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COMMENT

THE DEMISE OF ANTI-PANHANDLING LAWS IN AMERICA

KATIE PILGRAM NEIDIG*

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I. INTRODUCTION

Beginning in the late 1980s, previously empathetic Americans became increasingly intolerant of panhandling.[1] Local governments, responding to increased complaints from business owners and residents, implemented anti-panhandling regulations to deter beggars and ease concerns from the public.[2] Today, many municipalities have laws prohibiting panhandling in

1. *See* Young v. N.Y.C. Transit Auth., 903 F.2d 146, 149 (2d Cir. 1990) (revealing the New York Transit Authority's 1988 study showed panhandling caused the public to view the subway as dangerous); Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1181 (1996) ("Survey results indicate that many pedestrians react negatively to panhandlers."); Anthony J. Rose, Note, *The Beggar's Free Speech Claim*, 65 IND. L.J. 191, 192 (1989) (describing citizens' annoyance with the prevalence of begging); Isabel Wilkerson, *Shift in Feelings on the Homelessness: Empathy Turns into Frustration*, N.Y. TIMES (Sept. 2, 1991), http://www.nytimes.com/1991/09/02/us/shift-in-feelings-on-the-homeless-empathy-turns-into-frustration.html (reporting on the shift of public sentiment in the 1990s); Michael S. Scott, *Panhandling, in* PROBLEM-ORIENTED GUIDES FOR POLICE 2003, at 11 (U.S. Dep't of Justice, Problem-Specific Guides Series No. 13, 2003) (chronicling the change in America); Telephone Interview with Wilson A. Jackson (Nov. 30, 2015) [hereinafter Interview with Wilson A. Jackson] (recalling the police in Austin, Texas became less tolerant of panhandlers in the mid-1990s). Wilson Andrew Jackson lives in Austin, Texas, where he has panhandled since the mid-1980s. During past thirty-five years, he has directly observed the behaviors and strategies of other beggars and noticed shifts in law enforcement's and potential givers' attitudes towards and tolerance levels of panhandlers. The author interviewed Mr. Jackson by telephone on November 30, 2015.

2. *See* Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 701 (2d Cir. 1993) (contending the police department and its commissioner argue when the beggars behave aggressively, they frighten residents and harm businesses); *Young*, 903 F.2d at 149 (incorporating one detective's reports of subway passengers feeling uncomfortable or intimidated by the beggars); Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 226 (D. Mass. 2015) (examining the City of Worcester's records that claim 196 aggressive panhandling incidents were reported during 2011); McLaughlin v. City of Lowell, 140 F. Supp. 3d 177, 189 (D. Mass. 2015) (addressing tourists' and shoppers' hostility toward beggars); L.A. All. for Survival v. City of L.A., 987 F. Supp. 819, 822 (C.D. Cal. 1997) *aff'd*, 224 F.3d 1076 (9th Cir. 2000) (explaining the city council discovered aggressive begging intimidated residents and disturbed businesses); Ellickson, *supra* note 1, at 1181 ("Merchants . . . generally regard panhandling as bad for business."); Brandt J. Goldstein, *Panhandlers at Yale: A Case Study in the Limits of Law*, 27 IND. L. REV. 295, 331 (1993) (reporting the owner-operators of York district businesses wanted to prohibit panhandling); Marco Masoni, Student Research, *The Common Good: A Critique of How Communities Are Addressing Panhandling*, 1 GEO. J. ON FIGHTING POVERTY 322, 324 (1994) (revealing municipality's reaction to citizens and merchants troubled by panhandling by enacting statutes prohibiting aggressive solicitation); Robert Teir, *Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging*, 54 LA. L. REV. 285, 290 (1993) (indicating Seattle, urged by merchants and residents, enacted a law banning aggressive panhandling); Scott Collins, *Begging Backlash: After Years of Tolerance, Cities with "Compassion Fatigue" Have Begun Getting Tough on Panhandling*, L.A. TIMES (Apr. 28, 1994), http://articles.latimes.com/1994-04-28/news/we-51265_1_city-council (identifying the increased complaints in two liberal California cities); Lisa Redmond, *ACLU: Lowell's Panhandling Ordinance Violates Rights*, LOWELL SUN (Aug. 25, 2014), http://www.lowellsun.com/todaysheadlines/ci_26400870/aclu-lowells-panhandling-ordinance-violates-rights (tracing 237 calls to the city's police department for panhandling complaints from January to November 2013); Patrick Yeagle, *Springfield Panhandling Ordinance Ruled Unconstitutional*, ILL. TIMES (Aug. 13, 2015, 12:09 AM), http://illinoistimes.com/article-16005-springfield-panhandling-ordinance-ruled-unconstitutional.html (quoting former Springfield

some form, location, or manner.[3] However, recent changes in free speech jurisprudence make it nearly impossible to continue to regulate begging with municipal laws.[4] This Comment examines the very narrow window that remains for municipalities to restrict panhandling through ordinances and explores alternative measures designed to curb monetary donations, create social or environmental pressures, and provide suitable government assistance.[5]

Section II of this Comment describes the causes and effects of panhandling and the unenthusiastic reactions of law enforcement personnel that make begging uniquely difficult to regulate.[6] Section III applies traditional First Amendment case law and examines the protections of, restrictions on, and two types of forums associated with the right to freedom of speech. Since the late 1980s, local governments utilized the traditional doctrines of content-based and content-neutral restrictions to guide them in drafting and enacting laws prohibiting begging.[7] For example, a

council member Sam Cahnman, who stated "tourists and local residents felt intimidated by repeated solicitations for money from panhandlers" and a director of a Springfield nonprofit, Victoria Ringer, who claimed businesses have rights and "want to be able to offer a professional, safe level of comfort for customers and employees").

3. *See* Ellickson, *supra* note 1, at 1234 ("[A]nti-begging statutes . . . are in force in numerous states and cities . . . ."); Jessica Meyers, *Worcester Man Helps Take Panhandling Law to High Court*, BOS. GLOBE (Jan. 2, 2015), https://www.bostonglobe.com/news/nation/2015/01/02/homeless-worcester-man-center-free-speech-case-that-could-hit-supreme-court/yMTwGdh9dY3HNIVziwmGYO/story.html (arguing cities across the United States are regulating aggressive panhandling); Marshall H. Tanick, *Is Minneapolis' Begging Law Doomed?*, STAR TRIB. (Dec. 31, 2015, 6:18 PM), http://www.startribune.com/is-minneapolis-begging-law-doomed/363962261/ (proposing Minneapolis's anti-begging law is not new or unusual and pointing out three surrounding cities that have similar laws); Scott, *supra* note 1, at 29 (detailing at least twenty-five states and 33% of large municipalities regulate begging).

4. *See* Brad Reid, *Difficult Legal Issues Surrounding Anti-Panhandling Ordinances*, HUFFINGTON POST (Sept. 2, 2015), http://www.huffingtonpost.com/brad-reid/difficult-legal-issues-su_b_8077620.html ("[I]t is legally difficult [to] restrict panhandling.").

5. *See Thayer II*, 144 F. Supp. 3d at 237 (illustrating the difficulty of restricting panhandling post-*Reed*); Scott, *supra* note 1, at 24–26 (enumerating alternative public information responses).

6. *See* Greater Cincinnati Coal. for the Homeless v. City of Cincinnati, 56 F.3d 710, 714 (6th Cir. 1995) (showing the police merely warned the plaintiff, a beggar, even though they had authority under the ordinance to arrest him); Nancy R. Gibbs, *Begging: To Give or Not to Give*, TIME (June 24, 2001), http://content.time.com/time/magazine/article/0,9171,150018,00.html (stating city officials acknowledge the difficulty in enforcing anti-panhandling laws).

7. *See* Thayer v. City of Worcester (*Thayer I*), 755 F.3d 60, 63 (1st Cir. 2014) (finding the City of Worcester had been dealing with concerns regarding panhandling for the past ten years and took the first remedial step in 2005), *vacated*, 135 S. Ct. 2887 (2015) (mem.); Ellickson, *supra* note 1, at 1217 (1996) ("In the 1990s, the abiding concern with street misconduct . . . resurfaced with a vengeance."); Louisa R. Stark, *From Lemons to Lemonade: An Ethnographic Sketch of Late Twentieth-Century Panhandling*, NEW ENG. J. PUB. POL'Y, Spring–Summer 1992, at 341, 341 (listing six cities that passed ordinances against various forms of begging from 1987 to 1991); Collins, *supra* note 2

municipality might draft an ordinance banning aggressive panhandling and use traditional case law, to evaluate and conclude its law is a content-neutral restriction on speech because it prohibits all intimidating or threatening acts of begging without reference to the contents of the beggar's message.[8] As case law increased and misinterpretations compounded, confusion surrounding content-based classifications of anti-panhandling laws created a circuit split among the federal courts of appeals.[9]

Section IV details the Supreme Court's holding in *Reed v. Town of Gilbert*[10] and emphasizes that the decision fundamentally altered free speech jurisprudence by resolving twenty-six years of uncertainty regarding content-based regulations, causing the demise of countless anti-panhandling laws.[11] Accordingly, Section V surveys alternative actions local governments may employ in lieu of or in conjunction with municipal ordinances to reduce panhandling.[12]

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http://articles.latimes.com/1994-04-28/news/we-51265_1_city-council (reporting in 1993, Beverly Hills enacted a law against aggressive panhandling and in 1994, two other California cities passed or were considering passing anti-panhandling laws); NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 8 (2011) (observing in 188 cities a 7% increase in laws prohibiting panhandling from 2009 to 2011); NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 9 (2014) [hereinafter THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2014)] (determining in 187 cities since 2011, city-wide prohibitions on panhandling increased 25% and prohibitions on panhandling in specific areas increased 20%); Scott, *supra* note 1, at 21 (asserting many courts allowed ordinances restricting panhandling in specific areas); Interview with Wilson A. Jackson, *supra* note 1 (recalling the city of Austin, Texas, began regulating begging in the mid-1990s); Colleen Slevin, *Supreme Court Free Speech Ruling Challenges Anti-Panhandling Laws*, HUFFINGTON POST (Nov. 2, 2015, 1:55 PM), http://www.huffingtonpost.com/entry/supreme-court-free-speech-ruling-challenges-anti-panhandling-laws_56377dede4b0c66bae5cfe87 ("The debate over panhandling laws comes at a time when more cities have sought to restrict where people can ask for money.").

