No. 25-368

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

PETITIONER'S REPLY BRIEF

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REPLY BRIEF

For hundreds of years, authorities at every level of American government had restricted public begging. Then in the 1990s, courts found a constitutional right to beg in the First Amendment. And since 2015, nearly "*every panhandling ordinance challenged in court*" has been enjoined.[1] Because these lawsuits (and the threat of them) impose serious costs on the public, 20 States ask this Court to return to them a power they need to regulate public spaces for the public good. *See* Br. of S.C. et al., No. 25-368 (Dec. 12, 2025).

Respondents candidly urge the Court to ignore that begging was proscribable and proscribed for most of our Nation's history. In their view, the meaning of the First Amendment was not fixed at a "moment in time" (like at ratification). BIO.3, 18. To Respondents, what is constitutionally protected "today" is whatever has been judicially protected at some point "[f]rom 1791 *to the present*." BIO.3, 18-19.

That is an "unusual" and "eccentric[]" theory. BIO.4-5. Rather than viewing the First Amendment as an evolving one-way ratchet, this Court has expressly contemplated "categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law." *United States v. Stevens*, 559 U.S. 460, 472 (2010). Begging is one of those categories. The Court should consult the robust "history and tradition" of its

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[1] National Homelessness Law Center, *Housing Not Handcuffs 2021: State Law Supplement* (Nov. 2021), at 12, homelesslaw.org/wp-content/uploads/2022/02/2021-HNH-State-Crim-Supplement.pdf.

restriction to define "the scope of the First Amendment." *Vidal v. Elster*, 602 U.S. 286, 301 (2024).

The Court's charitable-solicitation cases do not answer the question presented. They protect speech that is "necessarily more than solicit[ing] for money." *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980). Alabama does not criminalize "free and robust debate," BIO.15, about "the poor, the environment, a religious cause," or a political campaign, BIO.13—the "sort of pure expression that lies at the heart of the First Amendment," BIO.17. Nor were its laws enjoined on that basis. *Contra* BIO.13-14. Under Eleventh Circuit precedent, a restriction that applies "*solely to begging*, [is] impermissible." App.13a (emphasis added); *see also* App.7a n.9.

Respondents also resist certiorari because lower courts have reached a "consensus" that begging is protected speech. BIO.10. That is precisely why this Court's intervention is needed. Nearly every circuit is bound by erroneous precedent that eschews history and tradition, making arguments about the true scope of the First Amendment unavailable. Though most jurisdictions would like to regulate in this area, they cannot satisfy federal courts. Ala. League of Muns. at 4-7, 10-11, No. 25-368 (Dec. 12, 2025). Many choose to settle rather than face the costs of litigation and the dim prospect of overturning circuit precedent. *E.g.*, *Rowland v. City of Morgantown*, No. 1:25-cv-41, 2025 WL 3653519 (N.D.W. Va. Dec. 17, 2025); *Burke v. Clarke*, *Gen. Mgr., WMATA*, No. 1:19-cv-3145 (D.D.C. dismissed Oct. 27, 2025). The status quo reflects not the will of the people but an impossible legal landscape only this Court can remedy.

I. Begging Is Not Protected Speech.

A. In 1791 and 1868, begging was a crime, not a constitutional right.

What Respondents call "shaky originalism" (at 21) is a tradition dating at least to the Middle Ages,[2] adopted by the American colonies,[3] embraced by every State to ratify the Bill of Rights,[4] and which went unquestioned until "the late 20th century." *Coal. on Homelessness v. City & Cnty. of S.F.,* 90 F.4th 975, 988 (9th Cir. 2024) (Bumatay, J., dissenting), *withdrawn in light of City of Grants Pass v. Johnson*, 603 U.S. 520 (2024), 106 F.4th 931; *see City of Chicago v. Morales*, 527 U.S. 41, 102-06 & nn.2-5 (1999) (Thomas, J., dissenting). Far from "questionable," BIO.22, the history is an "often-told tale," *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *see Edwards v. California,* 314 U.S. 160, 176-77 (1941) (collecting cases).[5]

Respondents say that early governments were concerned with "the *conduct* of voluntary idleness, not the communicative aspect of begging." BIO.22. Even if that were true, it would not prove that anyone understood "the freedom of speech," U.S. Const. amend. I, or its state-law analogues to protect begging in 1791 or 1868. But the argument fails on its own terms too.

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[2] *See* Pet.5-6; W. Quigley, *Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor,* 30 Akron L. Rev. 73 (1996).

