No. _____

Supreme Court of the United States

HAL TAYLOR,
in his official capacity as Secretary of
the Alabama Law Enforcement Agency,
Petitioner,

v.

JONATHAN SINGLETON,
on behalf of himself and others similarly situated,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Smith v. City of Fort Lauderdale*, the Eleventh Circuit held that "begging is speech entitled to First Amendment protection." 177 F.3d 954, 956 (1999). In this case, the Eleventh Circuit affirmed a permanent classwide injunction prohibiting the enforcement of Alabama's ban on public begging. That law is a dead ringer for historical precursors. Begging was not constitutionally protected at the founding; rather, it was widely criminalized. The question presented is:

Whether the First Amendment protects begging.

PARTIES AND PROCEEDINGS

Petitioner is Hal Taylor, in his official capacity as Secretary of the Alabama Law Enforcement Agency.

Respondent is Jonathan Singleton, on behalf of himself and others similarly situated.

The proceedings below are:

1. United States Court of Appeals (11th Cir.): *Singleton v. Taylor*, judgment entered April 8, 2025, rehearing denied May 28, 2025.

2. United States District Court (M.D. Ala.): *Singleton v. Taylor*, No. 2:20-cv-99, judgment entered March 10, 2023.

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PETITION FOR WRIT OF CERTIORARI

Like every other State of its vintage, Alabama first regulated vagrancy over 200 years ago. At the founding, States commonly prohibited idleness, wandering about with no course of business or fixed residence, begging in the streets, and the like. The basic theory, inherited from the English, was to distinguish those who could work (but refused) from those could not. The law demanded "honest labor" from the former and charity to the latter. One of the first acts establishing the City of Washington conferred the "full power and authority" to punish persons "found begging" who could not "give security for their good behaviour." Act of May 4, 1812, ch. 75, §6, 2 Stat. 721.

No one disputes the history. Nor that Alabama's prohibition on public begging (Ala. Code §13A-11-9(a)(1)) has not only well-established analogues but historical *twins*. The only question is whether that history satisfies the State's constitutional burden, as this Court has said, or whether "history must stay in the past," as plaintiffs urged below, DE41:51.

Two strands of doctrine answer that question in the State's favor. First, certain "categories" are "fully outside the protection of the First Amendment" because they have been restricted from "1791 to the present." *United States v. Stevens*, 559 U.S. 460, 468, 471 (2010). Like child pornography, a category identified in 1982, begging has been "historically unprotected" even though it has "not yet been specifically identified or discussed as such in our case law." *Id.* at 472; *accord Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 791-92, 795 n.3 (2011). Second, the law can continue to draw "content-based distinctions" that "have always coexisted with the First Amendment." *Vidal v.*

Elster, 602 U.S. 286, 295 (2024). The ubiquity of begging laws in our "history and tradition" prove they are fully "compatible with the First Amendment." *Id.* at 301; *accord City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 75-76 (2022) (citing "unbroken tradition" for "half a century" as evidence of the "scope of the First Amendment"); *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 475, 482 (2022).

The courts of appeals have used wrong methods to reach wrong results. They analyze begging laws with forum analysis, *Loper v. N.Y.P.D.*, 999 F.2d 699 (2d Cir. 1993); the test for time, place, and manner restrictions, *Gresham v. Peterson*, 225 F.3d 899 (7th Cir. 2000); and more recently, the strict scrutiny reserved for laws that regulate "based on 'the topic discussed or the idea or message expressed,'" *Rodgers v. Bryant*, 942 F.3d 451, 456 (8th Cir. 2019) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). With these ready-made balancing tests, the lower courts avoid asking whether the freedom of speech, as originally understood, protects begging at all.

More percolation is unlikely to bear fruit. Most States and their subdivisions are already blocked by from regulating begging as such. Although vagrancy laws "went virtually unchallenged" for centuries, *City of Chicago v. Morales*, 527 U.S. 41, 53 n.20 (1999) (plurality), they now face a constitutional gauntlet that few cities can afford to face. Laws that survive attack under the Due Process Clause, *see id.; Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), and the Cruel and Unusual Punishments Clause, *see City of Grants Pass v. Johnson*, 603 U.S. 520, 534 (2024), now must pass muster under the Free Speech Clause too, despite "little reason to think the First

Amendment was … commonly understood to upend" them. *Houston Cmty. Coll. Sys.*, 595 U.S. at 475.

Ignoring history and tradition, courts have taken *Reed v. Town of Gilbert* to be "a *per se* rule of applying heightened scrutiny" to begging laws. *Cf. Elster*, 602 U.S. at 295; *see, e.g.*, *Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015) (Manion, J., concurring). This reflexive resort to strict scrutiny "endanger[s] virtually all panhandling or solicitation regulations." J. Wegner & M. Norchi, *Regulating Panhandling: Reed and Beyond*, 63 S.D. L. Rev. 579, 608 (2019); *cf. City of Austin*, 596 U.S. at 80 (Breyer, J., concurring) (predicting "courts will strike down" "'entirely reasonable' regulations" of "panhandling, *e.g.*, Ala. Code §13A-11-9(a)"). Indeed, courts have enjoined laws limited in scope to panhandling at night,[1] soliciting from occupants of motor vehicles,[2] and even "aggressive panhandling" near ATMs, outside public restrooms, or by the outdoor seating of a restaurant.[3]

At the same time, there's been a "dramatic growth" in public demand for dealing with begging and other matters of public order and public safety.[4] At stake is not only "the will of the people," *City of Austin*, 596 U.S. at 79 (Breyer, J., concurring), but the basic "duty and … power to maintain the public peace," *City of Chicago*, 527 U.S. at 102 (Thomas, J., dissenting).

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[1] *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1292-93 (D. Colo. 2015) ("not … necessary [for] public safety").

[2] *Comite de Jornaleros v. City of Redondo Beach*, 657 F.3d 936, 940 (9th Cir. 2011).

[3] *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 195-96 (D. Mass. 2015).

[4] National Homelessness Law Center, *Housing and Homelessness in the United States* (Apr. 7, 2025), homelesslaw.org/wp-content/uploads/2025/04/USUNreport2025.pdf.

Grappling with a "health and safety crisis" on streets across the country, cities need "the full panoply of tools in the policy toolbox." *City of Grants Pass*, 603 U.S. at 528, 533. Those tools must comply with "a number of limits," *id.* at 541, but at least as to begging, the Free Speech Clause is not one of them.

OPINIONS BELOW

The Eleventh Circuit's opinion (App.1a-14a) is available at 2025 WL 1042101. The district court's opinion (App.15a-16a) is available at 2023 WL 2942998.

JURISDICTION

The judgment below was entered on April 8, 2025. A petition for rehearing was denied on May 28, 2025. With a 30-day extension of the time to file, Petitioner timely invokes jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides in pertinent part that "Congress shall make no law … abridging the freedom of speech."

Alabama Code §13A-11-9(a)(1) provides that a "person commits the crime of loitering if he or she … [l]oiters, remains, or wanders about in a public place for the purpose of begging."

Alabama Code §32-5A-216(b) provides that no one "shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle, nor for the purpose of distributing any article, unless otherwise authorized by official permit of the governing body of the city or county having jurisdiction over the highway."

STATEMENT

A. Begging was widely criminalized at the time of the founding.

The regulation of begging has roots at least as deep as 14th-century England.[5] The decline of feudalism, the bubonic plague, and the dissolution of monasteries caused severe labor shortages, lasting from the 14th through the 17th centuries. *Papachristou*, 405 U.S. at 161 & n.4. Generations of "masterless men" were either "born to a life of idleness" or "fallen upon evil days," but in any event, formed a "brotherhood of beggars" that became "a definite and serious menace to the community." *Id.* at 161 n.4 (quoting *Ledwith v. Roberts* [1937] 1 K.B. 232, 271).

All this led the Crown to stabilize the labor force with a series of enactments, starting with the Statute of Labourers in 1349. Finding that some would rather "beg in Idleness than by Labour [] get their Living," King Edward III declared that "every man and woman of our realm" shall work. 23 Edw. 3, pmbl., c. 1 (1349) (Eng.). The statute made it unlawful "to refuse an offer of work" and "to give alms to able-bodied beggars who refused to work."[6] Any "valiant beggars," who instead chose "idleness and vice," could be punished. 23 Edw. 3, c. 7. (1349) (Eng.).

