No. 25-368

IN THE
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,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Alabama's pedestrian solicitation statute prohibits any person "from stand[ing] on a highway" to "solicit[] employment, business, or contributions from the occupant of any vehicle …." Ala. Code § 32-5A-216(b). Alabama's begging statute prohibits "[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). Alabama law enforcement officers have cited people under these statutes for holding signs with messages such as "HOMELESS. Today it is me, tomorrow it could be you," "homeless please help," and "husband in hospital," and for holding a "plastic jar" for "Birmingham Restoration Ministries." D.Ct. ECF No. 106, ¶¶ 9, 14, 16.

The question presented is whether the Eleventh Circuit correctly held that these statutes trigger First Amendment scrutiny.

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INTRODUCTION

Respondent Jonathan Singleton is a Montgomery, Alabama, resident who is homeless and holds signs in public soliciting help. In this class action, Singleton challenged two Alabama statutes as violative of the First Amendment: a pedestrian solicitation statute prohibiting any person from "stand[ing] on a highway" to "solicit[] employment, business, or contributions from the occupant of any vehicle," Ala. Code § 32-5A-216(b), and a begging statute prohibiting "[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). Alabama law enforcement officers have issued citations under these statutes to Respondent and others for holding signs with messages such as "HOMELESS. Today it is me, tomorrow it could be you," "homeless please help," and "husband in hospital"; another class member was arrested for holding a "plastic jar" for "Birmingham Restoration Ministries." D.Ct. ECF No. 106, ¶¶ 9, 14, 16.

Petitioner Hal Taylor, the Secretary of the Alabama Law Enforcement Agency, declined to defend the statutes as satisfying any level of First Amendment scrutiny. His sole argument throughout the litigation has been (and continues to be) that the First Amendment has no application at all to the speech that the statutes criminalize.

The Eleventh Circuit's rejection of Petitioner's argument is consistent with established precedent in every circuit and state supreme court that has considered the issue. The First, Second, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have all held that begging is protected speech under

the First Amendment, as have numerous state supreme courts.

Courts have universally rejected Petitioner's position because it is foreclosed by this Court's long and unbroken line of precedent recognizing that speech seeking charitable relief is protected by the First Amendment. Most notably, *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), holds that "charitable appeals for funds, on the street or door to door, 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." *Id.* at 632.

That is precisely the speech that the challenged statutes prohibit. As the Eleventh Circuit explained, at the time of the Alabama begging statute's enactment, the ordinary meaning of "begging" was "to ask for charitable relief for the poor." Pet. App. 6a. The pedestrian solicitation statute more broadly prohibits "charitable solicitation for nonprofit or religious organizations." *Id.* at 7a–8a. The plain text of the statutes thus extends to charitable solicitation intertwined with the "advocacy of public issues," Pet. 20–21, as did Alabama's enforcement of the statutes. Indeed, Respondent's sign—"HOMELESS. Today it is me, tomorrow it could be you," D.Ct. ECF No. 106, ¶9—conveyed a message indistinguishable from that of many charities serving homeless clients.

In the decades since *Schaumburg*, this Court has remained steadfast on the First Amendment's protection of face-to-face solicitation of donations. Petitioner responds that the Court has never extended First Amendment protection specifically to

"begging," but he makes no meaningful effort to explain why requests for charitable relief for the poor would be qualitatively different from the contexts in which this Court has recognized requests for charitable relief as protected, such as charitable relief for the disabled. *See Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781 (1988).

Petitioner nonetheless urges the Court to take the extraordinary step of declaring that "begging" is a new category of unprotected speech based on founding-era state statutes regulating vagrancy. Petitioner's rationale for doing so misunderstands both the Court's First Amendment doctrine and the import of the historical sources he cites.

As an initial matter, this Court's First Amendment caselaw has never focused on a single moment in time, but instead has looked to whether "[f]rom 1791 *to the present*," speech has been unprotected. *United States v. Stevens*, 559 U.S. 460, 468 (2010) (emphasis added) (internal quotation marks omitted). Yet Petitioner rests his entire historical argument on a snapshot of state and local statutes from 1791—a time at which the First Amendment did not even apply to the States. There are many early state statutes criminalizing speech indisputably protected by the First Amendment today.

Moreover, even if the Court were to accept Petitioner's premise that founding-era state statutes are an adequate basis for carving out a new category of speech from the First Amendment, the state statutes that Petitioner cites would not warrant a carveout for

begging. These laws criminalized the conduct of voluntary idleness, not the communicative aspect of begging.

Petitioner's policy arguments are equally unsound. Most of the social ills that Petitioner decries—public urination, defecation, intoxication, "illegal urban encampments," "the open use of illegal drugs," Pet. 23—involve non-expressive conduct that has nothing to do with the First Amendment. Petitioner's complaints about begging, meanwhile, rest on the false premise that *no* restrictions on begging or charitable solicitation are constitutionally permissible if the First Amendment applies to such speech. But "[s]oliciting financial support is undoubtedly subject to reasonable regulation," *Schaumburg*, 444 U.S. at 632, so long as the government demonstrates under appropriate scrutiny that the regulation avoids an undue "intru[sion] upon the rights of free speech," *id.* at 631 (quoting *Thomas v. Collins*, 323 U.S. 516, 540–41 (1945)). Indeed, this Court has regularly upheld laws restricting solicitation under varying levels of scrutiny.