8. *Cf. Thayer I*, 755 F.3d at 66 (explaining the district court's reasoning for upholding the two ordinances).

9. *See* Norton v. City of Springfield (*Norton I*), 768 F.3d 713, 717 (7th Cir. 2014) (recognizing the disagreement among the appellate courts), *rev'd on reh'g*, 806 F.3d 411 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1173 (2016) (mem.).

10. Reed v. Town of Gilbert (*Reed II*), 135 S. Ct. 2218 (2015).

11. *See* Norton v. City of Springfield (*Norton II*), 806 F.3d 411, 413 (7th Cir. 2015) (Manion, J., concurring) (opining *Ward v. Rock Against Racism*, decided in 1989, was the starting point of the confusion that *Reed* resolved in 2015); Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 237 (D. Mass. 2015) (warning local governments about drafting anti-panhandling ordinances); Peter Schworm, *Federal Judge Strikes Down Worcester Panhandling Laws*, BOS. GLOBE (Nov. 10, 2015), http://www.bostonglobe.com/metro/2015/11/10/federal-judge-strikes-down-worcester-panhandling-ordinances/8hPfcDVNCG2eQxR1D8trjL/story.html (stressing the implications of the decision in *Reed*).

12. *See, e.g.*, Scott, *supra* note 1, at 24–29 (cataloging alternative options).

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II. CAUSES AND CONSEQUENCES OF PANHANDLING

Panhandlers follow the money and seek high-trafficked areas and people who are likely to carry cash,[13] making panhandling a potentially successful alternative to employment.[14] The majority of panhandlers do not seek traditional forms of employment for various reasons: they view panhandling as their occupation, which may be more profitable than a job paying minimum wage;[15] they prefer the relaxed schedule of begging to the strict work schedule required in traditional employment positions;[16] or they

13. *See* Goldstein, *supra* note 2, at 313 (1993) (noticing the returning panhandlers were first drawn to the York district because of the volume of pedestrian traffic); Stark, *supra* note 7, at 341, 344–45 (revealing the strategies of panhandlers who seek individuals that have just spent or are about to spend cash, making it difficult to claim they have no change to give); Teir, *supra* note 2, at 329 (finding beggars are motivated by their desire to obtain cash); Scott, *supra* note 1, at 8 (indicating panhandlers necessarily "go where the money is" and "where the opportunities to collect money are best").

14. *See* Greater Cincinnati Coal. for the Homeless v. City of Cincinnati, 56 F.3d 710, 713 (6th Cir. 1995) (recognizing plaintiff's average earnings are $25 for two to three hours of begging); Ellickson, *supra* note 1, at 1179 (noting "the most skillful panhandlers" could earn up to $20 hourly); Goldstein, *supra* note 2, at 303–04, 314 (revealing in the early 1990s, at a time when the local Burger King paid $4.25 per hour for entry-level positions, six panhandlers who begged for money on the street in the York district would receive $20 to $50 daily and $100 to $250 weekly); Gibbs, *supra* note 6 (discovering disabled beggars and women with children earned approximately $70 to $150 per day and one couple who lied about their circumstances earned up to $200 per hour); Derek Thompson, *Should You Give Money to Homeless People?*, ATLANTIC (Mar. 22, 2011), http://www.theatlantic.com/business/archive/2011/03/should-you-give-money-to-homeless-people/72820/ (interpreting studies showing a "career panhandler" may earn a monthly income ranging from $600 to $1,500); Interview with Wilson A. Jackson, *supra* note 1 (stating he has at times earned enough through panhandling to sustain a household with bills amounting to approximately $800 per month); Ron Dicker, *Panhandler Shane Warren Speegle Says He Made $60,000 a Year Begging on Street*, HUFFINGTON POST (July 23, 2012), http://www.huffingtonpost.com/2012/07/23/shane-warren-speegle-says_n_1694577.html (covering the story of one beggar who informed a police officer he earned $60,000 in 2011 by panhandling).

15. *See* Stark, *supra* note 7, at 342 (asserting beggars view panhandling as their employment); Robert Teir, *supra* note 2, at 305 (discussing an increase in beggars that panhandle to earn living expenses); Gibbs, *supra* note 6 ("It is true that many panhandlers do not want to work and disdain whatever minimum-wage jobs are available."); Scott, *supra* note 1, at 7 (announcing reasons why panhandlers do not seek employment); Mike Headrick, *Business of Begging: The Real Stories Behind Utah Panhandling*, KSL NEWS (Nov. 25, 2013, 11:24 PM), https://www.ksl.com/?sid=27782692 (stating one beggar, when approached by a resident, admitted to being employed as a panhandler); Brad Reid, *supra* note 4 (implying some beggars may consider panhandling as their occupation).

16. *See* Scott, *supra* note 1, at 7 (noting the "panhandlers' refusal to look for regular employment"); Interview with Wilson A. Jackson, *supra* note 1 (illustrating that he enjoys the freedom and lax lifestyle of panhandling); Clifton French, *Panhandler Robs Woman Trying to Give Him $5, Chokes Her Son When He Tries to Intervene*, ABC ACTION NEWS (Dec. 23, 2015, 9:10 AM), http://www.abcactionnews.com/news/region-pasco/hudson/panhandler-robs-woman-trying-to-give-him-5 (interviewing one panhandler who indicated she was not seeking employment). *But see* Blair v. Shanahan, 775 F. Supp. 1315, 1318 (N.D. Cal. 1991) (noting that the plaintiff no longer begs nor has any intentions to beg because he gained steady employment), *appeal dismissed*, 38 F.3d 1514 (9th Cir. 1994) and *vacated*, 919 F. Supp. 1361 (N.D. Cal. 1996).

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panhandle to supplement their government benefits.[17] Additionally, any income earned by begging is tax-free and purely profit.[18]

The true characteristics of most panhandlers are contrary to what many Americans believe—for example, few homeless individuals beg and most panhandlers are not homeless.[19] Additionally, the majority of panhandlers are likely to be involved in criminal activity.[20] Numerous studies have found the typical panhandler is "an unemployed, unmarried male in his 30s or 40s, with substance abuse problems, few family ties, a high school education, and laborer's skills."[21] Young panhandlers are typically runaways and transients.[22] Panhandling incites crimes against beggars and crimes

17. *See* Gresham v. Peterson, 225 F.3d 899, 902 (7th Cir. 2000) (portraying a plaintiff who resorted to begging to supplement his Social Security benefits); *Greater Cincinnati Coal. for the Homeless*, 56 F.3d at 713 (identifying a plaintiff that begs to enhance his disability benefits); Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 231 (D. Mass. 2015) (discussing how two panhandling plaintiffs rely on begging to earn income above what they receive from government assistance); Goldstein, *supra* note 2, at 307 (noting many of the beggars collect welfare assistance); Gibbs, *supra* note 6 (describing one panhandler who claims it is impossible to live on his disability benefits of $370 per month); Interview with Wilson A. Jackson, *supra* note 1 (stressing government aid is inadequate to sustain basic living expenses).

18. *See* Ellickson, *supra* note 1, at 1179 (describing a panhandler's income as tax-free); Scott Collins, *supra* note 2 (interviewing a director of a nonprofit who indicates begging income is tax-free); Kevin Lewis, *Exclusive Story: Profiling a Panhandler Pt. 1, Pt. 2 & Pt. 3*, WNDU NEWS (May 2, 2013, 6:51 PM), http://www.wndu.com/home/headlines/Exclusive-Story-Profiling-A-Panhandler-202876851.html (including one individual's claim that the $60 his panhandling friend earned was tax-free).

19. *See* Ellickson, *supra* note 1, at 1193 (clarifying "a large majority of panhandlers have 'regular access to a permanent dwelling'" and "only a small fraction of the street and shelter homeless engage in panhandling"); Goldstein, *supra* note 2, at 307 (finding most of the beggars were not homeless); Carlos Gieseken, *Homeless: To Give or Not to Give?*, PENSACOLA NEWS J. (Jan. 2, 2016), http://www.pnj.com/story/news/local/pensacola/2016/01/02/homeless-give-not-give/77990160/ (interviewing a professor who emphasized the distinction between beggars and homeless people); Scott, *supra* note 1, at 6 (citing numerous studies showing homeless individuals rarely beg and most beggars have a home); Headrick, *supra* note 15 (advancing one nonprofit director's claim that homelessness and begging are not synonymous); Lewis, *supra* note 18 (uncovering one panhandler lives in an apartment that costs $750 per month).

