

To: Senior Partner
From: Law Clerk
Re: Potential Client, William Thompson
August 5, 2013

Issues

Issue 1: Whether an action qualifies as symbolic speech within the meaning of the First Amendment when a dirty, disheveled homeless person, with a history of panhandling, stands at the curb at a street intersection to solicit from motorists, conveys no verbal message, and holds a blank cardboard sign with no written message.

Issue 2: Whether a city ordinance violates the right to free speech under the First Amendment when it purports to improve public safety by prohibiting exchanges between pedestrians and drivers at intersections, but allows such exchanges for newspaper sales at intersections every day and allows all such exchanges on Sundays during daylight hours, unless a pedestrian initiates contact by gestures.

Short Answers

Yes, the action qualifies as symbolic speech within the meaning of the First Amendment because the actor intended to communicate and a reasonable audience would understand the message. Despite the lack of writing on the sign, the action of holding up the piece of cardboard symbolically expressed a message. Thus, the action qualifies as speech and so is worthy of constitutional protection.

Yes, the city ordinance restricting exchanges between pedestrians and drivers at intersections is unconstitutional because the exception for newspaper sales unfairly favors

kate bohl 8/18/14 9:44 AM

Comment: An issue statement consists of a single sentence. That sentence includes 1. the core legal question (here "whether an action qualifies as symbolic speech"), 2. the statute or other provision under which the question is to be answered (here "within the meaning of the First Amendment") and 3. a few of the key facts relevant to the answer, often set off from the first two parts by the word "when."

kate bohl 8/18/14 9:54 AM

Comment: Issue statements should be answerable with "yes" or "no."

kate bohl 8/18/14 9:56 AM

Comment: Short answers should be 2-3 sentences.

kate bohl 8/19/14 11:18 AM

Comment: Short answers correspond to issue statements, and must be presented in the same order. Numbering is optional, and is often governed by the conventions in an individual office (or classroom.) Always ask for a sample or template.

that particular activity at the expense of all others and conflicts with the stated public safety rationale. The ordinance also fails to define terms it uses such as “daylight hours” or “prohibited gestures,” and does not allow reasonable alternative means of expression. Thus, the exception for newspaper sales, the ambiguity within the ordinance’s terms, and the fact that it fails to provide alternative outlets for the prohibited speech makes the ordinance **unconstitutional**.

Facts

In late 2011, the City of Tampa, Florida, passed an ordinance banning pedestrians from seeking or effecting solicitation or exchanges from motorists at intersections. Tampa, Fla., Code § 25-173 (2011). A related ordinance, concurrently passed, allowed newspaper sales at intersections, despite the new restriction on other exchanges. Tampa, Fla., Code § 6-265 (2011). The ordinance prohibiting solicitation purported to “protect the health, safety and general welfare of the citizens” by banning potentially hazardous exchanges between pedestrians and motorists. Tampa, Fla., Code § 25-173(b) (2011). Mr. **Thompson**, a homeless man appearing dirty, unshaven, and with only one shoe, stood at an intersection and solicited from motorists over the course of a year. This period of time started before the ordinance was passed. Interview with William Thompson, Tampa, Fla. (Feb. 21, 2012). On one occasion, the police issued Mr. Thompson a warning for violating the new ordinance. Memorandum from Kate Bohl to author (Feb. 21, 2012) (on file with **author**). Mr. Thompson learned of the ordinance permitted the selling newspapers and occasionally did so, when papers were **available**. When he was unable to obtain newspapers, Mr. Thompson stood at the intersection holding a blank piece of cardboard.

kate bohl 8/18/14 10:04 AM

Comment: Short answers are typically easier than other parts of the memo and I hope that they will be easy for you. Think of yourself running for the bus stop, when a friend asks you your opinion of the case you told him or her about. What would you say? You wouldn’t give an elaborate, fully fleshed out answer, and you wouldn’t include any citation. You would probably include the main legal points, summarized succinctly. That is the essence of the short answer.

kate bohl 8/18/14 10:07 AM

Comment: Pick one means of referring to a party and stick with it. If you chose to call William Thompson “Mr. Thompson,” don’t suddenly refer to him as “William.”

kate bohl 8/18/14 10:11 AM

Comment: The Bluebook index has an entry for “Interviews” that leads to Rule 17.2.5. The parenthetical “on file with the author” is consistent with the Bluebook’s goal of making it clear how to obtain information. You can also see it illustrated in Rule 17.2.4

kate bohl 8/18/14 10:16 AM

Comment: Strive for the clearest, simplest means of making a point or describing a situation. Here the author could have written “pending the availability of the papers,” or some such elaborate phrase. That particular formulation would have required more words unnecessarily, making it harder for the reader to get the point.

