No. _____

In The

Supreme Court of the United States

CITY OF DAYTONA BEACH, FLORIDA

Petitioner,

v.

DENNIS SCOTT, CHAD DRIGGERS,
DOUGLAS WILLIS, and
GEORGE ROWLAND

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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November 16, 2026

QUESTIONS PRESENTED

1. Does an ordinance which regulates face-to-face solicitations based on *when* a donation is requested qualify as content-neutral under the standards announced in *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015) and *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61 (2022)?

2. How closely must the definition of "solicitation" adhere to the one employed by *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61 (2022) to qualify as a content-neutral, category-based regulation of speech?

3. Should traffic safety be considered a compelling government interest?

PARTIES TO THE PROCEEDINGS BELOW

The parties to these proceedings are listed in the caption.

The Petitioner is the City of Daytona Beach, Florida which was the Defendant in the District Court and the Appellant in the Circuit Court.

The Respondents are Dennis Scott, Chad Driggers, Douglas Willis, and George Rowland, who were the Plaintiffs in the District Court and the Appellees in the Circuit Court.

All parties to the proceedings below are parties to this Petition.

CORPORATE DISCLOSURE STATEMENT

Petitioner, City of Daytona Beach, is a Florida municipal corporation which has no parent or subsidiary corporations, and no publicly owned company holds any ownership interest in the corporation.

RELATED PROCEEDINGS

- *Scott, et al. v. City of Daytona Beach Florida*, No.: 6:22-cv-2192-WWB-DAB, U.S. District Court for the Middle District of Florida. Judgment entered September 6, 2024.

- *Scott, et al. v. City of Daytona Beach Florida*, No.: 23-13119-H U.S. Court of Appeals for the Eleventh Circuit. Order Dismissing Appeal as Moot entered October 4, 2024.

- *Scott, et al. v. City of Daytona Beach Florida*, No.: 24-12662-AA / 24-12964-AA (Consolidated cases) U.S. Court of Appeals for the Eleventh Circuit. Judgment entered June 25, 2026.

- *Scott, et al v. City of Daytona Beach Florida*, No.: 24-12662-AA / 24-12964-AA (Consolidated cases) U.S. Court of Appeals for the Eleventh Circuit. Order Denying Petition for Rehearing and Petition for Rehearing *en banc* entered August 17, 2026.

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The opinion of the United States Court of Appeals for the Eleventh Circuit is reported as *Scott v. City of Daytona Beach, Florida,* 186 F.4th 1286 (11th Cir. 2026) (App. 1a-49a). The Eleventh Circuit reversed in part and affirmed in part the decision of the United States District Court for the Middle District of Florida. The District Court opinion is reported as *Scott v. City of Daytona Beach, Florida*, 740 F.Supp.3d 1205 (M.D. Fla. 2024) (App. 50a-70a).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The Eleventh Circuit Court of Appeals rendered its opinion on June 25, 2026. The Eleventh Circuit denied a timely filed Petition for Rehearing and Rehearing *En Banc* by order dated August 17, 2026. This Petition is filed within 90 days of that date.

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

Constitutional provisions

The First Amendment to the Constitution of the United States of America provides that "Congress shall make no law . . . abridging the freedom of speech . . . ."

Statutory provisions

The City of Daytona Beach "panhandling" Ordinance was enacted as Ordinance 19-27 and is codified as §66-1 of the Daytona Beach Code of Ordinances (2019). Section 66-1 appears at App. 78a-79a.

STATEMENT OF THE CASE

In 2019, the City of Daytona Beach enacted Ordinance 19-27, codified as §66-1, which regulates the times and locations where individuals can engage in "panhandling". App. 3a. The Ordinance defines "panhandling" to include any solicitation seeking an immediate payment of money or something of value. *See*, §66-1(b). App. 78a.

Respondents are persons who regularly engage in panhandling in Daytona Beach and rely

on that income for their living. App. 8a. One of the Respondents was arrested for violating §66-1 and the others claimed to have received police warnings or were otherwise chilled in their speech. App. 9a. Respondents brought an original proceeding challenging the constitutionality of the City's solicitation Ordinance, facially and as-applied, under the First Amendment. App. 9a.

Daytona Beach defended on the basis that §66-1 was content-neutral because its application was not based on the speaker or his speech and all solicitations seeking immediate consideration were subject to its time, place, and manner restrictions. App. 35a. The City argued that §66-1 was subject to intermediate scrutiny and would survive that level of review because its restrictions did not substantially burden speech, were supported by significant government interests, and were narrowly tailored. App. 129a. The City argued in the alternative that §66-1 could survive strict scrutiny based on compelling government interests (prevention of disease and traffic safety) and its concerted effort to utilize the least restrictive means of regulation. App. 150a-152a.

The City submitted into evidence an exhaustive Legislative History documenting the factual basis for the Ordinance and supported that legislative fact-finding with extensive record evidence in the form of affidavits, depositions and expert witness testimony. App.151a. In addition to supporting its interests in regulating, the City's evidence showed that 97.5% of Daytona Beach

remained available for solicitation free of geographical restrictions.

On August 29, 2023, the District Judge granted Plaintiffs' Second Motion for Preliminary Injunction and enjoined portions of §66-1. App. 55a. Daytona Beach appealed the preliminary injunction order to the Eleventh Circuit Court of Appeals in Case No.: 23-13119. That appeal was voluntarily dismissed as moot after the District Court entered a permanent injunction.

The Plaintiffs filed their Motion for Partial Summary Judgment on December 5, 2023. The City filed a Response (App. 127a-153a) but did not file a cross-motion for summary judgment. On July 18, 2024, the District Court entered its Order granting the Motion for Partial Summary Judgment. App. 50a-70a. The Order declared that §§66-1(c)(1) and (c)(3)-(4) violated the First Amendment and were unconstitutional. *Id*. The Court entered a permanent injunction against enforcement of those provisions. App. 69a.

Petitioner appealed from the summary judgment Order on August 15, 2024 to preserve its rights. App. 10a. The appeal was assigned Case No.: 24-12662-AA.

On September 6, 2024, the District Court entered its Order awarding damages and directing entry of final judgment based on a Stipulation submitted by the litigants. App. 10a. Final

Judgment was entered in this case on September 6, 2024. App. 74a-75a.

The City filed a timely appeal from the Final Judgment which was assigned Case No.: 24-12964-AA. The Eleventh Circuit consolidated that appeal with the earlier appeal from the summary judgment Order. App. 10a.

On June 25, 2026, the Eleventh Circuit issued its opinion determining that §66-1 regulated based on content because its temporal regulations had the practical effect of discriminating amongst Respondents and others who did not require an immediate donation of charitable or other aid. App. 40a. The Court concluded that the Ordinance could not survive strict scrutiny because the law was not narrowly tailored to the arguably compelling interests asserted. Consequently, §§66-1(c)(1), (c)(3)(a)–(b), (c)(3)(g)–(h), (c)(4)(a), and (c)(4)(i) of the Ordinance were declared to be unconstitutional. App. 49a.

Despite the finding of unconstitutionality, the Eleventh Circuit vacated much of the District Court's Order because one or all the Respondents had not demonstrated standing to challenge many of the individual provisions. The Eleventh Circuit remanded for an individualized determination as to the standing of *each* Plaintiff to challenge *each* of the provisions. App. 47a-48a.

The Court also vacated the injunction because it applied to non-parties and was thus a "universal"

injunction prohibited by *Trump v. CASA, Inc.*, 606 U.S. 831, (2025). The Eleventh Circuit remanded with instructions that the District Court reconsider the scope of the injunction in light of *Casa*. App. 48a.

Petitioner filed its timely Petition for Rehearing and Rehearing *en banc*. App. 76a-77a. The Eleventh Circuit denied that Petition by Order entered on August 17, 2026. App. 76a-77a. The Eleventh Circuit's Mandate issued on August 25, 2026.

This Petition follows.

REASONS FOR GRANTING THE WRIT

I. THE EFFECT OF *CITY OF AUSTIN, TEXAS V. REAGAN NAT'L ADVERT. OF AUSTIN, LLC*, 596 U.S. 61 (2022) ON *REED V. TOWN OF GILBERT, ARIZ.*, 576 U.S. 155 (2015) REGARDING SOLICITATION REMAINS UNCERTAIN.

Solicitations of all kinds are protected by the First Amendment. Prior to *Reed*, ordinances governing panhandling activities were traditionally treated as content-neutral so long as they did not discriminate against particular speakers or particular messages. The Eleventh Circuit's ruling in *Smith v. City of Fort Lauderdale, Fla.*, 177 F.3d 954, 956 (11th Cir. 1999) is typical of the sort of panhandling ordinances traditionally analyzed under intermediate scrutiny. *Smith* upheld a Fort Lauderdale ordinance which prohibited

panhandling on the beach. The ordinance did not discriminate among speakers and left most of the city available for panhandling. Similar laws had been upheld around the country. *See, e.g.*, *Gresham v. Peterson*, 225 F.3d 899 (7th Cir. 2000); *Young v. New York City Transit Auth.*, 903 F.2d 146 (2d Cir. 1990); *Norton v. City of Springfield, Ill.*, 768 F.3d 713 (7th Cir. 2014).

In *Gresham, supra*, the Seventh Circuit rejected a First Amendment and vagueness challenge to an ordinance which closely resembles Daytona Beach's law. The Indianapolis ordinance prohibited aggressive panhandling in terms almost identical to those employed by Daytona Beach. *Id*. at 901. Panhandling was banned "on any day after sunset, or before sunrise." *Id*. Solicitations were also prohibited near bus stops, cafes, ATM machines and in parked vehicles. *Id*.

A sea change occurred following this Court's decision in *Reed*. *Reed* prescribed a harsh, but easy to follow rule when it came to identifying content-based laws in what can be referred to as a "read 'em and weep" approach. *Reed* held that if a regulator had to read a sign to determine whether it was lawful, the ordinance would be treated as content-based. Because panhandling ordinances naturally describe their subject in terms of speech, and because speech activities are directly or indirectly effected, such laws were automatically classified as content-based in the wake of *Reed*.

Reed had a ubiquitous and immediate societal impact. Petitioner's review of the case law suggests that no panhandling ordinance has survived strict scrutiny following *Reed*, including the decision below. *See*, *Messina v. City of Fort Lauderdale, Fla.*, 546 F.Supp.3d 1227, 1240 (S.D. Fla. 2021) ("[P]anhandling laws that, in the wake of *Reed*, have been enjoined by federal courts across the country…")

In a sweeping paragraph, *Reed* held that the need to evaluate the content of individual signs meant that the ordinance was content-based even if the goal was not to censor any particular message:

> Our precedents have also recognized a separate and additional *category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be 'justified without reference to the content of the regulated speech,'* or that were adopted by the government 'because of disagreement with the message [the speech] conveys,*' Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

Reed, 576 U.S. at 163–64. (emphasis added).

The drawbacks of *Reed*'s categorical approach to content-based classification were apparent even at the time *Reed* was decided. As Justice Sotomayor noted in her dissent:

> [O]n the majority's view, courts would have to determine that a town has a compelling interest in informing passersby where George Washington slept.…
> …
> … [C]ourts will strike down those democratically enacted local laws even though no one - certainly not the majority - has ever explained why the vindication of First Amendment values requires that result.

Reed, 576 U.S. at 181, 185 (J. Kagan, concurring). Justice Breyer chimed in with a list of traditional laws which would likely be invalidated based on *Reed*'s analysis.[1]

Those concerns proved prescient as many efforts at local regulation which had historically been deemed neutral toward speech were struck down under *Reed*. *See, e.g.*, *Norton v. City of*

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[1] In his concurrence in *Austin*, Justice Breyer noted that he disagreed with *Reed's* effect on solicitation and renewed his clarion call that widespread application of *Reed* continued to pose doctrinal difficulties for "ordinary regulatory programs" including those regulating "panhandling" and "solicitation on behalf of charities." *Austin*, 596 U.S. at 79 (J. Breyer, concurring).

Springfield, Ill., 768 F.3d 713 (7th Cir. 2014); *Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); (Panhandling); *Thomas v. Bright*, 937 F.3d 721 (6th Cir. 2019) (Off-premises billboards); *Cahaly v. Larosa*, 796 F.3d 399 (4th Cir. 2015) (Ban on "robocalls").

The *Austin* decision represented a needed course correction. *Austin* considered the constitutionality of a billboard ordinance which distinguished between on-site and off-site signs. Under *Reed*, the decision would have been an easy one. The ordinance defined its subject matter in terms of speech and regulators had to evaluate the speech to determine whether the signs were lawful. Under *Reed,* the ordinance would have been content-based and subject to strict scrutiny rather than intermediate review.

Austin rejected *Reed's* approach and held that a law was not content-based simply because the nature of the speech had to be considered to determine whether the law applies. *Austin* looked past the mere mechanics of reading a sign holding that location-based regulations that remain agnostic as to viewpoint or topic are facially content-neutral.

It is beyond peradventure that *Austin* identified laws regulating solicitations as a matter of special concern for the Court. *Austin*, at 596 U.S. at 72. This Court held that solicitation laws are not inherently content-based and will not be subject to strict scrutiny so long as the laws do not discriminate based on topic, subject matter or

viewpoint. The key language in *Austin* reads as follows:

> Most relevant here, the First Amendment allows for regulations of solicitation - that is, speech "requesting or seeking to obtain something" or "[a]n attempt or effort to gain business." Black's Law Dictionary 1677 (11th ed. 2019). To identify whether speech entails solicitation, one must read or hear it first. *Even so, the Court has reasoned* that *restrictions on solicitation are not content based and do not inherently present "the potential for becoming a means of suppressing a particular point of view," so long as they do not discriminate based on topic, subject matter, or viewpoint.*

Id. (emphasis added).

Austin took the sensible position that laws which regulate based on a content-neutral *category* should not be subject to strict scrutiny which is nearly always a death knell to their survival. *Austin* was also clearly not confined to sign ordinances or any other sub-category of solicitation. Rather, *Austin* must be understood as having announced a broad principle specifically intended to limit *Reed's* impact on solicitation.

However, *Austin* included a strong dissent along with two concurring opinions, which left the

law less firmly decided than would be desirable. The predicable result was that courts like the Eleventh Circuit continue to apply strict scrutiny to laws which regulate by category rather than on the content of the speech.

In the years since *Austin* was decided, there have been few decisions governing face-to-face solicitations. But the dramatic impact of *Austin* on *Reed* can be seen in many applications ranging from disputes over donation boxes to campaign slogans on ballots. *See, e.g.*, *Nat'l Fed'n of the Blind of Texas, Inc. v. City of Arlington*, 109 F.4th 728 (5th Cir. 2024) (Donation boxes); *Mazo v. New Jersey Sec'y of State*, 54 F.4th 124 (3d Cir. 2022), *cert. denied sub nom. Mazo v. Way*, 2023 WL 6377826 (2023) (Campaign slogans). In those applications, the laws have been determined to be content-neutral as they would have been before *Reed* was decided.

The instant case appears to be the first decision by a circuit court post *Austin* which addresses an ordinance regulating face-to-face panhandling as a specific subject matter. However, the doctrinal difficulties in classifying panhandling ordinances as content-based or content-neutral extend to all manner of solicitation cases.

The Eleventh Circuit criticized Daytona Beach's panhandling Ordinance for not also regulating commercial solicitation. However, Daytona Beach regulates commercial solicitation by means of several ordinances imposing permitting

and regulatory standards on such activities. *See*, §66-32; §82-4 Daytona Beach Code App. 90a.

In its panhandling Ordinance, the City found a need to regulate the entire spectrum of non-commercial solicitations. The definition of "panhandling" adopted in the Ordinance specifically includes both "solicitations" and "begging." By defining panhandling as any request of a donation "of money or some other article of value," the Ordinance inherently regulates charitable speech, political speech, cause-related speech and personal requests for donations without distinction.

The City did not *ban* panhandling. Instead, it permitted unrestricted panhandling in approximately 97.5% of the City. App. 148a. In this sense, the Ordinance was a traditional locational regulation of the kind approved by the Eleventh Circuit in *Smith*. Daytona Beach elected to enact a law which was narrower than *Smith* in terms of what activities would be subject to regulation. In *Smith*, Fort Lauderdale prohibited all "soliciting, begging or panhandling" along a five-mile strip of beach. *Smith*, 177 F.3d at 955.

Daytona Beach determined that the serious negative impacts of face-to-face solicitation occurred primarily when there was an immediate exchange of money or goods. Those impacts were mitigated where the requested donation would occur at some time in the future as through advertising a fundraising event, requesting a mailed donation, or a donation from a transfer app like Zelle or Venmo.

Requests for immediate donations endanger both panhandlers and donors because they require a panhandler to approach a vehicle or a person and involve hand-to-hand exchange of money or something of value.

The content-neutral feature of Daytona Beach's Ordinance is that it only regulates requests for *immediate* donations. The reason *why* an immediate donation is requested is irrelevant to the City or its enforcement personnel. The content of any solicitation is immaterial except to determine *when in time* a donation is sought.

An immediate request for a political donation to the Republican Party is treated exactly the same as a request by the Catholic Church for a donation to its building fund or by Greenpeace for its campaign to save the whales. Likewise, the identity of the speaker plays no role in determining whether the speech is regulated.

If the Plaintiffs below sought an immediate donation, they would be subject to the regulation to the same extent as the Mayor of Daytona Beach or any political candidate. This is a temporal restriction which is based on when the donation occurs, not why the donation was pursued or who asked for the donation.

Under *Austin*, Daytona Beach's Ordinance should have been treated as content-neutral and subject to intermediate scrutiny. Daytona Beach's panhandling Ordinance is content-neutral because

Austin specifically carved out a category of content-neutral speech for solicitation laws that do not discriminate "based on topic, subject matter, or viewpoint." *Id.* at 72 (emphasis added). But that is not how the Eleventh Circuit panel evaluated the law.

The Eleventh Circuit decision erred from the very start by misconstruing the Ordinance. In its effort to show that Daytona Beach's law was content based, the opinion suggests that:

> A sign reading "Hungry—Please Help Me" would violate the ordinance. But an individual standing in the same place with a sign imploring passersby to "Help Your Local Humane Society" wouldn't.

App. 35a. But that supposed distinction is completely wrong. Indeed, that categorical error shows why review and correction of this decision is so vital.

In truth, neither of the messages invoked by the Eleventh Circuit is facially subject to the Ordinance because neither asks for an immediate donation of money or an item of value. The Eleventh Circuit inappropriately equated an ordinance based on time with one based on content.

It is the temporal component of the speech that matters under Daytona Beach's Code; not the

content of the speech. Under *Austin*, a law which is based on when the requested donation is requested should not be treated as content-based because the message and the speaker are irrelevant to the regulatory decision.

The Eleventh Circuit's analysis does not track the actual text of §66-1 nor does it follow the path *Austin* set out for First Amendment claims. A temporal distinction falls completely within *Austin*'s definition of a content-neutral solicitation law because it does not turn on topic, subject matter, or viewpoint.

A request for a political donation is not regulated by §66-1 unless the speaker asks for cash on the spot. An individual seeking a contribution to her church can ask for a donation next Sunday without falling under the Ordinance; she cannot ask for an immediate donation when she is standing at a regulated intersection. The same is true for a person soliciting for any social or ideological cause. And the same is true for a person begging for their next meal.

Daytona Beach's Ordinance is the quintessential content-neutral ordinance. The Ordinance applies to a request for an immediate donation from one of the Plaintiffs herein. But, if the very same Plaintiff has a sign which requests that a donation be sent to his address or to another person on his behalf, or in a location that is not regulated, the Ordinance would not apply.

The errors in the Eleventh Circuit's analysis go far beyond the interests of these individual litigants and illustrate the uncertain effects that *Austin* had on *Reed*. *Reed* and *Austin* should not legally and pragmatically result in relegating panhandling and solicitation ordinances to strict scrutiny where they are doomed to failure after decades of being subject to intermediate review.

The unclear effect of *Austin* on *Reed,* illustrated by the decision below, hampers the ability of governments across the nation to regulate panhandling and the serious problems associated with those activities. These problems include pedestrian safety, traffic control, traffic safety, and health, safety and welfare issues. poses a threat not just to other face-to-face solicitation laws around the country but in many other contexts where solicitations impact substantial and compelling government interests.

The case under review squarely presents the issue of how courts are to evaluate a First Amendment claim to a solicitation ordinance which does not overtly discriminate based on content either in terms of what is said or who says it. This Court has wrestled with this issue since its seminal decision in *Reed* a decade ago. The doctrinal and real-world problems with *Reed* have been explored through concurring and dissenting opinions in the *Reed* case as well as the subsequent decision in *Austin* which also features fractured opinions and rationale.

II. IT IS UNCLEAR WHETHER IT IS NECESSARY TO ADOPT THE DEFINITION OF SOLICITATION IN *CITY OF AUSTIN, TEXAS V. REAGAN NAT'L ADVERT. OF AUSTIN, LLC*, 596 U.S. 61 (2022) IN ITS ENTIRETY TO RENDER A PANHANDLING ORDINANCE CONTENT-NEUTRAL.

Austin corrected *Reed*'s approach of classifying solicitation laws as a suspect category for purposes of the First Amendment. *Austin*, 596 U.S. at 72, *citing Heffron v. International Soc. for Krishna Consciousness, Inc.,* 452 U. S. 640, 649 (1981).

Austin advanced that point by adopting a definition of "solicitation" which the majority apparently viewed as sufficient to provide guidance to the lower courts: speech "requesting or seeking to obtain something" or "[a]n attempt or effort to gain business." *Id*. at 72.

On its face, *Austin* adopted a broad and inclusive definition of solicitation which employed the conjunction "or" to reach both commercial and non-commercial applications:

> Most relevant here, the First Amendment allows for regulations of solicitation—that is, speech "requesting or seeking to obtain something" or "[a]n attempt or effort to gain business." Black's Law Dictionary 1677 (11th ed. 2019).

Austin, 596 U.S. at 72.

Pursuant to §66-1, Daytona Beach Code, Daytona Beach defines panhandling to mean:

> Panhandle means to beg or make any demand or *request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited to for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor*. As used in this article, the word "solicit" and its forms are included in this definition.

§66-1, Daytona Beach Code App. 51a. (emphasis added)

Daytona Beach's definition of a regulated solicitation would seem to fit neatly within the definition adopted by this Court in *Austin* which is a request to "obtain something", with the gloss that it applies only to *immediate* requests for donations rather than all donations.

The Eleventh Circuit did not see things the same way. Instead of recognizing the striking similarity between *Austin's* definition of solicitation which is a request "to obtain something" and

Daytona Beach's definition of panhandling[2] which is a request for "money or some other article of value" the Eleventh Circuit ruled that the City erred in adopting a definition which did not identically track *Austin*'s definition of solicitation.

The import of *Austin's* disjunctive definition of solicitation, is that *Austin* is unclear whether an ordinance must have a definition of solicitation that either is "requesting or seeking to obtain something" **or** "[a]n attempt or effort to gain business" **or** must contain *Austin's* definition in its entirety. *Austin* 596 U.S. at 72. (emphasis added)

Significantly, there has been a string of post *Austin* cases by a wide variety of courts upholding regulations of solicitations accomplished by way of "donation boxes" that have adopted a more flexible approach to *Austin's* definition of solicitation than the Eleventh Circuit. In each of those cases, local governments had established a need to regulate donation boxes differently from other forms of solicitation – charitable or otherwise. *See, e.g.*, *Nat'l Fed'n of the Blind of Texas, Inc. v. City of Arlington, Texas*, 109 F.4th 728 (5th Cir. 2024); *Arms of Hope v. City of Mansfield, Texas*, No. 4:23-CV-00131-O, 2026 WL 473041 (N.D. Tex. Feb. 19, 2026); *U'SAgain, LLC v. City of Los Angeles*, No. CV 24-6210-CBM-BFMX, 2024 WL 4127273 (C.D. Cal. Sept. 9, 2024).

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[2] Pursuant to the provisions of §66-1, Daytona Beach Code, solicitation is included in the definition of panhandling.

Most importantly, none of those cases suggested that the definition of "solicitation" used by those various local governments was unconstitutional because it did not exactly follow the definition employed by this Court in *Austin*. The Eleventh Circuit decision below stands as an outlier in that regard.

Each of those courts acknowledged that solicitations of donations via boxes or drop-off sites constituted speech protected by the First Amendment. And each of those courts recognized that the means of regulation did not reach every form of solicitation. For instance, none of those ordinances singled out commercial solicitations and none of the regulations was based on whether the donation boxes represented "[a]n attempt or effort to gain business". Significantly, all the recent post *Austin* cases which have considered regulations of donation boxes have concluded that the laws were content-neutral and subject to intermediate scrutiny. *Id*.

Daytona Beach's definition of panhandling does not include commercial applications which *Austin* defines as "an attempt or effort to gain business" because Daytona Beach regulates commercial transactions with other ordinances.

The Eleventh Circuit ruled that the failure to include commercial solicitations within the definition of "panhandling" was another distinction which rendered the Ordinance content-based. App.

34a. But the Eleventh Circuit's opinion is not borne out by this record. Daytona Beach already regulated commercial solicitation through an overlapping set of regulations. Code §66-32 regulates selling or offering to sell from vehicles on public streets or rights-of-way and prohibition of utilizing loud noises and speaking devices in that endeavor. Code §82-4 regulates display, promotion, or sales of merchandise, food, and beverages, including alcohol. Daytona Beach Code App. 91a. When read in *pari materia* with §66-1, those complimentary ordinances make it obvious that commercial speech is not favored over non-commercial speech either generally or in the context of face-to-face solicitations.

The principal thrust of Daytona Beach's Ordinance was to regulate the entire swath of non-commercial solicitations involving a tangible transfer of "money or some other article of value". In its definition regarding non-commercial solicitations, the Ordinance closely tracks *Austin*'s concept of "requesting or seeking to obtain something".

However, Daytona Beach decided to refine its definition in a speech-protective manner. Not every solicitation which involves a transfer of "money or some other article of value" is subject to the regulation. Instead, the City adopted a temporal approach which included only requests for an "immediate donation". In addition, solicitations falling within the statutory definition are only regulated if they occur at certain specified locations. The Ordinance only regulates certain of the most

vulnerable locations and provides for abundant alternative avenues of communication. Under the Ordinance, approximately 97.5% of Daytona Beach is available for panhandling.

The City's reasons for adopting such a narrow definition are borne out by the extensive legislative record below[3]. The City identified a compelling interest in regulating the spread of disease and an arguably compelling interest in preventing fatalities and serious injuries related to panhandling activities. The City further showed that there was a unique link between panhandling and those government interests. Accordingly, the City adopted a definition of solicitation which was closely tied to both its interests and the particular activities which impacted those interests.

The City considered this definition to be speech-friendly because it regulated less speech than would an ordinance that did not include the temporal limitation. Furthermore, the City had good reason to believe that this definition was entirely content-neutral because it was not based on what was said or why the donation was sought.

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[3] The Legislative History was comprised of 4 hearings, 10 hours of testimony and 24 witnesses including a physician, police officers, fire personnel, public works employees, the former city director of the IT department, business owners, business employees, and other citizens along with video presentations, photos, and maps.

Additionally, *Austin* corrected *Reed's* approach to solicitation laws as a suspect category for purposes of the First Amendment. *Austin,* 596 U.S. at 72 citing *Heffron v. International Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 649 (1981).

Austin rejected *Reed*'s categorical analysis regarding solicitations, and ruled that:

> To identify whether speech entails solicitation, *one must read or hear it first.* Even so, the Court has reasoned that restrictions on solicitation are not content based and do not inherently present "the potential for becoming a means of suppressing a particular point of view," so long as they do not discriminate based on topic, subject matter, or viewpoint. *Heffron v. International Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 649 (1981).

Id. (emphasis added)

In *Austin*, a regulator had to read the billboard at issue and identify the speaker so she could determine whether the sign included advertising related to the property or was for an off-premises business.

In Daytona Beach, a regulator must read the message to determine whether the solicitor is seeking an immediate donation or a donation in some other manner or at some time in the future.

The regulatory decision is not based on who the speaker is, or the content of his message or why the speaker wishes to convey that message.

The Eleventh Circuit found that the temporal distinction was content based even though the definitional term was not based on any particular speech or speaker:

> The challenged provisions of Daytona Beach's anti-panhandling ordinance are content-based because they target only one particular type of solicitation—namely, "demand[s] or request[s] made in person for an immediate donation of money or some other article of value."

App. 32a-33a.

Daytona Beach's panhandling Ordinance is based on time. It is not based on speech.

The court misunderstood the temporal component of the Ordinance and, more importantly attributed a request for an *immediate* donation as a regulation speech:

> Indeed, whether an individual asks for a donation now or at some later time goes to the heart of that message. There is a meaningful substantive difference between a sign that reads "Hungry—Please Help Me" and one

> that says "Hungry—Please Help Me by Donating to the Food Bank." The first sign communicates a message of urgent personal need, whereas the second conveys a message of more general distress. The first evokes acute hunger pangs; the second more vaguely references chronic food insecurity.

App. 36a. The court claims that this interpretation is consistent with "the ordinance's actual, everyday operation." App. 34a.

But that is not the case at all. The actual text of Daytona Beach's Ordinance says nothing about a solicitor's status or why she is asking for a donation. Instead, it creates a category for regulation which is temporal immediacy and is not based on content or identity.

