	58
III.	MISTAKEN ARGUMENT #2: RESTRICTIONS ON CHARITABLE REQUESTS ARE CONTENT NEUTRAL	59
IV.	MISTAKEN ARGUMENT #3: RESTRICTIONS LIKE BUFFER ZONES ARE REASONABLE TIME, PLACE, MANNER CONDITIONS.....	61
V.	MISTAKEN ARGUMENT #4: WE NEED TO LIMIT PANHANDLING TO MAKE OUR CITIES MORE ATTRACTIVE	62
VI.	MISTAKEN ARGUMENT #5: PANHANDLING LEADS TO INTIMIDATION WHERE PEOPLE FEEL LIKE THEY CANNOT SAY NO.....	63
VII.	MISTAKEN ARGUMENT #6: PEOPLE WHO PANHANDLE USE THE MONEY FOR DRUGS AND ALCOHOL.....	64
VIII.	MISTAKEN ARGUMENT #7: THE SUPREME COURT HAS ALREADY AUTHORIZED PRE-REGISTRATION PERMITTING REQUIREMENTS FOR ALL SOLICITORS.....	65
X.	CONCLUSION.....	66

I. INTRODUCTION

Although philanthropy ranks among the best of human endeavors, local governments across the country have severely restricted charitable entreaties by organizations and individuals alike, all in the name of eliminating “panhandlers.” These laws rely on premises that increasingly conflict with Supreme Court instructions about the freedom of speech. Yet lingering uncertainty about where exactly charitable restrictions fall in First Amendment jurisprudence has encouraged local governments to innovate new statutory formulations to wage

* Assistant Professor of Nonprofit Management and Public Administration, Cleveland State University, Maxine Goodman Levin College of Urban Affairs & Cleveland-Marshall College of Law. The author also serves as a Cooperating Attorney for the American Civil Liberties Union of Ohio, where he has volunteered to challenge a municipal ban on charitable solicitations. Kevin O’Neill, Freda Levenson, Hannah Lebovits, and Anne Wiley improved this essay with their terrific comments.

war on expressions of poverty in order to “clean up” their cities.¹ This piece examines seven arguments commonly used to justify restrictions on charitable solicitations and finds them to be without Constitutional merit. The First Amendment firmly and emphatically protects requests for altruism.

Local efforts to eradicate panhandling vary dramatically across the nation, but there are a few common themes.² To begin, local governments expansively define “panhandling” to include any solicitation by an individual or an organization for an immediate donation without offering something of equivalent value in exchange.³ Some local governments prohibit such solicitation in groups of two or more or on sidewalks within a buffer zone around certain areas, such as near sports stadiums, bus stops, streets, or commercial establishments.⁴ Other local governments require registration before solicitation can begin, and bar those with certain minor convictions from obtaining registration.⁵ Given their doubtful premises and the strong Constitutional protection given to pleas for altruism, all of these efforts to reduce panhandling stand on constitutionally perilous grounds.

II. MISTAKEN ARGUMENT #1: THE FIRST AMENDMENT DOES NOT APPLY BECAUSE ASKING FOR MONEY IS CONDUCT, NOT SPEECH

Although a favorite by governments and scholars,⁶ this argument need not detain us for long. Conceptually, it is difficult to imagine how speaking the words “I’m hungry, please help” is not actually speech. And, indeed, little judicial authority supports this view. Even symbolic speech such as burning the American flag receives constitutional protection,⁷ and the Supreme Court has

¹NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES, 20–21 (2014) (finding a twenty-five percent increase in city-wide anti-begging laws since 2011).

²The most egregious laws ban panhandling everywhere in the city. *E.g.*, YOUNGSTOWN, OHIO, CODIFIED ORDINANCES § 509.08(a) (Walter H. Drane Co. through Mar. 4, 2015). Since flat bans on speech are almost never upheld, these laws stand little chance of surviving judicial scrutiny and will not be discussed further. *E.g.*, *Speet v. Schuette*, 726 F.3d 867, 875 (6th Cir. 2013).

³Many laws across the country borrow language found in a model ordinance proposed by one advocacy organization. KENT S. SCHEIDEGGER, RESTORING PUBLIC ORDER: A GUIDE TO REGULATING PANHANDLING 27–33 (1993) (published by the Criminal Justice Legal Foundation).

