LESSONS IN LIBERTY

A Guide to Civil Liberties and Constitutional Law for North Carolina Government

Dedicated to Natalie Fiess

This booklet is dedicated in loving memory to Natalie Zilboorg Fiess (pictured above with her granddaughter Lydia), with a special thanks to the late Shirley and Doug Johnson of Oberlin, Ohio, longtime ACLU members whose support created the Natalie Fiess Fund for the Preservation of Civil Liberties and Religious Freedom (the "Fiess Fund"). The Fiess Fund has supported the publication and dissemination of four informational booklets to North Carolina government officials, school board members, and the attorneys who advise them.

Please note: The information provided in this booklet is current as of April 2013. This booklet is designed as a reference tool on a variety of civil liberties issues. It is not intended to be a substitute for legal advice from an attorney.

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PARADE AND PERMIT ISSUES

SCENARIO: *A group of residents in Smallville seeks to organize a march through downtown in support of equal rights for minorities. The group expects that several hundred marchers will participate. Smallville has an ordinance that requires groups planning to parade through the streets of the town to first obtain a written permit from the police chief.*

Question: *May the town require the group to obtain a permit before holding its march?*

Quick Answer: *Yes, with some limitations.*

EXPLANATION:

Although courts generally frown upon the government restricting free speech activity before it even occurs,[1] the Supreme Court has recognized that the government, in order to regulate competing uses of public space, may impose a permit requirement on those wishing to hold a march, parade, or rally.[2]

Such a permit process, however, must meet certain constitutional requirements. First, it must not delegate overly broad licensing discretion to government officials.[3] Further, any permit process controlling the time, place, and manner of speech (a) must not be based on the content of the message, (b) must be narrowly tailored to serve a significant governmental interest, and (c) must leave open ample alternative means of communication.[4] In other words, the same permit process must apply to all types of demonstrations regardless of what the demonstrators are expressing; the process must be no more cumbersome than necessary in order for the government to achieve whatever significant interest it has in making demonstrators get permits; and the process must leave people with plenty of other options for communicating their message.

Permit requirements are generally valid for parades and marches that do not take place on sidewalks and for other events that require blocking traffic or closing off streets. Permits may also be required for rallies at designated parks or plazas or for large events that require the use of sound-amplifying devices. Permits may contain conditions, so long as the conditions apply to all demonstrations equally, regardless of the message or viewpoint that the demonstrators wish to express. Examples of content-neutral conditions include limitations related to the time of the parade, noise level, parking, sanitation, and security (although, as noted on the next page, permit fees cannot be based on the likelihood of counter-protesters).[5]

In order to comply with the First Amendment, permits must be available on short notice for time-sensitive protests. In addition, there must be a reasonably quick turnaround time on the permit application.[6]

The Supreme Court has recognized that the government may impose a permit requirement on those wishing to hold a march, parade, or rally.

Question: *Can Smallville charge more than a nominal fee for a parade permit? What factors can be used to determine the amount of the permit fee?*

Quick Answer: *A fee may be charged as long as it is directly related to legitimate government expenses associated with accommodating the demonstrators. Some factors for ascertaining fees are illegitimate – for example, the fee cannot be based on the likelihood of counter-protesters.*

EXPLANATION:

Smallville could probably charge more than a nominal fee for a parade permit, as long as the fee is directly related to legitimate government expenses associated with accommodating the demonstrators.[7] Further, as with the guidelines for granting the permit itself, the fee provisions set forth in the ordinance must contain "narrow, objective, and definite standards" to guide the licensing authority,[8] so as to prevent any city official from exercising "unbridled discretion."[9] There is disagreement between different courts throughout the country as to whether an "indigence exception" is required,[10] and the Fourth Circuit Court of Appeals (the federal court of appeals with jurisdiction over North Carolina) has not ruled on that question.

There is some question as to whether a permit fee may include the costs of police protection.[11] However, the law is clear that a fee cannot be increased based upon the likelihood of counter-protesters.[12] The rationale for that rule, adopted by the United States Supreme Court, is that in order to assess the likelihood of counter-protesters, the government official would have to consider the content of the marchers' speech.[13] Controversial speech cannot be assessed a higher fee than non-controversial speech because the government has to treat all demonstrators equally. Any increased fee based on the likelihood of counter-protesters would amount to content-based discrimination in violation of the First Amendment.[14]

PARADE AND PERMIT ISSUES, Cont.

Question: *What if only four or five individuals want to picket on the sidewalk, rather than on the street?*

Quick Answer: *In most cases, small groups cannot be required to obtain a permit before picketing.*

EXPLANATION:

While Smallville may be justified in requiring advance permits for events such as parades, requiring this small group of people to obtain a permit for their activity probably violates their First Amendment right to free speech.[15] Generally, no permission is required to speak as part of ordinary sidewalk use. Ordinary sidewalk use would include holding picket signs, passing out leaflets, making speeches, and gathering signatures on petitions.[16]

Marches that take place on a sidewalk usually do not require a permit, as long as the marchers stay on the sidewalk and obey traffic and pedestrian signals.[17] Generally, marchers must provide enough space on the sidewalk for normal pedestrian traffic, must not unreasonably obstruct or detain passersby, and must not block entrances to buildings.[18] In addition, demonstrators are generally allowed to approach pedestrians with leaflets, newspapers, petitions, and solicitations for donations, provided the demonstrators do not unreasonably obstruct or detain passersby.[19] For example, a demonstrator cannot force a pedestrian to take a leaflet.

A permit may be required if demonstrators wish to erect a structure on a sidewalk,[20] but disagreement exists among the courts in various jurisdictions as to whether the First Amendment affords protection to demonstrators wishing to merely set up tables on sidewalks without obtaining a permit.[21]

Marches that take place on a sidewalk usually do not require a permit, as long as the marchers stay on the sidewalk and obey traffic and pedestrian signals.

Question: *Can groups that obtain a permit for a march or a rally constitutionally prevent those who disagree with the group's message from participating in the parade?*

Quick Answer: *Yes, with some limitations.*

EXPLANATION:

Private parties that obtain permits for a march or a rally can exclude other groups from the area the permit covers during the time period set forth in the permit.[22] However, in order to do so, the permit must be exclusive, meaning that it must provide that one group is granted permission to occupy the reserved area to the exclusion of other groups.[23] If a non-exclusive permit is issued, private parties may not exclude other groups. In *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, the United States Supreme Court found that a parade permit holder could not be forced to include a group conveying a message that the permit holder did not wish its parade to convey.[24] The application of the Massachusetts public accommodation law to allow a particular group to join a parade, over the objection of the parade permit holder, violated the permit holders' First Amendment right to freedom of speech.[25]

The notion of protecting the temporary exclusivity of a permit holder's freedom of expression in a public forum has been extended to other contexts, for example: allowing a ban of opposition party buttons and protest activities at an election campaign rally, which is sponsored by a single party and held in a fenced-in area of a public commons;[26] allowing a refusal of booth space to a labor union seeking to engage in promotional efforts at a community festival sponsored by a not-for-profit corporation and occurring on an area of a city's streets and sidewalks;[27] excluding street preachers from events staged by a private permit holder on various public grounds, based on the street preachers' expressing a verbal message contrary to the views being expressed by the permit holder;[28] and excluding a lone demonstrator holding a sign unrelated to the group's message next to a state's Christmas tree in a federally permitted annual holiday Peace Pageant.[29]

RIGHT OF INDIVIDUALS TO SPEAK AT GOVERNMENT MEETINGS

SCENARIO: *Mrs. Smith, a resident of Cityville, would like to speak at a Cityville City Council meeting regarding a council member's delinquent property tax payments. After Mrs. Smith signs up to speak during the public comments period of the meeting, the mayor refuses to allow Mrs. Smith to speak on her desired topic, stating that the city council has a policy prohibiting personal attacks against its members.*

Question: *Does Cityville's policy violate Mrs. Smith's First Amendment rights?*

Quick Answer: *Yes, unless the speech actually disrupts or threatens to disrupt the orderly and fair conduct of a meeting.*

