

Fighting City Hall: Tiny Charity Wins in Tampa Bay

09.13.16 | Linda J. Rosenthal, JD



“The biblical story of David and Goliath is probably the most well-known underdog story in the world. * * * For 3000 years, [it] has seeped into our cultural consciousness.” It’s human nature to root for the little guy who, confronted by a powerful bully, turns the table and – against all odds – pummels him.

Last month, there was just such a victory in Tampa Bay, Florida. One of the least powerful charities in town had no choice but to fight the government. On August 8, 2016, a federal court made it official: Homeless Helping Homeless: 1; City Hall: 0.

Criminalizing Poverty

“Nonprofits facing what they consider unreasonable restrictions by local government sometimes must take matters to court if they cannot work things out through the political process.”

In recent years, all around the nation, there have been aggressive governmental efforts to chase out the poor and homeless, especially from downtown, tourist, and business areas. Municipalities have enacted and vigorously enforced sweeping ordinances barring panhandling and sleeping outdoors. For example, in 2011, the city of Orlando jailed activists for feeding the hungry in a public park; in 2015, Fort Lauderdale police arrested a 90-year-old for running a food-sharing program.

Tampa Bay decided to combat its own serious homelessness problem with similar laws. A 2011 ordinance prohibits begging on city streets every day but Sunday “while allowing newspaper vendors to work the curb seven days a week.” A 2013 law prohibits sleeping or storing property outdoors and also expands the panhandling ban to the entire downtown area as well as near banks, ATMs, sidewalk cafes, and bus or trolley stops. It’s aimed at “behaviors that city officials said might make people feel vulnerable or unable to walk away from someone asking for money.”

Most notably, the restrictions on solicitations apply only to the poor. There are explicit exemptions for others: those newspaper vendors along with religious groups and political activists. “So while hectoring passersby about the End Times or accosting them with political petitions is protected free speech, no matter how aggressive, vocally asking for money, no matter how politely, is not.”

Homeless Helping Homeless: the Plaintiff

In 2009, Adolphus Parker created a new organization he called Homeless Helping Homeless (HHH). It’s the very definition of a “grassroots” effort: a tiny group, run by – and for – the poorest of the poor in Tampa. “The nonprofit’s corporate executives, administrators, and support staff are themselves homeless clients.”

With 501(c)(3) approval in hand, HHH quickly made progress. By 2015, this band of activists was providing 89 beds at 6 different locations and giving free meals to about 3,000 people each month.

“We give free shelter for people with no money, no job, and who don’t meet criteria for public assistance,” Mr. Parker says of his group. The city doesn’t have enough homeless assistance; overfilled shelters send people to HHH, as do police and hospitals. There are –

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showers, a place to sleep, lockers, TV, internet, phones, a place to be during the day, a nice cup of coffee in the morning, and, well, the dignity of working for a common cause ... The group helps indigent people get birth certificates, IDs and other documents required to secure public aid.

Homeless Helping Homeless operates on contributions; it receives no government funds at all. “The group sends members to populated parts of the city to collect donations, using locked boxes to ensure the money goes to the organization and not individuals.” It also raises money through social enterprise projects: a cafe, a thrift store, a junk-removal service, a mobile check-cashing service, and an online store that sells the trademarked “Burger Dog Pan.”

The Federal Lawsuit

In its first few years, Homeless Helping Homeless volunteers solicited donations for the organization without complaint or interference from police. The 2011 and 2013 anti-panhandling laws, though, have taken a toll – at least \$20,000 in lost donations by 2015. The group has been up against restrictions “that other organizations in the city” don’t face. Mr. Parker claims the city of Tampa Bay went out of its way to stop his organization from going about its usual way of raising funds. They –

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went and made a new ordinance that says, ‘Okay, you can be downtown, but you can’t hold a sign – [and] You cannot ask, ‘Would you like to make a donation?’ And then they went and signed a new law to put on the books because the big boys – the banks and so forth – don’t really want us downtown. They tried to use other means because we’re legal and we have all the necessary licenses.

By May 2015, Homeless Helping Homeless decided to fight back with a federal lawsuit seeking an injunction blocking the city’s enforcement of the anti-panhandling ordinances. In the Complaint in U.S. District Court in Tampa Bay, HHH asserts that these ordinances “are unconstitutional” because

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[t]aken together, the laws restrict speech based on its content, cover an unreasonably broad area, make exceptions for some kinds of speech but not others, and would require the charity’s volunteers to stand mutely with a sign while other conversations go on around them.

