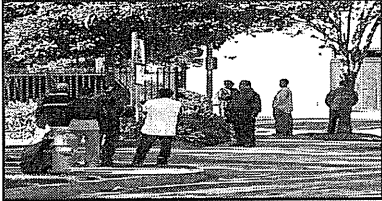


Balancing Community & Day Laborer Interests



Changing Landscape of Day Laborer Regulations

- In order to address problems created by large congregations of persons gathering on public property to solicit employment, many cities and towns in the 1990s enacted legislation to prohibit solicitation.
- Some included the opening of hiring centers:
 - Legislation adopted in the 1980s primarily addressed prohibitions against soliciting vehicles in the street (“tagging”).
 - As was predictable, legal actions followed challenging the constitutionality of these recent “broader” anti-solicitation ordinances.

2

CHIRLA v. Burke

(Los Angeles County)



Moving back to problem via court decision

1999 WL 33288183 (CD Cal. 1999) US District Court
2000 WL 1481467 (CD Cal. 2000) US District Court

3

CHIRLA I

- Colacurcio Multi-Factor Test (*Colacurcio v. City of Kent* (9th Cir. 1998) 163 F.3d 545) – Augers in favor of “expressive conduct” subject to protection.
- Content neutral
- County ordinance – valid regulation of secondary effects



4

CHIRLA II

- Judge King finds County ordinance unconstitutional.
- County ordinance imposes limits on speech broader than other anti-solicitation regulations – reaches sidewalks and people with signs. Includes speech which has not been shown to cause feared harms to traffic flow and safety. Ordinance also reaches individual solicitors which by themselves do not affect quality of life.



5

- Door-to-door canvassing, telephone solicitation, solicitation made by pedestrians of other pedestrians, private property – inadequate as alternative avenues of communication.
- Relegates *Xiloj-Itzep* case to the landfill of irrelevance.

6

GLENDALE, CA ADOPTS AMENDED ORDINANCE 2004

- G.M.C. 9.17.030:
 - Section A: "No person shall stand in or on any street, roadway, curb, parkway, alley, highway and driveway, and solicit or attempt to solicit employment, business or contributions of money or other property from the occupant of any vehicle while that vehicle is located on any public street, roadway, alley, highway or driveway and not lawfully parked within, or immediately adjacent to, any industrial or commercial zone within the city."
 - Section B: "No person, while the occupant of any vehicle located on any public street, roadway, alley, highway or driveway and not lawfully parked, shall solicit or attempt to solicit employment, business or contributions of money or other property from a person who is on or within any street, roadway, curb, parkway, alley or driveway within, or immediately adjacent to, any industrial or commercial zone within the city."

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- G.M.C. 9.17.020 defines "street" as:
 - "A way or place of whatever nature, publicly maintained and open to the use of the public for purpose of vehicular travel. For the purposes of this chapter, "street" includes highway and any parking area or lot owned or operated by city or the Glendale Redevelopment Agency."
- *Comite de Jornaleros de Glendale* filed in United States District Court – May 2004

8

THE COMITE ISSUES

- Content based
- Vague
- Not narrowly tailored to serve significant governmental interests
- Fails to provide ample alternative avenues of communication



~ ~ ~ ~ ~

- U.S.D.C. issues preliminary injunction finding vagueness, no narrow tailoring and failure to have ample alternative avenues of communication.

9

CONTENT BASED

- District Court followed *Acorn v. Phoenix* and found:
 - Even though speech was regulated in areas which are traditional public fora, the regulation focuses on the inherently disruptive nature of solicitation, not the content (the ordinance targets secondary effects of solicitation).
 - Secondary effects doctrine not limited to analysis of adult business.

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SIGNIFICANT INTERESTS

- Legislative record included:
 - Increased calls for police service
 - Fights
 - Intoxication
 - Vehicle swarming
 - Aggressive solicitation
 - Inhibiting traffic flow/pedestrians

All supported District Court determination that City has significant interests which are addressed by the ordinance.

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NARROW TAILORING

- Court found §9.17.030 not to be a “reasonable fit” between interests of City and the ordinance.
 - Allowing jugglers, etc., to stand on curb while restricting solicitation is not “narrow” enough.
 - Definition of street is vague compared to dictionary (streets may include sidewalks).

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ALTERNATIVE AVENUES OF COMMUNICATION

- Court's main objections:
 - Day laborer center not reasonable:
 - Not mentioned in ordinance.
 - In the financially "unsteady hands of the City".
 - "Street" vague due to conflict between City's ordinance and dictionary; sidewalk exception should be clearly expressed in ordinance.
- "Curb" vague due to failure to define.
- Permanent injunction appealed to 9th Circuit. Case settled after briefing.

