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Constitutional Law II  
Fall 1991

I.

In an effort to stimulate the economy of downtown Daytown, a newly renovated commercial arcade called Trail's End Traders Town (Trails End) recently opened. Trail's End is owned by Daytown businessperson, Tanja Helmsley, under her corporate name, Trail's End Enterprises, Inc. (TEE). The efforts of previous landlords to succeed with shops and restaurants being operated in the large, seven story building, now Trail's End, have not met with economic success. Trail's End is comprised of numerous specialty shops, food shops, including a pharmacy, fast food enterprises, restaurants and other vendors, a bandstand surrounded by an indoor park, small movie theaters, optometrists, a dentist, a lawyer, a small branch post office, and a few other small businesses. The facility is patrolled by a small private security force. It is otherwise protected by the City of Daytown's police, fire and other community safety, health and welfare mechanisms. The City of Daytown also provides downtown parking in an indoor/outdoor six-level parking facility adjacent to Trail's End for which discounted parking is available for Trail's End shoppers. Two sets of doors on each level of the parking facility open into Trail's End, and in high shopping periods, the doors remain open while streams of shoppers file through. The parking facility is otherwise physically and operationally separate from Trail's End.

During the first several months of operation, TEE received numerous complaints of panhandling, including some allegations of physical intimidation by panhandlers in the bandstand/park area and a short distance inside the main parking area door entries of Trail's End, all on Trail's End property.

Shortly thereafter, Tanja Helmsley had TEE's corporate counsel drafted the following regulation:

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Trail's End Trader's Town Panhandling Regulation

WILL BE STRICTLY ENFORCED

WHEREAS, there have been reported problems of obstruction of pedestrian and customer traffic; and

WHEREAS, our customers require the safe and unobstructed passage and

WHEREAS, the business of Trail's End may suffer serious damage as a result of panhandling and obstructions of passage:

BE IT ORDAINED BY Trail's End Enterprises

Section 1. That the Corporate Charter of Trail's End Enterprises be supplemented by the following:

(A) For the purposes of this section the following words and phrases have the following meanings ascribed to them respectively:

1. "Beg" means to ask for money or goods as a charity, whether by words, bodily gestures, signs, or other means.

2. "Obstruct pedestrian or customer traffic" means to walk, stand, sit, lie or place an object on Trail's End premises in such a manner as to block passage by another person, or to require another person to take evasive action to avoid physical contact.

(B) No person shall obstruct pedestrian or customer traffic on the premises.

(C) No person shall beg on the premises.

Whoever violates this regulation shall be removed from the premises and turned over to Daytown police to determine whether said person is violating any Daytown ordinances.

Tanja Helmsley President, Trail's End Enterprises

Charlie Feroci Secretary and Corporate Counsel

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On November 29, 1991, in the early afternoon of the Friday after Thanksgiving, historically the highest volume Christmas shopping day, Trail's End security officers conducted a "panhandler sweep" and ejected twelve panhandlers from the premises. Several of these who seemed particularly unkempt or assertive in their begging were turned over to Daytown police officers on the premises for possible charges under a similar Daytown Ordinance.

The Daytown ordinance is similar to the Trail's End regulation, although it is applicable only for obstruction of pedestrians or vehicular traffic in a public place, and only to "aggressive begging" (begging with the intent to intimidate another person into giving money or goods). None of the panhandlers ejected during the sweep were charged by the Daytown authorities on this day.

Alfonso Shaggi, one of the panhandlers ejected as a result of the sweep, is a homeless person who uses panhandling as a way of survival and as a means of demonstrating his plight to the public. It is especially a matter of survival for Alfonso when he misses meals at one of the area churches or missions or cannot get into one of Daytown's homeless shelters. Alfonso has, in the past, twice been charged, convicted and fined

under the Daytown ordinance, after being turned over to Daytown police by Trail's End security people, although he was not charged in this instance.

You are working as a new associate for the law firm of Ambue, Lance, Chaisson and Hope. Alfonso has come to the firm because of its high profile association with the American Civil Liberties Union. Alfonso states that he believes that his constitutional right to panhandle is being deprived by the actions of Trail's End, and that he would like to file a lawsuit against Trail's End to stop them from keeping him and his fellow and sister panhandlers from begging at Trail's End. One of the senior partners with the firm believes that Alfonso's concerns pose an important U.S. constitutional liberty concern and asks you to represent Alfonso, which you agree to.

