



# *Representative Rosemond Blanco Santos*

The House of Representatives  
16<sup>th</sup> Northern Marianas Commonwealth Legislature  
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**JUDICIARY AND GOVERNMENTAL OPERATIONS  
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MEMBER**

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**STANDING COMMITTEE REPORT NO.**

*16-22*

**Date: May 14, 2008**

**RE: House Bill No. 16-71, CS1**

The Honorable Arnold I. Palacios  
Speaker of the House of Representatives  
Sixteenth Northern Marianas  
Commonwealth Legislature  
Capitol Hill  
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations to which House Bill No. 16-71 was referred, entitled:

“To prohibit the solicitation of donations along and in public ways and intersections; and for other purposes.”

begs leave to report as follows:

**I. RECOMMENDATION:**

After considerable discussion and deliberation on the bill, the Committee recommends that the House pass House Bill No. 16-71 in the form of Committee Substitute 1.

*6/3/08 @ 9:00am SMM*

## II. ANALYSIS

### A. Purpose

The purpose of House Bill No. 16-71 is to prohibit the solicitation of donations along and in public ways and intersections. House Bill No. 16-71 also establishes penalties for violations of this Act.

### B. Committee Findings

The Committee finds there are occasions when persons approach a motor vehicle being operated on a public way or intersection for the purpose of soliciting from the occupant of the motor vehicle donations of money or property of any kind for charitable, religious, educational, benevolent, or other purposes. Although the intent of such actions may be to support a worthy cause, it places the safety of the solicitors and the occupants of the motor vehicles at risk. The Committee therefore finds it necessary and reasonable to prohibit such actions within 25 feet of the center line of any public highway in the Commonwealth.

The Committee notes that the right to solicit contributions is protected by the First Amendment of the United States Constitution. However, restrictions on time, place, and manner of the First Amendment rights are permissible as long as they "are justified without reference to the content of the regulated speech, . . . are narrowly tailored to serve a significant governmental interest, and . . . they leave open ample alternative channels for communication of the information."<sup>1</sup> (Case Summary Attached) The restriction imposed by House Bill No. 16-71 is tailored for the safety of the CNMI residents, without reference to the content of the regulated speech, and leaves open ample alternative channels for communication of the information. This restriction, therefore, does not violate a person's First Amendment rights.

### C. Legislative History

House Bill 16-71 was introduced by Rep. Joseph N. Camacho on March 26, 2008, and was referred to the House Standing Committee on Judiciary and Governmental Operations for disposition.

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<sup>1</sup> See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S. Ct. 3065, 3069, 82 L. Ed. 2d 221 (1984); *Association of Community Organizations for Reform Now v. St. Louis County*, 930 F.2d 591 (8th Cir. 1991).

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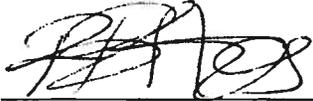
**D. Cost - Benefit**

The enactment of House Bill No. 16-71 will not incur additional costs to the CNMI government as the policing of CNMI public ways and intersections is already in place. The CNMI may see additional revenue through the penalty of \$250 per violation established by this Act. Additionally, the safety of the Commonwealth residents and tourists is a benefit that outweighs any costs that may be incurred through the enactment of this Act.

**III. CONCLUSION**

Your Committee is in accord with the provisions of House Bill 16-71 and recommends that it be passed by the House in the form of Committee Substitute 1.

Respectfully Submitted,



Rep. Rosemond B. Santos  
Chairwoman



Rep. Edward T. Salas  
Vice Chairman



Rep. Joseph C. Reyes  
Member

Rep. Christina M. E. Sablan  
Member

Rep. Edwin P. Aldan  
Member

Reviewed By:



House Legal Counsel

**ACLU ProCon.org**

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ACLU ProCon.org Case No. 435

***Clark v. Community for Creative Nonviolence***

***(Decided June 29, 1984)***

468 U.S. 288

See below for: [I. ISSUES](#) [II. DECISION](#) [III. WIN OR LOSS?](#) [IV. CASE SUMMARY](#) [V. AMICI CURIAE](#)

**I. ISSUES**

**A. Issues Discussed:**

Free Speech

**B. Legal Question Presented:**

Does the National Park Service regulation prohibiting camping in certain parks violate the First Amendment when applied to prohibit demonstrators from sleeping in connection with a demonstration?