That is precisely one of the points raised by this Petition which is that high level distinctions between different forms of solicitation should not automatically trigger strict scrutiny.

The purpose of this definition discourse is not to show that the Eleventh Circuit reached the wrong conclusion. Rather, this argument shows the difficulties a well-meaning court can get into when trying to apply a First Amendment doctrine which remains too amorphous to apply to traditionally routine regulations. *Austin* has not provided the lower courts with sufficient guidance as to how its specific definition of "solicitation" is to be applied

and how that categorical approach is supposed to work in real world settings. *Reed* has been superseded by *Austin* regarding the regulation of solicitation. To what extent and by what standard is the question this Court must now answer. The resulting doctrinal confusion must be resolved.

III. TRAFFIC SAFETY SHOULD BE CONSIDERED A COMPELLING GOVERNMENT INTEREST SUFFICIENT TO SURVIVE STRICT SCRUTINY IN THE CONTEXT OF REGULATIONS GOVERNING FACE-TO-FACE SOLICITATIONS.

First Amendment litigation is extremely sophisticated and complex. That complexity leads to divergent opinions in the lower courts on even basic categorical questions. Among those basic questions is what government interests are to be deemed so compelling as to potentially justify a content-based regulation. There is no universally accepted list, hence no agreement among the circuits as to what interests are, or are not, compelling.

Other lists important to First Amendment analysis are well developed. That is particularly true with respect to the categories of speech which are unprotected by the First Amendment.[4] But the list

[4] While this Court has stated that the list of unprotected categories is not necessarily complete, its recent rulings make it equally clear that the Court is in no rush to expand the existing categories. *See, e.g.*, *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786 (2011) (violent video games); *United States v.*

of interests which are deemed compelling is most notable for its brevity and its lack of precision.

The lower courts would benefit from at least a tentative list of those interests which this Court has determined to be compelling when it comes to regulation of speech.

In *Williams-Yulee v. Florida Bar*, 575 U.S. 433 (2015), this Court held that the state had a compelling interest in "protecting the integrity of the judiciary" and "maintaining the public's confidence in an impartial judiciary". *Id.* at 445. *Williams* is also one of those rare instances in which a content-based law survived strict scrutiny. *Id.*

Despite the vitriolic politics which accompanied regulations during the COVID pandemic, there was a consensus among the courts that public health concerns are compelling where speech is concerned. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020) ("Stemming the spread of COVID–19 is unquestionably a compelling interest…").

Likewise, the government has a compelling interest in protecting classified information and in combatting terrorism *See, e.g., Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988) and *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010).

Alvarez, 567 U.S. 709 (2012) (lies and untruthful speech other than defamation); and *Snyder v. Phelps*, 562 U.S. 443 (2011) (offensive speech on public topics).

Guarding against *quid pro quo* corruption in election politics has been recognized as a compelling interest, although it is rarely, if ever, found in practice. *See, e.g.*, *Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n*, 609 U.S. 908 (2026).

While these isolated decisions exist in their independent silos, there is no overarching doctrine which results in consistent application of compelling state interests. For instance, this Court has been inconsistent in its treatment of the substantiality of the government's interest in protecting children against pornography and sexual content. In *Sable Communications of California, Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989) the Court "recognized that there is a compelling interest in protecting the physical and psychological well-being of minors." However, as recently as last year, the Court has intimated that the government's interest in this area *might* only be substantial.

> H. B. 1181 undoubtedly advances an important governmental interest. Texas's interest in shielding children from sexual content is important, even "compelling."

Free Speech Coal., Inc. v. Paxton, 606 U.S. 461, 496 (2025).

Given the current state of the case law, there is no way of telling whether the list of compelling

interests distilled from past decisions is either complete and unabridged or subject to enlargement. And, if the courts are open to expanding the list of compelling governmental interests, how does a court go about evaluating and approving those new candidates?

Traffic safety is one of those uncertain interests. The decisions in the lower courts run the gamut on the question of whether traffic safety is (1) a compelling government interest; (2) potentially a compelling interest dependent on context or the further expansion of the law; or (3) clearly not sufficient to rise to the level of compelling.

There is unanimity of opinion that traffic safety and the closely related interest of pedestrian safety are "substantial" and "important". *See, e.g.*, *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507–08 (1981) ("Nor can there be substantial doubt that the twin goals that the ordinance seeks to further — traffic safety and the appearance of the city — are substantial governmental goals."). Such interests are routinely invoked to uphold regulations under intermediate scrutiny. *Id.*

Other circuits have ruled more-or-less categorically that traffic safety is no more than a substantial government interest. That is how the court ruled in the case in the Fifth Circuit of *Rash v. Lafayette Cnty., Mississippi*, 192 F.4th 429, 440 (5th Cir. 2026) as well as the Eighth and Ninth Circuits. *See, e.g.*, *Neighborhood Enterprises, Inc. v. City of St. Louis*, 644 F.3d 728, 737–38 (8th Cir. 2011) ("But 'a

municipality's asserted interests in traffic safety and aesthetics, while significant, have never been held to be compelling.'" (citation omitted)); *Foti v. City of Menlo Park*, 146 F.3d 629, 637 (9th Cir. 1998), *as amended on denial of reh'g* (July 29, 1998) ("These substantial interests, however, may not be compelling."). A District Court in the Tenth Circuit appears to have reached the same conclusion. *See*, *Quinly v. City of Prairie Vill., Kan.*, 446 F.Supp.2d 1233, 1240 (D. Kan. 2006) ("[C]ourts have been reluctant to find compelling a municipality's interest in traffic safety as a basis to uphold content-based sign regulations…").

There is significant uncertainty in the courts whether traffic safety interests are compelling. The uncertainty is of concern because traffic safety is routinely used to justify a wide range of local government initiatives from sign ordinances to panhandling laws.

This Court has never ruled that traffic safety is a compelling interest but has suggested that under certain circumstances, it *might* consider traffic safety compelling.

> The Town … has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the

> Code's distinctions fail as hopelessly underinclusive.

Reed, 576 U.S. at 171.

The Second, Third and Fourth Circuits have followed this same agnostic approach to the question. *See, e.g.*, *Westchester Day Sch. v. Vill. of Mamaroneck*, 386 F.3d 183, 191 (2d Cir. 2004) ("We know of no controlling authority, either in the Supreme Court or any circuit holding that traffic problems are incapable of being deemed compelling."); *Camp Hill Borough Republican Ass'n v. Borough of Camp Hill*, 101 F.4th 266, 271 (3d Cir. 2024) ("Camp Hill invokes two interests that it claims compelled it to limit speech: traffic safety and aesthetics. Though both are legitimate interests, we have never held them to be compelling."); *Cent. Radio Co. Inc. v. City of Norfolk, Va.*, 811 F.3d 625, 633–34 (4th Cir. 2016) ("Although interests in aesthetics and traffic safety may be 'substantial government goals,' … neither we nor the Supreme Court have ever held that they constitute compelling government interests." (citation omitted).

The First Circuit clearly recognizes that traffic safety is a substantial government interest. *See, e.g.*, *Cutting v. City of Portland, Maine*, 802 F.3d 79, 91 (1st Cir. 2015). But that Circuit has not yet been asked whether that interest was, or could ever be, considered compelling.

There appears to be only one decision in the country – an unreported decision - which holds

unequivocally that traffic safety is a compelling governing interest. In *Gbalazeh v. City of Dallas*, No. 3:18-CV-0076-N, 2019 WL 1569345 (N.D. Tex. Apr. 11, 2019) the Court denied a preliminary injunction reasoning that the local government's interest in traffic safety was sufficiently compelling to survive strict scrutiny:

> The ordinance, however, survives strict scrutiny. The City has stated that its compelling interest in enforcing section 28-63.3 is traffic safety. Def. City of Dallas's Resp. to Pls.' Appl. for Prelim. Inj., [77], 10 ("Resp."). Traffic safety qualifies as a compelling government interest.

Id. at *2.

The various cases cited herein reflect the pervasive uncertainty whether traffic safety should be recognized as a compelling state interest. Most courts have remained agnostic to the question, perhaps awaiting this Court's ruling, one way or the other.

The City of Daytona Beach went to great lengths to qualitatively and comprehensively describe the relationship of its panhandling Ordinance to the governmental interest of traffic safety. The legislative record included accounts from police personnel, including the head of traffic homicide investigation, of panhandlers being killed and injured in traffic incidents within the City. The

City also studied which of its roadways and intersections related to those problems in terms of congestion and traffic flow.

The uncertainty of the issue of whether traffic safety should be considered a compelling state interest cannot be better illustrated than by decisions of the Eleventh Circuit itself. Regarding the status of traffic safety, the Eleventh Circuit Court stated in the opinion below that:

> Even on the assumption the city's particular traffic-related interests are compelling, but *cf. Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1268 (11th Cir. 2005) (rejecting a blanket rule that "traffic safety" is a compelling government interest), the challenged provisions fail strict scrutiny's narrow-tailoring requirement.

App 44a.

However, in an arguably conflicting ruling from the precise case cited by the Eleventh Circuit in its opinion below, the *Solantic* Court clearly ruled that categorizing traffic safety as a compelling interest is a distinct possibility in some circumstances:

> We do not foreclose the possibility that traffic safety may in some circumstances constitute a compelling

> government interest, but Neptune Beach has not even begun to demonstrate that it rises to that level in this case.

Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1268 (11th Cir. 2005).

Obviously, Petitioner prefers a categorical rule that traffic and pedestrian safety *are* presumptively compelling governmental interests – at least in the context of regulating face-to-face interactions in heavy traffic. However, there is intrinsic value in having a definitive ruling one way or the other because local governments face these regulatory issues on a daily basis and require clear constitutional boundaries.[5]

The multifarious cases cited in this Petition reflect the profound uncertainty of whether traffic safety should be considered a compelling state interest. This case presents an excellent vehicle for this Court to give municipalities clear parameters on the regulation of traffic safety.

[5] *See, e.g.*, Wall Street Journal, August 8, 2017, AS PANHANDLING LAWS ARE OVERTURNED, CITIES CHANGE POLICIES, https://www.wsj.com/articles/as-panhandling-laws-are-overturned-cities-change-policies-1502204399 (last accessed 11/2/26) ("Cities across the U.S. are abandoning efforts to regulate panhandling, as more federal courts declare local restrictions on where and when people can beg to be violations of First Amendment rights.").

CONCLUSION

The conflict among the circuits over fundamental First Amendment issues regarding solicitation can only be resolved by a clear and comprehensive decision from this Court. The effect of *Austin* on *Reed* is unresolved and uncertain. The enigma of the correct way to utilize the definition of solicitation remains unclear. Additionally, the question of whether traffic safety is a compelling government interest as well as a clear list of compelling interests is necessary for the survival of routine but important local regulations. More needs to be done in the category of solicitation ordinances to make First Amendment doctrine clear for both speakers and regulators.

DATED: November 16, 2026.

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Appendix A — Opinion of the US Court of Appeals for the 11th Circuit (June 25, 2026)

UNITED STATES COURT OF APPEALS,
ELEVENTH CIRCUIT

No. 24-12662, No. 24-12964

DENNIS SCOTT, CHAD DRIGGERS, DOUGLAS WILLIS, GEORGE ROWLAND,

Plaintiffs-Appellees,

versus

CITY OF DAYTONA BEACH, FLORIDA,

Defendant-Appellant.

Filed June 25, 2026

Appeal from the United States District Court for the Middle District of Florida. D.C. Docket No. 6:22-cv-02192-WWB-RMN.

Before NEWSOM, BRASHER, and TJOFLAT, Circuit Judges.

OPINION

NEWSOM, Circuit Judge:

Panhandling is divisive. For some, it's a way of life—perhaps even a matter of life and death. To others, though, panhandling is a nuisance—they say it compromises safety

and sanitation, unsettles residents, and generally degrades the social order. Having concluded that panhandling's costs outweigh its benefits, Daytona Beach adopted an ordinance broadly restricting it within city limits.

Four men who regularly panhandle in Daytona Beach challenged most of the ordinance's provisions, claiming that they violate the First Amendment. Agreeing, the district court granted the plaintiffs summary judgment, enjoined enforcement of the challenged provisions, and awarded damages.

For the most part, we too agree—the ordinance imposes content-based restrictions on the plaintiffs' speech, and those restrictions fail strict scrutiny. We part ways with the district court, though, on two jurisdictional issues. On the front end of the case, so to speak, we hold that the plaintiffs have failed to establish standing to attack some of the ordinance's provisions. And on the back end, we hold that the district court overstepped its authority when it issued what was, in effect, a universal injunction. Accordingly, we affirm in part and vacate in part the district court's order.[1]

1. We also affirm the district court's damages award, as the parties stipulated that the plaintiffs are entitled to the full amount if we deem any provision of the ordinance unconstitutional.

Appendix A

I

A

In 2019, Daytona Beach confronted a problem. Local police had received numerous complaints about panhandling, and city leaders feared that panhandlers' conduct was undermining safety, aesthetics, and residents' and visitors' general experience. The city was particularly alarmed by the rise of what it called "aggressive panhandling"—beggars using profanity or touching or intimidating others as a means of inducing donations. In an effort to address the issues it perceived, Daytona Beach enacted Ordinance No. 19-27, which substantially restricted panhandling in the city.

The specifics of the ordinance are key to evaluating its constitutionality, so we'll take some time to describe them here. We'll begin with four key definitions and then move on to the ordinance's operative provisions. First, and most importantly, the ordinance provides a detailed (if a little clunky) definition of "panhandle":

> *Panhandle* means to beg or make any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited to for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this article, the word "solicit" and its forms are included in this definition.

> Panhandling is considered as having taken place regardless of whether the person making the solicitation received any contribution. Any purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, constitutes a donation as contemplated in this definition. Begging is included in this definition of Panhandling. Soliciting is includ[ed] in this definition of Panhandling.

Daytona Beach, Fla., Code § 66-1(b)(3) (MuniCode Supp. 2019).

Second and third, we need to define the words "beg" and "solicit," to which the ordinance's definition of "panhandle" repeatedly refers. Because the ordinance itself doesn't define those constituent terms, we ask how an ordinary person would understand them—that is, "how a reasonable person, conversant with the relevant social and linguistic conventions, would read the[m] in context." *United States v. Pate*, 84 F.4th 1196, 1201 (11th Cir. 2023) (en banc) (quoting John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2392-93 (2003)). While not dispositive, dictionary definitions can be indicative of words' ordinary understanding. One prominent descriptive dictionary defines the term "beg" as "to ask for as a charity esp[ecially] habitually or from house to house," and "to ask for alms or charity." *Beg*, Webster's Third New International Dictionary (1961); *accord, e.g.*, *Beg*, Black's Law Dictionary (11th ed. 2019) ("[t]o ask for charity, esp[ecially] habitually or pitiably").

The same volume defines the word "solicit" as "to approach with a request or plea (as in selling or begging)," and "to endeavor to obtain by asking or pleading." *Solicit*, Webster's Third New International Dictionary, *supra*; *accord, e.g.*, *Solicitation*, Black's Law Dictionary, *supra* ("the act or an instance of requesting or seeking to obtain something," or "an attempt or effort to gain business"); *City of Austin v. Reagan Nat'l Adver. of Austin, LLC*, 596 U.S. 61, 72, 142 S. Ct. 1464, 212 L. Ed. 2d 418 (2022) (adopting the *Black's* definition of "solicitation").

For our purposes, "beg" is easy. The ordinary understanding of that term fits comfortably within the ordinance's definition of "panhandle." "Solicit" is trickier. According to the dictionary, at least, it covers *any* request to obtain *anything*—not just money or an article of value. Importantly, though, the ordinance expressly limits panhandling to requests for "donation[s]." Daytona Beach, Fla., Code § 66-1(b)(3); *see also* Br. of Appellant at 26 (acknowledging that the ordinance doesn't apply to commercial solicitations). Because the ordinance expressly characterizes "[s]olicit[ation]" as a subset of donation-focused "panhandl[ing]," it would be nonsensical—at least for present purposes—for "solicit" to carry its broader meaning.[2] So we're left to infer from context the sense of

2. It's true that in ordinary parlance, panhandling might be a subset of solicitation—after all, making a "demand or request . . . in person for an immediate donation of money or some other article of value," *id.*, is one means of "requesting or seeking to obtain something," *Solicitation*, Black's Law Dictionary, *supra*. But under the ordinance—whose definitions we must respect—the reverse is true.

the term "solicit" as it is used in the ordinance. At times the ordinance appears to use "panhandle" and "solicit" interchangeably—the definition section, for example, provides that "[p]anhandling is considered as having taken place regardless of whether the person making the solicitation received any contribution." Daytona Beach, Fla., Code § 66-1(b)(3). The ordinance makes clear, though, that "[s]oliciting is *included* in th[e] definition of panhandling." *Id.* (emphasis added). The term "solicit" is thus best read to refer to pretty much everything covered by the term "panhandle," but no more.

Finally, "aggressive panhandling." The ordinance explains that term by reference to five particular means of seeking donations. (Warning: This is tedious, but while we're defining terms, we think it better to quote than to paraphrase.) To "aggressive[ly] panhandl[e]," the ordinance says, is (1) "[t]o approach or speak to a person and demand, request or beg for money or a donation of valuable property in such a manner as would cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person approached or another person in the solicited person's company, or upon property in the person's immediate possession"; (2) "[t]o maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property after the solicited person has made a negative response to an initial demand or request"; (3) "[t]o obstruct, block or impede . . . the passage or free movement of a solicited person or a person in the company of a solicited person"; (4) "[t]o touch or cause physical

contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's express consent"; or (5) "[t]o engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands." *Id.* § 66-1(b)(2)(a)-(e).

The definitional work done, we proceed to the ordinance's operative provisions. The substantive restrictions can be divided into three categories. First, and most straightforwardly, the ordinance bans aggressive panhandling citywide, including in all "public or semi-public area[s]." *Id.* § 66-1(c)(1).

Second, the ordinance prohibits garden-variety panhandling in locations throughout the city. Among them: at or near "commercially zoned property," *id.* § 66-1(c)(3)(a), "bus [and] trolley stop[s]" and other "public transportation facilit[ies]," *id.* § 66-1(c)(3)(b), ATMs, *id.* § 66-1(c)(3)(c), "parking lot[s]" and other parking facilities, *id.* § 66-1(c)(3)(d), "public restroom[s]," *id.* § 66-1(c)(3)(e), "daycare[s] [and] school[s]," *id.* § 66-1(c)(3)(f), and certain "signalized intersection[s]," *id.* § 66-1(c)(3)(g), as well as on the Daytona Beach Boardwalk, a beachfront promenade, *id.* § 66-1(c)(3)(h).

Third, the ordinance restricts certain methods of panhandling, many of which overlap with the practices covered by the prohibition on aggressive panhandling and the location-based provisions. So, for instance, the

ordinance prohibits approaching anyone in a car "in an aggressive manner," *id.* § 66-1(c)(4)(a), panhandling at "outdoor dining area[s,] . . . seating area[s], playground[s,] [and] . . . merchandise area[s], *id.* § 66-1(c)(4)(b), panhandling at "transit stop[s]," *id.* § 66-1(c)(4)(c), and panhandling from people "in line waiting to be admitted to a commercial establishment," *id.* § 66-1(c)(4)(d). The ordinance also prohibits "touching [a solicited person] without that person's consent," *id.* § 66-1(c)(4)(e), using "profane or abusive" language during a panhandling interaction, *id.* § 66-1(c)(4)(f), and employing threatening "gesture[s] or act[s]" to induce donations, *id.* § 66-1(c)(4)(g), as well as panhandling "under the influence of alcohol" or illegal drugs, *id.* § 66-1(c)(4)(h), and panhandling "[a]fter [d]ark," *id.* § 66-1(c)(4)(i).

B

Shortly after the ordinance's enactment, the city set about enforcing it, including against the four plaintiffs here. Dennis Scott, Douglas Willis, Chad Driggers, and George Rowland all panhandle in Daytona Beach. Each is, or has been, homeless, and all subsist on the money and goods that they obtain panhandling. The men panhandle throughout the city: Scott panhandles around the Daytona International Speedway and asks for donations as cars leave the area's shopping centers. He has also panhandled at the I-95 offramp to the west of the racetrack. Willis spends most of his time near the Boardwalk, and he requests donations from passersby on or around public sidewalks near the beach. He has panhandled both on sidewalks and along public roadways in the area. Driggers

and Rowland seem to cover the same basic territories; they spend most of their time near Ridgewood and Mason Avenues, which intersect in northern Daytona Beach.

Daytona Beach police have threatened to arrest each of the plaintiffs—and, in the case of Driggers, actually arrested him—for violating the ordinance. Perhaps not surprisingly, each of the plaintiffs has limited his panhandling because of the crackdown.

C

In 2022, Scott, Driggers, Willis, and Rowland sued Daytona Beach in federal court under 42 U.S.C. § 1983, alleging that 18 of the ordinance's 19 restrictions violate their First Amendment free-speech rights, and seeking declaratory and injunctive relief as well as damages.[3] They brought both facial and as-applied challenges.

Following discovery, the plaintiffs moved for partial summary judgment, which the district court granted. The court issued a declaratory judgment holding that the challenged provisions violate the First Amendment. It first concluded that the challenged provisions were content-based speech restrictions because they applied only to a subset of solicitation—namely, requests "for charitable donations." The court next held that each of the provisions failed strict scrutiny because it was either

3. The one provision the plaintiffs didn't challenge is § 66-1(c)(2), which prohibits aggressive panhandling on the private property of someone who has prohibited panhandling or posted a sign to that effect.

under-or over-inclusive. After holding the challenged provisions unconstitutional, the court permanently enjoined their enforcement and scheduled a bench trial on the issue of damages. Daytona Beach appealed.

Seeking to avoid trial, the parties entered into a stipulation regarding damages and jointly moved for judgment. Pursuant to the stipulation, the plaintiffs are entitled to $80,000 if, but only if, this Court declares any provision of the ordinance unconstitutional. Consistent with the parties' joint motion, the district court entered final judgment in favor of the plaintiffs. The city appealed. The damages appeal was consolidated with the summary judgment appeal.

* * *

Our opinion proceeds in three parts. First, we address (as we must) the plaintiffs' standing to challenge each of the ordinance's provisions. We hold that one or more of the plaintiffs has standing to attack some, but not all, of those provisions. Second, we take up the merits. We hold that seven of the ordinance's provisions—those that at least one plaintiff has standing to challenge—violate the First Amendment. We decline to evaluate the merits of the plaintiffs' challenge to the other 11 provisions. And finally, we consider the propriety of the district court's remedies. We hold that the court's declaratory judgment and injunction were over-broad.

II

First up, standing.[4] Because standing "is a threshold jurisdictional question," we must assure ourselves "not only of [our] own jurisdiction, but also of that of the [district] court[]." *AT&T Mobility, LLC v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 494 F.3d 1356, 1359-60 (11th Cir. 2007). That's true regardless of whether, or how thoroughly, the parties have briefed the standing issue. *Id.* at 1360.

To establish standing, a plaintiff must show three things: (1) that he has suffered an "injury in fact," (2) that his injury was caused by the defendant's conduct, and (3) that a favorable decision would likely redress his injury. *Henry v. Att'y Gen.*, 45 F.4th 1272, 1287 (11th Cir. 2022). Here, the latter two requirements—causation and redressability—are clearly satisfied. As the district court observed, the city's police officers made the arrests and threats that allegedly chilled the plaintiffs' speech. And a declaration that the challenged provisions are unconstitutional, as well as an injunction against their enforcement, would permit the plaintiffs to panhandle without fear of arrest and prosecution. So too, damages would compensate the plaintiffs for their past injuries.

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4. We review de novo whether a plaintiff has standing. *Henry v. Att'y Gen.*, 45 F.4th 1272, 1280 (11th Cir. 2022). We also review de novo an order granting summary judgment. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1239 (11th Cir. 2018).

Accordingly, the plaintiffs' standing depends on the first element: injury in fact. And the analysis of that element turns out to be significantly more complicated than the district court and the parties seem to have recognized. Bottom line: We hold that *some* of the plaintiffs have adequately demonstrated such an injury resulting from *certain* provisions of the ordinance. But not all the plaintiffs have shown an injury in fact stemming from each of the challenged provisions.

Our evaluation of the standing issues in the case proceeds in four parts. First, we'll explain the injury-in-fact requirement's application in free-speech cases. Second, we'll describe the interaction between standing doctrine and the traditional summary judgment standard. Third, we'll unpack the requirement that each plaintiff have standing to challenge each of the ordinance's provisions. And finally, we'll apply all that law to the plaintiffs' challenges here.

A

To constitute a cognizable Article III injury, "an invasion of a legally protected interest" must be both "(a) concrete and particularized[] and (b) actual or imminent." *Henry*, 45 F.4th at 1287. In free-speech cases, sub-element (a) is easy—free-speech violations are "concrete and particularized." *Id.* at 1288; *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 425, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016)) (holding that "abridgment of free speech" is a "concrete" injury). Sub-element (b) is where the action is.

Whether a plaintiff's injury is "actual or imminent" typically turns on the form of relief he requests. *See Mack v. USAA Cas. Ins. Co.*, 994 F.3d 1353, 1356 (11th Cir. 2021). To seek retrospective relief—*i.e.*, damages—the plaintiff must show a *completed* injury. *See id.* To seek prospective relief—*i.e.*, an injunction or a declaratory judgment—the plaintiff must demonstrate a likelihood of *future* harm. *Id.* at 1357. In the free-speech context, a plaintiff can do so by showing that "the operation or enforcement of the government policy would cause a reasonable would-be speaker to self-censor"—or, in other words, would "'objectively chill[]' protected expression." *Henry*, 45 F.4th at 1288.

Helpfully, when a plaintiff alleges an ongoing chill to his speech, the past-and future-injury inquiries largely converge. Because "an actual injury can exist when the plaintiff is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences," *Pittman v. Cole*, 267 F.3d 1269, 1283 (11th Cir. 2001) (quoting *Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1428 (11th Cir. 1998)), an ongoing chill constitutes both imminent harm for prospective-relief purposes, *see Henry*, 45 F.4th at 1288, and actual, completed injury for retrospective-relief purposes, *see Uzuegbunam v. Preczewski*, 592 U.S. 279, 293, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021) (holding that a plaintiff can seek nominal damages for a violation of his free-speech rights); *Finch v. City of Vernon*, 877 F.2d 1497, 1503 (11th Cir. 1989) (observing that a plaintiff who has suffered compensable injury as a result of a free-speech violation can sue for money damages). Accordingly, in this case, if a plaintiff can show that a provision of Daytona Beach's

ordinance objectively chills his protected expression, he has demonstrated standing to seek both prospective and retrospective relief.

B

Next up, the interaction between standing and summary judgment. Each standing requirement "must be supported . . . with the manner and degree of evidence required at the successive stages of the litigation." *Henry*, 45 F.4th at 1287 (citation modified). Because this is an appeal from an order granting the plaintiffs summary judgment, the familiar summary judgment standard governs the plaintiffs' evidentiary burden.

Summary judgment is appropriate when there is no genuine dispute about a material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving parties—here, the plaintiffs—bear the initial burden to show the lack of a genuine dispute. *Dawkins v. Fulton Cnty.*, 733 F.3d 1084, 1088 (11th Cir. 2013). "[O]nce that burden is met the burden shifts to the nonmoving party"—here, Daytona Beach—"to bring the court's attention to evidence demonstrating a genuine issue for trial." *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1121 (11th Cir. 2014). To do so, the city must present "more than speculation or a mere scintilla of evidence." *Id.* at 1122.

C

We next address the rule that a plaintiff must establish standing to attack each ordinance provision

that he challenges. "[S]tanding is not dispensed in gross." *TransUnion*, 594 U.S. at 431. Rather, "plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *Id.* Accordingly, our precedent requires a plaintiff challenging multiple provisions of a law to demonstrate standing as to each one. *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1273 (11th Cir. 2006); *see also Harrell v. Fla. Bar*, 608 F.3d 1241, 1253-54 (11th Cir. 2010). To do so, we held in *CAMP*, a plaintiff must show "that every challenged provision affects [him]" personally. 451 F.3d at 1274 (citation modified).

Here, the district court never conducted the necessary provision-by-provision analysis of the plaintiffs' standing. Instead, based on the way the plaintiffs had framed their complaint, the court grouped the 18 challenged provisions into four categories, which it labeled the "Location-Based Provisions," the "After-Dark Provisions," the "Traffic Provisions," and the "Conduct-Related Provisions." The court then evaluated whether each category of provisions, considered as a whole, chilled the plaintiffs' speech and concluded that a plaintiff who had been injured by *any* provision in a particular category had standing to challenge *every* provision in that category. But in *CAMP*, we rejected that sort of approach when we held that the plaintiff there didn't have standing to challenge an entire ordinance simply because it had been injured by one of its provisions. Instead—to repeat—we held that a plaintiff has to establish "that every challenged provision affects [him]" personally. 451 F.3d at 1274 (citation modified).

In the next section, we'll conduct a *CAMP*-compliant standing analysis, evaluating the plaintiffs' standing on a provision-by-provision basis. Settle in.[5]

D

To reset the stage briefly: When challenging multiple provisions of a law, a plaintiff must establish standing as to each one. A free-speech plaintiff has suffered an injury in fact—and, in this case, has therefore demonstrated standing—if the challenged law objectively chills protected expression. And for summary judgment to be proper, there mustn't be a genuine issue of material fact as to standing.