Throughout this litigation, Petitioner has offered *no* defense of Alabama's statutes under any type of heightened scrutiny, instead urging a First Amendment theory widely rejected across the lower courts. That unusual and dispositive decision renders

his petition an eccentricity unworthy of this Court's review. The petition should be denied.

STATEMENT OF THE CASE

Respondent Jonathan Singleton is a Montgomery, Alabama, resident who is homeless and holds signs in public soliciting help. Pet. App. 2a. Singleton has been cited six times for violating Alabama's pedestrian solicitation statute, Ala. Code § 32-5A-216(b), which prohibits any person "from stand[ing] on a highway" to "solicit[] employment, business, or contributions from the occupant of any vehicle …." *See* Pet. App. 2a.[1] Most recently, Respondent was cited for holding a sign that read "HOMELESS. Today it is me, tomorrow it could be you" while standing in the grass near a highway exit. D.Ct. ECF No. 106, ¶ 9.

Petitioner Hal Taylor is the Secretary of the Alabama Law Enforcement Agency ("ALEA"), which enforces the pedestrian solicitation statute throughout Alabama. Pet. App. 2a–3a. ALEA has cited people under the statute for holding signs that read, "homeless please help," "travelin broke blessed," and "husband in hospital." D.Ct. ECF No. 106, ¶ 16; *see also id.* (citation issued for simply "sitting in [the] rain with [an] umbrella and sign" (alterations in original)).

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[1] The statute makes an exception for solicitation "authorized by official permit," but the parties stipulated to being unaware of any permitting process that would allow solicitation under the pedestrian solicitation statute or of anyone who had ever received such a permit. D.Ct. ECF No. 106, ¶¶ 18–19.

ALEA also enforces Alabama's begging statute, which prohibits "[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); Pet. App. 3a. ALEA has made arrests under the begging statute for holding a sign that said "homeless anything will help"; for holding "a plastic jar" for "Birmingham Restoration Ministries"; and for approaching vehicles with a hat in hand "in an effort to beg." D.Ct. ECF No. 106, ¶ 14.

A person who violates either statute may be subjected to fines or imprisonment. *See* Ala. Code §§ 13A-5-7, 13A-5-12, 32-5A-8.

In 2020, Respondent filed suit in the U.S. District Court for the Middle District of Alabama against Petitioner in his official capacity,[2] challenging the pedestrian solicitation and begging statutes under the First Amendment. Pet. App. 3a–4a. The district court granted Respondent's motions for preliminary injunctive relief and class certification, certifying a class consisting of "all individuals who will in the future (1) stand on a public street in the State of Alabama for the purpose of soliciting employment, business, or contributions from the occupant of a vehicle, or (2) loiter, remain, or wander in a public place in the State of Alabama for the purpose of begging." D.Ct. ECF No. 84, at 10; *see* Pet. App. 4a.

Respondent then moved for summary judgment. Pet. App. 4a. In response, Petitioner declined to defend the statutes under any level of First Amendment

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[2] Respondent also named the City of Montgomery and Montgomery County Sheriff Derrick Cunningham as defendants, but they were dismissed from the case after reaching settlement agreements. Pet. App. 3a n.4.

scrutiny, instead conceding that Respondent was entitled to judgment as a matter of law under the Eleventh Circuit's decision in *Smith v. City of Fort Lauderdale*, which holds that begging, "[l]ike other charitable solicitation," is "speech entitled to First Amendment protection." 177 F.3d 954, 956 (11th Cir. 1999). The district court thus granted Respondent summary judgment and permanent injunctive relief. Pet. App. 15a–16a.

Petitioner appealed and filed a petition for initial en banc review, arguing that the Eleventh Circuit should take the case en banc to overturn its decision in *Smith*. *See* Ct. App. ECF No. 19, at 1. The Eleventh Circuit denied the petition and affirmed the district court's summary judgment order. Ct. App. ECF No. 66; Pet. App. 1a–14a.

The court of appeals began by examining the text and application of each statute. The court explained that the Alabama Code does not define the term "begging," but that its ordinary meaning at the time of the begging statute's enactment was "to ask for charitable relief for the poor." Pet. App. 6a. The court observed that while the begging statute "criminalizes begging alone," *id.*, the pedestrian solicitation statute additionally prohibits "charitable solicitation for nonprofit or religious organizations or solicitation of support for political candidates," *id.* at 7a.

Because Petitioner did not defend the pedestrian solicitation statute's application to non-begging charitable solicitation, the court treated all non-begging applications of the statute as "constitutionally impermissible." Pet. App. 8a–9a (quoting *Moody v. NetChoice, LLC*, 603 U.S. 707, 726 (2024)).

