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Ain't Too Proud to Beg? Anti-Begging Laws' First Amendment Problem

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NOTE

AIN’T TOO PROUD TO BEG?* ANTI-BEGGING LAWS’ FIRST AMENDMENT PROBLEM

John W. Fraser**

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* THE TEMPTATIONS, Ain’t Too Proud to Beg, on GETTN’ READY (Motown 1966).
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INTRODUCTION

James Speet does not live an enviable life. Mr. Speet lives in Grand Rapids, Michigan, a city that was recently named the best city in the United States to raise a family. This accolade likely makes little difference to Mr. Speet, who has been homeless for quite some time. Mr. Speet lives off of food stamps, odd jobs, and the charity of the community. To make matters even more difficult for Mr. Speet, his struggle to survive often puts him at odds with the law. Mr. Speet does not steal, sell drugs, or take any action that most people in society would consider to be criminal; Mr. Speet’s alleged criminal activity stems from holding up signs that read “Cold and Hungry, God Bless” and “Need Job, God Bless.”

Until recently, holding up a sign asking for money constituted criminal activity in the state of Michigan under Michigan’s long-standing anti-begging statute. A violation of the statute subjected the offender to “imprisonment for not more than 90 days or a fine of not more than $500.00, or both.” Luckily for Mr. Speet, Michigan’s anti-begging

2. Id.
5. Id.
6. Id. at 972–73.
7. Id.
8. MICH. COMP. LAWS § 750.167(1)(g), (h) (2014).
9. MICH. COMP. LAWS § 750.168(1) (2014); see § 750.167.
statute was found to be facially unconstitutional, so he can no longer be prosecuted for begging in Grand Rapids. Sadly, however, Mr. Speet's legal history is not uncommon as many cities and states have laws criminalizing begging.

There are legitimate reasons for communities to restrict begging in public places. One of the primary arguments in favor of restricting begging is to combat fraudulent or dishonest beggars. Panhandlers can also have a negative impact on business and create traffic and other public safety hazards.

This Note discusses whether begging is protected speech under the First Amendment and the moral implications of punishing an individual for attempting to survive. In addition, this Note addresses how the legislature and judiciary should balance the interests of society against the interests of beggars. This issue necessarily invokes the historical

10. Speet, 889 F. Supp. 2d at 979–80 (ruling that Michigan's anti-begging statute was unconstitutional under the First and Fourteenth Amendments because it provided an impermissible "blanket restriction[]" on speech). The Sixth Circuit recently affirmed the Western District of Michigan's decision. Speet v. Schuette, 726 F.3d 867, 880 (6th Cir. 2013).

11. Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities, NAT'L LAW CTR. ON HOMELESSNESS & POVERTY & NAT'L COALITION FOR THE HOMELESS 10 (July 2009), http://www.nationalhomeless.org/publications/crimreport/CrimzReport_2009.pdf [hereinafter Homes Not Handcuffs] (stating that almost half of 235 surveyed cities have restrictions on begging in public places). Apathy is also a major problem facing the homeless. Nancy A. Millich, Compassion Fatigue and the First Amendment: Are the Homeless Constitutional Castaways?, 27 U.C. DAVIS L. REV. 255, 258 ("The perception of much of the public is that programs offering help to the homeless are unsuccessful and that the more money communities spend on homelessness, the more this problem grows.").

12. See infra Part II.A.

13. See Speet, 726 F.3d at 879. The problems of dishonest beggars or panhandlers have been well-documented recently in the media. One dishonest panhandler alleges that he made $60,000.00 in a year by panhandling. Ron Dicker, Panhandler Shane Warren Speegle Says He Made $60,000 a Year Begging on Street, HUFFINGTON POST (July 23, 2012), http://www.huffingtonpost.com/2012/07/23/shane-warren-speegle-says_n_1694577.html.

14. The terms "panhandler" and "beggar" are used interchangeably throughout this Note, generally to describe individuals who ask people for money.


17. U.S. CONST. amend. I. The First Amendment protection of freedom of speech was extended to apply to the individual states through the due process clause of the Fourteenth Amendment, U.S. CONST. amend. XIV, § 1, by the Supreme Court in Gitlow v. New York, 268 U.S. 652, 666 (1925).

18. See infra Part V.

19. See infra Parts VI, VII.
problem of the “[t]yranny of the [m]ajority.” This Note proposes that courts extend First Amendment protection to begging and that anti-begging laws and subject laws that restrict begging in the places most commonly frequented by beggars be subject to strict scrutiny. While there are legitimate societal reasons for restricting begging in public places, restrictions that extinguish or severely limit the speech of individuals that must rely on the charity of others to simply survive outweigh any advocated societal interests. The First Amendment should protect begging as a form of speech, which some individuals must use simply to survive. Subjecting anti-begging laws to strict scrutiny properly balances legitimate societal interests in restricting begging against an individual’s struggle to survive.

Part I considers different state laws and municipal ordinances that prohibit or restrict begging in public places. Part II examines the purposes and effectiveness of anti-begging laws. Part III considers Supreme Court precedent on whether solicitation by an individual is a protected form of free speech under the First Amendment. Part IV analyzes how different circuit courts have applied Supreme Court precedent to address the issue. Part V proposes classifying begging as speech and extending First Amendment protection. Part VI proposes subjecting anti-begging laws to strict scrutiny because most begging occurs in a public forum. Finally, Part VII suggests possible methods of reform for municipalities.

I. AN OVERVIEW OF DIFFERENT STATE AND MUNICIPALITY APPROACHES TO ANTI-BEGGING LAWS

Many cities in the United States have restrictions of some degree on

21. “[L]aws . . . subjected to strict scrutiny . . . will be sustained only if they are suitably tailored to serve a compelling state interest.” City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985) (citing McLaughlin v. Florida, 379 U.S. 184, 192 (1964); Graham v. Richardson, 403 U.S. 365 (1971)).
22. See supra notes 13, 15, and 16; infra Part II.A.
23. See infra Part V.B.
24. See infra Part I.
25. See infra Part II.
26. See infra Part III.
27. See infra Part IV.
28. See infra Part V.
29. See infra Part VI.
30. See infra Part VII.
begging or panhandling. These restrictions vary from prohibiting begging in specific public places to prohibitions on aggressive panhandling to complete city or state-wide bans. This discussion will categorize anti-begging laws based on the level of restriction they create with regards to the locations and times that an individual may beg. Michigan’s anti-begging law was an example of an extremely restrictive law because it imposed a state-wide ban on begging. In contrast, laws that only restrict begging in particular places or times may be categorized as less restrictive because these laws do not completely proscribe begging in the municipality or state. Anti-begging laws range in restrictiveness from complete bans to restrictions on where, when, and how an individual may beg.

A. Highly Restrictive Anti-Begging Laws

In classifying anti-begging laws by restrictiveness, laws that completely prohibit begging in a municipality or state are the most restrictive since begging is prohibited throughout the jurisdiction. Municipality-wide prohibitions on begging are fairly common. These laws would require an individual who wishes to beg to leave the jurisdiction to avoid violating the law.
1. Michigan’s Unconstitutional Anti-Begging Statute

One of the most restrictive and furthest reaching anti-begging laws was Michigan’s now-unconstitutional anti-begging statute.\textsuperscript{40} Michigan’s anti-begging statute provided that either “[a] vagrant”\textsuperscript{41} or “[a] person found begging in a public place” is “a disorderly person.”\textsuperscript{42} The penalty for being “convicted of being a disorderly person is . . . imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.”\textsuperscript{43} Since the anti-begging statute extended to “vagrant[s]”\textsuperscript{44}—“a person without a settled home or regular work who wanders from place to place and lives by begging”—an individual could feasibly have violated Michigan’s anti-begging statute without ever actually being caught in the act of begging.\textsuperscript{46} Furthermore, Michigan’s anti-begging statute was far-reaching in that it proscribed begging anywhere in the state of Michigan.\textsuperscript{47}