[3] *See* Pet.6-7 & nn.10-14.

[4] Pet.7-9 & nn.15-27.

[5] While Respondents seem to criticize the State for focusing on laws in existence when the First Amendment was ratified, BIO.19, 22, they offer no evidence of any change in the meaning of the Free Speech Clause between then and 1868, and they agreed below that penalties for vagrancy were *increasing* in the 1850s. Resp.Br. at 45-46, No. 23-11163 (11th Cir. Sept. 6, 2023).

First, the federal government and many early States specifically proscribed *begging*. *See* Pet.7-8 (citing Connecticut, New Jersey, New York, North Carolina, Rhode Island, and Virginia); Act of May 4, 1812, ch. 75, § 6, 2 Stat. 721. Trying to divorce the regulation of vagrancy from that of begging, Respondents mistakenly assert that Alabama prohibited begging "only [in] 1977." BIO.22. In fact, one of the State's first acts in 1819 empowered Mobile to punish anyone "found begging." Pet.13.

Second, that many begging laws also "aimed" at purposes like promoting "honest" labor, providing relief to those unable to support themselves, and reducing "wandering" and "violence," BIO.22-24; *see* Pet.6-7, is irrelevant. Most States regulated begging or beggars, Pet.7-8,[6] which tells us something about the public's constitutional attitudes. Regardless of *why* these laws were adopted, the founding generations thought they were "compatible" with the freedom of speech. *Elster*, 602 U.S. at 301. If anything, the many policy "justifications underpinning historical vagrancy laws" (BIO.22) suggests that no "suppression of ideas [was] afoot." *Elster*, 602 U.S. at 316-17 (Barrett, J., concurring) (quoting *R.A.V. v. City of St. Paul*, 505 U.S. 377, 390 (1992)).

Third, Respondents prove too much. If the begging laws of the 18th and 19th centuries did not implicate "the communicative aspect of begging," BIO.22, then why would Alabama's materially identical laws? Then as now, "expression" was not "the target." BIO.23. Like trademark laws, certain regulations of

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[6] Some early laws did not criminalize begging or beggars directly but treated "begging as evidence" of a different crime, Br. of Prof. Quigley at 15, No. 23-11163 (11th Cir. Sept. 13, 2023).

billboards, or the crime of child pornography, laws against begging address "social ills … that ha[ve] nothing to do with the First Amendment." BIO.4. These laws do not become government censorship the moment the economic "conditions that spawned [them]" "no longer exist[]," BIO.22, 24—which has not happened here in any event, *see infra* §II.

Respondents point out that not all vagrancy laws mentioned begging as such, and some laws had exceptions, so they conclude begging was not "universally" and completely "proscribed." BIO.24-25. But that's not the State's burden. Categories like defamation and obscenity are unprotected by the First Amendment, notwithstanding historical limits and exceptions to those doctrines. The State simply needs a "similar tradition," *Stevens*, 559 U.S. at 469, or a "historical warrant … for [its] restrictions," *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 795 n.3 (2011). It has one: evidence that the power to ban begging was "sanctioned by centuries of Anglo-American law," *Beauharnais v. People of Ill.*, 343 U.S. 250, 263 (1952).

Respondents also emphasize that some aspects of the early vagrancy regimes may not have survived the Reconstruction Amendments. BIO.21-22, 24-26. But Respondents did not bring equal-protection, due-process, or incidents-of-slavery claims. They asserted a free-speech right to beg. Their arguments about *other* "substantive legal protections and provisions of the Constitution" are no more relevant to the meaning of the Free Speech Clause than to the meaning of the Cruel and Unusual Punishment Clause. BIO.25 (quoting *City of Grants Pass*, 603 U.S. at 557); *cf., e.g.*, *United States v. Harrison*, 153 F.4th 998, 1028 n.23 (10th Cir. 2025) (crediting historic practice despite "tension" with "*other* constitutional" commitments).

Respondents badly strawman the State's argument as one that "people who lacked rights" at the framing "have no speech rights today." BIO.25. The point is the opposite: because begging was a way to "forfeit [one's] civil, political, and social rights," *id.*, it could not possibly have been constitutionally protected speech.

B. The meaning of the Free Speech Clause cannot evolve.

As "a written instrument," the Constitution's "meaning does not alter. That which it meant when adopted, it means now." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 359 (1995) (Thomas, J., concurring in judgment). Respondents posit an exception for the Free Speech Clause. Its scope, they say, is not limited to "a single moment in time, but" depends on whether some speech or conduct "has been unprotected" "[f]rom 1791 *to the present*.'" BIO.18 (quoting *Stevens*, 559 U.S. at 468). On this view, anything *deemed* protected—as here, by some lower courts—is forever *constitutionally* protected too.