With respect to the statutes' begging applications, the court recognized that *Smith* had already held that begging is speech protected under the First Amendment. Pet. App. 12a. The statute in *Smith*, however, passed muster because it narrowly restricted begging on beaches. *Id.* at 12a n.13. Alabama's begging and pedestrian solicitation statutes, by contrast, applied "throughout public areas of Alabama," providing no "alternative channels of communication" like "begging in streets, on sidewalks, and in many other public fora." *Id.* (quoting *Smith*, 177 F.3d at 956–57). Petitioner conceded that, if begging is protected speech, then Alabama "cannot broadly restrict panhandling in the manner its laws provide." *Id.*

Because Petitioner failed to identify any constitutionally permissible applications of either statute, the court of appeals affirmed the district court's grant of summary judgment and permanent injunctive relief to Respondent. Pet. App. 13a.

Petitioner filed a second petition for rehearing en banc, which the Eleventh Circuit denied without requesting a response. Pet. App. 17a–18a.

REASONS FOR DENYING THE PETITION

I. Federal Courts and State Supreme Courts Uniformly Agree That Begging is Speech Protected by the First Amendment.

As Petitioner acknowledges, Pet. 2, the Eleventh Circuit's decision is consistent with established precedent in every circuit to have considered the question presented. The First, Second, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have all held that begging is protected speech under the First

Amendment. *See, e.g.*, *Cutting v. City of Portland*, 802 F.3d 79, 83 & n.4 (1st Cir. 2015); *Loper v. N.Y.C. Police Dep't*, 999 F.2d 699, 704 (2d Cir. 1993)*; Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013), *abrogated on other grounds by Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Speet v. Schuette*, 726 F.3d 867, 877–78 (6th Cir. 2013); *Gresham v. Peterson*, 225 F.3d 899, 903–05 (7th Cir. 2000); *Rodgers v. Bryant*, 942 F.3d 451, 456 (8th Cir. 2019); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 945 (9th Cir. 2011) (en banc); *Brewer v. City of Albuquerque*, 18 F.4th 1205, 1219 (10th Cir. 2021); *McCraw v. City of Oklahoma City*, 973 F.3d 1057, 1066 (10th Cir. 2020); *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999).

Moreover, although the Third, Fifth, and D.C. Circuits have not addressed the issue, district courts in the Fifth and D.C. Circuits have consistently concluded that begging is constitutionally protected speech. *See, e.g.*, *Henagan v. City of Lafayette*, No. 6:21-CV-03946, 2022 WL 4553055, at *4 (W.D. La. Aug. 16, 2022) (noting "the foundational principle that solicitation of a charitable donation of anything of value by an individual (i.e., panhandling) is protected speech under the First Amendment"), *objections overruled*, 2022 WL 4546721 (W.D. La. Sept. 27, 2022); *Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 663–64 (E.D. La. 2017); *Burke v. Wiedefeld*, No. 19-CV-3145 (JMC), 2024 WL 3471241, at *5 (D.D.C. July 18, 2024); *Narce v. Mervilus*, No. CV 23-200 (BAH), 2023 WL 7128475, at *8 (D.D.C. Oct. 30, 2023); *Brown v. Gov't of D.C.*, 390 F. Supp. 3d 114, 124 (D.D.C.

2019) (Jackson, J.). And Respondent has not found any contrary decisions by district courts within the Third Circuit.

State supreme courts have also consistently recognized begging to be constitutionally protected speech. *See, e.g.*, *Benefit v. City of Cambridge*, 679 N.E.2d 184, 187–88 (Mass. 1997) ("[T]here is no distinction of constitutional dimension between soliciting funds for oneself and for charities and therefore … peaceful begging constitutes communicative activity protected by the First Amendment."); *Mass. Coal. for the Homeless v. City of Fall River*, 158 N.E.3d 856, 860 (Mass. 2020); *City of Lakewood v. Willis*, 375 P.3d 1056, 1059 (Wash. 2016) ("The First Amendment protects charitable appeals for funds, including appeals in the form of begging or panhandling." (internal quotation marks and citation omitted)); *Champion v. Kentucky*, 520 S.W.3d 331, 334–35 (Ky. 2017); *cf. L.A. All. For Survival v. City of Los Angeles*, 993 P.2d 334, 340 (Cal. 2000) (restriction on begging "plainly implicates the liberty of speech clause of the California Constitution").

In short, not only is there no division of authority on the question presented for this Court to resolve, but there is widespread consensus across federal and state courts that Petitioner's position is wrong.

II. Petitioner's Position is Foreclosed by This Court's Precedent.

The lower courts have universally rejected Petitioner's position for good reason: It is foreclosed by this Court's long and unbroken line of precedent recognizing that speech seeking charitable relief is

protected by the First Amendment. And even apart from that precedent, Petitioner's rationale for making begging a new category of unprotected speech is fatally flawed, as Petitioner misunderstands both the historical inquiry and the historical record.