2. Montpelier, Vermont’s Anti-Begging Ordinance

Even cities in traditionally liberal states\textsuperscript{48} have highly restrictive anti-begging laws that completely proscribe begging in public throughout the municipality.\textsuperscript{49} For example, Montpelier, Vermont’s anti-begging ordinance states, “no person shall beg, or solicit the gift of money or any other thing, or exhibit himself for the purpose of inciting pity, in or on a street or public place, or other place of public resort, without the permission of the chief of police.”\textsuperscript{50} As such, the Montpelier ordinance

\begin{itemize}
\item \textsuperscript{40} § 750.167(1)(g), (h). Michigan’s anti-begging statute was found unconstitutional in Speet v. Schuette, 889 F. Supp. 2d 969, 979-80 (W.D. Mich. 2012), aff’d, 726 F.3d 867 (6th Cir. 2013).
\item \textsuperscript{41} § 750.167(1)(g).
\item \textsuperscript{42} § 750.167(1)(h).
\item \textsuperscript{43} MICH. COMP. LAWS § 750.168(1) (2014).
\item \textsuperscript{44} § 750.167(1)(h).
\item \textsuperscript{45} Definition of vagrant in English, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/us/definition/amERICAN_english/vagrant?q=vagrant.
\item \textsuperscript{46} The extension of Michigan’s anti-begging law to cover vagrants allows a law enforcement officer to identify an individual who fit the profile of a beggar, arrest that individual, and charge him or her as being a disorderly person. See § 750.167(1)(h).
\item \textsuperscript{47} § 750.167(1)(g), (h).
\item \textsuperscript{48} See Frank James, Mississippi Most Conservative State, Vermont Most Liberal: Gallup, NPR (Feb. 25, 2011), http://www.npr.org/blogs/itsallpolitics/2011/02/25/134054868/mississippi-most-conservative-state-vermont-most-liberal (“The most liberal state as measured by the percentage of voters who claim that label was Vermont at 30.5 percent.”).
\item \textsuperscript{49} MONTPELIER, VT., CODE OF ORDINANCES ch. 11, art. VII, § 11-708 (1996); see also Homes Not Handcuffs, supra note 11, at 165–71; A Dream Denied, supra note 31, at 135–45.
\item \textsuperscript{50} MONTPELIER, VT., CODE OF ORDINANCES, ch. 11, art. VII, § 11-708 (1996).
\end{itemize}
completely proscribes public begging city-wide.\textsuperscript{51} Violations of the Montpelier anti-begging ordinance subjects the offender to "a fine of not less than one dollar ($1.00) nor more than five hundred dollars ($500.00), or by imprisonment of not less than one (1) day nor more than thirty (30) days."\textsuperscript{52} As a result, Montpelier, Vermont’s anti-begging ordinance is highly restrictive because it bans every form of begging in public throughout the municipality—effectively requiring those who must beg to survive to leave the municipality to avoid violating the ordinance.\textsuperscript{53}

B. Less Restrictive Anti-Begging Laws

In contrast to highly restrictive anti-begging laws,\textsuperscript{54} the following less restrictive anti-begging laws place restrictions on an individual’s ability to beg without implementing a complete ban on begging in public areas throughout the municipality or state. These anti-begging laws are less restrictive because they impose “time, place, or manner” restrictions on where, when, and how an individual may beg.\textsuperscript{55} These less restrictive anti-begging laws are more narrowly tailored to address specific issues than a total ban on begging.

1. New York’s Anti-Begging Regulation

New York’s anti-begging regulation presents a prime example of a less restrictive anti-begging law.\textsuperscript{56} It states, “no person . . . shall engage in . . . the solicitation of money or payment for food, goods, services or entertainment. No person shall panhandle or beg upon any facility or conveyance.”\textsuperscript{57} At first glance, New York’s anti-begging regulation appears highly restrictive; however, this regulation is limited in scope and applies only to property under the control of the New York City Transit Authority and Bronx Surface Transit Authority (collectively referred to as the NYCTA).\textsuperscript{58} Therefore, New York’s anti-begging regulation only proscribes begging in transit authority facilities,\textsuperscript{59} such as subways.\textsuperscript{60} Furthermore, the NYCTA states that the purpose of this regulation is “to promote safety, to facilitate proper use of the transit facilities of the

\begin{itemize}
  \item \textsuperscript{51} Id.
  \item \textsuperscript{52} Ch. 1, § 1-9(a).
  \item \textsuperscript{53} Ch. 11, art. VII, § 11-708.
  \item \textsuperscript{54} \textit{See supra} Part I.A.
  \item \textsuperscript{55} Ward \textit{v.} Rock Against Racism, 491 U.S. 781, 791 (1989).
  \item \textsuperscript{56} N.Y. COMP. CODES R. & REGS. tit. 21, § 1050.6(b)(2) (2013).
  \item \textsuperscript{57} Id.
  \item \textsuperscript{58} Tit. 21, § 1050.1(b).
  \item \textsuperscript{59} Tit. 21, § 1050.6(b)(2).
  \item \textsuperscript{60} \textit{See} \textit{METROPOLITAN TRANSIT AUTHORITY}, http://new.mta.info/ (last visited Oct. 29, 2013).
\end{itemize}
authorities, to protect those transit facilities and their passengers, and to assure the payment of fares and other lawful charges for the use of their systems. Therefore, New York’s anti-begging regulation is less restrictive than a city wide ban because it only proscribes in NYCTA areas and is designed to remedy a specific problem.

2. Fort Lauderdale, Florida’s Anti-Begging Ordinance

Fort Lauderdale, Florida’s anti-begging ordinance restricts the places where a person may beg and the manner of how a person may beg. The Fort Lauderdale ordinance proscribes aggressive panhandling, general panhandling, and panhandling in specified areas of the city. A violation of the ordinance subjects the individual to “a fine not to exceed five hundred dollars ($500.00) or by imprisonment for a term not to exceed sixty (60) days or by both such fine and imprisonment.” However, the ordinance provides that “[p]anhandling does not mean the act of passively standing or sitting, performing music, or singing with a sign or other indication that a donation is being sought, but without any vocal request other than a response to an inquiry by another person.” Therefore, the Fort Lauderdale ordinance prohibits all solicitation for money by an individual in specified areas of the city, except when the individual is accepting donations while performing music or not actively soliciting donations.

3. Los Angeles, California and Chicago, Illinois’s Anti-Begging Ordinances

Los Angeles, California has also enacted a similar less restrictive anti-begging ordinance. The ordinance prohibits aggressive begging.

61. Tit. 21, § 1050.1(b).
62. Tit. 21, §§ 1050.1(b), 1050.6(b)(2).
64. Ch. 16, art. IV, §§ 16-82(a)(1)–(5) (defining aggressive panhandling).
65. Ch. 16, art. IV, §§ 16-82(a)(1)–(2) (defining non-aggressive panhandling).
66. Ch. 16, art. IV, § 16-82(b) (specifying areas where panhandling is prohibited).
67. Ch. 1, § 1-6(c) (1953), available at https://www.municode.com/library/fl/fort_lauderdale/codes/code_of_ordinances?nodeId=COOR_CH1GEPR_S1-6PEVI.
68. Ch. 16, art. IV, § 16-82(a).
69. ch. 16, art. IV, §§ 16-82(a)–(b).
71. § 41.59(b).
solicitation at specific locations, such as banks,\textsuperscript{72} motor vehicles,\textsuperscript{73} public transportation,\textsuperscript{74} and restaurants.\textsuperscript{75} Furthermore, the ordinance also includes restrictions on when an individual can beg because it prohibits begging in certain areas after dark.\textsuperscript{76} Similarly, Chicago's anti-begging ordinance prohibits begging in specified public areas, such as bus stops, public transportation, gas stations, ATMs, and restaurants.\textsuperscript{77} Therefore, New York,\textsuperscript{78} Fort Lauderdale, Florida,\textsuperscript{79} Los Angeles, California,\textsuperscript{80} and Chicago, Illinois\textsuperscript{81} have anti-begging statutes that are less restrictive than a blanket municipality-wide prohibition on begging because their restrictions are directed at "the time, place, or manner"\textsuperscript{82} of where, when, or how an individual may beg.

**II. PROBLEMS ADDRESSED BY ANTI-BEGGING LAWS AND THEIR CONSEQUENCES**

Many cities have some form of anti-begging law.\textsuperscript{83} These laws were enacted to address some perceived societal problems because beggars often make people feel uncomfortable and raise public safety and economic concerns.\textsuperscript{84} These laws, however, have consequences, and their enforcement raises legitimate moral concerns.\textsuperscript{85}

A. Problems Addressed by Anti-Begging Laws

Panhandlers present several problems in society.\textsuperscript{86} One problem is that
panhandlers intimidate people. 87 Most people can imagine a time when they were approached by a beggar and felt uncomfortable. 88 There are several factors that can influence the level of intimidation felt by people due to panhandlers, such as the “time of day,” whether the targeted person is alone, “the physical appearance of the panhandler,” and “the number of panhandlers.” 89 When people feel intimidated by the presence of panhandlers, they are more likely to take actions to avoid encounters with panhandlers in the first place. 90 These strategies include entirely avoiding areas where panhandlers are known to be present, 91 pretending to be talking on a cell phone, wearing headphones, and avoiding eye contact. 92 Additionally, one commentator has noted that “panhandling may unintentionally worsen race relations in cities where panhandlers are disproportionately black.” 93 Thus, panhandling presents legitimate problems for communities. 94

Because people are likely to go out of their way to avoid panhandlers, 95 panhandlers can also have a negative effect on businesses located near the areas where they beg. 96 The presence of panhandlers near businesses can effectively ruin a business because businesses cannot survive “if shoppers [are] unwilling to cross the phalanx of importuning street people” to enter the business. 97 If businesses that once served the community are forced to close, then residents of that community will be forced to look elsewhere to fill the void of services created by their absence. 98 Panhandlers’ presence near businesses does not just affect the