England would later "tighten up enforcement" by adding penalties and "giving justices of the peace the summary power to punish vagrants." C. Foote, *supra*,

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[5] In his discussion of vagrancy laws, Blackstone cites regulation of "idleness" in ancient Athens. W. Blackstone, 4 Commentaries on the Laws of England *169-70 (1768).

[6] C. Foote, *Vagrancy-Type Law and Its Administration*, 104 U. Pa. L. Rev. 603, 615 (1956).

at 615.[7] Officials would search "diligently and regularly … for beggars" to "determine" whether they were "aged" or "impotent" and thus "allowed to beg" and "assigned a place to beg" with "written authorization, by letter under seal."[8] Part morals legislation and part labor regulation, "the poor laws" became "a complex code" that obligated parishes both "to care for paupers" who could not work and to punish others.[9] *See also Papachristou*, 405 U.S. at 161-62 & n.4; *City of Chicago*, 527 U.S. at 103 (Thomas, J., dissenting).

Like "other English laws, these rules passed into colonial legal codes" directly.[10] The Colony of Virginia, for example, adopted the English vagrancy laws in 1672, citing "the wisdom[] of several[] parliaments."[11] In an act of 1748, the colony defined "vagabonds" to include those "going about begging."[12] A person "found … begging" could be arrested, tried, punished,

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[7] *See also* A. Sherry, *Vagrants, Rogues and Vagabonds. Old Concepts in Need of Revision*, 48 Cal. L. Rev. 557, 559 (1960) (describing regulation and punishment of "beggars and idle persons" under King Henry VII and the Statute of Westminster); J. Gillin, *Vagrancy and Begging*, 35 Am. J. Sociology 424, 426 (1929).

[8] W. Quigley, *Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor*, 30 Akron L. Rev. 73, 93 (1996); *see also id.* at 94-97.

[9] J. Ely Jr., *Poor Laws of the Post-Revolutionary South, 1776-1800*, 21 Tulsa L. J. 1, 2 (1985).

[10] A. Stanley, *Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America*, 78 J. Am. Hist. 1265, 1266-67 (1992); *see also* F. Lacey, *Vagrancy and Other Crimes of Personal Condition*, 66 Harv. L. Rev. 1203, 1206 (1953) ("Vagrancy legislation in the United States which began in colonial times, closely follows English models.").

[11] 2 The Statutes-At-Large, Being a Collection of All the Laws of Virginia ("Laws of Virginia"), 1619-1792, at 298 (Hening ed. 1809-1823) (1672).

[12] 6 Laws of Virginia, *supra*, at 29-30 (1748).

and, absent "sufficient security for his or her good behavior," committed "to service, on wages, for the term of one year." *Id.* By 1769, "the number of poor people" in Virginia had "much increased," so the government ordered parish vestries to construct houses "for the lodging, maintaining, and employing of all such poor people." *Id.* at 476. The act also gave the power to local officials to arrest "all and every person and persons who shall be found begging in their parish," and to convey them to poorhouses "to be employed for the space of twenty days." *Id.* After the founding, the Commonwealth enacted similar legislation, defining and punishing as "vagrants" anyone who "shall go about begging."[13] Around the same time, Virginia also transferred control over poor relief from the Anglican parish vestries to popularly elected overseers.[14]

Virginia was not unusual. Not at all. In fact, *every single State* that ratified the First Amendment had vagrancy laws on the books. *See City of Chicago*, 527 U.S. at 103 n.2 (Thomas, J., dissenting). Of those, at least six States named and punished the act of begging, including Connecticut,[15] New Jersey,[16] New

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[13] 12 Laws of Virginia, *supra*, at 579 (1787); *see also id.* at 134 (1785) (providing that "any able-bodied man" found "begging" may be conscripted into the navy for eighteen months).

[14] J. Ely Jr., *supra*, at 4-5; *see, e.g.*, 12 Laws of Virginia, *supra* at 573-80 (1787) (towns "provide for and maintain the poor").

[15] The First Laws of the State of Connecticut 206-10 (Cushing ed., 1982) (1784) (penalizing "vagabond, idle, and dissolute persons, begging"); 1 A System of the Laws of the State of Connecticut 127 (Swift ed., 1795) (1784) (authorizing arrest of "vagrant persons").

[16] A Digest of the Laws of New Jersey 585-86 (Elmer ed., 1838) (1799) (penalizing those who "go about from door to door, or place themselves in streets, highways or passages, to beg").

York,[17] North Carolina,[18] Rhode Island,[19] and Virginia (*see supra*). Four States regulated "beggars": Maryland,[20] New Hampshire,[21] South Carolina,[22] and Vermont.[23] Four did not enumerate begging as such but still regulated idleness and vagrancy: Delaware,[24]

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[17] 2 Laws of the State of New York 643-44 (Weed, Parsons & Co. 1886) (1788) (punishing "all persons who go about from door to door or place themselves in the streets, highways or passages, to beg in the cities and towns").

[18] 23 The Colonial and State Records of North Carolina 435-36 (Weeks ed., 1909) (1755) (penalizing those "going about begging"); 24 The Colonial and State Records of North Carolina 597-98 (Weeks ed., 1909) (1784) (penalizing "vagrant[s]").

[19] The Public Laws of the State of Rhode-Island and Providence Plantations 364-65 (Carter & Wilkinson eds., 1798) (1798) (authorizing work-houses for "any person who shall attempt to procure a living by begging in the streets").

[20] Laws of Maryland at large, with proper Indexes ch. XXIX, §§ IV-XVIII (Bacon & Calvert eds., 1765) (1768) (authorizing work-houses for "Vagrants, Beggars, [and] Vagabonds").

[21] 5 Laws of New Hampshire including public and private acts, resolves, votes, etc. 691 (Metcalf ed., 1916) (1791) (penalizing "Common-beggars").

[22] A Digest of the Laws of South-Carolina, containing the public statute law of the state down to the year 1822, at 166 (James ed., 1822) (1738) (penalizing unlicensed "hawker[s]" and "pedlar[s]" as "common vagrant[s]"); *id.* at 415-18 (penalizing "vagrants" including "sturdy beggars").

[23] 1 The Laws of the State of Vermont, Digested and Compiled 389 (Randolph: Sereno Wright 1808) (1797) (authorizing work-houses to "correct[]" "common beggars").

[24] 1 Laws of the State of Delaware 167-70 (Adams & Adams eds., 1797) (1740) (prohibiting importation of "vagrant persons" and providing for removal); *id.* at 135-38 (1731) (distinguishing "pedlars, hawkers or petty chapmen" from "idle and vagrant persons"); 2 Laws of the State of Delaware, *supra*, at 1034-41 (1792) (authorizing removal to poor-houses).

Georgia,[25] Massachusetts,[26] and Pennsylvania.[27]

These "earl[y] state vagrancy laws were direct descendants of similar colonial and English poor law statutes."[28] They were "ubiquitous in early American history," "lasted well through the ratification of the Fourteenth Amendment," and "remained on the books" until this Court "began to question" them in "the late 20th century … on due process grounds." *Coal. on Homelessness v. City & Cnty. of S.F.*, 90 F.4th 975, 988 (9th Cir. 2024) (Bumatay, J., dissenting), *opinion withdrawn*, 106 F.4th 931.

B. Alabama is permanently enjoined from enforcing its begging laws.

1. Alabama's begging statute prohibits remaining in public "for the purpose of begging." Ala. Code §13A-11-9(a)(1). Anyone who violates the law more than once in the same jurisdiction commits a misdemeanor, Ala. Code §13A-11-9(e), punishable by a fine of no more than $500, Ala. Code §13A-5-12(a)(3), or by imprisonment up to three months, Ala. Code §13A-5-7.

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[25] Digest of the Laws of the State of Georgia 1755—1800, at 568-69 (Marbury & Crawford eds., 1802) (1788) (penalizing "vagabonds" and "idle vagrants or disorderly persons").