⁴*E.g.*, SUMMIT COUNTY, OHIO, CODIFIED ORDINANCES § 537.15(c) (Walter H. Drane Co. through Aug. 31, 2015).

⁵See SCHEIDEGGER, *supra* note 3, at 32–33.

⁶*Speet*, 726 F.3d at 873–74 (noting this was the primary argument of the Michigan Attorney General in defense of Michigan’s ban on “begging”); Fay Leoussis, *The New Constitutional Right to Beg—Is Begging Really Protected Speech?*, 14 ST. LOUIS U. PUB. L. REV. 529, 530 (1995).

⁷*Texas v. Johnson*, 491 U.S. 397, 420 (1989).

repeatedly and consistently found that monetary solicitations are protected speech.⁸

One decision, not even followed within its circuit,⁹ concluded that only charities—not individuals—have the right to ask for money.¹⁰ This startling approach would give *more* speech rights to artificial corporations than to citizens. To the contrary, it is well established that people have the right to associate and the right *not* to associate:¹¹ the government cannot compel association as a prerequisite to exercising freedom of speech. Decades of subsequent cases—including an April ruling where eight Supreme Court justices agreed that a restriction on an individual's requests for donations were subject to strict scrutiny—leave no question that the individual's right to communicate a request for money is fully protected by the First Amendment.¹²

III. MISTAKEN ARGUMENT #2: RESTRICTIONS ON CHARITABLE REQUESTS ARE CONTENT NEUTRAL

Under the First Amendment, efforts to regulate speech on the basis of its content are sharply disfavored and rarely survive judicial challenge. Reasonable restrictions of speech that are not based on content are still scrutinized, but are more likely to survive. Given this context, a popular approach among local governments is to write their laws with an effort to sweep broadly, under the counterintuitive rationale that they can mitigate First Amendment problems with their laws by restricting *more* speech.¹³ Thus, the text of many laws restrict all requests for donations, be it by the food bank, the politician running for office, or the hungry looking for a meal.

Whether the breadth of these laws makes them content neutral on their face has sharply divided courts.¹⁴ The Fourth, Sixth, and Ninth Circuits readily concluded that laws targeting requests for donations were facially content based, since whether a restriction applied depended on the words being spoken.¹⁵ Meanwhile, the First and the Seventh Circuits (in decisions now vacated) found that breadth was a virtue, and since the laws applied to non-commercial solicitations of all stripes, whether charitable, political, or personal, they were

⁸ *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 790–91 (1988) (collecting cases).

⁹ *Loper v. N.Y.C. Police Dep't*, 999 F.2d 699, 704 (2d Cir. 1993).

¹⁰ *Young v. N.Y.C. Transit Auth.*, 903 F.2d 146, 156 (2d Cir. 1990).

¹¹ *Harris v. Quinn*, 134 S. Ct. 2618, 2644 (2014).

¹² *Williams–Yulee v. Florida Bar*, 135 S. Ct. 1656, 1664–65 (2015).

¹³ SCHEIDEGGER, *supra* note 3, at 7.

¹⁴ Clay Calvert, *Content-Based Confusion and Panhandling: Muddling a Weathered First Amendment Doctrine Takes Its Toll on Society's Less Fortunate*, 18 RICH. J.L. & PUB. INT. 249, 250 (2015), http://rjolpi.richmond.edu/archive/Calvert_Formatted.pdf [http://perma.cc/2TU6-DXTC].

¹⁵ *ACLU v. City of Las Vegas*, 466 F.3d 784, 784 (9th Cir. 2006); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 556 (4th Cir. 2013); *Planet Aid v. City of St. Johns*, 782 F.3d 318, 328 (6th Cir. 2015).

content neutral.¹⁶ In a refreshing display of judicial modesty, the Seventh Circuit panel conceded: “We do not profess certainty about our conclusion that the ordinance is content-neutral.”¹⁷

This disagreement was, perhaps, to be expected, since the Supreme Court’s instructions were not always consistent. In one decision, for example, the Court explained that “[t]he government’s purpose is the controlling consideration,” and thus if a state restriction was “‘justified without reference to the content of the regulated speech,’” it was content neutral.¹⁸ Relying on this approach, in a now-vacated opinion, the First Circuit upheld panhandling restrictions because the city had pointed to justifications such as public safety that, on its face, had nothing to do with content.¹⁹

