

IN THE
Supreme Court of the United States

NATIONAL FEDERATION OF THE BLIND
OF TEXAS, INCORPORATED, *et al.*,

Petitioner,

v.

CITY OF ARLINGTON, TEXAS,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

**BRIEF OF AMVETS NATIONAL SERVICE
FOUNDATION, GOLDWATER INSTITUTE,
THE NONPROFIT ALLIANCE FOUNDATION,
CATHOLIC DIOCESE OF KANSAS CITY-
SAINT JOSEPH, AND 32 OTHER NONPROFIT
ORGANIZATIONS LISTED IN APPENDIX 1
AS *AMICI CURIAE* IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI**

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IDENTITY AND INTEREST OF *AMICI CURIAE*¹

AMVETS National Service Foundation (“AMVETS”), Goldwater Institute (“Goldwater”), The Nonprofit Alliance Foundation (“TNPAF”), the Diocese of Kansas City-Saint Joseph, and the 32 other nonprofit organizations listed on Appendix 1 respectfully submit this brief *amicus curiae* in support of Petitioners National Federation of the Blind of Texas and Arms of Hope and their petition for writ of certiorari.

AMVETS is the nation’s most inclusive Congressionally-chartered veterans service organization, representing the interests of 20 million American veterans. Founded in 1944, AMVETS has more than 250,000 members nationwide. Its mission is to enhance and safeguard the entitlements of all American veterans who have served honorably and to improve the quality of life for them, their families, and their communities. AMVETS has provided assistance, jobs, and services to veterans and their communities for more than 80 years. AMVETS relies on charitable donations from the public, including donations deposited in unattended donation boxes in multiple

¹ Counsel of record for all listed parties received notice of Amici Curiae’s intent to file this brief at least 10 days prior to its due date. Sup. Ct. R. 37.2. No counsel for any party authored this brief in whole or in part, and no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. Sup. Ct. R. 37.6.

states, to continue providing its programs and services to our nation's veterans and their families.

Goldwater is a nonpartisan public-policy and research foundation devoted to advancing the principles of limited government, individual freedom, and constitutional protections through litigation, research, and advocacy. Among Goldwater's priorities is the protection of free speech rights against overreaching local governments.

TNPAF is a charity that works to promote, protect, and strengthen the philanthropic sector through education, coalition building, and, when necessary, litigation. TNPAF represents the voices of hundreds of nonprofit organizations nationwide by educating, informing, and uniting the nonprofit sector and the public amid an increasingly complex fundraising and regulatory landscape. TNPAF believes a thriving nonprofit sector provides the resources to meaningfully change the world. Donor access and privacy are critical to that effort.

The Diocese of Kansas City-Saint Joseph (the "Diocese") is a Catholic diocese in northwestern Missouri. Originally established in 1880, the Diocese has grown to nearly 124,000 members in 83 parishes and 10 missions. The Diocese provides social services, education, and comfort for the faithful of the region. Parishes within the Diocese have long used donation boxes within and outside the church to collect food for the hungry, clothing for the poor, and personal items for the needy. Its schools likewise collect food, clothing, and personal items for community-members

in need. The community’s unburdened access to donation boxes is vital to the free exercise of the Catholic religion and its virtues of charity, faith, and hope.

SUMMARY OF ARGUMENT

This case presents the Court with the opportunity to resolve a circuit split that threatens to undermine the First Amendment rights of all charitable and religious groups. Amici Curiae urge the Court to grant certiorari to correct an alarming trend among federal circuit courts of upholding state and municipal restrictions on charitable solicitations—here via unattended donation boxes—without applying the proper level of First Amendment scrutiny. The decision of the divided Fifth Circuit below reverses the majority position of an existing circuit split and opens the door for states and municipalities to unconstitutionally restrict crucial rights of speech and association long afforded to Amici Curiae and countless other charitable organizations under this Court’s long-standing precedent.

The nonprofit sector is an essential thread of our national fabric. Our nation’s charities feed the needy, aid the poor, protect our animals, enrich our arts and cultural lives, and lead our nation’s churches, mosques, and synagogues. Nonprofits provide necessary services that governmental and for-profit entities cannot provide. They also support unpopular causes and controversial issues of social, political, and economic importance in an increasingly polarized and socially active society.

