No. 91827-9

SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF LAKEWOOD,

Respondent,

Vs.

ROBERT W. WILLIS,

Petitioner.

RESPONDENT'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

A quarter-century ago, this Court in *City of Seattle v. Webster*, 115 Wn.2d 635, 802 P.2d 1333 (1990) held that municipalities may impose panhandling and solicitation regulations, provided that those regulations conform to the requirements of the First Amendment. Post-*Webster*, though a few Washington appellate cases touch on panhandling activities in a general sense, no Washington appellate case revisits the boundaries of such regulations.

In this case, a panhandler was reported banging on a car at the I-5 ramp at Gravelly Lake Drive in Lakewood. The responding officer found Mr. Willis at the ramp panhandling. In view of the officer, he walked out from the shoulder and into the lane of travel. He was cited and convicted by a jury for Begging in a Restricted Area under Lakewood Muni. Code (LMC) 9A.4.020A.[1] For the first time on RALJ appeal, Mr. Willis challenged Lakewood's Code on multiple grounds, including the First Amendment.[2]

The intersection between the First Amendment and local panhandling regulations has garnered, and continues to generate

[1] A complete copy of chapter 9A.04 LMC is attached as an appendix.

[2] Before the Superior Court and the Court of Appeals, Mr. Willis asserted various Fourteenth Amendment violations. His petition for review does not challenge the Court of Appeals' treatment of these arguments. And, Mr. Willis has not claimed that this Code violates Article I, § 5 of the Washington Constitution though providing passing treatment of this issue in his lower court briefing. (Brief of App. at p. 14; CP 8 (RALJ Brief)).

significant attention on the national level. Although Washington jurisprudence has been fairly quiet since *Webster*, other jurisdictions have been active in developing a body of case law on this issue. The overwhelming body of case law from other jurisdictions amply supports the roadside panhandling regulations at issue here. As such, Robert Willis' conviction for Begging in a Restricted Area should be affirmed.

II. POINTS AND AUTHORITIES

In a constitutional challenge to a local ordinance, "[a] duly enacted ordinance is presumed constitutional, and the party challenging it must demonstrate that the ordinance is unconstitutional beyond a reasonable doubt." *Kitsap County v. Mattress Outlet*, 153 Wn.2d 506, 509, 104 P.3d 1280 (2005). Appellate review is de novo. *Id.* Where a First Amendment challenge is raised, the burden is on the governmental entity to demonstrate that the regulation survives First Amendment scrutiny. *Collier v. City of Tacoma*, 121 Wn.2d 737, 753, 854 P.2d 1046 (1993).

Mr. Willis appears to be challenging the entirety of LMC 9A.4.020A. Here, he was convicted under the prong involving freeway ramps. "Wherever possible, it is the duty of this court to construe a statute so as to uphold its constitutionality." *State v. Reyes*, 104 Wn.2d 35, 41, 700 P.2d 1155 (1985)(citation omitted). This Court has similarly given weight to severability clauses in constitutional challenges. *State v.*

Anderson, 81 Wn.2d 234, 236, 501 P.2d 184 (1972). In this case, both the Lakewood Municipal Code and the Begging in Restrictive Areas ordinance have severability clauses. *See*, Lakewood Muni. Code 1.08.020; City of Lakewood Ordinance 532, § 2 (2001).

The appropriate focus of any challenge should be only to that provision of the Code under which Mr. Willis was challenged.

A. Under a Forum Analysis, the Ramp is a Nonpublic Forum.

Washington has adopted the federal method for undertaking a forum analysis, to determine the level of judicial scrutiny that applies in the context of a free speech challenge to activity on property owned and controlled by a government. *Bradburn v. N. Cent. Reg'l Library Dist.*, 168 Wn.2d 789, 813, 231 P.3d 166 (2010). This Court has regarded the forum analysis to be "the touchstone of a legal inquiry into the constitutional validity of a regulation that attempts to limit expressive activity." *City of Seattle v. Mighty Movers, Inc.*, 152 Wn.2d 343, 350, 96 P.3d 979 (2004)(quoting, *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983)). As this Court has acknowledged, "[t]his threshold question is critical, however, because the type of forum determines which constitutional standard applies when protected speech is sought to be regulated." *City of Seattle v. Huff*, 111 Wn.2d 923, 926, 767 P.2d 572 (1989).