"The First Amendment affords the broadest protection to political expression in order to sustain the unfettered interchange of ideas to bring about political and social change and promote the will of the people." [30]

EXPLANATION:

The Supreme Court has repeatedly explained that "it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions, and this opportunity is to be afforded for vigorous advocacy no less than abstract discussion."[31] This right "includes the ability to question the fitness of the community leaders ... especially in a forum created specifically to foster discussion" about the community.[32] Consequently, even personal attacks against elected officials are protected under the First Amendment unless the speech actually disrupts or threatens to disrupt the orderly and fair conduct of a meeting.[33]

Further, under state law, city councils in North Carolina are required to provide "at least one period for public comment per month at a regular meeting of the council."[34] The council is permitted to adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokespersons for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.[35] However, when no meeting is held during the month, the council is not required to provide a public comment period.[36]

Courts that have upheld restrictions on public comments at city council meetings appear to have done so because "the government officials in those cases acted in response to vocal and/or physical disruptions that prevented the meaningful or orderly continuation of the public meetings."[37] Therefore, to the extent that a citizen actually disrupts or interrupts the orderly progress of a meeting, the city council is permitted to regulate such conduct. By contrast, restrictions that are "a reaction to the expression itself, not the enforcement of any independent, substantial government interest" are impermissible.[38]

SIGN ORDINANCES

SCENARIO: *Ms. Peace, who lives in the Town of Lakewood, has placed a 20- by 30-inch sign on her front lawn. The sign reads, "Let's End the War, Make a Change." A city council member has advised Ms. Peace that this sign is prohibited. The only signs permitted in Lakewood are residential identification signs no larger than one square foot; signs advertising the property to sell, lease, or exchange; signs for churches, religious institutions, and schools; or commercial/advertising signs in commercially zoned districts. Ms. Peace wants to challenge this prohibition.*

Question: *Is Ms. Peace's yard sign protected by the First Amendment?*

Quick Answer: *Yes.*

EXPLANATION:

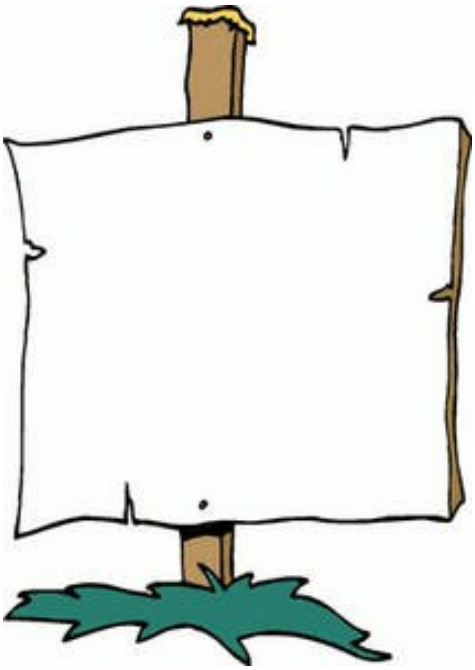
Political yard signs are a form of freedom of expression that often conflicts with municipal laws seeking to ban or limit the display of signs. The U.S. Supreme Court has observed that "[w]hile signs are a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to municipalities' police powers."[39] However, an ordinance regulating the display of signs is unconstitutional if it provides specific exceptions that effectively discriminate on the basis of the signs' message or creates a blanket prohibition on signs that reaches too far into the realm of protected speech.[40]

Political yard signs are a form of freedom of expression.

The Town of Lakewood's ordinance unjustifiably treats political signs differently from other signage on private residences. Thus, the ordinance is subject to attack because it discriminates on the basis of content or viewpoint. However, even if Lakewood repealed all of the exemptions, the ordinance would also be subject to attack on the grounds that it prohibits too much speech. "To ensure the widest possible dissemination of information … and the unfettered interchange of ideas, … the First Amendment prohibits not only content-based restrictions that censor particular points of view, but also content-neutral restrictions that unduly constrict the opportunities for free expression."[41]

In *City of Ladue v. Gilleo*, a unanimous U.S. Supreme Court struck down a city ordinance prohibiting signs at private residences, recognizing that such signs are "a venerable means of communication that is both unique and important" to residents' rights to free speech.[42] The Court noted that while residents remained free to convey their desired messages by other means (e.g., handheld signs, flyers, newspaper advertisements, bumper stickers, etc.), such forms of communication may not be practical substitutes for yard signs.[43] Furthermore, while the court observed that the city's interest in minimizing visual clutter associated with signs is valid, it is not sufficiently compelling to support ordinances like the one adopted by the Town of Lakewood.[44]

Incidentally, if the Town had decided to ban only residential signs that had a commercial message, such as a "For Sale" sign, that decision would be unconstitutional as well. In *Linmark Associates, Inc. v. Willingboro*, the Supreme Court struck down an ordinance prohibiting "For Sale" signs because the First Amendment prevented the township from "achieving its goal by restricting the free flow of truthful information."[45]



SCENARIO: *Clubber County has an ordinance that forbids the posting of campaign signs more than thirty days before an election and requires the removal of the signs within seven days after the election.*

Question: *May Clubber County impose these time limitations?*

Quick Answer: *No.*

EXPLANATION:

The U.S. Supreme Court has held that "the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office."[46]

While the Supreme Court has not considered the constitutionality of time limits on the display of temporary political signs, an overwhelming majority of lower courts, including courts in the Fourth Circuit, have held that municipal ordinances that impose such restrictions are invalid.[47]

In order to support the County's durational ban on campaign signs, there would have to be a meaningful distinction between signs that support a "cause" (e.g., the antiwar sign at issue in *City of Ladue v. Gilleo*)[48] and signs that support a political candidate. Because courts have found that no such distinction exists, the County's ordinance is invalid. Furthermore, durational restrictions on campaign signs are inconsistent with the "venerable" status that the Court has accorded to political yards signs erected on or about private property.[49]

However, not all limitations on political speech are impermissible. When regulations are part of a content-neutral restriction on signs, they can more easily pass constitutional muster.[50] For example, in *Members of City Council v. Taxpayers for Vincent*, the Supreme Court upheld a ban on posting political signs on public property that was part of a broader prohibition on posting <u>any</u> signs on public property.[51]

In another case, the Court upheld a ban on posting temporary political signs within 100 feet of polling places because the ban furthered the state's compelling interest in preventing voter intimidation and election fraud.[52] Courts have also upheld regulations of signs by size and shape, as long as such limits do not infringe on the ability to exercise free speech effectively.[53]

SIGN ORDINANCES, Cont.

SCENARIO: *In order to post campaign signs in Clubber County, one must apply for a permit and pay a fee.*

Question: *Is this process constitutional?*
Quick Answer: *No.*

EXPLANATION:

As noted earlier in this publication, in limited circumstances, municipalities may require a permit for activity involving free expression and may collect fees that fairly reflect costs incurred by the municipality in connection with such activity.[54]

However, there is no justification for imposing permit and fee requirements for the posting of campaign signs. Political signs neither interfere with the use of the streets nor create a risk of disorder.[55] Moreover, the Supreme Court has noted that political yard signs are unique, in part, because of their low cost: "Residential signs are an unusually cheap and convenient form of communication."[56] Permit and fee requirements increase the cost of this traditional means of communication, and it is no defense that the fee imposed is nominal.

As the Supreme Court noted in *Forsyth County,* "[a] tax based on the content of the speech does not become more constitutional because it is a small tax."[57] Thus, in addition to the time limits, the permit and fee requirements imposed by Clubber County are unconstitutional.

While a municipality has a legitimate interest in promoting aesthetics, the restriction imposed must be narrowly tailored to advance that interest.

