

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11163

JONATHAN SINGLETON,
on behalf of himself and others similarly situated,

Plaintiff-Appellee,

RICKY VICKERY. et al.,

Plaintiffs,

versus

CITY OF MONTGOMERY, ALABAMA, et al.,

Defendants,

SECRETARY OF THE ALABAMA LAW ENFORCEMENT
AGENCY,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:20-cv-00099-WKW-JTA

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

This appeal requires us to decide whether two Alabama statutes that criminalize begging are facially unconstitutional under the First Amendment. Hal Taylor, in his official capacity as Secretary of the Alabama Law Enforcement Agency, appeals from the district court's grant of summary judgment to Jonathan Singleton, on behalf of himself and others similarly situated, declaring the two Alabama statutes facially unconstitutional under the First Amendment and permanently enjoining Taylor from enforcing those statutes. The sole dispositive issue on appeal is whether begging is protected speech under the First Amendment. A prior panel of this Court has already answered that question in the affirmative. Accordingly, we are bound to affirm.

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I. Background

Jonathan Singleton is a homeless resident of Montgomery, Alabama, who holds a sign to solicit help from others. Singleton has been cited six times for violating Alabama Code § 32-5A-216(b) (“the pedestrian solicitation statute”), which prohibits a person, in relevant part, from “stand[ing] on a highway” to “solicit[] employment, business, or contributions from the occupant of any vehicle” unless otherwise authorized.¹ The Alabama Law Enforcement Agency (“ALEA”) enforces the pedestrian solicitation statute throughout Alabama. A person who violates the pedestrian solicitation statute may be subjected to fines and imprisonment. *See* Ala. Code § 32-5A-8.

ALEA also enforces Alabama Code § 13A-11-9(a)(1) (“the begging statute”), which prohibits a person from “[l]oiter[ing], remain[ing], or wander[ing] about in a public place for the purpose of begging.”² A person who violates the begging statute may be

¹ Alabama Code § 32-5A-216(b) provides in full:

No person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle, nor for the purpose of distributing any article, unless otherwise authorized by official permit of the governing body of the city or county having jurisdiction over the highway.

² Alabama Code § 13A-11-9(a)(1) provides in full: “A person commits the crime of loitering if he or she does any of the following: Loiters, remains, or wanders about in a public place for the purpose of begging.” Although Alabama has twice amended other subsections of this statute after Taylor noticed this appeal, the begging statute’s operative language remains unchanged. *See* Ala.

subject to fines and imprisonment. *See* Ala. Code §§ 13A-5-7, 13A-5-12, 13A-11-9(e). ALEA has warned, cited, and arrested people for violations of both statutes.

Singleton brought this action on behalf of himself³ and all others similarly situated seeking to enjoin Taylor, in his official capacity as Secretary of ALEA,⁴ from enforcing the begging and pedestrian solicitation statutes.⁵ Singleton also sought a declaration that the begging and pedestrian solicitation statutes facially violate the First Amendment because they unlawfully restrict protected speech.

The district court preliminarily enjoined enforcement of the begging and pedestrian solicitation statutes. Singleton then moved for summary judgment and for permanent injunctive relief. In response, Taylor recognized that “in the Eleventh Circuit, ‘begging

Laws Act 2023-245; Ala. Laws Act 2024-326. Accordingly, these amendments do not moot Taylor’s appeal. *See Naturist Soc’y, Inc. v. Fillyaw*, 958 F.2d 1515, 1520 (11th Cir. 1992) (“To the extent that [a statute’s challenged] features remain in place, and changes in the law have not so fundamentally altered the statutory framework as to render the original controversy a mere abstraction, the case is not moot.”).

³ Singleton was joined by named co-plaintiffs Ricky Vickery and Micki Holmes. Vickery and Holmes died while this case was pending before the district court.

⁴ Singleton also named as defendants the City of Montgomery, Alabama, and Derrick Cunningham, in his official capacity as Sheriff of Montgomery County. Singleton, however, settled with the City and Cunningham, and the district court dismissed them as defendants in this case.

⁵ The district court certified this action as a class action.