20. *See* Scott, *supra* note 1, at 6 (summarizing the prevalence of criminal records among beggars); *see also* Yeagle, *supra* note 2 ("Asked why he panhandles, Norton says a past DUI conviction from 2000 has prevented him from finding steady work."); Headrick, *supra* note 15 (uncovering all five panhandlers that were investigated had criminal convictions); Lewis, *supra* note 18 (investigating seven panhandlers and finding only one had no criminal history and three had extensive criminal records).

21. Scott, *supra* note 1, at 5–6; *see also* Young v. N.Y.C. Transit Auth., 903 F.2d 146, 150 (2d Cir. 1990) (revealing the transit authority's study results indicated subway beggars were usually men living with alcohol or drug addictions or mental illness); Stark, *supra* note 7, at 342 (inferring contemporary beggars are mostly young men with an alcohol and/or drug dependency). *But see* Rose, *supra* note 1, at 198 (highlighting the misconceptions regarding individuals' motivations to beg).

22. *See* Scott, *supra* note 1, at 6 (detailing the profiles of young people who resort to begging).

perpetrated by beggars.[23] Panhandlers often fight over prime begging territory.[24] Chemical dependent beggars purchase illegal drugs with the funds they have raised.[25]

Beyond the typical peaceful solicitation of donations, some panhandlers engage in a coercive form of begging known as aggressive panhandling,[26] which is defined as begging "coercively, with actual or implied threats, or menacing actions."[27] Menacing actions include blocking a pedestrian's or motorist's path, approaching a motorist's vehicle, touching a pedestrian, or begging near a financial institution or on public transportation.[28]

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23. *See* Robert Baker, *Panhandlers Fight over Syracuse Corner While Nearby Businesses Complain to Police*, POST-STANDARD (Sept. 24, 2012), http://www.syracuse.com/news/index.ssf/2012/09/panhandlers_fight_over_syracus.html (examining the violence among panhandlers); Scott, *supra* note 1, at 6 (proposing beggars may be the victims or perpetrators of crime).

24. *Cf.* Baker, *supra* note 23 (chronicling two fights among territorial panhandlers over one popular street corner that sent one man to the hospital for a cut and led to the death of one woman); Interview with Wilson A. Jackson, *supra* note 1 (attesting that the interviewee has witnessed other panhandlers fight over street corners). *But cf.* Goldstein, *supra* note 2, at 307 (describing one panhandler who would ask newcomers or difficult panhandlers that stood too close to his territory to move, but if they did not comply, he would move or leave to avoid the risk of a fight).

25. *See* Speet v. Schuette, 726 F.3d 867, 870, 879 (6th Cir. 2013) (quoting an agency director who claims the majority of beggars are spending their earnings on drugs and alcohol); Greater Cincinnati Coal. for the Homeless v. City of Cincinnati, 56 F.3d 710, 713 (6th Cir. 1995) (indicating the plaintiff begs for cash to purchase alcohol or food); Goldstein, *supra* note 2, at 330 (noting the regular panhandlers begged because they mostly desired better quality food and drugs or alcohol); Stark, *supra* note 7, at 346 (reiterating beggars spend their income on drugs or alcohol); Baker, *supra* note 23 (paraphrasing a business owner's complaint about finding drug paraphernalia and individuals passed out near his business, which is located diagonally across from a popular begging corner); Scott J. Croteau, *Worcester Police Start Arresting Panhandlers*, TELEGRAM & GAZETTE (Mar. 20, 2013), http://www.telegram.com/article/20130320/NEWS/103209932/ (advancing the police chief's claim that beggars were arrested with drug paraphernalia in their possession, showing they are panhandling to finance their drug habit); Gibbs, *supra* note 6 (admitting many beggars are addicted to drugs or alcohol); Interview with Wilson A. Jackson, *supra* note 1 (stating the claims that panhandlers use begging income to buy drugs or alcohol is consistent with what the interviewee witnessed during his thirty-five years of begging on the streets); French, *supra* note 16 (finding remnants of drugs and alcohol in camps where beggars reside); Slevin, *supra* note 7 (acknowledging one city official's claim that bans on panhandling are key to reducing the opioid problem in America). *But see* Gresham v. Peterson, 225 F.3d 899, 902 (7th Cir. 2000) (commenting that Gresham, a panhandler, spends his earnings on food).

26. *See* Meyers, *supra* note 3 (interviewing a plaintiff who admits there are some unruly beggars in Worcester); Scott, *supra* note 1, at 1 (defining aggressive begging).

27. Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 224 (D. Mass. 2015); Scott, *supra* note 1, at 1.

28. *See* Young v. N.Y.C. Transit Auth., 903 F.2d 146, 150 (2d Cir. 1990) (explaining the transit authority's study showed begging in the subway is more frightening and inherently aggressive because there is little opportunity to move away from an intimidating beggar); *Thayer II*, 144 F. Supp. 3d at 231 (identifying one aggressive panhandler that yelled at motorists and approached vehicles); Masoni, *supra* note 2, at 323–24 (identifying one city passed an ordinance, designed to reduce offensive panhandling, that proscribed begging near an ATM, public transportation, and a motor vehicle); Teir, *supra* note 2,

Aggressive panhandling may lead to particularly violent encounters. In New York, panhandler James Howley was arrested for repeatedly stabbing an individual.[29] After receiving one dollar, Howley noticed the individual possessed more cash, which he demanded.[30]

Even though municipalities pass ordinances, panhandling continues because law enforcement officers refuse to invest much effort into policing beggars.[31] One study estimated police officers arrest "considerably less than one percent" of the panhandlers they encounter.[32] Most officers

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at 334–36 (defining aggressive panhandling behaviors in a model law); Meyers, *supra* note 3 (writing the City of Worcester defined one form of aggressive panhandling as begging "within 20 feet of a[n] . . . ATM"); Lisa Redmond, *Federal Judge Strikes Down Lowell Panhandling Law*, LOWELL SUN (Oct. 24, 2015, 6:38 AM), http://www.lowellsun.com/todaysheadlines/ci_29018001/federal-judge-strikes-down-lowell-panhandling-law (including a city council member's complaint that aggressive beggars are approaching vehicles); Scott, *supra* note 1, at 5 (listing common intimidating factors contributing to aggressive begging); Reid, *supra* note 4 (describing aggressive panhandling).

29. James Howley, *N.Y. Homeless Man, Arrested After Allegedly Stabbing Man Who Gave Him $1*, CBS NEWS (Oct. 14, 2013, 3:28 PM), http://www.cbsnews.com/news/james-howley-ny-homeless-man-arrested-after-allegedly-stabbing-man-who-gave-him-1/.

30. *See id.* (reporting on the incident); *see also* Teir, *supra* note 2, at 290 (discussing the escalation of violence associated with aggressive solicitation); French, *supra* note 16 (warning of the growing violent encounters involving beggars and reporting one donor was robbed and her son choked by a panhandler).

31. *See* Greater Cincinnati Coal. for the Homeless v. City of Cincinnati, 56 F.3d 710, 714 (6th Cir. 1995) ("Police [o]fficer told plaintiff to 'move along' without giving him a ticket."); Rose, *supra* note 1, at 193 (noting the criminal justice system lacks dedication to punish beggars under anti-panhandling laws); *see also* Baker, *supra* note 23 (delineating two business owners' objections with police for not arresting panhandlers); Fernanda Santos, *Albuquerque, Revising Approach Toward the Homeless, Offers Them Jobs*, N.Y. TIMES (Dec. 7, 2015), http://www.nytimes.com/2015/12/08/us/albuquerque-revising-approach-toward-the-homeless-offers-them-jobs.html (stating Albuquerque's law against aggressive begging is "rarely enforced"); Scott, *supra* note 1, at 19 (arguing arrests for panhandling are uncommon and warnings are most common). *But see* Norton v. City of Springfield (*Norton I*), 768 F.3d 713, 714 (7th Cir. 2014) *rev'd on reh'g*, 806 F.3d 411 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1173 (2016) (mem.) (expressing the two plaintiff-panhandlers were cited for violating the City of Springfield's ordinance); Interview with Wilson A. Jackson, *supra* note 1 (estimating he was ticketed for panhandling a few dozen times over a duration of fifteen years).

32. Goldstein, *supra* note 2, at 343; *see also* Cutting v. City of Portland, 802 F.3d 79, 82 (1st Cir. 2015) (expressing the city enforced the law five times in one month); Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 701 (2d Cir. 1993) (conceding arrests for begging are rare); Rose, *supra* note 1, at 193–94 ("Police officers do not consistently arrest beggars . . . . " (citations omitted)); Teir, *supra* note 2, at 305 (suggesting panhandler arrests are unusual); Lewis, *supra* note 18 (counting only twenty-two panhandlers arrested in two years). *But see Greater Cincinnati Coal. for the Homeless*, 56 F.3d at 714 (including Director of the Greater Cincinnati Coalition for the Homeless, Michael Fontana's claim that in the first week following the enactment of the anti-panhandling ordinance, fifty individuals were arrested for begging); *Thayer II*, 144 F. Supp. 3d at 231 (recognizing a local beggar known to be threatening was arrested multiple times for violating the ordinance); Blair v. Shanahan, 775 F. Supp. 1315, 1318 (N.D. Cal. 1991) (detailing the police arrested the panhandling plaintiff more than five times in eight months), *appeal dismissed*, 38 F.3d 1514 (9th Cir. 1994) *and vacated*, 919 F. Supp. 1361 (N.D. Cal. 1996).