SCENARIO: *Rather than regulate the amount of time during which yard signs may be erected, Cristo County decides to restrict the number of signs that may be erected. The ordinance allows one non-commercial "for sale," "for rent," or "for lease" sign, and one additional sign per residence (creating a two-sign limit). Cristo County has enacted this restriction in an effort to protect the private property owners' aesthetic concerns, yet the County cannot point to any specific aesthetic problems.*

Question: *Does this restriction violate private property owners' First Amendment rights?*

Quick Answer: *Yes.*

EXPLANATION:

A municipal ordinance restricting the number of signs erected in support of or opposition to a candidate or issue infringes on the freedom of speech, in violation of the First Amendment. As the Fourth Circuit observed in *Arlington County Republican Committee v. Arlington County*, such a two-sign limit infringes on speech by preventing homeowners from expressing support for more than a single candidate.[58] The court also noted that a two-sign limit restricts the ability of voters living in the same household to support opposing candidates.[59] In addition to restricting property owners' rights, laws regulating the right to erect yard signs also negatively impact candidates.[60] Ordinances that limit the number of posters or signs that may be erected "restrict[] the quantity of campaign speech by individuals, groups, and candidates, and therefore limit political expression at the core of our electoral process and of the First Amendment freedoms."[61]

While a municipality has a legitimate interest in promoting aesthetics, the restriction imposed must be narrowly tailored to advance that interest. Without evidence to support any contention of aesthetic problems, Cristo County cannot establish that its two-sign limit is necessary. Moreover, the County could promote its interests through other, less restrictive means, such as regulating the size and shape of signs or preventing the posting of signs within a certain distance from the street.

Finally, as the Supreme Court observed in *City of Ladue v. Gilleo*, alternatives to political yard signs are not adequate; they require too much time or too much expense.[62] In Cristo County, there is no viable alternative for homeowners to express their political views on their property.

SIGN ORDINANCES, Cont.

SCENARIO: *The City of Tubville permits signs advertising goods or services that are sold on the property where the sign is located but prohibits the posting of signs on public property. This prohibition includes billboards for commercial advertising as well as private citizens' or private groups' noncommercial signs. Because Tubville's commuter streets have a lot of rush hour traffic, signs posted in public places have the effect of causing more traffic accidents. Also, Tubville's city council members believe that signs on public property bring down the value and appearance of city property, and the city would like to promote aesthetics within Tubville.*

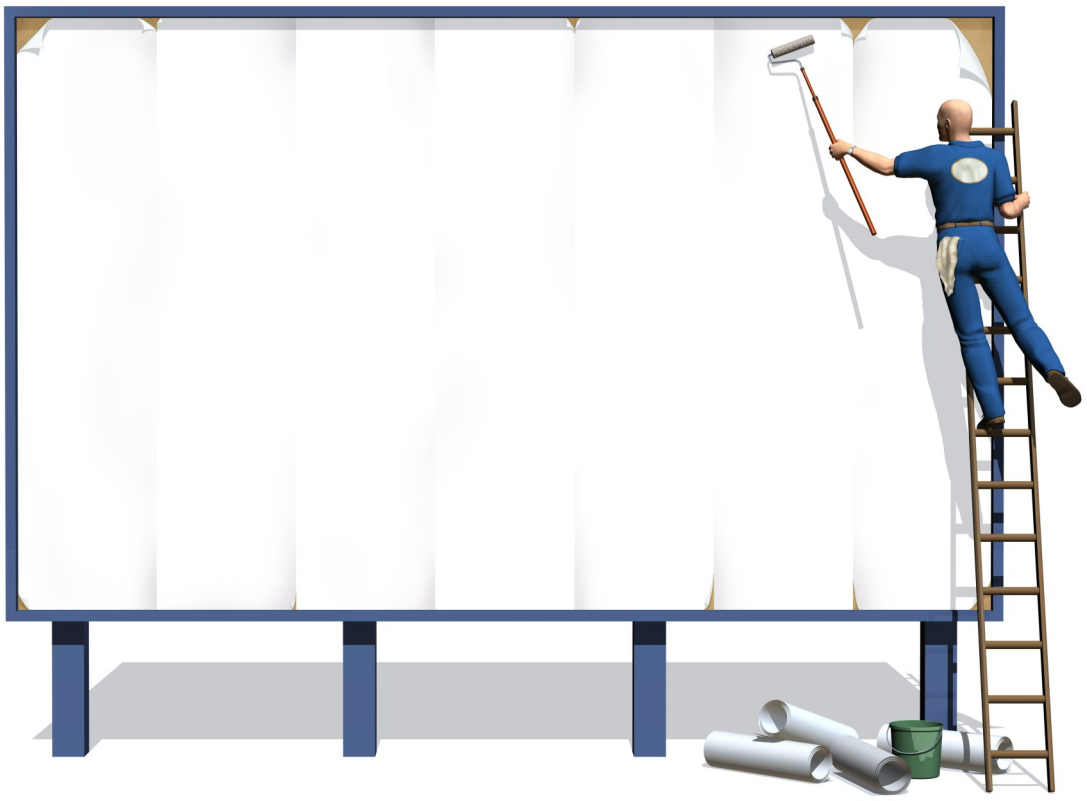
Question: *Will the City's ordinance restricting the posting of signs on public property pass constitutional muster?*

Quick Answer: *Yes, in part. The ordinance is constitutional only as to its prohibition on commercial advertising.*

EXPLANATION:

Commercial speech receives less constitutional protection than noncommercial speech; the former can be forbidden in situations where the latter cannot be.[63] In *Central Hudson Gas & Electric Corp. v. Public Service Commission*, the U.S. Supreme Court adopted a four-part test to determine the validity of government restrictions on commercial speech. Under the first part of the test, the inquiry focuses on whether the commercial speech at issue is either misleading or related to an unlawful activity.[64] If the commercial speech is misleading or related to an unlawful activity, it does not receive constitutional protection, and the government may regulate it or prohibit it entirely. If, however, the speech is neither misleading nor related to an unlawful activity, the government may regulate it *only if*: (i) the government interest in doing so is substantial; (ii) the regulation directly advances that interest; and (iii) the regulation reaches no further than necessary to accomplish its objective.[65]

Applying this test, the City of Tubville's prohibition on commercial advertising does not violate the First Amendment. There is no indication that the commercial advertising at issue involves unlawful activity or is misleading, and the three criteria for regulating commercial speech are met. First, the Supreme Court has recognized that traffic safety and aesthetics are substantial interests that justify regulation of commercial signs.[66] Second, if Tubville has reason to believe that billboards are traffic hazards and are unattractive, limiting them is the most direct way to address the problems they create.[67] Finally, the regulation is not broader than necessary, as the City allows occupants of property to display billboards located on that property.



However, Tubville's general ban on noncommercial permanent signs on public property is impermissible. As noted previously, the First Amendment protects noncommercial speech to a greater degree than commercial speech. Tubville's ordinance is unconstitutional because it allows onsite billboards to carry commercial messages but generally prohibits such billboards from carrying noncommercial messages.[68] If a city allows billboards at all, it cannot choose to limit their content to commercial messages. Simply stated, the general ban on noncommercial signs reaches too far into the realm of protected speech. Thus, while the City's ordinance is constitutional as to its prohibition on commercial advertising, its general ban on noncommercial signs violates the First Amendment.

The unconstitutionality of this restriction on noncommercial speech, however, does not mean that a city is unable to ban certain types of signs on public property. In *Members of City Council v. Taxpayers for Vincent,*[69] the Supreme Court held that the prohibition of all temporary signs posted on public property was constitutional. It is the City of Tubville's restriction of noncommercial speech on permanent signs, including billboards, that makes it unconstitutional.

CURFEW ORDINANCES

SCENARIO: *The City of Rangleville imposes a curfew on persons under the age of 18. The restricted hours of the curfew are from 9 p.m. to 6 a.m., seven days a week. In addition, there is a daytime curfew provision banning four or more youths from congregating together at any time of the day in a public place or establishment within the City of Rangleville. There are exceptions to the curfew, including minors who are (1) accompanied by an adult; (2) responding to an emergency; (3) traveling to or from employment; and (4) attending or traveling to or from a school, religious, or recreational activity supervised by adults. However, there is no exception for First Amendment activity. If a parent allows his/her minor to go out after the curfew hours, the parent can also be cited.*

Question: *Is this curfew constitutional?*

Quick Answer: *No, the ordinance is too broad.*

EXPLANATION:

Generally, a city has the authority to enact a curfew to protect the general safety and welfare of the public pursuant to its "police power."[70] In North Carolina, there is specific statutory authority for a local government to impose a curfew on persons younger than eighteen years of age.[71] However, blanket curfew ordinances, such as the one adopted by the City of Rangleville, raise a number of constitutional concerns and have not fared well in many courts.

