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VIA EMAIL

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RE: Augusta-Richmond County “Panhandling” Ordinance

Dear Mayor Davis, Members of the Augusta-Richmond County Board of Commissioners, and Attorney Brown:

We write to express our concerns regarding the May 25, 2021 proposal by the Public Service Committee of Augusta-Richmond County (“the County”) to expand its “aggressive panhandling” ordinance, County Code Section 3-7-1(x) (“the Ordinance”), to encompass the entire geographic span of the County. As originally enacted, the Ordinance criminalizes the innocent act of requesting charity and is accordingly a content-based restriction on speech, which violates the First Amendment to the United States Constitution. Expanding the Ordinance’s reach countywide would foreclose alternative channels of communication for the prohibited speech, rendering the Ordinance substantially overbroad and exacerbating its unconstitutionality. To protect the First Amendment rights of Augusta-Richmond residents, we urge you to reject the Ordinance’s expansion and repeal the existing Ordinance from the Augusta-Richmond municipal code.

The Ordinance imposes penalties for engaging in “panhandling,” which the Ordinance defines as “begging.” Sect. 3-7-1(x)(3)(e). “Begging” means to earnestly and humbly ask

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someone for something, usually charity,¹ and “frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation,” all of which is protected by the First Amendment. *Loper v. New York City Police Department*, 999 F.2d 699, 704 (2d Cir. 1993). *See also Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000) (those seeking monetary support in public spaces often “communicate important political or social messages [when] explaining their conditions related to veteran status, homelessness, unemployment and disability, to name a few”). Even when requests for charity are not accompanied by messages of political or social value, courts across the country recognize that “panhandling” is protected speech under the First Amendment.²

By prohibiting “begging,” the Ordinance targets only a particular subject matter of expression while leaving sidewalk speech, in general, unburdened. For example, a community organizer seeking signatures for a petition, a campaign worker handing out buttons for her candidate, and a sidewalk preacher looking to save souls would all still be allowed under the Ordinance. This makes the law a content-based speech restriction where punishment turns on the content of one’s expression. *See Rodgers v. Bryant*, 942 F.3d 451, 456 (8th Cir. 2019) (anti-loitering law is “a content-based restriction [insofar as] . . . it applies only to those asking for charity or gifts, not those who are, for example, soliciting votes, seeking signatures for a petition, or selling something”—i.e., “its application depends on the ‘communicative content’ of the speech”).

The Supreme Court has consistently declared content-based restrictions on speech presumptively unconstitutional. *Reed v. Gilbert*, 576 U.S. 155 (2015); *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). Courts use the most stringent legal standard—strict scrutiny—to review such restrictions. *See, e.g., Reed*, 576 U.S. at 163 (holding that content-based laws only survive strict scrutiny if “the government proves that they are narrowly tailored to serve a compelling state interest”). The Augusta-Richmond County “Panhandling” Ordinance cannot survive strict scrutiny because it is neither narrowly tailored, nor does it serve a compelling government interest.

Since the landmark *Reed v. Gilbert* case in 2015, every one of the dozens of “panhandling” ordinances challenged in federal court, including many with features similar to Augusta-Richmond County’s, has been found constitutionally deficient or resulted in the repeal

¹ *Beg*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/beg>.

² *Vill. of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980) (holding that a request for charity or gifts, whether “on the street or door to door,” is protected First Amendment speech); *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015) (“There is no question that panhandling and solicitation of charitable contributions are protected speech.”); *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999) (“Like other charitable solicitation, begging is speech entitled to First Amendment protection.”).

of the ordinance.³ The fact that the Ordinance at issue here prohibits “aggressive panhandling” does not insulate it from constitutional scrutiny. Just two weeks ago, a federal district court in our neighboring state of Florida granted a preliminary injunction against the enforcement of an “aggressive panhandling” ordinance that applied to the entire city. *Messina v. City of Fort Lauderdale, Fla.*, No. 21-cv-60168 (S.D. Fla. June 23, 2021). The court noted that “‘aggressive panhandling’ ordinances often sweep in much more speech than is necessary to promote public safety—including speech that is entirely innocuous—while omitting conduct that’s genuinely threatening. Where that’s true … then [the ordinance is] not narrowly tailored to accomplish the state’s compelling interests, however provocatively it’s titled.” *Id.* at 15.

Expanding the Ordinance to the Whole County is Unconstitutional

Expanding the Ordinance’s geographic reach to encompass the entire county would not be a “narrowly tailored” approach. The Ordinance in its current form applies only to the Broad Street/Augusta Common District and the Armstrong Galleria District. These areas constitute, respectively, a mere 1.5 mile and two-block stretch of sidewalk. However, the expansion proposal would extend the Ordinance’s geographic reach by nearly 300 fold to cover *every inch of the county*. Even assuming the County could demonstrate a compelling interest in prohibiting “aggressive panhandling,” expanding the Ordinance to the entire county is not narrowly tailored for the reasons explained below.

The Ordinance’s stated purpose is to “ensure unimpeded pedestrian traffic flow, to maintain and protect the physical safety and well being of pedestrians and to otherwise foster a safe and harassment-free climate” in the enumerated districts. § 3-7-1(x)(2). However, the County and the state of Georgia already have laws in place that protect these very same interests.