Before the Court of Appeals, Mr. Willis seemingly took the position that a forum was either "public" or "private." (App. Br. at p. 6 (citing, *Huff*, 111 Wn.2d at 927)). But, this misapprehends and oversimplifies the analysis. Under a forum analysis, there are three categories of public property: traditional public forums; public property that has been designated as a public forum and all other public property. *Mighty Movers*, 152 Wn.2d at 349. The Constitution does not require the Government to "freely grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities." *Cornelius v. NAACP*, 473 U.S. 788, 799-800, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985). This is so because "even protected speech is not equally permissible in all places and at all times." *Id.* In undertaking this analysis, the forum analysis does not extend beyond its historical confines. *Bradburn*, 168 Wn.2d at 813

If the forum qualifies as a traditional public forum, a heightened analysis applies. Speech in a public forum, "is subject to restrictions on time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Mighty Movers*, 152 Wn.2d at 350 (internal citations and quotations omitted).

"The protections afforded by the First Amendment are nowhere stronger than in the streets and parks both categorized for First Amendment purposes as traditional public fora." *Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009) (citing *Perry*, 460 U.S. at 45). In any event, speech in a public forum may still be regulated. To satisfy First Amendment concerns, the regulations must meet three criteria: (1) it must be content-neutral; (2) it must be "narrowly tailored to serve a significant governmental interest"; and (3) it must "leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989)

On the other hand, if the forum is a nonpublic forum a lesser form of scrutiny applies. "Speech in nonpublic forums may be restricted if the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral." *Mighty Movers,* 152 Wn.2d at 351 (internal citations and quotations omitted). A nonpublic forum is "[p]ublic property which is not by tradition or designation a forum for public communication." *Perry*, 460 U.S. at 46. The Supreme Court has stated that "the government does not create a public forum by inaction or by permitting limited discourse, but only by *intentionally* opening a non-traditional forum for public discourse." *Cornelius*, 105 S. Ct. at 3449 (emphasis added).

To determine whether the onramp is a public forum, courts consider "whether a 'principal purpose' of the property is the free exchange of ideas, whether the property shares the characteristics of a traditional public forum, and the historical use of the property." *Sanders v. City of Seattle*, 160 Wn.2d 198, 211, 156 P.3d 874 (2007). As the Court of Appeals correctly determined, a freeway ramp is a non-public forum.

This Court has been able to conduct a forum analysis in those situations where the challenger did not make a claim nor offer evidence that the location was a public forum. *Mighty Movers, Inc.*, 152 Wn.2d at 351 (utility poles). To date, Mr. Willis has dedicated scant briefing on this forum issue. (CP 7 (RALJ Brief); Br. of App. at p. 6). And, as the Court of Appeals recognized, Mr. Willis raised this challenge for the first time on appeal. Unpublished Op. at p. 6, fn. 4. That Court also repeatedly recognized that the factual record was not well-developed given the posture in which Mr. Willis raised his challenges. *See also, id* at p. 2, fn. 1 & 2, p. 9. The Court of Appeals noted that, despite this defect, based on the trial transcript, it was able to conclude that this location was not a traditional public forum. In concluding that this was not a "public forum," the Court of Appeals reached the same result as those courts which have looked at freeway-based First Amendment regulations.

We highlight this because it presents a possible inconsistency between several lines of authority. The Court of Appeals was "mindful that the City was precluded from making a complete factual record to defend its positions," which would have otherwise borne on Lakewood's obligation to defend this Code provision. Unpublished Op. at p. 6 fn. 4. It nonetheless recognized were still "sufficient facts on the forum issue," to decide this case. *Id.* On the other hand, this Court has recognized, that without a developed record, the claimed error may not satisfy RAP 2.5(a)(3) so as to merit review, much less entitle a defendant to relief. *State v. WWJ Corp.*, 138 Wn.2d 595, 603, 980 P.2d 1257 (1999). Given the fact that the Court of Appeals resolved this case on the merits, and this Court has accepted review, while the record (such as it is) favors Lakewood, to the extent that there is a defect, we request that such a defect be construed against Mr. Willis.