With that recap, let's assess the plaintiffs' standing to challenge each of the 18 provisions that they contend violate their First Amendment rights.

i

First up is § 66-1(c)(1), which prohibits "aggressive panhandling." Each plaintiff has said that, in the future,

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5. At oral argument, the plaintiffs' counsel agreed that, under *CAMP*, we have to conduct a provision-by-provision standing analysis. *See* Tr. of Oral Argument at 16:28. She contended, though, that the district court's categorical approach comported with *CAMP* because the ordinance's provisions overlap with one another. *See id.* at 16:44. True, some provisions do overlap, but it doesn't follow that a court is relieved of its obligation to verify each plaintiff's standing to challenge each provision. And as our analysis will show, the district court's method often led it to find standing where there was none.

he may solicit donations in ways that are criminalized by (c)(1). That includes, for example, requesting a donation from someone when standing within two feet of him, which all plaintiffs have said they might do. The plaintiffs have been arrested, threatened with arrest, or both for violating the ordinance, and Willis has seen others get arrested while panhandling. In light of this enforcement history, a reasonable person would refrain from soliciting in any way defined as "aggressive panhandling" despite an inclination to do so. Paragraph (c)(1) therefore objectively chills the plaintiffs' speech, and they have satisfied their initial burden to show that there is no genuine dispute as to their standing to challenge that provision.

The city responds that, during discovery, the plaintiffs denied having previously panhandled aggressively. But that concession doesn't negate the fact that the plaintiffs may want to engage in "aggressive panhandling" but are deterred from doing so by paragraph (c)(1). We conclude that, based on the available evidence, there is no genuine dispute that the plaintiffs have standing to challenge (c)(1).

ii

The plaintiffs also challenge eight separate provisions of § 66-1(c)(3), which prohibit panhandling in certain locations. To establish their standing as to these provisions, the plaintiffs argue that the location-based prohibitions cover areas where they panhandle. To determine whether the plaintiffs have shown the absence of a genuine factual dispute regarding their standing, we consider whether the particular urban features designated in the law are

sufficiently prevalent in the areas where they panhandle that there can be no meaningful doubt that the provisions at issue objectively chill their speech.

Subparagraph (c)(3)(a) prohibits panhandling within 20 feet of the entry to or exit from any commercially zoned property. Willis, Driggers, and Rowland have shown that there is no genuine dispute that this provision chills their speech. According to maps in the record,[6] there's a substantial amount of commercial property on the beach side of Daytona Beach and near the Boardwalk—both areas where Willis panhandles. Because of the threat of arrest, Willis has stopped holding a sign and has reduced his panhandling. That self-censorship is objectively reasonable in the face of possible prosecution, and the city has pointed to no record evidence that undermines Willis's standing. The maps also show that there is commercial property on the southern corners of Mason and Ridgewood Avenues, where Driggers and Rowland panhandle. Both have had to move to the northern side of Ridgewood because of threatened enforcement, which indicates objective chill. And as with Willis, the city hasn't identified any record evidence that undermines Driggers and Rowland's standing. Scott, by contrast, hasn't shown the absence of a material fact as to his standing to attack subparagraph (c)(3)(a). There are shopping centers along International Speedway, but only a few commercial entrances and exits along the road. Because depending on exactly where Scott panhandles, (c)(3)(a) may or may not

6. The maps identify panhandling exclusion zones based on urban features like business entrances and exits, ATMs, parking areas, etc.

objectively chill his speech, he hasn't clearly established his standing to challenge the provision.

Subparagraph (c)(3)(b) prohibits panhandling within 20 feet of any bus or trolley stop or any public-transportation facility. All plaintiffs have conclusively shown standing to challenge this provision. As to Willis, the maps show a number of bus stops near the Boardwalk. As to Driggers and Rowland, the maps identify a bus stop very near the southern corner of Mason and Ridgewood. And as to Scott, there are numerous bus stops up and down International Speedway. Because exclusion zones around transit stops cover the areas where each plaintiff panhandles, enforcement of (c)(3)(b) objectively chills their speech.

Subparagraph (c)(3)(c) prohibits panhandling within 20 feet of ATMs and other cash-dispensing machines. No plaintiff has shown that this provision indisputably chills his speech. As to Willis, the maps show some ATMs in the area where he panhandles, but they aren't so pervasive, or so particularized to specific locations where he operates, that the provision would clearly cause a reasonable person to modify his behavior. Similarly, as to Driggers and Rowland, there appears to be an ATM near the southeastern corner of Mason and Ridgewood, but the presence of that single ATM doesn't definitively show an objective chill. And as to Scott, there don't appear to be any ATMs along the road where he panhandles.

Subparagraph (c)(3)(d) prohibits panhandling within 20 feet of a city-owned parking lot, meter, or pay station.

No plaintiff has conclusively established standing to challenge (c)(3)(d). Driggers, Rowland, and Scott haven't alleged that they panhandle, or intend to panhandle, near these facilities, and the maps don't show any near where they operate. Willis has presented some evidence that he panhandles near public parking facilities—there are clusters of parking meters near the Boardwalk—but he hasn't shown that public parking is so pervasive, or so particularized to where he panhandles, that (c)(3)(d) indisputably chills his expression.

Subparagraph (c)(3)(e) prohibits panhandling within 20 feet of any public restroom. No plaintiff has established standing to challenge this provision, because the maps don't show public restrooms near any of the areas where any of them operates.

Subparagraph (c)(3)(f) prohibits panhandling within 100 feet of a daycare or school. No plaintiff has established standing to challenge (c)(3)(f). There are schools near the areas where Willis, Driggers, and Rowland panhandle, but the exclusion zones around the schools don't sweep so broadly as to permit the conclusion that their speech is objectively chilled. The maps don't show any schools in the area where Scott panhandles.

Subparagraph (c)(3)(g) prohibits panhandling within 150 feet of a signalized intersection on certain types of roads. All plaintiffs clearly have standing to challenge this provision. Driggers, Rowland, and Scott have all stated that they panhandle at intersections subject to (c)(3)(g)'s ban. And Willis has said that he has done so along public

roadways, and intersection-based exclusion zones substantially cover the area where he operates.

Finally, subparagraph (c)(3)(h) prohibits panhandling on the Boardwalk. Willis has standing to challenge this provision because he has previously panhandled on the Boardwalk and has been threatened with enforcement of the ordinance. By contrast, Driggers, Rowland, and Scott lack standing because none has claimed to have panhandled on the Boardwalk or that he intends to do so

iii

Next up are nine ostensibly conduct-based provisions in paragraph (c)(4).[7]

Subparagraph (c)(4)(a) prohibits approaching a vehicle to panhandle, solicit or beg, or to offer to perform a service related to the vehicle, or otherwise to solicit the sale of goods or services, if done so in an aggressive manner. All the plaintiffs have standing to challenge this provision. As already explained, they all solicit along public roadways, and have indicated they may engage in so-called aggressive panhandling in the future.

Subparagraph (c)(4)(b) prohibits panhandling, soliciting, and begging at any outdoor dining amphitheater, amphitheater seating area, playground, or outdoor

7. We say "ostensibly" because we agree with the plaintiffs that some of these look more like location-based provisions. We'll call them conduct-based, however, because that's how the ordinance labels them. The label is immaterial to our analysis.

merchandise area that is in use at the time. No plaintiff has definitively shown standing to challenge (c)(4)(b). Scott, Driggers, and Rowland haven't claimed that they panhandle or intend to panhandle at the covered locations, and the maps don't show a significant number of such locations in the areas where they operate. As to Willis, there are some outdoor dining areas on the Boardwalk, but he hasn't stated that he panhandles at them, let alone that he does so while they're in use.

Subparagraph (c)(4)(c) prohibits panhandling, soliciting, and begging at transit stops and taxi stands, as well as in public-transit vehicles. Although all plaintiffs have established that they panhandle *near* public-transit stops, *see supra* at 19 (addressing the plaintiffs' standing to challenge (c)(3)(b)), they haven't shown beyond dispute that they panhandle *at* those locations. So the plaintiffs haven't clearly established standing to challenge (c)(4)(c).

Subparagraphs (c)(4)(d) through (h) prohibit panhandling that involves certain behavior. Subparagraph (c)(4)(d) prohibits panhandling, soliciting, and begging aimed at anyone standing in line at a commercial establishment. Subparagraph (c)(4)(e) prohibits panhandling, soliciting, and begging that involves touching someone without his or her consent. Subparagraph (c)(4)(f) prohibits the use of any profane or abusive language in the course of panhandling, soliciting, or begging. In a similar way, subparagraph (c)(4)(g) prohibits the use of any gesture or act intended to instill fear in the person being solicited or to make her feel compelled to donate. And subparagraph (c)(4)(h) prohibits panhandling, soliciting, and begging while under the influence of alcohol or illegal drugs. Because none of the

plaintiffs claim that they have engaged in, or may engage in, any of the conduct described in subparagraphs (c)(4)(d) through (h), they haven't shown that these provisions objectively chill their speech.[8]

Lastly, subparagraph (c)(4)(i) prohibits panhandling, soliciting, and begging after dark. Driggers, Rowland, and Willis have standing to challenge this provision because they stated that they sometimes panhandle at night.[9] Scott, by contrast, lacks standing to challenge (c)(4)(i), because he hasn't said that he has panhandled at night or that he might do so in the future.

* * *

To sum up, each plaintiff indisputably has standing to attack some, but not all, of the ordinance's provisions:

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8. At oral argument, the plaintiffs' counsel acknowledged that there was no record evidence that her clients have used or intend to use profanity when panhandling. *See* Tr. of Oral Argument at 20:25. We similarly find no evidence that suggests the plaintiffs have panhandled or intend to panhandle in the ways restricted by (c)(4)(d), (e), (g), and (h).

9. The city's lone response is that the plaintiffs first mentioned nighttime panhandling in their amended complaint and that their discovery responses reported only that they "sometimes" panhandle after sunset. But the fact that the plaintiffs didn't allege that they panhandle after dark in their initial complaint doesn't undermine their claim to standing—plaintiffs are free to assert new facts in an amended complaint. Nor does the fact that the plaintiffs only *sometimes* panhandle at night negate their standing. How frequently they engage in nighttime panhandling may bear on the degree of chill that they experience, but not on whether they suffer any chill at all.

- Scott has standing to challenge §§ 66-1 (c)(1), (c)(3)(b), (c)(3)(g), and (c)(4)(a). He hasn't established standing to challenge §§ 66-1(c) (3)(a), (c)(3)(c)-(f), (c)(3)(h), or (c)(4)(b)-(i).

- Driggers and Rowland have standing to challenge §§ 66-1(c)(1), (c)(3)(a)-(b), (c)(3)(g), (c)(4)(a), and (c)(4)(i). They haven't established standing to challenge §§ 66-1(c)(3)(c)-(f), (c)(3)(h), or (c)(4)(b)-(h).

- Willis has standing to challenge §§ 66-1(c)(1), (c)(3)(a)-(b), (c)(3)(g)-(h), (c)(4)(a), and (c)(4)(i). He hasn't established standing to challenge §§ 66-1(c)(3)(c)-(f) or (c)(4)(b)-(h).

So, where does that leave us? With respect to the provisions that at least one plaintiff indisputably has standing to challenge, we proceed to the merits. *Cf. Murthy v. Missouri*, 603 U.S. 43, 57, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024) ("A proper case or controversy exists only when at least one plaintiff establishes that she has standing to sue." (citation modified)). Accordingly, in the next Part, we'll consider whether §§ 66-1(c)(1), (c)(3) (a)-(b), (c)(3)(g)-(h), (c)(4)(a), and (c)(4)(i) violate the First Amendment. Because no plaintiff has indisputably established standing to challenge §§ (c)(3)(c)-(f) or (c)(4) (b)-(h), we do not now consider their constitutionality. With respect to the claims that the plaintiffs haven't indisputably established standing to pursue, we vacate the district court's order granting summary judgment. On remand, the court should determine for each provision

whether (1) each plaintiff lacks standing entirely, in which case his claim should be dismissed, or (2) there is a genuine dispute regarding standing, in which case the issue should be resolved at trial.

III

On then—at last—to the merits of the First Amendment issue.[10] Our analysis proceeds in three sequential steps. First, we must determine whether the plaintiffs' panhandling is protected by the First Amendment. That much is easy—we have previously held that panhandling is speech within the First Amendment's ambit. *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999). Second, in order to assign the appropriate standard of scrutiny, we must decide whether the challenged provisions are "content-based" or "content-neutral." Although less straightforward than the coverage issue, we conclude, for reasons we'll explain, that the provisions are content-based and therefore trigger strict (rather than intermediate) constitutional scrutiny. Finally, having concluded that strict scrutiny applies, we must conduct the narrow-tailoring inquiry. We conclude, as is so often the case, that the city has failed to satisfy that exacting standard.[11]

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10. We review questions of constitutional law de novo. *Food Not Bombs*, 901 F.3d at 1239.

11. One prefatory matter: The plaintiffs have brought both facial and as-applied challenges. Under *Moody v. NetChoice, LLC*, 603 U.S. 707, 144 S. Ct. 2383, 219 L. Ed. 2d 1075 (2024), we analyze their facial challenge using a two-step test. First, we "assess the . . . law['s] scope," asking "[w]hat activities, by what actors, do[es]

Appendix A

A

1

In free-speech cases, whether a law is content-based or content-neutral is often dispositive. If a speech restriction is content-based, it's presumptively unconstitutional and subject to strict scrutiny. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015). By contrast, if the restriction is content-neutral, it faces the loosey-goosier intermediate scrutiny. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). Because the doctrinal test for identifying content-based regulations has evolved over the years, we think it'll be useful to begin by briefly sketching that history.

The distinction between content-based and content-neutral speech restrictions took shape—and became a central pillar of First Amendment jurisprudence—in the latter part of the 20th century. *See* Erwin Chemerinsky, *Content Neutrality as a Central Problem of Freedom*

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the law[] prohibit or otherwise regulate?" *Id.* at 724. Second, we "decide which of the law['s] applications violate the First Amendment, and . . . measure them against the rest." *Id.* at 725. Here, the city's ordinance "prohibit[s] or otherwise regulate[s]" just one "activit[y]," *id.* at 724—"panhandling," *see* Daytona Beach, Fla., Code § 66-1(c), which, for reasons already explained, *see supra* at 4-7, includes "begging," "soliciting," and "aggressive panhandling." Accordingly, the plaintiffs' facial challenge turns on whether the challenged provisions' "applications" to panhandling "violate the First Amendment"—because, if they do, there are no constitutional applications to balance the scales. *Moody*, 603 U.S. at 725.

of Speech, 74 S. Cal. L. Rev. 49, 51-53 (2000). From the very outset, the Supreme Court found the line between content-based and content-neutral laws difficult to draw.

In particular, the Court's decisions vacillated between competing understandings of what marked a restriction as content-based. *See* Genevieve Lakier, Reed v. Town of Gilbert, Arizona*, and the Rise of the Anticlassificatory First Amendment*, 2016 Sup. Ct. Rev. 233, 234. On the one hand, the Court sometimes focused on the government's apparent purpose, treating even facially content-based restrictions relatively leniently so long as they didn't indicate a censorial motivation. The point, the Court said in those cases, was "that content discrimination raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992) (citation modified). In other words, content discrimination was a problem principally because it suggested government malfeasance. By this logic, a speech restriction that drew lines based on content but didn't otherwise evince bias against particular viewpoints or speakers wasn't content-based in a constitutionally problematic sense. *See Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984).

On the other hand, the Supreme Court sometimes emphasized facial content discrimination, regardless of ostensible government motive. The Court's decision in *Burson v. Freeman*, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992), is illustrative. There, without inquiring

into purpose or intent, the Court held that an election law was facially content-based, and therefore subject to strict scrutiny, because its application "depend[ed] entirely on whether [someone's] speech is related to a political campaign." *Id.* at 197-98.

In *Reed v. Town of Gilbert*, the Supreme Court sought to clarify the doctrine. Employing what it called a "commonsense" understanding of the phrase "content based," the Court articulated a bright-line rule: A speech restriction is content-based if "on its face" it "draws distinctions based on the message a speaker conveys." 576 U.S. at 163 (citation modified). And importantly, the Court held that such a law "is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id.* at 165 (citation modified). *Reed* represented the triumph of the facial over the purposive approach to the content-discrimination inquiry.

In the ensuing years, some lower courts read *Reed* quite (and as it turns out, too) expansively. They interpreted the decision to establish a strict "read the sign" rule, under which a law was content-based if it required one to look at speech's substance to determine whether the law's restriction applied. In *Reagan National Advertising of Austin, Inc. v. City of Austin*, 972 F.3d 696 (5th Cir. 2020), *rev'd*, 596 U.S. 61, 142 S. Ct. 1464, 212 L. Ed. 2d 418 (2022), for instance, the Fifth Circuit considered a city ordinance that applied different rules to on-premises and off-premises signs advertising products or services.

Id. at 699-700. The court held that the ordinance was content-based because, it said, "[t]o determine whether a sign is on-premises or off-premises, one must read the sign and ask: does it advertise a business, person, activity, goods, products, or services" located offsite? *Id.* at 704 (citation modified). In other words, the court reasoned, because viewing the sign's content was a prerequisite to determining how the ordinance applied, the law was facially content-based within the meaning of *Reed*. *See id.* at 704-05.[12]

On review, the Supreme Court retained the core of *Reed*'s analytical framework but rejected the Fifth Circuit's absolutist approach. The Court reiterated that a regulation is facially content-based if it "targets speech based on its communicative content." *City of Austin v. Reagan Nat'l Adver. of Austin, LLC*, 596 U.S. 61, 69, 142 S. Ct. 1464, 212 L. Ed. 2d 418 (2022) (citation modified) (quoting *Reed*, 576 U.S. at 163). And importantly, the Court reaffirmed *Reed*'s holding that a regulation whose terms distinguish among topics or subjects is content-based regardless of the government's motivation. *See id.* at 71.

The Court held, though, that the Fifth Circuit's wooden read-the-sign rule was "too extreme an interpretation" of *Reed*. *Id.* at 69. A law is "agnostic as to content," the Court clarified, if it "requires an examination of speech

12. The Sixth Circuit applied *Reed* to a similar sign regulation and reached the same conclusion, holding that the law was "plain[ly]" content based. *Thomas v. Bright*, 937 F.3d 721, 730 (6th Cir. 2019), *abrogated by City of Austin v. Reagan Nat'l Adver. of Austin, LLC*, 596 U.S. 61, 142 S. Ct. 1464, 212 L. Ed. 2d 418 (2022).

only in service of drawing neutral . . . lines" unrelated to expression. *Id.* at 69. The ordinance at issue qualified as content-neutral because a particular sign's "substantive message" was irrelevant to the law's application; one had to consider its content only to determine whether the sign was on-or off-premises. *Id.* at 71. Because location—a non-speech consideration—determined how the city treated the sign, the ordinance didn't discriminate based on content. *See id.*

Importantly for present purposes, in support of its clarification the Court pointed to regulations of "solicitation," which it defined as "speech 'requesting or seeking to obtain something' or '[a]n attempt or effort to gain business.'" *Id.* at 72 (quoting *Solicitation*, Black's Law Dictionary, *supra*). Needless to say, one has to read or listen to speech to determine whether it "request[s] . . . something" or attempts to "gain business." *Id.* But, the Court said, that fact alone doesn't automatically render every solicitation restriction content-based. Rather, the Court explained, a law that "applie[s] evenhandedly to all who wish[] . . . to solicit" regardless of their purpose, *id.* at 73 (citation modified) (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981))—put simply, a law that regulates "solicitation generally," *id.* at 72 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 306-307, 60 S. Ct. 900, 84 L. Ed. 1213 (1940))—will be deemed content-neutral. Accordingly, the government can generally regulate "solicitation" as a category without triggering strict scrutiny, but drawing more granular content-based lines—*i.e.*, singling out particular kinds of solicitation—will do so.

For its analogy to solicitation regulations, the *Austin* Court drew on *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981). There, organizers of a state fair restricted solicitations to fixed locations to ensure the orderliness of the event, which attracted more than 100,000 daily visitors. *See id.* at 643-44, 650. Members of the Krishna faith challenged the rule, arguing that it unconstitutionally limited their ability to distribute literature and solicit donations. *Id.* at 645. The Court rejected the Krishnas' contention. The rule, the Court said, was not "based upon either the content or subject matter of speech" because it "applie[d] evenhandedly to all who wish to distribute and sell written materials or to solicit funds." *Id.* at 648-49. "No person or organization," the Court emphasized, "whether commercial or charitable, is permitted to engage in such activities except from a booth rented for those purposes." *Id.* at 649.

So again—and importantly for us—under *Heffron* and *Austin*, a rule that restricts "solicitation" may be content-neutral—but only if it regulates categorically and "evenhandedly." *Austin*, 596 U.S. at 72-73 (quoting *Heffron*, 452 U.S. at 649). A rule that discriminates among subcategories of solicitation—say, by applying different rules to requests for commercial and charitable donations—loses its claim to content-neutrality. And with narrow exceptions, the rule's content-based-ness renders it constitutionally suspect.[13]

13. The exception most relevant to solicitation regulations is the commercial-speech doctrine, which allows "the State [to] regulate some types of commercial advertising more freely than other forms

Taking stock: It seems to us that, from *Reed* and *Austin*, three principles emerge that inform our analysis of the free-speech issues in this case: First, there's the fairly obvious fact that the government-motive test is dead; a rule that on its face "targets speech based on its communicative content" is content-based, however benign the government's intent. *Id.* at 69 (citation modified) (quoting *Reed*, 576 U.S. at 163). Second, there's the general rule that the mere fact that someone has to look at the content of speech to decide whether a rule applies doesn't render the rule content-based. Third, there's the more particular rule governing solicitations: A general regulation that applies "evenhandedly" to all forms of solicitation is considered content-neutral, whereas a solicitation regulation that further "discriminate[s] based on topic, subject matter, or viewpoint"—*i.e.*, one that singles out particular types of solicitations—is content-based and presumptively unconstitutional. *See id.* at 72-73.

2

a

The challenged provisions of Daytona Beach's anti-panhandling ordinance are content-based because they target only one particular type of solicitation—namely, "demand[s] or request[s] made in person for an immediate

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of protected speech." *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 498, 116 S. Ct. 1495, 134 L. Ed. 2d 711 (1996) (opinion of Stevens, J.). The issues in this case don't implicate the commercial-speech doctrine.

donation of money or some other article of value." Daytona Beach, Fla., Code § 66-1(b)(3).[14] Two features of the ordinance, we think, make plain its content discrimination.

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14. One important preliminary matter: Our decision in *Smith v. City of Fort Lauderdale* doesn't compel the conclusion that Daytona Beach's ordinance is content-neutral. *Smith* involved a Fort Lauderdale rule that prohibited panhandling along the city's beaches. 177 F.3d at 955. After observing that the plaintiffs there didn't dispute that the rule was content-neutral, the panel in *Smith* applied intermediate scrutiny and upheld it. *Id.* at 956-57.

Under our precedent about precedent, a prior panel's holding binds subsequent panels "unless and until the first panel's holding is overruled by the Court sitting en banc or by the Supreme Court." *United States v. Bazantes*, 978 F.3d 1227, 1243-44 (11th Cir. 2020). There is, though, an important caveat: "[T]he prior precedent rule applies only to the actual holdings of prior decisions on issues that were *actually decided* by the earlier panel." *Id.* at 1244 (emphasis added).

Smith didn't "actually decide[]" the content-neutrality question within the meaning of the prior-panel-precedent rule. The panel's entire discussion of the issue consisted of a single sentence noting that the plaintiffs there had conceded the ordinance's content-neutrality. *Smith*, 177 F.3d at 956. The panel provided no independent analysis; instead, it simply accepted the parties' stipulation and then focused its attention on whether the rule survived intermediate scrutiny. Because *Smith* doesn't constitute an "actual[] deci[sion]" of the content-neutrality issue, it doesn't control our determination here.

This conclusion comports with longstanding Supreme Court precedent. The Court has clarified that "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170, 125 S. Ct. 577, 160 L. Ed. 2d 548 (2004) (quoting *Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 69 L. Ed. 411 (1925)). Because

First, and perhaps most obviously, the city candidly concedes that "the law does not regulate commercial solicitations." Br. of Appellant at 26. That fact alone takes the ordinance outside *Heffron*'s protection and betrays its content-based-ness. Recall that the Supreme Court in *Heffron* deemed content-neutral rules that neutrally prohibit *all* solicitations, regardless of the speaker's "commercial or charitable" purpose. 452 U.S. at 649. By restricting pleas for immediate donations *but not* commercial entreaties, Daytona Beach's ordinance discriminates based on content. *Cf. Café Erotica of Fla., Inc. v. St. Johns Cnty.*, 360 F.3d 1274, 1289 (11th Cir. 2004) (holding that an ordinance that "allow[ed] commercial messages to be displayed more prominently than political messages" was content-based). [15]

Second, and even aside from the commercial-charitable distinction generally, there is the ordinance's actual, everyday operation. Again, given its definition of "panhandling," whether the law restricts a speaker's

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the parties in *Smith* didn't contest whether the rule there was content-based or content-neutral, they didn't "br[ing]" the question "to [our] attention" in any meaningful sense. Nor, for reasons already explained, did we "rule upon" that question on the merits. Rather, under *Cooper* and its predecessors, the content-neutrality issue was a nonprecedential "lurk[er]."

15. Perhaps realizing that regulating requests for donations but not commercial solicitations poses a content-neutrality problem, the city argues that it has a good reason not to include commercial solicitations within the ordinance: The city already regulates them in other parts of its municipal code. The city, however, cites no authority for the idea that a content-based law should be considered content-neutral simply because the type of speech not covered by the law is regulated elsewhere.

expression turns entirely on whether he makes a request for an immediate donation. So, for example, an individual standing at an intersection with a sign reading "Hungry—Please Help Me" would violate the ordinance. But an individual standing in the same place with a sign imploring passersby to "Help Your Local Humane Society" wouldn't. So too, an individual on the Boardwalk asking beachgoers to "spare some change" would break the law, but a Greenpeace volunteer urging pedestrians to sign a "Save The Whales" petition wouldn't. It is content, therefore, that triggers the ordinance's application. The ordinance thus fails the "evenhanded[ness]" principle articulated in *Heffron* and reaffirmed in *Austin*. Unlike in *Heffron*, *some* "person[s] or organizations[s]"—the Humane Society supporter, the Greenpeace volunteer, etc.—"[are] permitted to engage in" solicitation. 452 U.S. at 649. Only one category of would-be solicitors is prohibited from speaking up to ask for support: those seeking immediate donations.

b

The city isn't without responses, of course. We'll consider the city's contentions in turn.

i

Most forcefully, the city argues that *immediacy*, like the location criterion in *Austin*, is an external, non-speech referent that renders its ordinance content-neutral. *See Austin*, 596 U.S. at 69. So, the city's argument goes, the ordinance is "agnostic as to content"—one needs to look at the content of the speech in question, it says,

only to determine whether it constitutes a request for an immediate donation. Br. of Appellant at 25. We aren't convinced.

A location criterion of the sort at issue in *Austin* has no meaningful effect on the speaker's message. Consider two signs for a barbeque restaurant. The on-premises sign reads, "Come inside for the world's best ribs!" The off-premises sign, "Head to Archibald's for the world's best ribs!" The communicative content is essentially the same: Archibald's has the best ribs, and folks should patronize the restaurant to try them.

The ordinance's immediacy criterion, by contrast—at least as it pertains here—*does* relate to the speaker's message. Indeed, whether an individual asks for a donation now or at some later time goes to the heart of that message. There is a meaningful substantive difference between a sign that reads "Hungry—Please Help Me" and one that says "Hungry—Please Help Me by Donating to the Food Bank." The first sign communicates a message of urgent personal need, whereas the second conveys a message of more general distress. The first evokes acute hunger pangs; the second more vaguely references chronic food insecurity. To be sure, the two signs are similar—both indicate that the speaker is hungry, and both seek support. But the immediacy of the first sign's request inflects the speech with a sense of exigency that the second sign lacks. And that sense of exigency is critical to the sign's communicative content. And yet Daytona Beach's ordinance prohibits it.

We think the city tips its hand when it emphasizes that a "if [a] speaker requests a donation of money at

some future time or place, she can do so without any restrictions at all." Br. of Appellant at 28. That's precisely the problem. If an individual addresses one topic—future donations—he can speak freely. But if the same person wants to address a different topic—immediate help—his options are severely limited. That disparate treatment, it seems to us, is textbook content discrimination.

ii

The city makes two additional arguments why its ordinance is content-neutral, but neither persuades us. First, the city insists that the ordinance is content-neutral because it restricts "all requests for the immediate donation of money . . . regardless of content, viewpoint or the identity of the speaker." Br. of Appellant at 25. Put another way, the ordinance "clearly defines solicitations so that it reaches *every* conceivable instance where an immediate donation is made in response to a request." *Id.* at 24-25.