Donation boxes are receptacles for contributions of used clothing and household items placed by charities on consenting private property, often in the parking lots of publicly prominent buildings such as grocery stores, churches, and schools. For centuries, benevolent groups have relied on unattended donation boxes not only to garner tangible support for their missions, but also to convey important and varied messages to passers-by. Donation boxes have been fixtures of synagogues, churches, and religious schools throughout history, and they have been commonplace on private commercial property in this country since at least the 19th Century.

Aside from their tangible function of collecting donated items, unattended donation boxes are a unique and indispensable means of charitable communication. As the Sixth Circuit recognized in *Planet Aid v. City of St. Johns, MI*, “donation bins in many respects mirror the passive speaker on the side of the road, holding a sign drawing attention to his cause.” 782 F.3d 318, 325-26 (6th Cir. 2015); *see also National Federation of the Blind of Texas v. Abbott*, 647 F.3d 202, 213 (5th Cir. 2011) (“public receptacles are not mere collection points for unwanted items, but are rather silent solicitors and advocates for particular charitable causes”).

Recognizing that unattended donation boxes are an important form of charitable speech, both the Fifth and Sixth Circuits have analyzed the constitutionality of laws regulating them using the strict-scrutiny standard announced by this Court in the seminal

trilogy of cases beginning with *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). See *Planet Aid*, 782 F.3d at 323-26 (applying *Schaumburg; Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947 (1984); and *Riley v. Nat'l Fed'n of Blind*, 487 U.S. 781, 795 (1988)); *Abbott*, 647 F.3d at 213-14 (same). Under *Schaumburg* and its progeny, charitable speech—even when it takes the form of solicitation—is entitled to the strongest constitutional protection, and laws targeting such speech are subject to strict scrutiny. *Riley*, 487 U.S. at 796.

In *Abbott* and *Planet Aid*, therefore, the Fifth and Sixth Circuits correctly held that state and municipal laws regulating unattended donation boxes must be narrowly tailored to promote a compelling government interest and may not unnecessarily interfere with charities' First Amendment freedoms. *Abbott*, 647 F.3d at 213; *Planet Aid*, 782 F.3d at 330; accord *Kissel v. Seagull*, 552 F. Supp. 3d 277, 289-90 (D. Conn. 2021); *Linc-Drop, Inc. v. City of Lincoln*, 996 F. Supp. 2d 845, 855 (D. Neb. 2014).

Until the decision below, *Abbott* and *Planet Aid* stood as crucial counterpoints to a single conflicting decision by the Ninth Circuit in *Recycle for Change v. City of Oakland*, 856 F.3d 666, 673 (9th Cir. 2017). In *Recycle for Change*, the Ninth Circuit held that a municipal ordinance regulating unattended donation boxes was subject only to intermediate scrutiny. 856 F.3d at 674-75. The Ninth Circuit reasoned that the ordinance in question merely “restrict[ed] the boxes

themselves, as collection devices for discarded material,” and thus was content-neutral. *Id.* at 673.

Abbott and *Planet Aid* expose the flaws in the Ninth Circuit’s superficial finding of content-neutrality in *Recycle for Change*. As the Fifth Circuit found in *Abbott*, donation boxes “are not mere collection points for unwanted items, but are rather silent solicitors and advocates for particular charitable causes.” *Abbott*, 647 F.3d at 213. Restriction of “the boxes themselves” thus cannot be content-neutral because it inherently restricts the charitable messages they express. And as the Sixth Circuit found in *Planet Aid*, an ordinance “clearly regulates protected speech on the basis of its content” if it “does not ban all unattended, outdoor receptacles”—which include ubiquitous items such as dumpsters and recycling bins—but “only those unattended, outdoor receptacles with an expressive message on a particular topic—charitable solicitation and giving.” *Planet Aid*, 782 F.3d at 328. Until the decision below, the balance of circuit-court precedent on this important issue aligned with this Court’s settled precedent applying strict scrutiny to regulations restricting charitable speech.