In order for this location to serve as a traditional public forum, the ramps must have the characteristics of a traditional public forum. *Mighty Movers*, 152 Wn.2d 359. Although streets and roadways are generally considered traditional public forums, this appellation alone does not resolve this issue. *See e.g., Hale v. Dept. of Energy*, 806 F.2d 910 (9th Cir. 1986)(road leading to nuclear weapons test site not public forum). As one court has recognized, for First Amendment purposes, "not all

sidewalks are public forums." *Chad v. City of Fort Lauderdale*, 861 F. Supp. 1057, 1061 (S.D. Fla. 1994)(collecting cases). The character of the specific forum at issue is the proper area of inquiry. *Bradburn*, 168 Wn.2d 814-15 (citing, *Illinois Dunesland Preservation Society v. Illinois Department of Natural Resources*, 587 F. Supp. 2d 1012 (E.D. Ill. 2008), *aff'd on other grounds*, 584 F.3d 719 (7th Cir. 2009)(noting forum distinction between state park and a display rack within the park).

Freeway related locales have been deemed unworthy to be treated as "public forums," justifying treatment as a public forum under the First Amendment. *Jacobsen v. Bonine*, 123 F.3d 1272 (9th Cir. 1997)(rest areas); *Sentinel Communications Co. v. Watts*, 936 F.2d 1189 (11th Cir., 1991) (same); *San Diego Minutemen v. Cal. Bus., Transp. & Hous.*, 570 F. Supp. 2d 1229, 1250 (S.D. Cal. 2008)(adopt a highway programs). These routes are designed "to facilitate safe and efficient travel by motorists along the System's highways." *Jacobsen*, 123 F.3d at 1274 (citation omitted). And, this court has recognized that even areas otherwise open to the public to aid in the ingress and egress of transportation will not necessarily qualify as a traditional public forum. *See, Sanders, supra* (Seattle monorail).

In Washington, as it relates to freeways, such as Interstate 5, those roads are regarded as "limited access highways." As their name suggests,

these roads are "especially designed or designated for through traffic, and over, from, or to which owners or occupants of abutting land, or other persons, have no right or easement," excepting for a "limited right or easement of access, light, air, or view." RCW 47.52.010 (Emphasis added). Governments may "restrict, or prohibit access as to best serve the traffic for which such facility is intended." RCW 47.52.040.

In this case, there has never been any showing, nor could there be any showing that a freeway on/off ramp is a traditional public forum. The Court of Appeals properly concluded that the freeway ramp was not a traditional public forum. Even if the Court of Appeals erred in this threshold determination, applying the proper test, the Code still passes constitutional scrutiny.

B. As a Nonpublic Forum, the Court of Appeals Correctly Concluded that Lakewood's Code is Reasonable and Viewpoint Neutral.

"When a nonpublic forum is at issue, restrictions are constitutional 'so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.'" *City of Seattle v. Eze*, 111 Wn.2d 22, 32, 759 P.2d 366 (1988)(quoting, *Cornelius*, 473 U.S. at 806). In this case, Lakewood's Code was properly determined to be a reasonable restriction and viewpoint neutral.

The government "has a strong interest in ensuring the public safety and order, in promoting the free flow of traffic on public streets and sidewalks[.]" *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 768 (1994)(citation omitted). "[T]he exercise of First Amendment rights may be regulated where such exercise will unduly interfere with the normal use of the public property by other members of the public with an equal right of access to it." *Food Employees v. Logan Valley Plaza*, 391 U.S. 308, 320-321 (1968).

Although the analysis is more suited to a public forum, this Court has recognized that a "government may use time, place, and manner regulations, as well as any additional restrictions that ensure the forum will be reserved for its governmentally intended purpose[.]" *Mighty Movers*, 152 Wn. 2d at 361 (internal citations omitted). When this occurs, "a party need not establish and a court need not engage in the 'elaborate' time, place, and manner analysis applicable to public forums when a nonpublic forum is involved." *Id.*

Where a nonpublic forum is involved, the government has the right to make distinctions in access on the basis of subject matter and speaker identity. *Perry*, 460 U.S. at 49. "These distinctions may be impermissible in a public forum but are inherent and inescapable in the process of limiting a nonpublic forum to activities compatible with the intended

purpose of the property." *Id.* As we discuss *infra*, Lakewood's Code satisfies the more demanding content-neutral test. But, if this Court were to disagree, these restrictions certainly satisfy the less-restrictive viewpoint neutrality test.

