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Ocean City lifts unconstitutional ban on strolling caricature artist from performing on the Boardwalk

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Caricature artist Adam Pate will be allowed to do his lightning fast portraits of passersby on Ocean City's Boardwalk this summer, after a letter from the ACLU of Maryland spurred the City to reverse its initial rejection of his application under an ordinance that imposes unconstitutional restrictions on free speech. Mr. Pate was told by City Solicitor Guy R. Ayers III that he was forbidden from performing on the Boardwalk because he accepts tips for the caricatures he draws. But when the issue of free speech on the Boardwalk last arose, back in 1995, a federal judge ruled that it was unconstitutional to discriminate against speech that contains commercial content. ACLU managing attorney Deborah A. Jeon, who filed the 1995 case, threatened a return to court if the City did not lift the restrictions on Mr. Pate.

"Ten years ago, the court ruled that there exists no real substitute for the Boardwalk as a forum for artists," said ACLU attorney Rick Griffiths, who helped to draft the letter. "The First Amendment clearly protects the type of expression Mr. Pate wishes to engage in. It was in the public interest of all who visit and enjoy Ocean City's premier venue to remove this unnecessary and unconstitutional restriction."

The current Peddlers and Solicitors ordinance of Ocean City's Town Code imposes a year-round ban on soliciting donations on the Boardwalk. But because the Boardwalk is a traditional public forum, it should only be subject to reasonable and content-neutral time, place and manner restrictions when there is a substantial government interest in regulating protected speech. Mr. Pate performs his drawings rapidly and with creative spontaneity, which people find entertaining and educational. That he solicits tips with a notice on his drawing board does not affect the sincerity of his artistic expression. The ACLU could see no justification under the First Amendment to exclude Mr. Pate from this traditional public forum.

"People around the country love my quick caricatures, and they have recommended that I go to Ocean City's great Boardwalk," said Mr. Pate. "This is the first time I've ever had any trouble doing my pictures in public places. I have a right to perform, and now Maryland beachgoers can have fun watching me this summer."

The current ordinance is very similar to an Ocean City ordinance ruled unconstitutional in the ACLU of Maryland's 1995 case, *Markowitz v. Mayor and City Council of Ocean City*. In his ringing defense of free speech rights in that case, U.S. District Court Judge Marvin Garbis called the ordinance "vastly overbroad" and said courts have allowed government to restrict free speech only when necessary to protect the public safety of health. The ACLU had brought suit on behalf of a member of the Libertarian Party who wanted to collect signatures on the Boardwalk, along with a puppeteer and a juggler who regularly performed on the Boardwalk.

City Solicitor Ayres confirmed in a May 26 letter to the ACLU of Maryland that Mr. Pate will be allowed to perform on the Boardwalk, saying that his proposed activity was not prohibited by the City ordinance after all.