In 1998, the Fourth Circuit Court of Appeals found a town's curfew ordinance valid based on its limited scope and numerous exceptions.[72] In *Schleifer v. City of Charlottesville*, the ordinance applied only to individuals under the age of seventeen and was only in effect between the hours of 12:01 a.m. and 5:00 a.m., Monday through Friday, and between the hours of 1:00 a.m. and 5:00 a.m. on Saturday and Sunday.[73] Furthermore, the ordinance detailed eight exceptions, including allowing a minor to be on a sidewalk directly abutting his or her home and a broad exception for a minor exercising his or her First Amendment rights.[74] By contrast, the Ninth Circuit struck down a curfew ordinance in San Diego, California, finding the ordinance overly broad.[75] The ordinance at issue in that case applied to all individuals under the age of eighteen, and the curfew was in effect between the hours of 10:00 p.m. and daylight the following day, seven days a week, with no First Amendment exception.[76]

In addition to the extremely restrictive nighttime curfew provision in the Rangleville ordinance, the Town imposes a daytime restriction and prohibits a group of four or more minors from congregating together in a public place or establishment. Such a ban on the freedom to be present in a public place was deemed unconstitutional by the Supreme Court in *City of Chicago v. Morales*.[77] In *Morales*, a city allowed its police officers to order any person to move along if they were in public with "no apparent purpose" in the company of a "gang member."[78] While the ordinance was invalidated primarily because of its unconstitutional vagueness, the Justices also objected to the fact that the ordinance interfered with individuals' choice of where to spend their time, so long as that choice was not accompanied by independently illegal activity.[79]

Moreover, the Rangleville curfew ordinance may interfere with the fundamental right of parents to raise their children free from state interference.[80] When the government seeks to interfere in the parent-child relationship, the state must overcome a strong presumption in favor of parental authority,[81] and many courts striking down curfew ordinances have recognized the importance of parental control over the raising of children.[82] However, in upholding the City of Charlottesville's less restrictive curfew ordinance, the Fourth Circuit did not find that the fundamental right of parents/guardians to direct their children's upbringing was implicated by the ordinance's provisions because they did not concern "intimate family decisions."[83] As noted above, the Rangleville curfew ordinance as written does not provide an exception for minors' First Amendment activities, thereby precluding youth participation in "a wide range of First Amendment activities [that] occur during curfew hours, including political events, death penalty protests, late night sessions of the [state] General Assembly, and neighborhood association meetings or nighttime events,"[84] as well as certain religious events.

PANHANDLING AND LOITERING ORDINANCES

SCENARIO: *The Town of Capehook has enacted an ordinance that prohibits soliciting donations anywhere in the Town, including on sidewalks.*

Question: *Would this ordinance be considered constitutional?*

Quick Answer: *Probably not.*

EXPLANATION:

In reference to charitable solicitations, the U.S. Supreme Court has held that "soliciting funds involves interests protected by the First Amendment's guarantee of freedom of speech."[85] As such, the solicitation of funds for charitable purposes has been traditionally afforded all the protections of core First Amendment speech.[86]

The North Carolina statutes provide that "[a] city may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person."[87] While neither the Supreme Court, the Fourth Circuit, nor any North Carolina court has specifically ruled on whether panhandling is protected under the First Amendment, most courts have ruled that panhandling is protected speech.[88] Thus, it is likely that a North Carolina court would find that a town's panhandling statute must comport with the First Amendment.

It is also likely that a court would find that Capehook's ordinance is a content-neutral restriction on speech, since it appears to apply evenly to all individuals and charitable organizations.[89] As a result, the Capehook ordinance must be "narrowly tailored to serve a significant governmental interest," and must "leave open ample alternatives for communication."[90] Courts have found that safety and traffic congestion may be significant interests,[91] but "mere annoyance is not a sufficient[ly] compelling reason to absolutely deprive one of a [F]irst [A]mendment right."[92] In any event, even if a significant interest is found, statutes that effect a total ban on panhandling, such as Capehook's, are not narrowly tailored and do not leave open ample alternative channels for communication.[93]

While neither the Supreme Court, the Fourth Circuit, nor any North Carolina court has specifically ruled on whether panhandling is protected under the First Amendment, most courts have ruled that panhandling is protected speech.

SCENARIO: *The City of Greenspan recently passed an ordinance that prohibits all begging within twenty feet of ATMs or bank entrances and begging between dusk and dawn.*

Question: *Does this ordinance violate a panhandler's First Amendment rights?*

Quick Answer: *Probably not.*

EXPLANATION:

Although total bans on panhandling have been struck down by the courts, many courts have held that certain regulations on charitable solicitations and panhandling are constitutional restrictions on the time, place and manner of solicitation. For instance, several courts have upheld regulations that ban "aggressive panhandling"—that is, panhandling in a manner that causes a reasonable person to be fearful if he or she refuses to donate.[94]

The Seventh Circuit has held that other restrictions were reasonable as well, such as bans on solicitations at night, at bus stops, at sidewalk cafes, and within 20 feet of an ATM or bank entrance.[95]

Courts upholding such ordinances have found that because the restrictions are limited to those situations in which citizens would feel insecure, they are narrowly tailored to serve significant state interests in promoting safety and convenience of its citizens on public streets.[96] Furthermore, courts have found that such restrictions allow ample alternative channels of communication. While prohibited from soliciting money near ATMs or banks and at night, Greenspan panhandlers may solicit during the day-light hours on the city's public streets.

PANHANDLING AND LOITERING ORDINANCES, Cont.

SCENARIO: *The City of Cityville would like to pass an ordinance prohibiting individuals from soliciting donations from "an operator or other occupant of a motor vehicle while such vehicle is located on any street or highway."*

Question: *Would such an ordinance be constitutional?*

Quick Answer: *Probably not as written.*

EXPLANATION:

Cityville can probably prohibit a panhandler or other solicitor of charitable donations from standing in a street or roadway while soliciting donations from someone in a car as long as there was some evidence to indicate the danger of soliciting from the median in Cityville.[97] However, Cityville's ordinance, as written, would likely be found overbroad because it could also be applied to charitable solicitation by an individual standing on a sidewalk, thereby precluding ample alternative channels of communication.[98] Furthermore, to the extent that no sidewalk exists in a given location, a prohibition against soliciting from a median may also fail to comply with the First Amendment, especially if the safety risk to solicitors on medians or shoulders is small, just as the risk to solicitors on sidewalks and the risk of traffic congestion resulting from this practice are minimal.[99]

SCENARIO: *The Town of Pleasantville seeks to enact an "anti-loitering ordinance," which provides that "no person may stand, sit, recline, linger, or otherwise remain" in a certain designated area between certain hours of the day. The ordinance applies only to individuals who are standing or sitting still and not to individuals walking or otherwise traveling through the designated area.*

Question:
Would such an ordinance be constitutional?

Quick Answer:
Probably not.

EXPLANATION:

As early as 1900, the U.S. Supreme Court recognized that the "right to remove from one place to another according to inclination ... is an attribute of personal liberty."[100] In addition, the North Carolina Supreme Court has held that "the right to travel upon the public streets of a city is a part of every individual's liberty, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by the Law of the Land Clause, Article I, § 17, of the Constitution of North Carolina."[101] Consequently, the proposed ordinance may unconstitutionally burden individuals' fundamental right to travel.

Both the U.S. Supreme Court and the Fourth Circuit Court of Appeals have struck down similar ordinances as being unconstitutionally vague.[102] In *City of Chicago v. Morales*, a plurality of the U.S. Supreme Court noted that the freedom of movement, including "the freedom to loiter for innocent purposes," is protected by the Fourteenth Amendment's Due Process Clause.[103] Because there do not appear to be any limitations on the applicability of Pleasantville's ordinance other than movement, the ordinance would likely prohibit constitutionally protected – not to mention perfectly innocent – activity.