On one such occasion, on December 11, 2011, the police arrested him. Thompson Interview, 3. When he was released he sought advice from this firm.

Analysis

Standing while holding a blank piece of cardboard qualifies as symbolic speech because the action intentionally expressed an understandable message, which the ordinance unconstitutionally restricted due to its unfair application, failure to support a valid governmental interest, vagueness, and lack of alternative means of expression. To qualify as symbolic speech and gain First Amendment protection, the actor must intend to communicate, a reasonable person must understand the message, and the context must show the action had meaning. *Spence v. Washington*, 418 U.S. 405, 409 (1974). To lawfully restrict free speech, an ordinance must be content neutral, narrowly further a compelling governmental interest, allow an alternative means of expression for the restricted speech, and not contain overly vague language. *Chad v. City of Ft. Lauderdale*, 66 F. Supp. 2d 1242, 1244-46 (N.D. Fla. 1998). Whether the actor was seeking an exchange with a motorist is not an issue in this case. The action qualified as constitutionally protected speech because it was intentional and understandable; the ordinance restricting the speech was unconstitutional because it did not apply evenly to all groups of people, failed to narrowly support public safety, and was vaguely constructed.

The act of holding up a blank piece of cardboard at an intersection qualifies as symbolic speech because it was intentional and understandable.

kate bohl 8/18/14 8:34 AM

Comment: Always include the procedural posture, also called the "procedural facts." Often nothing may have happened beyond the initial interview, but it is still important to "bring the reader up to the present" by saying so.

kate bohl 8/18/14 10:21 AM

Comment: Start your analysis with a thesis paragraph. This should include your overall conclusion, the key rules you used to reach that conclusion and should also eliminate any non-issues that you do not plan to discuss. End the thesis with a restatement of your conclusion, reworded to incorporate the essence of the rules you have just provided.

kate bohl 8/18/14 10:17 AM

Comment: Start your analysis with a statement of your overall conclusion.

kate bohl 8/18/14 10:24 AM

Comment: After the overall conclusion, the next two sentences in this memo provide key rules. Note that the reader is not providing every rule, just two particularly important rules.

kate bohl 8/18/14 10:28 AM

Comment: See comment 9 above. This final sentence is a reconclusion. If we were to diagram this paragraph, we could say it consists of Conclusion, Rule, Rule, (non issue) and Conclusion or "CRRC." It would be fine to include a single sentence after your rule statement applying the rules to the facts, but don't include any more conclusion than that. If you do you will have nothing to say in the body of your analysis!

kate bohl 8/18/14 10:58 AM

Comment: A point heading is both organizational and substantive. It divides your brief into sections but it is much more than a bookmark. You would not, for example, simply write "symbolic speech" instead of a sentence like this.

The first element in the determination of whether an action qualifies as symbolic speech is met here because the actor made an informed decision, based on experience, with an objective desire to convey a message. An actor must intend to communicate in order for an action to qualify as speech. *Spence*, 418 U.S. at 409-10. An intentional communication need not include an overt message; the deliberate failure to make an express communication warrants as much protection as an observable communication. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 558 (1995). The Supreme Court defines varieties of protected speech broadly and a “succinctly articulable message” is not a requirement for expression. *Id.*, 569. Here, the action meets the intent requirements of the strict *Spence* standard because the cardboard sign symbolically conveyed a message of frustration and need, just as the flag in the *Spence* case symbolized a message. The action also meets the more broad and recent *Hurley* standard because the lack of a specific message on the cardboard sign was deliberate and equally symbolic. The fact that the cardboard presented no written message is irrelevant because the action made a social statement that did not depend on what was written or not written on the sign. Therefore, the action demonstrated intent under both the *Spence* and *Hurley* standards and deserves guardianship under the First Amendment.