[26] The Colonial Laws of Massachusetts: Reprinted from the Edition of 1660, with the Supplements to 1672, at 211 (Whitmore ed., 1889) (1662) (authorizing arrest of "Vagrant persons"); *id.* at 221 (penalizing those living "the Vagrant and Vagabond life"); The General Laws and Liberties of the Massachusetts Colony 31 (Rawson ed. 1672) (1655) (similar).

[27] 5 Laws of the Commonwealth of Pennsylvania 528-29 (Thompson ed., 1803) (1803) (on removal of "vagrant persons").

[28] W. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. Rich. L. Rev. 111, 164 (1997).

Alabama's pedestrian solicitation statute prohibits "stand[ing] on a highway" to solicit employment, business, or contributions without a permit. Ala. Code §32-5A-216(b). A person who violates this provision commits a misdemeanor punishable by a fine of no more than $100 or by imprisonment up to 10 days, with escalating punishments for subsequent offenses. Ala. Code §32-5A-8.

2. Respondents are a certified class of individuals who will stand on a public street in Alabama to solicit employment, business, or money from the occupant of a vehicle or who will loiter, remain, or wander in a public place in Alabama for the purpose of begging. They brought suit against the City of Montgomery, the Sheriff of Montgomery County, and the Secretary of the Alabama Law Enforcement Agency, challenging on free-speech grounds the enforcement of Alabama Code §§13A-11-9(a)(1) and 32-5A-216(b). Shortly after filing suit, the City of Montgomery and Sheriff of Montgomery County settled the claims against them, and only the Secretary of the Alabama Law Enforcement Agency remained as a defendant. App.3a n.4.

The district court granted a preliminary injunction against the enforcement of both the begging statute and the pedestrian-solicitation statute. App.4a. After plaintiffs moved for summary judgment, the State conceded that under circuit precedent, *Smith v. City of Fort Lauderdale*, 177 F.3d 954 (11th Cir. 1999), begging is constitutionally protected speech, so the State cannot "broadly restrict panhandling in the manner its laws provide." App.4a. The district court granted summary judgment for the class and entered a permanent injunction. *Id.*

3. On appeal, the Eleventh Circuit panel understood the "sole dispositive issue" to be whether "begging is protected speech" or whether "the First Amendment, as originally understood, permits the criminalization of begging." App.2a, 5a. But the panel found no way to "distinguish the facts or law of this case from *Smith*," which had "held that such begging is entitled to First Amendment protection." App.11a (cleaned up). "Thus, the begging statute's applications, which are solely to begging, are impermissible, and the pedestrian solicitation statute's applications, which are to begging and other constitutionally protected speech, are impermissible." App.12a-13a. The panel was "bound to affirm" (App.2a) under any level of scrutiny, for the "full range of applications" for each statute was "constitutionally impermissible." App.13a & n.14. Petitioner then sought rehearing en banc, which was denied.

REASONS TO GRANT THE WRIT

I. Begging is not constitutionally protected speech under the First Amendment.

A. Begging was not protected by the freedom of speech at the founding.

Not only was there no free-speech right to beg at the founding, but begging had long been a *crime* throughout the States and the Colonies. *Cf. Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 241 (2022). "The history is an often-told tale," *Papachristou*, 405 U.S. at 161, which the Court relied upon in "early decisions" on state powers and then "repeated in numerous later cases up to the turn of the century," *Edwards v. California*, 314 U.S. 160, 176-77 (1941) (citing, *e.g.*, *Hannibal & St. J.R. Co. v. Husen*, 95 U.S. 465, 470-71 (1877); *Passenger Cases*, 48 U.S. 283, 425-28 (1849) (opinion of Wayne, J.); *Mayor of N.Y. v. Miln*, 36 U.S. 102 (1837)); *see also Prigg v. Pennsylvania*, 41 U.S. 539, 625 (1842). What the Court now takes to be a virtue in constitutional argument, it started to abandon in the 20th century based on its own views about "[]morality." *Edwards*, 314 U.S. at 177 ("But … *Miln* was decided in 1836. Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a 'moral pestilence.'"); *see also Papachristou*, 405 U.S. at 162; *City of Chicago*, 527 U.S. at 53 n.20 (plurality) ("Neither this history nor the scholarly compendia … persuades us[.]").

The Court came to doubt the wisdom of certain vagrancy laws, but never the fact of them. Every State outlawed vagrancy, and many specifically banned begging. *See supra*, Statement §A. These laws were

"direct descendants of similar colonial and English poor law statutes." W. Quigley, *Reluctant Charity*, *supra*, at 164; *see also* A. Stanley, *supra*, at 1266-67 ("[T]hese rules passed into colonial legal codes, and versions of them remained on the statute books of the American states."); F. Lacey, *supra*, at 1206.

Among other concerns, the early States "feared that, unless checked, the unemployed and unruly would overwhelm the industrious." J. Ely Jr., *supra*, at 20. Accordingly, it was well understood that cities and other local authorities had wide discretion to regulate begging, idleness, wandering, and the like. For example, a 1788 New York statute punished "all persons who go about from door to door or place themselves in the streets, highways or passages, to beg in the cities and towns."[29] In 1812, Congress passed and President Madison signed legislation conferring similar powers on the City of Washington. *See* Act of May 4, 1812, ch. 75, §6, 2 Stat. 721.

States that later joined the Union followed these models almost verbatim. Days after achieving statehood, Alabama incorporated the City of Mobile and granted its officials these powers:

> [T]o cause all vagrants, idle or disorderly persons, … and all such as have no visible means of support, or are likely to become chargeable to the city as paupers, or are found begging … or who can show no reasonable course of business or employment in the city; all who have no fixed place of residence, … to give security for their good behaviour … and to indemnify the city against any charge for their support; and in case of their refusal or inability

[29] 2 Laws of the State of New York, *supra*, at 643-44.

> to give such security, to cause them to be confined to labour … as often as may be necessary.

A Digest of the Laws of the State of Alabama 786-87 (Aikin ed., 1833) (Act of 1819).[30]

Needless to say, there is no evidence that founding-era governments protected a constitutional right to beg. Vagrants were considered "paupers, and as such they forfeited all civil, political, and social rights." W. Quigley, *Reluctant Charity*, *supra*, at 160. By all accounts, state practice had not changed by 1868 when the Fourteenth Amendment incorporated the First Amendment against the States. *See City of Chicago*, 527 U.S. at 103-04 (Thomas, J., dissenting) ("Vagrancy laws were common in the decades preceding the ratification of the Fourteenth Amendment, and remained on the books long after." (footnote omitted)). If anything, punishments increased during the 1850s.[31]

The history reveals an unbroken chain from Tudor England and colonial America through the Founding and Reconstruction. Albeit more lenient, many States, including Alabama, maintain laws in that tradition. *See, e.g.*, Sherry, *supra* at 560 (comparing English law and that of 20th-century Alabama). In 1823, Alabama

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[30] In the coming years, Alabama also legislated "for the support of the poor in each county," raising taxes, creating a fund, and appointing local "overseers of the poor." *Id.* at 340-43 (1823). By statute, "the indigent, lame, blind, and others, not able to maintain themselves" would receive housing, healthcare, and employment. *Id*. at 340.

[31] *See* D. Montgomery, *Wage Labor, Bondage, and Citizenship in Nineteenth-Century America*, 48 Int'l Lab. & Working-Class Hist. 6, 19 (1995). Despite state laws on the books, a conference of public charities in 1877 "agreed that new, uniform state legislation was needed to prevent people from begging." *Id.*

could punish anyone "found begging … in and about the streets." Digest of the Laws, *supra*, at 786-87. And in 2025, Alabama bans begging "on a highway," Ala. Code § 32-5A-216(b), or remaining in public "for the purpose of begging," Ala. Code § 13A-11-9(a)(1). The law today is a "dead ringer for historical precursors," which should easily pass muster where the government needs only "a well-established and representative historical *analogue*, not a historical *twin*." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 30 (2022); *see also United States v. Rahimi*, 602 U.S. 680, 692 (2024).