87. Id. at 4–5.
88. See Paul, Facing an Uncomfortable Reality: Beggars, LIFE IN A SACK (July 9, 2010), http://lifeinasack.net/facing-an-uncomfortable-reality-beggars/.
89. SCOTT, supra note 86, at 4–5.
90. Id. at 4.
91. Id.
92. Id.
94. See generally SCOTT, supra note 86, at 1–5.
95. Id. at 4.
96. The problems of panhandling on business have led to the production of guides on preventing panhandling for businesses. For an example, see NANCY G. LA VIGNE ET AL., PREVENTING PANHANDLING 3 (2007), available at http://www.urban.org/sites/default/files/alfresco/publication-pdfs/1001191-Preventing-Panhandling.PDF.
97. GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 31 (1996). Michigan’s Attorney General, Bill Schuette, also raised this argument when Michigan’s anti-begging law was constitutionally challenged. See Speet v. Schuette, 889 F. Supp. 2d 969, 973 (W.D. Mich. 2012) (“According to the government, the [anti-begging] ban helps businesses, because the presence of people begging in or near business establishments may deter others from patronizing those businesses.”).
98. This result is a natural consequence of a local business closing. For example, if your local grocery store closes, then necessarily you will be forced to purchase your groceries
individual business owners—their presence may also negatively affect the surrounding neighborhood. For example, approximately 60% of people who live in New York City stated that their quality of life has been diminished by the presence of panhandlers and beggars.

Moreover, the presence of panhandlers also has the potential to lead to an increase in crime. Increased crime in an area leads to lower property values and is also a reason why people move away from an area. An extreme—but possible—result is the creation of blighted areas, which foster even greater risks of crime.

Anti-begging laws also address the issue of dishonest beggars. Not all panhandlers are homeless, and not all homeless people panhandle. Panhandlers, however, present a problem to society because they “are notoriously prone to engage in fraud” to exploit society’s generosity toward the poor. Fraud by panhandlers ranges from asking for money for food because they are hungry and then using the money for drugs or alcohol to pretending to be homeless to exploit charitable donations. Issues of fraud by panhandlers have become so prevalent in some communities that charitable organizations have instructed citizens not to donate money to the panhandlers themselves—but to charitable organizations instead.

99. KELLING & COLES, supra note 97, at 31. See; see also Silber, supra note 15.
100. KELLING & COLES, supra note 97, at 13.
101. See id. at 20.
104. Detroit, Michigan has some of the largest areas of blight in the United States. For an overview of some of the problems created by blight, see generally Nick Carey, Detroit Area’s Battle with Blight May Be Key to Survival, REUTERS (July 25, 2013, 12:17 AM), http://www.reuters.com/article/2013/07/25/us-usa-detroit-blight-idUSBRE96O02T20130725.
106. SCOTT, supra note 86, at 6 (“Contrary to common belief, panhandlers and homeless people are not necessarily one and the same. Many studies have found that only a small percentage of homeless people panhandle, and only a small percentage of panhandlers are homeless.”).
107. Ellickson, supra note 93, at 1231.
108. SCOTT, supra note 86, at 6. Michigan’s Attorney General also claimed that one of the purposes of Michigan’s anti-begging law was to “prevent fraud, because beggars may not use the contributions for the purposes donors intend... [S]ome beggars may use such contributions for alcohol and illegal drugs.” Speet v. Schuette, 889 F. Supp. 2d 969, 973 (W.D. Mich. 2012).
Finally, aggressive panhandling is another problem addressed by anti-begging laws.\textsuperscript{110} Aggressive panhandling is defined as “soliciting coercively, with actual or implied threats, or menacing actions.”\textsuperscript{111} If an aggressive panhandler decides to use physical force or is overly aggressive, he or she could actually be committing robbery.\textsuperscript{112} Aggressive panhandlers have become a major problem in urban areas.\textsuperscript{113} Aggressive panhandlers increase the level of intimidation felt by pedestrians because they might “touch, shove, or respond with hostility or bigotry if one declines to give money.”\textsuperscript{114} Since aggressive panhandlers increase the level of intimidation felt by individuals, aggressive panhandlers can lead to decreases in foot traffic and business for the stores they are near because would-be patrons are more likely to avoid those stores in order to avoid being hassled or intimidated.\textsuperscript{115} As a result, panhandlers, in general, present legitimate problems for communities.\textsuperscript{116}

B. What are the Consequences of Anti-Begging Laws?

Every law has consequences—intended, unintended, positive, and negative.\textsuperscript{117} Anti-begging laws are no different. Like other laws, anti-begging laws have moral implications and a socioeconomic impact on society.\textsuperscript{118} An examination of the consequences of anti-begging laws illuminates that anti-begging laws are a largely ineffective remedy to the

\textsuperscript{110} SCOTT, supra note 86, at 1.

\textsuperscript{111} Id.

\textsuperscript{112} Id.


\textsuperscript{116} See, e.g., SCOTT, supra note 86, at 1; Stanton, supra note 113; Teir, supra note 114, at 288–90; Alfs, supra note 115.

\textsuperscript{117} See generally Robert K. Merton, \textit{The Unanticipated Consequences of Purposive Social Action}, 1 AM. SOC. REV. 894 (1936) (discussing the reality of unanticipated consequences in any purposive social action).

\textsuperscript{118} See generally id.
problems that begging has on the community.\textsuperscript{119}

Clearly, one of the negative consequences of anti-begging laws for beggars is the creation of a penalty, in the form of a fine, jail time, or both, for a violation of the law on individuals who are simply trying to survive.\textsuperscript{120} Enforcement of these laws raises legitimate moral questions and concerns. For example, anti-begging laws would surely fail to satisfy Kant’s Categorical Imperative\textsuperscript{121} because as a society we would not want to wholly outlaw solicitation of charitable donations.\textsuperscript{122} Furthermore, under a sentimentalist or moral sense theory approach,\textsuperscript{123} it seems inherently wrong to punish someone who is forced to rely on the charity of others to survive.\textsuperscript{124} Also, some donors may be negatively affected if begging is criminalized because donors might receive some spiritual or emotional benefit by giving to panhandlers.\textsuperscript{125}

Another negative consequence of anti-begging laws is that they are not cost effective.\textsuperscript{126} Individuals who are forced to rely on the charity of others to survive are not financially capable of paying any fines imposed on them.\textsuperscript{127} Furthermore, there are costs associated with enforcement of the law in the form of paying law enforcement officers to enforce the law.

\begin{itemize}
\item \textsuperscript{119} See \textit{supra} Part II.A.
\item \textsuperscript{120} For examples of different penalties imposed by various states and municipalities for violations of anti-begging laws, see \textit{supra} Part I.
\item \textsuperscript{121} “The categorical imperative is thus only a single one, and specifically this: \textit{Act only in accordance with that maxim through which you can at the same time will that it become a universal law.}” \textsc{Immanuel Kant}, \textit{Groundwork for the Metaphysics of Morals} 37 (Allen W. Wood ed. & trans., Yale Univ. Press 2002) (1785), available at \url{http://www.inp.uw.edu.pl/mdsie/Political_Thought/Kant%20-%20groundwork%20for%20the%20metaphysics%20of%20morals%20with%20essays.pdf}. Interestingly, one commentator has also proposed that the act of begging itself “is a morally dubious activity” according to Kant’s Categorical Imperative. Ellickson, \textit{supra} note 93, at 1182. “[I]f everyone were to try and survive as an unproductive person living off the charity of others, all would starve.” \textit{Id.}
\item \textsuperscript{122} If we applied anti-begging laws as a Categorical Imperative, necessarily any form of solicitation would violate the maxim, including solicitation requests made by charitable organizations, political organizations, and religious organizations.
\item \textsuperscript{123} “[S]ince vice and virtue are not discoverable merely by reason, or the comparison of ideas, it must be by means of some impression or sentiment they occasion, that we are able to mark the difference betwixt them.” \textsc{David Hume}, \textit{A Treatise of Human Nature} 258–59 (John P. Wright et al. eds., Everyman Paperbacks 2003) (1740).
\item \textsuperscript{125} Ellickson, \textit{supra} note 93, at 1179 (“Some donors undoubtedly take affirmative pleasure in satisfying request for a handout.”). See also Simone Sanner, \textit{GOP-Controlled SC Charges Fees, Requires Permits to Feed Homeless}, \textsc{Americans Against the Tea Party} (Feb. 13, 2014), \url{http://aattp.org/gop-controlled-sc-charges-fees-requires-permits-to-feed-homeless/} (discussing the effects of a permit requirement to feed the homeless in Columbia, South Carolina on donors).
\item \textsuperscript{126} See \textit{A Dream Denied}, \textit{supra} note 31, at 11.
\item \textsuperscript{127} For examples of the measures of fines imposed for violations of anti-begging statutes, see \textit{supra} Part I.
\end{itemize}
as well as court costs.\textsuperscript{128} Additionally, if the offender is sentenced to jail time, then taxpayer dollars are used to cover jail costs, which can be quite high.\textsuperscript{129}