kate bohl 8/18/14 10:51 AM

Comment: The point heading does not replace the topic sentence. Note that this topic sentence is related to – but more specific than – the point heading. This is because the topic sentence expresses the point of the paragraph while the point heading expresses the point of a group of paragraphs

kate bohl 8/18/14 11:10 AM

Comment: The writer needed to use parts of rules from two different cases to support the assertion in the topic sentence. When appropriate, rule synthesis like this is a really good strategy. It helps the writer to provide authority that is tailored to his or her point. It also demonstrates that the writer’s arguments dictate the flow of the memo and that the writer is not using the cases themselves to organize.

kate bohl 8/18/14 11:17 AM

Comment: This paragraph demonstrates good organization. It begins by stating the writer’s **conclusion** for the paragraph: the “C.” It then provides the **rule**: the “R.” The writer **applies** the rule to the facts of the clients case: “A.” Finally, the writer restates the **conclusion** in light of the rule provided and applied. It can be summarized as “**CRAC**”

The second element determining if an action qualifies as symbolic speech is met here because a reasonable person could understand the message because it shared many characteristics with panhandling. Courts assess the context of an activity and whether observers would understand the communication to determine whether an action qualifies as speech. *Spence*, 418 U.S. at 410-11. If a reasonable person can infer the content and meaning of an expression, it qualifies as symbolic speech. *Texas v. Johnson*, 491 U.S. 397,

404 (1989). Here, based on the visual image of the individual with the cardboard sign, reasonable automobile drivers would infer that the action amounted to typical panhandling and that the individual desired money or other handouts. Therefore, the second element of symbolic speech is met because a reasonable person would understand the communicative nature of the activity, which qualifies the action for protection under the First Amendment.

The nature of the activity qualifies it as free speech because panhandling can be seen as expressive and communicative behavior. Most courts view panhandling and begging in this way, characterizing it as an attempt to convey a message and thus as protected speech. *E.g., Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999). Although the Supreme Court commented that speech cannot be found in a “limitless variety” of actions, *United States v. O’Brien*, 391 U.S. 367, 376 (1968), panhandling involves a more specific message than the Supreme Court contemplated. Here, the action of holding up blank cardboard represented panhandling and so conveyed a request for money or other handouts. Therefore, the action is sufficiently expressive to qualify as protected speech.

kate bohl 8/18/14 11:39 AM

Comment: Sometimes arguably contrary authority can be dispensed with by a single sentence. Here, the writer thought it important to note this Supreme Court ruling on speech, but dismissing it did not require extensive or specific explanation.

Fairness and justice require symbolic acts to merit protection as free speech because symbolism is an important means of expression that deserves constitutional protection. Symbolism serves as a “primitive but effective way of communicating ideas.” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 632 (1943). Symbolic acts, such as wearing armbands, can convey powerful messages and the Supreme Court consequently regards them as protected speech. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 505 (1969). In the present case, the blank cardboard sign symbolizes a message of solicitation and need. Therefore, the sign helps

kate bohl 8/18/14 11:43 AM

Comment: His topic sentence introduces a policy paragraph. Policy arguments are arguments that demonstrate why the writer's conclusions are consistent with society's goals and with broader principles of justice. “Fairness and justice require” is thus a good way to begin a policy paragraph. Note that the writer makes his or her policy argument only after making all the legal arguments this section of the memo requires.

convey the message and supports the meaningful nature of the activity, which qualifies it as protected free speech.

The action deserves constitutional free speech protection because it meets the needed intent, understandability, and expressive requirements.

The ordinance at issue unlawfully restrict free speech because it is vague, includes arbitrary exceptions, and does not provide any reasonable alternative means of expression.