Now, however, a divided panel of the Fifth Circuit has abruptly reversed course, applying only intermediate scrutiny to a law that facially restricts the solicitation of donations in the form of unattended donation boxes. The court below adopted the Ninth Circuit’s faulty reasoning in *Recycle for Change*—that a law restricting all donation boxes equally is content-

neutral because it does not discriminate based on viewpoint. That holding violates nearly a century of this Court’s precedent applying strict scrutiny to laws banning or burdening charitable solicitations. *See Riley*, 487 U.S. at 796; *Munson*, 467 U.S. at 959-60; *Schaumburg*, 444 U.S. at 632; *see also Meyer v. Grant*, 486 U.S. 414, 422, n.5 (1988); *N.A.A.C.P. v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984); *NAACP v. Button*, 371 U.S. 415, 438 (1963); *Thomas v. Collins*, 323 U.S. 516, 540-41 (1945); *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940). A law that is speaker- or viewpoint-neutral is nonetheless content-based if it restricts based on subject matter—in this case, appeals for donations. *Reed v. Town of Gilbert*, 576 U.S. 155, 168-70 (2015).

The Fifth Circuit compounded its error below by gutting the minimal narrow-tailoring requirement that applies under either level of scrutiny. Under that requirement, which was mandated by this Court in *McCullen v. Coakley*, 573 U.S. 464 (2014), Arlington was required to “demonstrate that alternative measures that burden substantially less speech . . . fail to achieve [its] interests.” *McCullen*, 573 U.S. at 495. But Arlington fell well short of that mark. The Fifth Circuit, in allowing Arlington to ban donation boxes in 25 of the City’s 28 zoning districts with the stated aim of addressing overflow and litter surrounding the boxes, required no showing that existing regulations that stopped short of outright zoning bans were insufficient to achieve the City’s aesthetic interest.

The Court should grant certiorari to resolve a circuit split on this issue of great constitutional importance. At least 38 states and the District of Columbia regulate charitable organizations. If the decision below is allowed to stand, states and municipalities throughout the country could zone unattended donation boxes out of useful existence simply by declaring them to be “unsightly.” The effective elimination of this historically important form of charitable solicitation would pose an existential threat to some organizations, and it would trample the constitutionally protected speech and association rights of all of them.

Moreover, the erosion of strict First Amendment protection for charitable solicitation via the unattended donation box risks opening the floodgates to bans or burdens on all forms of charitable solicitation.

ARGUMENT

I. THE DECISION BELOW OPENS THE DOOR TO UNCONSTITUTIONAL BANS OR BURDENS ON ALL FORMS OF CHARITABLE SOLICITATION.

As Petitioners note, this case raises issues of exceptional importance that will guide state and local legislatures across the country as they draft laws regulating not only donation boxes, but also other forms of charitable and religious solicitation.

The nonprofit sector is vital to the social, political, and economic wellbeing of our nation. In 2016, the

nonprofit sector contributed an estimated \$1.05 trillion to the United States economy—5.6 percent of the nation’s gross domestic product.² Charitable giving in 2023 totaled \$557.16 billion.³

These charitable funds support a vast range of voluntary activities. They support shelter, food, and healthcare for those in need; groundbreaking scientific research; and all levels of public and private education, just to name a few. They also give voice to important social, political, and economic issues that politically dominant groups may deem unpopular or controversial.

At least 38 states and the District of Columbia require nonprofit organizations to register before soliciting charitable contributions.⁴ When circuit courts enable the government to silence an entire medium of charitable and religious solicitation, that

² See *The Nonprofit Sector in Brief 2019*, Urban Institute, National Center for Nonprofit Statistics (June 2020), <https://urbaninstitute.github.io/nccs-legacy/briefs/sector-brief-2019>.

³ *Giving USA: U.S. Charitable Giving Totaled \$557.16 Billion in 2023*, https://philanthropy.indianapolis.iu.edu/news-events/news/_news/2024/giving-usa-us-charitable-giving-totaled-557.16-billion-in-2023.html.

⁴ Those states include Alabama, Alaska, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.

message radiates from coast to coast, threatening to nullify the work this Court and countless lower courts have done to protect the bedrock First Amendment freedoms of speech, association, and religion. If state and local governments follow the new majority circuit position and increasingly ban donation boxes, vital nonprofits will be powerless to reach donors and facilitate anonymous donations.

The result of the ruling below is to open the floodgates to complete bans on protected speech activity based on nothing more than the government’s “say-so.” As a consequence, this case has far-reaching implications for charitable solicitation that extend well beyond donation boxes. It gives a green light to state and local governments to find clever workarounds—like the zoning provisions at issue here—to prohibit speech they simply do not like. As Petitioners note, that risk applies not just to donation boxes, but also to other indispensable means of charitable fundraising, such as online or door-to-door solicitations. Petition for Writ of Certiorari at 34.