Nothing in the constitutional text, history, or structure supports an evolving-standards approach to the freedom of speech. Neither does the doctrine. While much of First Amendment law is "choked with different variations of means-ends tests," the question whether "the government can ban certain forms of speech outright" is not. *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1053 (11th Cir. 2022) (Newsom, J., concurring). That's a question of history and tradition, Pet.15-16, which is the method by which "we protect [] constitutional rights" like "the freedom of speech." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022). And while the Court has declined proposals to exempt from scrutiny "a wholly *new* category of

content-based regulation," BIO.17 n.4 (quoting *Brown*, 564 U.S. at 794 (emphasis added)), its reluctance just confirms the primacy of the historical method. *See, e.g.*, *Stevens*, 559 U.S. at 472 (rejecting "freewheeling authority" to redefine the First Amendment's scope).

Respondents suggest that the excluded categories must be ones "familiar to the bar" from "1791 to the present." BIO.16 (quoting *Stevens*, 559 U.S. at 468). But *Stevens* was describing characteristics of existing categories of unprotected speech, not prescribing a test for future ones. And as Respondents concede, *Brown* reiterated that a "long (if heretofore unrecognized) tradition" can sustain a law. BIO.27 (quoting 564 U.S. at 792). The alternative would make the First Amendment turn on the novelty of the claim. Thankfully, that is not the case; child pornography is unprotected even if no one needed to say so until 1982. *New York v. Ferber*, 458 U.S. 747, 762 (1982).

Respondents' position that begging is constitutionally protected because it has been protected "today" (BIO.3, 19) also wrests power from this Court to say what the law is. Just because some lower courts have broken the tradition of begging restrictions from "1791 *to the present*" (BIO.18) does not make this this Court powerless to set things right. While the Court may be unlikely to walk back "the First Amendment's application to profanity" or "blasphemy," BIO.19, "these changes appear to have reflected changing policy judgments, not a sense that [the founding-era laws] violated the original meaning of the First or Fourteenth Amendment," *cf. McKee v. Cosby*, 586 U.S. 1172, 1182 (2019) (Thomas, J., concurring in the denial of certiorari).

Last, Respondents observe (at 20) that the Court sometimes applies "contemporary doctrine" to "confirm[]" "[w]hat history suggests." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477 (2022). And the Court may consider "the duration of [our] history," *Elster*, 602 U.S. at 296, as evidence of liquidated meaning, *see City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 75 (2022) (relying on "tradition" over "the last 50-plus years"). But Respondents need a far different rule to allow "*present*" views to trump original meaning. The Court's use of other sources to *confirm* the original meaning gets Respondents nowhere.

C. The Court has not recognized begging as protected speech.

The history answers why begging is "qualitatively different." BIO.13; *see* Pet.19-22. But so do the Court's charitable-solicitation cases, which protect expression that is "*necessarily more* than solicit[ing] for money." *Schaumburg*, 444 U.S. at 632 (emphasis added). Begging is not necessarily more than asking for money. Respondents are not a "coalition of professional fundraisers, charitable organizations, and potential charitable donors" with "a variety of speech interests," for example. *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 787 (1988). They are people who may just "remain … in a public place … for the purpose of begging." DE84:10 (certifying class).

The distinction matters. The Court has protected charitable solicitation because it is "characteristically intertwined" with public advocacy, debate, and ideas; it has not constitutionalized a right to ask for money. *Schaumburg*, 444 U.S. at 632; *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 959-60 (1984); *Riley*, 487 U.S. at 787-88. *Schaumburg* itself confirms

the distinction Respondents insist does not exist: "[S]oliciting by religious and charitable organizations" differed from asking "for money" because the former "necessarily combine[s]" requests for support with "communication of information" and "advocacy of causes." 444 U.S. at 632, 635.