First, the City of Tampa ordinances that regulate exchanges at intersections are unlawful because they fail to meet content neutrality requirements and do not apply evenly to all groups. To be constitutional, a panhandling ordinance must apply uniformly to all people, regardless of agenda or purpose. *Chad*, 66 F. Supp. 2d at 1246. Since the ordinance in *Chad* banned the activities of all groups, including homeless people and charities, it applied evenly and could withstand constitutional scrutiny. *Id.* In contrast, the restrictions in the present case do not apply evenly to all groups of people. One ordinance prohibits persons from “distributing materials or goods or soliciting business or charitable contributions of any kind from the occupant of any motorized vehicle.” Tampa, Fla., Code S 25-173(e)(1) (2011). But another ordinance allowed newspaper street sales at intersections “throughout the city.” Tampa, Fla., Code S 6-265(a) (2011). The ordinances only restrict exchanges at intersections that do not involve newspapers, which is a content-based restriction. The exception for newspaper sales benefits that group at the expense of others by allowing the dissemination of messages stated in the newspaper, while

kate bohl 8/18/14 11:45 AM

Comment: End a section with a very brief conclusion summarizing the points addressed. If length or word count become issues, the writer could simply eliminate this final sentence.

kate bohl 8/18/14 11:49 AM

Comment: It is appropriate to use the present tense here because the effect of the ordinance continues into the present

suppressing any other message. Therefore, the ordinances restrict free speech based on the content of the message and cannot withstand constitutional scrutiny.

Second, the ordinance fails to satisfy the requirement that it narrowly serve a significant governmental interest because, although it asserts a public safety goal, a related ordinance, that covers newspaper sales, allows the same street corner solicitation that the panhandling ordinance at issue bans. To lawfully restrict free speech, an ordinance must further a valid governmental interest in a way that does not extend beyond the bare minimum needed to further the interest. *O'Brien*, 391 U.S. at 382. Promoting safety and supporting the free flow of traffic qualify as compelling governmental interests that allow restrictions on exchanges between pedestrians and motorists. *Sun-Sentinel Co. v. City of Hollywood*, 274 F. Supp. 2d 1323, 1331 (S.D. Fla. 2003). Here, the ordinance purports to “protect the health, safety and general welfare of the citizens” by banning dangerous exchanges between pedestrians and motorists that could lead to injury or collision. Tampa, Fla., Code S 25-173(b) (2011). However, an exchange between a newspaper salesman and a motorist is arguably even more dangerous than a similar interchange between a panhandler and a motorist. Instead of a one-way transaction from motorist to pedestrian, as in the case of giving money to a panhandler, a newspaper sale involves a two-way trade of money for newspaper. The bargain may also require the driver to inquire about pricing or force the pedestrian to make change, thus further increasing the danger of collisions or bodily harm. Therefore, although the restrictions could potentially be constitutional without the newspaper exception, the restrictions are unlawful as currently constructed because the allowance for newspaper sales shows public safety is a pretext.

kate bohl 8/18/14 12:01 PM

Comment: This is another example of rule synthesis: the writer uses portions of the rule from two different cases to support the conclusion stated in the topic sentence.

kate bohl 8/18/14 12:08 PM

Comment: Sometimes it can be appropriate to use a simple common sense example to help support a point. It would not be appropriate to use a common sense example as the *sole* support for a point.

kate bohl 8/18/14 12:05 PM

Comment: Although this is a long paragraph, it is perfectly permissible because it is properly constructed of the appropriate “C-R-A-C” parts and does not exceed a page in length. If this paragraph were any longer, the writer would need to divide it into two parts, using a transition word such as “furthermore” at the beginning of the second paragraph to signal the reader that the second paragraph was a continuation of the point made in the first.

Similarly, the ordinance does not truly serve a public safety goal because the exception allowing solicitations on Sundays permits the dangerous activity it purportedly seeks to eliminate. ~~As stated above,~~ governments may restrict street-side panhandling to promote public safety and the free flow of traffic because individuals seeking handouts from automobiles create a hazard. *State v. Barton*. 8 N.Y.3d 70, 78 (2006). Here, the government allows pedestrian-to-motorist solicitation to occur on Sundays because data indicates “crashes are up to seventy percent (70%) less frequent on Sundays than at comparable times on weekdays.” Tampa, Fla., Ordinance 2011-127 (Oct. 20, 2011). However, the decision that a thirty percent danger level represents a sufficient level of safety is arbitrary and shows that the restrictions, on their face, permit a significant quantum of danger. The ordinance must fail because this exception permits unsafe activities and shows that the ordinance is not completely consistent with the stated governmental interest of promoting public safety.

kate bohl 8/19/14 9:46 AM

Comment: Although it is certainly not wrong to include a phrase like this, it doesn't accomplish anything. If the point made earlier were sufficiently important here, the reader is entitled to assume that you would repeat it here. And, of course, if you are admonishing your reader to remember an earlier point on his or her own, you are likely to simply irritate your reader! Better to start the sentence with “Governments may restrict...”