There is reason to doubt the First Circuit’s conclusion, even under the test that it used. As noted below, a primary justification for restrictions on charitable solicitation is to prevent a perceived unpleasantness felt by the listener, and this unconstitutional motive moves these laws towards content-based restrictions.²⁰ Further, although the laws define panhandling more broadly than the traditional definition,²¹ the very use of the word “panhandling” lays bare the legislative purpose. Any doubt on this score is dispelled by the rhetoric of the government officials who pass these laws, who often candidly express their hope that these laws would rid their cities of the downtrodden asking for money.²² Even when government officials are coached to avoid such transparency, pretext is usually not hard to find. Moreover, many laws are not actually being enforced as broadly as written, as food banks, firefighters, and trick-or-treaters are permitted to solicit openly for their causes without being hauled off to jail.²³

In any event, the test for content neutrality was clarified by the Supreme Court in June, and it was bad news for panhandling restrictions. In *Reed v. Town of Gilbert*, the Court instructed that a law is content based if *either* of the following are true: (1) the *text* of the law makes distinctions based on speech’s

¹⁶ *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015); *Norton v. City of Springfield*, 768 F.3d 713, 717 (7th Cir. 2014), *rev’d on reh’g*, No. 13-3581, 2015 WL 4714073, at *2 (7th Cir. Aug. 7, 2015).

¹⁷ *Norton*, 768 F.3d at 717.

¹⁸ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (emphasis omitted) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

¹⁹ *Thayer*, 755 F.3d at 64.

²⁰ See *supra* text accompanying notes 35–37.

²¹ See *Panhandling*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining the word as “[t]he act or practice of approaching or stopping strangers and begging for money or food”).

²² Scott Piepho, *Are Fairlawn’s Panhandling Regulations Constitutional?*, AKRON LEGAL NEWS (May 2, 2012), <http://www.akronlegalnews.com/editorial/3621> [<http://perma.cc/7TVT-FBPX>]; Associated Press, *‘No-Panhandling’ Sign Offends Man*, VINDY.COM (Jan. 18, 2015), <http://www.vindy.com/news/2015/jan/18/no-panhandling-sign-offends-man/> [<http://perma.cc/YEP8-HH5Z>] (quoting the Mayor of Whitehall, Ohio: “That’s one of the first things I heard when I became mayor: ‘I’m getting panhandled, it’s everywhere, it needs to stop.’”).

²³ Leigh Allan, *It’s a Sign for Dayton to Beg Off*, DAYTON DAILY NEWS, Mar. 13, 2004, at B1.

“subject matter . . . function or purpose”²⁴ or (2) the *purpose* behind the law suggests it was “adopted by the government ‘because of disagreement with the message [the speech] conveys,’”²⁵ either because of a censorial motive or the absence of any non-censorial justification that would explain the distinctions made. Thus, even when the government asserts a benign motive, laws that draw distinction on their face “based on the message a speaker conveys” must pass strict scrutiny.²⁶ Applying this rule, the Court found that a city’s sign ordinance that imposed different size and timing limitations on “directional signs” than on “political signs” and “ideological signs” was a content-based regulation that could not survive strict scrutiny.²⁷

Under the Court’s approach in *Reed*, panhandling restrictions readily qualify as content-based rules that must pass strict scrutiny. By imposing particular burdens on speech made with “the purpose[] of immediately obtaining money or any other thing of value,”²⁸ panhandling restrictions on their face draw distinctions between speech based on its “subject matter, . . . function or purpose.”²⁹ No inquiry into the law’s motive or purpose is needed; one need only read the text of the ordinances to conclude that strict scrutiny applies, which “almost assuredly dooms them to failure.”³⁰ Indeed, *Reed* compelled the Seventh Circuit to reverse course completely: the same panel that had previously upheld restrictions on panhandling now concluded that the restrictions violated the First Amendment.³¹

IV. MISTAKEN ARGUMENT #3: RESTRICTIONS LIKE BUFFER ZONES ARE REASONABLE TIME, PLACE, MANNER CONDITIONS

While a content-based panhandling law will not survive, the inverse is not necessarily true. Speech restrictions on sidewalks and parks face a presumption of unconstitutionality that can be overcome only if they are content neutral, leave effective alternatives for the speech, and are backed by actual evidence that the zones are narrowly tailored to further a legitimate, non-censorial purpose.³² Even under this more forgiving content-neutral standard, local governments have

²⁴ *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015).