³ See, e.g., *Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 470 F. Supp. 3d 888, 895, 908 (S.D. Ind. 2020) (preliminarily enjoining an ordinance that banned panhandling (1) at various locations—including bus stops, parking facilities, and within 50 feet of ATMs or entrances to certain buildings; (2) while touching another without consent; and (3) while blocking another’s path); *Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 673 (E.D. La. 2017) (permanently enjoining an ordinance that required panhandlers to register with the chief of police and to wear identification before asking for money); *Homeless Helping Homeless, Inc. v. City of Tampa, Fla.*, 2016 WL 4162882, at *6 (M.D. Fla. Aug. 5, 2016) (permanently enjoining a general ban on panhandling in front of sidewalk cafés, within 15 feet of ATMs, and in other designated areas); *Browne v. City of Grand Junction, Colo.*, 136 F. Supp. 3d 1276, 1288–94 (D. Colo. 2015) (permanently enjoining a panhandling ban to the extent it (1) limited the times during which a person could panhandle; (2) prevented solicitation after a first refusal; and (3) banned panhandling on public buses or in parking garages, parking lots, or similar facilities); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 182 (D. Mass. 2015) (declaring unconstitutional (1) a ban on panhandling in certain areas of the city and (2) a ban on “aggressive panhandling”).

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See Augusta-Richmond County Code §§ 3-7-1(a),⁴ (c),⁵ (j)⁶ (o)⁷; § 3-7-31⁸; O.C.G.A. § 16-5-20 (criminalizing assault). The court in *McLaughlin v. City of Lowell*, 140 F.Supp. 3d 177, 182 (D. Mass. 2015) struck down an “aggressive panhandling statute” that, similar to the Augusta-Richmond Ordinance, applied countywide and included provisions “duplicative of existing sanctions but directed specifically at panhandling.” In the recent Florida case referenced above, the court found an “aggressive panhandling” ordinance unconstitutional where “the State ha[d] already criminalized assault and battery … and the City [didn’t] explain why a batterer should receive *enhanced* penalties solely because, before the assault, he asked the victim for change.” *Messina*, No. 21-cv-60168, at 24 (emphasis in original). Imposing these types of additional penalties only on people asking for charity signals that the government does not intend to address merely the allegedly “aggressive” nature of the conduct; rather, “[s]electivity of this sort creates the possibility that the city is seeking to handicap the expression of particular ideas.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 394 (1992).

Moreover, based on statements made during the May 25, 2021 Public Safety Committee meeting, the motivation for expanding the current Ordinance to the entire county does not appear to be related to any of the government interests set forth in the Ordinance, but rather to be based on a concern about trash. This was evidenced by comments from Commissioners Hasan and Sias. Specifically, Commissioner Hasan stated that he had been contacted by constituents with concerns about trash, while Commissioner Sias stated, “One of the things Director [Robert] Sherman and I would like to see addressed is the trash. Maybe we could restrict panhandling

⁴ “Any person who shall act in a violent or tumultuous manner toward another, whereby any person is placed in danger of safety of his life, limb or health.” Augusta-Richmond County Code § 3-7-1(a).

⁵ “Any person who shall endanger lawful pursuits of another by acts of violence or threats of bodily harm.” Augusta-Richmond County Code § 3-7-1(c).

⁶ “Any person who utters, in a public place or any place open to the public, any obscene words or epithets.” Augusta-Richmond County Code § 3-7-1(j).

⁷ “Any person who shall congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by a peace officer or other person having authority.” Augusta-Richmond County Code § 3-7-1(o).

⁸ “Any person who shall loiter on any street, sidewalk or crossing in such a manner as to be an obstruction to free passage thereon, and who shall fail to promptly move on when notified to do so by any officer of the Sheriff’s Department, or by any citizen in front of, or near, whose residence or place of business such loitering is carried on, shall be punished as provided herein.” Augusta-Richmond County Code § 3-7-31.

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from areas where people are prone to leave trash, particularly up under the bridges.”⁹ Violating Augusta-Richmond residents’ constitutional rights by criminalizing First Amendment-protected speech throughout the entire county is far too blunt an instrument to solve the issue of litter. The County “has taken a sledgehammer to a problem that can and should be solved with a scalpel.” *Browne*, 136 F.Supp.3d at 1293-94.

In considering geographic expansion of the Ordinance, Augusta-Richmond County officials have also asserted that “panhandling” has a “negative impact on retail, food and beverage, all of those types of businesses in our community,”¹⁰ but they have provided no evidence supporting this contention. Additionally, “the promotion of tourism and business has never been found to be a compelling government interest for the purposes of the First Amendment.” *McLaughlin*, 140 F.Supp.3d at 189. The First Amendment “does not permit a city to cater to the preference of one group, in this case tourists or downtown shoppers, to avoid the expressive acts of others, in this case panhandlers, simply on the basis that the privileged group does not like what is being expressed.” *Id.* Accordingly, a court would likely strike down an expansion of the Ordinance if premised on addressing an alleged, but undocumented, negative impact on businesses, particularly given the already existing County Code provisions (cited in footnotes 4 through 8 above) that address the same purported concerns.