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is speech entitled to First Amendment protection.” (quoting *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999)). Thus, Taylor conceded that Singleton was “entitled to judgment as a matter of law” because under our First Amendment precedent, Alabama “cannot broadly restrict panhandling in the manner its laws provide.”⁶ Accordingly, the district court granted Singleton summary judgment and permanent injunctive relief. Taylor timely appealed.

II. Standard of Review

“We review *de novo* a district court’s grant of summary judgment, applying the same standard as the district court.” *Snell v. United Specialty Ins. Co.*, 102 F.4th 1208, 1214 (11th Cir. 2024) (quotation omitted). “Namely, summary judgment is appropriate ‘if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Id.* (quoting Fed. R. Civ. P. 56(a)).

III. Discussion

Taylor argues that the “sole dispositive issue in this appeal” is “[w]hether the First Amendment, as originally understood, permits the criminalization of begging.” According to Taylor, the First Amendment does not protect begging. In particular, Taylor argues that (1) we must look to the original public meaning of the First Amendment to decide whether begging is protected speech,

⁶ Taylor also “reserve[d] the right to ask the Eleventh Circuit to reconsider” *Smith*.

and (2) the original public meaning of the First Amendment does not protect begging. In support, Taylor cites several laws from common-law England, the Founding Era, and Reconstruction that criminalized begging and vagrancy. But as we will explain, our precedent requires us to affirm.

The First Amendment provides, in relevant part, that “Congress shall make no law . . . abridging the freedom of speech” U.S. Const. amend. I. The Fourteenth Amendment’s Due Process Clause incorporates the First Amendment’s Free Speech Clause against the states. *See* U.S. Const. amend. XIV, § 1, cl. 3; *Gitlow v. New York*, 268 U.S. 652, 666–67 (1925).

A law is facially unconstitutional under the First Amendment if “a substantial number of the law’s applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (alteration adopted) (quotation omitted). When considering a facial challenge under the First Amendment, we must first “determine what the law covers.” *Id.* at 725 (alteration adopted) (quotation omitted). Next, we must “decide which of the laws’ applications violate the First Amendment, and . . . measure them against” those that do not. *Id.* In so doing, we “must explore the laws’ full range of applications—the constitutionally impermissible and permissible both—and compare the two sets.” *Id.* at 726.

We turn first to what the law covers. Here, the begging statute criminalizes “[l]oiter[ing], remain[ing], or wander[ing] about in a public place for the purpose of begging.” Ala. Code

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§ 13A-11-9(a)(1). The Alabama Code does not define the term “begging.” The parties do not cite, and we are not aware of, any construction given to that term by Alabama courts. Accordingly, we give the term “begging” its “plain, ordinary, and most natural meaning” at the time of its enactment. *In re Celotex Corp.*, 227 F.3d 1336, 1338 (11th Cir. 2000) (quotation omitted). The plain, ordinary meaning of “begging” when Alabama enacted the begging statute⁷ was to ask for charitable relief for the poor. *See Beg*, 1 *Oxford English Dictionary* 765 (1st ed. 1978) (“To ask (bread, money, etc.) in alms or as a charitable gift”); *Alms*, 1 *Oxford English Dictionary* 247 (1st ed. 1978) (“Charitable relief of the poor; charity”). Given the begging statute’s text, its “full range of applications” criminalizes begging alone. *Moody*, 603 U.S. at 726; *see* Ala. Code § 13A-11-9(a)(1) (prohibiting “[l]oiter[ing], remain[ing], or wander[ing] about in a public place *for the purpose of begging*” (emphasis added)).

As for the pedestrian solicitation statute, that statute prohibits any person from, in relevant part, “stand[ing] on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle” unless otherwise authorized. Ala. Code § 32-5A-216(b). Like the begging statute, neither the Alabama Code nor Alabama courts have defined the terms “soliciting” or “contributions.” But the “plain, ordinary, and

⁷ Alabama enacted its current begging statute in 1977. *See* Ala. Acts 1977, No. 607, p. 812, § 5540.

most natural meaning” of the statute at the time of its enactment⁸ includes begging, as ordinarily understood, within its prohibitions. *Celotex Corp.*, 227 F.3d at 1338 (quotation omitted); see *Solicit*, 10 *Oxford English Dictionary* 395 (1st ed. 1978) (“To entreat or petition (a person) for, or to do, something; to urge, importune; to ask earnestly or persistently.”); *Contribution*, 2 *Oxford English Dictionary* 924 (1st ed. 1978) (“The action of contributing or giving as one’s part to a common fund or stock; the action of lending aid or agency to bring about a result.”). Moreover, the record shows that ALEA has enforced the pedestrian solicitation statute against begging, as ordinarily understood.