A. This Court Has Repeatedly and Consistently Held That the First Amendment Protects Speech Seeking Charitable Relief.

The question presented by Petitioner was answered in *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), which holds that "charitable appeals for funds, on the street or door to door, 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." *Id.* at 632. That is precisely the speech that the challenged statutes prohibit. *See supra* pp. 5–6 (describing the statutes and the speech that has triggered citations under them).

Schaumburg is just one of many Supreme Court decisions recognizing First Amendment protection for charitable solicitations. Decades earlier, in *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Court reversed the convictions of several Jehovah's witnesses who were charged with violating a state law prohibiting individuals from "solicit[ing] money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause" after they went door-to-door requesting contributions in exchange for religious pamphlets. *Id.* at 301–02. The Court held that the law intruded on the defendants'

First Amendment right to solicit assistance in support of their religious beliefs. *Id.* at 303–04.[3]

In the decades since *Schaumburg*, the Court has remained steadfast on the First Amendment's protection of face-to-face solicitation of donations. *See Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 789, 801 (1988) ("[S]olicitation of charitable contributions is protected speech" and "a speaker's rights are not lost merely because compensation is received."); *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 677 (1992) ("It is uncontested that the solicitation at issue in this case is a form of speech protected under the First Amendment."); *United States v. Kokinda*, 497 U.S. 720, 725 (1990) (plurality opinion) ("Solicitation is a recognized form of speech protected by the First Amendment."); *see also, e.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 442 (2015); *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 959 (1984); *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981); *Hynes v. Mayor & Council of Borough of Oradell*, 425 U.S. 610, 616–18 (1976).

In response to this unbroken wall of precedent, Petitioner asserts that the Court has never extended First Amendment protection to "begging." Pet. 19. "[T]o the contrary," Petitioner says, "the Court has

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[3] Although *Cantwell* involved the free exercise clause, the Court has subsequently cited *Cantwell* for the proposition that soliciting funds involves interests protected by the First Amendment's guarantee of freedom of speech. *Schaumburg*, 444 U.S. at 629 (collecting cases).

consistently maintained that solicitation is 'undoubtedly' regulable.'" *Id.* (quoting *Schaumburg*, 444 U.S. at 632). The latter point is a non-sequitur: Of course solicitation is regulable—all constitutionally-protected speech is regulable so long as the applicable level of First Amendment scrutiny is satisfied. That basic principle of constitutional law provides no support for Petitioner's claim that begging restrictions receive no First Amendment scrutiny at all.

Petitioner fares no better in his efforts to extract begging from the charitable solicitation this Court has subjected to First Amendment scrutiny. Although Petitioner does not contest the Eleventh Circuit's definition of begging—"to ask for charitable relief for the poor," Pet. App. 6a, he makes no meaningful effort to explain why, in his view, asking for charitable relief for the poor is qualitatively different from the requests for charitable relief this Court has recognized as protected, such as charitable relief for the disabled, *see Riley*, 487 U.S. 781.

To the extent that Petitioner means to distinguish the solicitation of charitable relief on behalf of oneself from charitable solicitation on behalf of a nonprofit organization, this is not a distinction that Alabama's statutes allow—both the pedestrian solicitation statute and the begging statute criminalize speech seeking charitable relief for the poor without regard to the speaker (and indeed the pedestrian statute extends to any sort of charitable relief, whether it be for the poor, the environment, a religious cause, or otherwise). *See supra* pp. 5–6. Moreover, "it would be illogical to restrict the right of the individual beggar to seek assis-

tance for himself while protecting the right of a charitable organization to solicit funds on his behalf. Such a conclusion would require citizens to organize in order to avail themselves of free speech guarantees, a requirement that contradicts the policies underlying the First Amendment." *Benefit*, 679 N.E.2d at 188.

The petition spends several pages emphasizing the relationship between charitable solicitation and "advocacy of public issues," Pet. 20–22, but that also is not a basis for distinguishing the Alabama statutes. Respondent was cited for holding a sign saying, "HOMELESS. Today it is me, tomorrow it could be you," D.Ct. ECF No. 106, ¶ 9, a message indistinguishable from that used by many charities serving homeless clients. Indeed, the petition treats the begging statute and the pedestrian solicitation statute—which applies to all charitable solicitation, including solicitation for religious, nonprofit, and political causes—as prohibiting the same speech and as raising the same First Amendment question. *See* Pet. 15.

But even if Alabama had only criminalized requests for personal financial support isolated from any additional messaging, this Court's precedent establishes that the First Amendment would apply. To start, "[i]t is not clear that a professional's speech is necessarily commercial whenever it relates to that person's financial motivation for speaking." *Riley*, 487 U.S. at 795. But "even a communication that does no more than propose a commercial transaction is entitled to the coverage of the First Amendment." *Edenfield v. Fane*, 507 U.S. 761, 767 (1993). This Court has recognized the First Amendment's application to

speech far less valuable than communicating a personal need for charitable assistance: "*Most* of what we say to one another lacks religious, political, scientific, educational, journalistic, historical, or artistic value (let alone serious value), but it is still sheltered from government regulation." *United States v. Stevens*, 559 U.S. 460, 479 (2010) (internal quotation marks omitted). "This is because the First Amendment entrusts "the speaker and the audience, not the government, [to] assess the value of the information presented." *Edenfield*, 507 U.S. at 767; *accord, e.g., Riley*, 487 U.S. at 791 ("[T]he government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government."). The First Amendment applies as fully to "ordinary people engaged in unsophisticated expression" as it does to "professional publishers." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 574 (1995).