B. The history should be dispositive.

1. The scope of the freedom of speech is a matter of original meaning.

The Court has long applied a history-and-tradition test to the First Amendment's threshold question. Some speech or expression falls outside the scope of the Free Speech Clause because it was never within the scope to begin with. For instance, defamation is unprotected because the power to ban it is "sanctioned by centuries of Anglo-American law." *Beauharnais v. People of Ill.*, 343 U.S. 250, 263 (1952). Obscenity is unprotected because it was "outside the protection intended" at "the time of the adoption of the First Amendment." *Roth v. United States*, 354 U.S. 476, 483 (1957) (citing "contemporaneous evidence"). And child pornography is unprotected because it falls within the "long-established category" of speech integral to a crime. *Stevens*, 559 U.S. at 471 (characterizing *New York v. Ferber*, 458 U.S. 747 (1982)).

Conversely, some speech or expression is protected today because it was not historically restricted. For instance, violent video games are protected because of

"the absence of any historical warrant … for such restrictions." *Brown*, 564 U.S. at 795 n.3. Depictions of animal cruelty are protected because there is no "long history in American law" or "similar tradition" of restricting them. *Stevens*, 559 U.S. at 469. Political speech by judicial candidates is protected because the "practice of prohibiting [it] … is neither long nor universal." *Republican Party of Minn. v. White*, 536 U.S. 765, 785 (2002). And reporting on official misconduct is protected because "for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose [such] previous restraints." *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 718 (1931).

In sum, the Court has repeatedly defined "the freedom of speech" by reference to original meaning. While the Court first *announced* certain categories of unprotected speech in the 20th century, it consistently relied on history and tradition to identify them and define their scope. Its "decisions … cannot be taken as establishing a "freewheeling authority to declare new categories," *Stevens*, 559 U.S. at 472, because *history* is the test. After all, the "Constitution is a written instrument," and "its meaning does not alter." *South Carolina v. United States*, 199 U.S. 437, 448 (1905). Consequently, the Court has left open that "there are some categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law." *Stevens*, 559 U.S. at 579. Begging is plainly one of those categories.

2. Regulations are constitutional if they historically coexisted with the First Amendment.

Another way that First Amendment doctrine gives force to "history and tradition" is by focusing on the pedigree of the challenged restriction, rather than the speech itself. *Elster*, 602 U.S. at 301; *see City of Austin*, 596 U.S. at 76; *Houston Cmty. Coll. Sys.*, 595 U.S. at 475; *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 446 (2015). Suppose plaintiffs make a *prima facie* case that begging is expressive conduct or commercial speech or otherwise falls within the scope of the Free Speech Clause. Then, "the Government bears the burden of proving the constitutionality of its actions." *Bruen*, 597 U.S. at 24 (quoting *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 816 (2000)). "And to carry that burden, the government must generally point to *historical* evidence about the reach of the First Amendment's protections." *Id.* at 24-25 (citing *Stevens*, 559 U.S. at 468-71). This is "how we protect [all] constitutional rights," including "the freedom of speech." *Id.*

In recent cases, the Court has clarified the role of history and tradition in determining the scope of the First Amendment—even when the speech at issue may be presumptively protected. In *Houston Community College System*, the Court considered whether "the founding generation understood the First Amendment to prohibit representative bodies from censuring [their] members." 595 U.S. at 482. Because the power was "more or less assumed" at the Founding and "no evidence suggest[ed] prior generations thought [otherwise]," the case was over. *Id.* at 475-76. The Court reasoned first from "long settled

and established practice" and invoked doctrine only to "confirm" its conclusion. *Id.*

In *City of Austin*, the Court divided over what the historical evidence proved, but there was no dispute that "history and tradition" could "identify[] and defin[e] those 'few limited areas' where, '[f]rom 1791 to the present,' 'the First Amendment has permitted restrictions upon the content of speech.'" 596 U.S. at 101 (Thomas, J., dissenting) (quoting *Brown*, 564 U.S. at 791). The majority relied upon a "history of regulating off-premises signs," following the "proliferat[ion]" of billboards "in the 1800s." *Id.* at 75. With "50-plus years" of regulation in the 20th century, the Court found an "unbroken tradition" sufficient to save the challenged law from strict scrutiny. *Id.*

Elster confirmed repeatedly that "content-based distinctions" should survive if they "have always coexisted with the First Amendment." 602 U.S. at 295. Rather than applying doctrinal default rules, the Court asked if "history and tradition" could sustain the trademark law even if it might not survive "heightened scrutiny." *Id.* at 299-301 (citing *City of Austin*, 596 U.S. at 75; *R.A.V. v. St. Paul*, 505 U.S. 377, 382-83, 387 (1992); *Roth*, 354 U.S. at 482-83). The historical roots of the challenged restriction were "sufficient" to prove "compatib[ility] with the First Amendment." *Id.* at 301.

These authorities should have decided this case in favor of the State. Alabama's begging laws have impeccable historical *bona fides*—at least as strong as those the Court identified in *Houston*, *City of Austin*, and *Elster*. But the Eleventh Circuit made up its mind in the 1990s that begging is constitutionally protected speech. And if Alabama had been in one of the few

circuits without bad law on the books, the court may well have erred by assuming that *Reed* demands strict scrutiny whenever "one must read or hear" something to know if it's regulated. *City of Austin*, 596 U.S. at 72. But "*Reed* [did not] cast doubt on the Nation's history." *Id.* at 75. On that misapprehension, courts across the country have reduced the freedom of speech to a "mechanical jurisprudence" of "oversimplified formulas" that "treat[] society as though it consisted of bloodless categories." *Kovacs v. Cooper*, 336 U.S. 77, 96 (1949) (Frankfurter, J., concurring); *see United States v. Jimenez-Shilon*, 34 F.4th 1042, 1053-54 (11th Cir. 2022) (Newsom, J., concurring). The Court should grant certiorari to restore the role of history and tradition in an area of First Amendment jurisprudence where it is badly needed.

C. This Court has never addressed whether begging is protected speech.

The Court has not resolved the question presented. *See Speet v. Schuette*, 726 F.3d 867, 874-75 (6th Cir. 2013); *Gresham*, 225 F.3d at 903. A series of cases in the 1980s extended First Amendment protection to certain forms of solicitation, but never to begging and never to the entire category of asking for money. To the contrary, the Court has consistently maintained that solicitation is "undoubtedly" regulable. *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980); *see also City of Austin*, 596 U.S. at 72 ("[T]he First Amendment allows for regulations of solicitation—that is, speech 'requesting or seeking to obtain something.'"); *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981).

Yet many lower courts, including the court below, have erroneously treated "'soliciting,' 'begging,' and

'panhandling' [as] interchangeable terms." App.10a (quoting *Smith*, 177 F.3d at 955 n.1); *see also Speet*, 726 F.3d at 874-76; *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013); *Loper*, 999 F.2d at 705. Without any historical analysis, the Eleventh Circuit declared that begging is just "[l]ike … charitable solicitation." *Smith*, 177 F.3d at 956.

But the analogy breaks down upon even a passing glance at the charitable solicitation cases. Indeed, *Schaumburg* itself distinguished asking "for money" (which is not protected) from "canvassing and soliciting by religious and charitable organizations" (which is). 444 U.S. at 628, 632. The freedom of speech covers charitable appeals because they "*necessarily combine*" financial requests with "advocacy of public issues." *Id.* at 635 (emphasis added). They are "characteristically intertwined with … speech seeking support for particular causes or for particular views on economic, political, or social issues." *Id.* at 632. *Schaumburg* made the point half-a-dozen different ways,[32] and the Court repeated the key feature of charitable solicitation in subsequent cases. *See, e.g.*, *Sec'y of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 959 (1984) ("*Schaumburg* determined first that charitable solicitations are so intertwined with speech that they are entitled to the protections of the First Amendment."); *see id.* at 961.

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[32] *Id.* at 631 ("Solicitation and speech" can be "so intertwined that a prior permit could not be required."); *id.* at 632 ("Prior authorities … clearly establish that charitable appeals for funds, on the street or door to door, involve a variety of speech interests[.]"); *id.* ("[W]ithout solicitation the flow of such information ... would likely cease. Canvassers in such contexts are *necessarily more* than solicitors for money.") (emphasis added); *id.* at 636-37 (protecting "canvassing" for "research, advocacy, or public education … functions as well as to solicit financial support").