The pedestrian solicitation statute’s “full range of applications,” however, is not limited to begging. *Moody*, 603 U.S. at 726. The plain, ordinary meaning of the pedestrian solicitation statute also restricts other speech across Alabama, such as charitable solicitation for nonprofit or religious organizations or solicitation of support for political candidates.⁹ *Id.*; see Ala. Code

⁸ Alabama enacted the pedestrian solicitation statute in its current form in 1980. See Ala. Acts 1980, No. 80-434, p. 604, § 5-107.

⁹ The parties stipulated below that the pedestrian solicitation statute does not apply to “someone standing on a highway solicitating [sic] support for a political candidate or conveying a religious message.” We need not decide the effect of this stipulation because, for our purposes, the result is the same. See *United States v. One 1978 Bell Jet Ranger Helicopter*, 707 F.2d 461, 462–63 (11th Cir. 1983) (explaining that a stipulation “as to what the law requires” does not bind the court, but the parties may stipulate to limit the issues that are tried). If the stipulation binds us, then we must accept that the pedestrian solicitation statute only applies to begging, and then we must decide whether that “full

§ 32-5A-216(b); *see also* *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (“[T]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” (quotation omitted)); *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980) (“[C]haritable appeals for funds, on the street or door to door, . . . are within the protection of the First Amendment.”).

Having identified the range of applications of the begging and pedestrian solicitation statutes, we next turn to which, if any, of those applications violate the First Amendment. *See* *Moody*, 603 U.S. at 725–26. Taylor appears to concede that, under *Schaumburg*, non-begging applications of the pedestrian solicitation statute are unconstitutional. *See* *Schaumburg*, 444 U.S. at 632. Taylor does not offer any examples of unprotected, non-begging speech that might save the pedestrian solicitation statute from Singleton’s facial challenge. Instead, Taylor insists we focus our attention solely on the pedestrian solicitation statute’s application to begging. In the

range” of applications is constitutional. *See* *Moody*, 603 U.S. at 726. If the stipulation does not bind us, then we must consider the pedestrian solicitation statute’s applications to other, non-begging speech. Because, however, Taylor concedes that all applications of the pedestrian solicitation statute to non-begging speech are unconstitutional, we similarly must decide whether the pedestrian solicitation statute’s applications to begging are constitutional and weigh them against the concededly unconstitutional applications. *See id.* Accordingly, regardless of the parties’ stipulation, our review turns solely on the constitutionality of the pedestrian solicitation statute’s applications to begging. Thus, we assume without deciding that the parties’ stipulation does not bind us. *See One 1978 Bell Jet Ranger Helicopter*, 707 F.2d at 462–63.

face of that concession, we put Singleton’s non-begging examples of the pedestrian solicitation statute’s applications on the “constitutionally impermissible” side of the ledger. *Moody*, 603 U.S. at 726.

We must then decide on which side of the ledger to put the begging statute’s and pedestrian solicitation statute’s applications to begging. If those applications are constitutionally impermissible, then there is no “permissible” set of constitutional applications, and the statutes are facially unconstitutional. *Id.* Accordingly, we next turn to whether begging is protected speech under the First Amendment. *See id.* at 725–26 (asking whether state laws “intru[ded] on protected editorial discretion” to determine whether those “laws’ applications violate the First Amendment”). We must follow our earlier decision answering that question in the affirmative.

“A prior panel decision of this Court is binding on subsequent panels and can be overturned only by the Court sitting en banc.” *Morrison v. Amway Corp.*, 323 F.3d 920, 929 (11th Cir. 2003). Accordingly, we must “follow the precedent of the first panel to address the relevant issue.” *Stanley v. City of Sanford*, 83 F.4th 1333, 1338 (11th Cir. 2023) (quotation omitted). A prior panel decision addresses the same relevant issue “if we cannot distinguish the facts or law of the case under consideration.” *Devengoechea v. Bolivarian Republic of Venez.*, 889 F.3d 1213, 1227 (11th Cir. 2018).