According to Brian T. Burgess, Esq., the group’s Washington, D.C., pro bono, attorney: “They think they have just as much a right to be out there engaging in protected speech as someone soliciting for signatures on a petition.”

Harassment

According to Adolphus Parker, in the weeks and months after the lawsuit began, Homeless Helping Homeless was subjected to a campaign of harassment and intimidation. Local news stories document police raids, relentless code-enforcement actions, and other attention from city officials and law enforcement. Government representatives, of course, deny any connection with the litigation.

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To tell you the truth ... – really, really honestly to tell you the truth – we have tried other options to go in and do it... [As a result]..., we lost all our contracts, and then in retaliation to the lawsuit that we filed against the city, you know what they did? They closed four of our facilities down – four out of six.

“I poked the bear [City of Tampa],” says the founder of Homeless Helping Homeless. “Now the bear is hitting back. *** It’s not about the facility, it’s about the lawsuit,” Mr. Parker adds, noting that the group had not had previous trouble with the city in connection with the shelters. “‘How dare *us* sue *them*?’ he says, sarcastically. ‘They can’t afford for us to win.’”

The Court’s Ruling

On August 8, 2016, U.S. District Judge Steven Merryday issued his decision in *Homeless Helping Homeless v. City of Tampa Bay*. He granted an injunction barring government authorities from enforcing the 2013 panhandling ordinance. (The 2011 ordinance had previously been repealed by Tampa Bay as a litigation maneuver; officials believed that the earlier law was more difficult to justify.)

Judge Merryday ruled that the 2013 law is unconstitutional under the First Amendment because it prohibits one kind of communication – and not others – solely based on content. He based his decision on Reed v. Town of Gilbert (2014), a U.S. Supreme Court case about a dispute involving parishioners in Gilbert, Arizona, temporarily planting some small signs directing people to church services. “The provisions of a municipality’s sign code that impose more stringent restrictions on signs directing the public to the meeting of a non-profit group than on signs conveying other messages are content-based regulations of speech that cannot survive strict scrutiny,” according to Justice Clarence Thomas writing for the unanimous Court.

The City of Tampa Bay has not yet announced its intentions with regard to an appeal. The men of Homeless Helping Homeless are happy about the ruling, glad to be “vindicated.” But they are not gloating, and won’t “immediately” resume soliciting donations in the areas specified in the ordinance. They are trying to develop a fundraising strategy that doesn’t rely on solicitations in these locations. If that’s not possible, though, they will have no choice but to resume those activities. As for the pro bono law firm, it “now may seek to have City Hall cover its legal fees.”

Conclusion

According to Malcolm Gladwell, author of “David & Goliath: Underdogs, Misfits and the Art of Battling Giants,” society may have misinterpreted the famous tale all along. “Goliath may have actually been the underdog, not David.”

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Why do we call David an underdog? Well, we call him an underdog because he’s a kid, a little kid, and Goliath is this big, strong giant. We also call him an underdog because Goliath is an experienced warrior, and David is just a shepherd. But most importantly, we call him an underdog because Goliath is outfitted with all of this modern weaponry, this glittering coat of armor and a sword and a javelin and a spear, and all David has is this sling.

According to Gladwell, Goliath arrogantly believes he has the power to direct the course of the battle:

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'Come to me, that I might feed your flesh to the birds of the heavens and the beasts of the field,' the key phrase is 'Come to me.' Come up to me because we're going to fight, hand to hand, like this.

But David has other plans, the writer explains. David won't fight Goliath on the giant's terms.

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He's not going to fight him that way. Why would he? He's a shepherd. He's spent his entire career using a sling to defend his flock against lions and wolves. That's where his strength lies. So here he is, this shepherd, experienced in the use of a devastating weapon, up against this lumbering giant weighed down by a hundred pounds of armor and these incredibly heavy weapons that are useful only in short-range combat. Goliath is a sitting duck. He doesn't have a chance.

Is it surprising, really, that – against all apparent odds – Adolphus Parker and his enterprising, determined, and resourceful friends at Homeless Helping Homeless went on to win the day here?