

## Salinas Judge Upholds Civil Rights of the Poor

by Robert Norse

Poor people in Salinas, the right to free speech, and California's conscience won an unexpected victory in the court of Municipal Judge Albert H. Maldonado on August 27. Maldonado struck down virtually all of the "aggressive solicitation" law, which targets homeless people and poor people (many of whom are Latino) in Salinas, an agricultural center of over 100,000, 70 miles south of San Francisco.

Maldonado threw out all of Ordinance 2324 except the sections banning panhandling from people in vehicles. In a move that strongly encouraged homeless advocates, the judge ruled that the law's ban on begging on private property, even without the permission of the owner, was also unconstitutional.

In May, police arrested Kip Louis Klein for panhandling inside the Cathay House Restaurant after permission was denied. Klein, facing severe penalties of up to six months in jail and/or \$1000 fine, was represented by Public Defender Jan Lundberg, who successfully argued that the Salinas City Council's anti-panhandling law was unconstitutional on its face.

In March, 1998, with only Juan Oliveras dissenting, the business-beholden Salinas City Council criminal-

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ized all peaceful solicitation within 25 feet of an ATM or bank, in bank parking lots, at any bus stop or bus station, within 10 feet of any store entrance, in any outdoor dining area, and at any business where a "No Begging" sign was displayed.

The ordinance also contained a broader ban against any request for money after dark or "in an aggressive manner." The City Council's apparent target: poor people in redeveloped Old Town, particularly around the newly built Steinbeck Center; ironically, Steinbeck's memorial became an excuse for the persecution of the poor. [See *Street Spirit*, April, 1998.]

Citing the U.S. Constitution and the California Constitution's even stronger "liberty of speech" clause, Maldonado

struck down 95% of the homeless-get-out law. Article 1, Section 2(a) of the California Constitution declares: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

"Annoyance and inconvenience are a small price to pay for the preservation of our most cherished rights," Maldonado wrote, citing *Wirta v. Alameda, Contra Costa Transit District* (1967).

Maldonado found the anti-homeless law both "under-inclusive," in that it only covers solicitation instead of all speech (hence content-based), as well as "over-inclusive" or overbroad because it covered solicitation that didn't exhibit the "dangers" claimed by the City Council (who had cited an "enhanced sense of

fear, intimidation, and disorder").

"Because restaurants are held open to the public, and speech and related conduct in such locations are protected under the Liberty of Speech Clause of the California Constitution, so long as they are not basically incompatible with the normal activities of the forum, a person may go into a restaurant to solicit," ruled the judge.

This decision not only rolls back community space stolen from the poor, it expands the open area to include private businesses like restaurants normally open to the public. If upheld on appeal, it will overturn similar laws in Santa Monica, Santa Cruz, Palo Alto, and elsewhere.

Maldonado has returned the Constitution to the streets of Salinas.

For information about this case, contact Homeless United for Friendship & Freedom at 831-423-4833; e-mail: wmnofstl@cruzio.com