In the context of viewpoint-neutral regulations, "[t]he restriction need only be reasonable; it need not be the most reasonable or the only reasonable limitation." *Mighty Movers*, 152 Wn.2d at 361 (citations omitted; emphasis omitted). Such roadways are primarily intended for the passage of automobiles transitioning between high speed freeways (such as Interstate 5 where Mr. Willis was panhandling) and municipal road networks. These zones are not intended for soliciting donations from passing vehicles but to provide for the safety of the motorists who use these roadways.

Here, Lakewood's Code is reasonable in light of the primary purpose of freeway ramps. The removal of the danger of collision or injury to motorists by solicitors seeking alms at these locations, facilitates the governmental goals in these limited geographical areas.

C. Even Assuming that a Ramp is a Public Forum, Lakewood's Code is a Valid Content-Neutral Time, Place and Manner Restriction.

In a public forum, time, place and manner restrictions on the exercise of first amendment rights will be permitted if they "are justified

without reference to the content of the regulated speech . . . narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 82 L. Ed. 2d 221, 104 S. Ct. 3065 (1984).

In order for a content neutral ordinance to pass constitutional muster, it "must be narrowly tailored to serve the government's legitimate, content neutral interests but ... need not be the least restrictive or least intrusive means of doing so... So long as the means chosen are not substantially broader than necessary to achieve the government's interest ... the regulation will not be simply because a court concludes the government's interest could be adequately served by some less-speech-restrictive alternative". *Ward*, 491 U.S. at 798-800. This Court applies a similar test to "restrictions on speech that are *viewpoint neutral*, but *subject-matter based*," which "are valid so long as they are narrowly tailored to serve a *compelling* state interest and leave open ample alternative channels of communication" *Collier*, 121 Wn.2d at 753 (emphasis by the Court).

1. The Code is Content Neutral.

Although the United States Supreme Court has not squarely confronted the issue, in a series, it has suggested solicitation-based restrictions are content-neutral.

In *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981) the Court addressed a rule requiring religious organizations soliciting donations at a state fair do conduct these activities at an assigned location, and only from an assigned booth. Without addressing the distinction the rule drew between solicitation and other speech, the Court held the rule was content-neutral, explaining that it "applie[d] evenhandedly to all who wish to distribute and sell written materials or to solicit funds." *Id.* at 649. The Court went on to reject, in a footnote, an argument that this rule discriminated in the manner in which a message was disseminated, observing, "[t]he argument is interesting but has little force. This aspect of the Rule is inherent in the determination to confine exhibitors to fixed locations, it applies to all exhibitors alike, and it does not invalidate the Rule as a reasonable time, place, and manner regulation." *Id.*, 452 U.S. at 649 n.12.

Similarly, in *United States v. Kokinda*, 497 U.S. 720, 736, 110 S. Ct. 3115, 111 L. Ed. 2d 571 (1990) the Court addressed a federal

regulation prohibiting solicitation on sidewalks outside post office. The Supreme Court initially observed that the sidewalk did not qualify as a traditional public forum, and thus, subject to a lower level of First Amendment scrutiny. *Id.* 497 U.S. at 725-727. Evaluating the nature of the speech itself, a plurality held, "It is the inherent nature of solicitation itself, a content-neutral ground, that the [Postal] Service justifiably relies upon when it concludes that solicitation is disruptive of its business." *Id.*, 497 U.S. at 736.

Justice Kennedy supplied the fifth vote. On this issue, he agreed with the lead opinion that the regulation was content-neutral; "The Postal Service regulation, narrow in its purpose, design, and effect, does not discriminate on the basis of content or viewpoint ...". *Id.*, 497 U.S. at 739 (Kennedy, J. Concurring).

