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Michigan Anti-begging Statute Declared Unconstitutional

FACTS:

Grand Rapids' police arrested James Speet and Ernest Sims, two homeless adult residents of Grand Rapids, under an ordinance based upon the Michigan statute that criminalizes begging in a public place. Speet had been arrested on two separate occasions in 2011 for begging while holding signs that stated "Cold and Hungry, God Bless" and "Need Job, God Bless." On July 4, 2011 Sims was arrested for asking a person on the street: "Can you spare a little change?" Speet and Sims sued the Michigan Attorney General and the city of Grand Rapids alleging that the anti-begging statute violates, both facially and as applied, the First and Fourteenth Amendments of the federal constitution.

The Michigan anti-begging statute in question has existed since 1929. The statute provides that, in pertinent part, "[a] person is a disorderly person if the person is any of the following: ... (h) A person found begging in a public place." The statute criminalizes begging, making it a misdemeanor punishable, in part, for not more than 90 days in jail.

In part, the First Amendment provides protection against a statute that violates speech and conduct under certain circumstances. Basically, a challenge to a statute can be made on the basis that the statute violates the First Amendment on either a facial or as applied basis. The analysis provided in this case by the courts below was restricted to whether the statute was "facially invalid under the First Amendment."

QUESTION 1:

Is begging a form of solicitation that the First Amendment protects?

A: Answer according to the Federal District Court and the Sixth Circuit Court of Appeals:

YES. Although begging is not specifically defined in the statute, according to the Sixth Circuit, the term by its very definition encapsulates the solicitation for alms. Although the United States Supreme Court has not directly decided the question of whether the First Amendment protects soliciting alms when done by an individual, the Court has

held—repeatedly—that the First Amendment protects charitable solicitation performed by organizations. The Sixth Circuit noted that other circuits have held that begging is a type of solicitation protected by the First Amendment and that there is no justifiable distinction between "begging for one's self and solicitation by organized charities."

QUESTION 2:

Does the statute, on its face, chill a substantial amount of activity protected by the First Amendment?

A: Answer according to the Federal District Court and the Sixth Circuit Court of Appeals:

YES. The Sixth Circuit Court of Appeals found the statute unconstitutional, on its face, because it prohibits a substantial amount of solicitation, an activity that the First Amendment protects, but allows other solicitation based on content. A successful facial challenge is "momentous and consequential." It essentially "take[s] the law off the books completely." In this case, the plaintiff successfully met the challenge of showing substantial overbreadth: that the statute prohibits "a substantial amount of protected speech both in an absolute sense and relative to [the statute's] plainly legitimate sweep[.]" The state's legitimate concern of regulating fraud, according to the Court, can be better served by a statute that, instead of directly prohibiting begging, is more narrowly tailored to the specific conduct, such as fraud, that it seeks to prohibit.

Speet v Schuette, No. 12-2213, Sixth Circuit Court of Appeals (August 14, 2013)

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.