The city, it seems to us, might be saying either of two things, neither of which solves its content-discrimination problem. As an initial matter, the city might be contending that the ordinance's content-neutrality is preserved simply because it doesn't draw even more fine-grained content-based distinctions than it already does—say, between requests for charitable donations and requests for political donations. If so, it's wrong. For reasons already explained, by targeting requests for immediate donations, the ordinance *already* discriminates on the basis of content. The mere fact that it doesn't go *even further* is no salve. The absence of speaker-based, viewpoint-based, or more granular content-based lines, doesn't cure the existing content discrimination.

Alternatively, the city might be contending that the ordinance finds safe harbor in *Austin*'s "solicitation" carveout. Again, we disagree. Recall that in *Austin*, the Supreme Court—adverting to its earlier decision in *Heffron*—defined solicitation broadly as any "speech 'requesting or seeking to obtain something' or 'an attempt or effort to gain business.'" 596 U.S. at 72 (citation modified) (quoting *Solicitation*, Black's Law Dictionary, *supra*). If the ordinance here truly restricted *all* solicitations, as that term is commonly understood, then the city's reliance on *Austin* might be well-founded. But it doesn't, and so it's not. As we've explained, the ordinance effectively redefines (or term-of-art-ifies) the word "solicitation" as a constituent of the term "panhandling." *See* Daytona Beach, Fla., Code § 66-1(b)(3) ("Soliciting is includ[ed] in this definition of panhandling."). So as used in the ordinance, a "solicitation" covers *only* a request for an immediate donation. Accordingly, the ordinance singles out a particular topic for differential treatment. And that, for reasons already covered, makes it facially content-based.

Second, and separately, the city points to a handful of out-of-circuit decisions, which it says suggest that laws targeting requests for immediate donations aren't content-based. Only one warrants above-the-line treatment,[16] and

16. In *Waggoner v. City of Dallas*, No. 3:22-CV-2776-E-BK, 2023 U.S. Dist. LEXIS 152237, 2023 WL 5516474 (N.D. Tex. July 20, 2023), *report and recommendation adopted*, No. 3:22-CV-02776-E-BK, 2023 U.S. Dist. LEXIS 149876, 2023 WL 5517220 (N.D. Tex. Aug. 25, 2023), the court held that a city ordinance was facially content-neutral because it "prohibit[ed] all persons"—with a few

even it is readily distinguishable. In *National Federation of the Blind of Texas, Inc. v. City of Arlington*, 109 F.4th 728 (5th Cir. 2024), the Fifth Circuit held that an ordinance restricting the placement of donation boxes (think clothes,

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narrow, non-speech-related exceptions—"from standing or walking on designated medians and clear zones." 2023 U.S. Dist. LEXIS 152237, [WL] at *6. And in *United States v. Lee*, No. 1:23-CR-00368, 2024 U.S. Dist. LEXIS 210728, 2024 WL 4836401 (D.D.C. Nov. 20, 2024), *vacated*, No. 24-3171, 2025 U.S. App. LEXIS 2412, 2025 WL 415328 (D.C. Cir. Feb. 3, 2025), the court held that the closure of much of the Capitol Grounds on January 6, 2021, was content-neutral because the area "was walled off to all members of the public *writ large*." 2024 U.S. Dist. LEXIS 210728, [WL] at *5. So, unlike Daytona Beach's ordinance, the regulations in *Waggoner* and *Lee* didn't even refer to speech, let alone single out speech about a specific topic.

In *Mazo v. New Jersey Secretary of State*, 54 F.4th 124 (3d Cir. 2022), the court addressed a law requiring political candidates to obtain consent before naming a person or organization in a ballot slogan. *Id.* at 133. The court viewed the case as a straightforward application of *Austin*, because one had to look at the content of the slogan only to determine whether the consent requirement applied—whether a third party had consented to the use of its name had nothing to do with the slogan's communicative content. *Id.* at 149. Not so here, where a request for an immediate donation *is* the communicative content.

Lastly, in *Project Veritas v. Schmidt*, 125 F.4th 929 (9th Cir. 2025), the court held that an Oregon law prohibiting unannounced audio recording of conversations was content-neutral, even though it had carveouts for recordings of felonies and law-enforcement interactions. *See id.* at 950-51. Those exceptions, the court held, turned on *when* or *with whom* a conversation occurred, not on *what* the conversation was about. *See id.* at 951-52. That's not the case here. Daytona Beach's panhandling ordinance applies only when someone requests an immediate donation—in other words, its application turns on *what* one's speech is about.

toys, etc.) didn't discriminate based on content because the law "regulate[d] all donation boxes without reference to content." *Id.* at 734. The court emphasized that the restriction didn't single out requests for "charitable" donations—by which it meant donations to those genuinely in need—but, rather, applied to all donation boxes, regardless of purpose. *Id.* at 735. So, the court concluded, because the ordinance "encompass[ed] both charitable and non-charitable solicitations," *id.*, it was "agnostic as to content," *id.* (quoting *Austin*, 596 U.S. at 69).[17]

Whatever the merits of the Fifth Circuit's decision, it's enough to point out that the ordinance here is different from the one the court confronted there. In particular, Daytona Beach's ordinance goes an important (and content-based) step farther. It doesn't generically target donations in the way the ordinance at issue in *National Federation* did; rather, it targets only requests for *immediate* donations, treating them differently from future donations. So whereas "[t]he signage on the donation boxes [was] of no consequence" in *National Federation*, *id.* at 734, the substance of a request for a donation—its "signage," if you will—is dispositive under Daytona Beach's ordinance. And for reasons already explained, the

17. The city also briefly adverts to *U'Sagain, LLC v. City of Los Angeles*, No. CV 24-6210-CBM-BFMx, 2024 U.S. Dist. LEXIS 161797, 2024 WL 4127273 (C.D. Cal. Sept. 9, 2024), which upheld a similar donation-bin restriction. Because the court there employed logic similar to the Fifth Circuit's and cited *National Federation* in concluding that Los Angeles's regulation was content-neutral, *see* 2024 U.S. Dist. LEXIS 161797, [WL] at *3, our discussion of *National Federation* also addresses the city's reliance on *U'SAgain*, as well.

immediate-donation-versus-future-donation distinction impermissibly discriminates on the basis of content.

* * *

Taking stock, once again: Even if with the best of intentions, Daytona Beach has singled out a category of speech—requests for immediate donations—for disfavored treatment based on its communicative content. Under *Reed* and *Austin*, that renders the ordinance facially content-based. And unlike the location criterion in *Austin*, there is no non-speech referent that renders the ordinance content-neutral; immediacy can't be disentangled from the donation request's message—it is part and parcel of it. Finally, because the ordinance targets only a specific subset of solicitations—namely, requests for immediate donations of the sort that constitute "panhandling"—*Austin*'s solicitation carveout doesn't rectify the ordinance's content-discrimination.

B

Because the challenged provisions of Daytona Beach's ordinance are facially content-based, they are presumptively unconstitutional and subject to strict scrutiny. *Reed*, 576 U.S. at 163. We hold that they fail that test.

Strict scrutiny is an exacting standard, one that few speech restrictions survive. *See Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 444, 135 S. Ct. 1656, 191 L. Ed. 2d 570 (2015). To satisfy strict scrutiny, the city must demonstrate

(1) that it is pursuing a compelling government interest (2) by the least speech-restrictive means available to it. *See United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000). The city proffers two interests, which we'll examine in turn.

1

The city first asserts that the ordinance is necessary to protect the public health. Panhandling, the city claims, is linked to public urination and defecation, which, in turn, can spread diseases that cause serious illness and even death. Before the district court, several witnesses—law-enforcement officers, fire-department personnel, public workers, and local merchants—testified to the connection between panhandling and public urination and defecation, and the city's expert confirmed that exposure to public urination and defecation can cause sickness. The plaintiffs dispute that panhandling spreads pathogens, but given the procedural posture, we must take the facts in the light most favorable to the city and draw all reasonable inferences in its favor. Accordingly, we think it's appropriate to infer a connection between panhandling, public urination and defecation, and the spread of disease. And we agree with the city that protecting the public from the spread of infectious diseases is a compelling government interest. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18, 141 S. Ct. 63, 208 L. Ed. 2d 206 (2020).

The problem is that the city could advance that interest by less speech-restrictive means. Most obviously, it could simply enforce the laws already on its books. As the

plaintiffs point out, Daytona Beach's disorderly-conduct ordinance criminalizes "defoul[ing] or disturb[ing] public property or private property of another so as to create an unsafe, unhealthy or unsanitary condition." Daytona Beach, Fla., Code § 62-37(a)(7). The city protests that existing laws can't fully address the disease risk that panhandling poses. For support, it cites the deposition of the deputy city manager, who testified that the city hadn't attempted to prosecute people for public defecation, in part because it couldn't muster the resources to "prosecute a crime that the system regards as minor or insignificant." But the city can't claim that less speech-restrictive means are inadequate when it hasn't even tried to employ them or dedicated enough money or manpower to make them effective. *Cf. Playboy*, 529 U.S. at 816, 823 (concluding that the government hadn't shown that the low take-up rate of an opt-in adult-content blocking feature rendered it ineffective because the government failed to promote the technology to consumers). Because the city hasn't seriously attempted to use existing, on-point laws to mitigate the spread of disease connected to public urination and defecation, it may not address the problem indirectly by prohibiting speech that's only arguably associated with those issues.

2

The city separately contends that the ordinance promotes traffic safety. Panhandlers approaching cars at busy intersections, the city says, expose both themselves and drivers to serious risk. For support, the city cites several instances in which panhandlers were hit by cars,

as well as one in which a panhandler distracted a driver, who crashed into two other vehicles. So, according to the city, the ordinance is an appropriate way to ameliorate risks to both pedestrians and drivers.

Even on the assumption the city's particular traffic-related interests are compelling, *but cf. Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1268 (11th Cir. 2005) (rejecting a blanket rule that "traffic safety" is a compelling government interest), the challenged provisions fail strict scrutiny's narrow-tailoring requirement. That is so for two reasons. First, as with its interest in public health, the city may well be able to address the traffic-safety issues it identifies by enforcing its existing laws against disorderly conduct, trespass, and obstruction of traffic. *Cf. Vigue v. Shoar*, 494 F. Supp. 3d 1204, 1229 (M.D. Fla. 2020) (holding that a state's "legitimate interest in road safety 'can be better served by measures less intrusive than a direct prohibition on solicitation'" (quoting *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 637, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980))), *voluntarily dismissed*, No. 20-14285-V, 2021 U.S. App. LEXIS 40622 (11th Cir. Sep. 1, 2021). But yet again, the city hasn't tried those options or explained why they wouldn't work.

Second, the ordinance is fatally underinclusive. Underinclusiveness "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 802, 131

S. Ct. 2729, 180 L. Ed. 2d 708 (2011).[18] In *Brown*, for example, the Supreme Court invalidated a California law that restricted the sale of violent video games to minors, in part on the ground that it didn't limit access to other media that comparably increased children's feelings of aggression. *Id.* at 801-02. Here, the city asserts that people who repeatedly approach cars at busy intersections face a substantial risk of serious injury. But even if that's true, the ordinance regulates only those individuals who approach cars at busy intersections *to communicate a particular message*. So, as in *Brown*, the ordinance inexplicably targets only one speech-related problem—the risk posed by individuals requesting immediate donations—while leaving unburdened similar threats to pedestrian safety—for example, the risk posed by those soliciting signatures for petitions.[19]

* * *

18. The city insists that underinclusivity is solely a tool for determining whether or not a law is content-based, and that it's irrelevant to the narrow-tailoring inquiry. That is incorrect. It's well established that, while not dispositive, underinclusivity is relevant to whether a law advances a compelling interest. *Williams-Yulee*, 575 U.S. at 448-49.

19. The city responds that the record shows that people soliciting immediate donations are at a higher risk of being struck by cars than other solicitors. But for support, the city musters only scattered anecdotes that show, at most, that panhandlers face *some* risk—not that they face a *higher* risk. *See, e.g.*, Br. of Appellant at 40 (citing a police officer's deposition describing one incident in which a panhandler was killed in a traffic accident); Reply Br. of Appellant at 19 (citing a police officer's affidavit referencing two instances in which panhandlers were hit by cars).

In sum, the city has failed to demonstrate that its ordinance is the least speech-restrictive means to prevent the spread of disease and to reduce the risk of injury-causing traffic accidents. The challenged provisions at issue therefore fail strict scrutiny and violate the First Amendment.

IV

Having held that a number of the challenged provisions violate the First Amendment, we turn to the question of remedy. In its summary judgment order, the district court declared all 18 challenged provisions unconstitutional and permanently enjoined the city from enforcing them—against anyone. Subsequently, in its order entering final judgment, the court awarded the plaintiffs $80,000 in damages, consistent with the parties' stipulation. For the sake of clarity, we'll address the district court's declaratory judgment, injunction, and damages award in turn.

A

The district court's declaratory judgment was too broad: It held unconstitutional provisions of the ordinance that no plaintiff had clearly established standing to challenge—namely, §§ (c)(3)(c)-(f) and (c)(4)(b)-(h). Because genuine issues of fact regarding standing preclude summary judgment in the plaintiffs' favor, the district court should have refrained from granting the plaintiffs declaratory relief until their standing was properly adjudicated at trial. Accordingly, we vacate the court's declaration that these provisions are unconstitutional.

Because at least one plaintiff established standing to challenge the remaining provisions, and because we agree with the district court's merits analysis, we affirm its declaration that §§ (c)(1), (c)(3)(a)-(b), (c)(3)(g)-(h), (c)(4)(a), and (c)(4)(i) violate the First Amendment.

B

The district court's injunction was likewise overbroad, for two related reasons. First, in light of the Supreme Court's intervening decision in *Trump v. CASA, Inc.*, 606 U.S. 831, 145 S. Ct. 2540, 222 L. Ed. 2d 930 (2025), the injunction impermissibly operates "universally." In *CASA*, the Court held that universal injunctions—in which district courts "prohibit enforcement of a law or policy against *anyone*"—likely exceed federal courts' congressionally granted equitable powers. *Id.* at 837.[20] But that's precisely the form and scope of relief the district court granted here; nothing in its order limited the injunction's operation to the parties. Accordingly, in compliance with *CASA*, we vacate the injunction insofar as it prevents enforcement of the challenged provisions against nonparties.

Second, and relatedly, the injunction is overbroad because it applies to provisions that the plaintiffs haven't clearly established standing to challenge. Equitable

20. *CASA* addressed a universal injunction against the federal government, but the decision's logic applies with equal force to any blanket, non-party-specific injunction. *See Nussbaumer v. Sec'y, Fla. Dep't of Child. & Fams.*, 150 F.4th 1371, 1381 n.5 (11th Cir. 2025) (applying *CASA*'s prohibition on universal relief to a suit against a state agency).

remedies are party-specific. *CASA*, 606 U.S. at 844. It follows that if a particular plaintiff hasn't shown standing to challenge a particular provision, a court can't enjoin its enforcement against him. Importantly, this is true even if another plaintiff has standing to attack the provision generally. So while (as we've explained) the question when assessing the merits is whether *any* plaintiff is *a* proper party, *see supra* at 24, the question for equitable-relief purposes is whether a *specific* plaintiff is *the* proper party. *Cf. id.* ("It is an elementary principle that a court cannot adjudicate directly upon a person's right without having him either actually or constructively before it." (quoting *Gregory v. Stetson*, 133 U.S. 579, 586, 10 S. Ct. 422, 33 L. Ed. 792 (1890))); *cf. also* William Baude & Samuel L. Bray, *Proper Parties, Proper Relief*, 137 Harv. L. Rev. 153, 171 (2023) ("[I]f one party has standing, the Court will need to resolve that party's rights. But figuring out whether all, most, or merely one of the parties has standing will be exceptionally important for determining what relief a court should ultimately issue.").

Here, the district court should have enjoined enforcement of a particular provision against a plaintiff only if *that* plaintiff had standing to challenge *that* provision. Accordingly, we affirm the portion of the district court's order enjoining the city from enforcing §§ 66-1 (c)(1), (c)(3)(b), (c)(3)(g), and (c)(4)(a) against Scott; §§ 66-1(c)(1), (c)(3)(a)-(b), (c)(3)(g), (c)(4)(a), and (c)(4)(i) against Driggers and Rowland; and §§ 66-1(c)(1), (c)(3)(a)-(b), (c)(3)(g)-(h), (c)(4)(a), and (c)(4)(i) against Willis. We vacate the injunction insofar as it barred enforcement of other provisions against the plaintiffs.

C

Lastly, we consider the district court's $80,000 damages award. As already explained, in their joint motion for the entry of judgment, the parties agreed that if any provision of the ordinance was deemed unconstitutional on appeal, the plaintiffs would be entitled to the full damages amount. We have held that seven of the ordinance's provisions—§§ (c)(1), (c)(3)(a)-(b), (c)(3)(g)-(h), (c)(4)(a), and (c)(4)(i)—violate the First Amendment. Accordingly, we affirm the damages award.

To summarize: We **AFFIRM** in part and **VACATE** in part the district court's summary judgment order. We **AFFIRM** the court's declaration that that §§ (c)(1), (c)(3)(a)-(b), (c)(3)(g)-(h), (c)(4)(a), and (c)(4)(i) violate the First Amendment, but **VACATE** its declaration that §§ (c)(3)(c)-(f) and (c)(4)(b)-(h) do so. We **AFFIRM** the portion of the district court's order enjoining the city from enforcing §§ 66-1(c)(1), (c)(3)(b), (c)(3)(g), and (c)(4)(a) against Scott; §§ 66-1(c)(1), (c)(3)(a)-(b), (c)(3)(g), (c)(4)(a), and (c)(4)(i) against Driggers and Rowland; and §§ 66-1(c)(1), (c)(3)(a)-(b), (c)(3)(g)-(h), (c)(4)(a), and (c)(4)(i) against Willis, but **VACATE** the injunction in all other respects. And we **AFFIRM** the $80,000 damages award.

AFFIRMED in part, **VACATED** in part, and **REMANDED**.

Appendix B — Middle District of Florida Court Order for Plaintiffs' Motion for Summary Judgment (July 18, 2024)

UNITED STATES DISTRICT COURT,
M.D. FLORIDA, ORLANDO DIVISION

Case No.: 6:22-cv-2192-WWB-RMN

DENNIS SCOTT, CHAD DRIGGERS, DOUGLAS WILLIS AND GEORGE ROWLAND,

Plaintiffs,

v.

CITY OF DAYTONA BEACH FLORIDA,

Defendant.

Signed July 18, 2024

ORDER

WENDY W. BERGER, UNITED STATES DISTRICT JUDGE

THIS CAUSE is before the Court on Plaintiffs' Motion for Partial Summary Judgment (Doc. 108), Defendant's Response (Doc. 122), and Plaintiffs' Reply (Doc. 124). In their Motion, Plaintiffs request entry of a declaratory judgment in their favor, a permanent injunction against enforcement of the city ordinance at issue, and a trial on

the issue of damages for past enforcement thereof. (Doc. 108 at 25). For the reasons set forth herein, Plaintiffs' Motion will be granted.

I. BACKGROUND

Plaintiffs brought this case against Defendant City of Daytona Beach pursuant to 42 U.S.C. § 1983 for violations of their First Amendment rights to freedom of speech and expression. Plaintiffs challenge several provisions of Daytona Beach City Ordinance 19-27, codified at Code of Ordinances, City of Daytona Beach, § 66-1 (the "**Ordinance**"), which regulates panhandling within city limits.[1] Daytona Beach, Fla., Code of Ordinances ch. 66,

1. The Ordinance defines "panhandle" as follows: "to beg or make any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited to for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this article, the word 'solicit' and its forms are included in this definition. Panhandling is considered as having taken place regardless of whether the person making the solicitation received any contribution. Any purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, constitutes a donation as contemplated in this definition. Begging is included in this definition of panhandling. Soliciting is included in this definition of panhandling." § 66-1(b)(3).

The Ordinance does not provide definitions for begging and soliciting. However, ordinarily, "solicitation" is defined as "[t]he act or an instance of requesting or seeking to obtain something; a request or petition," and "beg" is defined as "[t]o request earnestly; to beseech." Solicitation, Black's Law Dictionary (11th ed. 2019); Beg, Black's Law Dictionary (11th ed. 2019).

art. I, § 66-1 (2022). As relevant to the instant Motion, the Ordinance prohibits panhandling in the following areas of Daytona Beach: within twenty feet of the entrance or exit of commercially zoned property, bus stops and other public transportation facilities, ATMs, public parking lots and garages, parking meters, and public restrooms; within one hundred feet of daycares and schools; within one hundred and fifty feet of traffic intersections; and on the city boardwalk. § 66-1(c)(3). The Ordinance also makes it unlawful to panhandle, solicit, or beg at any operating outdoor dining area, amphitheater seating area, playground, or outdoor merchandise area; at any transit stop, taxi stand, or in a public transit vehicle; while the person being solicited is standing in line to be admitted to a commercial establishment; by touching the person being solicited without that person's consent; by using profane or abusive language during the solicitation or following an unsuccessful solicitation; by using any gesture or act intended to cause a reasonable person to be fearful or feel compelled to accede to the solicitation; while under the influence of alcohol or an illegal controlled substance; or after dark.[2] § 66-1(c)(4)(b)-(i). Finally, the Ordinance prohibits "[a]ggressive [p]anhandling"[3] "on any sidewalk,

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2. "After [d]ark means from one half hour after sunset until one-half hour before sunrise." § 66-1(b)(1).

3. "Aggressive Panhandling" means:

a. To approach or speak to a person and demand, request or beg for money or a donation of valuable property in such a manner as would cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person

highway, street, roadway, right-of-way, parking lot, park, or other public or semi-public area or in any public building

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approached or another person in the solicited person's company, or upon property in the person's immediate possession (for example, placing oneself within 2 feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money); or

b. To maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property after the solicited person has made a negative response to an initial demand or request for money or a donation (for example, walking in front of, next to, or behind a solicited person while continuing to demand, request or beg for money from that person after that person has refused to donate or give money); or

c. To obstruct, block or impede, either individually or as part of a group of persons, the passage or free movement of a solicited person or a person in the company of a solicited person, including persons on foot, on bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles (for example, walking, standing, sitting, lying, or placing an object in such a manner as to block passage of another person or vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact); or

d. To touch or cause physical contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's express consent; or

e. To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.

§ 66-1(b)(2).

lobby, entranceway, plaza or common area, public forum or limited public forum" and further prohibits a person from approaching a driver or passenger of a motor vehicle for the purpose of panhandling, soliciting, or begging if done in an "aggressive manner." § 66-1(c)(1), (4)(a). Violation of the Ordinance is punishable by a jail sentence, not to exceed sixty days, or a fine, not to exceed $500.00, or both. § 66-1(d) (citing Daytona Beach, Fla., Code of Ordinances ch. 1, § 1-14 (2022)).

Plaintiffs Dennis Scott, Chad Driggers, Douglas Willis, and George Rowland live in or near Daytona Beach and all experience poverty. (Doc. 35, ¶¶ 1, 12-15). Plaintiffs request charity by standing on public sidewalks or the medians and shoulders of public streets in areas frequented by pedestrians, near businesses, or near intersections and hold signs communicating their request for assistance or offer tokens in exchange for donations. (*Id.* ¶ 1). Plaintiffs receive food, gift cards and cash, and care packages containing water, hygiene products, and clothing items. (*Id.* ¶¶ 79, 92, 105, 118).

Since the Ordinance was enacted on February 6, 2019, local law enforcement has made at least 246 arrests for violations of the Ordinance. (*Id.* ¶ 68; Doc. 39-8 at 1).

Driggers has been arrested five times for violations of the Ordinance, and all Plaintiffs have received warnings from local law enforcement regarding the Ordinance. (Doc. 35, ¶¶ 80, 94-95, 108, 120). Due to the threat of arrest and prosecution for violations of the Ordinance, Plaintiffs have reduced the frequency of their solicitations

or moved outside city limits when soliciting. (*Id.* ¶¶ 12-15). Plaintiffs allege that they want and need to continue to solicit donations to survive. (*Id.*).

As a result of the foregoing, Plaintiffs brought this suit, challenging the following provisions of the Ordinance: §§ 66-1(c)(3), (c)(b)-(d) ("**Location-Based Provisions**") (Claim 1), § 66-1(c)(4)(i) ("**After-Dark Provision**") (Claim 2), §§ 66-1(c)(3)(g), (c)(4)(a) ("**Traffic Provisions**") (Claim 3), and §§ 66-1(c)(1), (c)(4)(a), and (c)(4)(e)-(h) ("**Conduct-Related Provisions**") (Claim 4). Thereafter, Plaintiffs filed the Second Motion for Preliminary Injunction (Doc. 39), which the Court granted. (Doc. 72 at 15). Defendant filed an interlocutory appeal of the Court's Order granting the Preliminary Injunction, which is pending before the Eleventh Circuit Court of Appeals. (Doc. 74 at 1). Defendant also filed a Motion for Injunction Pending Appeal ("**Motion to Stay**," Doc. 76) to stay the effect of the Preliminary Injunction pending resolution of its interlocutory appeal, which the Court also denied. (Doc. 105 at 8).

II. LEGAL STANDARD

Summary judgment is appropriate when the moving party demonstrates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A fact is material if it may "affect the outcome

of the suit under the governing law." *Id.* "The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313-14 (11th Cir. 2007). Stated differently, the moving party discharges its burden by showing "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

However, once the moving party has discharged its burden, "Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Id.* at 324, 106 S.Ct. 2548 (quotation omitted). The nonmoving party may not rely solely on "conclusory allegations without specific supporting facts." *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). Nevertheless, "[i]f there is a conflict between the parties' allegations or evidence, the [nonmoving] party's evidence is presumed to be true and all reasonable inferences must be drawn in the [nonmoving] party's favor." *Allen*, 495 F.3d at 1314.

III. DISCUSSION

A. Standing

Plaintiffs first argue that they have standing to challenge the Ordinance and each of the Challenged

Provisions. "The Constitution limits the jurisdiction of the federal courts to actual cases or controversies." *Florence Endocrine Clinic, PLLC v. Arriva Med., LLC*, 858 F.3d 1362, 1365 (11th Cir. 2017) (citing U.S. Const. art. III, § 2). "One element of the case-or-controversy requirement is that [plaintiffs], based on their complaint, must establish that they have standing to sue." *Id.* at 1365-66 (quoting *Raines v. Byrd*, 521 U.S. 811, 818, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997)). "Under settled precedent, the 'irreducible constitutional minimum' of standing consists of three elements: the plaintiff must have suffered an injury in fact, the defendant must have caused that injury, and a favorable decision must be likely to redress it." *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). "The foremost standing requirement is injury in fact. An injury in fact consists of an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* (quotations omitted); *see also Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1119 (11th Cir. 2022). "Because the elements of standing 'are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported . . . with the manner and degree of evidence required at the successive stages of the litigation.'" *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (quoting *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130).

In this case, there is sufficient record evidence to establish Plaintiffs' standing as to each of their claims.

Plaintiffs have been arrested and/or threatened with prosecution under the Ordinance for carrying on their regular panhandling—which Plaintiffs assert are constitutionally protected activities. (Doc. 39-1, ¶¶ 10-12; Doc. 39-2, ¶¶ 10-12; Doc. 39-3, ¶¶ 9-13; Doc. 39-4, ¶¶ 10-13). This enforcement action constitutes an injury for the purposes of standing. *Bischoff v. Osceola Cnty.*, 222 F.3d 874, 884 (11th Cir. 2000) ("Plaintiffs' testimony that they were threatened with arrest for engaging in free speech activities is evidence of an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing.").

This injury analysis holds true for each of Plaintiffs' asserted claims. In Count 1, Plaintiffs challenge the Location-Based Provisions. (Doc. 35, ¶¶ 125-146). Although Defendant suggests there is no evidence that Plaintiffs panhandle in the restricted locations, Plaintiffs have testified that they panhandle frequently on sidewalks and near traffic intersections. (Doc. 39-1, ¶ 6; Doc. 39-2, ¶ 6; Doc. 39-3, ¶¶ 5-6; Doc. 39-4, ¶ 7). Maps of the areas affected by the Location-Based Provisions show significant overlap with both sidewalks and traffic intersections. (Doc. 20-6 at 5, 26-27). Plaintiffs have thus been arrested or threatened with arrest for activity in areas at least partially covered by the Location-Based Provisions. In Count 2, Plaintiffs challenge the After-Dark Provisions, and have declared that they panhandle at night from time to time. (Doc. 35, ¶¶ 147-168; Doc. 39-5, ¶ 1; Doc. 39-6, ¶ 1; Doc. 39-7, ¶ 1). Defendant contends this claim is "conclusory and disputed," but has not pointed to facts disputing Plaintiffs' declarations. (Doc. 122 at 3). In Count

3, Plaintiffs challenge the Traffic Provisions. (Doc. 35, ¶¶ 169-189). Plaintiffs have been arrested or threatened with arrest while panhandling on roadway medians and sidewalks, areas expressly covered by the Traffic Provisions. § 66-1(c)(3)(g). Finally, Plaintiffs challenge the Conduct-Related Provisions in Count 4. (Doc. 35, ¶¶ 190-210). Plaintiffs have stated their panhandling may include second requests for alms or requests made within two feet of another person. (Doc. 108-1 at 9-10; Doc. 108-2 at 9-10; Doc. 108-3 at 9-10; Doc. 108-4 at 10). The Conduct-Related provisions prohibit such actions as "aggressive panhandling." Plaintiffs have established injury as to each of the Challenged Provisions.