II. THE FIFTH CIRCUIT ERRED WHEN IT FAILED TO HOLD THAT DONATION-BOX LAWS ARE CONTENT-BASED SPEECH RESTRICTIONS SUBJECT TO STRICT SCRUTINY, TAKING THE WRONG SIDE OF AN EXISTING CIRCUIT SPLIT.

A. Donation Boxes Are a Historically Important and Uniquely Valuable Form of Charitable Solicitation.

The use of donation boxes to solicit support for charitable causes is nearly as old as recorded human history. The Old Testament tells of a priest in the Temple of Solomon who “took a chest, and bored a hole in the lid of it, and set it beside the altar,” which historians infer “was intended for the collection of offerings for the maintenance of the temple.” Thomas Frost, “Alms-Boxes and Alms-Dishes.” *Antiquities and Curiosities of the Church*, William Andrews, ed., William Andrews & Co., 1897, p. 154 (quoting 2 Kings 12:9).

Donation boxes are a historical fixture of all three Abrahamic religions. The placement of “tzedakah boxes” at Jewish synagogues dates back thousands of years. Petition for Writ of Certiorari at 31 (citing Laura Mogil, *A History of Giving*, N.Y. Times, Sept. 6, 2007). Similar boxes known as “alms boxes,” “poor boxes,” “offertory boxes,” or “mite boxes” have been common at Christian churches since the earliest days of the religion. *Id.*; *see also* Frost at 154. In Islam, “sadaqah stones” embodying the Quranic virtue of voluntary charity date back to the early Ottoman

Empire. Sinasi Acar, “Charity Stones in Istanbul,” *History of Istanbul from Antiquity to the 21st Century*, Vol. 4, pp. 415-20 (2015) (translated). They contained reservoirs for coin donations and were made from small stone pillars on “mosques, fountains, bridges, . . . inns, hospitals and nurseries, as well as on some well-frequented streets.” *Id.*

Surviving examples of historical donation boxes show they have long been used to communicate charitable messages to the public. A late-19th Century history of Christian alms boxes, for example, observes that a “large proportion of these old alms-boxes bear inscriptions; ‘Remember the poor’ being one very frequently met with by those who . . . never pass a country church without entering it, provided the doors are not locked.” Frost at 156-57.

Charities have placed donation boxes outside commercial areas in America since at least the late 19th Century. The Salvation Army’s Red Kettle campaign, for example, began in 1891, when a pot—accompanied by a sign that read, “keep the pot boiling”—was placed at San Francisco’s Oakland Ferry Landing to raise money to address hunger among the city’s poor. Ashley Williams, *In the Spirit of giving? What to know about the Salvation Army’s annual Red Kettle campaign*, USA Today, Dec. 7, 2022. Nineteenth Century American news reports contain numerous accounts of donation boxes in publicly prominent commercial areas, where their charitable messages would be obvious to passers-by. Petition for Writ of Ceriorari at 32-33 (citing “Charity Box Opened,” The Clinton Morning Age (Mar. 16, 1895) (publicizing donation box at Freund &

Witzigman's shoe store); Lawrence Daily Journal (Apr. 24, 1890) (encouraging public to contribute to hospital donation box at post office); "A Donation Box Stolen," The Philadelphia Record (July 3, 1889) (noting theft of donation box at Twentieth and Tioga streets benefiting survivors of Johnstown Flood); "Couldn't Feel at Home," The Kentucky New Era (Mar. 25, 1881) (fictional 1881 story involving orphan asylum donation box)).

Unattended donation boxes are a unique method of charitable speech and solicitation. Unlike simple signs conveying charitable messages, donation boxes allow donors to respond with tangible contributions directly at the point of speech. Unlike human speakers, unattended donation boxes communicate their messages at all times, day or night, allowing them to reach passers-by who are more likely to encounter them at unconventional hours, such as nurses, police officers, and other shift-workers.

Perhaps most significantly, unlike other methods of solicitation, unattended donation boxes allow individuals to donate anonymously. Aside from serving individual privacy interests, anonymous charity is integral to the practice of all three Abrahamic faiths. *See* Gregg E. Gardner, "Beyond Maimonides' Ladder: Anonymous Charity in Early Jewish Tradition," (July 25, 2018), <https://histphil.org/2018/07/25/beyond-maimonides-ladder-anonymous-charity-in-early-jewish-tradition/>; Ursula Vils, "Anonymous Giving: Acts of Charity That Have No Name," *Los Angeles Times* (Dec. 25, 1985), <https://www.latimes.com/archives/la-xpm-1985-12>

25-vw-21250-story.html; Acar, *supra*. Anonymity has also been recognized by this Court as an important constitutional consideration. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *see also McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 342 (1995) (“an author’s decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment”).