It is no surprise, then, that the lower courts have consistently rejected any First Amendment distinction between charitable solicitation for organizations and charitable solicitation for personal relief. *See, e.g.*, *Loper*, 999 F.2d at 704 ("We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed. The former are communicating the needs of others while the latter are communicating their personal needs. Both solicit the charity of others. The distinction is not a significant one for First Amendment purposes."); *Speet*, 726 F.3d at 877 ("[T]here is no 'legally justifiable distinction' between 'begging for one's self and solicitation by organized

charities.'"); *Smith*, 177 F.3d at 956 ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."); *Gresham*, 225 F.3d at 904 ("[T]he Court's analysis in *Schaumburg* suggests little reason to distinguish between beggars and charities in terms of the First Amendment protection for their speech."); *Rodgers*, 942 F.3d at 456 ("The fact that [beggars] intend to ask for money does not mean that their speech is unprotected. To the contrary, asking for charity or gifts, whether 'on the street or door to door,' is protected First Amendment speech.").

Petitioner offers no persuasive response to this mountain of authority.

B. Petitioner's Proposed Test for Creating New Categories of Unprotected Speech Has No Basis in First Amendment Doctrine.

Petitioner's argument is foreclosed not only by this Court's longstanding precedents applying the First Amendment to charitable solicitation specifically, but also by longstanding First Amendment law generally. Petitioner urges the Court to take the extraordinary step of recognizing a new category of unprotected speech outside the few limited categories "long familiar to the bar," *Stevens*, 559 U.S. at 468 (citation omitted), but his rationale for doing so has no support in First Amendment doctrine.

"From 1791 to the present … the First Amendment has permitted restrictions upon the content of speech in a few limited areas, and has never include[d] a freedom to disregard these traditional limitations." *Id.* at 468 (citation and internal quotation

marks omitted). These long-recognized historical categories—including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct—"are well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." *Id.* at 468–69 (citation and internal quotation marks omitted). There is no dispute that the speech criminalized by Alabama does not fall into one of the existing categories; to the contrary, the challenged statutes restrict holding signs and engaging in face-to-face conversation in a traditional public forum, which is precisely the sort of pure expression that lies at the heart of the First Amendment. *E.g.*, *McCullen v. Coakley*, 573 U.S. 464, 476, 488–89 (2014) (emphasizing First Amendment protection for face-to-face conversation on sidewalks); *City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994) (holding that "signs are a form of expression protected by the Free Speech Clause").

Although the Court has contemplated the possibility of additional "categories of speech that have been historically unprotected," *Stevens*, 559 U.S. at 472, it has rejected every attempt to expand the list in recent decades, expressing "reluctan[ce] to 'exempt a category of speech from the normal prohibition on content-based restrictions,'" *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 767 (2018) (quoting *United States v. Alvarez*, 567 U.S. 709, 722 (2012)).[4]

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[4] *See, e.g.*, *Nat'l Inst. of Fam. & Life Advocs.*, 585 U.S. at 768 (refusing to recognize "professional speech" as an exempt category); *Alvarez*, 567 U.S. at 722 (rejecting the suggestion that "false statements generally should constitute a new category of

(cont'd)

Petitioner nonetheless urges the Court to create a new exception here because some (but not all) of the original states had laws that punished begging. Pet. 7–9. As discussed below, i*nfra* II.C, Petitioner misunderstands the import of the historical sources he cites. But more fundamentally, Petitioner misunderstands the role of history in First Amendment analysis.

First, this Court's First Amendment caselaw has never focused on a single moment in time, but instead has looked to whether "[f]rom 1791 *to the present*," speech has been unprotected. *Stevens*, 559 U.S. at 468 (emphasis added) (internal quotation marks omitted); *see also Williams-Yulee*, 575 U.S. at 462 (Scalia, J., dissenting) ("Our cases hold that speech enjoys the full protection of the First Amendment unless a widespread and longstanding tradition ratifies its regulation."). Yet Petitioner rests his entire historical argument on a snapshot of state and local statutes from 1791.