Regarding causation, it is undisputed that police officers employed by Defendant effected the arrests and threats. (*See*, *e.g.*, Doc. 39-1, ¶¶ 10-12). Plaintiffs have thus also shown that Defendant caused their injuries. Finally, "a decision in Plaintiffs' favor declaring the chapters unconstitutional, either on their face or as applied to Plaintiffs, would redress the injury of being threatened with arrest for engaging in constitutionally protected activity." *Bischoff*, 222 F.3d at 885. Plaintiffs have standing to bring each of their claims.

B. Declaratory and Permanent Injunctive Relief

Plaintiffs seek declaratory judgment in their favor and a permanent injunction against enforcement of the Challenged Provisions. A permanent injunction is an extraordinary remedy that is warranted only if Plaintiffs establish: (1) success on the merits; (2) irreparable harm

absent injunctive relief; (3) the balance of equities among the parties favors the injunction; and (4) that issuance of the injunction is in the public interest. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268 (11th Cir. 2006).

1. Success on the Merits

"The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws 'abridging the freedom of speech.'" *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015) (quoting U.S. Const., amend. I). "Above all else, the First Amendment means that government generally has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 618, 140 S.Ct. 2335, 207 L.Ed.2d 784 (2020) (quotation omitted). "A regulation of speech is facially content based under the First Amendment if it 'target[s] speech based on its communicative content'—that is, if it 'applies to particular speech because of the topic discussed or the idea or message expressed.'" *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69, 142 S.Ct. 1464, 212 L.Ed.2d 418 (2022) (quoting *Reed*, 576 U.S. at 163, 135 S.Ct. 2218). Content-based laws are subject to strict scrutiny, whereas content-neutral laws are subject to intermediate scrutiny. *Barr*, 591 U.S. at 618, 140 S.Ct. 2335. "Content-based laws . . . are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163, 135 S.Ct. 2218.

Appendix B

The parties dispute whether the Challenged Provisions are content based. Solicitation, whether charitable or commercial, is protected speech under the First Amendment. *See Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 789, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988) ("Our prior cases teach that the solicitation of charitable contributions is protected speech."); *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 633, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980) ("[O]ur cases long have protected speech even though it is in the form of . . . a solicitation to pay or contribute money." (quotation omitted)). However, "the First Amendment allows for regulations of solicitation—that is, speech 'requesting or seeking to obtain something' or '[a]n attempt or effort to gain business.'" *City of Austin*, 596 U.S. at 72, 142 S.Ct. 1464 (quoting *Solicitation*, Black's Law Dictionary (11th ed. 2019)). "[R]estrictions on solicitation are not content based and do not inherently present 'the potential for becoming a means of suppressing a particular point of view,' *so long as they do not discriminate based on topic, subject matter, or viewpoint.*" *Id.* (emphasis added) (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)).

Here, the Challenged Provisions are content based because they apply only to solicitations for charitable donations. The Court has already twice arrived at this conclusion in orders granting a preliminary injunction and denying Defendant's Motion to Stay that injunction. (*See* Doc. 72 at 9-10; Doc. 105 at 5-6). Nonetheless, Defendant repeats its argument that because the Challenged Provisions apply to any request "for an

immediate donation of money or some other article of value" regardless of speaker or context, all persons "who engage in solicitation, *as defined by § 66-1*, are treated the same, regardless of 'topic, subject matter, or viewpoint.'" (Doc. 122 at 12, 15 (emphasis added) (quoting *City of Austin*, 596 U.S. at 72, 142 S.Ct. 1464)). The Ordinance restricts panhandling, defined as "beg[ging] or mak[ing] any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others." § 66-1(b)(3). The Ordinance further provides that solicitation is considered a subset of panhandling. *Id.* As the Court has already noted in its Order denying the Motion to Stay, this definition is part of the problem. This Court's—and the Supreme Court's—definition of solicitation reaches beyond only requests for donation. *See City of Austin*, 596 U.S. at 72, 142 S.Ct. 1464 ("[T]he First Amendment allows for regulations of solicitation—that is, speech 'requesting or seeking to obtain something' or '[a]n attempt or effort to gain business.'") (quoting *Solicitation*, Black's Law Dictionary (11th ed. 2019)). This definition includes requests for charitable donations, but also expressly covers efforts to gain business and extends to requests not involving the exchange of money, such as a solicitation to attend a church or to support a political cause. Relying on this definition, the Supreme Court in *Austin* determined that "restrictions on solicitation are not content based." *Id.* Defendant, in contrast, improperly employs a narrow definition of "solicitation" to target only the speech it wishes to restrict—requests for donations—and then uses the holding in *City of Austin* to argue the Ordinance's restriction on "solicitation" is content neutral.

Appendix B

City of Austin cannot support the Challenged Provisions because they target charitable solicitations but do not restrict any other sort of solicitation, whether political, religious, or commercial. *See Messina v. City of Fort Lauderdale*, 546 F. Supp. 3d 1227, 1240-41 (S.D. Fla. 2021) (holding a panhandling ordinance to be content based because "people are free to solicit pedestrians . . . for advice, for directions, for their prayers, for a signature on a petition, to read a treatise by John Locke, to join a political party, to visit a restaurant, to come to church . . . [a]s long as the speaker doesn't say something to the effect of 'I'm poor, please help' or 'Do you have some spare change?' he may approach a stranger anywhere in the City and utter any *other* message"); *see also Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 470 F. Supp. 3d 888, 903 (S.D. Ind. 2020) (holding that a statute's "plain text establishes its content-based nature, because it defines the prohibited conduct by referring to the content of the speech—a request for an immediate donation of money or something else of value—and by referring to the function of the speech—requesting the donation or something else of value").

The Supreme Court's decision in *City of Austin* illustrates this point with favorable reference to *Heffron*. In *Heffron*, a state law restricted all solicitation to a specific location at the Minnesota State Fair and applied the restriction "against a religious practice that included 'solicit[ing] donations for the support of the Krishna religion.' As a result, members of the religion were free to roam the fairgrounds and discuss their beliefs, but they were prohibited from asking for donations for their

cause outside of a designated location." *City of Austin*, 596 U.S. at 72, 142 S.Ct. 1464 (quoting *Heffron*, 452 U.S. at 645, 101 S.Ct. 2559). However, the restriction in *Heffron* was content-neutral because it applied "evenhandedly to all who wish[ed] to distribute and sell written materials or to solicit funds . . . whether commercial or charitable." *Heffron*, 452 U.S. at 648-49, 101 S.Ct. 2559. Conversely, the plain language of the Ordinance at issue in this case circumscribes only solicitations for donations, but not solicitations to patronize a business, attend an event, or support a religious or social cause. Therefore, this is not a case where the government regulates all types of solicitations without regard to topic, subject matter, or viewpoint. Strict scrutiny applies.

To survive strict scrutiny, Defendant bears the burden of showing the Challenged Provisions "are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163, 135 S.Ct. 2218. Defendant must establish that the asserted harms are "real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys., Inc. v. Fed. Commc'ns Comm'n*, 512 U.S. 622, 664, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994). Laws can fail narrow tailoring when they are over-inclusive, i.e., they "burden substantially more speech than is necessary to further the government's legitimate interests." *McCullen v. Coakley*, 573 U.S. 464, 486, 134 S.Ct. 2518, 189 L.Ed.2d 502 (2014) (quotation omitted). Similarly, a law can fail narrow tailoring as underinclusive when the law targets one type of speech, but not another that poses the same danger to the government's asserted interest. *See Reed*, 576 U.S. at 172, 135 S.Ct. 2218.

Appendix B

Defendant asserts as compelling interests the preservation of public health, safety, and welfare of its citizens generally, and specifically in the context of traffic safety for drivers and pedestrians, and of health hazards associated with panhandling. (Doc. 1-3 at 3). Assuming for the sake of argument that these are compelling interests, each of the Challenged Provisions fails strict scrutiny.

First, regarding the Location-Based Provisions, Defendant has offered no evidence showing that the asserted traffic safety or health concerns are greater in the areas affected by the Ordinance compared to other areas. *See Messina*, 546 F. Supp. 3d at 1244 ("As an example, the law prevents solicitation at bus stops . . . , where constant crowds might be expected to deter dangerous conduct, but it says nothing about solicitation in back-alleys, where there are fewer people to prevent or deter violent attacks."). The Location-Based Provisions are therefore fatally underinclusive.

The After-Dark Provision, on the other hand, is overinclusive because Defendants point to no evidence showing that panhandling at night presents any inherent danger and thus "burden[s] substantially more speech than is necessary to further the government's legitimate interest." *McCullen*, 573 U.S. at 486, 134 S.Ct. 2518 (quotation omitted); *see also Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1292 (D. Colo. 2015) ("[T]he challenged portions of Ordinance No. 4627 are over-inclusive because they prohibit protected speech that poses no threat to public safety.").

The Traffic Provisions are underinclusive in that they restrict solicitations for charity but not solicitations regarding any other subject matter, which would pose the same threat to public safety and deployment of police or fire vehicles. *See Reed*, 576 U.S. at 172, 135 S.Ct. 2218 (holding that the sign code at issue was underinclusive—and therefore not narrowly tailored to further a compelling government interest—where the government failed to show that restricting certain types of signs but not others was necessary to promote traffic safety).

Finally, the Conduct-Related Provisions are over-inclusive because they "sweep in much more speech than is necessary to promote public safety—including speech that is entirely innocuous." *Messina*, 546 F. Supp. 3d at 1240. If the Conduct-Related Provisions applied only to tortious or criminal conduct, this would be a much closer question. However, among such conduct, the Conduct-Related Provisions also effectively prohibit any repeated request for charity, which does nothing to promote public safety. § 66-1(b)(2). At bottom, none of the Challenged Provisions can clear the high hurdle raised by strict scrutiny. Accordingly, Plaintiffs' claims succeed on the merits, and they are entitled to a declaratory judgment that the Challenged Provisions are unconstitutional.

2. Irreparable Harm

Plaintiffs must also establish that they will suffer an irreparable injury before a permanent injunction can issue. *KH Outdoor*, 458 F.3d at 1268. "An injury is irreparable if it cannot be undone through monetary remedies." *Scott*

v. Roberts, 612 F.3d 1279, 1295 (11th Cir. 2010) (quotation omitted). "[I]t is well established that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *KH Outdoor*, 458 F. 3d at 1271-72 (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)); *see also FF Cosms. FL, Inc. v. City of Mia. Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017) ("[A]n ongoing violation of the First Amendment constitutes an irreparable injury."). As discussed above, the Challenged Provisions violate Plaintiffs' free expression rights under the First Amendment. Accordingly, Plaintiffs have also established irreparable harm. *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020) ("Because the ordinances are an unconstitutional 'direct penalization' of protected speech, continued enforcement, 'for even minimal periods of time,' constitutes a per se irreparable injury.") (quoting *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983)).

3. Balance of the Equities and Public Interest

Finally, Plaintiffs must show that their threatened injury outweighs any harm the injunction may cause Defendant, and that the proposed injunction is in the public interest. *KH Outdoor*, 458 F.3d at 1268. These two factors merge when, as here, a government entity is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009); *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1271 (11th Cir. 2020). "The public interest is served by the maintenance of First Amendment freedoms and could not possibly be served

by the enforcement of an unconstitutional Ordinance." *Howard v. City of Jacksonville*, 109 F. Supp. 2d 1360, 1365 (M.D. Fla. 2000). Further, "neither the government nor the public has any legitimate interest in enforcing an unconstitutional ordinance." *Otto*, 981 F.3d at 870. Because the Challenged Provisions violate Plaintiffs' rights under the First Amendment, "the threatened injury to the plaintiff clearly outweighs whatever damage the injunction may cause the city." *KH Outdoor*, 458 F.3d at 1272. Thus, a permanent injunction against the enforcement of the Challenged Provisions is warranted.

C. Liability Under 42 U.S.C. § 1983

Plaintiffs also seek monetary damages pursuant to 42 U.S.C. § 1983 for past enforcement of the Ordinance. (Doc. 35, ¶¶ C-F). "Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (2006) (footnote omitted). For the reasons set forth above, Plaintiffs have established that Defendant's enforcement of the Ordinance violates Plaintiffs' rights arising under the First Amendment. And the Ordinance is indisputably a legislative enactment of Defendant's City Council and enforced by police officers employed by Defendant. Therefore, Defendant is liable to Plaintiffs for money damages for its past enforcement of the Ordinance. *See id.* at 692, 98 S.Ct. 2018 (holding

that § 1983 "plainly imposes liability on a government that, under color of some official policy, 'causes' an employee to violate another's constitutional rights"). The amount of damages to which Plaintiffs are entitled will be determined at trial.

IV. CONCLUSION

Defendant's arguments regarding the constitutionality of the Ordinance are unsupported by applicable law and the text of the Ordinance itself. Plaintiffs have demonstrated their entitlement to summary judgment in their favor and entry of a permanent injunction against enforcement of the Ordinance. Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Plaintiffs' Motion for Partial Summary Judgment (Doc. 108) is **GRANTED**.

2. Sections 66-1(c)(1) and (c)(3)-(4) of the Code of Ordinances of the City of Daytona Beach, Florida are **DECLARED** unconstitutional.

3. The City of Daytona Beach is **PERMANENTLY ENJOINED** from enforcing §§ 66-1(c)(1) and (c)(3)-(4) of the Code of Ordinances.

4. The issue of damages will be fully resolved at trial set to begin on **September 16, 2024**, as provided in the Court's Notice at Docket Entry 144.

5. On or before **August 2, 2024**, the parties shall meet to prepare a new Joint Pretrial Statement solely on the issue of damages. On or before **August 9, 2024**, the parties shall file with the Court their Joint Pretrial Statement, along with trial briefs.

6. Defendant's *Daubert* Motion to Exclude the Expert Opinion and Testimony of Ruth McColly (Doc. 107), Plaintiffs' *Daubert* Motion to Exclude Expert Testimony of Dr. Steven Miles (Doc. 109), Plaintiffs' *Daubert* Motion to Exclude Expert Testimony of Michael Dax Flinn (Doc. 110), Defendant's Motion in Limine Directed to Testimony of Pedro Greer, M.D. (Doc. 125), Defendant's Motion in Limine Directed to Testimony of Ruth McColly (Doc. 126), and Plaintiffs' Motion to Preclude Testimony or Other Evidence Relating to Defendant's Traffic Safety Justification at Trial (Doc. 127) are **DENIED as moot**.

DONE AND ORDERED in Orlando, Florida on July 18, 2024.

Appendix C — Middle District of Florida Court Order (September 6, 2024)

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No.: 6:22-cv-2192-WWB-RMN

DENNIS SCOTT, CHAD DRIGGERS, DOUGLAS WILLIS AND GEORGE ROWLAND,

Plaintiffs,

v.

CITY OF DAYTONA BEACH FLORIDA,

Defendant.

ORDER

THIS CAUSE is before the Court on the parties' Joint Motion for Entry of Judgment (Doc. 164). Therein, the parties request entry of a final judgment as to damages pursuant to Federal Rule of Civil Procedure 58. In addition, the parties stipulate that Defendant shall reserve its right to pursue its appeal of the Court's Order granting Plaintiffs' Motion for Partial Summary Judgment. (Doc. 151 at 17, Doc. 160 at 1). The parties also stipulate that Defendant may reserve its right to appeal entry of final judgment. *See Downey v. State Farm Fire & Cas. Co.*, 266 F.3d 675, 683 (7th Cir. 2001) ("Almost every circuit that has considered the issue has held that an express reservation

of the right to appeal avoids waiver of contested issues that had been resolved earlier in the litigation." (citing *Shores v. Sklar*, 885 F.2d 760, 764 (11th Cir. 1989)). Finally, the parties ask the Court to enter a separate judgment pursuant to Rule 58(a), setting forth all relief granted to Plaintiffs. (Doc. 164 at 2-3).

Attached to the Joint Motion is the parties Conditional Settlement Agreement (Doc. 164-1), wherein Defendant agrees to pay to Plaintiffs $80,000 in monetary damages, not inclusive of attorney's fees and costs. (*Id.* at 2). The agreement further provides that Plaintiffs shall not seek to execute on any monetary judgment in this matter until all appeals are concluded or the time to appeal has expired and that they will waive the filing of a supersedeas bond. (*Id.* at 4). The Court has reviewed the Conditional Settlement Agreement and finds that its terms are reasonable.

Accordingly, for the reasons set forth in the Joint Motion and pursuant to Federal Rule of Civil Procedure 58, it is **ORDERED** and **ADJUDGED** as follows:

1. The Joint Motion for Entry of Judgment (Doc. 164) is **GRANTED**. The Court retains jurisdiction to resolve the issue of entitlement to attorney's fees and costs and to enforce the terms of the parties' Conditional Settlement Agreement (Doc. 164-1).

2. The Clerk is directed to enter judgment in favor of Plaintiffs, and against Defendant, on each of their claims as alleged in the Amended Complaint

(Doc. 35), providing that Plaintiffs are entitled to monetary damages in the amount of $80,000.00, in addition to interest accruing from the date of entry of this judgment as provided by 28 U.S.C. § 1961.

3. Plaintiffs shall not seek to execute on this judgment until all appeals in this matter are concluded or the time to appeal has expired.

4. Plaintiffs shall file their Motion for Attorney's Fees and Costs within thirty days of issuance of a mandate from the Eleventh Circuit resolving this case's appeal or the expiration of the time to appeal. Failure to timely file may result in the denial of fees and costs without further notice.

5. The bench trial scheduled to begin on September 16, 2024, is **CANCELED**.

6. The Clerk is directed to terminate all pending motions and close this case.

DONE AND ORDERED in Orlando, Florida on September 6, 2024.

/s/ Wendy W. Berger
WENDY W. BERGER
UNITED STATES DISTRICT JUDGE

Appendix D — Middle District of Florida Court Judgment (September 6, 2024)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No.: 6:22-cv-2192-WWB-RMN

DENNIS SCOTT, CHAD DRIGGERS, DOUGLAS WILLIS AND GEORGE ROWLAND,

Plaintiffs,

v.

CITY OF DAYTONA BEACH FLORIDA,

Defendant.

Filed September 6, 2024

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Judgment is entered in favor of Plaintiffs, and against Defendant, on each of their claims as alleged in the Amended Complaint (Doc. 35), providing that Plaintiffs are entitled to monetary damages in the amount of $80,000, in addition to interest accruing from the date of entry of this judgment as provided by 28 U.S.C. § 1961.

Appendix D

Any motions seeking an award of attorney's fees and/or costs must be filed within the time and in the manner prescribed in Local Rule 7.01, United States District Court Middle District of Florida.

Date: September 6, 2024

ELIZABETH M. WARREN,
CLERK

s/AM, Deputy Clerk

[Civil Appeals Jurisdiction Checklist Omitted]

Appendix E — Order of the US Court of Appeals for the 11th Circuit Denying Petition for Rehearing and Petition for Rehearing *En Banc* (August 17, 2026)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-12662

DENNIS SCOTT, CHAD DRIGGERS, DOUGLAS WILLIS, GEORGE ROWLAND,

Plaintiffs-Appellees,

versus

CITY OF DAYTONA BEACH, FLORIDA,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida.
D.C. Docket No. 6:22-cv-02192-WWB-RMN

No. 24-12964

DENNIS SCOTT, CHAD DRIGGERS, DOUGLAS WILLIS, GEORGE ROWLAND,

Plaintiffs-Appellees,

versus

Appendix E

CITY OF DAYTONA BEACH, FLORIDA,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida.
D.C. Docket No. 6:22-cv-02192-WWB-RMN

Before NEWSOM, BRASHER, and TJOFLAT, Circuit Judges.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

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 Panel Rehearing also is DENIED. FRAP 40.

Appendix F — Daytona Beach Code of Ordinances
§ 66-1
§ 66-32
§ 82-4

* * *

ARTICLE I. – IN GENERAL

Footnotes:

*--- **(2)** ---*

***Editor's note—** Ord. No. 19-27, § 1, adopted February 6, 2019, repealed the former Art. 1, §§ 66-1 and 66-2, and enacted a new Art. I as set out herein. The former Art. I pertained to similar subject matter and derived from the 1970 Code and Ord. No. 11-312, adopted December 21, 2011.*

Sec. 66-1. – Panhandling, begging and solicitation.

(a) *Intent.* The purpose and intent of this article is to recognize the constitutional right of persons to panhandle, including but not limited to solicit and beg, in a peaceful and non-threatening manner; however, an increase in aggressive panhandling and begging throughout the city has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places but also to an enhanced sense of fear, intimidation, and disorder as well as actual danger to the health, safety and welfare of citizens

and tourists alike. Aggressive panhandling and begging usually includes approaching or following pedestrians, repetitive requests for donations of money despite refusals, the use of abusive or profane language, unwanted physical contact, and the intentional, or as incident to the aggressive panhandling and begging, blocking of pedestrian and vehicular traffic. Additionally, the presence of panhandlers and beggars, who request money from persons in specific public areas such as outdoor cafes, automated teller machines, entrances and exits from buildings, and while standing in line to enter an event or a building, is especially troublesome because persons cannot readily escape from the undesired conduct, which often carries with it an implicit threat to both persons and property as well as incidental to the panhandling and begging activities the imperiling of the health, safety and welfare of the citizens of and visitors to Daytona Beach by, among other things, blockage of ingress and egress from and into commercial businesses adjacent to public rights-of-way. Also, unless helped by regulation, some of the habits attributable to panhandlers, including but not limited to open urination and open defecation, pose a threat to the health, safety and welfare of citizens and tourists who visit the City of Daytona Beach.

This article is not intended to limit any persons from exercising their constitutional right to panhandle,

including but not limited to beg, or solicit funds, or engage in any other constitutionally protected activity, when conducted in a legal manner. The goal of this article is instead to ensure the foregoing constitutional rights while through regulation acting to protect citizens from the fear and intimidation accompanying certain kinds of panhandling and begging that have become an unwelcome and overwhelming presence in the city by prohibiting aggressive panhandling and begging throughout the city and by regulating through time, place, and manner ordinance provisions regulating panhandling and begging in certain public places, based upon the foregoing significant, important and substantial governmental interests set forth in the predicate clauses and an overriding compelling governmental interest to protect the health, safety and welfare of the citizens of Daytona Beach and visitors from the adverse secondary effects of solicitation, including panhandling and begging, in public areas. The restrictions contained in this article are neither overbroad nor vague and are narrowly tailored to serve a compelling and substantial governmental interest, and preserve ample alternative areas for the valid exercise of constitutional rights of solicitation which they do as set forth more particularly herein.

If such regulations were to be deemed to trigger strict scrutiny, certain behaviors attributed to panhandlers including but not limited to open urination and open defecation and the blockage of ingress and egress into and from commercial businesses and other public areas as well as the impedance of pedestrian walkways and other public rights-of-way implicates the compelling

governmental interest of Daytona Beach in protecting the health, safety and welfare of its citizenry and visitors in preserving police and fire department access to such rights-of-way in order to save lives.

(b) *Definitions.* For purposes of this article, the following words and phrases shall have the meanings ascribed to them as follows:

After dark means from one-half hour after sunset until one-half hour before sunrise. The times of sunset and sunrise will be established by the times listed in any local publication of general distribution.

Aggressive panhandling means:

a. To approach or speak to a person and demand, request or beg for money or a donation of valuable property in such a manner as would cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person approached or another person in the solicited person's company, or upon property in the person's immediate possession (for example, placing oneself within two feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money); or

b. To maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property after the solicited person has made a negative response to an initial demand or request for money or a donation (for example, walking in front of, next to, or behind a solicited person while continuing to demand, request or beg for money from that person after that person has refused to donate or give money); or

c. To obstruct, block or impede, either individually or as part of a group of persons, the passage or free movement of a solicited person or a person in the company of a solicited person, including persons on foot, on bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles (for example, walking, standing, sitting, lying, or placing an object in such a manner as to block passage of another person or vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact); or

d. To touch or cause physical contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's express consent; or

e. To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.

Panhandle means to beg or make any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited to for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this article, the word "solicit" and its forms are included in this definition. Panhandling is considered as having taken place regardless of whether the person making the solicitation received any contribution. Any purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, constitutes a donation as contemplated in this definition. Begging is included in this definition of panhandling. Soliciting is including in this definition of panhandling.

Prohibited areas for panhandling including but not limited to soliciting and begging means the following locations throughout the city in which it is unlawful to engage in panhandling, including but not limited to solicitation or begging, when either the panhandler or beggar or the person being panhandled is located in, on or at the following locations:

a. Within 20 feet, in any direction, from any entrance or exit of commercially zoned property;

b. Within 20 feet, in any direction, of any bus or trolley stop or any public transportation facility;

c. Within 20 feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;

d. Within 20 feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the city;

e. Within 20 feet, in any direction, of any public restroom owned and operated by a governmental agency;

f. Within 100 feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;

g. Within 150 feet of any signalized intersection of: 1) arterial roads; 2) collector roads; and 3) arterial and collector roads, as such roads are defined by the Florida Department of Transportation;

h. Occurring on the boardwalk as visibly defined by the map at the end of this section.

Appendix F

(c) *Prohibited conduct, proximity and location restrictions.*

(1) It shall be unlawful for any person to engage in aggressive panhandling on any sidewalk, highway, street, roadway, right-of-way, parking lot, park, or other public or semi-public area or in any public building lobby, entranceway, plaza or common area, public forum or limited public forum within the city limits of the City of Daytona Beach.

(2) It shall be unlawful for any person to engage in aggressive panhandling on private property if the owner, tenant or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property.

(3) It shall be unlawful for any person to engage in panhandling when either the person engaged in panhandling or the panhandler or the person being panhandled, is located in, on or at the following locations:

a. Within 20 feet, in any direction, from any entrance or exit of commercially zoned property;

b. Within 20 feet, in any direction, of any bus or trolley stop or any public transportation facility;

c. Within 20 feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;

d. Within 20 feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the city;

e. Within 20 feet, in any direction, of any public restroom owned and operated by a governmental agency;

f. Within 100 feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;

g. Within 150 feet of any signalized intersection of: 1) arterial roads; 2) collector roads; and 3) arterial and collector roads;

h. Occurring on the boardwalk as visibly defined by the map at the end of this section.

(4) It shall be unlawful for any person to engage in the following prohibited conduct:

a. Approach an operator or other occupant of a motor vehicle for the purpose of panhandling, soliciting or begging, or offering to perform a service in connection with such vehicle, or otherwise soliciting the sale of goods or services, if such panhandling, soliciting or begging is done in an aggressive manner;

b. Panhandle or solicit or beg at any lawfully permitted outdoor dining area amphitheater, amphitheater seating area, playground or lawfully permitted outdoor merchandise area, provided such areas are in active use at the time;

c. Panhandle, solicit or beg at any transit stop or taxi stand or in a public transit vehicle;

d. Panhandle, solicit or beg while the person or persons being solicited is standing in line waiting to be admitted to a commercial establishment;

e. Panhandle, solicit or beg by touching the person or persons being solicited without that person's consent;

f. Panhandle, solicit or beg with the use of profane or abusive language during the solicitation or following an unsuccessful solicitation;

g. Panhandle, solicit or beg by or with the use of any gesture or act intended to cause a reasonable person to be fearful of the solicitor or feel compelled to accede to the solicitation;

h. Panhandle, solicit or beg while under the influence of alcohol or after having illegally used any controlled substance, as defined in chapter 893 of the Florida Criminal Statutes; or

i. Panhandle, solicit or beg after dark.

(d) *Penalty.* Any person found guilty of violating the provisions of this section shall be punished in the manner prescribed in section 1-14 of this Code.

Appendix F



(Ord. No. 19-27, § 2, 2-6-2019)

Secs. 66-2—66-30. – Reserved.

* * *

Appendix F

Sec. 66-32. Loud noises and speaking devices; selling or offering to sell from vehicles on public streets or rights-of-way.

(a) No solicitor, canvasser, peddler or transient merchant or any person in his behalf shall shout, blow a horn, ring a bell, or use any sound device, including any loudspeaking radio or sound amplifying system, upon any of the city streets, alleys, parks or other public places or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

(b) It shall be unlawful to either sell or offer to sell any goods, wares or merchandise from a vehicle while on any public street or right-of-way within the city limits.

(Code 1970, § 31-7)

Cross reference(s) – Noise, § 42-211 et seq.; streets, sidewalks and other public places, ch. 86; traffic and motor vehicles, ch. 94.

* * *

Appendix F

Sec. 82-4. Display, promotion, or sales of merchandise, food, and beverages, including alcohol.

(a) No use of city property or recreational facility may include the display, promotion, or sale of merchandise or food and beverages, including alcoholic beverages, unless expressly authorized by the permit issued or approved agreement. Additional fees associated with such displays, promotions, or sales may apply, as set forth in the fee schedule.

(b) Where display, promotion, or sale of merchandise is authorized, only event-related merchandise is permitted.

(c) Where display, promotion, or sale of food and beverages is authorized, the following conditions must be met:

(1) The applicant must provide proof of all required licenses from the health department.

(2) All containers of beverages sold, dispensed, or given away must be designed and constructed in accordance with industry standards, and in a manner that law enforcement officers may ascertain the contents upon visual inspection. Closed containers and sport drink bottles are prohibited. For outdoor events, ceramic and glass containers are prohibited. The city may impose additional container requirements as a condition of the permit.