The history of donation boxes is well established, and modern-day charitable organizations continue to use donation boxes for the same reasons they have been used by charitable and religious groups for centuries. Aside from being an important source of tangible support for their missions, unattended donation boxes allow such groups to communicate their charitable messages in ways that no other medium can fully replicate.

B. Unattended Donation Boxes Are Charitable Speech Entitled to the Strongest First Amendment Protection.

This Court has long recognized that charitable solicitations “involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.” *Schaumburg*, 444 U.S. at 632. “Regulation of a solicitation must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech.” *Riley*, 487 U.S. at 796

(quoting *Schaumburg*, 444 U.S. at 632; *Munson*, 467 U.S. at 959-60) (internal quotation marks omitted).

Accordingly, laws restricting the solicitation of donations have always been subject to strict First Amendment scrutiny. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618 (2021); *Riley*, 487 U.S. at 800-01; *Munson*, 467 U.S. at 969; *Schaumburg*, 444 U.S. at 636-38; *Cantwell*, 310 U.S. at 305. That is the case even if they do not discriminate on the basis of any particular religious or charitable speaker or viewpoint. In *Cantwell*, for example, this Court noted that a regulation that was neutral as to religion but unreasonably obstructed the collection of donations would be constitutionally objectionable. 310 U.S. at 305.

This Court has provided the same level of scrutiny to laws imposing registration and licensing requirements on charitable or religious solicitations. In *Collins*, this Court held that such measures must be imposed “in such a manner as not to intrude upon the rights of free speech and free assembly.” 323 U.S. at 540-41; *see also N.A.A.C.P.*, 743 F.2d at 1355 (that “one must inform the government of his desire to speak and must fill out appropriate forms and comply with applicable regulations discourages citizens from speaking”).

This Court’s First Amendment doctrine in the area of charitable solicitations was crystallized in the trilogy of *Schaumburg*, *Munson* and *Riley*. In all three cases, this Court applied strict scrutiny to laws restricting the solicitation of donations, requiring the

government to show a substantial legitimate interest and the most narrowly tailored means to achieve it.⁵ *Riley*, 487 U.S. at 800-01; *Munson*, 467 U.S. at 969; *Schaumburg*, 444 U.S. at 636-38. This Court has affirmed multiple times in subsequent years that an “exacting” standard higher than intermediate scrutiny applies to such laws. *See Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 442 (2015) (affirming application of “exacting scrutiny to laws restricting the solicitation of contributions to charity, upholding the speech limitations only if they are narrowly tailored to serve a compelling interest”) (citing *Riley*, 487 U.S. at 798); *Bonta*, 594 U.S. at 618 (applying “exacting scrutiny” to licensing law restricting solicitation of charitable donations and corresponding rights of speech and association).

Against this Court’s settled precedent, the divided Fifth Circuit below applied only intermediate scrutiny to Arlington’s near-complete ban of donation boxes on consenting private property. That was clear error, and it erodes the safeguards that have long protected the First Amendment rights of speech and association inherent in charitable solicitations.

⁵ In *Planet Aid*, the court rejected the argument that *Schaumburg* and its progeny “applied a level of scrutiny stricter than that applicable to commercial speech but not strict in the highest sense,” finding that “*Schaumburg* plainly applied strict scrutiny.” 782 F.3d at 330 (internal quotation marks omitted).

C. The Decision Below Tilts the Balance of Federal Circuit Court Precedent to the Wrong Side of the Scale on the Standard of Scrutiny Applicable to Donation-Box Laws.

The first two federal circuit courts to address the constitutionality of donation-box laws correctly held that they were subject to the strict-scrutiny standard announced by this Court in the *Schaumburg* trilogy.