If public safety is found to be pretextual, the ordinance has no other valid basis because other stated reasons, such as promoting public convenience, do not justify the restriction of free speech. In similar situations, courts have found that protecting the public from annoyance does not justify the restriction of panhandling. *C.C.B. v. State*, 458 So. 2d 47, 50 (Fla. Dist. Ct. App. 1984). Here, a portion of the ordinance states pedestrians on roadways cause concern for the “convenience of motorists.” Tampa, Fla., Ordinance 2011-127 (Oct. 20, 2011). First, promoting public convenience is an insufficient basis for restricting speech. Further, this provision does not even promote public convenience overall. Indeed, its only benefit is to drivers. This suggests that the law favors their states of mind and attitudes over the states of mind and attitudes of the panhandlers, and, indeed,

kate bohl 8/19/14 10:05 AM

Comment: This sentence illustrates a final “C” sentence that re-concludes by restating the point made in the “C” topic sentence, shaded in light of the authority presented and explained. Writers sometimes omit this final “C,” perhaps, unconsciously, considering it unnecessary. It is important, however, because without it you essentially say to the reader, “okay, I brought you this far, you can wrap it up on your own.”

over the states of mind of pedestrians. Promoting the convenience of one group over another cannot justify a restriction on free speech that is purportedly intended to promote “public convenience.’ Therefore, the ordinance fails on constitutional grounds because public convenience does not qualify as a valid reason to restrict speech.

The requirement that governmental restrictions on free speech allow alternative means of expression is not met here because alternatives are not reasonable. To restrict free speech, an ordinance must leave open substitute avenues of communication that are not too expensive or inconvenient. *State v. O’Daniels*, 911 So. 2d 247, 253 (Fla. Dist. Ct. App. 2005). In *Smith v. City of Fort Lauderdale*, restrictions on panhandling only impacted a narrow strip of beach and sidewalk, leaving other areas available. Because of the alternative thus provided, the ordinance was valid. 177 F.3d at 956. Here, the ordinance listed alternatives available to solicitors, such as handbilling, door-to-door sales, direct mail, and telephone campaigns. Tampa, Fla., Ordinance 2011-127 (Oct. 20, 2011).

However, homeless people most likely do not have the resources for these alternatives. The sweeping geographic impact may leave homeless people without any substitute forum because people in Tampa heavily rely on automobiles and there may be no other forum that offers a similar opportunity to spread a message inexpensively to such a wide group of people. Therefore, the ordinance unconstitutionally infringes on free speech because the offered alternative means of expression are not practical substitutes and the restrictions surpass the *Smith* standard by impacting very wide geographic areas.

The ordinance is also unlawful because it does not define the terms it uses with sufficient specificity, beginning with the threshold definition of “most dangerous intersections” in its absolute ban on street corner solicitations. To withstand a vagueness

kate bohl 8/19/14 10:23 AM
Comment: This sentence, and the two that precede it, taken together, illustrate rule synthesis: using parts of a rule from each of two cases to construct a rule. The reference to the *Smith* case demonstrates “rule explanation.” It is not technically part of the rule used by the *Smith* court. It is really the court’s explanation of the rule.