(d) Where display, promotion, or sale of alcoholic beverages is authorized, the following conditions must be met:

(1) The activities will not unreasonably interfere with or detract from public health, welfare, safety, and recreation.

(2) The activities are not expected to result in violence, crime, or disorderly conduct.

(3) The applicant supplies proof of appropriate state licensure where required by law, and the activities comply with all requirements of state and local law.

(4) The applicant supplies proof of liquor liability insurance acceptable to the risk manager, unless this requirement is waived as part of the permit.

(5) Alcohol sales and consumption will not exceed 12 hours per day in duration, unless specifically provided otherwise in the permit.

(6) Alcohol sales may be conducted only by the following:

a. The city at those sites where the city has a state license to sell alcoholic beverages. The city may retain all profits from such sales for the support of city parks and recreational facilities, or may negotiate a mutually

acceptable profit sharing arrangement which will be reflected in the permit.

b. A nonprofit civic organization, with all profits to go solely to the nonprofit organization.

c. A person or entity who has a permanent restaurant business located within the city limits from which alcoholic beverages are sold in the ordinary course of business.

d. A licensed caterer.

(Ord. No. 13-183, § 3, 8-7-2013)

* * * *

Appendix G – Plaintiffs' Motion for Partial Summary Judgment (December 5, 2023)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No.: 6:22-cv-2192-WWB-RMN

DENNIS SCOTT, *et al.*,

Plaintiffs,

v.

CITY OF DAYTONA BEACH, FLA.,

Defendant.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF LAW

Pursuant to Fed. R. Civ. P. 56 and this Court's Case Management Order (ECF 36, at 6-7), Plaintiffs, through counsel, move this Court to enter partial summary judgment because there is no genuine issue as to any material fact, and Plaintiff is entitled to judgment as a matter of law. As grounds therefor, Plaintiffs state:

1) Soliciting charitable contributions is protected speech under the First Amendment of the U.S. Constitution. Yet, in the City of Daytona Beach ("City"), it is a crime to ask for a donation in traditional public forums.

2) Individuals engaged in soliciting immediate charitable contributions may be arrested for violating the City's Code of Ordinances, § 66-1 ("Panhandling Ordinance" or "Ordinance"). Violations are punishable by a fine not exceeding $500.00 and/or imprisonment for up to 60 days. City Code §§ 1-14 & 66-1(d).

3) Tellingly, these ordinances do not criminalize persons engaged in other forms of speech within the same public forums – such as a politician asking for votes or a person asking for directions, or even a person requesting future charitable donations.

4) By singling out solicitations of immediate donations for differential treatment, the Panhandling Ordinance is content-based and subject to strict scrutiny. Because it is not narrowly tailored to any compelling government interest, nor is it the least restrictive means of advancing any interest, the Ordinance is an unconstitutional restriction of free speech in violation of the First Amendment. It fails to meet even intermediate scrutiny, as it is not narrowly tailored to any of the City's purported interests.

5) Plaintiffs are individuals experiencing homelessness and/or poverty who solicit charitable donations within the City. They wish to continue to do so. The fear of arrest and prosecution has significantly discouraged or hampered their ability to request donations. If the Panhandling Ordinance is allowed to stand, the suppression of Plaintiffs' First Amendment rights and the rights of those similarly affected will continue unabated.

6) Plaintiffs in this motion seek declaratory judgment and permanent injunctive relief to enjoin enforcement of the Panhandling Ordinance as unconstitutional.

7) If the requested injunctive relief is not issued, Plaintiffs and others face irreparable harm without adequate remedy at law, as they will be subjected to further loss of their First Amendment rights, continued loss of liberty due to arrest and incarceration, and continued chilling of their speech.

8) Granting the relief sought will not result in the imposition of greater harm to the City and such relief is in the public interest. The City remains free to enforce other laws that ensure public health, public safety and traffic safety.

WHEREFORE, Plaintiffs ask this Honorable Court to enter: (1) a declaratory judgment that Daytona Beach City Code § 66-1 is unconstitutional in violation of the First Amendment; (2) a permanent injunction prohibiting Defendant from enforcing City Code § 66-1; and (3) judgment in favor of Plaintiffs that Defendant is liable for damages for past enforcement of City Code § 66-1 in an amount to be determined at trial.

STATEMENT OF UNDISPUTED FACTS

Plaintiffs

1. Plaintiffs Scott, Driggers, Willis, and Rowland engage in charitable solicitation in the City to communicate

messages of need and pleas for food, money and other necessities. (ECF 8-1 ¶¶ 6, 8; ECF 8-2 ¶¶ 7-8; ECF 8-3 ¶¶ 6-7, 15; ECF 8-4 ¶ 8.)

2. Plaintiffs' speech occurs on traditional public fora such as streets, sidewalks, public beaches and boardwalks, and on medians. (ECF 8-1 ¶¶ 5-9, 11, 14-16; ECF 8-2 ¶¶ 5-9, 12; ECF 8-3 ¶¶ 5-9, 11-12; ECF 8-4 ¶¶ 5-10; ECF 25-1 ¶ 1; ECF 25-2 ¶ 1; ECF 25-3 ¶ 1.)

3. Driggers, Willis, and Rowland make charitable requests at various times of the day, sometimes at night. (ECF 25-1 ¶ 1; ECF 25-2 ¶ 1; ECF 25-3 ¶ 1.)

4. Plaintiffs have been warned on multiple occasions by the Daytona Beach Police Department against engaging in charitable solicitation in downtown Daytona Beach and other areas of the City under threat of arrest for violating the Panhandling Ordinance. (ECF 8-1 ¶¶12-14; ECF 8-2 ¶¶ 10-12; ECF 8-3 ¶¶ 9, 12, 14; ECF 8-4 ¶¶ 10, 12.)

5. Driggers has been arrested approximately 5 times and spent 10 days in jail for violating the Panhandling Ordinance. (ECF 8-1 ¶¶ 10, 13.)

6. Because of the enforcement of the Panhandling Ordinance by the Daytona Beach Police Department, Plaintiffs have had to stop asking for charity entirely or otherwise reduce the frequency of their requests for charity. (ECF 8-1 ¶¶ 11-17, 20; ECF 8-2 ¶¶ 13-15; ECF 8-3 ¶¶ 9-13, 18; ECF 8-4 ¶¶ 10; Ex. 1, No. 2, at 3; Ex. 2, No. 2, at 2-4; Ex. 3, No. 2, at 2-3; Ex. 4, No. 2, at 3-4.)

7. Plaintiffs would like to continue to ask for charity within the City of Daytona Beach without risking arrest or mistreatment by the police. (ECF 8-1 ¶ 21; ECF 8-2 ¶ 16; ECF 8-3 ¶ 19; ECF 8-4 ¶ 15; Ex. 1, No. 2, at 3; Ex. 2, No. 2, at 2-4; Ex. 3, No. 2, at 2-3; Ex. 4, No. 2, at 3-4.)

Daytona Beach City Code § 66-1

8. City Code § 66-1 defines panhandling as:

> to beg or make any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this article, the word 'solicit' and its forms are included in this definition. Panhandling is considered as having taken place regardless of whether the person making the solicitation received any contribution. Any purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, constitutes a donation as contemplated in this definition. Begging is included in this definition of Panhandling. Soliciting is included in this definition of Panhandling.

(ECF 1-3, § 66-1(b)(3).)

9. The Panhandling Ordinance bans such solicitation within 20 feet of entrances or exits to commercial buildings, at bus stops or public transportation facilities, parking lots or garages or pay stations, automated teller machines, and public restrooms within the City. (*Id.* § 66-1(c)(3)(a)-(e).) It prohibits panhandling within 100 feet of a school or daycare, and on the City's boardwalk. (*Id.* § 66-1(c)(3)(f), (h).) It makes it unlawful to "panhandle, solicit or beg" at an outdoor dining area, amphitheater, playground, outdoor merchandise area, transit stop, taxi stand, in a public transit vehicle, or while the person(s) being solicited is standing in line waiting to be admitted to a commercial establishment. (*Id.* § 66-1(c)(4)(b)-(d).) (Collectively, "location-based restrictions.")

10. The Panhandling Ordinance prohibits panhandling after dark. (*Id.* § 66-1(c)(4)(i) ("time of day restriction").)

11. The Panhandling Ordinance prohibits panhandling within 150 feet of most traffic signals and approaching a motor vehicle for the purposes of panhandling, if done in an aggressive manner. (*Id.* § 66-1(c)(3)(g), (c)(4)(1) ("traffic restrictions").)

12. The Panhandling Ordinance bans panhandling in combination with certain conduct throughout the City, including "aggressive" panhandling, panhandling with the use of profane or abusive language, and panhandling while under the influence of alcohol. (*Id.* § 66-1(c)(1), (c)(e)-(h) ("conduct-related restrictions").) These conduct-related restrictions apply to all public property in the City. (*Id.*; ECF 106-2, 118:16-22.)

13. Aggressive panhandling is approaching a person in a manner that the person is threatened with imminent bodily injury, touching a solicited person without explicit permission, blocking a solicited person from passing, or intimidating a solicited person to accede to demands. It also includes asking for a donation more than once or standing within two feet of someone when making a request (*Id.* § 66-1(b)(2)(a), (c)-(e).)

14. A violation of the Panhandling Ordinance is punishable by a sentence of up to 60 days in jail and/or a fine of up to $500. (ECF 1-3, at § 66-1(d); Ex. 5.)

The City's Interests Articulated at the Legislative Hearings

15. On July 24, 2018, the City hired attorney Michael Kahn to draft and assist in the passage of an ordinance regulating panhandling within the City. (ECF 106-6, 36:19-23, 37:5-8.)

16. The City retained Mr. Kahn because of its knowledge of his involvement preparing an ordinance to address issues related to panhandling in St. Augustine, Florida. (ECF 106-6, 33:9-21, 35:2-15.)

17. On December 12, 2018, and January 16, 2019, there were two Special Meetings of the Daytona Beach City Commission regarding the passage of the Panhandling Ordinance. (ECF 106-5, 17:6-16; ECF 20-2, at 1, 15.)

18. The Panhandling Ordinance recites that the City has a compelling interest in protecting its citizens' lives, health, safety and welfare. (ECF 1-3, at 3.)

19. The Panhandling Ordinance recites that the City has significant interests in: providing a safe and pleasant environment; preserving safety of traffic flow and preventing traffic congestion; safety of pedestrians and individuals traveling in vehicles; promoting tourism and aesthetics of downtown; promoting safety and convenience of its citizens, ensuring free flow of traffic on public streets and sidewalks; safety and convenience of public in using public fora; safety and convenience on public roads; controlling traffic and pedestrian congestion; preventing crime, protecting retail trade and maintaining property values; aesthetics of City; and maintaining safe ingress and egress of commercial establishments. (ECF 1-3, at 4-6.)

20. At the Special Meetings, testimony and exhibits were presented to the City Commission by Mr. Kahn. (ECF 106-5, 17:23-18:1, 31:2-5, 59:4-7; Ex. 6 at 13-14; *see generally* ECF 20-2, 20-5.)

21. The exhibits that were entered into evidence at the hearing on January 16, 2019, included a series of maps that purported to show the areas in the City where panhandling was prohibited and how much land in the City was available for panhandling. (ECF 106-8, 37:4-10, 119:25-2; ECF 20-5 to 20-9.)

22. Evidence was presented at the hearings that public urination and defecation, unlicensed pets, and drug paraphernalia are harmful to public health. (ECF 20-2, at 15-47, 161-162; ECF 20-5, at 27-30.)

23. The Panhandling Ordinance does not prohibit public urination or defecation, unlicensed pets, drug use, or drug paraphernalia. (ECF 106-1, 49:2-12, 48:15-17, 51:10-12; ECF 106-6, 55:17-20, 71:22-24; ECF 106-14, 87:2-4; *see generally* ECF 1-3.)

24. The medical evidence the City relied on included no studies or other evidence linking outbreaks of disease to panhandling. (ECF 106-6, 97:6-9; ECF 106-10, 110:20-25, 156:1-6; ECF 20-2, at 236-354.)

25. The City produced no evidence that an interaction with a panhandler or the unlicensed pet of a panhandler has led to the spread of infectious disease in the City. (ECF 106-6, 97:14-24, 111:11-13; ECF 106-10, 113:19-23, 114:10-13, 115:19-21; ECF 106-7, 73:21-24, 74:12-15; ECF 106-12, 69:2-6, 70:11-14; ECF 106-13, 61:14-17, 22-25; ECF 106-14, 90:25-91:4; *see generally* ECF 20-2 to 20-12.)

26. The only evidence presented at the hearings that panhandlers congregate and delay deployment of fire and police vehicles were two incidents where this occurred. (ECF 20-5, at 110-11, 122-24.)

27. The City produced no other evidence that panhandling interferes with the deployment of fire and police vehicles. (ECF 106-6, 106:12-16; ECF 106-12, 44:5-17; ECF 106-14, 84:15-24.)

28. The Panhandling Ordinance does not prohibit delaying deployment of fire and police vehicles. (*See generally* ECF 1-3.)

29. Evidence was presented at the hearings that panhandlers caused issues with traffic and pedestrian safety by approaching drivers in or near the street. (ECF 20-2, at 116-120.)

30. The Panhandling Ordinance does not prohibit people who are soliciting anything other than immediate charitable donations from approaching drivers in or near the street. (ECF 106-1, 60:25-61:1, 62:9-23; *see generally* ECF 1-3.)

31. Evidence was presented at the hearings that panhandlers can block the entrances to businesses. (ECF 20-5, at 111.)

32. The Panhandling Ordinance does not prohibit blocking the entrances to businesses. (*See generally* ECF 1-3.)

33. Evidence was presented at the hearings that panhandlers can interfere with the flow of traffic or block sidewalks. (ECF 20-2, at 116, 122-123, 144, 149.)

34. The Panhandling Ordinance does not prohibit interfering with the flow of traffic or blocking sidewalks. (*See generally* ECF 1-3.)

35. In support of the City's interest in furthering traffic safety, two traffic accident reports were entered

into evidence at the hearing on December 12, 2018. (ECF 20-4, at 50-59, 63-134.) The reports purportedly documented accidents involving "known panhandlers." (ECF 20-2, at 117-118.)

36. Neither of the accident reports indicate that the person who was involved in the accident was panhandling at the time of the accident. (ECF 106-2, 112:16-113:14, 113:25-115:18; ECF 20-4, at 58, 73.)

37. One of the accident reports indicates that the accident occurred at the intersection of International Speedway Boulevard and Segrave Street. (ECF 20-4, at 121.) That intersection is not an area where panhandling is prohibited by the Ordinance. (ECF 106-6, 99:1-18; ECF 20-6, at 42.)

38. The other accident report stated that the person who was involved in the accident was standing near the median of Beville Road at the intersection with Nova Road. (ECF 20-4, at 58-59.) The median is also outside of the areas where panhandling is prohibited by the Ordinance, per the maps that were entered into evidence at the City Commission meeting. (ECF 20-8, at 27.)

39. Other than anecdotes presented at the Special Meetings, the City produced no evidence that panhandling is more problematic or dangerous at the locations where it is prohibited by the Ordinance. (ECF 106-6, 103:17-107:19; 111:14-113:20.)

40. The City's location-based provisions were intended to protect a "captive audience" from being subjected to panhandling. (ECF 106-1, 64:18-65:8, 65:24-68:7, 92:17-93:15.)

41. The City produced no evidence at the legislative hearings that charitable solicitation occurring at night is more dangerous. (*See generally* ECF 20-2, 20-5.) It now cites only one traffic accident at night unrelated to panhandling and the need to prevent people from feeling uncomfortable as the justification for this provision. (ECF 106-1, 85:11-21, 97:14-23; ECF 106-6, 113:11-24, 134:2-7.)

42. The Ordinance does not make it unlawful to approach someone after dark to distribute leaflets or make a request for something other than an immediate donation. (ECF 106-1, 99:6-25; *see generally* ECF 1-3.)

43. The City produced no evidence that charitable solicitation by someone under the influence of alcohol or drugs was particularly problematic or dangerous. (ECF 106-6, 113:5-24, 134:2-7; *see generally* ECF 20-2; ECF 20-5.)

44. The Ordinance does not make it unlawful to distribute leaflets or make a request for something other than an immediate donation while under the influence of alcohol or drugs. (ECF 106-1, 99:20-25; *see generally* ECF 1-3.)

45. In passing the Panhandling Ordinance, the City sought to "displace" panhandlers, remove the "reason for

the panhandler to loiter," and prevent potential "crimes they're committing afterwards". (ECF 106-1, 68:25-70:7, 78:2-12; ECF 106-6, 88:2-3.)

46. City employees who helped to compile evidence for the Special Meetings were asked only to identify evidence related to panhandling and panhandlers. (ECF 106-1, 22:14-24, 35:13-20, 42:17-22.)

47. Witnesses who testified at the meetings were selected because of knowledge they had of panhandling within the City. (ECF 106-1, 27:3-7.)

48. The City made no attempt to collect evidence of problems related to solicitations for religious or political donations. (ECF 106-1, 43:1-9.)

49. On February 6, 2019, the City Commission adopted the Ordinance, and it went into effect that day. (ECF 106-5, 16:11-17; Ex. 7, at 6-8.)

Enforcement of the Panhandling Ordinance

50. When the Ordinance was passed, the City immediately began enforcing it through arrests, notices to appear, and warnings. (ECF 106-14, 27:23-28:8; Ex. 8, at 1-6.)

51. Since the Ordinance's enactment in February 2019, the Daytona Beach Police Department has made at least 259 arrests or citations for violating the Ordinance. (Ex. 8.)

52. In total, people who were charged with violating the Ordinance spent over 700 days in jail for those violations. (Ex. 8.)

53. In total, people who were charged with violating the Ordinance were assessed over $19,000 in fines and court costs for those violations. (Ex. 8.)

54. The City intends to continue enforcing the Ordinance unless a permanent injunction is issued. (ECF 76; 11th Cir. Doc. 14-1, Case No. 23-13119, Appellant's Motion for Stay Pending Appeal.)

55. The Ordinance is specific to charitable donations; it does not make soliciting other things unlawful. (ECF 106-2, 170:2-22.)

56. Holding a sign advertising a business within 150 feet of a signalized intersection of arterial roads within Daytona Beach does not violate the Ordinance. (ECF 106-2, 171:7-172:13; Ex. 9, at 1.)

57. Holding a sign that reads "Homeless, please help" within 150 feet of the same intersection would violate the Ordinance. (ECF 106-2, 171:18-25.)

58. Soliciting the purchase of event tickets within 150 feet of a signalized intersection of arterial roads within Daytona Beach does not violate the Ordinance. (ECF 106-2, 172:14-173:2; Ex. 9, at 7-12.)

59. Advertising a Bible course and soliciting attendance at a service for Jehovah's Witnesses on the

City's Boardwalk does not violate the Ordinance. (ECF 106-2, 174:20-175:16; Ex. 9, at 4-6.)

60. Holding a sign that reads "Need Food Please Help God Bless," or "Anything helps if you can. Thank you. God Bless" on the City's Boardwalk would violate the Ordinance. (ECF 106-2, 171:18-25; Ex. 10.)

Other Enforcement Mechanisms to Alleviate the City's Recited Harms

61. The City's Disorderly Conduct Ordinance, City Code § 62-37, can be used to make an arrest for public urination or defecation. (ECF 106-1, 49:2-12; ECF 106-7, 37:14-38:3; ECF 106-14, 87:22-25; *see* Ex. 11.)

62. City Code § 62-37 can be used to make an arrest for interfering with pedestrian or vehicular traffic, or obstructing traffic on the roadways. (ECF 106-2, 104:7-105:6; ECF 106-7, 36:6-8, 131:1-7; *see* Ex. 11.)

63. Threatening someone to incite violence is a violation of City Code § 62-37. (ECF 106-2, 103:23-104:2; *see* Ex. 11.)

64. Threatening someone to create fear is the crime of assault under state law. (ECF 106-2, 103:20-22; *see* § 784.011, Fla. Stat. (2023).)

65. Touching a person without their consent is the crime of battery under state law or City Code § 62-36. (ECF 106-1, 55:22-56:5; ECF 106-2, 103:12-19; *see* § 784.03, Fla Stat. (2023); Ex. 12.)

66. City Code § 78-4 prohibits littering or the unauthorized deposit of refuse on public property, including needles or razors. (ECF 106-1, 51:22-52:4; ECF 106-14, 99:24-100:2; *see* Ex. 13.)

67. State controlled substance laws make possession of drug paraphernalia and use of controlled substances illegal. (ECF 106-1, 51:10-18; ECF 106-7, 65:19-66:2; ECF 106-14, 99:18-23; *see* §§ 893.13, 893.147, Fla Stat. (2023).)

68. City Code § 86-38 makes it a crime to hinder or impede the free and uninterrupted passage of vehicles, traffic, or pedestrians. (ECF 106-2, 105:15-22; *see* Ex. 14.)

69. State law makes it unlawful to obstruct the use of a public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon. (ECF 106-2, 105:25-106:14; *see* § 316.2045, Fla Stat. (2023).)

70. State law requires pedestrians to yield the right of way to emergency vehicles, a violation of which is a citable offense. (ECF 106-2, 106:23-107:12; *see* § 316.126, Fla Stat. (2023).)

71. A person causing a problem on private property can be told to leave and issued a trespass warning by the owner; a person causing a problem on public property can be issued a trespass warning, and subsequently be removed if they refuse to leave, if there is an underlying law violation. (ECF 106-2, 109:10-17; ECF 106-6, 138:11-139:3; *see* §§ 810.08-09, Fla Stat. (2023); Ex. 15.)

72. The City did not attempt to use other available laws to address the problems its associates with panhandling. (ECF 106-6, 85:17-87:2.)

MEMORANDUM OF LAW

I. Plaintiffs meet the standard for granting summary judgment.

Summary judgment is proper if the evidence shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Plaintiffs move for summary judgment on the grounds that the uncontested, material facts in this case establish that the Panhandling Ordinance violates the First Amendment.

A. Plaintiffs have standing to challenge the Panhandling Ordinance.

Plaintiffs satisfy the Supreme Court's constitutional standing requirements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). The undisputed facts demonstrate Plaintiff suffered an actual injury-in-fact under the Panhandling Ordinance. Plaintiffs hold signs and make verbal requests soliciting donations in the City. (Facts ¶ 1.) Plaintiffs have been arrested and/or threatened with arrest for violation of the Panhandling Ordinance within the City. (Facts ¶¶ 4-5.) The enforcement actions taken by City police have chilled Plaintiffs' speech (Facts ¶ 6) and give Plaintiffs their own legally cognizable interest

in challenging the constitutionality of the Panhandling Ordinance. *Leverett v. City of Pinellas Park*, 775 F.2d 1536, 1538*39 (11th Cir. 1985) (Plaintiffs had standing to an ordinance that "interfere[d], directly and continuously, with the way [they] normally conduct their affairs"). Plaintiffs' injuries were caused by the City's passage and enforcement of the Ordinance and can be redressed by relief granted by this Court. *See KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1267 (11th Cir. 2006). Accordingly, Plaintiffs have standing to advance their constitutional challenge.

B. The City's Panhandling Ordinance is unconstitutional.

1. Plaintiffs' charitable solicitation is protected speech.

It is firmly established that the "solicitation of charitable contributions is protected speech" under the First Amendment. *Riley v. Nat'l Federation of the Blind*, 487 U.S. 781, 789 (1988); *see also Smith v. City of Ft. Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."). Moreover, the speech regulated by the Ordinance occurs within a public forum. (*See* ECF 1-3 § 66-1(c) (prohibiting requests for donations at various public locations and public or semi-public forums throughout the City).) The Supreme Court "long ago recognized that members of the public retain strong free speech rights when they venture into public streets and parks, 'which have immemorially been held in trust for the

use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983)). "All public streets…are properly considered traditional public fora" and "[n]o particularized inquiry into the precise nature of any street is necessary." *Frisby v. Schultz*, 487 U.S. 474, 481 (1988). Solicitation on medians also implicates the First Amendment. *See, e.g., McGraw v. City of Okla. City*, 973 F.3d 1057, 1068 (10th Cir. 2020). Accordingly, Plaintiffs' requests for donations, which occur on streets, sidewalks, public beaches, boardwalks, and sometimes on medians, are protected speech. (Facts ¶ 2.)

2. The Panhandling Ordinance prohibits charitable solicitation based on its content.

The Ordinance singles out requests for immediate donations, banning them in locations throughout the City and when made under certain circumstances or at certain times of day. (ECF 1-3 § 66-1(c).) These bans apply only to those requesting immediate donations. (*Id.* § 66-1(b)(3).) No other type of speech, such as seeking support for political, religious, or social causes, is subject to the regulations; nor are solicitations for things other than donations. Thus, whether the Ordinance's criminal penalties apply depends entirely on the content of the message.

Speech restrictions are content-based when they "single out any topic or subject matter for differential

treatment." *See City of Austin, Tex. v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 71 (2022). This is so even if the law does not favor one viewpoint over another. *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015) ("a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter"). Since *Reed*,[1] courts have unanimously found that anti-panhandling ordinances were content-based restrictions on speech. *Messina v. City of Ft. Lauderdale*, 546 F. Supp. 3d 1227, 1242-43 (S.D. Fla. 2021) (collecting cases). Because the Ordinance singles out a single topic or subject matter—requests for immediate donations—it is a content-based speech restriction that is presumptively unconstitutional and subject to strict scrutiny. The government bears the burden of proving that the law is narrowly tailored to a compelling government interest and is the least restrictive means of advancing that interest. *Reed*, 156 U.S. at 171.

The Panhandling Ordinance is analogous to the sign code at issue in *Reed*, which contained "content-discriminatory classifications" for only certain messages,

1. Defendant has argued that *Austin* changes the constitutional scrutiny applied to laws such as the Panhandling Ordinance. (*See* ECF 44; ECF 76.) However, *Austin* did not "cast doubt on any of our precedents recognizing examples of topic or subject-matter discrimination as content based"; it instead confirmed that restrictions on solicitation are not content-based only if "they do not discriminate based on topic, subject matter, or viewpoint." *Austin*, 596 U.S. at 72, 76; *see also* ECF 72, at 10-11. *Austin* is not applicable here, because the Panhandling Ordinance does discriminate based on subject matter.

in that the City subjects only a specific topic—requests for charity—to different treatment than other messages. (*See* ECF 72, at 11.) The Ordinance's definition of "panhandling" explicitly demonstrates that the speech being restricted is not all solicitations, but only solicitations for immediate donations, a form of traditionally protected speech. (Facts ¶ 8.) *See Vill. of Schaumburg v. Citizens for a Better Environ.*, 444 U.S. 620, 632 (1980) ("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"). The City has stated that the Ordinance only regulates charitable donations, and it is undisputed that it does not regulate solicitation for event tickets, business, or attendance at religious services. (Facts ¶¶ 55-56, 58-59.) Thus, the Ordinance is content-based.

3. Even if facially content-neutral, the Panhandling Ordinance is content-based because it targets certain speakers and their message.

Some laws, "though facially content neutral, will be considered content-based regulations of speech: laws that cannot be 'justified without reference to the content of the regulated speech,' or that were adopted by the government 'because of disagreement with the message [the speech] conveys.'" *Reed*, 576 U.S. at 164 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). Where "there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for

instance, that restriction may be content based" and thus subject to strict scrutiny. *City of Austin*, 596 U.S. at 76.

The Panhandling Ordinance cannot escape that it is an inherently content-based restriction. (*See* ECF 105, at 6.) First, it defines "the prohibited conduct by referring to the content of the speech—a request for an immediate donation of money or something else of value." *Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 470 F. Supp. 3d 888, 903 (S.D. Ind. 2020) (citing *Reed,* 576 U.S. 155, 164 (2015)).

Second, the Ordinance itself and the voluminous record Defendant provides as justification for the Ordinance focuses on only a certain type of speech— "panhandling and begging"—and those who participate in that speech— "panhandlers and beggars." (ECF 1-3, at 2-8; s*ee generally* ECF 20-2 to 20-12.) "The [City Commission] designed [the Ordinance] to target those speakers and their messages for disfavored treatment. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011). Measures passed solely to target a particular type of speech or speaker, though facially content-neutral, are unconstitutional. *Id.* at 566 ("A government bent on frustrating an impending demonstration might pass a law demanding two years' notice before the issuance of parade permits. Even if the hypothetical measure on its face appeared neutral as to content and speaker, its purpose to suppress speech and its unjustified burdens on expression would render it unconstitutional."). The "absence of a neutral justification" for a restriction on speech "prevents the city from defending [that restriction] as content neutral." *City*

of Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 429-30 (1993). The legislative history used to justify the Ordinance and the City's testimony about its purpose lays bare its true goal: to remove disfavored speakers and their speech from the City. (Facts ¶¶ 45-48; *see, e.g.,* ECF 1-3, at 7 (justifying the Ordinance's speech restrictions due to the troublesome "presence of panhandlers and beggars" and "habits attributable to panhandlers").) Accordingly, the Ordinance must be subjected to strict scrutiny even if deemed facially content-neutral.

