



Rehan Hasan, Board Chair • Mark Silverstein, Legal Director

November 6, 2009

Debra Eiland, Esq.  
Prosecutor's Office  
City of Manitou Springs  
606 Manitou Avenue  
Manitou Springs, CO 80829  
By email to [edebra@qwest.net](mailto:edebra@qwest.net)

Dear Ms. Eiland:

The American Civil Liberties Union Foundation of Colorado has received a request for legal assistance from Nathan Butler, who is charged with a violation of a Manitou Springs ordinance that purports to prohibit “panhandling.”

I write to ask that you immediately dismiss the pending charge against Mr. Butler. I also ask that you drop pending charges against *everyone* who is currently facing a charge for allegedly violating this unconstitutional ordinance.

The ordinance Mr. Butler is charged with violating reads as follows:

5.16.010 Panhandling—Defined—Prohibited.

Panhandling is defined in this chapter as the solicitation of monies or other things of value on private or public property where nothing of value is rendered in return. No person shall engage in panhandling within the city limits.

Panhandling is prohibited on public or private property and is declared to be punishable as a misdemeanor.

Mr. Butler was not panhandling; he was playing his guitar in a public park, an activity that constitutes expression protected by the First Amendment. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (“Music, as a form of expression and communication, is protected under the First Amendment”).

Even if Mr. Butler *had* been engaging in activity that the ordinance defined as “panhandling” (and he was not), the charges must nevertheless be dropped.

The activities prohibited by the Manitou Springs ordinance are expression that is protected by the First Amendment and its counterpart in the Colorado Constitution, Article II, Section 10.

Numerous cases have held that charitable solicitation of funds is protected expression. *See, e.g., Riley v. National Fed'n of the Blind*, 487 U.S. 781, 782 (1988); *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 959-68 (1984); *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980); *United States v. Kokinda*, 497 U.S. 720, 725 (1990) ("[s]olicitation is a recognized form of speech protected by the First Amendment").

The constitutional protection of solicitation applies not just to organized charities, but also to humblest solitary beggar asking for spare change to get through the day:

Begging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation. Even without particularized speech, however, the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance. We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed. The former are communicating the needs of others while the latter are communicating their personal needs. Both solicit the charity of others. The distinction is not a significant one for First Amendment purposes.

*Loper v. New York City Police Department*, 999 F.2d 699, 700 (2d Cir. 1993). *See also Berkeley Community Health Project v. City of Berkeley*, 902 F. Supp. 1084, 1089 (N.D. Cal. 1995) (recognizing that solicitation of donations is form of speech and enjoining anti-panhandling ordinance); *C.C.B. v. State*, 458 So.2d 47, 48 (Fla. App. 1984) (upholding "first amendment right of individuals to beg or solicit alms for themselves").

The Manitou Springs ordinance imposes a blanket ban on any and every form of constitutionally-protected charitable solicitation anywhere in the city, whether on public or private property. The ordinance clearly violates both the Colorado and United States Constitutions.

I understand from reading press accounts that the Manitou Springs City Attorney, Jefferson Parker, shares the ACLU's view that the "panhandling" ordinance cannot constitutionally be enforced. In May, 2009, he recommended that the City Council repeal the ordinance. Although the City Council declined to do so at that time, I do not believe that your employers would want you to continue prosecuting Mr. Nathan or any of the others who are currently facing criminal charges under this unconstitutional ordinance.

Mr. Nathan lives in Texas. He has a court appearance in Manitou Springs on November 17. He will experience considerable cost and inconvenience if he has to travel to Colorado to defend himself.

Please respond to this request by close of business Monday November 9. If I do not hear from you by then, I will assume that you intend to continue prosecuting Mr. Nathan and others who are charged with violating this unconstitutional ordinance. You can call me at 303-777-5482 ext 114.

Sincerely,



Mark Silverstein  
Legal Director, ACLU of Colorado

Cc: Jefferson Parker, Manitou Springs City Attorney, [jhparker@hphclaw.com](mailto:jhparker@hphclaw.com)  
Eric Drummond, Mayor, Manitou Springs, [edrummond@comsgov.com](mailto:edrummond@comsgov.com)  
Donna M. Ford, Council Member, [dford@comsgov.com](mailto:dford@comsgov.com)  
Mark A. Snyder, Council Member, [msnyder@comsgov.com](mailto:msnyder@comsgov.com)  
Ed W. Klingman, Council Member, [eklingman@comsgov.com](mailto:eklingman@comsgov.com)  
Tony Jones, Council Member, [ajones@comsgov.com](mailto:ajones@comsgov.com)  
Aimee Cox, Council Member, [acox@comsgov.com](mailto:acox@comsgov.com)  
Matt Carpenter, Council Member Elect, [mcarpenter@comsgov.com](mailto:mcarpenter@comsgov.com)  
Michael C. Gerbig, Jr., Council Member Elect, [mgerbig@comsgov.com](mailto:mgerbig@comsgov.com)  
Ingrid Richter Council Member Elect [irichter@comsgov.com](mailto:irichter@comsgov.com)