The Ordinance in its Current Form is Unconstitutional

Even absent an expansion of geographic reach, the Ordinance as it currently stands should be struck down on overbreadth grounds due to its vague, subjective terms and its criminalization of non-threatening conduct.

The Ordinance states that “[b]ehavior shall be deemed as ‘aggressive’ or ‘intimidating’ if a reasonably prudent individual could be deterred from passing through or remaining in or near any thoroughfare, or place open to the public because of fear, concern or apprehension caused by such behavior.” § 3-7-1(d).

The Ordinance’s reliance on vague terms like “concern” and “apprehension” risks sweeping up situations where there is nothing aggressive or intimidating about the speech, but passersby nonetheless experience discomfort and a desire to avoid contact when faced with another human being in need. People who make requests for charity should not be punished because others feel uncomfortable in their presence. *See Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 134 (1992) (“Listeners’ reaction to speech is not a content-neutral basis for regulation.”). Additionally, content-based regulations require “a more stringent

⁹ May 25, 2021 Public Safety Committee Meeting, City of Augusta, 2:40:00 – 2:46:00 (<https://play.champds.com/augustaga/event/141>).

¹⁰ Mary Klinger, “City leaders extend panhandling ordinance,” *WFXG*, <https://www.wfxg.com/story/44087624/city-leaders-extend-panhandling-ordinance> (June 11, 2021).

vagueness test” such that “government may regulate in the area” of First Amendment freedoms “only with narrow specificity.” *Wollschlaeger v. Governor, Florida*, 848 F.3d 1293, 1320 (11th Cir. 2017). Vague and subjective terms like “concern” and “apprehension” fail to satisfy this “specificity” requirement for prohibiting “panhandlers” speech.

Second, although the Ordinance is framed as curbing “aggressive panhandling,” it also prohibits the least “aggressive” or “intimidating” type of “panhandling”: sitting or reclining on the ground. Specifically, Sec. 3-7-1(x)(4)(d) states, “It shall be unlawful for any person to sit or recline on a public sidewalk with an intent to procure a handout.” As explained above, this conduct is already addressed by existing local laws that prohibit blocking sidewalks. *See supra*, footnotes 8-9. But by prohibiting the specific act of sitting or reclining “*with an intent to procure a handout*,” the County imposes duplicative penalties based solely on the content of an individual’s message—i.e., speech intending to solicit charity. Again, the First Amendment does not allow government laws to single out the expression of particular ideas for punishment. *See R.A.V.*, 505 U.S. at 394. Further, this prohibition on mere sitting or reclining on the sidewalk belies that the Ordinance is intended to penalize only “aggressive panhandling.” The County “has indisputably banned substantial amounts of protected (and harmless) activities in a way that doesn’t seem likely to avert dangerous encounters.” *Messina*, No. 21-cv-60168, at 23.

Expanding the Ordinance Fails to Address the Underlying Causes

Expanding the unconstitutional Ordinance’s geographic reach not only violates residents’ civil rights; it also does nothing to address the cause of panhandling and begging. The Ordinance imposes criminal penalties in the form of a \$1,000 fine or 60 days in the county jail. For those who request charity from others on the public streets, neither penalty will improve their conditions that led them to make such a request in the first place, but only further impoverishes and stigmatizes them. We can all agree that we would like to see an Augusta where people are not forced to beg on the streets. But whether examined from a legal, policy, or fiscal standpoint,¹¹ criminalizing requests for charity is not a way to achieve this goal. Arrests and convictions lead to more difficulties—i.e., court debts, criminal records—in the lives of already-vulnerable individuals who are challenged in supporting themselves. Imposing monetary fines for their life-sustaining requests for charity only puts them deeper in the hole and does not eliminate the underlying causes of poverty and homelessness. “While some communities might wish all solicitors, beggars and advocates of various causes be vanished from the streets, the First Amendment guarantees their right to be there, deliver their pitch and ask for support.” *Gresham*, 225 at 904.

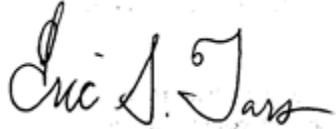
Beyond the ordinances already struck down in court, at least 70 additional cities have repealed their “panhandling” ordinances when informed of the likely infringement on First Amendment rights. We strongly urge that the County reject the proposal to expand its “panhandling” Ordinance, repeal the existing unconstitutional Ordinance from the municipal

¹¹ Daniel G. Garrett, *The Business Case for Ending Homelessness: Having a Home Improves Health, Reduces Healthcare Utilization and Costs*, [Am Health Drug Benefits](#), 2012 Jan-Feb; 5(1): 17–19.

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code, and develop constructive approaches that will benefit the residents of Augusta-Richmond County, housed and unhoused alike. If the County would like, we would be happy to work with you to develop and implement solutions that work for everyone. Please feel free to contact us at etars@nlchp.org or 202-638-2535 x. 120 with any questions or concerns.

Sincerely,



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