The decision in *Morales* turned on the fact that the ordinance in question "reach[ed] a substantial amount of innocent conduct" and "entrust[ed] lawmaking to the moment-to-moment judgment of the policeman on his beat."[104] Similarly, Pleasantville's ordinance leaves it to the law enforcement officer on the street to determine whether a person found in the designated area is actually moving through that area. If someone has paused to check the time, look at a map, or wait for her friend, it may not be obvious for what purpose she has paused. It would be up to the police officer to determine whether that person is in violation of the ordinance, thereby creating the potential for abuse that might result from application of the ordinance's vague language. The ordinance in *Morales* suffered from the same flaw and was therefore struck down.[105] Because Pleasantville's proposed ordinance covers activity that would not necessarily have an adverse effect on a significant governmental interest, such as traffic safety, it would probably not survive constitutional scrutiny.[106]

ACCESS TO GOVERNMENT BUILDINGS

SCENARIO: *A woman in a wheelchair has to go to court but cannot get up the ornate staircase to the courtroom. If she does not show up for court, she will lose her case by default. The building has no elevator because it is a historical landmark and the county did not want to alter it.*

Question: *What are the county's obligations to people with disabilities who need to access government services?*

Quick Answer: *The county must make reasonable accommodations in order to make it possible for a person with a disability to have her day in court.*

EXPLANATION:

Title II of the Americans with Disabilities Act ("ADA")[107] prohibits state and local government entities from discriminating on the basis of disability, regardless of their size or whether they receive federal funding. Accordingly, state and local governments must provide people with disabilities an equal opportunity to benefit from all of their services, programs, and activities (e.g., public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).[108]

Title II also seeks to enforce a variety of other constitutional guarantees, including: (i) the right of access to the courts;[109] (ii) the right of criminal defendants to be present at all stages of the trial "where his [or her] absence might frustrate the fairness of the proceedings";[110] (iii) a "'meaningful opportunity to be heard' by removing obstacles to full participation in judicial proceedings";[111] (iv) the right of criminal defendants to be tried by a jury;[112] and (v) the right of members of the public to access criminal proceedings.[113]

To enforce these rights of access to the courts, state and local governments must follow specific architectural standards in the new construction and alteration of their buildings,[114] and they must relocate programs or otherwise provide access to inaccessible older buildings. However, Title II does not require state and local governments to take any and all means to make judicial services accessible to persons with disabilities; it requires only "reasonable modifications."[115] For example, while the state may not be required to install an elevator in the local courthouse, it may be required to move judicial proceedings involving individuals with disabilities to the ground floor, and to provide a ramp up the exterior stairs leading to the building. These kinds of reasonable accommodations must be made, unless the state can show that making the modifications would impose an undue hardship on the operation of the court or fundamentally alter the nature of the program.[116] If such modifications cannot be made, the proceedings should be moved to an accessible building.

OTHER ZONING ORDINANCES

SCENARIO: *The City of Rhone has many single-family homes in planned communities containing schools and churches. Rhone has recently passed a new zoning ordinance that prohibits adult establishments from locating within 1,000 feet of any single-family house, school, or church. The Adult Time Theater has bought a piece of land that falls within this restriction and would like to challenge the ordinance.*

Question: *May Rhone enforce this restriction against Adult Time Theater?*

Quick Answer: *Yes, but not arbitrarily.*

EXPLANATION:

Local governments may be able to use zoning ordinances to restrict the location of adult movie theaters and bookstores.[117] The U.S. Supreme Court has declared that "with respect to businesses that purvey sexually explicit materials, zoning ordinances designed to combat the undesirable secondary effects of such businesses are to be reviewed under the standards applicable to 'content-neutral' time, place, and manner regulations."[118] Content-neutral regulations must be designed to serve a substantial governmental interest and must not unreasonably limit alternative avenues of communication.[119] Additionally, a "municipality's evidence must fairly support the municipality's rationale for its ordinance."[120] In this context, courts generally rule on the side of the municipality because it is not unreasonable to want to keep single-family homes separate from adult theaters and bookstores.

According to the U.S. Supreme Court, "a city's 'interest in attempting to preserve the quality of urban life is one that must be accorded high respect.'"[121] In light of this strong governmental purpose, such zoning ordinances generally will not violate the First Amendment.[122] Thus, Adult Time Theater will probably be forced to either sell the land or open a different line of business. In creating zoning laws to regulate businesses such as adult theaters, the City has to allow for a reasonable alternative avenue of communication; otherwise it is a substantial restriction on speech.[123] Thus, while the City of Rhone can disperse or concentrate adult places of business to particular areas within the City, it cannot entirely exclude such enterprises from operating.[124]

END NOTES

Parade and permit issues

1. N.Y. Times Co. v. United States, 403 U.S. 713, 714 (1971) (per curiam).
2. Forsyth Cnty. v. Nationalist Movement, 505 U.S. 123, 130 (1992); Reyes v. City of Lynchburg, 300 F.3d 449, 454 (4th Cir. 2002).
3. *Forsyth Cnty.*, 505 U.S. at 133.
4. *Id.* at 130.
5. *See, e.g.*, Ward v. Rock Against Racism, 491 U.S. 781, 792 (1989) (finding regulation aimed at combating excessive noise to be content-neutral).
6. *See, e.g.*, Am.-Arab Anti-Discrimination Comm. v. City of Dearborn, 418 F.3d 600, 605 (6th Cir. 2005) (recognizing that "notice provisions have the tendency to stifle our most paradigmatic examples of First Amendment activity" before finding a 30-day notice period unconstitutional); Douglas v. Brownell, 88 F.3d 1511, 1524 (8th Cir. 1996) (holding that parade ordinance was not narrowly tailored where its "five-day notice requirement restrict[ed] a substantial amount of speech that d[id] not interfere with the city's asserted goals of protecting pedestrian and vehicle traffic, and minimizing inconvenience to the public"); Grossman v. City of Portland, 33 F. 3d 1200, 1206 (9th Cir. 1994) (holding that seven-day advance-notice requirement was a "temporal hurdle" which "drastically burden[ed] free speech").
7. Stonewall Union v. City of Columbus, 931 F.2d 1130, 1136 (6th Cir. 1991).
8. *Forsyth Cnty.*, 505 U.S. at 131 (citing Shuttlesworth v. Birmingham, 394 U.S. 147, 150–51 (1969)).
9. *Id.* at 133.
10. *Compare* Cent. Fla. Nuclear Freeze Campaign v. Walsh, 774 F.2d 1515, 1523–24 (11th Cir. 1985) (finding city ordinance which required persons wishing to demonstrate in city streets and parks to prepay amount of costs for additional police protection denied indigent persons unable to pay such costs an equal opportunity to be heard); Eastern Conn. Citizens Action Grp. v. Powers, 723 F.2d 1050, 1056 (2d Cir. 1983) (finding a $200 administrative fee unreasonable and unconstitutional where it effectively deterred those unable to pay), *and* Invisible Empire of the Knights of the Ku Klux Klan v. Mayor of Thurmont, 700 F. Supp. 281, 286 (D. Md. 1988) (finding unconstitutional an ordinance that did not include a waiver provision for indigents unable to pay the costs of police protection), *with Stonewall Union*, 931 F.2d at 1137 (reasoning that the lack of an indigency exception does not render an ordinance unconstitutional where the ordinance provides for sidewalks and parks as constitutionally acceptable free alternatives for indigent paraders). *See also Forsyth Cnty.*, 505 U.S. at 137 (noting that prior precedent does not support the notion "that only nominal charges are constitutionally permissible").
11. *See Stonewall Union*, 931 F.2d at 1136–37 (permitting greater than nominal fees that are reasonably related to expenses incident to the preservation of public safety and order). *But see Nuclear Freeze*, 774 F.2d at 1523–24 ("The granting of a license permit on the basis of the ability of persons wishing to use public streets and parks to demonstrate, to pay an unfixed fee for police protection, without providing for an alternative means of exercising First Amendment rights, is unconstitutional.").
12. *Forsyth Cnty.*, 505 U.S. at 134–36.
13. *Id.*
14. *Id.*
15. *See* Cox v. City of Charleston, 416 F.3d 281, 285 (4th Cir. 2005) (holding that permit ordinance which contained no small-gathering exception was unconstitutionally overbroad and stating that "we . . . believe that the unflinching application of the Ordinance to groups as small as two or three renders it constitutionally infirm"); *see also* Green v. City of Raleigh, 523 F.3d 293, 304–05 (4th Cir. 2008) (holding that a small group exception for ten or less participants was narrowly tailored). Other circuits have also either expressed doubt about or struck down ordinances requiring permits for small groups. *See, e.g.*, Douglas v. Brownell, 88 F.3d 1511, 1524 (8th Cir. 1996) (ten or more people); Grossman v. City of Portland, 33 F.3d 1200, 1207 (9th Cir. 1994) (six to eight people); Cmty. for Creative Non-Violence v. Turner, 893 F.2d 1387, 1392 (D.C. Cir. 1990) (two or more people).
16. *See, e.g.*, Snyder v. Phelps, 131 S. Ct. 1207, 1218 (2011) (recognizing the robust historical protection of picketing on public sidewalks).