Finally, in *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 112 S. Ct. 2711, 120 L. Ed. 2d 541 (1992) the Court again addressed a regulation addressing solicitation, this time, in an airport. As it did in *Kokinda*, it evaluated the nature of the forum, and concluded that it was not a public forum. Once the Supreme Court made this initial determination, it had no difficult in determining that the regulations withstood scrutiny. As it relates to solicitation, the Court spoke at length regarding why solicitation should be held to a different standard,

> We have on many prior occasions noted the disruptive effect that solicitation may have on business. Solicitation requires action by those who would respond: The individual solicited must decide whether or not to contribute (which itself might involve reading the solicitor's literature or hearing his pitch), and then, having decided to do so, reach for a wallet, search it for money, write a check, or produce a credit card. Passengers who wish to avoid the solicitor may have to alter their paths, slowing both themselves and those around them. The result is that the normal flow of traffic is impeded. ...
>
> In addition, face-to-face solicitation presents risks of duress that are an appropriate target of regulation. The skillful, and unprincipled, solicitor can target the most vulnerable, including those accompanying children or those suffering physical impairment and who cannot easily avoid the solicitation. ...

505 U.S. at 683-84 (internal citations, quotation marks and ellipsis in original omitted).

While this appeal was pending, the Supreme Court decided *Reed v. Town of Gilbert*, 576 U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015) and extended upon its content-neutrality analysis. In *Reed*, the Court invalidated a local sign ordinance. In doing so, the *Reed* Court held that identifying which restrictions applied depended entirely on the sign's communicative content (i.e., was the sign political, ideological or a directional sign) were an impermissible content-based regulation of speech. Notably *Reed* did not involve a forum analysis, and it did not cite to *Heffron, Kokinda* nor *Lee*.

Those courts which have sought to interpret the Supreme Court's pre-*Reed* solicitation-related jurisprudence in the roadside solicitation context, have reached similar results conducting a similar analysis. *Los Angeles Alliance for Survival v. City of Los Angeles*, 22 Cal. 4th 352, 93 Cal. Rptr. 2d 1, 993 P.2d 334 (2000); *People v. Barton*, 8 N.Y.3d 70, 861 N.E.2d 75, 828 N.Y.S.2d 260 (N.Y. 2006). The post-*Reed* cases reach the same result. *See e.g., Cutting v. City of Portland*, 802 F.3d 79, 85 (1st Cir. 2015)(finding language to be content-neutral, but invalidating on other grounds); *Thayer v. City of Worcester*, 2015 U.S. Dist. LEXIS 151699, *37 (D. Mass. Nov. 9, 2015)(same).

Lakewood's Code provisions are not aimed at any message or idea communicated by the panhandler. Lakewood's Code limits "begging," which is defined as "asking for money or goods as a charity, whether by words, bodily gestures, signs or other means." LMC 9A.4.020(E). This definition mirrors virtually word-for-word the definition of "begging," contained in a City of Seattle Ordinance which was at issue and withstood multiple forms of constitutional challenge. *Roulette v. City of Seattle*, 850 F. Supp. 1442, 1451 (W.D. Wash. 1994), *aff'd on other grounds*, 78 F.3d 1425 (9th. Cir. 1996).[3] In this vein, the focus is not on the type of speech, but instead, the manner in which the solicitation occurs, which is

[3] Although *Roulette* was appealed, the Ninth Circuit was not called upon to review this definition. 97 F.3d at 302 fn. 2.

allowable under a content-neutral analysis. *Iskcon of Potomac, Inc. v. Kennedy*, 61 F.3d 949, 955 (DC Cir. 1995).

This definition does not restrict the expression of any message, idea, or form of speech. It does not distinguish between "good" and "bad" solicitation, and it does not discriminate based on identity. For this reason, Lakewood's Code is content-neutral.

2. The Code is Narrowly-Tailored.

In order to survive First Amendment scrutiny (assuming a public forum), the regulation must be narrowly-tailored. To determine whether a regulation is so tailored, "the court must compare the identified state interest with the terms and effect of the injunctive relief." *Bering v. Share*, 106 Wn. 2d 212, 230, 721 P.2d 918 (1986). The reasonableness of the restriction is measured "by balancing the public interest advanced by the regulation against the extent of the restriction on free speech rights." *Collier*, 121 Wn.2d at 754.

Lakewood's Code satisfies these concerns. Rather than prohibit panhandling, Lakewood has identified discrete areas of the city where such activities may not occur, with one of those areas being freeway ramps. There is a compelling interest in maintaining safe freeway ramps. Similarly, there is a compelling interest in promoting safe travel to and from the state's interstate highway system. Indeed, "[i]t requires neither

towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous." *News & Sun-Sentinel Co. v. Cox*, 702 F. Supp. 891, 900 (S.D. Fla. 1988) (internal citations and quotations omitted).