4. The Panhandling Ordinance does not withstand strict scrutiny because it is not narrowly tailored.

"Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163. The City must also show that the laws are the "least restrictive means" of accomplishing that vital interest. *See U.S. v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 813 (2000). Moreover, because "'content-based regulations are presumptively invalid,'… the Government bears the burden to rebut that presumption." *Id.* at 817 (quotation omitted).

The only compelling interest recited in the Panhandling Ordinance is protecting its citizens' lives, health, safety and welfare. (Facts ¶ 18.)[2] But the Ordinance is not narrowly

2. The other interests articulated in the ordinance are not deemed by the City to be compelling. (*See* ECF 1-3, at 2-8.) The

tailored to the City's proffered interests in public health and safety. Defendant must show that the Ordinance actually advances its asserted interests. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994). Defendant must do more than simply posit the problems associated with the speech; it "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Id.* Laws are not narrowly tailored where they "burden substantially more speech than is necessary to further the government's legitimate interests[,]" and are therefore fatally over-inclusive. *McCullen*, 573 U.S. at 486. Laws may also fail the narrow tailoring requirement when they are under-inclusive, in that they single out a certain type of speech but do not regulate others that are equally problematic. *See Reed,* 576 U.S. at 172; *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 802 (2011).

Assuming, *arguendo,* that protecting public health and safety are compelling interests, the Ordinance cannot survive strict scrutiny because it is not narrowly tailored to those interests. The Ordinance refers to problems such as public urination and defecation and the obstruction of emergency vehicles (ECF 1-3, § 66-1(a)), but the act of requesting charity in public does not cause those problems, nor does the Ordinance prohibit them. The City produced no data or hard evidence connecting these problems to panhandling, relying on inflammatory generalizations

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caselaw supports this. *See Messina*, 546 F. Supp. 3d at 1243-44 (protecting economic interests or making residents and tourists feel less intimidated or fearful are not compelling interests to justify a panhandling regulation).

rather than tailoring a solution to the public health and safety issues. (Facts ¶¶ 22-28.) The Ordinance restricts requests for donations but does not make it an offense to openly urinate or defecate or impede emergency vehicles. (Facts ¶¶ 23, 28.) Thus, Ordinance is not narrowly tailored to health or safety because it does not address those interests in a direct and material way. Moreover, the Ordinance is not narrowly tailored because it is over- and under-inclusive, or otherwise prohibits conduct that is already illegal under existing laws. The Ordinance's provisions fall into four general categories, addressed more fully below: location-based, time of day, traffic, and conduct-related restrictions. (ECF 1-3.)

a. Location-based restrictions, §§ 66-1(c)(3) & (c)(4)(b)-(d)

The Ordinance prohibits panhandling at various locations throughout the City (Facts ¶ 9.) Such bans are over-inclusive because they prohibit protected speech even in situations where it is not demonstrably more dangerous. *Messina*, 546 F. Supp. 3d at 1244-45; *see also Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412-13 (7th Cir. 2015) (striking down a location-based panhandling ban); *Homeless Helping Homeless, Inc., v. City of Tampa, Fla.*, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882, at *5 (M.D. Fla. Aug. 5, 2016) (same); *McLaughlin*, 140 F. Supp. 3d at 196 (same). If enacted to promote public safety, the Ordinance is poorly targeted. There is no evidence that panhandling is any more dangerous in the affected areas. (Facts ¶¶ 39-40.) *See McLaughlin*, 140 F. Supp. 3d at 195 ("[W]hile it may be more bothersome, and even in

some sense more coercive for a person to be panhandled when they cannot, or find it difficult to leave, it is not demonstrably more dangerous.").

The Panhandling Ordinance is fatally under-inclusive because it penalizes only certain types of activities that generate an alleged safety hazard, while leaving others unregulated, e.g., banning requests for donations but not other solicitations in defined locations. (Facts ¶¶ 8-9, 55.) And the prohibited locations are not necessarily the most dangerous: the Ordinance bars requests for charity at bus stops, "where constant crowds might be expected to deter dangerous conduct, but it says nothing" about requests "in back-alleys, where there are fewer people to prevent or deter violent attacks." *Messina*, 546 F. Supp. at 1244.

b. Time of day restriction, § 66-1(c)(4)(i)

The Ordinance forbids panhandling after dark. (ECF 1-3, § 66-1(c)(4)(i).) Bans on charitable solicitation at night are not narrowly tailored. *See Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1292 (D. Colo. 2015). The City "has not cited to any evidence or provided any meaningful argument to establish that a 'blanket prohibition on panhandling at night is necessary to advance public safety,'" *id.*, and it primarily justifies this provision as intended to prevent people from feeling uncomfortable (Facts ¶ 41.) Such vague generalizations do not meet strict scrutiny. *Messina*, 546 F. Supp. 3d at 1239 (rejecting City attempts to justify panhandling ordinances "by invoking a general interest in making its residents and tourists *feel* more 'comfortable'"). The time of day

restriction also sweeps up a significant amount of perfectly innocent conduct, and it does not apply to other types of speech that could cause the same problems. (Facts ¶ 42.)

c. Traffic restrictions, §§ 66-1(c)(3)(g) & (4)(a)

The Ordinance prohibits panhandling within 150 feet of many traffic signals and approaching the occupant of a motor vehicle for the purpose of panhandling, soliciting, or begging when done in an aggressive manner. (ECF 1-3, §§ 66-1(c)(3)(g)), (c)(4)(a).) Regulations that restrict only charitable solicitation have been found unconstitutional even where the state interest is to promote traffic safety. *Vigue v. Shoar,* 494 F. Supp. 3d 1204, 1224-25 (M.D. Fla. Oct. 12, 2020). The Ordinance bans approaching cars to solicit donations, but approaching cars to talk about politics or sell tickets is allowed, and the City provides no explanation for why panhandling is more dangerous than other speech on or near roadways. (Facts ¶¶ 29-30, 33-38.) *See Messina*, 546 F. Supp. 3d at 1248. Such restrictions are not narrowly tailored as there is no legitimate reason to single out charitable solicitation from other types of speech—political or commercial solicitation that creates a traffic hazard is "equally dangerous." See *Rodgers v. Bryant*, 942 F.3d 451, 457 (8th Cir. 2019); *Bischoff v. Fla.*, 242 F. Supp. 2d 1226, 1257 (M.D. Fla. 2003). Thus, these sections are not narrowly tailored and therefore violate the First Amendment.

d. Conduct-related restrictions, §§ 66-1(c)(1), (c)(4)(a) & (c)(4)(e)-(h)

The Panhandling Ordinance's prohibitions on "aggressive" panhandling (ECF 1-3, § 66-1(b)(2), (c)(1)) are not narrowly tailored. Aggressive panhandling ordinances "often sweep in much more speech than is necessary to promote public safety, including speech that is entirely innocuous." *Messina*, 546 F. Supp. 3d at 1240. For example, the Ordinance prohibits continued appeals after the initial request is turned down. (ECF 1-3, § 66-1(b)(2)(b).) However, there is nothing inherently dangerous about a second request. *Messina*, 546 F. Supp. 3d at 1245; *see also McLaughlin*, 140 F. Supp. 3d at 194). These provisions also ban such conduct in relation to charitable donations but not other types of speech. Unwanted touching and disorderly conduct are equally problematic whether the speaker is asking for a donation or is conveying any other message. *See id.*

Nor is the Ordinance the least restrictive means of achieving the City's stated interests. Aggressive panhandling provisions that make conduct already punishable by criminal statutes subject to additional penalties because of its connection with protected speech fail the narrow tailoring requirement. *See McLaughlin*, 140 F. Supp. 3d at 193 ("The City may not deem criminal activity worse because it is conducted in combination with protected speech"); *see also Messina*, 546 F. Supp. 3d at 1245; *Browne,* 136 F. Supp. 3d at 1293-94. The activities defined as "aggressive panhandling" and the other conduct-related provisions are already punishable through

other City ordinances and state criminal laws. (Facts ¶¶ 61-72.) The City could enforce these other laws addressing problematic conduct rather than banning speech, but has not attempted to do so. (*Id.*) The Ordinance's imposition of harsher penalties for panhandlers than for others who commit the same crimes is not the least restrictive means of promoting public safety.

5. The Panhandling Ordinance fails to meet even intermediate scrutiny.

The Ordinance cannot survive even intermediate scrutiny, as it is not narrowly tailored. The narrow tailoring inquiry is crucial to intermediate scrutiny:

> The tailoring requirement does not simply guard against an impermissible desire to censor. The government may attempt to suppress speech not only because it disagrees with the message being expressed, but also for mere convenience. Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance. But by demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily "sacrific[ing] speech for efficiency."

McCullen, 573 U.S. at 486 (citing *Riley,* 487 U.S. at 795)). Defendant must not only establish that the ordinance alleviates non-speculative harms in a direct and material way, *see Turner Broad. Sys,* 512 U.S. at 664, it must

also demonstrate that the restriction does not burden substantially more speech than necessary to further its interests, which requires a showing "that it seriously undertook to address the problem with less intrusive tools readily available to it" and "that it considered different methods that other jurisdictions have found effective." *McCullen*, 573 U.S. at 494.

Defendant offers "little evidence of non-speculative harms or interests that the Ordinance's restrictions alleviate in a direct and material way." *See Brewer v. City of Albuquerque*, 18 F.4th 1205, 1227 (10th Cir. 2021). The "problems to which the City's evidence *does* point are not likely to be ameliorated by the relevant subsections of the ordinance." *Id.* The Ordinance is not narrowly tailored to its purported interests as it does not prohibit the harmful conduct that the City cites to justify it, and the City can prevent said conduct by simply enforcing other laws that do directly proscribe the harmful behaviors. (*See supra* § I(B)(4); Facts ¶¶ 61-71.) However, Defendant has not considered or attempted to use readily available, less intrusive tools. (Facts ¶ 72.)

II. The Plaintiffs are entitled to permanent injunctive relief.

A permanent injunction is warranted if Plaintiffs: (1) succeed on the merits; (2) establish that irreparable harm will result if court does not order injunctive relief; (3) establish that the balance of equities tip in their favor; and (4) demonstrate that an injunction is in the public interest. *KH Outdoor, LLC*, 458 F.3d at 1268. In Section

I(B), *supra,* Plaintiffs have demonstrated success on the merits.

A. Plaintiffs will suffer irreparable harm absent an injunction.

Ordinances that violate the First Amendment are "per se irreparable injur[ies]." *LaCroix v. Town of Ft. Myers Bch., Fla.*, 38 F.4th 941, 954-55 (11th Cir. 2022) (citation omitted); *Scott v. Roberts*, 612 F.2d 1279, at 1297 (11th Cir. 2010) (citation omitted). Plaintiffs have been repeatedly warned, arrested, jailed, and fined for the content of their speech (Facts ¶ 4-6), and will suffer irreparable harm absent a permanent injunction. *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Amer. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) ("Because chilled speech cannot be compensated by monetary damages, an ongoing violation of the First Amendment constitutes irreparable injury.").

B. The threatened injury to Plaintiffs outweighs any harm to Defendant.

Courts must weigh the harm that plaintiffs likely will sustain if the injunction were denied against that which the defendant will suffer if the injunction is issued. *Howard v. City of Jacksonville*, 109 F. Supp. 2d 1360, 1362 (M.D. Fla. 2000). Here, in contrast to the Plaintiffs' past and continuing harm, Defendant will not suffer injury if it is prevented from enforcing illegal restrictions on First Amendment rights. Defendant is free to enforce other state and local laws which address the harms of

which it complains. *See, e.g., Booher v. Marion Cnty.*, No. 507cv00282, 2007 WL 9684182, at *4 (M.D. Fla. Sept. 21, 2007).

C. A permanent injunction in the public interest.

A permanent injunction would not adversely affect the public interest. The protection of constitutional rights is always in the public interest. *Lebron v. Wilkins*, 820 F. Supp. 2d 1273, 1292 (11th Cir. 2013) ("perhaps no greater public interest exists than protecting a citizen's rights under the constitution"); *Howard*, 109 F. Supp. 2d at 1365 ("The public interest is served by the maintenance of First Amendment freedoms and could not possibly be served by the enforcement of an unconstitutional Ordinance."). Because the public has no interest in enforcing unconstitutional speech restrictions, an injunction cannot "disserve" the public interest. *See Scott*, 612 F.3d at 1297.

III. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Partial Summary Judgment, enter a declaratory judgment, issue a permanent injunction, and schedule a trial on the issue of damages.

Dated: December 5, 2023

Respectfully submitted,

/s/ *Chelsea Dunn*

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Appendix H — Defendant's Response to Plaintiffs' Motion for Partial Summary Judgment (January 11, 2024)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No.: 6:22-cv-2192-WWB-RMN

DENNIS SCOTT, CHAD DRIGGERS, DOUGLAS WILLIS, AND GEORGE ROWLAND,

Plaintiffs,

v.

CITY OF DAYTONA BEACH, FLA.,

Defendant.

Filed January 1, 2024

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant files this Response to Plaintiffs' Motion for Partial Summary Judgment (ECF 108) and says:

1. Summary judgment must be denied for the following reasons:

A. Disputed issues of material fact exist as to every core issue in this case. In particular, the key inquiries

concerning the government's interests, advancement of that interest and narrow tailoring are all vigorously contested.

B. *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC,* 142 S.Ct. 1464 (2022) dramatically changed First Amendment jurisprudence with regard to content-based laws:

> Most relevant here, the First Amendment allows for regulations of solicitation—that is, speech "requesting or seeking to obtain something of value". . . [R]estrictions on solicitation are not content based and do not inherently present "the potential for becoming a means of suppressing a particular point of view," so long as they do not discriminate based on topic, subject matter, or viewpoint. (citation omitted).

Id. at 1473 (emphasis added). Plaintiffs' confine their discussion of that crucial case to a single footnote (ECF 108 at 15, n. 1) and never grapple with the solicitation-specific language above. The pre-*Austin* case law relied on by Plaintiffs has been overruled or is now questionable in light of that opinion.

C. Plaintiffs' central thesis is fallacious and asserts that "[t]he Ordinance is specific to charitable donations; it does not make soliciting other things unlawful." (ECF 108 at 11, ¶¶ 55; *See also,* ECF 108 at 8, ¶¶ 30, 15). In reality, the ordinance applies to *every* solicitation seeking

something of value including political donations, religious alms, and contributions to social causes. *See,* § 66-1(b) (ECF 121-2 at 9). No content or speaker is singled out for regulation based on what they say or who they are.

D. Section 66-1 survives intermediate scrutiny. The legislative record, including the predicate clauses in the Ordinance, supports numerous substantial interests including the promotion of business, aesthetics, and traffic congestion. Narrow tailoring is demonstrated by the City's examination of the impact of a similar ordinance in a similar jurisdiction (St. Augustine), by the fact that the ordinance regulates, but does not prohibit solicitations, and by abundant documentation of alternative avenues of communication.[1]

E. Section 66-1 is the rare law which can survive strict scrutiny. Record evidence demonstrates compelling government interests in preventing disease and avoiding traffic fatalities as well as the adoption of the least restrictive means of regulation.

STATEMENT OF DISPUTED FACTS

Defendant has maintained since the inception of this litigation that all of the core issues involve disputed issues

1. There can be no meaningful dispute that Plaintiffs remain free to solicit in 97.5% of the City, including many busy roads and commercial areas. (ECF 120-30 at 2-3, 10; ECF 120-18 at 120-21, 170). There is extensive record evidence concerning the precise methodology employed by the City to arrive at this figure. (ECF 120-18 at 37-102).

of material fact which cannot be determined without an evidentiary proceeding.[2] (ECF 45 at 4-6). These include whether Plaintiffs have standing to maintain all of their claims[3] as well as the factors relevant to First Amendment scrutiny. Defendant identifies the following material facts that remain in dispute:

A. Standing. Plaintiffs solicit donations at major intersections and on busy sidewalks. (ECF 108 at 3, ¶ 2). There is no conflicting evidence and, in fact, a lack of any record evidence to show that the Plaintiffs solicit or even wish to solicit near ATM machines, near public schools, near parks, or near the entrances to businesses. (ECF 8- 1; 8-2; 8-3; 8-4; 108-1, 108-2; 108-3; 108-4).

There is no evidence that Plaintiffs engage in "aggressive panhandling", as that term is defined by the Ordinance, or that they fear they will be arrested for doing so based on any vagueness in that term. (ECF 35 at 3-5); 121-42; 121-431 121-44; 121-45.

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2. Many of the supposed facts which Plaintiffs maintain are undisputed are immaterial to this litigation. It is undisputed that § 66-1 regulates solicitations which request an immediate donation of money or some other article of value. Plaintiffs' examples of unregulated speech are inapposite because they do not involve that financial component. *See,* ECF 108 at 11, ¶¶ 56-60.

3. *See, Pernell v. Florida Bd. of Governors of State Univ. Sys.,* 641 F. Supp. 3d 1218, 1249 (N.D. Fla. 2022) ("Standing 'is not dispensed in gross.' *Lewis v. Casey,* 518 U.S. 343, 358 n. 6, (1996). IA] plaintiff must demonstrate standing for each claim he seeks to press' and 'for each form of relief' " that is sought. *Davis v. Fed. Election Comm'n,* 554 U.S. 724, 734 (2008) *quoting DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 352 (2006).").

Plaintiffs' claim that they solicit at night is conclusory and disputed.[4]

B. Government interest.

(1) § 66-1 was enacted to remedy a gap in the City's existing solicitation laws (commercial solicitations were already regulated by other code provisions (ECF 33-1)). In addition, evidence shows that existing laws were not well-suited to addressing this serious public issue. (ECF 121-2 at 92; 121-13 at 85-89).[5]

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4. In their original Affidavits, none of the Plaintiffs mention panhandling after dark and records of Plaintiff Driggers' arrests show that he solicited during daytime hours. (ECF 8-1; 8-2; 8-3; 8-4).

5. Plaintiffs theorize that a number of other laws could be used instead of § 66-1 to address the adverse secondary effects of solicitations. (ECF 108 at 11-13, ¶¶ 61-72). That argument fails as a matter of fact because the legislative history and record evidence show that existing laws were *not* effective in addressing the government's interests. (ECF 120-13 at 29: "The panhandling situation in Daytona Beach has become unmanageable. It was a constant source of trouble in any number of ways, in terms of businesses, traffic, visitors, everything."; *See, also,* ECF 121-13 at 86-89). Second, those generic alternatives are not as narrowly tailored as § 66-1 to address the precise problems encountered by the City. Third, arresting a solicitor under one of those alternative laws provides no greater protection of First Amendment rights than the narrowly tailored §66-1. Finally, abstract theorizing does nothing to detract from the extensive record supporting this law and the careful tailoring to advance the City's interests. *See, Ward v. Rock Against Racism,* 491 U.S. 781, 800 (1989) ("[T]he regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative.").

(2) Compelling interest in protecting the public against:

(a) Spread of disease. (ECF 121-2 at 29-54; ECF 121-33; ECF 121-38).[6]

(b) Fatal traffic accidents and injuries. (ECF 121-2 at 131-34; ECF 121-5 at 168-170).

(3) Substantial interest in protecting:

(a) The public health (ECF 121-2 at 29-54, 123-24, 143-44, 152-54, 160, 170; ECF 121-5 at 147-48; ECF 121-33; ECF 121-38).

(b) Public safety (ECF 121-34 at 2; 121-2 at 104-05; 121-5 at 136-37).

(c) Traffic and pedestrian safety (ECF 121-16 at 82-85; 121-2 at 104-05, 131-34, 137, 150-51; ECF 121-5 at 139-40; 152-53, 168-69; ECF 121-34; ECF 121-27 at 150-52).[7]

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6. The public health issue is not merely contested on the record but is the subject of a pending *Daubert* motion to exclude the testimony of Steven Miles, M.D. (ECF 109).

7. Plaintiffs argue that Daytona's proofs fail because there were "only two" police reports showing a link between panhandling and traffic accidents and two more with respect to interference with emergency vehicles. (ECF 108 at 7, ¶ 26, 8, ¶ 35). The Plaintiffs do not offer a test for determining how much death and injury must be endured before government is entitled to address the problem.

(d) Promotion of business (ECF 121-31; ECF 121-32; ECF 121-27 at 143-145; ECF 121-2 at 108-117, 135-36; ECF 121-13 at 29-31, 89, 92-93).

(e) Aesthetics. (ECF 121-2 at 123-24; ECF 121-13 at 91-92).

(4) Plaintiffs' argument, and the U.S. Government's Statement of Interest, are premised on the spurious assumption that § 66-1 targets the homeless. (ECF 108 at 2, ¶ 5; ECF 26). The Ordinance does not mention homelessness and the regulated solicitations apply to everyone regardless of wealth or their residential status. (ECF 121-16 at 146-47 ["[H]omelessness has nothing to do with the panhandling ordinance."]; 121-2; 121-5; 121-10; 121-11; 121-12; 121-13 at 25, 32-33; *See, generally, §* 66-1).

C. Advancement of Government Interest.

(1) Evaluation of similar ordinance in St. Augustine which demonstrably advanced the same government interests. (ECF 121-13 at 34-35: "St. Augustine had a similar issue to what we have. . .", 80-81; 134-136; ECF 121-5 at 171-172; ECF 121-10; ECF 121-11; ECF 121-12). *See, also,* ECF 121-13 at 33, 78-82 (improvement in St. Augustine).

(2) Evidence of advancement of government interests within the City post-enactment. (ECF 121-17 at 83-85; ECF 121-29; ECF 121-31; ECF 121-32; ECF 121-33; ECF 121-34; ECF 121-35; ECF 121-36).

(3) The burden on speech is slight and entirely proportionate to the government's need. *See, e.g.,* ECF 121-18 at 139-42, 158, 170.

(4) Defendant contests Plaintiffs' assertion that other criminal laws provide a superior means of regulation. *See,* footnote 5, *supra.*

D. Narrow Tailoring / Least Restrictive Means

(1) Plaintiffs' claim that "[t]he City did not attempt to use other available laws to address the problems its (sic) associates with panhandling" [ECF 108 at 13, ¶ 72] is contravened by the legislative history and by multiple witnesses. (ECF 121-10, 121-11, 121-12, *generally*). Moreover, Plaintiffs do not and cannot suggest a narrower law which would serve the government interest equally well.

(2) Evaluation of a similar ordinance in St. Augustine shows consideration of alternative means of regulation. (ECF 121-16 at 34-35, 80-81, 134-36; ECF 121-10; ECF 121-11; ECF 121-12; ECF 121-5 at 171-72).

(3) Defendant's assertion that 97.5% of the City remains available for solicitations is in dispute. Plaintiffs' expert claims that 31.9 % of Daytona Beach is actually available for panhandling.[8] (ECF 107-1).

8. Defendant has filed a *Daubert* motion directed to that expert's opinion. (ECF 107). In addition to typical issues concerning a failure to report methodology or demonstrate expertise in the area, the opinion ignores multiple binding Supreme Court precedents on the central issue of access to private property.

(4) The balance on speech is slight (ECF 121-27, at 181: "It's a big city, and a very small part of it's restricted"). and the government's multiple interests would not be served by a less restrictive alternative. (ECF 121-13 at 29, 86-89).

E. Core Issue of What Solicitations are Affected. Plaintiffs claim that §66-1 regulates only charitable solicitations. (ECF 108 at 11, ¶ 55). That is untrue both on the face of the Ordinance and as a matter of contested fact.

MEMORANDUM OF LAW

Plaintiffs' Motion must be denied because § 66-1 of the Daytona Beach Code of Ordinances is constitutional on its face. Plaintiffs argue the incorrect constitutional standard and fail to acknowledge the change in law effected by the Supreme Court's recent decision in *Austin, supra.*

In addition, Plaintiffs are not entitled to summary judgment because there are multiple genuine issues of material fact which are disputed. *Compare, McDonald v. City of Pompano Beach, Florida,* 556 F.Supp. 3d 1334 (S.D. Fla. 2021) (Summary judgment denied where ordinance prohibiting panhandling on certain medians was the subject of numerous factual disputes).[9]

9. Defendant did not file for summary judgment in this proceeding because it realized that the existence of contested facts precludes summary judgment.

Appendix H

I. STANDARD FOR SUMMARY JUDGMENT

"Under Rule 56(c), summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). The moving party bears the initial burden of showing the Court that there are no genuine issues of material fact in the record which would require a trial. *Id.* The evidence, and all inferences drawn from the facts, must be viewed in the light most favorable to the non-moving party. *Id.* Summary judgment is inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts:

> "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *See* Anderson, 477 U.S. at 255, 106 S.Ct. 2505.

Allen v. Board of Public Educ. for Bibb County, 495 F.3d 1306, 1315 (11th Cir. 2007); *See, also, Sconiers v. Lockhart,* 946 F.3d 1256, 1263 (11th Cir. 2020) ("[I]f a reasonable jury could make more than one inference from the facts, and one of those permissible inferences creates a genuine

issue of material fact, a court cannot grant summary judgment. . . Rather, the court must hold a trial to get to the bottom of the matter.").

Plaintiffs' Motion must be denied because there exist a plethora of genuine issues of material fact and §66-1 of the Daytona Beach Code of Ordinances is constitutional on its face. Further, Plaintiffs argue the incorrect legal standard and fail to acknowledge the impact of the Supreme Court's recent decision in *Austin*.[10]

II. INTRODUCTION TO *REED* AND *AUSTIN*

Daytona Beach's regulation of panhandling and solicitations is not much different from laws which have been enacted for decades in communities across the country.[11] The City has enacted time, place and manner restrictions which govern where and when solicitations may take place. Crucially, this law is *not* dependent on the content or viewpoint of any solicitations. Solicitors remain free to say whatever they wish: solicitors can seek money or items of value for their own benefit or for any charity or cause they choose. *What* they say is not the

10. The Court denied the City's Request for five additional pages of briefing. (ECF 116). It is impossible in this case of first impression to adequately address the disputed issues of material fact as well as briefing on the key constitutional issues including the impact of *Austin* and the question of content-neutrality in solicitation ordinances within the 20 pages allotted.

11. *See, generally, Panhandling Laws,* The First Amendment Encyclopedia (2017) https://www. mtsu .edu/first-amendment/article/1215/panhandIing-laws (last accessed 1/8/24).

issue under § 66-1. Rather it is *where* they say it, *when* they say it and—in the case of aggressive solicitations — *how* they say it.

Historically, ordinances regulating panhandling and other solicitations were treated as time, place and manner restrictions subject to intermediate scrutiny. *See, e.g., Smith v. City of Fort Lauderdale, Fla.,* 177 F.3d 954, 956 (11th Cir. 1999) (Ban on solicitations along the city's beaches was limited in terms of geography and subject to intermediate scrutiny); *Gresham v. Peterson,* 225 F.3d 899, 901-02 (7th Cir. 2000) (Court upheld law that, like §66-1, regulated aggressive panhandling, hours when solicitations could occur and exclusion zones around ATMs, shops, etc.).

Solicitation laws were not thought to be content-based because the subject matter of the conversation between the panhandler and the public was not at issue. The accepted view of the law changed dramatically with the Supreme Court's decision in *Reed v. Town of Gilbert, Ariz.,* 576 U.S. 155 (2015). *Reed* radically redefined what it means for a law to be content-based. In *Reed*, a sign case having nothing to do with solicitation, Justice Thomas, speaking for a fractured plurality,[12] found that the content of individual signs meant that the ordinance was content-based even if the goal was not to censor any particular message. *See, Reed*, 576 U.S. at 163-64.

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12. In a concurring opinion, Justices Breyer, Kagan and Ginsburg warned about the unintended consequences of *Reed*, and opined that a literal reading of the majority's opinion would render the sign "George Washington slept here" subject to strict scrutiny.

Appendix H

While not directly addressing the subject of panhandling, Reed nonetheless had an immediate and pervasive effect on the lower courts' treatment of solicitation ordinances. In the wake of *Reed*, ordinary solicitation ordinances were struck down in droves. *See, e.g., Thayer v. City of Worcester,* 755 F.3d 60, 67-68 (1st Cir. 2014); *Norton v. City of Springfield, III.,* 806 F.3d 411 (7th Cir. 2015); *Messina v. City of Fort Lauderdale, Ha.*, 546 F.Supp. 3d 1227, 1240 (S.D. Fla. 2021) ("[P]anhandling laws, in the wake of *Reed*, have been enjoined by federal courts across the country. . .").

Reed was substantially modified by the Supreme Court's more recent decision in *City of Austin. Austin* considered whether a law prohibiting off-site billboards, but allowing on-site advertising, was content-based. The Court held that a law was *not* necessarily content-based simply because one had to read the message or listen to the speech in order to determine whether the law applies:

> Underlying these cases and others is a rejection of the view that *any* examination of speech or expression inherently triggers heightened First Amendment concern. Rather, it is regulations that discriminate based on "the topic discussed or the idea or message expressed" that are content based. *Reed*, 576 U.S. at 171, 135 S.Ct. 2218.

City of Austin, 596 U.S. at 73-74.

Notably for the instance case, the Court specifically addressed the constitutionality of laws regulating solicitation:

> Most relevant here, the First Amendment allows for regulations of solicitation—that is, speech "requesting or seeking to obtain something" or lamn attempt or effort to gain business." Black's Law Dictionary 1677 (11th ed. 2019). To identify whether speech entails solicitation, one must read or hear it first. Even so, the Court has reasoned that *restrictions on solicitation are not content based* and do not inherently present "the potential for becoming a means of suppressing a particular point of view," so long as they do not discriminate based on topic, subject matter, or viewpoint. (citation omitted)).