**II. THE SUPREME COURT'S DECISION:**

"We need not differ with the view of the Court of Appeals that overnight sleeping in connection with the demonstration is expressive conduct protected to some extent by the First Amendment... Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

It is also true that a message may be delivered by conduct that is intended to be communicative and that, in context, would reasonably be understood by the viewer to be communicative. Symbolic expression of this kind may be forbidden or regulated if the conduct itself may constitutionally be regulated, if the regulation is narrowly drawn to further a substantial governmental interest, and if the interest is unrelated to the suppression of free speech.

Petitioners submit, as they did in the Court of Appeals, that the regulation forbidding sleeping is defensible either as a time, place, or manner restriction or as a regulation of symbolic conduct. We agree with that assessment... That sleeping, like the symbolic tents themselves, may be expressive and part of the message delivered by the demonstration does not make the ban any less a limitation on the manner of demonstrating, for reasonable time, place, or manner regulations normally have the purpose and direct effect of limiting expression but are nevertheless valid. Neither does the fact that sleeping, arguendo, may be expressive conduct, rather than oral or written expression, render the sleeping prohibition any less a time, place, or manner regulation. To the contrary, the Park Service

neither attempts to ban sleeping generally nor to ban it everywhere in the parks. It has established areas for camping and forbids it elsewhere, including Lafayette Park and the Mall. Considered as such, we have very little trouble concluding that the Park Service may prohibit overnight sleeping in the parks involved here.

The requirement that the regulation be content-neutral is clearly satisfied. The courts below accepted that view, and it is not disputed here that the prohibition on camping, and on sleeping specifically, is content-neutral and is not being applied because of disagreement with the message presented. Neither was the regulation faulted, nor could it be, on the ground that without overnight sleeping the plight of the homeless could not be communicated in other ways. The regulation otherwise left the demonstration intact, with its symbolic city, signs, and the presence of those who were willing to take their turns in a day-and-night vigil. Respondents do not suggest that there was, or is, any barrier to delivering to the media, or to the public by other means, the intended message concerning the plight of the homeless.

It is also apparent to us that the regulation narrowly focuses on the Government's substantial interest in maintaining the parks in the heart of our Capital in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence...

We are unmoved by the Court of Appeals' view that the challenged regulation is unnecessary, and hence invalid, because there are less speech-restrictive alternatives that could have satisfied the Government interest in preserving park lands... We do not believe, however, that either *United States v. O'Brien* or the time, place, or manner decisions assign to the judiciary the authority to replace the Park Service as the manager of the Nation's parks or endow the judiciary with the competence to judge how much protection of park lands is wise and how that level of conservation is to be attained..."

The U.S. Supreme Court reversed the judgment of the Court of Appeals of the District of Columbia Circuit.

### III. A WIN OR LOSS FOR THE ACLU?

The ACLU, as counsel, urged affirmance of the Court of Appeals of the District of Columbia judgment; the Supreme Court reversed in a 2-7 vote, giving the ACLU an apparent loss.

#### Justice Vote: 2 Pro vs. 7 Con

- White, B. (Wrote majority opinion)
- Burger, W. (Wrote concurring opinion)
- Blackmun, H. (Joined majority opinion)
- Powell, L. (Joined majority opinion)
- Rehnquist, W. (Joined majority opinion)
- Stevens, J.P. (Joined majority opinion)
- O'Connor, S.D. (Joined majority opinion)
- Marshall, T. (Wrote dissenting opinion)
- Brennan, W. (Joined dissenting opinion)

### IV. CASE SUMMARY

#### A. Background

"The Interior Department, through the National Park Service, is charged with responsibility for the management and maintenance of the National Parks and is authorized to promulgate rules and regulations for the use of the parks in accordance with the purposes for which they were established. The network of National Parks includes the National Memorial-core parks, Lafayette Park and the Mall, which are set in the heart of Washington, D.C., and which are unique resources that the Federal Government holds in trust for the American people...

Under the regulations involved in this case, camping in National Parks is permitted only in campgrounds designated for that purpose. No such campgrounds have ever been designated in Lafayette Park or the Mall...

Demonstrations for the airing of views or grievances are permitted in the Memorial-core parks, but for the most part only by Park Service permits. Temporary structures may be erected for demonstration purposes but may not be used for camping.