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believe arrests for panhandling are not worth their time, and district attorneys rarely prosecute the arrests.[33] Thus, the main method of enforcing of anti-begging laws is an officers' warning, including the typical "move along" order.[34] Conversely, local governments view aggressive panhandling as a public safety concern,[35] and police officers are more likely to arrest intimidating or coercive beggars.[36]

III. FREEDOM OF SPEECH

The First Amendment to the United States Constitution protects the right to freedom of speech and declares, "Congress shall make no law . . . abridging the freedom of speech . . . . "[37] However the First Amendment

33. *See Blair*, 775 F. Supp. at 1318 (noting the district attorney refused to press charges every time the plaintiff was arrested); Masoni, *supra* note 2, at 324 (noting the negligible amount of convictions under San Francisco's aggressive panhandling ordinance); Rose, *supra* note 1, at 194 (describing how prosecutors usually view cases against beggars for violating anti-panhandling ordinances as lacking importance and urgency); Scott, *supra* note 1, at 19 (portraying the difficulty in enforcing anti-panhandling ordinances); Lewis, *supra* note 18 (discovering prosecutors only charged thirteen of the twenty-two arrested beggars).

34. *See* Thayer v. City of Worcester (*Thayer I*), 755 F.3d 60, 66 (1st Cir. 2014) (recognizing the two plaintiffs were warned but never arrested under the ordinances), *vacated*, 135 S. Ct. 2887 (2015) (mem.); Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 701 (2d Cir. 1993) (acknowledging police officers often used an ordinance to urge beggars to move along); Young v. N.Y.C. Transit Auth., 903 F.2d 146, 149 (2d Cir. 1990) (clarifying when the beggars were caught violating the statute, the police officers merely asked them to cease begging or leave); Ellickson, *supra* note 1, at 1201 ("If armed with a[n] . . . ordinance aimed at chronic street misconduct, in practice a police officer would be inclined to . . . [issue] a verbal warning or request to move along." (first citing Streetwatch v. Nat'l R.R. Passenger Corp., 875 F. Supp. 1055, 1057 (S.D.N.Y. 1995); and then citing Daniel L. Koffsky, Note, *Orders to Move On and the Prevention of Crime*, 87 YALE L.J. 603 (1978))); Rose, *supra* note 1, at 193–94 (indicating law enforcement use anti-begging laws mostly to threaten offending panhandlers); Teir, *supra* note 2, at 305 (noting the typical response of law enforcement is to warn panhandlers); Scott, *supra* note 1, at 19 (claiming the likely response to panhandlers from police is a warning).

35. *See* Redmond, *supra* note 28 (recognizing the city of Lowell viewed aggressive panhandling as "a matter of public safety"); Schworm, *supra* note 11 (contending the city of Worcester sought to eliminate aggressive begging "in the name of public safety").

36. *See Thayer II*, 144 F. Supp. 3d at 230–31 (reporting there were thirty arrests for violating an aggressive panhandling ordinance and arresting one aggressive beggar nine times); Baker, *supra* note 23 (paraphrasing one law enforcement official's comments that the city of Syracuse did not have the resources to continue a campaign to ticket and arrest panhandlers on the medians of highway exit ramps, but police officers continue to target aggressive panhandlers); Gibbs, *supra* note 6 (interviewing one police official who reported his officers arrested 150 individuals for aggressive panhandling); *Worcester's Anti-Begging Law Violates Free Speech Rights*, BOS. GLOBE (Dec. 21, 2014), http://www.bostonglobe.com/opinion/editorials/2014/12/21/worcester-anti-begging-law-ordinance-violates-free-speech-rights/E5BE1oVwBpRWobQomsXfbP/story.html (explaining the aggressive panhandling ordinance which provides for the arrest of aggressive beggars); Scott, *supra* note 1, at 2 ("Panhandling becomes a higher police priority when it becomes aggressive . . . .").

37. U.S. CONST. amend. I.

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does not preserve the right to any and all speech.[38] Particular types of speech, such as indecency, vulgarity, defamation, or fighting words are unprotected.[39] Additionally, the government may place appropriate "time, place, or manner" limitations on speech.[40]

A. *Content-Based and Content-Neutral Restrictions*

Restrictions on speech are categorized as content based or content neutral.[41] The government may never restrict speech based on "its message, its ideas, its subject matter, or its content."[42] As a result, content-based restrictions on speech are presumed unconstitutional, must meet strict scrutiny, and may only be justified if "narrowly tailored to promote a compelling [g]overnment interest," and no "less restrictive alternative would serve the [g]overnment's purpose."[43] Alternatively, content-neutral restrictions limit all speech on some basis other than the viewpoint or content of the speech.[44] Such limitations pose less concern about the government censoring speech and must meet only intermediate scrutiny.[45] Under intermediate scrutiny, a content-neutral restriction will be upheld if "it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."[46] Moreover, the restriction does not need to be the least prohibitive or disruptive manner of serving the governmental interest.[47]

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38. *See* Chaplinsky v. State of N.H., 315 U.S. 568, 571 (1942) (discussing the limits of the right to freedom of speech).

39. *See id.* at 572 (listing unprotected forms of speech).

40. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989); Clark v. Cmty. for Creative Non-violence, 468 U.S. 288, 298 (1984).

41. *See* Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 642 (1994) ("We have said that the 'principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because [of agreement] or disagreement with the message it conveys." (first quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989); and then citing R.A.V. v. City of St. Paul, 505 U.S. 377, 386 (1992))).

42. Police Dep't of Chi. v. Mosley, 408 U.S. 92, 95 (1972) (citations omitted).

43. United States v. Playboy Entm't Grp., 529 U.S. 803, 813 (2000); *see also* R.A.V. v. City of St. Paul, 505 U.S. 377, 382, 395–96 (1992) (presuming a restriction is invalid if it is content based).

44. *See Turner Broad. Sys., Inc.*, 512 U.S. at 642 (defining content-neutral restrictions as "unrelated to the content of speech" (citing Clark v. Cmty. for Creative Non-violence, 468 U.S. 288, 293 (1994))).

45. *See id.* (applying intermediate scrutiny to a content-neutral limitation).

46. *Id.* at 662 (quoting United States v. O'Brien, 391 U.S. 367, 377 (1968)).

47. *Compare id.* ("[A] regulation need not be the least speech-restrictive means . . . ."), *with* Ward v. Rock Against Racism, 491 U.S. 781, 798 (1989) (reaffirming a regulation "need not be the least restrictive or least intrusive means").

B. *Public Forums*

A public forum is defined as governmental property "that the government is constitutionally obligated to make available for speech" is known as a public forum.[48] Parks, streets, and sidewalks are examples of historically recognized public forums.[49] With limited authority, the government may restrict—but must not ban—speech within public forums.[50] In addition to satisfying strict or intermediate scrutiny, the government may only limit speech within public forums if the restriction leaves sufficient alternatives for dissemination of the speech.[51] Hence, panhandlers who beg near the street or on sidewalks have an additional argument that anti-panhandling laws produce insufficient alternatives for spreading their message.[52]

C. *Nonpublic Forums*

In contrast, the government may prohibit all communicative activities on government properties known as nonpublic forums, provided the restriction is "reasonable and viewpoint neutral."[53] The Supreme Court specifically addressed and validated restrictions on panhandling within two different nonpublic forums.[54] Writing for the Court, Justice O'Connor held the United States Postal Service's law prohibiting begging on a sidewalk leading to a post office was content neutral, reasonable, and did not violate

48. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 1550 (4th ed. 2013).

49. *See* McCullen v. Coakley, 134 S. Ct. 2518, 2529 (2014) (listing public sidewalks and streets as public forums); United States v. Grace, 461 U.S. 171, 171 (1983) (providing examples of public forums).

50. *See McCullen*, 134 S. Ct. at 2529 (quoting United States v. Grace, 461 U.S. 171, 177 (1983)) (declaring the government's authority to regulate speech in public forums is significantly limited); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983) ("In the quintessential forums, the government may not prohibit all communicative activity."); Cutting v. City of Portland, 802 F.3d 79, 83 (1st Cir. 2015) (citing Hague v. Comm. for Indus. Org., 307 U.S. 496, 515–16 (1939)) (mandating restrictions on the government's ability to prohibit speech in public forums).

51. *Compare* Clark v. Cmty. for Creative Non-violence, 468 U.S. 288, 293 (1984) ("[R]estrictions . . . are valid provided . . . they leave open ample alternative channels for communication of the information." (citations omitted)), *with Perry Educ. Ass'n*, 460 U.S. at 45 (noting the need to "leave open ample alternative channels of communication" (citations omitted)).

52. *Cf.* Reed v. Town of Gilbert (*Reed I*), 587 F.3d 966, 980 (9th Cir. 2009) (arguing the town's sign code left insufficient alternatives for communication of the message), *rev'd*, 135 S. Ct. 2218 (2015).

53. CHEMERINSKY, *supra* note 48, at 1576; *see also* Int'l Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 677 (1992) (applying the reasonable standard to a non-public forum); United States v. Kokinda, 497 U.S. 720, 721 (1990) (examining a regulation of speech in a non-public forum for reasonableness).