In *Smith v. City of Fort Lauderdale*, we considered whether Rule 7.5(c) of the City of Fort Lauderdale’s Rules and Park

Regulations for City Parks and Beaches (“Rule 7.5(c)”), which prohibited “[s]oliciting, begging or panhandling” on the beach, violated the First Amendment. 177 F.3d at 955 (quotation omitted). We observed that it was “undisputed that ‘soliciting,’ ‘begging,’ and ‘panhandling’ are interchangeable terms,” so we “use[d] the term ‘begging’ to encompass all three.” *Id.* at 955 n.1. Rule 7.5(c) did not define the terms “soliciting,” “begging,” or “panhandling,” and Florida courts have not construed those terms in Rule 7.5(c).¹⁰ Accordingly, we gave the terms their “plain, ordinary, and most natural meaning” as in the begging and pedestrian solicitation statutes. *Celotex Corp.*, 227 F.3d at 1338 (quotation omitted).¹¹ Fort Lauderdale enacted Rule 7.5(c) in 1993. *Chad v. City of Fort Lauderdale*, 861 F. Supp. 1057, 1059 (S.D. Fla.

¹⁰ Rule 7.5(c) remains on the books in Fort Lauderdale virtually unchanged since *Smith*, and Fort Lauderdale has not codified definitions of “soliciting,” “begging,” or “panhandling” in that time. See Beach Rules and Regulations, <https://www.fortlauderdale.gov/government/departments-a-h/fire-rescue/organization/ocean-rescue/beach-rules-and-regulations> [<https://perma.cc/C2AL-EAQB>] (“7.5(c) Soliciting, begging or panhandling is prohibited. This includes tips or payment for any service, performance or instruction.”).

¹¹ In *Smith*, we did not explicitly state that we were construing the relevant statutory terms according to their plain and ordinary meaning. See *Smith*, 177 F.3d at 956. But we did not cite any statutory or state-court definitions of those terms, either. See *id.* Instead, we relied on *Loper v. New York City Police Department*, 999 F.2d 699, 704 (2d Cir. 1993), which considered a similar ordinance and gave the term “begging” its plain, ordinary meaning. See *Smith*, 177 F.3d at 956; *Loper*, 999 F.2d at 704 (observing, without citation, that “[b]egging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation”).

1994). At that time, the plain, ordinary meaning of “begging” was to ask for charitable relief for the poor. *See Beg*, 2 *Oxford English Dictionary* 65 (2d ed. 1989) (“To ask (bread, money, etc.) in alms or as a charitable gift”); *Alms*, 1 *Oxford English Dictionary* 354 (2d ed. 1989) (“Charitable relief of the poor; charity”). We then held that “[l]ike other charitable solicitation, begging is speech entitled to First Amendment protection.” *Smith*, 177 F.3d at 956. But we also noted that Fort Lauderdale had an “interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach.” *Id.* Although Rule 7.5(c) prohibited begging on the beach, Rule 7.5(c) also was “content-neutral and le[ft] open ample alternative channels of communication,” such as “begging in streets, on sidewalks, and in many other public fora throughout” Fort Lauderdale.¹² *Id.* at 956–57. Thus, we ultimately affirmed summary judgment for Fort Lauderdale. *Id.* at 957.

We next consider “if we can[] distinguish the facts or law” of this case from *Smith*. *Devengoechea*, 889 F.3d at 1227. As discussed, the begging and pedestrian solicitation statutes also do not define “begging,” “solicitation,” or “contributions,” but the two statutes apply to begging as ordinarily understood. And, as noted above, the plain, ordinary meaning of “begging” was the same when Fort

¹² Although not relevant to our decision in this case, we explained in *Smith* that “in a public forum, the government may enforce regulations of the time, place, and manner of expression which [1] are content-neutral, [2] are narrowly tailored to serve a significant government interest, and [3] leave open ample alternative channels of communication.” 177 F.3d at 956 (quotation omitted). Rule 7.5(c) met each of these three criteria. *See id.* at 956–57.