It is likewise of no moment that there may be other statutes and codes available to remedy this behavior. "So long as the means chosen are not substantially broader than necessary to achieve the government's interest, however, the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Ward*, 491 U.S. at 800.

By prohibiting panhandling at freeway ramps, while allowing the same activity to be undertaken through most of the reset of the City, Lakewood's Code satisfies the narrow-tailoring which is mandated by the First Amendment.

3. Lakewood's Code Leaves Open Reasonable Alternative Channels of Communication.

A reasonable regulation of First Amendment activity within a public forum "must leave open ample alternative channels of communication." *Perry*, 460 U.S. at 45. What Lakewood may not do is prohibit panhandling altogether within city limits.

In this sense, Lakewood's Code is not unique. Those federal courts to have considered the issue have uniformly recognized that restrictions prohibiting roadside begging over areas of a municipality constitute valid time, place and manner regulations. *See e.g.*, *International Soc. for Krishna Consciousness, Inc. v. Baton Rouge*, 876 F.2d 494 (5th Cir., 1989)(assuming without deciding that streets were public forum); *Gresham v. Peterson*, 225 F.3d 899 (7th Cir., 2000)(parties agreed regulation was content neutral); *Association of Community Organizations for Reform Now v. St. Louis County*, 930 F.2d 591 (8th Cir. 1991)(applying strict scrutiny without forum analysis); *see also, Smith v. City of Fort Lauderdale*, 177 F.3d 954 (11th Cir. 1999) (ordinance prohibiting panhandling on five-mile strip of beach and two attendant sidewalks; sole issue was narrow tailoring); *Acorn v. City of Phoenix*, 798 F.2d 1260 (9th Cir. 1986)(assuming without deciding streets were public for a), *overruled in part by Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (9th Cir 2011).

Here, LMC 9A.04.020A leaves open alternative channels of communication. It does not prohibit Mr. Willis from exercising other forms of speech in other manners and at other locations. Mr. Willis may "ply [his] craft vocally or in any manner [he] deem fit (except for those involving conduct defined as aggressive) during all the daylight hours on

all of the city's public streets," excepting at freeway ramps and other prohibited areas defined by Code. *Gresham*, 225 F.3d at 207; LMC 9A.4.020A. As in *Gresham*, he may spread his message in other ways,

> He may hold up signs requesting money or engage in street performances, such as playing music, with an implicit appeal for support. Although perhaps not relevant to street beggars, the ordinance also permits telephone and door-to-door solicitation at night. Thus to the extent that "give me money" conveys an idea the expression of which is protected by the First Amendment, solicitors may express themselves vocally all day, and in writing, by telephone or by other non-vocal means all night.

225 F.3d at 207.

Lakewood's code leaves open ample alternative channels of communication for Mr. Willis and others, thereby satisfying the last prong of this test.

CONCLUSION

For the foregoing reasons, the City of Lakewood requests that this Court affirm the decision below and uphold Mr. Willis' conviction for Begging in a Restrictive Area.

DATED: December 4, 2015.

By: _____
Matthew S. Kaser, WSBA #32239
Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on:

David Ianotti
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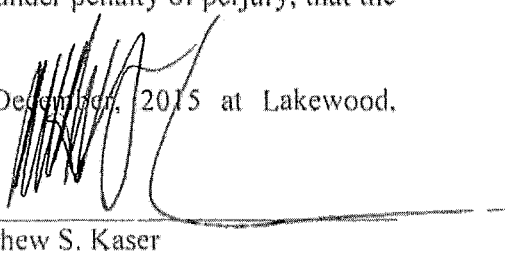
By the following indicated methods:

- Deposit into the public defender box at Lakewood City Hall; and

The undersigned hereby declares, under penalty of perjury, that the foregoing statements are true and correct.

EXECUTED this 4th day of December, 2015 at Lakewood, Washington.



Matthew S. Kaser

09A.4.000 - Aggressive Begging

Chapter 9A.04
Aggressive Begging

Sections:
9A.04.010 Aggressive begging.
9A.04.020 Definitions.
9A.04.020A Restrictive Areas
9A.04.030 Violation.