Simply put, solicitation is not protected; only when there is a "nexus between solicitation and the communication of information and advocacy of causes" does regulation "implicate[] interests protected by the First Amendment." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799 (1985). Without a nexus to "matters of public interest," "there is no threat to the free and robust debate of public issues" or "a meaningful dialogue of ideas." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 760 (1985) (opinion of Powell, J.)). The First Amendment does not turn every federal court into an "appropriate forum in which to review" matters of purely "personal interest." *Connick v. Myers*, 461 U.S. 138, 147 (1983).

The difference between charitable solicitation and begging is night and day. *See Young v. N.Y.C. Transit Auth.*, 903 F.2d 146, 156 (2d Cir. 1990) ("Both … *Schaumburg* and [the City's] experience … point to the difference[.]"). "Begging … do[es] not necessarily involve the communication of information or opinion." *People v. Zimmerman*, 19 Cal. Rptr. 2d 486, 488 (Cal. App. Dep't Super. Ct. 1993). Begging *may* be "accompanied by speech," *Loper*, 999 F.2d at 704, and it "may conceivably" lead to "conversation," *Young*, 903 F.2d at 154. But a possible "kernel of expression … is not sufficient." *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). Whereas charitable solicitation "necessarily" involves protected speech, *Schaumburg*, 444 U.S. at 635, the only necessary "object of begging … is the transfer of money," *Young*, 903 F.2d at 154. In no sense does begging *itself* entail a "meaningful dialogue of ideas." *Dun & Bradstreet, Inc.*, 472 U.S. at 760.

The Court also protected charitable solicitation in recognition of "the reality" that restricting it would

also restrict "the flow of [] information and advocacy." *Schaumburg*, 444 U.S. at 632. "[W]ithout the funds obtained from solicitation …, [an] organization's continuing ability to communicate its ideas and goals may be jeopardized." *Cornelius*, 473 U.S. at 799. Not only that, but a donation is itself an "expression of support for the recipient and its views." *Id.* (citing *Buckley v. Valeo*, 424 U.S. 1, 21 (1976)). None of this can be said of begging, which bears no necessary relationship to the "marketplace … [of] ideas about political, economic, and social issues." *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 309 (2012).

To be sure, the First Amendment protects the right to advocate for the destitute. Homelessness and poverty are matters of public concern, which can be freely discussed on public property. But Alabama's begging laws present no obstacle to any message about those subjects. And the fact that some speakers may couple otherwise-protected speech with unprotected begging does not immunize them from regulation. *See Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949); *cf. Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 458 (1978) (distinguishing "information" from "using the information as bait"); *Thomas v. Collins*, 323 U.S. 516, 534-35 (1945). As centuries of our Nation's historical practice suggest, begging can be regulated without intruding on core First Amendment liberties.

II. The issue is exceptionally important.

America's cities "face a homelessness crisis." *City of Grants Pass*, 603 U.S. at 525. Drug addiction, untreated mental illness, and homelessness have reached record levels.[33] In January 2024 alone, the Department of Housing and Urban Development reported that 771,480 people were homeless on a single night, the highest number ever recorded.[34] The effects are visible nationwide: illegal urban encampments, loitering, blocked sidewalks, panhandling, public urination, defecation, and intoxication, as well as the open use of illegal drugs.[35] The problem is so severe that the President recently issued an executive order addressing "[e]ndemic vagrancy, disorderly behavior, sudden confrontations, and violent attacks" that have "made our cities unsafe."[36]

It does not need to be this way. States have "broad sovereign power" to "respond to the homelessness crisis." Br. for California as *Amicus Curiae* at 3, *City of Grants Pass v. Johnson*, No. 23-175 (U.S. Mar. 4, 2024). States and their subdivisions are eager to use that authority to protect the public and to help the homeless. But they face a problem: "judicially created rules" that hinder "common-sense measures to keep

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[33] M. Garnett & A. Miniño, *Drug Overdose Deaths in the United States, 2003-2023*, CDC (Dec. 2024), tinyurl.com/5h8rhp9h; Nat'l Institute of Mental Health, *Mental Illness* (Sept. 2024), tinyurl.com/mwfk3dhf.

[34] Congressional Research Service, *Homelessness*, (May 5, 2025), tinyurl.com/4xppzar8.

[35] S. Quinones, *Skid Row Nation: How L.A.'s Homelessness Crisis Response Spread Across the Country*, L.A. Mag. (Oct. 6, 2022), tinyurl.com/yh2dta7a.

[36] Exec. Order No. 14,321, 90 Fed. Reg. 35817, *Ending Crime and Disorder on America's Streets*, (July 29, 2025).

people safe." *Cf.* Br. for California Governor Gavin Newsom as *Amicus Curiae* at 2, *Grants Pass,* No. 23-175 (U.S. Mar. 4, 2024). It's time to let local governments help themselves.

A. Local governments are overwhelmed. Municipal social services, police, and emergency responders are strained under levels of demand exceeding capacity. In New York City, for example, "[n]on-emergency 311 concerns, such as noise complaints, illegal parking, homelessness-related issues, outdoor drug use, [and] aggressive panhandling" have risen steadily for six years.[37] Los Angeles reports a similar surge, with tens of thousands of additional 311 calls in just the past few years.[38] In Albuquerque, nearly a quarter of residents identified panhandling as an issue that most affects their families.[39] Over half of San Diego residents said that aggressive panhandling is a problem; nearly one in five called it a "major problem."[40] These surveys reflect what communities across the country now face: persistent and visible disorder, which erodes public trust and instills palpable fear into urban residents. *Cf. City of Chicago*, 527 U.S. at 98-101 (Thomas, J., dissenting). Our cities cannot manage this crisis without the full measure of their traditional police powers.

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[37] Office of the Mayor, *Mayor Adams, NYPD Commissioner Tisch Launch New Quality of Life Division to Enhance Public Safety and Community Trust* (Apr. 10, 2025), tinyurl.com/5n8f8vyx.

[38] J. Regardie, *A Little Help Here: MyLA311 Reports Rise 5.2% in 2024*, CROSSTOWN (Jan. 21, 2025), tinyurl.com/2vn4cynt.

[39] City of Albuquerque, *Albuquerque Yearly Survey Results* (Apr. 16, 2024), tinyurl.com/2vyr5kjy.

[40] San Diego Police Department, *Homelessness* (Sept.-Oct. 2022), tinyurl.com/4j5s68y8.

At the heart of the crisis is crime and the fear of crime bred by public disorder. "Disorder includes petty crime and inappropriate behavior such as public drunkenness, panhandling, and loitering; its physical manifestations include graffiti, abandoned cars, broken windows, and abandoned buildings."[41] Such conditions instill the belief that "society has ceded control to those who are ... outside the law" and that "anything might happen" in such places. *Id.* In San Francisco, for example, one-third of residents reported giving money because they felt pressure; many avoided certain areas altogether.[42] Once a beggar claims a "good spot," others soon follow, creating clusters that block pedestrian traffic, discourage commerce, and signal the absence of order.[43]

The danger is more than perception. As residents of metropolitan areas "know from daily experience, confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information." *United States v. Kokinda*, 497 U.S. 720, 734 (1990) (plurality opinion). Unwanted solicitation "presents risks of duress that are an appropriate target of regulation" because "the skillful, and unprincipled, solicitor can target the most vulnerable, including those accompanying children or those suffering physical impairment and who cannot easily avoid the solicitation." *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*,

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[41] G. Kelling, *Measuring What Matters: A New Way of Thinking About Crime and Public Order*, 2 City J. 21, 21 (1992).

[42] G. Kelling & C. Coles, Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities 194-236 (1996).

[43] F. Leoussis, *The New Constitutional Right to Beg—Is Begging Really Protected Speech?*, 14 St. Louis U. Pub. L. Rev. 529, 531 (1995).