Further, it is unlikely that anti-begging laws have substantial deterrent value.\textsuperscript{130} Panhandlers that must beg and rely on charity to survive do not have much—if anything—left to lose. The threat of a fine is meaningless when one is only concerned about surviving and has no means to pay the fine.\textsuperscript{131} Similarly, the threat of imprisonment is unlikely to deter an individual from begging because, at the very least, he or she will receive meals and a warm bed during the time in jail.\textsuperscript{132}

In contrast, from a societal perspective, one positive consequence of anti-begging laws is that law enforcement officers have the ability to enforce the law. If a law enforcement officer receives a complaint from a citizen or business about a panhandler, then the officer can enforce the law and remove the offender—just like any other criminal.\textsuperscript{133} Additionally, anti-begging laws can help prevent business owners from losing business due to panhandling\textsuperscript{134} because business owners have the ability to remove panhandlers who are scaring away business from the city.

\begin{itemize}
\item \textsuperscript{129} In Randall County, Texas, it "costs taxpayers around \$65 per day per inmate" to cover the operating costs of "housing, clothes, meals, basic medical care and other necessities." Shannel Douglas, \textit{Inmates Cost Taxpayers \$65 Per Day}, COMABC 7 NEWS (Nov. 20, 2012), http://abc7amarillo.com/news/local/inmates-cost-taxpayers-65-per-day?id=827668. Instead of the costs of jail time, New York City has attempted to address its homelessness problems by spending some of its resources not on food and shelter but by flying homeless families to live with relatives elsewhere—even internationally. Julie Bosman, \textit{City Aids Homeless with One-Way Tickets Home}, N.Y. TIMES (July 28, 2009), http://www.nytimes.com/2009/07/29/nyregion/29oneway.html.
\item \textsuperscript{130} One of the primary reasons for punishment is deterrence. Kent Greenawalt, \textit{Punishment, in JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 35 (5th ed. 2009).} “Knowledge that punishment will follow crime deters people from committing crimes, thus reducing future violations of right and the unhappiness and insecurity they would cause.” \textit{Id.}
\item \textsuperscript{131} For example, James Speet was arrested in January 2011 for violating Michigan's anti-begging statute, was unable to pay the fine, and spent four days in jail. Speet v. Schuette, 726 F.3d 867, 871 (6th Cir. 2013). A few months later, in June 2011, Speet was arrested again for violating Michigan’s anti-begging statute. \textit{Id.}
\item \textsuperscript{132} While beggars who require the charity of others to survive will probably not be deterred by the threat of imprisonment, dishonest beggars—those that are not homeless or starving—might be deterred from begging by anti-begging laws if they are faced with punishment by imprisonment.
\item \textsuperscript{133} See supra Part I (discussing various anti-begging laws and their accompanying penalties).
\item \textsuperscript{134} See supra Part II.A.
\end{itemize}
III. SUPREME COURT DECISIONS ON WHETHER SOLICITATION BY AN INDIVIDUAL IS PROTECTED SPEECH UNDER THE FIRST AMENDMENT

The Supreme Court has not directly decided the issue of whether begging by an individual is protected speech under the First Amendment. The Court has ruled on a number of occasions that solicitation by charitable organizations is protected speech under the First Amendment. These rulings, however, have been qualified based on the fact that requests for solicitation by charitable organizations also involve a component of disseminating ideas or advocating causes—a component which may not necessarily be present when a panhandler attempts to solicit funds.

A. Village of Schaumburg v. Citizens for a Better Environment

In Village of Schaumburg v. Citizens for a Better Environment, the Supreme Court did not directly consider whether begging by an individual is protected speech under the First Amendment, but the Court considered whether solicitation of alms by a charitable organization is protected speech under the First Amendment. The Village of Schaumburg (the Village) passed an ordinance that required charitable organizations seeking solicitations to apply and obtain a permit. Solicitation without a permit would result in “a fine of up to $500 for each offense.”

135. Realistically, an anti-begging law allows a business owner to attempt to scare away panhandlers without ever involving law enforcement because a threat to call the police by a business owner might be sufficient to convince the panhandler to vacate the area.

136. See supra Part II.A.

137. Speet v. Schuette, 726 F.3d 867, 874 (6th Cir. 2013) (“While 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.”).


139. See Schaumburg, 444 U.S. at 632.

140. Id. at 623.

141. Id. To obtain a permit, the ordinance required the applicant to include “‘proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization.’” Id. at 624 (quoting the ordinance).

142. Id. at 624.
environmental organization, sought to solicit in the Village and applied for a permit to do so. When the Village denied CBE's application for a permit, CBE brought suit seeking declaratory and injunctive relief on the basis that the Village's ordinance was unconstitutional on First and Fourteenth Amendment grounds.

After reviewing previous decisions involving freedom of speech, the Supreme Court held "that charitable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment." Therefore, the Court established that solicitation by charitable organizations is protected speech under the First Amendment and affirmed the decisions of the lower courts in finding that the ordinance violated the First and Fourteenth Amendments. Importantly, the Court limited its decision in one key aspect.

The Court qualified its holding by stating that "because charitable solicitation does more than inform private economic decisions and is not primarily concerned with providing information about the characteristics and costs of goods and services, it has not been dealt with in our cases as a variety of purely commercial speech." As a result, the Court distinguished charitable solicitation from commercial speech because charitable solicitation "is intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and for the reality that without solicitation the flow of such information and advocacy would likely cease." Therefore, the Court alluded to the notion that solicitation of funds by itself may not necessarily be protected speech—but the accompaniment of the request for a donation with "informative and perhaps persuasive speech" is what extends the protection of the First Amendment. However, the Court did not specifically articulate a level of scrutiny that laws regulating charitable solicitation would be subject to.

143. Id. at 625.
144. Id.
145. Id. at 632.
146. Id. at 632, 639.
147. See id. at 632.
148. Id.
149. Id.
150. Id. Similarly, Justice Rehnquist, in his dissent, argues that the ordinance is valid because it "deals not with the dissemination of ideas, but rather with the solicitation of money." Id. at 641 (Rehnquist, J., dissenting). This statement provides another allusion to the notion that mere solicitation for money without any informative or persuasive speech may not be protected speech under the First Amendment.
151. See id. at 632 (majority opinion) ("Soliciting financial support is undoubtedly subject
Therefore, Village of Schaumburg did not conclusively hold that solicitation of money, in general, is protected speech under the First Amendment. Instead, the Court stated that charitable solicitation is protected speech under the First Amendment because the act of solicitation of funds by a charitable organization is accompanied by "economic, political, or social" speech that is within the protection of the First Amendment. Therefore, the Court did not directly address whether solicitation or begging by an individual—without more—would be protected speech under the First Amendment, but the Court did provide some framework on the issue.

B. International Society for Krishna Consciousness, Inc. v. Lee

The Court considered the constitutionality—under the First Amendment—of regulations that limited the locations where charitable organizations may solicit funds in International Society for Krishna Consciousness, Inc. v. Lee. The International Society for Krishna Consciousness (ISKCON) challenged the constitutionality of a regulation of the Port Authority of New York and New Jersey (Port Authority) that prohibited distributing flyers or soliciting funds within several major New York City area airports on the grounds that the regulation violated the First Amendment. ISKCON is a non-profit religious organization whose members participate in a "ritual" that requires members to distribute religious brochures and solicit funds for the organization in to reasonable regulation . . .

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152. See Schaumburg, 444 U.S. at 632.
153. Id.
154. See id.
156. Id. at 675–76. "The Port Authority owns and operates . . . John F. Kennedy International Airport[,] . . . La Guardia Airport[,] . . . and Newark International Airport." Id. at 675. The regulation prohibited the following conduct within airport terminals "if conducted by a person to or with passers-by in a continuous or repetitive manner: . . . (b) The sale or distribution of flyers, brochures, pamphlets books or any other printed or written material. (c) The solicitation and receipt of funds." Id. at 675–76 (quoting Int’l Soc’y for Krishna Consciousness, Inc. v. Lee, 925 F.2d 576, 578–97 (2d Cir. 1991)).
The Port Authority's regulation prohibits ISKCON from performing its "ritual" inside airport terminals.158

The district court granted summary judgment in favor of ISKCON on the basis that the airport terminals constituted a public forum, which subjected the regulation to strict scrutiny.159 The Second Circuit affirmed in part and reversed in part on the basis "that the terminals are not public fora,"160 and therefore, the regulation was only subject to rational basis review.161 On this basis, the Second Circuit held "that the ban on solicitation was reasonable, but the ban on distribution was not."162 Both parties petitioned the Supreme Court for certiorari, and the Supreme Court granted both petitions.163

The Supreme Court held that ISKCON's "ritual" qualified as protected speech under the First Amendment.164 The Court's analysis primarily focused on whether the airport terminals constituted public fora because regulations on speech in public fora are subject to strict scrutiny.165 Regulations on speech outside a public forum, however, are subject only to rational basis review.166

The Court provided some criteria in determining whether an area constitutes a public forum.167 First, "a traditional public forum is property that has as 'a principal purpose . . . the free exchange of ideas.'"168 Public access to government-owned property, by itself, does not create a public forum.