The Fifth Circuit, ironically, was first to address the issue. In *Abbott*, the court considered a Texas law that required professional fundraisers who solicited and collected donations on behalf of charities through public donation boxes to disclose, among other things, their contact information and the amounts paid to charities under their fundraising agreements. 647 F.3d at 206-07. The court rejected the argument that unattended donation boxes are “merely commercial speech,” holding that they are a form of solicitation that “surely implicate[s]” the “speech interests identified in *Schaumburg*—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes.” *Id.* at 212-13 (quoting *Schaumburg*, 444 U.S. at 642) (internal quotation marks omitted). The Fifth Circuit thus applied strict scrutiny, holding that the donation-box law would be sustained only “if (1) it serves a sufficiently strong, subordinating interest that the government is entitled to protect and (2) it is narrowly drawn to serve the interest without unnecessarily interfering with First Amendment

freedoms.” *Id.* at 213 (quoting *Munson*, 467 U.S. at 960-61) (internal quotation marks omitted).

The Sixth Circuit took up the mantle four years later in *Planet Aid*. Considering a municipal order that banned outdoor, unattended donation boxes, the court first held that “speech regarding charitable giving and solicitation is entitled to strong constitutional protection, and the fact that such speech may take the form of a donation bin does not reduce the level of its protection.” *Planet Aid*, 782 F.3d at 326. It observed that “[a] charitable donation bin can—and does—speak”:

A passer-by who sees a donation bin may be motivated by it to research the charity to decide if he wants to donate—in so doing, the passer-by will gain new information about the social problem the charity seeks to remedy. Indeed, the donation bin may ultimately motivate citizens to donate clothing or shoes even if they had not previously considered doing so. The speech may not be unidirectional, either—a citizen faced with a choice among several bins from different charities may be inspired to learn more about each charity’s mission in deciding which charity is consistent with his values, thus influencing his donation decision.

Id. at 325.

The Sixth Circuit then carefully considered whether the municipal donation-box ban was a content-based restriction—and thus subject to strict scrutiny—or merely a regulation of the time, place, and manner of protected speech—and thus subject only to intermediate scrutiny. *Id.* at 326-30. It held that the ban “clearly regulate[d] speech on the basis of its content”:

The ordinance does not ban or regulate all unattended, outdoor receptacles. It bans only those unattended, outdoor receptacles with an expressive message on a particular topic—charitable solicitation and giving.

Id. at 328. The court rejected the argument that the law was content-neutral because it applied to all donation boxes regardless of viewpoint, observing, “it does not follow that the ordinance is content-neutral simply because it is viewpoint-neutral.” *Id.* at 328-29 (citing *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002)).⁶ The court thus applied strict scrutiny. *Id.*

Two years after *Planet Aid*, the Ninth Circuit departed from the well-reasoned approaches of the Fifth and Sixth Circuits when it decided *Recycle for Change*. That case involved a comprehensive licensing scheme created by the City of Oakland that applied to unattended donation boxes but not other types of

⁶ Indeed, the same year the Sixth Circuit decided *Planet Aid*, this Court rejected an analogous argument in *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015).

receptacles, such as dumpsters or recycling bins. 856 F.3d at 668-69. Disregarding more than eight decades of this Court’s precedent, the Ninth Circuit erroneously held that the licensing scheme did “not discriminate on the basis of any message,” finding that neither “the activity of collecting . . . personal items” nor “the solicitation of items to further such activity . . . constitute ‘communicative content.’” *Id.* at 671-72 (quoting *Reed*, 576 U.S. at 164).

Even after *Recycle for Change*, though, the balance of circuit court precedent still weighed in favor of applying strict scrutiny to laws restricting charitable speech in the form of unattended donation boxes.

The decision below, however, flipped the Fifth Circuit to the other side of the split. The court below applied the same superficial reasoning as the Ninth Circuit in *Recycle for Change*, holding that Arlington’s ordinance “does not discriminate based on topic, subject matter, or viewpoint” because it “regulates all donation boxes without reference to content.” Petition for Writ of Certiorari, App. 9a (citing *Recycle for Change*, 856 F.3d at 672; *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 72 (2022)). Now, the majority of circuit courts to consider this issue have wrongly applied intermediate scrutiny after erroneously finding donation-box laws to be content-neutral.

Now is the time for this Court to resolve this problematic circuit split. The ordinance at issue in this case is materially the same as the one invalidated in *Planet Aid*, and the Sixth Circuit’s reasoning

regarding content discrimination squarely applies here. Arlington did not impose a permitting scheme on all outdoor receptacles, such as dumpsters and recycling bins, nor did it indiscriminately restrict all receptacles' size, construction, maintenance, upkeep, or placement. The Fifth Circuit ignored the blatant subject-matter distinction inherent in a law that restricts donation boxes and nothing else. The Sixth Circuit was right—a law banning “only outdoor receptacles that carry a message about charitable giving” necessarily restricts “expression that the Supreme Court held in *Schaumburg* and its progeny is worthy of strong constitutional protection.” *Planet Aid*, 782 F.3d at 328.