challenge, a restriction must provide a person of “common understanding” with enough detail to determine the meaning of the restrictions. *Ledford v. State*, 652 So. 2d 1254, 1256-57 (Fla. Dist. Ct. App. 1995). In the present case, the ordinances prohibit solicitation at the ten intersections “that have the highest number of accidents, as such intersections are provided by the Tampa Police Department reports.” Tampa, Fla., Code S 25-173(f)(10) (2011). The Tampa Police Department produces two public resources, but they offer conflicting data. One website shows intersections with high numbers of crashes over the past ninety days. *High Crash Locations*, http://www.tampagov.net/appl_police_traffic_intersections/?cscRedirectID=234 (last updated Apr. 1, 2012). This data obviously changes every ninety days. Another site shows the top ten crash intersections based on five years of data. *City of Tampa Top Crash Intersections 2006-2010*, http://www.tampagov.net/dept_Police/files/Top_10_Crash_Sites_2006-2010.pdf (last visited Mar. 31, 2012). Due to this conflicting information, the ordinance fails to provide adequate notice to citizens. Therefore, the restrictions are void for vagueness and unlawful due to these discrepancies.

kate bohl 8/19/14 10:49 AM

Comment: Generally, I'm not a fan of using words like “clearly” or “obviously,” because, if the writer is using words like that, it is usually because his or her writing is *not* clear and the point is *not* obvious. Here the word “obviously” works, however, because it is being used to point out the implications of a cite which cannot otherwise be explained.

Furthermore, the ordinances are overly vague because they restrict gestures but fail to clearly define the term in a way that would convey the meaning to a reasonable person. A person of “ordinary intelligence” must be able to comprehend any prohibition and the language must provide enough guidance to allow fair enforcement. *Chad*, 66 F. Supp. 2d at 1245. In the present case, the language of the ordinance does not reasonably define the forbidden conduct. The ordinance allows solicitation on Sundays and newspaper sales on any day, provided the seller does not initiate contact by “gesture.” Tampa, Fla., Code S 25-

kate bohl 8/19/14 10:30 AM

Comment: This paragraph continues the “vagueness discussion” began in the preceding paragraph. The writer conveys this to the reader by beginning this paragraph with the word “Furthermore.” Another transition word, such as “similarly,” would work as well.

173(f)(1) (2011); Tampa, Fla., Code S 6-265(b)(1) (2011). This gesture prohibition could cause unintended consequences if, for example, a person was hailing a cab or waving at a friend. Therefore, the ambiguity of the language makes the ordinance unlawful because neither law enforcement nor citizens have a full understanding of the meaning of the terms.

Additionally, the ordinance is void for vagueness because equivocal language regarding the definition of daylight hours allows arbitrary enforcement. A restriction on free speech must define terms in sufficiently concrete language to guide law enforcement personnel and prevent discretionary enforcement. *Chad*, 66 F. Supp. 2d at 1244-45. The ordinance states pedestrians can engage in street-side solicitations on Sundays “during daylight hours,” but does not define the term. Tampa, Fla., Code S 25-173(f) (2011). If a term is not defined in an ordinance, the city code relies on definitions in Webster’s New Collegiate Dictionary. Tampa, Fla., Code S 1-3(a) (2011). The dictionary defines daylight as “daytime,” which in turn is defined as “the time between dawn and dark.” Merriam-Webster, Inc., Merriam-Webster’s Collegiate Dictionary 294 (11th ed. 2008). Dawn is the time when “daylight first appears.” *Id.* Dusk is the “darker stage of twilight.” *Id.*, 358. These definitions are circular and unhelpful. A person soliciting around dawn or dusk could be a victim of arbitrary enforcement by a law enforcement officer because the precise determination of the beginning or ending of these periods varies from person to person. Therefore, the vagueness of the terms of the ordinance, from its reference to “dangerous intersections” to its Sunday daylight hours exemption make the ordinance unlawful because precise enforcement is impossible.

The ordinance deserves this level of constitutional scrutiny because it restricts activity in a public forum. Sidewalks qualify as public forums. *E.g., Smith*, 177 F.3d at 956.

kate bohl 8/19/14 10:33 AM

Comment: This paragraph illustrates further continuation of the “vagueness discussion,” and an example of another transition word: “Additionally.”

kate bohl 8/19/14 10:38 AM

Comment: This detailed parsing of a deceptively simple dictionary definition not only uncovers hidden ambiguities, but emphasizes them.

kate bohl 8/19/14 11:01 AM

Comment: The three paragraphs above illustrate “extended CRAC” analysis which requires three related paragraphs to complete. One way to check that the analysis here has been correctly structured is to compare the very first “C” topic sentence (“The ordinance is also unlawful because it does not define the terms it uses with sufficient specificity, beginning with the threshold definition of “most dangerous intersections” in its absolute ban on street corner solicitations.”) With the final “C” topic sentence here. Since the first gives the point and the last restates that point, shaded to reflect the authority presented and discussed, the writer can be sure that the analysis found in this “extended CRAC” is properly structured and accessible to the busy reader.