²⁵ *Id.* (alteration in original) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

²⁶ *Id.*

²⁷ *Id.*

²⁸ DAYTON, OHIO, REVISED CODE OF GENERAL ORDINANCES § 137.14 (Municode through Ordinance No. 31389-15).

²⁹ *Reed*, 135 S. Ct. at 2227.

³⁰ Calvert, *supra* note 14, at 280.

³¹ Norton v. City of Springfield, No. 13-3581, 2015 WL 4714073, at *2 (7th Cir. Aug. 7, 2015).

³² Reynolds v. Middleton, 779 F.3d 222, 225–26 (4th Cir. 2015).

struggled to show that sidewalk speech restrictions are narrowly tailored.³³ For example, the Supreme Court recently and unanimously rejected a Massachusetts law establishing buffer zones on the sidewalks around abortion clinics.³⁴ Even after narrowly concluding that these zones were content neutral, the Supreme Court still found that government had failed to *prove* that 35 foot buffer zones at every clinic were sufficiently tailored to fulfill the government's interests in preventing intimidation and congestion, or that the speakers who wish to converse with those entering the clinics had an effective means of doing so.³⁵ A similar fate likely awaits buffer zones in the solicitation context, which are supported by pretext rather than evidence, and that regularly fail to leave alternatives available to the speaker.³⁶ Likewise, prohibitions on charitable solicitation by a group of two or more (entitled, in the great legislative tradition of doublespeak, "aggressive" panhandling) violate not only speech rights but association and assembly rights as well, giving courts a trifecta of First Amendment violations from which to choose.

V. MISTAKEN ARGUMENT #4: WE NEED TO LIMIT PANHANDLING TO MAKE OUR CITIES MORE ATTRACTIVE³⁷

Cities are wonderful places of ideas and excitement, and the desirability of a walkable city is widely acknowledged. One commonly voiced concern is that people feel uncomfortable being confronted with requests by those perceived to be in extreme poverty, and limiting solicitation will encourage more downtown visitors or residents.³⁸ A more offensive and less persuasive iteration of this argument—and one that seems to carry more purchase in those sprawling suburbs "specifically designed with malice toward pedestrian traffic"³⁹—relies on a claimed governmental interest in "maintain[ing] the quality of the . . . visitor environment,"⁴⁰ which amounts to nothing more than a desire to spare passersby the unpleasantness of hearing or seeing a request for help.⁴¹

³³ *Id.* at 226, 228–29 (assuming law was content neutral based on pro se litigant's concession, but expressing skepticism that restrictions on roadside solicitations would survive following *McCullen*).

³⁴ *McCullen v. Coakley*, 134 S. Ct. 2518, 2541 (2014).

³⁵ *Id.* at 2537.

³⁶ *Reynolds*, 779 F.3d at 231.

³⁷ Robert Teir, *Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging*, 54 LA. L. REV. 285, 289 (1993).

³⁸ Dan Frosch, *Homeless Are Fighting Back Against Panhandling Bans*, N.Y. TIMES (Oct. 5, 2012), http://www.nytimes.com/2012/10/06/Commerce/Clause/homeless-are-fighting-back-in-court-against-panhandling-bans.html?_r=0 [<http://perma.cc/LTK4-9PTC>] (quoting a City Attorney who reasoned that "the persistent sort of solicitation by people who just camp out in front of stores every day downtown has really discouraged tourists, shoppers and families from coming downtown").

³⁹ Piepho, *supra* note 22.

⁴⁰ Press Release, City of Dayton, Ohio, Amended Ordinance Redefines Means of Panhandling (June 22, 2011), <http://www.daytonohio.gov/PressReleases/Documents/>

Yet freedom of speech belongs to the rich and poor alike. The cruel reality of restrictions on charitable solicitation is that they place the comfort and convenience of relatively wealthy visitors and business-owners over the First Amendment rights of the destitute.⁴² Whether the community likes the speech or the speaker is entirely beside the point, and the fact that people would rather not hear speech or find it unpleasant is no justification for limiting it. In fact, “the First Amendment protects flag burning, funeral protests, and Nazi parades—despite the profound offense such spectacles cause.”⁴³ And, as the Supreme Court recently explained, the fact that an “individual confronted with an uncomfortable message” on a sidewalk cannot “turn the page, change the channel, or leave the Web site” is a “virtue, not a vice.”⁴⁴ Thus, the most common justification for banning solicitation—that people want to avoid hearing it—actually supplies the strongest argument that such laws are unconstitutional efforts to censor undesired speech.⁴⁵

