
Regulating the Homeless.

*A Dispassionate, Apolitical Examination
of Panhandling and Anti-Camping Ordinances*

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Panhandling is protected speech

“[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.”

Vill. of Schaumburg v. Citizens for a Better Env't
444 U.S. 620, 632 (1980)

Time Place and Manner

- Restrictions after dark
- Restrictions near vulnerable places
 - Banks, ATMs, Bus stops
- Restrictions on aggressive manner
 - Intimidating, following, repeating requests

Reed redefines “Content-Based”

“If a sign informs its reader of the time and place a book club will discuss John Locke's *Two Treatises of Government*, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government.”

Reed v. Town of Gilbert, Ariz.,
135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015)

Reed requires Strict Scrutiny

“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”

Reed v. Town of Gilbert, Ariz.,
135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015)

Panhandling cases applying *Reed*

Content-Based

1. *Norton v. City of Springfield, Ill.*, (7th Cir. 2015)
2. *Homeless Helping Homeless, Inc. v. City of Tampa, Florida*, (M.D. Fla. 2016).
3. *McLaughlin v. City of Lowell*, (D. Mass. 2015)
4. *Thayer v. City of Worcester*, (D. Mass. 2015)
5. *Browne v. City of Grand Junction*, (D. Colo. 2015)

Content Neutral

1. *Cutting v. City of Portland, Maine*, (1st Cir. 2015)
2. *Thayer v. City of Worcester*, (D. Mass. 2015)

Concepts found Unconstitutional

1. Traffic islands and roadways
2. In the downtown area
3. ½ hour after sunset to ½ hour before sunrise
4. 20 ft from ATM or bank
5. Parking or Transit facilities
6. Outdoor dining facility
7. Aggressive panhandling
 1. Intimidating manner
 2. Repeated requests
 3. Following a person

Texas "Place" Examples

	Houston	San Antonio	Austin	Corpus Christi
Vulnerable Locations				
ATM	8'	50'	25'	25'
Bank entrance		50'	25'	25'
Check Cashing Business		50'	25'	
Pay Telephone	8'			
parking meter	8'	50'		
parking fee collection box	8'			
Parking Garage		50'		
transit facility	8'		X	25'
Crosswalk		50'	X	
fuel dispensing device	8'			
outdoor dining establishment	8'		X	
School entrance			entire block	
Downtown Business District			7pm to 7am	roads/sidewalks
Private Property				without permission
Noth Beach				roads/sidewalks

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Parking Garage		50'		
transit facility	8'		X	25'
Crosswalk		50'	X	
fuel dispensing device	8'			
outdoor dining establishment	8'		X	
School entrance			entire block	
Downtown Business District			7pm to 7am	roads/sidewalks
Private Property				without permission
Noth Beach				roads/sidewalks

Texas "Manner" Examples

	Houston	San Antonio	Austin	Corpus Christi
Aggressive Manner				
approaching solicitee, if intimidating		X		X
using obscene language		X		X
touching solicitee		X	X	X
Blocking safe passage			X	X
following solicitee, if intimidating		X	X	X
after request from solicitee	8'	X	X	X

Texas "Manner" Examples

	Houston	San Antonio	Austin	Corpus Christi
Aggressive Manner				
approaching solicitee, if intimidating		X		X
using obscene language		X		X
touching solicitee		X	X	X
Blocking safe passage			X	X
following solicitee, if intimidating		X	X	X
after request from solicitee	8'	X	X	X

What's left?

	Houston	San Antonio	Austin	Corpus Christi
Vulnerable Locations				
Fuel dispensing device	8'			
School entrance		entire block		
Private Property				without permission
Aggressive Panhandling			X	X
Using obscene Language		X		X
Blocking Safe Passage			X	X

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Liberty Interest in Public Spaces

In Texas, the rational basis test applies to deprivals of liberty interests that are not fundamental interests. “The question is only whether a rational relationship exists between the [policy] and a conceivable legitimate objective. If the question is at least debatable, there is no substantive due process violation.”

*Simi Inv. Co. v. Harris Cty., Tex.,
236 F.3d 240, 249 (5th Cir. 2000).*

TxDOT Won't help

TxDOT has a rational basis only to protect the safety of drivers or their stored equipment

- Tex. Penal Code § 42.03 obstructing a highway
- Tex. Penal Code § 30.05 passageway and criminal trespass

City has authority to regulate

A home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality.

The municipality may:

- (1) control, regulate, or remove an encroachment or obstruction on a public street or alley of the municipality;
- (2) open or change a public street or alley of the municipality; or
- (3) improve a public highway, street, or alley of the municipality.

Status Crimes are Unenforceable

“That portion of the statute referring to the ‘use’ of narcotics is based upon the ‘act’ of using. That portion of the statute referring to ‘addicted to the use’ of narcotics is based upon a condition or status. They are not identical. ... To be addicted to the use of narcotics is said to be a status or condition and not an act.”

Robinson v. California,
370 U.S. 660, 662, 82 S. Ct. 1417, 1418, 8 L. Ed. 2d 758 (1962).

Status Crimes are Unenforceable

“We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment.”

Robinson v. California,
370 U.S. 660, 666, 82 S. Ct. 1417, 1420, 8 L. Ed. 2d 758 (1962).

Status Crimes are Unenforceable

“On its face the present case does not fall within that holding, since appellant was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion.”

Powell v. State of Tex.

392 U.S. 514, 532, 88 S. Ct. 2145, 2154, 20 L. Ed. 2d 1254 (1968)

Homelessness might be Status

Although sleeping is an act rather than a status, the status of being could clearly not be criminalized under *Robinson*. Because being does not exist without sleeping, criminalizing the latter necessarily punishes the homeless for their status as homeless, a status forcing them to be in public. The Court concludes that it is clear, then, that the sleeping in public ordinance as applied against the homeless is unconstitutional.

Johnson v. City of Dallas
860 F. Supp. 344, 350 (N.D. Tex. 1994)

DOJ *Bell* Statement of Interest

DOJ interprets this requirement to mean that a city ordinance cannot prohibit camping in public property unless one of these two things is true:

1. There are alternative public property locations in which citizens are allowed to camp, or
2. There are adequate beds available in homeless shelters for all homeless individuals.

Texas Anti-Camping Ordinances

	City-Wide	Parks	W/O Permit	Other Location
Houston			X	
El Paso			X	
San Antonio	X		X	
Arlington	X			

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