In 1982, the Park Service issued a renewable permit to respondent Community for Creative Non-Violence (CCNV) to conduct a wintertime demonstration in Lafayette Park and the Mall for the purpose of demonstrating the plight of the homeless. The permit authorized the erection of two symbolic tent cities: 20 tents in Lafayette Park that would accommodate 50 people and 40 tents in the Mall with a capacity of up to 100. The Park Service, however, relying on the above regulations, specifically denied CCNV's request that demonstrators be permitted to sleep in the symbolic tents.

CCNV and several individuals then filed an action to prevent the application of the no-camping regulations to the proposed demonstration, which, it was claimed, was not covered by the regulation. It was also submitted that the regulations were unconstitutionally vague, had been discriminatorily applied, and could not be applied to prevent sleeping in the tents without violating the First Amendment. The District Court granted summary judgment in favor of the Park Service. The Court of Appeals, sitting en banc, reversed. The 11 judges produced 6 opinions. Six of the judges believed that application of the regulations so as to prevent sleeping in the tents would infringe the demonstrators' First Amendment right of free expression. The other five judges disagreed and would have sustained the regulations as applied to CCNV's proposed demonstration..."

On certiorari the U.S. Supreme Court reversed the judgment of the Court of Appeals of the District of Columbia Circuit.

**B. The Arguments**

<b>ACLU Side</b> (Respondent/Appellee)	<b>Opposing Side</b> (Petitioner/Appellant)
Not listed	Not listed

**V. AMICI CURIAE**

<b>ACLU Side</b> (Respondent/Appellee) and Counsel	<b>Opposing Side</b> (Petitioner/Appellant) and Counsel

- **National Coalition for the Homeless**

(Brief of amici curiae urging affirmance were filed for the National Coalition for the Homeless by Ogden Northrop Lewis.

Burt Neuborne argued the cause for respondents. With him on the brief were Charles S. Sims, Laura Macklin, Arthur B. Spitzer, and Elizabeth Symonds.)

(Deputy Solicitor General Bator argued the cause for petitioners. With him on the briefs were Solicitor General Lee, Assistant Attorney General McGrath, Alan I. Horowitz, Leonard Schaitman, and Katherine S. Gruenheck.)

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SIXTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2008

H. B. NO. 16-71, CS1

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A BILL FOR AN ACT

TO PROHIBIT THE SOLICITATION OF DONATIONS ALONG AND IN PUBLIC WAYS AND INTERSECTIONS, AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE SIXTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1           **Section 1. Findings and purpose.** The Commonwealth Legislature finds that  
2 persons soliciting donations along and in public highways and intersections pose a health  
3 and safety hazard to themselves and to oncoming traffic.

4           **Section 2. Prohibition.** No person shall solicit donations from persons or  
5 vehicles within 25 feet of the center line of any public highway in the Commonwealth.

6           **Section 3. Penalty.**

7           (a) A person in violation of Section 2 shall be assessed a civil fine of two hundred  
8 fifty dollars (\$250).

9           (b) A parent or guardian of a child under the age of 18 years who knowingly  
10 permits that child to violate subsection 2(a) shall be liable for the fine of two  
11 hundred fifty dollars (\$250).

12           **Section 4. Severability.** If any provision of this Act or the application of any  
13 such provision to any person or circumstance should be held invalid by a court of  
14 competent jurisdiction, the remainder of this Act or the application of its provisions to  
15 persons or circumstances other than those to which it is held invalid shall not be affected  
16 thereby.

17           **Section 5. Savings clause.** This Act and any repealer contained herein shall not  
18 be construed as affecting any existing right acquired under contract or acquired under  
19 statutes repealed or under any rule, regulation or order adopted under the statutes.  
20 Repealers contained in this Act shall not affect any proceeding instituted under or  
21 pursuant to prior law. The enactment of the Act shall not have the effect of terminating,

1 or in any way modifying, any liability, civil or criminal, which shall already be in  
2 existence on the date this Act becomes effective.

3           **Section 6. Effective date.** This Act shall take effect upon its approval by the  
4 Governor or becoming law without such approval.

Prefiled: 2/26/08

Date: February 26, 2008

Introduced By: /s/ Rep. Joseph N. Camacho

Reviewed for Legal Sufficiency by:

/s/ Antonio F. S. Cabrera

House Legal Counsel