After reviewing the background as stated, write a brief memorandum (1) addressing any threshold constitutional issue or issues that may be raised in Alfonso's case; and (2) addressing the key constitutional claim or claims that are most likely to be asserted on behalf of Alfonso.

With respect to each issue or claim addressed in your memo, please set forth (a) the claim(s) or issue(s), including the constitutional provision or concept implicated; (b) the analytical framework or frameworks that a court would likely employ in addressing the issue(s) or claim(s); (c) an analysis of the facts and law in terms of the appropriate analytical framework(s) and (d) your views as to the likelihood of success of Alfonso's claim(s) based upon a balanced appraisal of the issues and claims addressed.

II.

A.

The College of Law of the University of Nighton, a Catholic university, is now engaged in a campaign to build a new \$20 million, 120,000 square foot, College of Law to be available by the Fall of 1993. The College of Law has raised 45% of the funds to this point, expects to fund-raise another 5% of the funds, and will obtain the remaining funds for the building through the use of a bond issue under the authority of Ohio State law. After the issuance and sale of bonds six months before the building is completed, the College and University will begin to repay the bond debt and will continue to do so over a period of thirty years,

The state law provides private and public universities and colleges with the authority to issue tax-exempt bonds for financing educational buildings and facilities at generally higher interest rates for bond purchasers than ordinarily available in the commercial market, and permits repayment at interest rates that are several percentage points less than commercially available rates. Thus, the state's colleges or universities ordinarily have the advantage of earning more interest on funds held for debt service than the interest they are required to pay to retire the debt.

In designing the new College of Law, the law school has designated 500 square feet of space as a "non-

denominational chapel and prayer area" for the use of its students and faculty. It is estimated that about 50% of the students and 25% of the faculty are Roman Catholic. The general population of the area is about 25% Roman Catholic. A chaplain is annually assigned to the College of Law from the University's Campus Ministry program, and usually maintains office hours at the College of Law. The Chaplain in recent years has conducted support workshops and conducted spiritual counseling and prayer services for interested students generally, on and off law school premises. It is expected that a Campus Ministry Chaplain would use the above described area for these purposes, but the area is not limited to her use of them as such.

Several first year law students, one Roman Catholic, one Jewish, one Methodist, and one Moslem, have complained to the Dean of the College of Law, to the Provost and to the President, all to no avail, that the inclusion of the chapel/prayer service room offends them and violates their constitutional rights.

Anticipating that these students may shortly file suit in U.S. District Court against the state to prevent the use of the bond issuance authority, you are asked by the Dean to prepare a memorandum describing and analyzing the constitutional claim or claims and the realistic likely resolution of that claim or claims should a suit be brought. In your memo, set forth the claim or claims, the analytical framework or frameworks a federal district court would probably rely upon, an analysis of the claims in terms of the facts and analytical framework(s), the likely outcome and why. Try to be balanced in your analysis.

B.

Assume for the purposes of this part that the students do not file suit, but that they complain to the Governor and Secretary of State; and that very shortly thereafter, the Secretary of State issues a ruling that bond issue authority for private universities and colleges will not be available unless

"... the University provides assurance in writing that no part of the building to be financed by the bond issue will be dedicated to, or used for, religious purposes, including...any space dedicated to a chapel or prayer service...."

The Dean believes that the legislature would not have endorsed such a limitation, but in view of imminence of building plans, is not in a position to go to the legislature to have the Secretary's action reversed. The Dean, and several like-minded law students and faculty, come to you, now working in the University's legal affairs office, to ask you to file suit in U.S. District Court claiming that the constitutional rights of the University, the College of Law, students and faculty are being violated by the ruling of the Secretary of State. Your boss, the President of the University, unsure, asks you to write a memorandum (1) describing the most realistic constitutional claim or claims that could be asserted on behalf of the University, law school, students and faculty, the analytical framework(s) that would likely guide a federal court's analysis, (3) a likely analysis in terms of the facts and law here, and (4) your views as to the likelihood of success of such claim or claims and why or why not.