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unprotected speech"); *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 794 (2011) (refusing to "create a wholly new category of content-based regulation that is permissible only for speech directed at children"); *Snyder v. Phelps*, 562 U.S. 443, 451 n.3 (2011) (acknowledging "there is no suggestion that [picketing at funerals] falls within one of the categorical exclusions from First Amendment protection" (internal quotation marks omitted)); *Stevens*, 559 U.S. at 472 ("declin[ing] to carve out from the First Amendment any novel exception" for animal cruelty). Informing this line of cases is the "danger" that the "real reason for governmental proscription" of whole categories of speech is to suppress the "ideas expressed by speech … and not its objective effects." *Brown*, 564 U.S. at 799; *see also Cohen v. California*, 403 U.S. 15, 26 (1971) (rejecting the "facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process").

Making matters worse, Petitioner takes his snapshot at a time at which the First Amendment did not even apply to the States. *See Barron v. Mayor of Baltimore*, 32 U.S. (7 Pet.) 243, 250-51 (1833); *cf. Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 594 U.S. 180, 212 (2021) (Thomas, J., dissenting). This Court has rejected reliance on early state statutes to define the scope of the First Amendment—recognizing, for example, the First Amendment's application to profanity, *e.g.*, *Mahanoy Area Sch. Dist.*, 594 U.S. at 191; *Cohen v. California*, 403 U.S. 15, 19 (1971), even though all fourteen original states "made either blasphemy or profanity, or both, statutory crimes," *Roth v. United States*, 354 U.S. 476, 482 (1957).

Indeed, there are many early state statutes criminalizing speech undisputably protected by the First Amendment today. *E.g.*, Digest of the Laws of the State of Alabama 398 (John G. Aikin ed., 1833) (making it a crime punishable by whipping for "any slave or free person of color [to] preach to, exhort, or harangue any slave or slaves, or free persons of color, unless in the presence of five respectable slave-holders"); *id.* at 397 (making it a crime for "[a]ny person . . . to teach any free person of color, or slave, to spell, read, or write"); Michael Kent Curtis, *The Curious History of Attempts to Suppress Antislavery Speech, Press, and Petition in 1835-37*, 89 Nw. U. L. Rev. 785, 802 (1995) (describing laws outlawing advocacy against slavery). Vagrancy laws in particular "went virtually unchallenged" in court because attorneys were not "widely available to the indigent" until the 1960s. *City of Chicago v. Morales*, 527 U.S. 41, 54 n.20 (1999) (plurality opinion).

Although the Court recognized three terms ago that its decisions "have often insisted on protecting even some historically unprotected speech," *Counterman v. Colorado*, 600 U.S. 66, 73 (2023), Petitioner asserts that other recent decisions "decide[] this case in favor of the State," Pet. 18. None of the decisions that Petitioner cites carve out new categories of speech from First Amendment protection based solely on founding-era state statutes, as Petitioner urges the Court to do here.

In *Houston Community College v. Wilson*, 595 U.S. 468 (2022), the Court considered whether a public college board of trustees' verbal reprimand of one of its elected members could give rise to a First Amendment retaliation claim. Explaining that a "[l]ong settled and established practice" receives "great weight" in evaluating constitutional disputes, the Court resolved the case by examining practices "throughout our history," including examples from as recently as 2016. *Id.* at 474, 476 (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929)); *see also id.* at 477–80 (considering "contemporary doctrine" in addition to history).

City of Austin v. Reagan National Advertising of Austin, LLC, 596 U.S. 61 (2022), also provides no support for Petitioner's exclusive focus on founding-era state statutes. In assessing a city law that distinguished between on-premises and off-premises advertising signs, the Court parsed judicial precedent—including precedent applying the First Amendment to regulations of solicitation, *id.* at 72–73—to decide what level of scrutiny should apply. The Court's examination of historical practices, moreover, focused on "[t]he unbroken tradition" of billboard regulation

over "the last 50-plus years"—not a snapshot of state statutes in 1791. *Id.* at 75.

Finally, *Vidal v. Elster*, 602 U.S. 286 (2024), was a "narrow" decision considering whether a law prohibiting the trademark of another person's name was consistent with the First Amendment. The decision disclaims any intent to "set forth a comprehensive framework" even for trademark cases, much less the First Amendment writ large. *Id.* at 310. *Vidal*, moreover, considers not a single moment but the "duration of [U.S.] history," *id.* at 296, as reflected in the common law and numerous judicial decisions, *id.* at 296–308.

In short, none of these cases support Petitioner's effort to disregard the Court's traditional First Amendment framework.

C. Petitioner Misunderstands the Import of the State Statutes He Cites.

Even if the Court were to accept Petitioner's premise that founding-era state statutes are an adequate basis for carving out a new category of speech from the First Amendment, the state statutes that Petitioner cites would not warrant a carveout for begging.

Petitioner's historical argument boils down to the claim that states during the Founding era had vagrancy laws. Pet. 7–9. This is shaky originalism right out of the gate, given that the justifications underpinning historical vagrancy laws—and indeed the laws themselves—have already been deemed largely unconstitutional. The Thirteenth Amendment forecloses the theory of involuntary servitude that undergirded

many of the founding-era vagrancy laws, and the Fourteenth Amendment forecloses the use of vagrancy laws to "maintain … racial hierarchy," as attempted by southern states in the wake of the Civil War. *Timbs v. Indiana*, 586 U.S. 146, 153 (2019); *see also Papachristou v. City of Jacksonville*, 405 U.S. 156, 161–62 (1972) (striking down the city's vagrancy ordinance that derived from English poor laws, noting that the conditions that spawned those laws no longer existed yet the "archaic … definitions of vagrants" remained). And, of course, the First Amendment now applies to the states, something that was not true in the Founding era. *See Gitlow v. New York*, 268 U.S. 652, 666 (1925).