Id. at 1473 (emphasis added); *See, also, Hines v. Pardue,* F.Supp.3d , 2023 WL 5254673 at *19 (S.D. Tex. Aug. 15, 2023) ("[S]olicitation restrictions represent content-neutral regulations, 'so long as they do not discriminate based on topic, subject matter, or viewpoint." (*quoting City of Austin*)).

Austin is so recently decided that the Eleventh Circuit has not yet spoken definitively on the subject[13] and no

13. To date, only one Eleventh Circuit case has cited to *Austin: LaCroix v. Town of Fort Myers Beach, Fla.,* 38 F.4th 941, 947 (11th Cir. 2022). *LaCroix* determined that a ban on all portable signs was content-neutral under *Austin* because the ban applied

Florida Court has yet issued a ruling directly on point. Appellant has also found no post-*Austin* case which has specifically addressed the constitutionality of panhandling ordinances. However, the contours of *Austin* are becoming clear as Circuit Courts elsewhere begin to apply in it contexts other than signage. *See, e.g., Mazo v. New Jersey Sec'y of State,* 54 F.4th 124, 149 (3d Cir. 2022), *cert. denied sub nom. Mazo v. Way,* No. 22-1033, 2023 WL 6377826 (U.S. Oct. 2, 2023) ("Under *City of Austin,* then, a law is 'agnostic as to content,' if it 'requires an examination of speech only in service of drawing neutral' lines. . . . A second category of neutral line-drawing distinguishes between speech based on its function or purpose without indirectly regulating subject matter, such as whether speech constitutes `solicitation.'"); *See, also, Nat'l Fed'n of the Blind of Texas Inc. v. City of Arlington, Texas,* 2022 WL 4125094 *7 (N.D. Tex. 2022); *Porter v. Martinez,* 68 F.4th 429 (9th Cir. 2023).

These cases show a widespread recognition that solicitation ordinances will not be deemed content-based under *Austin* unless they target particular speakers or messages. In other words, distinctions based on categories defined by speech are not automatically content-based. The significance of a finding of content-neutrality for the

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to all portable signs regardless of what message was displayed. Analogously, §66-1 must be deemed content-neutral because it applies to all instances of solicitation for the immediate donation of money or consideration. It must be upheld under intermediate scrutiny because it does *not* impose a complete ban (as was the case in *LaCroix*) but allows unrestrained solicitations almost everywhere in the City during any daylight hours.

instant case is that the law will be subject to intermediate scrutiny rather than strict scrutiny.

A. SECTION 66-1 IS CONTENT-NEUTRAL; THE LAW DOES NOT DISCRIMINATE ON THE BASIS OF TOPIC, SUBJECT MATTER OR VIEWPOINT.

Section 66-1 is written in plain language which clearly defines solicitations so that it reaches *every* conceivable instance where an immediate donation is made in response to a request:

> *Panhandle* means to beg or make any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited to for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this article, the word "solicit" and its forms are included in this definition. . . . Begging is included in this definition of panhandling. Soliciting is including in this definition of panhandling.

§ 66-1(b)(3)—Definitions *Panhandle* (ECF 121-2 at 9). All requests for the immediate donation of money are included, regardless of content, viewpoint or the identity of the speaker. In the words of *Austin,* the Ordinance is

completely "agnostic as to content". *Austin,* 596 U.S. at 69.[14]

Under § 66-1, a regulated solicitation certainly could be for charitable purposes. However, the solicitation could also be for political or religious purposes or to support some social cause. If a politician or an evangelist engages in solicitation, that individual will be subject to the Ordinance to the same extent as someone seeking alms. The Ordinance regulates the act of solicitation; not the content of the communication.

Given the plain language of the Ordinance, there is no occasion to construe the law so that it applies only to certain categories—such as charitable solicitations—when it clearly applies to every solicitation seeking a donation for any person, cause or purpose.[15]

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14. The fact that the Ordinance regulates only where there is an exchange of money or other thing of value does not transform the Ordinance into a content-based law. *See, StreetMediaGroup, LLC v. Stockinger,* 79 F.4th 1243, 1250-51 (10th Cir. 2023) (Sign law which required billboard owners to obtain a permit for displaying paid messages but not for messages for which no payment was received was not content-based).

15. There is nothing ambiguous about the definition of "panhandling" nor is there anything unusual about including the terms "begging" and "soliciting" within the broader statutory definition. *See, Smith v. City of Fort Lauderdale, Fla.*, 177 F.3d 954, 955 (11th Cir. 1999). There is no call for statutory construction where there is no ambiguity. *See, e.g., United States v. Dawson*, 64 F.4th 1227, 1236 (11th Cir. 2023) ("If the language of the statute is clear and unambiguous, we will go no further and will employ that plain meaning.").

Plaintiffs complain that the law only regulates solicitations which request an immediate donation of something of value and does not apply to other forms of solicitation. (ECF 108 at 15).[16] Under § 66-1, speakers cannot solicit an immediate contribution but remain free to draw attention to the plight of the homeless or request a donation of money at some future time or place. The distinction Plaintiffs pursue here is not content-based nor does it suggest that § 66-1 is over- or underinclusive.[17]

The City is not faced with the choice of vanquishing all of life's ills or doing nothing at all. *See, Williams-Yulee v. Florida Bar,* 575 U.S. 433, 449 (2015) ("A State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns."). There is nothing unconstitutional about the

16. The City has a comprehensive system for regulating street vendors and others engaged in commercial solicitations within Daytona Beach. *See,* §66-32; §82-4; §94-8. (ECF 33-1). Section 66-1 addresses an entirely different problem which falls outside the scope of the City's commercial restrictions.

17. Plaintiffs also suggest that § 66-1 was enacted for a content-based reason despite the apparent content-neutrality of its text. This claim seems to be based on the fact that many panhandlers are homeless and the testimony at the public hearing sometimes conflated the two terms. However, a favorable review of the record as mandated for this summary judgment proceeding shows that the City was concerned with the act of panhandling and its consequences, not where individual panhandlers resided or what they did for a living. The record also shows that the City did not receive the same sort of complaints about religious speakers or political campaigns not engaged in requests for immediate donations. (ECF 120-13 at 77-78).

City's decision to focus on those solicitations closely linked to the pernicious effects of disease and traffic hazards, rather than every solicitor of every kind. *See, McCullen v. Coakley,* 573 U.S. 464, 480 (2014) ("[A] facially neutral law does not become content-based simply because it may disproportionately affect speech on certain topics.").

Under *Austin*, a solicitation law which does not discriminate based on content or the identity of the speaker is content-neutral on its face and is subject to intermediate scrutiny, not strict scrutiny. *See, StreetMediaGroup,* 79 F.4th at 1252 ("Because the Act and rules are content neutral under Supreme Court precedent, we review under the intermediate scrutiny standard of review.").

B. SECTION 66-1 SURVIVES INTERMEDIATE SCRUTINY.

Time, place and manner restrictions, such as § 66-1, are typically reviewed under the three-part test announced in *Ward v. Rock Against Racism,* 491 U.S. 781 (1989):[18]

> [E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions "are justified without reference

18. There are numerous tests for intermediate scrutiny in cases such as Ward, *O'Brien,* and *Renton.* However, as a practical matter, these various tests all lead to the same result. *See, generally, Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale,* 11 F.4th 1266, 1291-92 (11th Cir. 2021).

> to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." (citations omitted).

Id. at 791.

Section 66-1 comports precisely with the Supreme Court's ruling in *Austin*. The City established a category of speakers subject to regulation—persons who engage in solicitation—recalling that the Court specifically held that "the First Amendment allows for regulations of solicitation". *Austin,* 596 U.S. at 72. The category of "solicitation" is obviously defined in terms of speech, and "[t]o identify whether speech entails solicitation, one must read or hear it first". However, *Austin* tells us that such ordinances are not content-based so long as they do not turn on what is said or who is doing the speaking. *Id.*[19] Individuals who engage in solicitation, as defined in §66-1, are treated the same regardless of "topic, subject matter, or viewpoint". *Id.*

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19. This This is the point of departure between *Austin* and *Reed*. Under the earlier precedent, a category defined in terms of speech would be considered content-based even if the category did not distinguish between individual speakers or turn on the content of what was said. Thus, one could not regulate solicitors as a class under *Reed*, but such regulations are specifically permissible under *Austin*.

There is no question that the governmental interests set forth in the predicate clauses of Daytona Beach's solicitation Ordinance are substantial:

> It is well settled that "a State's interest in protecting the 'safety and convenience' of persons using a public forum is a valid governmental objective." *Heffron v. International Society For Krishna Consciousness,* 452 U.S. 640, 650, 101 S.Ct. 2559, 2565, 69 L.Ed.2d 298 (1981). *See also Messer v. City of Douglasville, Ga.,* 975 F.2d 1505, 1510 (11th Cir. 1992) (holding that "both traffic safety and aesthetics are substantial governmental goals"). As the Supreme Court stated, "[M]unicipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for the movement of people and property, the primary purpose to which the streets are dedicated." *Schneider v. State of New Jersey,* 308 U.S. 147, 160, 60 S.Ct. 146, 150, 84 L.Ed. 155 (1939).

Int'l Caucus of Lab. Committees v. City of Montgomery, 111 F.3d 1548, 1551 (11th Cir. 1997); *See, also, Jim Gall Auctioneers, Inc. v. City of Coral Gables,* 210 F.3d 1331, 1333 (11th Cir. 2000) (We see no reason to revisit the district court's finding that the City has a substantial interest in maintaining the aesthetics and tranquility of its residential neighborhoods, as well as in regulating traffic flow."). The existence of even one substantial interest is sufficient to support a regulation. *See, Fla. Bar v. Went For It, Inc.,* 515 U.S. 618, 625, n. 1 (1995).

Appendix H

While the burden is on the government to show that it has adopted a narrowly tailored law, it is not the business of the Courts to second-guess reasonable legislative decisions. *See, Turner Broad. Sys., Inc. v. F.C.C.,* 512 U.S. 622, 662 (1994), *quoting* Ward, *supra* ("To satisfy this standard, a regulation need not be the least speech-restrictive means of advancing the Government's interests. 'Rather, the requirement of narrow tailoring is satisfied `so long as the. . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.").

The record includes evidence in support of the Ordinance as to all aspects of its regulations. (ECF 121-36; 121-5 at 17-18, 147-148, 153, 167 [basis for location-based restrictions; public defecation/urination as unique problem]; ECF 121-32 at 2-5 [aggressive panhandling; defecation/urination at business entrance]; ECF 121-33 [unique public health risks and ties to panhandling]; ECF 121-34 at 2-3; 121-5 at 9-10, 163-66 [aggressive panhandling; solicitations after dark]).

The City was careful to draft a law which was narrowly tailored to advance its interests without unnecessarily burdening Plaintiffs' speech rights. (ECF 20; ECF 121-30; ECF 121-36 at 6-7). That effort is apparent on the face of the Ordinance. The City's Ordinance does not ban panhandling. In fact, the Ordinance barely regulates it at all. Panhandling is permitted without any restrictions in some 97.5% of the City during all daylight hours. (ECF 121-30 at 10). *Compare, City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41 (1986) (Upholding adult entertainment zoning where only five percent of the city was available

for those uses). The areas where panhandling is regulated are closely tied to high-traffic areas in terms of vehicular or pedestrian movement. (ECF 121-13 at 99-101; ECF 121-36). Other locations where panhandlers are regulated include areas where pedestrians are concentrated at entranceways to businesses and public buildings and places where individuals may expect a degree of privacy or are captive audiences, such as at ATMs. (ECF 121-2 at 183). Even there, a panhandler can bring attention to the plight of the homeless and encourage charitable giving so long as there is no immediate donation of money or consideration.

Narrow tailoring is also demonstrated by the fact that the City Commission closely studied a very similar panhandling ordinance enacted in St. Augustine and considered the entire evidentiary record developed in that city's public hearings. (ECF 121-5 at 172-173; 121-10; 121-11; 121-12; *See, also,* ECF 121-5 at 83-84, 93-97). It was entirely reasonable for the City of Daytona Beach to look at the experiences of other cities and the legislative solutions tried elsewhere to address a common problem. Indeed, consideration of other ordinances is a bellwether for determining whether a local government has considered the impact of its regulations on speech. *Contrast,* FF *Cosmetics FL, Inc. v. City of Miami Beach,* 866 F.3d 1290, 1300-01 (11th Cir. 2017).[20]

20. Plaintiffs never suggested that any other kind of regulation would be sufficient to address the City's legitimate interests. Rather, they take the maximal position that no restrictions are permissible on panhandlers under any circumstances. Plaintiffs' extreme position runs contrary to the

The burden on speech here is slight. Plaintiffs can either move a few feet to a lawful location to solicit money or they can engage in advocacy anywhere so long as they do not seek an immediate donation of money.[21] Section 66-1 of the Daytona Code satisfies intermediate scrutiny in all respects.

C. EVEN IF DAYTONA BEACH'S SOLICITATION ORDINANCE IS CONTENT-BASED, IT SURVIVES STRICT SCRUTINY GIVEN THE COMPELLING GOVERNMENT INTERESTS ASSERTED AND THE NARROWNESS OF THE REGULATION.

To the extent that strict scrutiny applies, Daytona Beach's solicitation Ordinance has predicate clauses that assert compelling government interests, all of which are supported by record evidence. The effort to survive strict scrutiny appears to be unique among reported cases as local governments have generally conceded that their regulations cannot meet that standard. Yet, regulations can and do survive strict scrutiny where the interest is

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Supreme Court's observation that solicitation ordinances are fully consistent with the First Amendment. *Austin,* 596 U.S. 61 at 72.

21. Plaintiffs complain that their solicitations will be "hampered" if they are forced to move down the street. (ECF 108 at 2, li 5). That slight inconvenience does not serve to invalidate the law. *See, e.g., Florida Preborn Rescue, Inc. v. City of Clearwater, Florida,* 2023 WL 7181593 at *11 (M.D. Fla. Oct. 20, 2023) ("[T]he law is well-settled that the alternative channel 'does not have to be the speaker's first choice." (citation omitted)).

compelling and the law is carefully crafted. *See, Williams-Yulee v. Fla. Bar,* 575 U.S. 433 (2015).

Preserving the public health is a compelling government interest. *See, Regents of Univ. of California v. Bakke,* 438 U.S. 265, 310 (1978) ("It may be assumed that in some situations a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification."); *Buchwald v. Univ. of New Mexico Sch. of Med.,* 159 F.3d 487, 498 (10th Cir. 1998) ("[P]ublic health is a compelling government interest. . ."). In this case, Daytona Beach introduced expert testimony from Steven Miles, M.D. about the link between panhandling, open defecation and urination and the spread of life-threatening diseases. (ECF 121-33 at 3, ¶¶ 12-13). Dr. Miles' opinion was supported by medical literature documenting the diseases addressed in his testimony. (ECF 121-3). The unique link between panhandling and open defecation and urination was supported by numerous witnesses, including police officers, the fire chief, fire personnel, public workers, business owners and employees. (ECF 121-5 at 147-48; ECF 121-31 at 4; 121-32 at 3-4; ECF 121-36 at 3-5). Plaintiffs have introduced no evidence to contradict the existence of these compelling interests.[22]

The City also identified traffic and pedestrian safety as a compelling interest served by its panhandling Ordinance. (ECF 44 at 17-18). *See, Gbalazeh v. City of*

22. Plaintiffs' medical expert did not directly contradict Dr. Miles' study. Rather he took issue with the length of time disease organisms might survive. (ECF 120-38 at 3-6).

Dallas, Texas, No. 3:18-CV-0076-N, 2019 WL 1569345 at *2 (N.D. Tex. 2019) ("Traffic safety qualifies as a compelling government interest; *See, also, Solantic, LLC v. City of Neptune Beach,* 410 F.3d 1250, 1268 (11th Cir. 2005) ('We do not foreclose the possibility that traffic safety may in some circumstances constitute a compelling government interest. . ."). It is no great stretch to imagine that individuals regularly approaching cars at busy intersections expose themselves to extreme risks which the government may wish to ameliorate. (ECF 121-36 at 1-2, ¶¶ 5, 6).

Section 66-1 adopts the least restrictive means of regulation. Panhandling is regulated in the community, but is permitted in over 97.5% of the City, including many busy roads and commercial areas. The temporal restrictions are limited to nighttime hours when solicitation is rare and dangerous conditions exist. *Compare, Lady J. Lingerie, Inc. v. City of Jacksonville,* 176 F.3d 1358, 1365 (11th Cir. 1999) (Adult businesses could operate fourteen hours a day, seven days a week). The only restriction on manner pertains to specifically defined "aggressive" panhandling, which addresses conduct rather than speech, and is tailored so that it reaches only actions tantamount to an assault.

Daytona Beach's solicitation Ordinance has asserted compelling state interests in its predicate clauses and has more than amply supported them in its comprehensive legislative record. Section 66-1 can satisfy the extraordinary burdens imposed by *Reed*, although

it should be governed by the lesser burdens adopted by *Austin*.

WHEREFORE, Defendant prays that the Court deny the Plaintiffs' Motion for Partial Summary Judgment in its entirety.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed on this 11th day of January, 2024, by using the court's CM/ECF system.

/s/ Michael H. Kahn
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Florida Bar No.: 0241921

Appendix I – Plaintiffs' Reply in Support of Their Motion for Partial Summary Judgment (January 25, 2024)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No.: 6:22-cv-2192-WWB-RMN

DENNIS SCOTT, *et al.*,

Plaintiffs,

v.

CITY OF DAYTONA BEACH, FLA.,

Defendant.

Filed January 25, 2024

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs moved for partial summary judgment on December 5, 2023 (ECF 108), and Defendant responded on January 11, 2024 (ECF 122). Plaintiffs hereby reply.

I. Plaintiffs have standing to challenge the Ordinance.

As an initial matter, in its Statement of Disputed Facts, Defendant claims that the Plaintiffs' standing is

disputed. (ECF 122, at 3.) However, Defendant does not even mention standing in its Memorandum of Law and fails to cite any authority to support its factual contention. In ruling on the preliminary injunction motion, this Court noted that Defendant had failed to specifically argue standing. (ECF 72, at 6 n.6.) Despite that admonishment, Defendant has failed to properly raise the issue once again.

Regardless, the evidence in the record clearly supports Plaintiffs' standing. Plaintiffs' first claim challenges the location-based provisions of the Panhandling Ordinance. (ECF 35, at 23-26.) Plaintiffs panhandle on public fora such as sidewalks, intersections, and the Boardwalk. (ECF 39-1, at 1, ¶6; ECF 39-2, at 1, ¶6; ECF 39-3, at 1, ¶¶ 5-6; ECF 39-4, at 1, ¶7.) Although the City argues that Plaintiffs do not solicit near ATMs, schools, parks, and business entrances (ECF 122, at 3), the City's maps show that the prohibited zones for these areas often overlap with sidewalks and intersections.[1] Plaintiffs' second claim challenges the after-dark provisions. (ECF 35, at 26-29.) Plaintiffs Driggers, Rowland and Willis have stated that they sometimes panhandle at night. (ECF 39-5; ECF 39-6; ECF 39-7.) Plaintiffs' third claim challenges the traffic provisions. (ECF 35, at 30-33.) Plaintiffs Driggers, Rowland and Scott panhandle at intersections and request donations from drivers of stopped cars. (ECF 39-1, at 1, ¶6; ECF 39-2, at 1, ¶6; ECF 39-4, at 1, ¶7). Plaintiffs' final claim challenges the conduct-related provisions. (ECF 35, at 33-36.)All four Plaintiffs have stated they may panhandle in a

1. *See*, *e.g.*, ECF 20-6, at 27 (ATM); ECF 20-5, at 180, ECF 20-5, at 203 (schools); ECF 20-6, at 26 (park); ECF 20-5, at 203, ECF 20-6, at 5 (business entrances).

way that the City has defined as "aggressive." (ECF 108-1, at 9-10; ECF 108-2, at 9-10; ECF 108-3, at 9-10; ECF 108-4, at 9-10.) Defendant cites no evidence that contradicts any of these statements. Notwithstanding Defendant's assertions, the facts supporting Plaintiffs' standing are not in dispute. Plaintiffs have shown injury in fact, a causal connection, and redressability by Defendant. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

II. The Ordinance is content-based because it discriminates based on topic and subject matter.

Defendant's argument that the Ordinance is content-neutral is based on a fundamental misreading of *City of Austin, Tex. v. Reagan Nat'l Advertising of Austin, LLC*, 596 U.S. 61 (2022). The City incorrectly contends that *Austin* "substantially modified" *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015). (ECF 122, at 10.) *Austin* actually reaffirmed the main holding of *Reed* that "it is regulations that discriminate based on 'the topic discussed or the idea or message expressed' that are content based." 596 U.S. at 73-74 (quoting *Reed*). Indeed, cases from other circuits confirm the District Court's reading that *Austin* did not overturn or otherwise modify the holding from *Reed*. *See Int'l Outdoor, Inc. v. City of Troy, Mich.*, 77 F.4th 432, 436, n.1 (6th Cir. 2023); *Project Veritas v. Schmidt*, 72 F.4th 1043, 1056 (9th Cir. 2023); *Schrader v. Dist. Att'y of York Cnty.*, 74 F.4th 120, 127 (3d Cir. 2023). Regarding solicitation, *Austin* stated that the government could regulate solicitation, so long as it did not "discriminate based on topic, subject matter, or viewpoint." *Id.* at 72. Importantly, the Court in *Austin* used the ordinary

definition of "solicitation," going so far as to quote Black's Law Dictionary: "solicitation—that is, speech 'requesting or seeking to obtain something' or '[a]n attempt or effort to gain business.'" *Id.*

The City relies on this language from *Austin* in its attempt to defend the Ordinance. However, as this Court has aptly observed, "Defendant . . . narrowly redefines "solicitation" to include only the speech it wishes to restrict—requests for donations—and then uses the Supreme Court's holding in *Austin* to argue the Ordinance's restriction on 'solicitation' is content neutral." (ECF 105, at 5-6.) The Ordinance clearly does not include all forms of solicitation as that term was construed in *Austin*. *Compare* City Code Ch. 66, Peddlers, Solicitors, Canvassers, Itinerant Vendors, Art. I, Sec. 66-1, Panhandling, begging & solicitation, *with* Art. II, Commercial Peddlers, Solicitors, Canvassers, Itinerant Vendors, & Art. V, Off-Premises Solicitation.[2] In fact, the City's 30(b)(6) representative explicitly said that the Ordinance "is specific towards charitable donations." (ECF 106-2, 170:2-10.) By re-defining solicitation to include only speech that requests or seeks to obtain donations while ignoring speech that requests or seeks to obtain anything else, the City is in fact discriminating based on topic and subject matter.

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2. The City Code (last accessed Jan. 22, 2024) can be found on Municode at: https://library.municode.com/fl/daytona_beach/codes/code_of_ordinances?nodeId=PTIICOOR_CH66PESOCAITVE.

The City claims that the Ordinance is content-neutral because it prohibits all speakers from requesting immediate donations. (ECF 122, at 13.) However, that argument gives away the game; requests for donations, which are by definition charitable solicitations, are prohibited but other types of speaking are not. This is no different than if the City prohibited all speakers from talking about the upcoming election, or from discussing the weather. What the City has done is remove one subject of solicitation from public discourse, while allowing other types of solicitation. Such a regulation is content-based and subject to strict scrutiny. *See Reed*, 576 U.S. at 169 ("But it is well established that '[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.'").

Since *Reed*, courts have unanimously found that anti-panhandling ordinances were content-based restrictions on speech. *See e.g.*, *Rogers v. Bryant*, 942 F.3d 451, 456 (8th Cir. 2019); *Messina v. City of Ft. Lauderdale*, 546 F. Supp. 3d 1227, 1242-43 (S.D. Fla. 2021) (collecting cases). This includes at least one decision issued after *Austin*. *Henagan v. City of Lafayette*, No. 6:21-CV-03946, 2022 WL 4546721, at *3 (W. D. La. Sept. 27, 2022) (ordinance restricting begging and soliciting money "does discriminate based upon topic and speaker"). The City cites a few cases that apply *Austin* in contexts other than panhandling or charitable solicitation to state that "distinctions based on categories defined by speech are not automatically content-based." (ECF 122, at 12.) That is true as far as it goes, but it does not mean that such distinctions are

automatically content-neutral, either. *Austin* is clear that "a regulation of speech cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a 'function or purpose' proxy that achieves the same result." *Austin*, 596 U.S. at 74. The overarching rule is that laws that discriminate based on the topic discussed or the idea expressed, such as the Ordinance at issue here, are content-based. *Id.* at 73-74.

III. The facts that are in dispute are immaterial to Plaintiffs' Motion.

Defendant argues that there are numerous disputed facts, and therefore summary judgment is not warranted. (ECF 122, at 7.) However, the facts Defendant claims are in dispute are immaterial to the legal issues raised in Plaintiffs' motion or are not supported by the record. Plaintiffs' motion simply argues that the Ordinance is content-based[3] and not narrowly tailored to the governmental interests that purportedly justify it. Thus, even though the parties disagree about whether the Ordinance actually advances the City's proffered interests,[4] such disputes are

3. While the undisputed facts show the Ordinance is content-based, even if it was content-neutral and reviewed under intermediate scrutiny it is required to be narrowly tailored. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). As detailed in Plaintiffs' motion (ECF 108, at 23), it is not, and therefore the Ordinance fails even that lighter burden.

4. In this regard, among other things, the City takes issue with the Plaintiffs' discounting the police reports offered as evidence at the City Commission hearings. (ECF 122, at 5 n.7.) While throwing around provocative words like "injury" and

immaterial to whether the Ordinance is content-based and meets narrow tailoring.

Defendant states that the core issue is what solicitations are covered by the Ordinance. (ECF 122, at 7.) The important point is that the undisputed facts show the Ordinance does not apply to all solicitations, as that term was used in *Austin* and defined by Black's Law Dictionary, and that whether a solicitation is covered is determined by its subject. It is undisputed that the Ordinance does not apply to offers to buy and sell event tickets (ECF 106-2, 172:14-173:2; ECF 108-9, at 7-12), solicitations for attendance at religious services (ECF 106-2, 174:20-175:16; ECF 108-9, at 4-6), or to people holding signs advertising businesses.[5] (ECF 106-2, 171:7-172:13; ECF 108-9, at 1.) There is no actual dispute as to what the Ordinance covers.

Defendant's attempt to create a dispute of fact regarding narrow tailoring fares no better. First, Defendant disputes the fact that the City did not use other available laws to address its interests. (ECF 122, at 6.) However, the legislative record it cites does not say what the City asserts it says; there is no evidence that the City used other laws to ameliorate the issues raised at the City

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"death" is eye-catching, the City misses the point: *its own maps* demonstrate that the Ordinance would not have prevented the complained-of harms. (ECF 108, at 8-9.)

5. In a footnote, the City claims that these examples are "inapposite because they do not involve [a] financial component." (ECF 122, at 3, n.2.) Clearly, exchanging tickets for money and selling goods for money involves a financial component.

Commission hearings.[6] In fact, the City's own 30(b)(6) representative admitted as much: "Q: What evidence does the City have that it has attempted to use these other laws in order to prohibit the problems? A: I just told you. We haven't." (ECF 121-13, at 86:24-87:2.)

The City goes on to claim that the fact that it evaluated a similar ordinance used in St. Augustine shows that it considered alternative means of regulating panhandling. (ECF 122, at 6.) However, the St. Augustine ordinance is essentially the same as the one passed by Daytona Beach. Indeed, Daytona Beach chose to hire Mr. Kahn to draft its ordinance precisely because he had drafted the ordinance that was passed in St. Augustine. (ECF 123-13, at 33:8-10.) That the City considered an ordinance with provisions nearly identical—and thus similarly burdensome on protected speech—to those it ultimately passed does not show that it considered any less restrictive alternatives, as is required for narrow tailoring. *McCullen v. Coakley*, 573 U.S. 464, 494- 95 (2014).

Finally, in attempting to create a dispute of fact regarding narrow tailoring, the City points to disputed evidence about how much of the City remains available for panhandling, and that the effect of the Ordinance on speech is "slight." (ECF 122, at 6.) However, this argument conflates the narrow tailoring analysis with the alternative

6. The City also failed to cite with specificity any facts to support this contention. A general citation to exhibits that total more than 1,000 pages does not give sufficient notice to the Plaintiffs or the Court as to what portion is being used to show that the City attempted to use other laws.

channels analysis of intermediate scrutiny. *Brewer v. City of Albuquerque*, 18 F.4th 1205, 1239 (10th Cir. 2021); *see also Cutting v. City of Portland*, 802 F.3d 79, 88 (1st Cir. 2015) ("the fact that there are other places where plaintiffs may engage in their expressive activity 'misses the point'" of the narrow tailoring inquiry" (quoting *McCullen*, 573 U.S. at 489)). This is not a meaningful dispute for summary judgment purposes.

IV. Conclusion

For the foregoing reasons stated above and in their initial Motion, Plaintiffs' Motion for Partial Summary Judgment should be granted.

Respectfully submitted,

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Appendix I

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