**First Amendment Clinic**
*School of Law*
**UNIVERSITY OF GEORGIA**

September 28, 2023

**<u>VIA EMAIL – commissioners@columbiacountyga.gov</u>**
Chairman Douglas R. Duncan, Jr.
Vice Chairman Gary L. Richardson
Commissioner Connie M. Melear
Commissioner Donald Skinner, Sr.
Commissioner Alison G. Couch
County Attorney Chris Driver
Columbia County Board of Commissioners
630 Ronald Reagan Drive
Building B, 2nd Floor
Evans, GA 30809

**RE: Columbia County "Panhandling" Ordinance**

Dear Chairman Duncan, Members of the Columbia County Board of Commissioners, and County Attorney Driver:

We write to express our concerns regarding the March 7, 2023 decision by the Columbia County Board of Commissioners ("the County") to enact its "panhandling" ordinance, Ordinance No. 23-01 ("the Ordinance"). 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. To protect the First Amendment rights of Columbia residents, we urge you to repeal the Ordinance from the Columbia municipal code.

## <u>The Ordinance's Prohibition on "Panhandling" is Unconstitutional</u>

The Ordinance imposes penalties for engaging in "panhandl[ing]," which the regulation defines as "request[ing] an immediate donation of money or other thing of value, including a request for employment, business, or contributions, or to request the sale of goods or services." Sect. 58-10(b)(1). Requesting donations "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.[1]

By prohibiting "request[s] [for] donation of money or other thing of value," 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 message being communicated. *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 [or] seeking signatures for a petition"—i.e., "its application depends on the 'communicative content' of the speech").

The Supreme Court has 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 therefore use the most stringent legal standard—strict scrutiny—to review content-based 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 Columbia County "Panhandling" Ordinance cannot survive strict scrutiny because it is neither narrowly tailored, nor does it serve a compelling government interest.

Since the landmark U.S. Supreme Court case *Reed v. Gilbert* (2015), dozens of "panhandling" ordinances challenged in federal court, including many with features similar to Columbia County's, have been found constitutionally deficient or resulted in a court prohibiting enforcement of the ordinance.[2] Beyond the ordinances struck down by courts, at least 70

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[1] *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.").

[2] Without limitation, see for example, *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*

additional cities have repealed, amended, or readdressed their "panhandling" ordinances when informed of their likely infringement on First Amendment rights.[3]

The fact that the Ordinance at issue here prohibits "aggressive panhandling" does not insulate it from constitutional scrutiny. Just two years 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*., 546 F.Supp.3d 1227, 1252 (S.D. Fla. 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.

**<u>The Ordinance's Prohibition on "Aggressive Panhandling" is Similarly Unconstitutional</u>**

The Ordinance defines "aggressive panhandling" as "[a]pproaching, speaking to, or following the person being solicited, if that manner of conduct is intended to, or is … reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation." § 58-10(b)(4)(c). It also defines "aggressive panhandling" as "[i]ntentionally or recklessly blocking the safe or free passage of the person being solicited, or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation." § 58-10(b)(4)(d). The provision prohibiting "aggressive panhandling" applies to the "unincorporated areas of the county," § 58-10(c)(1), which comprise the vast majority of the 308 square miles in Columbia County. Even assuming the County could demonstrate a compelling interest in prohibiting "aggressive panhandling," doing so throughout the unincorporated areas of the entire county is not narrowly tailored, and therefore violates the First Amendment.

The Ordinance's definition of "aggressive panhandling" encompasses conduct that is already prohibited elsewhere in the Columbia municipal code. *See* Columbia County Code §§

*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").

[3] National Homelessness Law Center, https://homelesslaw.org/wp-content/uploads/2019/07/IAskForHelpBecause-Campaign-One-Pagers.pdf (last accessed Sep. 27, 2023.)

58-6(b)(1),[4] (3),[5] (15)[6]; 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 Columbia County 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).

The Ordinance’s reliance on the vague phrases such as “reasonably likely to intimidate” and “take evasive action” risks sweeping up situations where there is nothing aggressive 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 trigger the application of “a more stringent 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 phrases like “reasonably likely to intimidate” and “take evasive action” fail to satisfy this “narrow specificity” requirement for regulating panhandlers’ speech by blanketly prohibiting it.

Furthermore, the County has not established a compelling interest in restricting the First Amendment activity at issue here. During the Feb. 21, 2023 and March 7, 2023 county commissioner meetings during which the Ordinance was discussed, Columbia lawmakers speaking in support of the Ordinance referred to concerns about people stepping into roadways. However, county officials have not provided evidence in those meetings of any actual traffic incidents that have occurred as a result of panhandling on road medians. The Tenth Circuit Court of Appeals struck down a statute that prohibited panhandling on road medians in the absence of any evidence from the city “show[ing] that its recited harms are real.” *McCraw v. City of Okla. City*, 973 F.3d 1057 (10th Cir. 2020) (holding “aggressive panhandling” law unconstitutional). Other federal appellate courts have likewise found statutes restricting panhandling on road

[4] “Act in a violent or tumultuous manner toward another, whereby any person is placed in danger of safety of his life, limb or health.” Columbia County Code § 58-6(b)(1).

[5] “Endanger lawful pursuits of another by acts of violence or threats of bodily harm.” Columbia County Code § 58-6(b)(3).

[6] “Congregate with another in or on any public way so as to halt the flow of vehicular or pedestrian traffic, and refuse to clear such public way when ordered to do so by a peace officer or other person having authority.” Columbia County Code § 58-6(b)(15).

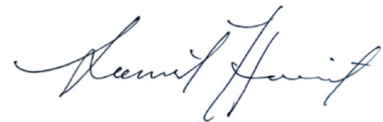
medians to be unconstitutional. *See Brewer v. City of Albuquerque*, 18 F.4th 1205 (10th Cir. 2021); *Rodgers v. Bryant*, 942 F.3d 451 (8th Cir. 2019); *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015); *Reynolds v. Middleton*, 779 F.3d 222 (4th Cir. 2015). In the absence of any evidence that the Ordinance is narrowly tailored to advance a compelling government interest, the Ordinance is unconstitutional and should be repealed before a court requires that it be stricken from the Columbia County Code.

**The Ordinance Fails to Address the Underlying Causes**

Not only does the Ordinance violate residents' civil rights; it also does nothing to address the underlying causes of panhandling. The Ordinance imposes criminal penalties in the form of a $1,000 fine or 60 days in the county jail. Sect. 1-9. 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 will only further impoverish and stigmatize them. We can all agree that we would like to see a Columbia County where people are not forced to beg on the streets. But whether examined from a legal, policy, or fiscal standpoint, criminalizing requests for charity is not a way to achieve this goal.[7] Arrests and convictions lead to more financial and legal difficulties—i.e., court debts, criminal records—in the lives of already-vulnerable individuals who are struggling to feed themselves and find shelter from the elements. 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.

We strongly urge that the County repeal its "panhandling" Ordinance and develop constructive approaches that will benefit the residents of Columbia 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 wknight@homeless.org with any questions or concerns.

Sincerely,



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[7] 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.