54. *See Int'l Soc'y for Krishna Consciousness, Inc.*, 505 U.S. at 677, 683 (resolving a circuit court split by holding airport terminals are non-public forums); *Kokinda*, 497 U.S. at 730 (analyzing the restriction under the non-public forum standard).

the First Amendment.[55] The Court, which previously classified sidewalks as public forums, emphasized the sidewalk at issue was on post office property, was not intended to be used as a public walkway or for speech activities, and was a nonpublic forum.[56] Two years later, a majority of the Court upheld the Port Authority of New York and New Jersey's restrictions on continuous or repetitive requests for money within the airports' terminals.[57] Narrowing its focus to airports, the Court stated the purpose of airport terminals was not for soliciting or distributing and concluded the terminals were nonpublic forums.[58] While these cases "indicate a strong presumption for finding government property to be a nonpublic forum," Supreme Court precedent seems to signal a strong likelihood that courts will classify areas such as streets, sidewalks, and traffic medians as public forums.[59]

D. *Circuit Split Regarding Laws Regulating Panhandling*

Since the late 1980s, tolerance of panhandling has decreased in the United States and led local governments to pass laws that regulate begging, which "is a recognized form of speech protected by the First Amendment[.]"[60] As a result, panhandlers and nonprofit organizations started challenging the constitutionality of the laws by arguing infringement on the right to freedom

55. *See id.* at 736–37 ("[T]his regulation passes constitutional muster . . . [and] is reasonable as applied." (citations omitted)).

56. *See id.* at 721 ("The postal sidewalk is not a traditional public forum.").

57. *See Int'l Soc'y for Krishna Consciousness, Inc.*, 505 U.S at 675–76, 685 (enumerating the restrictions imposed by the regulation, and concluding the regulation was reasonable).

58. *See id.* at 683 (deciding the airport terminals did not satisfy the standards for identification as a public forum).

59. CHEMERINSKY, *supra* note 48, at 1581; *see also* McCullen v. Coakley, 134 S. Ct. 2518, 2529 (2014) (categorizing sidewalks and streets as traditional public forums); Cutting v. City of Portland, 802 F.3d 79, 83 (1st Cir. 2015) (announcing traffic medians as a public forums); Homeless Helping Homeless, Inc. v. City of Tampa, No. 8:15-cv-1219-T-23AAS, 2016 WL 4162882, at *4 (M.D. Fla. Aug. 5, 2016) (noting the ordinance restricted speech within the traditional public forums of sidewalks, streets, and parks).

60. United States v. Kokinda, 497 U.S. 720, 725 (1990) (first citing Vill. of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 629 (1980); and then citing Riley v. Nat'l Fed'n of Blind of N.C., Inc., 487 U.S. 781, 788–89 (1988)); *see also* Vill. of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 629 (1980) (clarifying requests for donations are protected by the right to freedom of speech); Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 704 (2d Cir. 1993) (relating panhandling to a form of communication); Rose, *supra* note 1, at 201–02 (asserting anti-panhandling laws necessarily involve the First Amendment); THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2014), *supra* note 9, at 8–9 (reporting, among the cities surveyed, laws restricting panhandling throughout the whole municipality increased 25% and laws restricting panhandling in specific locations increased 20% since 2011); Scott, *supra* note 1, at 11 (indicating the tolerance level for panhandlers decreased during the 1990s).

of speech.[61]

The federal courts of appeals became divided on whether laws regulating panhandling were content neutral.[62] In one constitutional challenge, the First Circuit determined two ordinances, which prohibited begging aggressively and remaining on the street or traffic islands, were content neutral and subject to intermediate scrutiny.[63] Similarly, the Seventh Circuit upheld a city ordinance preventing verbal requests for monetary donations in the "downtown historic district" as content neutral because the ordinance was not based on the beggar's explanation for the monetary request.[64] The District of Columbia Circuit held the park service's rule against solicitations on park and monument grounds was content neutral as "it merely regulates the manner in which the message may be conveyed."[65] Thus, the First, Seventh, and District of Columbia Circuits determined various anti-panhandling ordinances against begging were content neutral.[66]

In contrast, the Second, Fourth, Sixth, and Ninth Circuits concluded similar anti-soliciting laws were not content based.[67] The Second Circuit stated New York's Penal Code, which criminalized loitering with the intent to panhandle, banned all speech associated with panhandling and was not content neutral.[68] Charlottesville passed a city code criminalizing requests for immediate donations within fifty feet of a particular intersection, and the

61. *See* Teir, *supra* note 2, at 334 (predicting constitutional challenges on laws banning even the most offensive acts of panhandling); Meyers, *supra* note 3 (revealing the American Civil Liberties Union assisted a local panhandler, Robert Thayer, with filing a law suit challenging two Worcester anti-begging ordinances); Tanick, *supra* note 3 (proposing nonprofit organizations are eager to challenge the Minneapolis anti-begging statute).

62. *See generally* Norton v. City of Springfield (*Norton I*), 768 F.3d 713, 717 (7th Cir. 2014) (discussing the "conflict among the circuits about panhandling ordinances"), *rev'd on reh'g*, 806 F.3d 411 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1173 (2016) (mem.).

63. *See* Thayer v. City of Worcester (*Thayer I*), 755 F.3d 60, 64–65, 70–71 (1st Cir. 2014) (classifying the two laws as content neutral and subjecting them to intermediate scrutiny), *vacated*, 135 S. Ct. 2887 (2015) (mem.).

64. *Norton I*, 768 F.3d at 717–18.

65. ISKCON of Potomac, Inc. v. Kennedy, 61 F.3d 949, 955 (D.C. Cir. 1995)) (citing Int'l Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 704 (1992) (Kennedy, J., concurring)).

66. *See Thayer I*, 755 F.3d at 67 (outlining the analysis and concluding the ordinances were content neutral); *ISKCON of Potomac, Inc.*, 61 F.3d at 954–55 (determining the regulations were content neutral). *See generally Norton I*, 768 F.3d at 714, 717–18 (analyzing how to determine if a law is content based and holding the challenged statute was content-neutral).

67. *See* Speet v. Schuette, 726 F.3d 867, 870 (6th Cir. 2013) (striking the content-based statute); Am. Civil Liberties Union of Nev. v. City of Las Vegas, 466 F.3d 784, 795–96, 800 (9th Cir. 2006) (condemning the content-based anti-begging law); Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 705 (2d Cir. 1993) (deciding that a ban on all speech containing solicitations was a content-based regulation).

68. *See id.* (asserting the statute was more than a restriction—it was an absolute prohibition).

Fourth Circuit concluded the ordinance was clearly content based because it "plainly distinguishes between types of solicitations on its face."[69] Michigan law stated "a disorderly person . . . is . . . [a] person found begging in a public place[,]" but in 2013, the Sixth Circuit held the statute was facially content based and prohibited a category of speech specifically protected by the First Amendment.[70] Invalidating Las Vegas's ordinance that prohibited verbal and written solicitations, the Ninth Circuit found the law was content based on its face.[71]

IV. *REED V. TOWN OF GILBERT*

A. *Background*

Although it maintained no permanent meeting location, the Good News Community Church held regular Sunday services for an average of twenty-nine to forty members.[72] Good News held services at different temporary locations, including schools and a senior center.[73] To notify the public of the location for the upcoming services, Good News's members posted ground signs on Saturday mornings in areas near the church containing the church's name, website, slogan, and pertinent logistical information.[74] Members displayed approximately seventeen signs near the location where services would be held.[75] After services concluded on Sunday, members removed the signs.[76] In 2005, the town of Gilbert, Arizona passed the Gilbert Land Development Code ("the Code"), which regulated the posting of signs within the town.[77] The Code banned fifteen types of signs and required a permit for any sign placed in Gilbert unless specifically exempted

69. Clatterbuck v. City of Charlottesville, 708 F.3d 549, 556 (4th Cir. 2013), *abrogated by* Central Radio, Co. v. City of Norfolk, 811 F.3d 625 (4th Cir. 2016).

70. *Speet*, 726 F.3d at 870 (citations omitted).

71. *See* Am. Civil Liberties Union of Nev., 466 F.3d at 788, 796, 800–01 ("[T]he solicitation ordinance is content[]based.").

72. *See* Brief for Petitioners at 7–8, Reed v. Town of Gilbert (*Reed II*), 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631957, at *7–8 (providing details about the church's congregation and services).

73. *See id.* at 8 (identifying the locations where Good News held services).

74. *See* Reed v. Town of Gilbert (*Reed I*), 587 F.3d 966, 971 (9th Cir. 2009) (summarizing the contents of Good News's signs), *rev'd*, 135 S. Ct. 2218 (2015); Brief for Petitioners at 8, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631957, at *8 (listing the information Good News members placed on their signs).

75. *See Reed I*, 587 F.3d at 971 (describing the placement of Good News's signs).

76. *See id.* (detailing the routine of removing the signs).

77. *See* Reed v. Town of Gilbert (*Reed II*), 135 S. Ct. 2218, 2224 (2015) ("The town . . . adopted a comprehensive code governing the . . . display [of] outdoor signs" (citations omitted)).

by the Code.[78] The Code exempted twenty-three categories of signs from the permit requirement, and the type of sign displayed, such as political signs, determined the sign's classification.[79] Each category contained "different time, place[,] and manner provisions."[80] Although not requiring a permit, the Code dictated specific requirements for the exempted categories, such as the permitted size and number of signs, locations the signs could be placed, and duration the signs could remain posted.[81] Good News's signs were categorized as "Temporary Directional Signs Relating to a Qualifying Event."[82] The Code regulated many aspects of temporary directional signs:

- Signs must be within "[six] feet in height and [six] square feet in area;"
- Up to four signs may be posted on one property;
- Signs are permitted for "up to [twelve] hours before, during[,] and [one] hour after the qualifying event ends";
- Signs are not required to be placed on-site and must be displayed at "grade level";
- Signs "in the public right-of-way" or attached to "any structure" are prohibited; and
- Signs must contain "durable and weather-resistant materials" and must be secured to avoid being dislocated by the wind or becoming a safety issue.[83]

In July and September 2005, the Gilbert Code Compliance Department warned Good News for displaying signs outside the permissible time limit within the Code.[84] In addition to the warnings, a compliance officer seized one of Good News's signs, which Pastor Clyde Reed visited the office to

78. *See* Joint Appendix at 27, 39–42, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631244, at *27, 39–42 (setting forth the Town of Gilbert's sign ordinance).

