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To the Honorable Public Defenders of Florida:

The purpose of this letter is to inform you of a recent federal court ruling declaring a panhandling ordinance unconstitutional. You and your staff may be able to use this ruling to defend people arrested under similar ordinances, because those ordinances are likely unconstitutional as well.

Earlier this year the Florida Justice Institute, a non-profit civil rights organization in Miami, along with private counsel from Fort Lauderdale, filed a federal civil rights action against the City of Fort Lauderdale challenging the enforcement of Fort Lauderdale’s panhandling and roadway solicitation ordinances. United States District Judge Roy K. Altman then granted a preliminary injunction enjoining Fort Lauderdale from enforcing both laws, finding that the ordinances are likely unconstitutional because they are content-based restrictions on speech that violate the First Amendment. *Messina et al. v. City of Fort Lauderdale*, 2021 WL 2567709 (S.D. Fla., June 23, 2021). The Order is attached to this letter.

The panhandling ordinance prohibited requests for donations in public parks, parking lots, and transportation centers; and within 15 feet of any sidewalk café, ATM, or entrance to a commercial or governmental building. The roadway solicitation ordinance prohibited requesting donations or offering items for sale to cars along certain roads, and prohibited it along all city roads if holding a sign.

Judge Altman found the ordinances were content-based because they imposed restrictions only on those soliciting for donations and not on those expressing any other message. The U.S. Supreme Court recently clarified this area of the law by holding that a law is “content-based” if it “applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Because the ordinances were content-based, they were subject to strict scrutiny. *Id.* Laws subject to strict scrutiny are “presumptively unconstitutional,” and the government must prove that they are “narrowly tailored to serve compelling state interests.” *Id.* Judge Altman found that the ordinances were not narrowly tailored to any government interest, and were therefore likely unconstitutional.

Judge Altman’s decision is supported by numerous federal court decisions from across the country holding that panhandling and solicitation laws such as Fort Lauderdale’s are unconstitutional, including cases from St. John’s County, *Vigue v. Shoar*, 494 F. Supp. 3d 1204, 1223 (M.D. Fla. 2020) (multiple state statutes that restrict charitable roadway solicitation held content-based and struck down because they could not survive strict scrutiny); from Tampa,

Homeless Helping Homeless, Inc. v. City of Tampa, Fla., 2016 WL 4162882, at *4 (M.D. Fla., Aug. 5, 2016) (Tampa’s panhandling ordinance “punishes speech . . . based decidedly and exclusively on the content of the speech, a fact that subjects [the ordinance] to strict scrutiny”); and from Miami, *Toombs v. State of Florida*, 25 Fla. L. Weekly Supp. 505a, Case No. 15-220 AC (Fla. Jud. Cir. 2017) (holding City of Miami panhandling ordinance unconstitutional). In another recent case arising from a criminal prosecution under a Fort Myers panhandling ordinance, the state of Florida conceded that the ordinance was content-based and could not survive strict scrutiny, leading the Second DCA to reverse the conviction. *Watrous v. State*, 2021 WL 3519325 (Fla. 2d DCA, Aug. 11, 2021) (recognizing that Ft. Myers panhandling ordinance violates First Amendment).

The *Messina* case and the vast body of federal and state law holding such laws unconstitutional can be used to challenge the prosecution of any panhandling or solicitation law that imposes restrictions on people asking for donations but not on other requests or speech. Recently, local governments have tried to “neutralize” the speech issue by imposing restrictions solely along roadways and on medians or by penalizing only hand-to-hand transmissions. While such ordinances can be more difficult to challenge, they must still satisfy intermediate scrutiny, meaning the government must show they are narrowly tailored to a significant government interest. Local governments are frequently unable to meet this standard. For instance, the *Messina* case addressed a hand-to-hand transmission prohibition, and still found that it was likely unconstitutional under intermediate scrutiny, even though it was content-neutral. *Messina*, 2021 WL 2567709 at *15-17.

Prosecutions under panhandling ordinances frequently appear on county court first appearance dockets, and judges may try to resolve them quickly by a plea of guilty for time served. Advocacy at these hearings is the first line of defense, but if the case proceeds further, more formal motion practice may help. For example, this occurred in Miami and resulted in a reported decision striking down the city’s ordinance. See *Toombs v. State of Florida*, 25 Fla. L. Weekly Supp. 505a, Case No. 15-220 AC (Fla. Jud. Cir. 2017).

Notwithstanding this body of law, there are still cities and counties in Florida that use such panhandling and solicitation laws to arrest poor and homeless people who are requesting donations. If similar ordinances are being enforced in your circuit, we strongly urge you and your staff to raise these issues at first appearance or bail hearings, and all subsequent relevant proceedings. We stand ready to assist in fighting these laws and can provide caselaw, sample motions, and legal memoranda on a range of issues related to these cases.

Thank you for the important work you all do, and please contact our office if we can be of assistance.

Best regards,

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