17. *See Cox*, 416 F.3d at 286 (concluding that permit ordinance was too broad where it covered expression that did "nothing to disturb or disrupt the flow of sidewalk traffic").
18. *See id.* at 287; Grossman v. City of Portland, 33 F.3d 1200, 1207 (9th Cir. 1994).
19. Riley v. Nat'l Fed'n of the Blind of N.C., Inc., 487 U.S. 781, 802 (1988); Schneider v. State, 308 U.S. 147, 160 (1939); Lovell v. City of Griffin, 303 U.S. 444, 452 (1938).
20. Graff v. City of Chicago, 9 F.3d 1309, 1314 (7th Cir. 1993) ("[N]o person has a constitutional right to erect or maintain a structure on the public way.").
21. *Compare* One World One Family Now v. City of Miami Beach, 175 F.3d 1282, 1286 (11th Cir. 1999) (finding that use of tables on city sidewalks to assist in sale of t-shirts came within First Amendment's protection), *with* Int'l Caucus of Labor Comms. v. City of Montgomery, 111 F.3d 1548, 1551–53 (11th Cir. 1997) (holding that regulation prohibiting setting up of tables on sidewalks was a reasonable time, place and manner restriction on pamphleteering), *and* Int'l Soc'y for Krishna Consciousness v. Rochford, 585 F.2d 263, 270 (7th Cir. 1978) (holding that a regulation prohibiting the erection in airports of a table, chair, or other structure in areas other than leased space was constitutionally permissible).
22. Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp. of Boston, Inc., 515 U.S. 557, 573–75 (1995) (holding that organizers of Boston's St. Patrick's Day-Evacuation Day Parade had First Amendment interest in excluding marchers with messages that organizers chose not to convey); Diener v. Reed, 77 F. App'x. 601, 608–09 (3d Cir. 2003) (holding that city ordinance providing for exclusive use of park area upon issuance of permit was not a facially invalid restriction on speech under the First Amendment; rather, allowing permit holders to exclude unwelcome participants ensured that holders were able to determine content of their message or event and served function of facilitating public order in city parks).
23. *See* Parks v. City of Columbus, 395 F.3d 643, 653–54 (6th Cir. 2005).
24. *Hurley*, 515 U.S. at 573.
25. *Id.*
26. Sistrunk v. City of Strongville, 99 F.3d 194, 199–200 (6th Cir. 1996); Schwitzgebel v. City of Strongville, 898 F. Supp. 1208, 1219 (E.D. Ohio 1995), *aff'd*, 97 F.3d 1452 (6th Cir. 1996).
27. United Auto Workers v. Gaston Festivals, 43 F.3d 902, 909–11 (4th Cir. 1995).
28. Diener v. Reed, 77 F. App'x. 601, 608–09.
29. Sanders v. United States, 518 F. Supp. 728, 730 (D.D.C. 1981), *aff'd*, 679 F.2d 262 (D.C. Cir. 1982).

Right of individuals to speak at government meetings:

30. Bach v. Sch. Bd. of Va. Beach, 139 F. Supp. 2d 738, 743 (E.D. Va. 2001) (citing Roth v. United States, 354 U.S. 476, 484 (1957)).
31. N.Y. Times v. Sullivan, 376 U.S. 254, 269 (1964) (quoting Bridges v. California, 314 U.S. 252, 270 (1941) and N.A.A.C.P. v. Button, 371 U.S. 415, 429 (1963)).
32. *Bach*, 139 F. Supp. 2d at 743 (citing Leventhal v. Vista Unified Sch. Dist., 973 F. Supp. 951, 953–54 (S.D. Cal. 1997)); *see also* Collinson v. Gott, 895 F.2d 994, 1000 (4th Cir. 1990) (Phillips, J., concurring) ("Speech at public meetings called by government officials for discussion of matters of public concern is entitled to normal first amendment protections against general restrictions or *ad hoc* parliamentary rulings by presiding officials.").
33. Steinburg v. Chesterfield Cnty. Planning Comm'n, 527 F.3d 377, 380 (4th Cir. 2008) ("Inasmuch as the Commission was authorized to set its subject matter agenda and to cut off speech that was reasonably perceived to threaten disruption of the orderly and fair progress of the meeting, we conclude that the Commission and its members did not violate Steinburg's First Amendment rights in excluding him."); *Bach*, 139 F. Supp.2d at 743; *see also Leventhal*, 973 F. Supp. at 958 ("Debate over public issues, including the qualifications and performance of public officials . . . , lies at the heart of the First Amendment."); Moore v. Asbury Park Bd. of Educ., No. Civ.A.05-2971 MLC, 2005 WL 2033687, at *12 (D.N.J. Aug.

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23, 2005) (holding that a school board bylaw that prevented "personally directed" comments was a content-based restriction that was unconstitutional under the First Amendment); State v. Ytterdahl, 721 P.2d 757, 760 (Mont. 1986) ("The right of a citizen to protest an alleged unlawful act of his government is undoubted. His right of speech, even though distasteful, must also be unfettered unless the speech creates the evil of a breach of peace.").
34. N.C. Gen. Stat. § 160A-81.1 (2011).
35. *Id.*
36. *Id.*
37. Dayton v. Esrati, 707 N.E.2d 1140, 1146 (Ohio Ct. App. 1997); *see also Steinburg*, 527 F.3d at 380 (holding that when a citizen has been excluded from a public meeting "because of his disruptive manner, and not because of any viewpoint he expressed," the government has not violated that citizen's First Amendment rights); State v. Guy, 242 N.W.2d 864, 867 (Neb. 1976) (holding that a council's interest in preserving order is limited to prohibiting "conduct contrary to the normal presentation of business which disturbs or interrupts the orderly progress of the proceeding"); District of Columbia v. Gueory, 376 A.2d 834, 837 (D.C. Ct. App. 1977) (holding ordinance that prohibited "actual or imminent interference with the peaceful conduct of governmental business" constitutional under the First Amendment) (internal citations omitted).
38. *Esrati*, 707 N.E.2d at 1147.