505 U.S. 672, 684 (1992). Panhandlers target people near ATMs, in parking lots or at bus stops, where refusal can feel particularly unsafe, raising fears that a rejection may provoke a sudden or violent response. Leoussis, *supra*, at 530-31. Far too often, it does.[44]

B. Local governments need more than the "least restrictive means available to protect public safety." *McLaughlin*, 140 F. Supp. 3d at 195. They should not need experts to prove that begging "near an ATM is … a kind of provocation" or that people might be more "vulnerable" "at a public restroom." *Id.* What kind of "residuary and inviolable sovereignty" is this? *Alden v. Maine*, 527 U.S. 706, 715 (1999) (quoting The Federalist No. 39, at 245). States are not "mere provinces or political corporations," but sovereigns with the authority to legislate for the welfare of their citizens. *Id.* That sovereignty includes the police power—the general authority to regulate "matters completely within [a State's] territory" even without express constitutional authorization. *Jacobson v. Massachusetts*, 197 U.S. 11, 24-25 (1905); *see also NFIB v. Sebelius*, 567 U.S. 519 (2012).

With police power comes the basic "duty and the power to maintain the public peace" and good order. *See City of Chicago*, 527 U.S. at 102 (Thomas, J., dissenting); *Berman v. Parker*, 348 U.S. 26, 33 (1954) (the "public welfare is broad and inclusive," encompassing "spiritual as well as physical, aesthetic as well as monetary" concerns). States are obligated to address

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[44] *See, e.g.*, L. Evers, *76-year-old Man Stabbed in Chest After Refusing to Give Panhandler Money*, FOX5 (Aug. 14, 2023), tinyurl.com/3zdywukh; CBS News, *Panhandler Breaks Man's Skull with Metal Pipe Aboard Manhattan Subway, Police Say* (Jul. 8, 2018), tinyurl.com/msnh8fr9.

the homelessness crisis, yet while decay and disorder proliferate, federal courts stymie the historic powers needed to respond. Nearly every federal court of appeals has already decided that panhandling laws must be narrowly tailored. But to confront the "crisis" on America's streets, local governments need "the full panoply of tools in the policy toolbox." *City of Grants Pass*, 603 U.S. at 528, 533. The Constitution provides certain rules for the use of those tools, but a free-speech right to beg is not one of them.

CONCLUSION

The Court should grant the petition for writ of certiorari and reverse.

Respectfully submitted,

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September 2025

APPENDIX

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-11163

JONATHAN SINGLETON,
on behalf of himself and others similarly situated,

Plaintiff-Appellee,

RICKY VICKERY, et al.,

Plaintiffs,

versus

CITY OF MONTGOMERY, ALABAMA, et al.,

Defendants,

SECRETARY OF THE ALABAMA
LAW ENFORCEMENT AGENCY,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:20-cv-00099-WKW-JTA

OPINION

Before BRANCH, LUCK, and LAGOA, *Circuit Judges.*

PER CURIAM:

This appeal requires us to decide whether two Alabama statutes that criminalize begging are facially unconstitutional under the First Amendment. Hal Taylor, in his official capacity as Secretary of the Alabama Law Enforcement Agency, appeals from the district court's grant of summary judgment to Jonathan Singleton, on behalf of himself and others similarly situated, declaring the two Alabama statutes facially unconstitutional under the First Amendment and permanently enjoining Taylor from enforcing those statutes. The sole dispositive issue on appeal is whether begging is protected speech under the First Amendment. A prior panel of this Court has already answered that question in the affirmative. Accordingly, we are bound to affirm.

I. Background

Jonathan Singleton is a homeless resident of Montgomery, Alabama, who holds a sign to solicit help from others. Singleton has been cited six times for violating Alabama Code § 32-5A-216(b) ("the pedestrian solicitation statute"), which prohibits a person, in relevant part, from "stand[ing] on a highway" to "solicit[] employment, business, or contributions from the occupant of any vehicle" unless otherwise authorized.[1] The Alabama Law Enforcement Agency ("ALEA") enforces the pedestrian sol-

[1] Alabama Code § 32-5A-216(b) provides in full:

> No person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle, nor for the purpose of distributing any article, unless otherwise authorized by official permit of the governing body of the city or county having jurisdiction over the highway.

icitation statute throughout Alabama. A person who violates the pedestrian solicitation statute may be subjected to fines and imprisonment. *See* Ala. Code § 32-5A-8.

ALEA also enforces Alabama Code § 13A-11-9(a)(1) ("the begging statute"), which prohibits a person from "[l]oiter[ing], remain[ing], or wander[ing] about in a public place for the purpose of begging."[2] A person who violates the begging statute may be subject to fines and imprisonment. *See* Ala. Code §§ 13A-5-7, 13A5-12, 13A-11-9(e). ALEA has warned, cited, and arrested people for violations of both statutes.

Singleton brought this action on behalf of himself[3] and all others similarly situated seeking to enjoin Taylor, in his official capacity as Secretary of ALEA,[4]

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[2] Alabama Code § 13A-11-9(a)(1) provides in full: "A person commits the crime of loitering if he or she does any of the following: Loiters, remains, or wanders about in a public place for the purpose of begging." Although Alabama has twice amended other subsections of this statute after Taylor noticed this appeal, the begging statute's operative language remains unchanged. *See* Ala. Laws Act 2023-245; Ala. Laws Act 2024-326. Accordingly, these amendments do not moot Taylor's appeal. *See Naturist Soc'y, Inc. v. Fillyaw*, 958 F.2d 1515, 1520 (11th Cir. 1992) ("To the extent that [a statute's challenged] features remain in place, and changes in the law have not so fundamentally altered the statutory framework as to render the original controversy a mere abstraction, the case is not moot.").

[3] Singleton was joined by named co-plaintiffs Ricky Vickery and Micki Holmes. Vickery and Holmes died while this case was pending before the district court.

[4] Singleton also named as defendants the City of Montgomery, Alabama, and Derrick Cunningham, in his official capacity as Sheriff of Montgomery County. Singleton, however, settled with the City and Cunningham, and the district court dismissed them as defendants in this case.

from enforcing the begging and pedestrian solicitation statutes.[5] Singleton also sought a declaration that the begging and pedestrian solicitation statutes facially violate the First Amendment because they unlawfully restrict protected speech.

The district court preliminarily enjoined enforcement of the begging and pedestrian solicitation statutes. Singleton then moved for summary judgment and for permanent injunctive relief. In response, Taylor recognized that "in the Eleventh Circuit, 'begging is speech entitled to First Amendment protection.'" (quoting *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999)). Thus, Taylor conceded that Singleton was "entitled to judgment as a matter of law" because under our First Amendment precedent, Alabama "cannot broadly restrict panhandling in the manner its laws provide."[6] Accordingly, the district court granted Singleton summary judgment and permanent injunctive relief. Taylor timely appealed.

II. Standard of Review

"We review *de novo* a district court's grant of summary judgment, applying the same standard as the district court." *Snell v. United Specialty Ins. Co.*, 102 F.4th 1208, 1214 (11th Cir. 2024) (quotation omitted). "Namely, summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)).

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[5] The district court certified this action as a class action.

[6] Taylor also "reserve[d] the right to ask the Eleventh Circuit to reconsider" *Smith*.

III. Discussion

Taylor argues that the "sole dispositive issue in this appeal" is "[w]hether the First Amendment, as originally understood, permits the criminalization of begging." According to Taylor, the First Amendment does not protect begging. In particular, Taylor argues that (1) we must look to the original public meaning of the First Amendment to decide whether begging is protected speech, and (2) the original public meaning of the First Amendment does not protect begging. In support, Taylor cites several laws from common-law England, the Founding Era, and Reconstruction that criminalized begging and vagrancy. But as we will explain, our precedent requires us to affirm.

The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. amend. I. The Fourteenth Amendment's Due Process Clause incorporates the First Amendment's Free Speech Clause against the states. *See* U.S. Const. amend. XIV, § 1, cl. 3; *Gitlow v. New York*, 268 U.S. 652, 666–67 (1925).