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157. Id. at 674–75. The "ritual [is] known as sankirtan." Id. at 674.
158. Id. at 676.
160. While both "fora" and "forums" are both correct plural forms of "forum," this note uses "fora" as the plural form of "forum" to be consistent with the Supreme Court's use. See Definition of forum in English, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/definition/english/forum.
162. Id.
163. Id.
164. Id. It is important to note that the solicitation by ISKCON members in this case clearly carries some aspect of "the dissemination and propagation of views[,] . . . ideas, and . . . advocacy of causes" as stated in Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 632 (1980) because ISKCON members were soliciting funds while "disseminating religious literature." Int'l Soc' y for Krishna Consciousness, Inc., 505 U.S. at 674–75. However, the Court does not state in its opinion whether the act of solicitation on its own by ISKCON members, absent the distribution of leaflets, would be protected speech under the First Amendment. See id.
165. See id. at 678–79.
166. Id. at 679.
167. Id.
168. Id. (quoting Cornelius v. NAACP Legal Def. and Educ. Fund, Inc., 473 U.S. 788, 800 (1985)).
Although, a "separation from acknowledged public areas may serve to indicate that the separated property is a special enclave, subject to greater restriction." Based on these criteria, the Court determined that airport terminals are not public fora because airports have not historically been used for speech activities.

Therefore, the Port Authority's regulations only needed to be reasonable to avoid constitutional violation. The Court upheld the Second Circuit's decision that the ban on solicitation was reasonable because solicitation may have a disruptive effect on business and "face-to-face solicitation presents risks of duress that are an appropriate target of regulation." Thus, the Court affirmed the Second Circuit's decision and upheld the ban on solicitation as reasonable under rational basis review.

In a separate opinion, the Court held that the Port Authority's ban on distribution of leaflets violated the First Amendment. Justice O'Connor distinguished solicitation of funds from distribution of leaflets because "leafletting does not entail the same kinds of problems presented by face-to-face solicitation." This distinction is due to the fact that the act of handing out leaflets does not require the recipient to cease movement. Justice O'Connor found the Port Authority's general blanket ban on distribution of leaflets to be unreasonable; however, "regulations of the time, place, and manner of leafletting" would likely be constitutional under rational basis review.

Therefore, the Court did not explicitly provide that the act of solicitation on its own was protected speech under the First Amendment. The Court, however, did provide some framework to

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169. Id. at 679–80 (quoting Greer v. Spock, 424 U.S. 828, 836 (1976)).
170. Id. at 680 (citing United States v. Grace, 461 U.S. 171, 179–80 (1983)).
172. Id. at 683.
173. Id. at 684.
174. Id. at 685.
177. Id.
178. Id. at 692.
179. See supra note 164.
determine which areas may be considered public fora for First Amendment purposes.\textsuperscript{180} Also, the Court distinguished face-to-face solicitation from the distribution of leaflets on the basis of the differences in the nature of the interaction between the two activities.\textsuperscript{181}

\section*{IV. Circuit Court Interpretations}

In the absence of clear authority from the Supreme Court,\textsuperscript{182} the circuit courts have interpreted the Supreme Court’s decisions in different ways. There have been differing opinions as to whether begging constitutes speech or conduct. Courts that have viewed begging as speech have invoked strict scrutiny to review regulations on begging, while courts that have viewed begging as conduct have subjected regulations limiting begging to rational basis review.\textsuperscript{183}

\subsection*{A. Young v. New York City Transit Authority}

In \textit{Young}, the Second Circuit evaluated whether the NYCTA “prohibition of begging and panhandling in the New York City subway system violate[d] the First Amendment.”\textsuperscript{184} The district court granted plaintiffs’ request for declaratory and injunctive relief on the basis that “begging constitutes a type of speech that merits the full protection of the First Amendment” and declared the prohibition unconstitutional.\textsuperscript{185} The NYCTA appealed the district court’s decision to the Second Circuit.\textsuperscript{186}

On appeal, the Second Circuit first considered whether begging constitutes speech or conduct.\textsuperscript{187} The Second Circuit began “by expressing grave doubt as to whether begging and panhandling in the subway are sufficiently imbued with a communicative character to justify constitutional protection.”\textsuperscript{188} In considering “whether begging constitutes the kind of ‘expressive conduct’ protected to some extent by the First Amendment,” the Second Circuit relied on “[c]ommon sense” in finding

\begin{itemize}
  \item \textsuperscript{180} \textit{Int’l Soc’y for Krishna Consciousness, Inc.}, 505 U.S. at 679–80.
  \item \textsuperscript{181} \textit{Id.} at 690 (O’Connor, J., concurring).
  \item \textsuperscript{182} \textit{See supra} Part III.
  \item \textsuperscript{183} \textit{See infra} Part V. \textit{Compare} \textit{Young v. N.Y.C. Transit Auth.}, 903 F.2d 146, 154 (2d Cir. 1990) (holding that begging is conduct and not protected speech under the First Amendment), \textit{with Speet v. Schuette}, 726 F.3d 867, 875 (6th Cir. 2013) (holding that begging is protected speech under the First Amendment).
  \item \textsuperscript{184} \textit{Young}, 903 F.2d at 147. For a more detailed examination of the NYCTA anti-begging regulation, \textit{see supra} Part I.B.1.
  \item \textsuperscript{185} \textit{Young}, 903 F.2d at 148, 152.
  \item \textsuperscript{186} \textit{Id.} at 147.
  \item \textsuperscript{187} \textit{Id.} at 152–53.
  \item \textsuperscript{188} \textit{Id.} at 153.
\end{itemize}
that begging constitutes conduct—not speech. To determine what expressive conduct is protected by the First Amendment, the question is "[whether] the likelihood was great that the message would be understood by those who viewed it." After reviewing Supreme Court precedent extending First Amendment protection to expressive conduct, the Second Circuit noted "the conduct . . . formed a clear and particularized political or social message very much understood by those who viewed it." Therefore, the Second Circuit narrowly interpreted Supreme Court precedent to extend First Amendment protection to conduct only in situations where the conduct was "inextricably joined" with a particularized message.

The Second Circuit held that "begging is not inseparably intertwined with a 'particularized message.' It seems fair to say that most individuals who beg are not doing so to convey any social or political message. Rather, they beg to collect money." The Second Circuit rejected the plaintiffs' argument that the act of begging conveyed any sort of particularized political or social message because "there hardly seems to be a 'great likelihood' that the subway passengers who witness the conduct are able to discern what the particularized message might be." The Second Circuit further stated that even if the beggar attempted to convey a particularized message, the message would be ignored because people on the subway view begging as a form of harassment. The Second Circuit concluded that begging is conduct—not speech—because "[w]hether with or without words, the object of begging and panhandling is the transfer of money." Therefore, the Second Circuit found that begging is conduct that is not subject to First Amendment protection.

The Second Circuit also rejected the plaintiffs' argument that the Supreme Court extended protection to solicitation in Village of Schaumburg v. Citizens for a Better Environment on the basis that

189. Id.
192. Young, 903 F.2d at 153.
193. Id.
194. Id.
195. Id. at 153–54.
196. See id. at 154.
197. Id.
198. Id. at 153–54.
199. Vill. of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 633 (1980); see also supra Part III.A.
begging on the subway was not "intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues." Therefore, the Second Circuit held that begging constituted conduct—not speech—and also held that the NYCTA anti-begging regulation did not violate the First Amendment.

B. Smith v. City of Fort Lauderdale, Florida

In a similar case, plaintiffs challenged—on First Amendment grounds—a Fort Lauderdale, Florida ordinance that prohibited panhandling on the beach. The Eleventh Circuit, however, determined that "[l]ike other charitable solicitation, begging is speech entitled to First Amendment protection." The Eleventh Circuit also ruled that the ordinance "restrict[ed] speech in a public forum." However, the Eleventh Circuit held that the ordinance’s "restrictions on begging in the Fort Lauderdale Beach area [were] narrowly tailored to serve the City’s interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach." Therefore, the Eleventh Circuit held that begging was speech entitled to First Amendment protection but that the ordinance did not violate the First Amendment because it was narrowly tailored to withstand strict scrutiny review.