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RECENT CASES

- *Comite de Jornaleros v. Redondo Beach*
 - Injunction Granted – on appeal in 9th Circuit
 - Issues:
 - Standing
 - Content neutrality
- *ACORN Redux*
 - Briefed and argued May 2008

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- *ACLU v. Las Vegas (ACLU III)*
 - Solicitation is speech and an ordinance which requires enforcement by reviewing the documents to determine what falls within proscription is subject to strict scrutiny.

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- *Berger v. Seattle* (9th Cir. 2008)
 - Solicitation regs – content neutral narrowly tailored
 - Alternative avenues of communication available.
 - En Banc Review granted July 14, 2008

- *Lopez v. Town of Cave Creek* (USDC June 2008)
 - Anti-solicitation ordinance is content based.
 - Even if not, fails narrow tailoring.
 - Should enforce existing laws

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- *Times News v. Burlington* (USDC June 2008)
 - Solicitation is content neutral.
 - Passes narrow tailoring test.
 - Expert opinion and common sense carry the day.
 - Newspaper exception not needed to meet narrowing test.

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- OTHER ALTERNATIVES**
- Rejecting Keynesian economics as interpreted by Arthur Laffer; Vista, CA addresses the “demand side”.
 - Regulation of “employers”. Not fully tested on the merits, but given legislative purpose, seems to meet first amendment requirements.
 - In *Calderon, et al. v. City of Vista, et al.*, TRO denied with court finding ordinance coupled with administrative policy contains standards to adequately guide official’s decision.
 - Advances City’s purpose of protecting day laborers from dangers and abuse by requiring a bilingual registration certificate and “term” sheet.
 - Court severed language which noted the ordinance is not intended to impose a mandatory duty on the City or its employees.
 - Settled – reg. forms available “on the spot”.

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■ Tennessee: state law permits local agencies to revoke a business license if State Labor Commissioner finds employer knowingly hired an illegal immigrant – HB 729

■ Voluntary “Departure” or “Deportation”: federal pilot program to allow non-criminal illegal immigrants to turn themselves into one of five locations in the country for deportation. Program period--August 1 through August 22, 2008 – program fails.

■ Be fortunate enough to advise a city or town in Ohio, New York, Indiana.

■ *State v. Dean* (170 Ohio App.3d 292 (2007))

- Improper solicitation ordinance in Cincinnati upheld as content neutral, narrowly tailored measure which allows alternative avenues of communication.

■ *People v. Barton* (8 N.Y.3d 70 (2006))

- Aggressive panhandling (including solicitation) ordinance upheld. Not overbroad, is content neutral, etc.

■ Ordinances serve purposes unrelated to the content of expression – distraction to motorists (N.Y.) or freedom of citizens to move about without interference or intimidation (Ohio).

■ Content neutrality not negated because a sign must be read by police to determine whether code is violated. But compare *ACLU v. Las Vegas* (need to read sign is indicia of content based measure).

- Narrow tailoring is satisfied so long as regulation promotes substantial government interest and means chosen are not substantially broader than necessary to achieve that intent. Does not have to be the least restrictive or intrusive means (citing *Ward*).
- Allowing non-verbal solicitation and solicitation in other geographic areas = alternative channels of communication.
- Enforce existing “nuisance” laws – littering, public urination , trespass, etc.

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CHALLENGE TO APPROVAL OF DAY LABORER CENTERS

- *Karunakaram, etal. v. Town of Herndon, County of Fairfax Virginia*
 - Allegations – Approval of C.U.P. by town and use of County funds to operate center violate state and federal law.
 - State: prohibition on providing public assistance to illegal aliens or employing illegal aliens.
 - Federal: prohibition on employment of illegal aliens; aiding and abetting
 - Center closed September 2007 – case dismissed.

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- *Garcia v. Laguna Beach* – California Superior Court
 - City prevails against unlawful expenditure claim brought by Justice Watch – appealed.
 - Briefed on appeal – argument set for September 17, 2008.
- Cease and desist letters – Thousand Oaks.

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- AFL-CIO “agreement” to work with NDLOM to improve wages and working conditions of day laborers.
- Minuteman and other anti-immigration groups.
 - The public agency “squeeze”



**OBSERVATIONS RE POST 1990
Solicitation Ordinances**

“The dog don’t bark according to no rule.”

Content Based
2

Content Neutral
5

<u>Ordinance Upheld</u>	
<u>Yes</u>	<u>No</u>
3	4