A law is facially unconstitutional under the First Amendment if "a substantial number of the law's applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (alteration adopted) (quotation omitted). When considering a facial challenge under the First Amendment, we must first "determine what the law covers." *Id.* at 725 (alteration adopted) (quotation omitted). Next, we must "decide which of the laws' applications violate the First Amendment, and . . . measure them against" those that do not. *Id.* In so doing, we "must explore the laws' full range of applications—the cons-

titutionally impermissible and permissible both—and compare the two sets." *Id.* at 726.

We turn first to what the law covers. Here, the begging statute criminalizes "[l]oiter[ing], remain[ing], or wander[ing] about in a public place for the purpose of begging." Ala. Code § 13A-11-9(a)(1). The Alabama Code does not define the term "begging." The parties do not cite, and we are not aware of, any construction given to that term by Alabama courts. Accordingly, we give the term "begging" its "plain, ordinary, and most natural meaning" at the time of its enactment. *In re Celotex Corp.*, 227 F.3d 1336, 1338 (11th Cir. 2000) (quotation omitted). The plain, ordinary meaning of "begging" when Alabama enacted the begging statute[7] was to ask for charitable relief for the poor. *See Beg*, 1 *Oxford English Dictionary* 765 (1st ed. 1978) ("To ask (bread, money, etc.) in alms or as a charitable gift . . . ."); *Alms*, 1 *Oxford English Dictionary* 247 (1st ed. 1978) ("Charitable relief of the poor; charity . . . ."). Given the begging statute's text, its "full range of applications" criminalizes begging alone. *Moody*, 603 U.S. at 726; *see* Ala. Code § 13A-11-9(a)(1) (prohibiting "[l]oiter[ing], remain[ing], or wander[ing] about in a public place *for the purpose of begging*" (emphasis added)).

As for the pedestrian solicitation statute, that statute prohibits any person from, in relevant part, "stand[ing] on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle" unless otherwise authorized. Ala. Code § 32-5A-216(b). Like the begging statute, neither the Alabama Code nor Alabama courts have

[7] Alabama enacted its current begging statute in 1977. *See* Ala. Acts 1977, No. 607, p. 812, § 5540.

defined the terms "soliciting" or "contributions." But the "plain, ordinary, and most natural meaning" of the statute at the time of its enactment[8] includes begging, as ordinarily understood, within its prohibitions. *Celotex Corp.*, 227 F.3d at 1338 (quotation omitted); *see Solicit*, 10 *Oxford English Dictionary* 395 (1st ed. 1978) ("To entreat or petition (a person) for, or to do, something; to urge, importune; to ask earnestly or persistently."); *Contribution*, 2 *Oxford English Dictionary* 924 (1st ed. 1978) ("The action of contributing or giving as one's part to a common fund or stock; the action of lending aid or agency to bring about a result."). Moreover, the record shows that ALEA has enforced the pedestrian solicitation statute against begging, as ordinarily understood.

The pedestrian solicitation statute's "full range of applications," however, is not limited to begging. *Moody*, 603 U.S. at 726. The plain, ordinary meaning of the pedestrian solicitation statute also restricts other speech across Alabama, such as charitable solicitation for nonprofit or religious organizations or solicitation of support for political candidates.[9] *Id.*;

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[8] Alabama enacted the pedestrian solicitation statute in its current form in 1980. *See* Ala. Acts 1980, No. 80-434, p. 604, § 5-107.

[9] The parties stipulated below that the pedestrian solicitation statute does not apply to "someone standing on a highway solicitating [*sic*] support for a political candidate or conveying a religious message." We need not decide the effect of this stipulation because, for our purposes, the result is the same. *See United States v. One 1978 Bell Jet Ranger Helicopter*, 707 F.2d 461, 462–63 (11th Cir. 1983) (explaining that a stipulation "as to what the law requires" does not bind the court, but the parties may stipulate to limit the issues that are tried). If the stipulation binds us, then we must accept that the pedestrian solicitation statute only applies to begging, and then we must decide whether that "full range" of applications is constitutional. *See*

see Ala. Code § 32-5A-216(b); *see also Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) ("[T]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." (quotation omitted)); *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980) ("[C]haritable appeals for funds, on the street or door to door, . . . are within the protection of the First Amendment.").

Having identified the range of applications of the begging and pedestrian solicitation statutes, we next turn to which, if any, of those applications violate the First Amendment. *See Moody*, 603 U.S. at 725–26. Taylor appears to concede that, under *Schaumburg*, non-begging applications of the pedestrian solicitation statute are unconstitutional. *See Schaumburg*, 444 U.S. at 632. Taylor does not offer any examples of unprotected, non-begging speech that might save the pedestrian solicitation statute from Singleton's facial challenge. Instead, Taylor insists we focus our attention solely on the pedestrian solicitation statute's application to begging. In the face of that concession, we put Singleton's non-begging examples

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Moody, 603 U.S. at 726. If the stipulation does not bind us, then we must consider the pedestrian solicitation statute's applications to other, non-begging speech. Because, however, Taylor concedes that all applications of the pedestrian solicitation statute to non-begging speech are unconstitutional, we similarly must decide whether the pedestrian solicitation statute's applications to begging are constitutional and weigh them against the concededly unconstitutional applications. *See id.* Accordingly, regardless of the parties' stipulation, our review turns solely on the constitutionality of the pedestrian solicitation statute's applications to begging. Thus, we assume without deciding that the parties' stipulation does not bind us. *See One 1978 Bell Jet Ranger Helicopter*, 707 F.2d at 462–63.

of the pedestrian solicitation statute's applications on the "constitutionally impermissible" side of the ledger. *Moody*, 603 U.S. at 726.

We must then decide on which side of the ledger to put the begging statute's and pedestrian solicitation statute's applications to begging. If those applications are constitutionally impermissible, then there is no "permissible" set of constitutional applications, and the statutes are facially unconstitutional. *Id.* Accordingly, we next turn to whether begging is protected speech under the First Amendment. *See id.* at 725–26 (asking whether state laws "intru[ded] on protected editorial discretion" to determine whether those "laws' applications violate the First Amendment"). We must follow our earlier decision answering that question in the affirmative.

"A prior panel decision of this Court is binding on subsequent panels and can be overturned only by the Court sitting en banc." *Morrison v. Amway Corp.*, 323 F.3d 920, 929 (11th Cir. 2003). Accordingly, we must "follow the precedent of the first panel to address the relevant issue." *Stanley v. City of Sanford*, 83 F.4th 1333, 1338 (11th Cir. 2023) (quotation omitted). A prior panel decision addresses the same relevant issue "if we cannot distinguish the facts or law of the case under consideration." *Devengoechea v. Bolivarian Republic of Venez.*, 889 F.3d 1213, 1227 (11th Cir. 2018).

In *Smith v. City of Fort Lauderdale*, we considered whether Rule 7.5(c) of the City of Fort Lauderdale's Rules and Park Regulations for City Parks and Beaches ("Rule 7.5(c)"), which prohibited "[s]oliciting, begging or panhandling" on the beach, violated the First Amendment. 177 F.3d at 955 (quotation omitted). We observed that it was "undisputed that

'soliciting,' 'begging,' and 'panhandling' are interchangeable terms," so we "use[d] the term 'begging' to encompass all three." *Id.* at 955 n.1. Rule 7.5(c) did not define the terms "soliciting," "begging," or "panhandling," and Florida courts have not construed those terms in Rule 7.5(c).[10] Accordingly, we gave the terms their "plain, ordinary, and most natural meaning" as in the begging and pedestrian solicitation statutes. *Celotex Corp.*, 227 F.3d at 1338 (quotation omitted).[11] Fort Lauderdale enacted Rule 7.5(c) in 1993. *Chad v. City of Fort Lauderdale*, 861 F. Supp. 1057, 1059 (S.D. Fla. 1994). At that time, the plain, ordinary meaning of "begging" was to ask for charitable relief for the poor. *See Beg*, 2 *Oxford English Dictionary* 65 (2d ed. 1989) ("To ask (bread, money, etc.) in alms or as a charitable gift . . . ."); *Alms*, 1 *Oxford English Dictionary* 354 (2d ed. 1989)

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[10] Rule 7.5(c) remains on the books in Fort Lauderdale virtually unchanged since *Smith*, and Fort Lauderdale has not codified definitions of "soliciting," "begging," or "panhandling" in that time. *See* Beach Rules and Regulations, https://www.fortlauderdale.gov/government/departments-a-h/fire-rescue/organization/ocean-rescue/beach-rules-and-regulations [https://perma.cc/C2AL-EAOB] ("7.5(c) Soliciting, begging or panhandling is prohibited. This includes tips or payment for any service, performance or instruction.").