C. Speet v. Schuette

In Speet v. Schuette, the Sixth Circuit affirmed a finding that Michigan’s anti-begging statute was unconstitutional on the basis that the statute violated the First Amendment by banning speech—in the form of begging—in a public forum. Plaintiffs James Speet and Ernest Sims brought suit facially challenging the constitutionality of Michigan’s anti-
begging statute\textsuperscript{210} seeking declaratory and injunctive relief.\textsuperscript{211} The district court granted plaintiffs' motion for summary judgment, and Michigan Attorney General Bill Schuette appealed to the Sixth Circuit.\textsuperscript{212} After acknowledging that the Supreme Court has never "directly decided the question of whether the First Amendment protects soliciting alms when done by an individual," the Sixth Circuit "h[e]ld that begging, or the soliciting of alms, is a form of solicitation that the First Amendment protects."\textsuperscript{213} The Sixth Circuit interpreted the Supreme Court's decision in \textit{Village of Schaumburg v. Citizens for a Better Environment}\textsuperscript{214} "as holding that 'charitable solicitation is protected because it is characteristically intertwined with . . . speech seeking support for particular causes or for particular views on economic, political, or social views.'"\textsuperscript{215}

As a result, the Sixth Circuit interpreted \textit{Village of Schaumburg} as holding that charitable solicitation necessarily contains speech and extended First Amendment protection to begging by individuals.\textsuperscript{216} Furthermore, Michigan's anti-begging statute—as a state-wide ban—restricted speech in public fora.\textsuperscript{217} As a blanket ban on all forms of begging throughout the state, Michigan’s anti-begging statute was not narrowly tailored to serve its legitimate state interests and, therefore, unconstitutionally violated the First Amendment.\textsuperscript{218}

\section*{V. IS BEGGING CONDUCT OR SPEECH?}

To determine whether begging is protected speech under the First Amendment, the first question to resolve is whether begging constitutes conduct or speech.\textsuperscript{219} If begging is classified as inexpressive conduct,
then it will not be entitled to First Amendment protection.\textsuperscript{220} However, if begging inherently communicates speech interests, then begging is entitled to First Amendment protection.\textsuperscript{221}

\textbf{A. Arguments in Favor of Classifying Begging as Inexpressive Conduct}

There are two factors that support a finding that begging is inexpressive conduct. First, it is unlikely that the audience of the begging perceives any expressive elements from the beggar.\textsuperscript{222} Second, the intent of the beggar is not to disseminate information—it is to obtain money.\textsuperscript{223} Perhaps the strongest arguments in favor of classifying begging as inexpressive conduct are those put forth by the Second Circuit in \textit{Young v. New York City Transit Authority}.\textsuperscript{224}

The \textit{Young} court strongly considered the audience of the panhandlers in finding that begging constituted inexpressive conduct.\textsuperscript{225} The fact that most individuals view panhandlers as intimidating\textsuperscript{226} certainly supports the \textit{Young} court’s view that “the conduct of begging and panhandling [is] totally independent of any particularized message.”\textsuperscript{227} Indeed, the \textit{Young} court felt that most targets of panhandlers pay no attention to whether the panhandlers are trying to convey any message because the targets “experience [panhandler requests] as threatening, harassing and intimidating.”\textsuperscript{228} As a result, if the target audience only views the request as harassment, any expressive message to the request will be ignored or will not be perceived.\textsuperscript{229} Arguably, the more aggressive the panhandler,\textsuperscript{230} the less receptive the target will be to any potential message conveyed by the panhandler because the target will only perceive the aggressive

\textsuperscript{220} Indeed, this was the position put forward by the Second Circuit in \textit{Young}. \textit{Young v. N.Y.C. Transit Auth.}, 903 F.2d 146, 153–54 (2d Cir. 1990). \textit{See supra} Part IV.A.
\textsuperscript{221} \textit{See Smith v. City of Fort Lauderdale, Fla.}, 177 F.3d 954, 956 (11th Cir. 1999); \textit{Speet}, 726 F.3d at 877–78.
\textsuperscript{222} \textit{Young}, 903 F.2d at 153–54.
\textsuperscript{223} \textit{Id.} at 153.
\textsuperscript{224} \textit{See id.} at 153–54.
\textsuperscript{225} \textit{See id.} The Second Circuit focused heavily on the audience based on the Supreme Court’s decision in \textit{Spence v. Washington}, 418 U.S. 405, 410–11 (1974) (stating that in determining whether expressive conduct is protected as free speech the court must determine whether “[a]n intent to convey a particularized message was present, and in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it”).
\textsuperscript{226} \textit{See SCOTT, supra} note 86, at 4.
\textsuperscript{227} \textit{Young}, 903 F.2d at 154.
\textsuperscript{228} \textit{Id.}
\textsuperscript{229} \textit{See generally Proper Etiquette for Ignoring Beggars?}, \textsc{Yelp}, http://www.yelp.com/topic/inglewood-proper-etiquette-for-ignoring-beggars (last visited Jan. 16, 2014) (discussing the various ways in which people ignore beggars).
\textsuperscript{230} \textit{See generally SCOTT, supra} note 86, at 1 (defining aggressive panhandling).
panhandler’s request as harassment and then be more likely to ignore the request.\textsuperscript{231} If any expressive element contained within the act of begging is wholly ignored, then the only aspect that is being perceived is the inexpressive element of soliciting money.\textsuperscript{232}

The \textit{Young} court also considered the intent behind the action in determining whether the action should be classified as conduct or speech.\textsuperscript{233} As the \textit{Young} court noted, “the object of begging and panhandling is the transfer of money.”\textsuperscript{234} Therefore, the goal of panhandling is not to convey some sort of message or to make a statement to society, such as protesting the Vietnam War\textsuperscript{235} or fighting segregation.\textsuperscript{236} Instead, the goal of panhandling is for the panhandler to acquire money.\textsuperscript{237} The act of panhandling does not invoke some sort of message in the target in the same way that wearing a black arm-band sends a message to an observer that the wearer is protesting the Vietnam War.\textsuperscript{238} The two actions have inherently different purposes. The purpose of panhandling is to provide a benefit—usually monetary—to the panhandler. The purpose of wearing a black arm-band is to \textit{communicate} to observers that the wearer opposes the Vietnam War.\textsuperscript{239} The goal of protecting the dissemination of information was also a point raised in \textit{Village of Schaumburg v. Citizens for a Better Environment}.\textsuperscript{240} The primary goal of panhandling is not to disseminate any information on views or ideas—it is to acquire money.

\section*{B. Arguments in Favor of Classifying Begging as Speech}

The arguments put forth by the \textit{Young} court represent a minority view on the issue of whether begging is speech or inexpressive conduct.\textsuperscript{241} The

\begin{itemize}
\item \textsuperscript{231} See id. at 4–5.
\item \textsuperscript{232} See \textit{Young}, 903 F.2d at 154.
\item \textsuperscript{233} See id.
\item \textsuperscript{234} Id.
\item \textsuperscript{235} \textit{Tinker} v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 505–06 (1969) (wearing black arm-bands to protest the Vietnam War is speech protected by the First Amendment).
\item \textsuperscript{236} \textit{Brown} v. Louisiana, 383 U.S. 131, 141–42 (1966) (conducting a sit-in to protest segregation is speech).
\item \textsuperscript{237} \textit{Young}, 903 F.2d at 154. There are even “how to” articles on the internet on how to make more money begging. \textit{How to Panhandle}, WikiHow, http://www.wikihow.com/Panhandle (last visited Dec. 8, 2015).
\item \textsuperscript{238} \textit{Tinker}, 393 U.S. at 504–05.
\item \textsuperscript{239} Id. at 504.
\item \textsuperscript{240} \textit{Vill. of Schaumburg v. Citizens for a Better Env’t}, 444 U.S. 620, 632 (1980) (“[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.”).
\item \textsuperscript{241} See \textit{Speet v. Schuette}, 726 F.3d 867, 874–78 (6th Cir. 2013) (collecting cases from a variety of circuits and distinguishing \textit{Young}, 903 F.2d at 155).
\end{itemize}
Young court’s narrow interpretation of Village of Schaumburg place
too great of an emphasis on the reception by the audience of the beggar’s message and con
cstitutionally extended First Amendment protection to solicitation only as a collective right. Additionally, there are a number of moral and public policy reasons for 
classifying begging as speech.

Inherently, panhandling requires some degree of communication. Sometimes this communication may be implied—without the use of
words—by mere gestures. For example, a panhandler extending an open hand to a passerby communicates that the panhandler is seeking a donation. Furthermore, “[b]egging frequently is accompanied by 
speech indicating the need for food, shelter, clothing, medical care or transportation.” Clearly, there is at least some—even if it is rather limited—expressive communication involved in begging.

