

MASSACHUSETTS FEDERAL COURTS STRIKE DOWN PANHANDLING ORDINANCES AS UNCONSTITUTIONAL

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Massachusetts federal courts recently concluded that panhandling ordinances in the cities of Lowell and Worcester were unconstitutional. As a result, those cities are currently facing liability for attorneys' fees and costs of more than \$1.7 million. These decisions represent a recent trend of increased scrutiny of the regulation and enforcement of panhandling and highlight the potential for civil rights claims by individuals who engage in panhandling activities in Massachusetts.

In McLaughlin v. City of Lowell, No. 14-10270-DPW (D. Mass. Oct. 23, 2015) ("Lowell Case") and Thayer v. City of Worcester, No. 13-40057-TSH (D. Mass. Nov. 9, 2015) ("Worcester Case"), the ACLU, on behalf of homeless men who regularly panhandled in those cities, challenged the validity of panhandling ordinances restricting solicitation of donations in certain areas and so-called "aggressive panhandling." On October 23, 2015, the U.S. District Court in Boston (Woodlock, J.) ruled that the Lowell ordinances were unconstitutional, and emphasized that "panhandling is an expressive act regardless of what words, if any, a panhandler speaks." *Id.* The City of Lowell did not appeal the decision.

In the Worcester Case, although both the District Court and the First Circuit Court of Appeals initially held that the ordinances were constitutional, the United States Supreme Court reversed those decisions and remanded the matter to the lower courts based on a newly announced standard of review applicable to restrictions on speech. On November 9, 2015, the U.S. District Court (Hillman, J.), found Worcester's panhandling ordinances unconstitutional and cautioned that Massachusetts municipalities "must go back to the drafting board and craft solutions which recognize an individuals [right] to continue to solicit in accordance with their rights under the First Amendment, while at the same time, ensuring that their conduct does not threaten their own safety, or that of those being solicited." *Id.* The City of Worcester also decided not to appeal.

While the Worcester and Lowell cases technically invalidated only the panhandling ordinances at issue in those cases, the rulings will likely have wide-reaching implications throughout the Commonwealth. As it is reasonable to expect the ACLU to pursue similar challenges to panhandling restrictions in other Massachusetts cities and towns, it would be appropriate for cities and towns to scrutinize their existing ordinances and bylaws, and carefully consider the risks of potential enforcement against individuals who panhandle in their communities. Any such enforcement may well be challenged on constitutional grounds with the potential for an award of attorneys' fees under 42 U.S.C. §1988.

Should you have any questions concerning these panhandling cases or their implications please contact Attorney Gregg J. Corbo or Attorney Janelle M. Austin by e-mail at gcorbo@k-plaw.com or jaustin@k-plaw.com, or by phone at 617.556.0007.

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