79. *See id.* at 28–30 (enumerating the categories of signs not requiring a permit).

80. Brief for Respondents at 2, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 6466937, at *2.

81. *See* Brief for Petitioners at 9, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631957, at *9 (detailing the types of requirements imposed by the Code); Joint Appendix at 32–33, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631244, at *32–33 (instructing up to three garage sale signs, not "greater than [six] square feet in area and [six] feet in height[,]" may be posted on private property while the sale takes place).

82. Reed v. Town of Gilbert (*Reed I*), 587 F.3d 966, 972 (9th Cir. 2009), *rev'd*, 135 S. Ct. 2218 (2015).

83. Joint Appendix at 38–39, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631244, at *38–39.

84. *See Reed I*, 587 F.3d at 972 (recounting how a compliance officer sent two notices of Code violations to Good News); Joint Appendix at 105–06, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631244, at *105–06 (chronicling Good News's two citations).

recover.[85] Following the warnings and seizure, Good News members utilized fewer signs and posted them for less time.[86] Attempting to negotiate a compromise, Pastor Reed approached the Code Compliance Department in February 2007, but a code compliance manager "told Good News that 'there is no leniency under the Code, and that the Church would be cited if it was determined that it had violated any of the applicable provisions in the Code.'"[87] One month later, Good News initiated a lawsuit challenging the constitutionality of the Code and arguing it was a content-based restriction on protected speech.[88] Good News requested a preliminary injunction to prohibit the town's enforcement of its ordinance.[89]

The district court denied the injunction and found the town's regulation on qualifying event signs was content neutral and satisfied intermediate scrutiny.[90] Good News appealed, and the Ninth Circuit affirmed the district court's ruling but remanded the case to determine whether the variable restrictions on different types of signs violated the First Amendment.[91] On remand, the district court determined the ordinance did "not discriminate between different forms of noncommercial speech in a[n] unconstitutional manner."[92] For the second time, Good News appealed, and the Ninth Circuit affirmed the lower court's holding.[93] Pastor Reed and Good News petitioned the Supreme Court for a writ of certiorari, arguing the appellate court's decision violated the Supreme Court's First Amendment precedent and increased a three-way circuit split regarding the proper standard used to determine whether a sign regulation is content neutral and violated the Supreme Court's First Amendment precedent.[94] The Court granted certiorari and reversed the Ninth Circuit's holding.[95]

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85. *See* Brief for Petitioners at 13, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631957, at *13 (claiming one compliance official took one of the signs).

86. *See id.* at 13 (identifying the remedial measures taken by Good News).

87. *Reed I*, 587 F.3d at 972; Brief for Petitioners at 14, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2014 WL 4631957.

88. *See id.* (summarizing the arguments contained in the complaint).

89. *See Reed I*, 587 F.3d at 973 (recapitulating Good News's filings and requests).

90. *See id.* (writing the district court determined the Code was content neutral and met intermediate scrutiny).

91. *See id.* at 983 (affirming the lower court's "denial of a preliminary injunction").

92. Reed v. Town of Gilbert, 707 F.3d 1057, 1060 (9th Cir. 2013), *rev'd*, 135 S. Ct. 2218 (2015).

93. *See id.* at 1060, 1077 (affirming the district court's decision).

94. *See* Petition for Writ of Certiorari at 19–34, Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) (No. 13-502), 2013 WL 5720386 at *19–34 (proclaiming the arguments for granting certiorari).

95. *See* Reed v. Town of Gilbert (*Reed II*), 135 S. Ct. 2218, 2226 (2015) (granting certiorari and reversing).

B. *The* Reed *Opinion*

In *Reed v. Town of Gilbert*, Justice Thomas clarified the often-confused concept of content-based regulations.[96]

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed . . . . Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.[97]

Thereafter, the Court noted the Ninth Circuit used three theories to incorrectly determined Gilbert's sign ordinance was content neutral.[98] First, the Ninth Circuit noted the town enacted the ordinance for reasons other than the disapproval of the content of the signs and the town's justifications for restricting signs were not content based.[99] However, the Supreme Court stressed such analysis omitted the necessary initial step of deciding if the regulation is, on its face, content neutral.[100] Any facially content-based regulation of speech must meet strict scrutiny and cannot be cured by content-neutral reasons or rationale.[101] Thus, a court must only evaluate the justifications after it has determined whether the regulation is facially content neutral.[102]

Second, the Ninth Circuit explained the ordinance neither referred to a message or viewpoint nor provided for differing treatment for particular content and applied to all political signs regardless of the candidate, to all event signs regardless of the subject matter, and to all ideological signs regardless of the message.[103] Even though a restriction on speech does not target a specific message or viewpoint, the Supreme Court clarified the

96. *See* Ashutosh Bhagwat, Reed v. Town of Gilbert*: Signs of (Dis)Content?*, 9 N.Y.U. J.L. & LIBR. 137, 137 (2015) (emphasizing "a fundamental confusion among the lower courts about the meaning of the phrase 'content based'").

97. *Reed II*, 135 S. Ct. at 2227.

98. *See id.* (finding the appellate court's reasoning unpersuasive).

99. *See id.* (describing the lower court's justifications for determining the Code was content neutral).

100. *See id.* at 2228 (mandating courts must first determine if the restriction is facially content neutral).

101. *See id.* ("[A]n innocuous justification cannot transform a facially content-based law into one that is content neutral.").

102. *See id.* (outlining the proper procedure for evaluating the content-neutrality of a regulation).

103. *Id.* at 2229.

restriction may still be content based if it prohibits public dissemination of an entire topic.[104]

Lastly, the Ninth Circuit reasoned the ordinance's distinctions relied on content-neutral factors, such as the speaker or "'whether and when an event is occurring.'"[105] The Supreme Court asserted the ordinance did not differentiate based on the speaker, and even if it did, "'[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content[.]'"[106] Although some categories of signs involved an event, the Court concluded the Code's varying restrictions did not rely on an event's occurrence.[107] As with speaker-based distinctions, the Court emphasized an ordinance that regulates a sign because it "conveys an idea about a specific event" is also content based.[108]

The Court stated whether Gilbert's sign ordinance applied to any sign depended on the message or viewpoint contained in the sign.[109] The ordinance subjected a sign conveying a political message to more rules than a sign communicating an ideological message, which had differing restrictions from a sign directing the public to a garage sale.[110] As a result, the Court held the ordinance was facially content based and thereby must satisfy strict scrutiny.[111] To withstand strict scrutiny, the town had to show its code containing distinctions based on content was narrowly tailored to satisfy a compelling governmental interest.[112] The Court held the governmental interests provided by the town, "preserving the [t]own's aesthetic appeal and traffic safety" were "hopelessly underinclusive" and the ordinance failed strict scrutiny and violated the First Amendment right to freedom of speech.[113]

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104. *See id.* at 2229–30 (alleviating the confusion and stating "regulation[s] targeted at [a] specific subject matter" and ones that "discriminate among viewpoints within that subject matter" are both content based).

105. *Id.* at 2230 (quoting Reed v. Town of Gilbert, 707 F.3d 1057, 1069 (9th Cir. 2013)).

106. *Id.* (quoting Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 340 (2010)).

107. *See id.* at 2231 (rejecting the appellate court's contention that the code's limitations were based on if and when an event occurs).

108. *Id.*

109. *See id.* at 2227 ("The restrictions . . . depend entirely on the communicative content of the sign.").

110. *See id.* (illustrating how signs containing related messages received differing treatment under the code).

111. *See id.* (classifying the Code as content based and evaluating it under a higher level of scrutiny); Tanick, *supra* note 3 (outlining the Court determined the Code discriminated based on the message contained in the signs).

112. *Reed II*, 135 S. Ct. at 2231.

113. *Id.* at 2231–32; *see also* Tanick, *supra* note 3 (summarizing the Supreme Court's holding that the ordinance violated the First Amendment).

C. *The Significance of the* Reed *Opinion*

The Supreme Court's decision in *Reed* revolutionized the analysis of "First Amendment jurisprudence."[114] The uncertainty surrounding the concept of content-based limitations on speech resulted from *Ward v. Rock Against Racism*[115] and continued until *Reed*.[116]

> Ward stated that "[t]he principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." Over time, courts interpreted this statement to mean that it did not matter if a law regulated speakers based on what they said, so long as the regulation of speech was not imposed because of government disagreement with the message. Under this approach, if an ordinance was not viewpoint-based, then it was content-neutral.[117]

Under *Ward*, the government was permitted to regulate an entire topic of speech as long as it did not restrict a specific viewpoint within the topic.[118] The unanimous decision in *Reed* overruled this part of *Ward*, defined content based as regulating either the entire topic or a viewpoint within, and "effectively abolishe[d] any distinction between content regulation and subject-matter regulation[.]"[119] Under *Reed*, both categories of restrictions must pass strict scrutiny, and consequently, most regulations will fail such a stringent test.[120]

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114. Norton v. City of Springfield (*Norton II*), 806 F.3d 411, 413 (7th Cir. 2015) (Manion, J., concurring); *see also* Adam Liptak, *Court's Free-speech Expansion Has Far-Reaching Consequences*, N.Y. TIMES (Aug. 17, 2015), http://www.nytimes.com/2015/08/18/us/politics/courts-free-speech-expansion-has-far-reaching-consequences.html (stressing the Supreme Court's decision in *Reed* "transformed the First Amendment"); Schworm, *supra* note 11 (stating experts claim the *Reed* decision will have extensive effects on laws implicating the First Amendment); Yeagle, *supra* note 2 (noting the plaintiffs' attorney referred to *Reed* as "a strong victory for free speech").