[11] In *Smith*, we did not explicitly state that we were construing the relevant statutory terms according to their plain and ordinary meaning. *See Smith*, 177 F.3d at 956. But we did not cite any statutory or state-court definitions of those terms, either. *See id.* Instead, we relied on *Loper v. New York City Police Department*, 999 F.2d 699, 704 (2d Cir. 1993), which considered a similar ordinance and gave the term "begging" its plain, ordinary meaning. *See Smith*, 177 F.3d at 956; *Loper*, 999 F.2d at 704 (observing, without citation, that "[b]egging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation").

("Charitable relief of the poor; charity . . . ."). We then held that "[l]ike other charitable solicitation, begging is speech entitled to First Amendment protection." *Smith*, 177 F.3d at 956. But we also noted that Fort Lauderdale had an "interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach." *Id.* Although Rule 7.5(c) prohibited begging on the beach, Rule 7.5(c) also was "content-neutral and le[ft] open ample alternative channels of communication," such as "begging in streets, on sidewalks, and in many other public fora throughout" Fort Lauderdale.[12] *Id.* at 956–57. Thus, we ultimately affirmed summary judgment for Fort Lauderdale. *Id.* at 957.

We next consider "if we can[] distinguish the facts or law" of this case from *Smith*. *Devengoechea*, 889 F.3d at 1227. As discussed, the begging and pedestrian solicitation statutes also do not define "begging," "solicitation," or "contributions," but the two statutes apply to begging as ordinarily understood. And, as noted above, the plain, ordinary meaning of "begging" was the same when Fort Lauderdale enacted Rule 7.5(c) as when Alabama enacted the begging and pedestrian solicitation statutes. *Compare Beg*, 1 *Oxford English Dictionary* 765 (1st ed. 1978) ("To ask (bread, money, etc.) in alms or as a charitable gift . . . ."), *with Beg*, 2 *Oxford English Dictionary* 65 (2d ed. 1989) ("To ask (bread, money, etc.) in alms or

[12] Although not relevant to our decision in this case, we explained in *Smith* that "in a public forum, the government may enforce regulations of the time, place, and manner of expression which [1] are content-neutral, [2] are narrowly tailored to serve a significant government interest, and [3] leave open ample alternative channels of communication." 177 F.3d at 956 (quotation omitted). Rule 7.5(c) met each of these three criteria. *See id.* at 956–57.

as a charitable gift . . . ."); *see also Alms*, 1 *Oxford English Dictionary* 247 (1st ed. 1978) ("Charitable relief of the poor; charity . . . ."); *Alms*, 1 *Oxford English Dictionary* 354 (2d ed. 1989) ("Charitable relief of the poor; charity . . . ."). Thus, the "begging" prohibited by the begging and pedestrian solicitation statutes is the same "begging" prohibited by Rule 7.5(c). And we have already held that such begging is "entitled to First Amendment protection." *Smith*, 177 F.3d at 956. Thus, because *Smith* considered the same issue that we now consider, *Smith* is "the precedent of the first panel to address the relevant issue." *Stanley*, 83 F.4th at 1338 (quotation omitted); *see Devengoechea*, 889 F.3d at 1227.

Under our "prior-panel-precedent rule," we are bound to follow *Smith*, and we now apply *Smith* to this case. *See Stanley*, 83 F.4th at 1338 (quotation omitted). The begging and pedestrian solicitation statutes criminalize begging, and begging is "entitled to First Amendment protection." *Smith*, 177 F.3d at 956. And because the begging and pedestrian solicitation statutes apply throughout public areas of Alabama, they do not "leave open ample alternative channels of communication," such as "begging in streets, on sidewalks, and in many other public fora." *Id.* at 956–57 (quotation omitted).[13] Indeed, Taylor conceded below that if begging is protected speech, Alabama "cannot broadly restrict panhandling in the manner its laws provide." Thus, the begging statute's

[13] By contrast, in *Smith*, we affirmed summary judgment for Fort Lauderdale because Rule 7.5(c) only applied to the beach. 177 F.3d at 956–57. Thus, Rule 7.5(c) left "open ample alternative channels of communication," such as "begging in streets, on sidewalks, and in many other public fora throughout" Fort Lauderdale. *Id.*

applications, which are solely to begging, are impermissible, and the pedestrian solicitation statute's applications, which are to begging and other constitutionally protected speech, are impermissible. Taylor does not offer any other permissible applications of either statute. Accordingly, we affirm the district court's grant of summary judgment and permanent injunctive relief to Singleton because the begging and pedestrian solicitation statutes' "full range of applications" is "constitutionally impermissible." *Moody*, 603 U.S. at 726.[14]

In opposition to this conclusion, Taylor argues that we decided Smith incorrectly. As discussed, Taylor contends that our focus should be on the original public meaning of the First Amendment and that Smith improperly focused on an analogy to charitable solicitations. We may not, however, overrule a prior panel even if we are "convinced the prior [panel] reached the wrong result." *Smith v. GTE Corp.*, 236 F.3d 1292, 1303 (11th Cir. 2001). Instead, Taylor's arguments are better directed to this Court sitting *en banc*, a fact Taylor realized when he moved for initial hearing en banc of this appeal. *See Stanley*, 83 F.4th at 1338 (holding that a prior panel precedent is no longer binding if a "later en banc or Supreme Court decision[] . . . actually abrogate[s] or directly conflict[s] with . . . the holding of the prior panel" (quotation omitted)). Thus, we affirm.

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[14] Singleton argues that we should review the begging and pedestrian solicitation statutes using strict scrutiny because the statutes are not content-neutral. Because we decide that the begging and pedestrian solicitation statutes fail under Smith, which treated Rule 7.5(c) as "content-neutral," we need not decide whether to use strict scrutiny in this case. *Smith*, 177 F.3d at 956.

IV. Conclusion

For the foregoing reasons, the district court properly held that the statutes at issue are facially unconstitutional.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Case No. 2:20-CV-99-WKW
[WO]

JONATHAN SINGLETON, on behalf of himself and others similarly situated,

Plaintiffs,

v.

HAL TAYLOR, in his official capacity as Secretary of the Alabama Law Enforcement Agency,

Defendant.

ORDER

Before the court is Plaintiffs' Motion for Summary Judgment and for Final Declaratory Relief and Permanent Injunction. (Doc. # 112.) Defendant concedes that, under binding Eleventh Circuit precedent, this Motion is due to be granted. (Doc. # 113 at 2.)

Therefore, it is ORDERED as follows:

(1) Plaintiffs' Motion (Doc. # 112) is GRANTED;

(2) The State of Alabama's begging statute, Alabama Code § 13A-11-9(a)(1), is DECLARED facially unconstitutional under the First Amendment to the United States Constitution;

(3) The State of Alabama's Pedestrian Solicitation Statute, Ala. Code § 32-5A-216(b), is DECLARED facially unconstitutional under the First Amendment to the United States Constitution; and

(4) Defendant, in his official capacity as Secretary of the Alabama Law Enforcement Agency, and all individuals under his direction and supervision, are PERMANENTLY ENJOINED from enforcing Alabama Code § 13A-11-9(a)(1) and Alabama Code § 32-5A-216(b).

Final judgment will be entered separately.

DONE this 10th day of March 2023.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-11163

JONATHAN SINGLETON, on behalf of himself and others similarly situated,

Plaintiff-Appellee,

RICKY VICKERY. et al.,

Plaintiffs,

versus

CITY OF MONTGOMERY, ALABAMA, et al.,

Defendants,

SECRETARY OF THE ALABAMA LAW ENFORCEMENT AGENCY,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:20-cv-00099-WKW-JTA

ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC

Before BRANCH, LUCK, and LAGOA, *Circuit Judges.*

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.