09A.4.010 - Aggressive Begging

It is unlawful for any person to engage in aggressive begging in any public place in the City, as those terms are defined by this section. (Ord. 526 § 2 (part), 2010.)

09A.4.020 - Definitions

A. Aggressive Begging means: (a) begging with intent to intimidate another person into giving money or goods by any means including repeated requests for money while approaching or following the person from whom funds are being requested; (b) continuing to solicit from a person or continuing to engage that person after the person has given a negative response to such soliciting; (c) soliciting from anyone who is waiting in line; (d) following a person with intent to solicit money or other things of value; (e) begging with use of false, misleading information, where the person knew or reasonably should have known of the falsity or misleading nature of the information; (f) (c) begging with or involving activities that are unsafe or dangerous to any person or property; (g) begging in a manner that exploits children; or (e) willfully providing or delivering, or attempting to provide or deliver unrequested or unsolicited services or products with a demand or exertion of pressure for payment in return.
B. "Automated Teller Machine" means a machine, other than a telephone: (1) that is capable of being operated by a customer of a financial institution; (2) by which the customer may communicate with the financial institution a request to withdraw, deposit, transfer funds, make payment, or otherwise conduct financial business for the customer or for another person directly from the customer's account or from the customer's account under a line of credit previously authorized by the financial institution for the customer; and (3) the use of which may or may not involve personnel of a financial institution;
C. Financial Institution means any banking corporation, credit union, foreign exchange office. For purposes of this section, it shall also include any check cashing business.
D. Major/Principal Arterial Intersections are the intersections of the principal arterials identified in Lakewood Municipal Code 12A.09.022 .
E. Begging means asking for money or goods as a charity, whether by words, bodily gestures, signs or other means.
F. To intimidate means to coerce or frighten into submission or obedience or to engage in conduct which would make a reasonable person fearful or feel compelled.
G. Public place means: (a) any public road, alley, lane, parking area, sidewalk, or other publicly-owned building, facility or structure; (b) any public playground, school ground, recreation ground, park, parkway, park drive, park path or rights-of-way open to the use of the public; or (c) any privately-owned property adapted to and fitted for vehicular or pedestrian travel that is in common use by the public with the consent, expressed or implied, of the owner or owners;
H. "Public Transportation Facility" means a facility or designated location that is owned, operated, or maintained by a city, county, county transportation authority, public transportation benefit area, regional transit authority, or metropolitan municipal corporation within the state for the purpose of facilitating bus and other public transportation.
I. Exploit means using in an unethical, selfish or abusive manner or in any other manner that seeks an unfair advantage; and
J. On and Off Ramps refers to the areas commonly used to enter and exit public highways from any City roadway or overpass.
K. "Public Transportation Vehicle" means any vehicle that is owned by a City, County, County Transportation Authority, Public Transportation Benefit Area, Regional Transit Authority, or Metropolitan Municipal Corporation within the State for the purpose of facilitating bus and other public transportation.

(Ord. 532 § 1 (part), 2011; Ord. 526 § 2 (part), 2010.)

09A.4.020A - Restrictive Areas

Begging shall be deemed a violation of this section of the municipal code under the following conditions: (1) at on and off ramps leading to and from state intersections from any City roadway or overpass; (2) at intersections of major/principal arterials (or islands on the principal arterials) in the City; (3) within twenty five (25) feet of an ATM machine, or financial institution; (4) within fifteen (15) feet of any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any public parking lot or structure or walkway dedicated to such parking lot or structure; (5) before sunrise or after sunset at any public transportation facility

or on any public transportation vehicle or (6) while a person is under the influence of alcohol or controlled substances. (Ord. 532 § 1 (part), 2011.)

09A.4.030 - Violation

Violation of this section shall be a misdemeanor, punishable by a fine up to $1000 or by a jail sentence of up to 90 days, or by both such fine and jail time. (Ord. 526 § 2 (part), 2010.)

Appendix

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Greetings:

Please find enclosed for filing the Respondent's Supplemental Brief in the above-captioned matter.

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6000 Main Street SW | Lakewood, WA 98499
Ph: 253.983.7838 | Fax: 253.589.3774