115. Ward v. Rock Against Racism, 491 U.S. 781 (1989).

116. *See Norton II*, 806 F.3d at 413 (Manion, J., concurring) (claiming *Reed* alleviated the confusion following *Ward*).

117. *Id.* (quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)).

118. *See id.* (distinguishing *Ward* and *Reed* by providing a comparison between restricting a topic and a viewpoint within the topic).

119. *Id.* at 412 (majority opinion); Reed v. Town of Gilbert (*Reed II*), 135 S. Ct. 2218, 2227 (2015) (expounding the ways regulations on speech can be found content based); Liptak, *supra* note 114 (explaining the *Reed* decision broadened the concept of content based to include regulations targeting a topic of speech).

120. *See Norton II*, 806 F.3d at 413 (Manion, J., concurring) ("Few regulations will survive this rigorous standard."); Liptak, *supra* note 114 (warning of the general inability for most laws to pass strict scrutiny).

D. *Applying the* Reed *Standard to Panhandling*

The Supreme Court's decision in *Reed* darkens the future for anti-panhandling ordinances.[121] In *Thayer v. City of Worcester*,[122] two panhandlers challenged the constitutionality of two Worcester city ordinances prohibiting aggressive panhandling and banning beggars from remaining on the traffic island.[123] The district court denied the plaintiffs' request for an injunction and held the ordinances were content neutral, were "narrowly tailored to prohibit only aggressive or distracting activity," and left sufficient alternatives for begging.[124] After excluding the provision prohibiting begging after dark, the First Circuit Court of Appeals affirmed the district court's holding on both ordinances except for the provision prohibiting begging after dark.[125] The panhandlers petitioned the Supreme Court for review of their case, and the Court granted certiorari, vacated the judgment of the First Circuit, and remanded the case back to the First Circuit "for further consideration in light of *Reed v. Town of Gilbert*[.]"[126] The First Circuit vacated its judgment and remanded the case to the district court.[127] On remand, Judge Hillman addressed the changes *Reed* made to the analysis and held the aggressive panhandling ordinance was content based, was not "the least restrictive means available to protect the public[,]" and failed strict scrutiny.[128] Although he classified the traffic island ordinance as content neutral, Judge Hillman ruled the ordinance violated the First Amendment because it was an unqualified prohibition, which is in no way narrowly tailored.[129] Worcester's City Manager, stated that due to the improbability of successfully defending the ordinances, the city decided not to appeal

121. *See* Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 237 (D. Mass. 2015) (urging local governments to revise ordinances that were written before *Reed*); Schworm, *supra* note 11 (advancing the *Reed* decision changed the legal climate); Tanick, *supra* note 3 (warning the decision in *Reed* endangers many municipalities' anti-begging laws).

122. Thayer v. City of Worcester (*Thayer I*), 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015) (mem.).

123. *See id.* at 64–65 (including the text of the two ordinances in the opinion).

124. *Id.* at 66.

125. *See id.* at 78 (affirming the "court's denial of a preliminary injunction as to all provisions . . . save for the . . . proscription on nighttime solicitation").

126. Thayer v. City of Worcester, 135 S. Ct. 2887, 2887 (2015) (mem.) (citing Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015)).

127. *See* Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 221 (D. Mass. 2015) (detailing the procedural history of the case).

128. *Id.* at 237.

129. *See id.* (comparing one of Worcester's ordinances to a law recently struck down by the First Circuit).

Judge Hillman's decision.[130] In *Norton v. City of Springfield*,[131] two panhandlers filed suit, arguing Springfield's ordinance against panhandling in the city's downtown historic district violated their First Amendment rights.[132] The district court ruled the ordinance was facially content neutral and denied the injunction requested by the panhandlers.[133] The Seventh Circuit, noting a circuit split among the United States Courts of Appeals, stated the Supreme Court described content based as regulating speech "because of the ideas it conveys" or "because the government disapproves of its message."[134] Then, the Seventh Circuit affirmed the lower court's decision and concluded Springfield's ordinance was content neutral because it restricted speech on the basis of subject-matter, which was often permissible and not content, which was never permissible.[135]

The panhandlers filed a petition for rehearing, and the Seventh Circuit considered the petition only after the Supreme Court's opinion in *Reed*.[136] Having relied on the First Circuit's decision in *Thayer* in their previous opinion, the Seventh Circuit focused special attention on the Supreme Court's decision to vacate the judgment and remand *Thayer*.[137] Utilizing the *Reed* standard, the Seventh Circuit held the ordinance was content-based because it restricted an entire topic of speech.[138] The appellate court reversed the district court's ruling and remanded the case, instructing the lower court to enter an injunction.[139] In addition to the *Thayer* and *Norton*,

130. *See* Brad Petrishen, *Worcester Won't Appeal to Reinstate Panhandling Ordinance*, TELEGRAM & GAZETTE (Nov. 21, 2015, 11:36 AM), http://www.telegram.com/article/20151120/NEWS/151129815/ (reporting on the city of Worcester's decision not to appeal the district court's ruling).

131. Norton v. City of Springfield (*Norton I*), 768 F.3d 713 (7th Cir. 2014) *rev'd on reh'g*, 806 F.3d 411 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1173 (2016) (mem.)

132. *Id.* at 714; *see also* Yeagle, *supra* note 2 (reporting the plaintiffs claimed the ordinance infringed on their right to freedom of speech).

133. *See Norton I*, 768 F.3d at 714 (summarizing the district court's holding).

134. *Id.* at 717.

135. *See id.* at 717–18 (articulating the city had the power to impose the content-neutral limitations contained in the ordinance); Yeagle, *supra* note 2 (writing the Seventh Circuit "initially upheld" the ordinance).

136. *See* Norton v. City of Springfield (*Norton II*), 806 F.3d 411, 411–12 (7th Cir. 2015) (noting the court deferred deliberation on the petition until the Court heard *Reed*), *cert. denied*, 136 S. Ct. 1173 (2016) (mem.); Yeagle, *supra* note 2 (noting the plaintiffs requested a rehearing).

137. *See* Norton v. City of Springfield (*Norton II*), 806 F.3d 411, 411–12 (7th Cir. 2015) (acknowledging their reliance on the Court remanding *Thayer I* (citations omitted)).

138. *See id.* (incorporating the *Reed* analysis into its decision (citations omitted)); Yeagle, *supra* note 2 (indicating the appellate court followed *Reed* and found the ordinance restricted speech based on the content of the message).

139. *See* Norton v. City of Springfield (*Norton II*), 806 F.3d 411, 413 (7th Cir. 2015) (reversing and remanding the case to the district court for an injunction); Yeagle, *supra* note 2 (stating the Seventh Circuit ordered the district court to enjoin the ordinance).

courts quickly began using the *Reed* standard to invalidate anti-panhandling laws.[140] Some cities took a proactive approach and amended, suspended, or removed their regulations on panhandling.[141] Most anti-begging laws that predate *Reed* will need to be amended to sustain legal challenge.[142] Local governments that want to regulate panhandling are faced with a complex legal climate because broadly targeting panhandling or aggressive begging is impermissible and prohibiting all speech within a particular location, such as a traffic median, will likely be met with public criticism.[143]

Although they are no longer permitted to generally prohibit begging, municipal officials may still be able to regulate specific aggressive acts of panhandling that pose a significant threat to public safety, if the law "precisely and narrowly restrict[s] *only* that conduct which would constitute

140. *See* Homeless Helping Homeless, Inc. v. City of Tampa, No. 8:15-cv-1219-T-23AAS, 2016 WL 4162882, at *1, 4 (M.D. Fla. Aug. 5, 2016) (finding the anti-panhandling ordinance was content based, but the district court judge admitted he would have upheld the law as content neutral before the *Reed* decision); McLaughlin v. City of Lowell, 140 F. Supp. 3d 177, 178 (D. Mass. 2015) (following *Reed* and invalidating two ordinances against various forms of panhandling); Browne v. City of Grand Junction, 136 F. Supp. 3d 1276, 1289–90 (D. Colo. 2015) (citing *Reed* to determine an anti-begging ordinance was content based); City of Lakewood v. Willis, 375 P.3d 1056, 1063 (Wash. 2016) (discerning by holding that the ordinance was content based, the court joined the "overwhelming majority of courts that have addressed similar anti[-]begging laws after *Reed*"); *see also* Billie Stanton Anleu, *Judge's Ruling Strikes Down Law Similar to Frozen Colorado Springs Ordinance*, GAZETTE (Oct. 2, 2015, 9:00 AM), http://gazette.com/judges-ruling-strikes-down-law-similar-to-frozen-colorado-springs-ordinance/article/1560430 (reporting on the decision in *Browne v. City of Grand Junction*); Cyrus Moulton, *Ruling in Worcester Case Makes it Tough for Cities to Curb Panhandling*, TELEGRAM & GAZETTE (Nov. 11, 2015), http://www.telegram.com/article/20151111/NEWS/151119766/ (stating courts across America are using the standard in *Reed* to nullify anti-begging laws); Schworm, *supra* note 11 (quoting Tristia Bauman, a senior attorney at a national legal group, who claims courts, following the *Reed* opinion, are striking anti-begging laws); Tanick, *supra* note 3 (indicating courts are invalidating begging laws under *Reed*); Slevin, *supra* note 7 (commenting three federal judges have used the *Reed* standard to reverse or remand cases involving panhandling regulations). *See generally* Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 233 (D. Mass. 2015) (citing three cases that used *Reed* to invalidate ordinances prohibiting aggressive begging).