Lauderdale enacted Rule 7.5(c) as when Alabama enacted the begging and pedestrian solicitation statutes. *Compare Beg*, 1 *Oxford English Dictionary* 765 (1st ed. 1978) (“To ask (bread, money, etc.) in alms or as a charitable gift . . .”), *with Beg*, 2 *Oxford English Dictionary* 65 (2d ed. 1989) (“To ask (bread, money, etc.) in alms or as a charitable gift . . .”); *see also Alms*, 1 *Oxford English Dictionary* 247 (1st ed. 1978) (“Charitable relief of the poor; charity . . .”); *Alms*, 1 *Oxford English Dictionary* 354 (2d ed. 1989) (“Charitable relief of the poor; charity . . .”). Thus, the “begging” prohibited by the begging and pedestrian solicitation statutes is the same “begging” prohibited by Rule 7.5(c). And we have already held that such begging is “entitled to First Amendment protection.” *Smith*, 177 F.3d at 956. Thus, because *Smith* considered the same issue that we now consider, *Smith* is “the precedent of the first panel to address the relevant issue.” *Stanley*, 83 F.4th at 1338 (quotation omitted); *see Devengoechea*, 889 F.3d at 1227.

Under our “prior-panel-precedent rule,” we are bound to follow *Smith*, and we now apply *Smith* to this case. *See Stanley*, 83 F.4th at 1338 (quotation omitted). The begging and pedestrian solicitation statutes criminalize begging, and begging is “entitled to First Amendment protection.” *Smith*, 177 F.3d at 956. And because the begging and pedestrian solicitation statutes apply throughout public areas of Alabama, they do not “leave open ample alternative channels of communication,” such as “begging in streets, on sidewalks, and in many other public fora.” *Id.* at 956–57 (quotation

omitted).¹³ Indeed, Taylor conceded below that if begging is protected speech, Alabama “cannot broadly restrict panhandling in the manner its laws provide.” Thus, the begging statute’s applications, which are solely to begging, are impermissible, and the pedestrian solicitation statute’s applications, which are to begging and other constitutionally protected speech, are impermissible. Taylor does not offer any other permissible applications of either statute. Accordingly, we affirm the district court’s grant of summary judgment and permanent injunctive relief to Singleton because the begging and pedestrian solicitation statutes’ “full range of applications” is “constitutionally impermissible.” *Moody*, 603 U.S. at 726.¹⁴

In opposition to this conclusion, Taylor argues that we decided *Smith* incorrectly. As discussed, Taylor contends that our focus should be on the original public meaning of the First Amendment and that *Smith* improperly focused on an analogy to charitable solicitations. We may not, however, overrule a prior

¹³ By contrast, in *Smith*, we affirmed summary judgment for Fort Lauderdale because Rule 7.5(c) only applied to the beach. 177 F.3d at 956–57. Thus, Rule 7.5(c) left “open ample alternative channels of communication,” such as “begging in streets, on sidewalks, and in many other public fora throughout” Fort Lauderdale. *Id.*

¹⁴ Singleton argues that we should review the begging and pedestrian solicitation statutes using strict scrutiny because the statutes are not content-neutral. Because we decide that the begging and pedestrian solicitation statutes fail under *Smith*, which treated Rule 7.5(c) as “content-neutral,” we need not decide whether to use strict scrutiny in this case. *Smith*, 177 F.3d at 956.

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panel even if we are “convinced the prior [panel] reached the wrong result.” *Smith v. GTE Corp.*, 236 F.3d 1292, 1303 (11th Cir. 2001). Instead, Taylor’s arguments are better directed to this Court sitting *en banc*, a fact Taylor realized when he moved for initial hearing *en banc* of this appeal. See *Stanley*, 83 F.4th at 1338 (holding that a prior panel precedent is no longer binding if a “later *en banc* or Supreme Court decision[] . . . actually abrogate[s] or directly conflict[s] with . . . the holding of the prior panel” (quotation omitted)). Thus, we affirm.

IV. Conclusion

For the foregoing reasons, the district court properly held that the statutes at issue are facially unconstitutional.

AFFIRMED.