Any restrictions of speech in public forums require intense constitutional inspection in order to guarantee the protection of constitutional rights. *Ledford*, 652 So. 2d at 1255. Here, the action occurred on a sidewalk at an intersection, within one to two feet from the curb. Therefore, the action occurred in a public forum and warrants scrutiny.

Justice requires the restrictions on free speech be found unconstitutional because they muzzle some voices while bestowing unfair favor on others, by allowing newspaper sales. A court found a Jacksonville ordinance “unconstitutionally overbroad by its abridgment in a more intrusive manner than necessary, of the First Amendment right of individuals to beg or solicit alms for themselves” because it restricted panhandling, but unfairly allowed solicitation by permitted organizations. *C.C.B.*, 458 So. 2d at 48. In the present case, the ordinances violate the constitution in the same manner because they limit the speech of some individuals, while allowing the speech of those engaged in newspaper sales. Such governmental favor sets a dangerous precedent and could lead to abuse and the erosion of the right to free speech. The city would have to remove the newspaper exemption or lift the panhandling ban entirely in order to make the situation more fair. Therefore, as currently constructed, the ordinances fail to support sound public policy because they unfairly give voice to newspapers while quashing that of other individuals.

Additionally, the ordinances do not support fair public policy because they specifically allow solicitations on Sundays, which could benefit some people at the expense of others. In *Chad v. City of Ft. Lauderdale*, the court decided panhandling bans must apply evenly to all groups. 66 F. Supp. 2d at 1246. When government regulations impact activities on Sundays, “undesirable political division according to religious affiliation may be fostered.” *State Sunday Laws and the Religious Guarantees of the Federal Constitution*, 73

kate bohl 8/19/14 10:52 AM

Comment: The writer begins discussing policy here, and so signals the reader by using the phrase “justice requires.”

kate bohl 8/19/14 11:03 AM

Comment: Note that the Sunday exception was discussed earlier, in the legal argument concerning “vagueness. Almost any point has a legal dimension and a policy dimension and can be fruitfully discussed in both parts of a memo.

Harv. L. Rev. 729, 735 (1960). Here, the Sunday exception could potentially allow some people to benefit at the expense of others and could adversely impact someone wishing to observe Sunday as a Sabbath. Therefore, the ordinance does not support sound public policy because the Sunday exception opens the door to unfairness by impacting some people more than others.

The ordinances are unconstitutional due to uneven application on different groups, conflicts with the public safety rationale, ambiguous language, and lack of alternative means of communication.

kate bohl 8/19/14 11:05 AM

Comment: This single sentence “wrap up” to the section is helpful to the reader, but if space limitations are a problem the writer could simply eliminate it.

Conclusion

Appealing the trial court’s ruling against Mr. Thompson has a reasonable possibility of success because the ordinance unconstitutionally restricted his intentional, understandable, symbolic speech; speech that conveyed a message of solicitation and need.

kate bohl 8/19/14 11:12 AM

Comment: The conclusion to an office memo gives your recommendation. It is the one part of the brief where you can use the first person. So, although this writer did not chose to do so, he or she could have written “I recommend that...”

The ordinance fails to meet the constitutional requirements needed to restrict speech. Given the newspaper exception in a related ordinance, the prohibitions imposed did not apply evenly to the messages of all groups. The panhandling ordinance also fails to narrowly support a governmental interest in sufficiently precise language and did not allow alternative means of communication. Therefore, Mr. Thompson’s case should be appealed to the Second District Court of Appeals.

kate bohl 8/19/14 11:14 AM

Comment: Note that references to the ordinances are in the present tense. This is appropriate because the ordinances are presently in effect.