VI. MISTAKEN ARGUMENT #5: PANHANDLING LEADS TO INTIMIDATION WHERE PEOPLE FEEL LIKE THEY CANNOT SAY NO⁴⁶

The First Amendment allows for regulation of “true threats.”⁴⁷ It does not

2011/Amended%20Ordinance%20Redefines%20Means%20of%20Panhandling.pdf [http://perma.cc/V7EX-J2LB]; see also Piepho, *supra* note 22 (quoting Fairlawn Council Member Kathleen Baum as saying the new restrictions “[w]ill deter people from panhandling. It gives the city a better appearance.”) (alteration in original); Sanford, Fla., Ordinance No. 2014-4324 (Sept. 8, 2014) (asserting an interest in providing a “pleasant environment” to justify the adoption of the “Aggressive Panhandling” ordinance).

⁴¹ Susan Schweik, *Kicked to the Curb: Ugly Law Then and Now*, 46 HARV. C.R.-C.L. L. REV. AMICUS 1, 2 (2011), http://harvardcrcl.org/wp-content/uploads/2013/01/Schweik_Vol46_Amicus.pdf [http://perma.cc/22VB-7RT9].

⁴² Business associations are commonly the fiercest advocates for anti-panhandling laws. E.g., Catherine Doe, *Downtown Alliance Confronts Pan Handling*, VALLEY VOICE (Sept. 18, 2013), <http://www.ourvalleyvoice.com/2013/09/18/downtown-alliance-confronts-pan-handling/> [http://perma.cc/4VXN-MJS4] (quoting the leader of a business alliance saying: “We’ve worked too long and too hard to make downtown the positive place it is and will throw every legal means possible to deal with it. We aren’t going to let the homeless change that.”).

⁴³ *McCutcheon v. FEC*, 134 S. Ct. 1434, 1441 (2014).

⁴⁴ *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014).

⁴⁵ *Id.* at 2531–32 (“To be clear, the Act would not be content neutral if it were concerned with undesirable effects that arise from ‘the direct impact of speech on its audience’ or ‘[l]isteners’ reactions to speech.’ If, for example, the speech outside Massachusetts abortion clinics caused offense or made listeners uncomfortable, such offense or discomfort would not give the Commonwealth a content-neutral justification to restrict the speech.”) (alteration in original) (citation omitted) (quoting *Boos v. Barry*, 485 U.S. 312, 321 (1988)).

⁴⁶ William L. Mitchell, II, “*Secondary Effects*” *Analysis: A Balanced Approach to the Problem of Prohibitions on Aggressive Panhandling*, 24 U. BALT. L. REV. 291, 294 (1995).

⁴⁷ *Virginia v. Black*, 538 U.S. 343, 359 (2003) (“‘True threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”).

permit inferring a threat, and it certainly does not permit inferring a threat simply because some people feel intimidated when approached by someone who is different than they are. Indeed, rather than succumbing to imagined threats, most people tend to ignore panhandlers who appear to be homeless.⁴⁸ Behavior that is actually threatening—not merely annoying or obnoxious, and not simply because they make the listener feel guilty or uncomfortable—can be limited without restricting an entire category of speakers from a public forum.⁴⁹ In light of the First Amendment values at stake, local governments will need much stronger evidence than broad stereotypes and anecdotal evidence to impute intimidation to the entire category of speakers.

VII. MISTAKEN ARGUMENT #6: PEOPLE WHO PANHANDLE USE THE MONEY FOR DRUGS AND ALCOHOL⁵⁰

A common refrain is that people should not support panhandlers because many of them are not actually homeless or will use the money for “improper” purposes. Whether this is empirically true or not is up for debate, but it is beside the Constitutional point. Similarly irrelevant is the government’s paternalistic view that it is wiser to donate to organized charities.⁵¹ No one is required to donate to charity or to individuals, but by allowing all voices into the marketplace of ideas, the First Amendment entrusts citizens—and not their government—with the choice to decide which causes to heed and which requests to answer.⁵² Just as listeners can choose whether or not to support charities that spend an “unreasonable” amount on fundraising,⁵³ listeners can decide for themselves whether to respond to a sidewalk plea for assistance.