But even aside from their highly questionable pedigree, founding-era state vagrancy laws are unhelpful to Petitioner because they criminalized the *conduct* of voluntary idleness, not the communicative aspect of begging. *See* Brief for Prof. William P. Quigley as Amicus Curiae in Support of Plaintiff-Appellee at 12–13, *Singleton v. Taylor*, No. 23-11163 (11th Cir. Sept. 13, 2023). Indeed, while it may be true that "Alabama first regulated vagrancy over 200 years ago," Pet. 1, Alabama's prohibition on begging as expression dates back only to 1977, Ala. Acts 1977, No. 607, p. 812, § 5540; Commentary, Ala. Code § 13A-11-9. Alabama's original vagrancy law says nothing about begging or beggars at all; it simply commands that every person "shall apply himself to some honest calling for his support," punishing those repeatedly found "sauntering about." Digest of the Laws of the State of Alabama 438 (John G. Aikin ed., 1833).

Before the 1977 amendment, Alabama's vagrancy law "punished one's status; it was aimed at a mode of life." Commentary, Ala. Code § 13A-11-9. Begging was not outlawed during this time; to the contrary, state law allowed a person to "ask[] [for] charity within the county in which he has a known place of residence." Ala. 1940 Code Tit. 14 § 441. Only when an able-bodied person adopted a lifestyle of begging "from place to place," far from their home, could they be punished for being a "tramp." *Id.*

The recent vintage of Alabama's restriction on begging as speech is consistent with the national trend. Throughout the nation's early years, vagrancy laws targeted a person's idleness, not their expression. "At common law a vagrant" was defined as "an idle person who is without visible means of support and who, although able to work, refuses to do so." Caleb Foote, *Vagrancy-Type Law and Its Administration*, 104 U. Pa. L. Rev. 603, 609 (1956); William P. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. Rich. L. Rev. 111, 164 (1997) [hereinafter *Reluctant Charity*] ("[U]nder the poor laws, refusal to work by the able-bodied was a crime."). Idleness, not expression, was the target.

In Georgia, for example, the legislature complained that there were "able-bodied men, capable of laboring for their support" yet whose "idle and disorderly life render[ed] themselves incapable of paying" their taxes. Digest of the Laws of the State of Georgia 1755-1800, at 568 (Horatio Marbury & William H. Crawford eds., 1802). A person "found … wandering, strolling, loitering about or misbehaving himself"

could be charged as a vagabond, but would be acquitted if they had gainful employment or signed up for military service. *Id.* at 569.

To be sure, some state vagrancy laws treated begging as evidence of voluntary idleness, but typically only when performed by "sturdy beggars," *e.g.*, A Digest of the Laws of South-Carolina, Containing the Public Statute Law of the State, Down to the Year 1822, at 416 (Benjamin James ed., 1822)—that is, "an able-bodied man begging without cause, and often with violence." *Sturdy Beggar*, Oxford English Dictionary (online ed. Sept. 2025). As Petitioner acknowledges, throughout history, those who were unable to work could beg in order to gather the resources they needed to survive. Pet. 6.

Petitioner also acknowledges that "[t]he basic theory" of early vagrancy laws "was to distinguish those who could work (but refused) from those [who] could not," Pet. 1, not to prohibit a category of speech. Whatever the merits of compulsory labor in 1791, that theory "no longer fits the facts" of society today. *Edwards v. California*, 314 U.S. 160, 174 (1941). During the Founding era, local governments had a duty to provide aid to their settled residents who fell into poverty. *See, e.g.*, *Reluctant Charity, supra*, at 116. The potential financial cost of providing such assistance motivated jurisdictions to assume a heavy hand over how their residents spent their day.[5] Today, Alabama

[5] The duty to provide poor aid prompted other intrusive measures, such as Connecticut's instruction that towns should *(cont'd)*

has no legal obligation to support all of its poor residents, and it lacks any justification to punish them for being idle. Any lingering interest the state might have to force people to labor was dispelled by the passage of the 13th Amendment's ban on involuntary servitude. U.S. Const. amend. XIII, § 1. Just as "respect for past judgments also means respecting their limits," *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 491 (2025), respect for history means respecting the limits of what it teaches.

