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## **Court Sustains Invalidation Of Begging Ban (New York Law Journal)**

Daniel Wise

# Court Sustains Invalidation Of Begging Ban

State Statute Declared  
Violation of Free Speech

BY DANIEL WISE

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A NEW YORK State law banning loitering for the purpose of begging is unconstitutional, a unanimous panel of the U.S. Court of Appeals for the Second Circuit ruled yesterday.

The Second Circuit's ruling in *Loper v. New York City Police Department*, No. 92-9127, affirmed an order issued last October by U.S. Judge Robert W. Sweet finding that the state statute, Penal Law §240.35(1), abridged the free speech rights of beggars.

The state statute subjects any person who "loiters, remains or wanders about in a public place for the purpose of begging" to a maximum penalty of 15 days in jail.



Judge Miner

In sustaining the injunction on the enforcement of the state law in New York City, Judge Roger J. Miner wrote, that it "seems certain" that begging conveys a social or political message.

"Begging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation," Judge Miner pointed out. "Even without particularized

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## Court Sustains Invalidation of Anti-Begging Law

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speech, however, the presence of an unkempt or 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."

The concerns advanced by New York City — that beggars tend to become aggressive and eventually harass and intimidate people passing by — are addressed by other provisions of the Penal Law, he noted. If panhandlers overstep the boundaries of acceptable conduct, Judge Miner suggested, they can be prosecuted under New York's laws barring harassment, disorderly conduct and menacing.

Joining the ruling were Judges Joseph M. McLaughlin and Daniel M.

Friedman, who was sitting by designation from the U.S. Court of Appeals for the Federal Circuit.

### Prior Ruling Addressed

The main obstacle to yesterday's ruling was the Second Circuit's own 1990 ruling upholding a ban on begging in New York City's subway system. But, the panel distinguished the earlier ruling in *Young v. New York City Transit Authority*, 903 F.2d 146, because begging in "the confined atmosphere of the subway" can disrupt or startle passengers "creating the potential for a serious accident."

In addition, Judge Miner wrote, the ban in *Young* was limited to the subways while the state penal law provision prohibits begging anywhere in New York City leaving "individual

beggars without the means to communicate their individual wants and needs."

The penal law, in banning begging on New York City's streets and sidewalks, barred speech in areas that the courts have characterized as "quintessential public forums," where speech is to be protected under the most stringent test, requiring a compelling state interest to curtail the speech.

By contrast, the speech in *Young*, where the ban was limited to the subways, was protected by a lesser standard of "reasonableness," Judge Miner analogized.

The plaintiff class was represented by George Sommers. New York City was represented by Assistant Corporation Counsel Fay Leoussis.