A variation on this argument is that we need limits on panhandling to prevent charlatans from lying to obtain a donation. This line of reasoning rests upon an untested but widely believed assumption that some of those who panhandle invent a sympathetic story to encourage donations. Not only does this fail for

⁴⁸ One formerly homeless person explained: “Panhandling sucks. It’s just hard. You have to take so much rejection . . . An overwhelming majority of people that walk past panhandlers ignore them or say something rude or look at them like they’re scum.” Alyssa Figueroa, *Do You Ignore Homeless People?*, ALTERNET (Jan. 29, 2013), <http://www.alternet.org/poverty/psychology-behind-why-people-react-way-they-do-homeless-person-asking-help> [<http://perma.cc/RY5Z-7TD5>].

⁴⁹ See *Watts v. United States*, 394 U.S. 705, 708 (1969) (per curiam) (holding that “political hyperbole” and language that is “vituperative, abusive, and inexact” do not constitute true threats).

⁵⁰ Doe, *supra* note 42.

⁵¹ Piepho, *supra* note 22 (quoting a City Council President saying: “I’ve always been of the belief that if you want to give, give to a charity, not the people on the streets.”).

⁵² *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976) (“[P]eople will perceive their own best interests if only they are well enough informed, and . . . the best means to that end is to open the channels of communication rather than to close them.”).

⁵³ *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 791–95 (1988).

want of evidence, the best way to fight fraud is to ban fraud, not to expansively restrict an entire class of speech. As the Supreme Court has said: “If this is not the most efficient means of preventing fraud, we reaffirm simply and emphatically that the First Amendment does not permit the State to sacrifice speech for efficiency.”⁵⁴

VIII. MISTAKEN ARGUMENT #7: THE SUPREME COURT HAS ALREADY AUTHORIZED PRE-REGISTRATION PERMITTING REQUIREMENTS FOR ALL SOLICITORS

The latest fad among local governments is to deter soliciting by requiring that they obtain a registration from the city before hitting the streets.⁵⁵ These laws run up against a presumption of unconstitutionality:

It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.⁵⁶

Although the Court has suggested that, in light of the privacy interests of the home, the government may impose minimal, ministerial, and quick registration requirements upon *door-to-door* solicitors in some circumstances,⁵⁷ lower courts have refused to extend this exception to a speaker’s access to a public forum like a sidewalk, where the government’s interest in protecting private home life does not apply.⁵⁸ Moreover, pre-speech licensing requirements by their nature inhibit spontaneous speech (as in, for example, the person who truly needs bus fare to get home), which enjoys particular protection in the public square.⁵⁹ The right to speak is not a privilege granted by local ordinance, but a right bestowed by the

⁵⁴ *Id.* at 795.

⁵⁵ *E.g.*, AKRON, OHIO, CODE OF ORDINANCES § 135.10(F) (Municode through Ordinance No. 95-2015).

⁵⁶ *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002).

⁵⁷ *Id.* at 162–63.

⁵⁸ *Berger v. City of Seattle*, 569 F.3d 1029, 1039 (9th Cir. 2009) (en banc) (“It is therefore not surprising that we and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum.”).

⁵⁹ *Watchtower*, 536 U.S. at 162. Recognizing this problem, even the model ordinance on which these laws recommends that licenses should be required only for those who panhandle five or more days in a year. SCHEIDEGGER, *supra* note 3, at 31. Local governments have gone beyond this recommendation to require registration before *any* solicitation could take place. *E.g.*, AKRON, OHIO, CODE OF ORDINANCES § 135.10(F) (Municode through Ordinance No. 95-2015). Also problematic are rules that effectively bar those with minor misdemeanor convictions from obtaining a permit, since misdemeanants do not forfeit their right to free speech. *E.g.*, *id.*

Constitution. Given the history of and potential for abuse, courts are appropriately skeptical of local efforts to impose a government official between citizens and their First Amendment rights.⁶⁰

X. CONCLUSION

The great power of our nation's commitment to freedom of speech is that it applies to us all: wealthy or not, eloquent or not, likeable or not. Charitable requests fall comfortably within the First Amendment's inclusive protections, denying governments the option to drive speech or speakers from the public square based on community opposition or reaction to their speech. Genuine, non-censorial efforts to eliminate threats and fraud must rely on narrowly tailored, evidence-backed rules, not broad strokes based on stereotypes and stories. The First Amendment does not demand generosity, but it does protect the right to ask for it.

⁶⁰ *Watchtower*, 536 U.S. at 167.