Without evidence that the expressive elements of begging were universally and consistently proscribed, Petitioner is left to rely on the mere existence of vagrancy laws writ large. Pet. 14. Thus, Petitioner posits that, at the Founding, "[v]agrants were considered 'paupers, and as such they forfeited all civil, political, and social rights.'" *Id.* (quoting *Reluctant Charity*, *supra*, at 160). Petitioner's suggestion that people who lacked rights during the Founding era have no speech rights today flies in the face of the Fourteenth Amendment's guarantee of the rights of citizenship to all Americans. *See, e.g.*, *City of Grants Pass v. Johnson*, 603 U.S. 520, 557 (2024) (emphasizing that "many substantive legal protections and provisions of the Constitution may have important roles to play when States and cities seek to enforce their laws against the homeless"). Indeed, the drafters of the Fourteenth Amendment identified vagrancy laws as an example of the evil that the Amendment should eliminate. *See,*

"diligently inspect into the affairs and management of all persons in their town" to ensure that household finances were not being mismanaged. *Reluctant Charity*, *supra*, at 121 (internal quotation marks omitted).

e.g., *Timbs v. Indiana*, 586 U.S. 146, 168–69 (2019) (Thomas, J., concurring); *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 387 (1982) ("Congress plainly perceived" laws "penalizing vagrancy" as "consciously conceived methods of resurrecting the incidents of slavery").

Petitioner essentially reasons that because states once criminalized poverty, they now have license to criminalize expressions of poverty—which repeats the same conceptual mistakes that this Court rejected in *Stevens* and *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011). In *Stevens*, the government cited a long history of regulating animal cruelty, but the Court rejected the government's contention that this history supported restrictions on *depictions* of such cruelty. *Stevens*, 559 U.S. at 469. In *Brown*, the Court held that a ban on selling violent video games to children triggered First Amendment scrutiny, even though children historically lacked many of the same constitutional rights as adults. *Brown*, 564 U.S. at 795 & n.3. Neither a history of regulating related conduct nor of regulating a group of people is a basis for relegating a category of speech into "a First Amendment Free Zone." *Stevens*, 559 U.S. at 469 (internal quotation marks omitted).

In attempting to shift the burden to Respondent to identify "evidence that founding era governments protected a constitutional right to beg," Pet. 14, Petitioner gets the test exactly backwards. The First Amendment establishes the default principle that the state "shall make no law … abridging the freedom of speech," U.S. Const. amend. I, and content-based re-

strictions come with a presumption of unconstitutionality that the government must rebut, *e.g., Stevens*, 559 U.S. at 468. For a category of speech to be unprotected, the government must show "persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription." *Brown*, 564 U.S. at 792. Petitioner's snapshot of state vagrancy laws falls far short of satisfying that standard.

III. The Question Presented Is Not Exceptionally Important.

Most of the social ills that Petitioner insists render his petition exceptionally important—public urination, defecation, intoxication, "illegal urban encampments," "the open use of illegal drugs," Pet. 23—involve non-expressive conduct that has nothing to do with the First Amendment, the question presented, or the Eleventh Circuit's decision below.

Petitioner's complaints about begging, meanwhile, rest on the false premise that *no* restrictions on begging or charitable solicitation are constitutionally permissible if the First Amendment protects such speech. But "[s]oliciting financial support is undoubtedly subject to reasonable regulation," *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980), so long as the government demonstrates under appropriate scrutiny that the regulation avoids an "intru[sion] upon the rights of free speech," *id.* at 631 (quoting *Thomas v. Collins*, 323 U.S. 516, 540–41 (1945)); *see also City of Austin*,

596 U.S. at 72 ("[T]he First Amendment allows for regulations of solicitation[.]").

Indeed, this Court has regularly upheld laws restricting solicitation under varying levels of scrutiny. *E.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 457 (2015) (upholding regulation that prohibited judicial candidates from personally soliciting campaign funds because the regulation narrowly served the compelling interest of ensuring public confidence in the judiciary); *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649–50, 655 (1981) (upholding a content-neutral regulation that prohibited solicitation at a state fair because the regulation served the significant government interest of crowd management); *United States v. Kokinda*, 497 U.S. 720, 737 (1990) (upholding as reasonable a regulation that prohibited solicitation on United States Post Office property); *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 683 (1992) (upholding as reasonable a regulation that prohibited face-to-face solicitation in airport terminals).

Petitioner made the unusual and dispositive decision to offer *no* defense in this litigation of Alabama's begging and pedestrian solicitation statutes under any type of heightened scrutiny. He has never attempted to identify the appropriate level of scrutiny required here—much less apply such scrutiny to the statutes at issue. Pet. 2–3 (stating, without further analysis, that examining begging laws under heightened scrutiny leads to the "wrong results"). To the contrary, Petitioner has conceded that if the First Amendment applies to the challenged statues, Alabama "cannot broadly restrict panhandling in the manner [those] laws provide." Pet.

App. 12a. That concession controls this case, but it does not mean that courts will invalidate other, more carefully tailored restrictions on solicitation that do not discriminate based on topic, subject matter, or viewpoint. And holding state and local governments to the First Amendment does not limit their power to respond to non-expressive behavior. *See, e.g.*, *Grants Pass*, 603 U.S. at 541–43. Petitioner's policy concerns are thus unfounded.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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