Failing to engage the many ways that *Schaumburg* drew this distinction, Pet.20 & n.32, Respondents drift to other cases that reinforce it. *Cantwell v. Connecticut*, 310 U.S. 296 (1940), involved a religious group "selling books, distributing pamphlets, and soliciting contributions." *Schaumburg*, 444 U.S. at 629. *Riley* couldn't "parcel out" the commercial aspect of professional fundraising because it was "inextricably intertwined with otherwise fully protected speech." 487 U.S. at 796. "[T]he solicitation at issue" in *International Society for Krishna Consciousness v. Lee* concerned religious literature. 505 U.S. 672, 674-75, 677 (1992). *United States v. Kokinda* involved political volunteers selling newspapers. 497 U.S. 720, 723 (1990) (plurality). These cases turned on "the nexus between solicitation and the communication of information and advocacy of causes." *Cornelius v. NAACP*, 473 U.S. 788, 799 (1985). Begging lacks that nexus.

Nor is begging inextricably intertwined with protected speech. Its object is the transfer of money—period. *See Young v. N.Y.C. Transit Auth.*, 903 F.2d 146, 154-56 (2d Cir. 1990). That some add a "kernel of expression" to their begging does not bring begging within the scope of the First Amendment. *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 458 (1978); *cf. Snyder v. Phelps*, 562 U.S. 443, 471 (2011) (Alito, J., dissenting); *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949).

II. Restoring The Traditional Power To Regulate Begging Is Exceptionally Important.

Respondents suggest that there is no exigency because governments can just "demonstrate[] under appropriate scrutiny" that their begging laws pass muster. BIO.27-28. But they neglect to mention that courts routinely hold that the appropriate scrutiny is strict: an "unforgiving" standard that "succeeds in [its] purpose if and only if, as a practical matter, it is fatal in fact absent truly extraordinary circumstances." *Free Speech Coal. v. Paxton*, 606 U.S. 461, 485 (2025).

In the decades-old cases Respondents cite (at 28) upholding restrictions on charitable solicitation, this Court applied intermediate scrutiny. *E.g.*, *Lee*, 505 U.S. at 683. But after *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), lowers courts have washed away "'entirely reasonable' regulations that reflect the will of the people." *City of Austin*, 596 U.S. at 79-80 (Breyer, J., concurring). According to the National Homelessness Law Center, "every panhandling ordinance challenged" between 2015 and 2021 was enjoined.[7]

So when Respondents say (at 13) "[o]f course solicitation is regulable," it is notable that they cannot offer a single example of a law that would satisfy the lower courts. *See* Pet.26-27; Ala.League.Br.4-13. Nor is that surprising, because courts are not well-suited to second-guess, under strict scrutiny, whether (for example) restricting solicitation near an ATM is "the

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[7] *Supra* at 1 n.1; *accord* ACLU of N.C., *Civil Rights Groups Challenge Greensboro's Unconstitutional Panhandling Ordinance* (Aug. 8, 2018), tinyurl.com/4646sp6m ("100 percent of [panhandling] ordinances have been struck down by courts—25 of 25 since 2015.").

least restrictive means," or enough "experts" think that people exiting a restroom are more vulnerable. *E.g.*, *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 195-96 (D. Mass. 2015). Respondents' implication (at 29) that Alabama can fix its law by removing the word "begging" (while "more carefully tailor[ing]" the law *to begging*) just opens up those laws to void-for-vagueness claims. *See* BIO.22 (citing *Papachristou*, 405 U.S. at 161-62 (1972); *Loitering*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Loitering statutes are generally held to be unconstitutionally vague.").

Governments need "the full panoply of tools in the policy toolbox" to address the homelessness crisis plaguing their streets. *City of Grants Pass*, 603 U.S. at 533. Regulating begging is one such tool, prophylactically turning off one spigot to downstream harms like public intoxication, drug abuse, and encampments before they happen. *Contra* BIO.27; *see Plumley v. Massachusetts*, 155 U.S. 461, 478 (1894) ("[T]he police powers of a State justif[y] the adoption of precautionary measures against social evils."); *Morales*, 527 U.S. at 104 (Thomas, J., dissenting).

Begging is thus "an appropriate target of regulation." *Lee*, 505 U.S. at 684. "[A] person asking for money disrupts passage," "is more intrusive and intimidating than an encounter with a person giving out information," *Kokinda*, 497 U.S. at 734, and "presents risks of duress," particularly to "the most vulnerable," *Lee*, 505 U.S. at 684. And begging in the vicinity of public roadways "has the serious potential of creating an accident and injuring many people." *Young*, 903 F.2d at 150 (quoting criminologist George Kelling); *see* Ala.League.Br.14-19 (discussing how begging causes distracted driving); Br. of S.C. at 7-8. This practical

importance matched by doctrinal need makes this issue worthy of review.

CONCLUSION

The Court should grant the petition for certiorari.

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