Sign ordinances

39. City of Ladue v. Gilleo, 512 U.S. 43, 48 (1994).
40. *Id.* at 51.
41. *Id.* at 55 n.13 (internal citations and alterations omitted).
42. *Id.* at 54.
43. *Id.* at 56.
44. *Id.* at 54–55.
45. Linmark Assoc., Inc. v. Twp. of Willingboro, 431 U.S. 85, 95 (1977).
46. Eu v. S.F. Cnty. Democratic Cent. Comm., 489 U.S. 214, 223 (1989) (internal citation and quotation marks omitted).
47. *See* McFadden v. City of Bridgeport, 422 F. Supp. 2d 659, 675 (N.D. W. Va. 2006) (holding unconstitutional a ban on political signs displayed earlier than thirty days before or later than forty-eight hours after event); Curry v. Prince George's Cnty., 33 F. Supp. 2d 447, 454–55 (D. Md. 1999) (more than forty-five days before or ten days after); City of Painesville Bldg. Dep't v. Dworken & Bernstein Co., 733 N.E.2d 1152, 1160 (Ohio 2000) (more than seventeen days before or forty-eight hours after); *see also* Whitton v. Gladstone, 54 F.3d 1400, 1403–04 (8th Cir. 1995) (more than thirty days before or seven days after); Dimas v. Warren, 939 F. Supp. 554, 557 (E.D. Mich. 1996) (more than forty-five days before); Orazio v. Town of N. Hempstead, 426 F. Supp. 1144, 1148–49 (E.D.N.Y. 1977) (holding that no time limit on the display of pre-election political signs is permissible under the First Amendment).
48. *Ladue*, 512 U.S. at 51.
49. *Id.* at 54.
50. Members of City Council v. Taxpayers for Vincent, 466 U.S. 789, 804–05 (1984).
51. *Id.* at 814–15.
52. Burnson v. Freeman, 504 U.S. 191, 198–200, 206, 211 (1992).
53. *See, e.g.*, Am. Legion Post 7 of Durham v. City of Durham, 239 F.3d 601, 611 (4th Cir. 2001) (upholding a 216 square foot limitation on flag size in non-residential districts and a forty square foot limitation on flag size in residential districts); Baldwin v. Redwood City, 540 F.2d 1360, 1368 (9th Cir. 1976) (upholding sixteen square foot size limit on signs); Candidates' Outdoor Graphic Servs. . . . COGS v. City & Cnty. of S.F., 574 F. Supp. 1240, 1248–49 (N.D. Cal. 1983) (upholding eleven-inch height limit on signs posted on utility poles).
54. *Cf.* Forsyth Cnty. v. Nationalist Movement, 505 U.S. 123, 136 (1992); Cox v. New Hampshire, 312 U.S. 569, 577 (1941).
55. *Baldwin*, 540 F.2d at 1372 n.32.
56. City of Ladue v. Gilleo, 512 U.S. 43, 57 (1994).
57. *Forsyth Cnty.*, 505 U.S. at 136.
58. Arlington Cnty. Republican Comm. v. Arlington Cnty., 983 F.2d 587, 594 (4th Cir. 1993).
59. *Id.*
60. *See Baldwin*, 540 F.2d at 1369; Curry v. Prince George's Cnty., 33 F. Supp. 2d 447, 449 n.3 (D. Md. 1999) (citing Craig v. Boren, 429 U.S. 190, 194–97 (1976)).
61. *Baldwin*, 540 F.2d at 1369 (internal citation and quotations omitted).

62. City of Ladue v. Gilleo, 512 U.S. 43, 56–57 (1994).
63. Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 506 (1981); Cent. Hudson Gas & Elec. Corp. v. Pub. Svc. Comm'n, 447 U.S. 557, 562–63 (1980).
64. *Cent. Hudson*, 447 U.S. at 563–64.
65. *Id.* at 564.
66. Members of City Council v. Taxpayers for Vincent, 466 U.S. 789, 806–07 (1984) (upholding ordinance prohibiting posting of signs on public property because city's interest in avoiding visual clutter was sufficient to justify restriction); *Metromedia*, 453 U.S. at 507–08.
67. *Metromedia*, 453 U.S. at 508.
68. *Id.* at 513 ("The city does not explain how or why non-commercial billboards located in places where commercial billboards are permitted would be more threatening to safe driving or would detract more from the beauty of the city."); Major Media of Se., Inc. v. City of Raleigh, 792 F.2d 1269, 1272 (4th Cir. 1986).
69. 466 U.S. 789 (1984).

Curfew Ordinances

70. The police power allows state and local governments to enact any law that is not prohibited by the Constitution or other federal laws.
71. N.C. Gen. Stat. §§ 153A-142, 160A-198 (2011).
72. *See* Schleifer v. City of Charlottesville, 159 F.3d 843, 851–52 (4th Cir. 1998).
73. *Id.* at 846.
74. *Id.*
75. Nunez v. City of San Diego, 114 F.3d 935, 938 (9th Cir. 1997).
76. *See id.* at 938.
77. 527 U.S. 41, 58–60 (1999).
78. *Id.* at 47 & 51 n.14.
79. *Id.* at 53 ("[T]he freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment.").
80. *See, e.g.*, Santosky v. Kramer, 455 U.S. 745, 747–48 (1982) (holding that before a state may sever completely the rights of parents in their natural child, due process requires that the state support its allegations by at least clear and convincing evidence); Wisconsin v. Yoder, 406 U.S. 205, 234 (1972) (holding that the First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children to attend formal high school to age sixteen); Pierce v. Society of Sisters, 268 U.S. 510, 534–35 (1925) (finding that the Compulsory Education Act of 1922 unreasonably interfered with the liberty of parents and guardians to direct the upbringing and education of their children).
81. *See, e.g.*, Betancourt v. Town of West New York, 769 A.2d 1065, 1068–69 (N.J. Super. Ct. App. Div. 2001).
82. *See Nunez*, 114 F.3d at 951-52; *Betancourt*, 769 A.2d at 1068–69.
83. Schleifer v. City of Charlottesville, 159 F.3d 843, 853 (4th Cir. 1998).
84. Hodkins *ex rel.* Hodgkins v. Peterson, 355 F.3d 1048, 1058 (7th Cir. 2004); *see also* Hutchins v. District of Columbia, 188 F.3d 531, 546 n.9 (D.C. Cir. 1999); *Schleifer*, 159 F.3d at 847, 853–54; Qutb v. Strauss, 11 F.3d 488, 490 (5th Cir. 1993); Bykofsy v. Borough of Middletown, 401 F. Supp. 1242, 1258 (M.D. Pa. 1975), *aff'd*, 535 F.2d 1245 (3d Cir. 1976).
85. Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 629 (1980).
86. The U.S. Supreme Court has recognized that charitable organizations have a First Amendment right to raise funds. *See* Illinois *ex rel.* Madigan v. Telemarketing Assocs., Inc., 538 U.S. 600, 611–12 (2003) ("[C]haritable appeals for funds . . . 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." (quoting *Schaumburg*, 444 U.S. at 632); Riley v. Nat'l Fed. of the Blind of N.C., Inc., 487 U.S. 781, 788–89 (1988)). In non-panhandling cases, the Fourth Circuit has limited its observations, noting that " '[t]he First Amendment protects the right to engage in charitable solicitation.' " United Seniors Ass'n, Inc. v. Soc. Sec. Admin., 423 F.3d 397, 407 (4th Cir. 2005) (quoting *Telemarketing. Assocs.*, 538 U.S. at 611–12); *see also* Famine Relief Fund v. West Virginia, 905 F.2d 747, 751 (4th Cir. 1990). Similarly, in another non-panhandling case, the North Carolina Court of Appeals discussed the constitutionality of solicitation in the context of charitable organizations. *See* Durham Highway Fire Prot. Ass'n, Inc. v.

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Baker, 82 N.C. App. 583, 585, 347 S.E.2d 86, 87 (1986) ("[S]oliciting contributions is certainly protected by the First Amendment.").

87. N.C. Gen. Stat. § 160A□179 (2011).

88. *See* Gresham v. Peterson, 225 F.3d 899, 904 (7th Cir. 2000) (quoting *Schaumburg*, 444 U.S. at 632, and noting that "the Court's analysis in *Schaumburg* suggests little reason to distinguish between beggars and charities in terms of the First Amendment protection for their speech"); *see also* Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11th Cir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."); 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."); Benefit v. City of Cambridge, 679 N.E.2d 184, 188 (Mass. 1997); C.C.B. v. State, 458 So.2d 47, 50 (Fla. Dist. Ct. App. 1984).

89. *See, e.g.*, Heffron v. Int'l Soc. for Krishna Consciousness, Inc., 452 U.S. 640, 649 (1981) (finding a state fair regulation content-neutral because "[n]o person or organization, whether commercial or charitable" could solicit funds except under the regulations' strictures); Times-News Pub. Co. v. City of Burlington, CIV.A. 108CV00415, 2008 WL 2622995, at *4 (M.D.N.C. June 30, 2008) (finding a city ordinance banning solicitation from the median to be content-neutral because "[n]o person or charity is permitted to engage in the prohibited activities dependent upon their point of view, message or belief"); Denver Pub. Co. v. City of Aurora, 896 P.2d 306, 313 (Colo. 1995) (finding ordinance content neutral where stated purpose was to eliminate dangers associated with solicitation from vehicles and its effect remained constant as to all communicative or noncommunicative material offered for sale).

90. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989); *see also* State v. Petersilie, 334 N.C. 169, 183, 432 S.E.2d 832, 840 (1993).

91. *See, e.g.*, Schleifer v. City of Charlottesville, 159 F.3d 843, 848 (4th Cir. 1998) ("If government cannot ensure the safety of its citizens, it has failed them in the most fundamental sense."); ACORN v. City of St. Louis, 930 F.2d 591, 594 (8th Cir. 1991) ("[T]he government interest in safety and traffic efficiency is 'significant' . . . ."); Int'l Soc'y for Krishna Consciousness of New Orleans, Inc. v. City of Baton Rouge, 876 F.2d 494, 498 (5th Cir. 1989) (observing that a municipality has a legitimate interest in regulating flow of traffic due to "the disruptive nature of fund solicitation from the occupants of vehicles"); Treants Enters., Inc. v. Onslow Cnty., 94 N.C. App. 453, 458, 380 S.E.2d 602, 604–05 (N.C. Ct. App. 1989) (noting that the purpose of furthering health, safety, and welfare of the public is "clearly within the scope of the police power of the state").

92. *C.C.B.*, 458 So.2d at 50.

93. *Loper*, 999 F.2d at 704–05; Thompson v. City of Chicago, No. 01 C 6916, 2002 WL 31115578, at *4 (N.D. Ill. Sept. 24, 2002).

94. *See, e.g.*, Gresham v. Peterson, 225 F.3d 899, 905–09 (7th Cir. 2000) (holding that aggressive panhandling prohibition was narrowly tailored to promote significant governmental interest and was not void for vagueness); City of Seattle v. Webster, 802 P.2d 1333, 1338–41 (Wash. 1990) (en banc) (holding that aggressive panhandling ordinance was neither vague nor overbroad).

95. *Gresham*, 225 F.3d at 907.

96. *Id.* at 906.

97. *See, e.g.*,Times-News Pub. Co. v. City of Burlington, CIV.A. 108CV00415, 2008 WL 2622995, at *3–9 (M.D.N.C. June 30, 2008) (denying preliminary injunction because a ban on median solicitation passes the test for content-neutral regulations on the tine, place and manner of speech); ACORN v. St. Louis, 930 F.2d 591, 596–97 (8th Cir. 1991) (holding that county ordinance prohibiting in-the-roadway solicitations of motorists was narrowly tailored to the governmental interest in public safety and, thus, was a valid time, place, and manner restriction on

First Amendment activities); U.S. Labor Party v. Oremus, 619 F.2d 683, 688 (7th Cir. 1980) ("The obvious concern of the State is the evident dangers of physical injury and traffic disruption that are present when individuals stand in the center of busy streets trying to engage
drivers and solicit contributions from them."); Sun-Sentinel v. City of Hollywood, 274 F. Supp. 2d 1323, 1328–34 (S.D. Fla. 2003) (holding that Florida pedestrian regulation statute was content-neutral and promoted a significant government interest, was narrowly-tailored, left open ample alternative avenues for communication, and was not overbroad or vague).

98. *See* Comite De Jornaleros De Redondo Beach v. City of Redondo Beach, 475 F. Supp. 2d 952, 967–68 (C.D. Cal. 2006) (holding ordinance prohibiting solicitation of employment on streets and highways did not leave day laborers with adequate alternative avenues of communication) *rev'd*, 607 F.3d 1178 (9th Cir. 2010) *on reh'g en banc*, 657 F.3d 936 (9th Cir. 2011) and *aff'd*, 657 F.3d 936 (9th Cir. 2011); *see also* Zeiger v. State, 231 S.E.2d 494, 496 (Ga. Ct. App. 1976); People v. Griswold, 821 N.Y.S.2d 394, 401–03 (N.Y. City Ct. 2006). In *Zeiger*, the Georgia Court of Appeals implied that the only reason it upheld a conviction under an anti-solicitation ordinance was because the defendant was standing in the roadway, stating: "[W]e are satisfied that if the interdicted action involved standing near, rather than on a highway, the defendant's position might be well taken." 231 S.E.2d at 496.

99. The Florida district court in *Sun-Sentinel*, *supra* note 96, expressed concern over the potential foreclosure of solicitors' business opportunities and explained its denial of a preliminary injunction based on the fact that vehicle solicitation was allowed under the ordinance "[s]o long as the vendors stand on the median or sidewalk, and never enter the paved roadway." *Sun-Sentinel*, 274 F. Supp. 2d at 1332. While the Texas Court of Appeals upheld an ordinance that prohibited vehicle solicitation in roadways, it expressly allowed solicitation "so long as [the solicitor] remains on the surrounding sidewalks, medians, islands and unpaved shoulders." Dominguez v. State, 902 S.W.2d 5, 6 n.2 (Tex. Ct. App. 1995).

100. Williams v. Fears, 179 U.S. 270, 274 (1900); *see also* City of Chicago v. Morales, 527 U.S. 41, 53 (1999) ("[T]he freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment.").

101. State v. Dobbins, 277 N.C. 484, 497, 178 S.E.2d 449, 497 (1971).

102. *Morales*, 527 U.S. at 59–64; Lytle v. Doyle, 326 F.3d 463, 469 (4th Cir. 2003).

103. *Morales*, 527 U.S. at 53; *see also id.* at 54 (noting that "it is apparent that an individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is 'a part of our heritage.' ") (quoting Kent v. Dulles, 357 U.S. 116, 126 (1958)); *Lytle*, 326 F.3d at 469 (noting that "standing in a given location also is not per se illegal.").

104. *Morales*, 527 U.S. at 60 (quoting Kolender v. Lawson, 461 U.S. 352, 360 (1983)).

105. *Id.* at 64.

106. *See Lytle*, 326 F.3d at 470.

107. 42 U.S.C. § 12131 et seq. (2011).

108. *Id.* at § 12132.

109. Tennessee v. Lane, 541 U.S. 509, 523 (2004).

110. Faretta v. California, 422 U.S. 806, 819 n.15 (1975).

111. *Lane*, 541 U.S. at 523 (citing Boddie v. Connecticut, 401 U.S. 371, 379 (1971); M.L.B. v. S.L.J., 519 U.S. 102 (1996)).

112. *Id.* (citing Taylor v. Louisiana, 419 U.S. 522, 530 (1975)).

113. *Id.* (citing Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 8–15 (1986)).

114. 28 C.F.R. § 35.150–51 (2011).

115. *Id.* § 35.130(b)(7).

116. *Id.*

END NOTES

117. *See, e.g.*, City of Renton v. Playtime Theaters, Inc., 475 U.S. 41, 54–55 (1986) (upholding a zoning ordinance that banned adult movie theaters from being within 1,000 feet of any residential zone, church, park, or school); Young v. Am. Mini-Theaters, Inc., 427 U.S. 50, 72–73 (1976) (upholding a city ordinance that limited the number of adult theaters in certain areas and banned such establishments from locating in residential areas).
118. *Renton*, 475 U.S. at 49.
119. *Id.* at 47.
120. City of L.A. v. Alameda Books, Inc., 535 U.S. 425, 438 (2002).
121. *Renton*, 475 U.S. at 50 (quoting *Young*, 427 US. at 71).
122. *See id.* at 51–55; *Young*, 427 U.S at 71–73; *see also* Euclid v. Amber Realty Co., 272 U.S. 365, 394–97 (1926) (rejecting a takings challenge to a zoning ordinance because of the strong underlying police purpose).
123. *Renton*, 475 U.S. at 51–55 (internal citation omitted).
124. It is unclear how far a municipality can go in using zoning ordinances to exclude adult entertainment establishments; however, in *Renton*, the Court upheld an ordinance that banned adult theaters from all but approximately five percent of the city. *Id.* at 53.

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