Furthermore, whether or not the beggar’s target audience actually perceives the expressive element of communication involved in begging is irrelevant because many people ignore all forms of solicitation—even those by charitable organizations. For example, many people ignore all forms of telemarketing calls, and the National Do-Not-Call Registry was enacted in part to help enable people to more easily avoid or ignore solicitation attempts. The fact that people might ignore solicitation—even by charitable organizations—does not change the Supreme Court’s ruling in Village of Schaumburg upholding solicitation as protected speech. In other words, if a charitable organization’s solicitation attempts are completely ignored, the solicitation is still protected by the First Amendment. Likewise, if a beggar panhandles on a street corner

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243. See Speet, 726 F.3d at 877 (quoting Young, 903 F.2d at 167 (Meskill, J., concurring in part and dissenting in part)) (holding that begging is protected for First Amendment purposes because “[t]o hold otherwise would mean that an individual’s plight is worthy of less protection in the eyes of the law than the interests addressed by an organized group”). See also District of Columbia v. Heller, 554 U.S. 570, 579–80 (2008).
244. See supra Part II.B.
245. See Loper v. N.Y.C. Police Dep’t, 999 F.2d 699, 704 (2d Cir. 1993) (stating that begging “usually involves some communication”).
246. See id. (“Even without particularized speech, however, the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance.”).
247. Id.
248. Id.
252. See id.
and everyone around ignores him or her, the beggar's actions still contain expressive communication. Therefore, the audience of the action should not be a dispositive factor when it comes to whether solicitation by an individual is protected by the First Amendment.

Additionally, simple requests for donations are little different than the messages conveyed by organized charities. Yet, when charitable organizations request donations on behalf of others, their actions constitute speech that is protected under the First Amendment. While one (minor) goal of solicitation by charitable organizations may be to promote awareness about a particular cause, the primary goal of solicitation is to acquire money. Likewise, panhandlers communicate a request for donations with the goal of acquiring money. Therefore, the distinction between solicitation by charitable organizations and solicitation by individuals is insignificant as both communicate the same idea—"donate money"—with the same ultimate goal—acquiring money. Essentially, the underlying intent driving solicitation by charitable organizations and beggars is the exact same. While one might argue that charitable solicitation is distinguishable because the funds raised by charitable organizations are contributed toward a specific political or social cause, this argument is without merit because the funds donated to panhandlers are contributions toward the social or political cause of putting an end to poverty and homelessness.

In addition, to distinguish solicitation by charitable organizations as speech and solicitation by individuals as conduct would require a "middle man," in the form of an organization, in order to protect solicitation as speech. To require individuals to form organizations to invoke First Amendment protection is contrary to constitutional interpretation of constitutional rights as individual rights.

254. See Schaumburg, 444 U.S. at 632.
256. See Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 704 (2d Cir. 1993) ("We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed. The former are communicating the needs of others while the latter are communicating their personal needs.... The distinction is not a significant one....").
257. See District of Columbia v. Heller, 554 U.S. 570, 579–80 (2008) (stating that the Constitution protects "individual rights, not 'collective' rights, or rights that may be exercised only through participation in some corporate body").
specifically rejected the notion that individuals might be required to form
groups to receive constitutional protection. 258

There are also moral grounds for extending First Amendment
protection to solicitation by beggars. 259 From a utilitarian perspective,
criminalizing an activity that provides the only means of survival for a
desperate individual cannot possibly generate the greatest social benefit
to society when the positive benefits are relatively insignificant in
comparison. 260 Additionally, from a sentimentalist or moral sense theory
perspective, it seems inherently wrong to refuse to protect the means of
survival of an individual who is forced to beg and rely on the charity of
others merely to subsist—just because begging might make a few people
uncomfortable from time to time. 261

Overall, begging by an individual should be protected as speech under
the First Amendment. Begging contains at the very least some amount of
expression. 262 For example, the presence of a beggar contains an
expressive message of making the issue of poverty salient to the
community. 263 Additionally, whether the audience perceives the target
message should not be a dispositive factor in deciding to extend
protection. Solicitation by beggars and charitable organizations both have
the same ultimate goal—to acquire money. Finally, there are moral and
constitutional issues presented by extending First Amendment protection
to solicitation by charitable organization and not to beggars. 264

VI. ANTI-BEGGING LAWS AND THE PUBLIC FORUM

Extending First Amendment protection to begging does not fully
resolve the issue of whether anti-begging laws are constitutional.
Resolving this inquiry requires a determination of whether the places that
beggars frequent most 265 are considered public fora because regulations

258. See id.
259. See supra Part II.B.
260. For a description of the positive benefits of anti-begging laws, see supra Part II.B.
261. See Paul, supra note 88.
262. See Speet v. Schuette, 726 F.3d 867, 877–78 (6th Cir. 2013); Loper v. N.Y.C. Police
Dep't, 999 F.2d 699, 704 (2d Cir. 1993).
263. See Loper, 999 F.2d at 704 (“Begging frequently is accompanied by speech indicating
the need for food, shelter, clothing, medical care or transportation.”).
264. “[B]egging is indistinguishable from charitable solicitation for First Amendment
purposes. To hold otherwise would mean that an individual’s plight is worthy of less protection
in the eyes of the law than the interests addressed by an organized group.” Speet, 726 F.3d at 877
(quoting Young v. N.Y.C. Transit Auth., 903 F.2d 146, 167 (2d Cir. 1990) (Meskill, J., concurring
in part and dissenting in part)).
265. For a list of areas commonly frequented by panhandlers, see Scott, supra note 86, at
9. This Note primarily considers public sidewalks to be the place that beggars frequent most. See
id.
on free speech in public fora are subject to strict scrutiny, while regulations on speech outside of a public forum are subject to rational basis review. Therefore, if the places that beggars frequent most are considered public fora, municipalities that pass anti-begging laws must narrowly tailor them and also have a "compelling state interest" to withstand strict scrutiny review.

While the Supreme Court has rejected an argument that all government-owned sidewalks constitute public fora, most public sidewalks do qualify as public fora. The "quintessential" public fora include "public streets, parks, and (some) sidewalks." As a result, many of the places frequented by beggars would likely be considered public fora. However, a public forum is not created "whenever members of the public are permitted freely to visit a place owned or operated by the Government." Moreover, the Court has recognized only "traditional" public fora—those that "have historically been made available for speech activity." Since most public sidewalks do qualify as "traditional" public fora and begging commonly occurs on public sidewalks, anti-begging laws that restrict begging on or near public sidewalks will be subject to strict scrutiny and require the state to demonstrate a "compelling state interest" and the restriction be "narrowly drawn" in order to withstand a constitutional challenge.

In contrast, if the places that beggars frequent are not "traditional" public fora, municipalities need only show that a regulation limiting begging in those areas be reasonable and subject to rational basis

266. United States v. Kokinda, 497 U.S. 720, 726–27 (1990) (holding that regulations on speech in public fora, "such as public streets and parks, [are] examined under strict scrutiny").
267. See Int'l Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 683 (1992) (holding that restrictions on speech that is protected under the First Amendment outside of a public forum "need only satisfy a requirement of reasonableness").
269. Kokinda, 497 U.S. at 727. In Kokinda, the Court rejected an argument that a sidewalk on Postal Service property constituted a public forum in part because it was not a "public passageway" or "thoroughfare." Id.
271. See Kokinda, 497 U.S. at 727; SCOTT, supra note 86, at 9.
273. See Int'l Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 679–81 (1992) (finding that airport terminals are not public fora because they are not a "traditional public forum"). One scholar has suggested that all "places of modernity—shopping malls, airports, transportation terminals and facilities, highway rest stops—cannot achieve 'quintessential' [public] forum status" because they have not been around long enough to be considered traditional public fora. ZICK, supra note 270, at 56. However, public beaches have also been categorized as public fora. Smith v. City of Fort Lauderdale, Fla., 177 F.3d 954, 956 (11th Cir. 1999).
274. See Kokinda, 497 U.S. at 727.
275. See SCOTT, supra note 86, at 9.
review.277 For example, beggars also frequently panhandle: at intersections with traffic signals, on or near public transportation, near ATMs, and near freeway entrances and exits.278 These areas would probably not qualify as public fora under Supreme Court First Amendment jurisprudence because they are not “quintessential” public fora that have “historically been made available for speech activity.”279 For the most part, “these places have not been around long enough to warrant . . . treatment” as public fora.280 Additionally, common sense and experience dictate that most of these places have never been traditionally used for speech activities—protests, boycotts, rallies, or demonstrations—in the same way that public parks, streets, and sidewalks have been used for these activities. For example, when planning a protest of an action of government, protesters do not plan to stage their protest on a freeway entrance or exit—they plan to hold their protest at the seat of government.281 As a result, these other places that are commonly frequented by beggars would not likely qualify as public fora, so restrictions on begging at these locations need only survive rational basis review.282

If First Amendment protection is extended to begging, then the key consideration in examining the constitutionality of anti-begging laws will be to consider the locations that are the subject of the restrictions.283 If the anti-begging law restricts begging in a public forum, such as in a public park, sidewalk, or street, then the law will be subject to strict scrutiny and only be upheld if it satisfies a “compelling state interest” and is “narrowly drawn” to achieve that interest.284 On the other hand, if the anti-begging law restricts begging outside of a public forum, then the restriction need only be reasonable because it will only be subject to rational basis review.285