III. THE DECISION BELOW GUTS THE MINIMAL NARROW-TAILORING REQUIREMENT THAT APPLIES EVEN UNDER INTERMEDIATE SCRUTINY.

The damage done below is not limited to tilting the scales toward the wrong level of First Amendment scrutiny. As a minimal requirement under any level of scrutiny, a law “must not ‘burden substantially more speech than is necessary to further the government’s legitimate interests.’” *McCullen*, 573 U.S. at 486 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)). Despite acknowledging the applicability of *McCullen*’s narrow-tailoring requirement, however, the Fifth Circuit allowed Arlington’s donation-box law to stand without requiring the City to “demonstrate that alternative measures that burden substantially

less speech . . . fail to achieve [its] interests.” *McCullen*, 573 U.S. at 495.

Arlington identified an aesthetic purpose behind its donation-box law: “to protect the aesthetic well-being of the community[,] and promote the tidy and ordered appearance of developed property.” Petition for Writ of Certiorari, App. 4a. As the dissent below recognized, however, existing non-zoning provisions of the law already restrict the “construction, labeling, maintenance, upkeep, signage, color, placement, clustering, and unchecked accumulation of boxes.” Petition for Writ of Certiorari, App. 25a. Those provisions “precisely target[]” the City’s stated interests. *Id.* Yet the majority below approved Arlington’s “drastic” zoning exclusions—which ban donation boxes from all residential and easily accessible commercial zones—without requiring any evidence that the existing, less-restrictive measures are ineffective in achieving the City’s legitimate goals.

As the dissent observed, Arlington’s zoning provision

outright bans the boxes not just from the Community Commercial zones that are the focus of the city’s concerns, but also from the 577 city acres that are zoned Office Commercial and from *all* residential zones, where at least some churches are located. Those are areas where, if boxes were properly maintained, their presence would seem to be both appropriate and particularly useful to the Charities.

Petition for Writ of Certiorari, App. 26a. As Petitioners point out, every other solicitation option available to charitable organizations is both more costly and reaches fewer people than unattended donation boxes. Petition for Writ of Certiorari at 7. This is a case, like *Gilleo*, in which “adequate substitutes [do not] exist for the important medium of speech that [the government] has closed off.” *Gilleo*, 512 U.S. at 56.

The decision below dilutes the narrow tailoring requirement long mandated by this Court’s First Amendment precedent to the point of near meaninglessness.

CONCLUSION

Amici Curiae respectfully implore this Court to reverse the decision below and reaffirm the long-standing principle that charitable solicitations are fully protected speech subject to strict First Amendment scrutiny. Such a ruling would protect the rights of nonprofit organizations across the country and guide future legislatures in drafting clear and constitutional laws in this vital area.

Respectfully submitted,

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APPENDIX

APPENDIX INDEX

APPENDIX 1—List of *Amici Curiae* App. 1

APPENDIX
List of Amici Curiae

60Plus American Association of Senior Citizens
AMVETS National Service Foundation
Archdiocese of Kansas City in Kansas
Catholic Charities of Kansas City-Saint Joseph
Catholic Charities of Northeast Kansas
Catholic Diocese of Kansas City-Saint Joseph
Creative Visions
Demos
Disabled American Veterans
Donnelly College
Feeding America
Foundation for Individual Rights and Expression
GO2 for Lung Cancer
Goldwater Institute
Homegrown National Park
Illinois Policy Institute
KinderUSA
Lt. Kenneth Lee Coontz VFW Post 2446
National Children's Cancer Society
National Federation of the Blind
National Federation of the Blind – California
National Federation of the Blind – Florida
National Federation of the Blind – Massachusetts
National Federation of the Blind – Missouri
National Federation of the Blind – Washington
National Police Association
Our Lady's Montessori School
Paralyzed Veterans of America

Retired Police Canine Foundation
Saint Bonaventure Indian Mission & School
SOS Children's Villages USA
Students for Life of America
The Nonprofit Alliance Foundation
United States Justice Foundation
VFW – Missouri Department
Vietnam Veterans of America