VII. SUGGESTED MUNICIPAL REFORMS

Extending First Amendment protection to begging will affect a

278. SCOTT, supra note 86, at 9.
280. ZICK, supra note 270, at 56.
281. For an interesting graphic of all worldwide protests since 1979, see J. Dana Stuster, Mapped: Every Protest on the Planet Since 1979, FOREIGN POL’Y (Aug. 23, 2013), http://foreignpolicy.com/2013/08/23(mapped-every-protest-on-the-planet-since-1979/.
number of anti-begging laws that are currently in force in a number of municipalities. Some of these municipalities will likely need to amend their laws in order to withstand a constitutional challenge. In order to withstand a constitutional attack on First Amendment grounds, municipalities will need to pass regulations that are "narrowly drawn to achieve a compelling state interest."\textsuperscript{287}

Under a public forum analysis, it is unlikely that any highly restrictive anti-begging laws\textsuperscript{288} would pass constitutional muster.\textsuperscript{289} For example, Montpelier, Vermont would need to amend its ordinance to change its anti-begging regulations from a city-wide public ban on begging to specific targeted areas with legitimate purposes.\textsuperscript{290} Under public forum analysis, a city-wide ban on begging in all public places would almost undoubtedly fail to be considered "narrowly tailored" in a constitutional challenge.\textsuperscript{291}

However, a less restrictive anti-begging law\textsuperscript{292} that restricts speech in a public forum would likely pass constitutional muster so long as it is narrowly tailored to address the "time, place, or manner"\textsuperscript{293} of begging and serves a compelling state interest.\textsuperscript{294} For example, Los Angeles and Chicago\textsuperscript{295} have anti-begging laws that would likely be upheld as constitutional—even under strict scrutiny. Neither city prohibits begging on a city-wide basis; instead, both Los Angeles and Chicago restrict begging at specific locations.\textsuperscript{296} Even under strict scrutiny, an ordinance that restricts begging near banks, restaurants, bus stops, and ATMs would likely be upheld as constitutional because these are areas where people

\textsuperscript{286} For examples of some of these anti-begging laws, see supra Part I. See also A Dream Denied, supra note 31, at 135–45; Homes Not Handcuffs, supra note 11, at 165–71.

\textsuperscript{287} Int'l Soc'y for Krishna Consciousness, Inc., 505 U.S. at 678 (citing Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983)).

\textsuperscript{288} See supra Part I.A.


\textsuperscript{290} Montpelier, VT., CODE OF ORDINANCES ch. 11, art. VII, § 11-708 (1996); see also supra Part I.A.2.

\textsuperscript{291} Int'l Soc'y for Krishna Consciousness, Inc., 505 U.S. at 676; see also Speet, 726 F.3d at 879-80 (holding that a state-wide ban on begging is unconstitutional because it is not narrowly tailored to serve its legitimate state interests).

\textsuperscript{292} See supra Part I.B.


\textsuperscript{294} Fort Lauderdale, Florida's anti-begging ordinance was upheld as constitutional because the Eleventh Circuit found the ordinance to be "narrowly tailored to serve the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach." Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11th Cir. 1999). This decision has been subject to criticism. See generally Ann Marie Cummins, Note: Smith v. City of Fort Lauderdale: The Eleventh Circuit Casts a "Net Making Easy the Roundup of So Called Undesirables," 10 TEMP. POL. & CIV. RTS. L. REV. 165, 178–79 (2000).

\textsuperscript{295} See supra Part I.B.3.

\textsuperscript{296} See supra Part I.B.3.
are very likely to be confronted by panhandlers and have safety and economic concerns. For example, if panhandlers are near an ATM, passers-by are unlikely to use the ATM for fear of being accosted after making a withdrawal. Furthermore, a number of these locations are not likely to be classified as public fora, so a municipality would only need to show that the anti-begging law is reasonable because the law would only be subject to rational basis review. Therefore, less restrictive anti-begging laws would likely be upheld because they are probably narrowly tailored to withstand strict scrutiny or restrict begging outside of a public forum.

Overall, all municipality-wide bans on begging will probably be found to be unconstitutional because they would necessarily restrict speech in a public forum and fail to pass strict scrutiny review. Municipality-wide bans on begging—even if they serve a compelling state interest—are not narrowly tailored to meet their goal and thus fail to withstand strict scrutiny. Instead, anti-begging laws that restrict begging—even in a public forum—at specific times, specific places, and manners such as those enacted by Chicago, Illinois or Los Angeles, California would likely be upheld as constitutional because they are narrowly tailored to achieve their compelling state interest in public safety and economic concerns.

In drafting or amending an anti-begging law, a municipality would likely withstand a constitutional challenge by narrowly tailoring restrictions on begging in public fora, such as public sidewalks, in accord with particularized safety and economic concerns. For example, an anti-begging law that prohibited begging on public sidewalks in front of elementary schools would likely be narrowly tailored and serve

297. See Scott, supra note 86, at 9 (stating that restaurants, bus stops, and ATMs are places where panhandlers are common).
298. ATMs are a common location for panhandlers because the people who use ATMs for a withdrawal cannot "say they do not have any money to give." Id.
300. See id. at 683.
301. For example, the Sixth Circuit in Speet v. Schuette, 726 F.3d 867, 880 (6th Cir. 2013), recently held that Michigan's statewide ban on begging was unconstitutional.
306. See Speet, 726 F.3d at 879–80; Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11th Cir. 1999).
307. See United States v. Kokinda, 497 U.S. 720, 727 (1990); see also supra Part VI.
308. See Smith, 177 F.3d at 956–57 (holding that an anti-begging ordinance that restricts begging in beach areas is "narrowly tailored to serve the City's interest in providing a safe, pleasant environment"); Alfs, supra note 115 (discussing the negative impact that the presence of panhandlers has on business).
a legitimate compelling state interest in ensuring the safety of children to withstand strict scrutiny review.\textsuperscript{309} The municipality has far more leeway in restricting begging outside of public fora because the municipality need only show that the restriction is reasonable.\textsuperscript{310} For example, a restriction prohibiting begging within fifteen feet of all ATMs at all times would almost certainly withstand rational basis review because the restriction would serve the reasonable purpose of attempting to deter crime near ATMs.\textsuperscript{311} Thus, to restrict begging in a public forum, the municipality must narrowly tailor the restriction and the restriction must serve a compelling state interest, while a restriction on begging outside of a public forum need only be reasonable.\textsuperscript{312}

CONCLUSION

While there are legitimate societal interests for limiting begging in public places, these interests do not provide reasonable grounds to completely prohibit begging in public spaces.\textsuperscript{313} State laws should not punish those who require the charity of others to survive.\textsuperscript{314} There is no compelling or constitutionally permissible reason to require a "middle man" in the form of a charitable organization to protect solicitation of alms by an individual as free speech under the First Amendment.\textsuperscript{315} Society cannot simply sweep the poor and homeless "under the rug" to make the problem go away.\textsuperscript{316}

\begin{footnotesize}
\begin{enumerate}
\item Los Angeles, California has enacted such an ordinance. L.A., CAL., L.A. MUN. CODE ch. IV, art. 1, § 41.59(c)(1) (1997).
\item Speet v. Schuette, 726 F.3d 867, 879–80 (6th Cir. 2013).
\item See supra Part II.B.
\item See Speet, 726 F.3d at 877; Young v. N.Y.C. Transit Auth., 903 F.2d 146, 167 (2d Cir. 1990) (Meskill, J., concurring in part and dissenting in part); see also District of Columbia v. Heller, 554 U.S. 570, 579–80 (2008) (stating that the Constitution protects “individual rights, not ‘collective’ rights, or rights that may be exercised only through participation in some corporate body”).
\item However, some cities have tried to temporarily hide the problem. See Vickie Elmer, \textit{In Detroit, a Super Bowl Timeout for the Homeless}, WASH. POST, Feb. 4, 2006, at A.02 (discussing Detroit, Michigan’s attempt to hide its homeless population when the city hosted the Super Bowl in 2006); Scott Keyes, \textit{Is Washington DC Trying to Hide Its Homeless Population During Inauguration?}, THINK PROGRESS (Jan. 19, 2013, 9:30 AM), http://thinkprogress.org/economy/2013/01/19/1469411/dc-homeless-inauguration/# (discussing Washington, D.C.’s
The Supreme Court and all circuit courts should hold that the First Amendment protection of soliciting alms extends to individuals and subject all anti-begging laws that restrict begging in a public forum to strict scrutiny. The law should reflect the reality that beggars need the protection of the First Amendment.\(^3\)\(^1\)\(^7\) To forego this result would be to deprive those forced to beg of their only means of survival. The least we can do as a society is allow the poor and homeless, like Mr. Speet,\(^3\)\(^1\)\(^8\) to hold up a sign and ask for a helping hand. First Amendment protection would accomplish this goal.

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317. See supra Part V.B.
318. See Speet, 726 F.3d at 871.