141. *See* Cutting v. City of Portland, 802 F.3d 79, 82 (1st Cir. 2015) (pointing to the city's suspension of the ordinance); Anleu, *supra* note 140 (acknowledging city officials suspended enforcement of and are in the process of revising Colorado Springs's anti-begging laws); Lisa Redmond, *supra* note 28 (expressing the City of Lowell never enforced its ordinance prohibiting begging throughout downtown); Slevin, *supra* note 7 (naming Boulder, Longmont, and Colorado Springs—three cities that took proactive measures).

142. *See Thayer II*, 144 F. Supp. 3d at 237 (urging many local governments to redraft their ordinances to comply with *Reed*); Tanick, *supra* note 3 (suggesting local governments revise their anti-begging laws); Slevin, *supra* note 7 ("Mark Silverstein, legal director of the ACLU of Colorado, thinks most panhandling laws . . . will have to be changed because of the ruling [in *Reed*].").

143. *See Thayer II*, 144 F. Supp. 3d at 237 (arguing several courts, following the standard set forth in *Reed*, found aggressive panhandling ordinances were content-based); Schworm, *supra* note 11 (covering one law professor's claim that anti-begging laws are unacceptable); Slevin, *supra* note 7 (noting one legal director argues municipalities are unable to pass a statute prohibiting all speech).

such a threat."[144] For example, a district court held an ordinance prohibiting panhandling in the downtown area was unconstitutional but "[r]estricting panhandling [near ATMs] might satisfy the narrow tailoring requirement for content-neutral regulations."[145] Similarly, after ruling a law that prohibited solicitations at specific times or locations violated the Constitution, a district court noted the important public safety implications of threats and allowed the provision against "conduct that is intimidating, threatening, coercive, or obscene and that causes the person solicited to reasonabl[y] fear for his or her safety."[146] These post-*Reed* cases did not expressly condone blanket bans on aggressive panhandling, but the courts permitted provisions that ban behaviors typical of coercive or threatening beggars.[147]

Alternatively, the post-*Reed* courts are most likely simply allowing bans on behaviors that many municipalities' existing traffic and criminal laws address, such as laws prohibiting obstruction of the roadway, disorderly

144. *Thayer II*, 144 F. Supp. at 237; *see also* Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 705 (2d Cir. 1993) (contending a law banning solicitation in every public space is not narrowly drawn); Blair v. Shanahan, 775 F. Supp. 1315, 1324–25 (N.D. Cal. 1991) (defining a narrowly tailored ordinance as prohibiting particularly offensive or endangering acts without reference to speech), *appeal dismissed*, 38 F.3d 1514 (9th Cir. 1994) and *vacated*, 919 F. Supp. 1361 (N.D. Cal. 1996); Masoni, *supra* note 2, at 326 (concluding clearly defined bans on behaviors are more likely to survive a constitutional attack than total prohibitions on panhandling); Rose, *supra* note 1, at 215, 217 (urging laws that prohibit all panhandling are content based and evaluated under strict scrutiny); Teir, *supra* note 2, at 333 (arguing specifically banning the most aggressive acts of begging improves the likelihood of withstanding a legal challenge); Scott, *supra* note 1, at 29 (condemning laws that ban all begging because they will most likely fail a legal attack); *supra* note 4 (suggesting bans on aggressive behaviors may be allowed).

145. *McLaughlin*, 140 F. Supp. 3d at 178; *see also* Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 227 (D. Mass. 2015), ECF No. 120 (admitting the City of Worcester had an interest in prohibiting begging around ATMs); Redmond, *supra* note 28 (summarizing how Judge Woodlock, in the *McLaughlin* opinion, noted the importance of regulating begging around ATMs). *But see* Browne v. City of Grand Junction, 136 F. Supp. 3d 1276, 1293 ((D. Colo. 2015) (discounting the city's claim that begging "within 20 feet of an ATM . . . constitutes a threat to public safety").

146. *Browne*, 136 F. Supp. 3d at 1294.*; see also* Slevin, *supra* note 7 (recapitulating Judge Arguello, in the *Browne* opinion, "let stand parts of the law that prohibit panhandlers from threatening people").

147. *See* Thayer v. City of Worcester (*Thayer I*), 755 F.3d 60, 64 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015) (mem.) (writing the ordinance defined aggressive begging as making threats and begging around a financial institution or ATM); *Loper*, 999 F.2d at 701 (detailing aggressive behaviors utilized by the beggars, such as begging near banks, ATMs, or bus stops, blocking an individual's path, following people, and making threats); L.A. All. for Survival v. City of L.A., 987 F. Supp. 819, 822 (C.D. Cal. 1997) *aff'd*, 224 F.3d 1076 (9th Cir. 2000) (indicating the city council determined begging near financial institutions or ATMs is aggressive); Teir, *supra* note 2, at 335 (enumerating two aggressive begging behaviors in a model law—panhandling in the vicinity of an ATM and soliciting that causes an individual to reasonably fear for their safety); Yeagle, *supra* note 2 (interviewing the plaintiffs' attorney who claims the city may still regulate begging around ATMs and public transportation stops); Scott, *supra* note 1, at 1, 5 (classifying panhandling close to an ATM as an intimidation factor and stating aggressive panhandling includes threats).

conduct, harassment, and assault and battery.[148] Consequently, when less restrictive means are available, municipalities have an obligation to use the existing laws, and promulgating an additional ordinance to regulate aggressive begging behavior will most likely fail strict scrutiny.[149]

V. ALTERNATIVES TO ANTI-PANHANDLING LAWS

Enacting and enforcing anti-begging laws is only one approach but not the ultimate solution to the problems posed by beggars.[150] Utilizing less formal approaches, such as public information campaigns, social and situational pressures, and providing requisite social services, may also reduce panhandling.[151] Public information campaigns include attempts to

148. *See Loper*, 999 F.2d at 701–02 (suggesting the city's pre-existing statutes ban the beggars' aggressive acts); Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 223 (D. Mass. 2015) (dismissing the city's need for an ordinance specifically prohibiting aggressive panhandling because five other laws could be used to regulate such behaviors); Blair v. Shanahan, 775 F. Supp. 1315, 1324 (N.D. Cal. 1991) (declaring the city previously passed numerous statutes that prevented threatening or coercive acts), *appeal dismissed*, 38 F.3d 1514 (9th Cir. 1994) and *vacated*, 919 F. Supp. 1361 (N.D. Cal. 1996); Masoni, *supra* note 2, at 325 (claiming many municipalities enacting anti-begging laws are banning behaviors already prohibited by their existing laws). *But see* Teir, *supra* note 2, at 290 (maintaining aggressive begging should be controlled because when left unrestrained, it endangers public safety and leads to more severe crimes).

149. *See* McCullen v. Coakley, 134 S. Ct. 2518, 2540 (2014) (requiring the government to prove narrow tailoring by showing the alternative methods, which were less restrictive on speech, could not advance the important government interest); *Loper*, 999 F.2d at 702 (distinguishing between using existing traffic or criminal statutes to regulate aggressive panhandlers and passing an ordinance specifically banning offensive begging as "the former prohibit[s] conduct and the latter prohibits speech as well as conduct of a communicative nature"); *Blair*, 775 F. Supp. at 1324–25 (finding the ordinance was not narrowly tailored because the city could regulate aggressive begging with existing statutes that did not unnecessarily restrict speech); Teir, *supra* note 2, at 330 (recognizing a law proscribing aggressive solicitation may be categorized as content based).

150. *See* Masoni, *supra* note 2, at 328 (arguing anti-begging laws will never eliminate panhandling); Rose, *supra* note 1, at 206, 228 (stressing prohibitions on begging do not resolve the panhandler's underlying troubles and will not eliminate the "problem of the street people"); Santos, *supra* note 31 (including one city official's claims that punishing panhandlers is not the solution); Joshua Silavent, *Laws that Target Panhandling Put Homeless in a Bind*, GAINESVILLE TIMES (Nov. 19, 2015), http://www.gainesvilletimes.com/section/6/article/113557/ (writing advocates of panhandlers assert anti-begging laws are only effective if established social services exist); Scott, *supra* note 1, at 17 (showing the majority of experts view law enforcement as one technique used in reducing panhandling). *But see* Teir, *supra* note 2, at 291 (advocating municipalities need only to specifically draft an ordinance defining and banning particularly threatening acts of begging and do not need social programs to control aggressive panhandling).

151. *See Thayer I*, 755 F.3d at 63–64 (finding the City of Worcester, before enacting its ordinances, attempted to reduce panhandling by providing increased social services and placing signs meant to discourage donations); Scott, *supra* note 1, at 17 (listing other necessary aspects that form a complete plan of action used to reduce begging). *But see* NAT'L LAW CTR. ON HOMELESSNESS & POVERTY & NAT'L COAL. FOR THE HOMELESS, HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 16 (2009) [hereinafter THE CRIMINALIZATION OF HOMELESSNESS IN

persuade potential donors to give money to local charities instead of beggars or to give only non-monetary donations to panhandlers.[152] Using signs, handouts, or advertisements, the local government can try to persuade the potential donor with four fundamental arguments:[153]

- The panhandler will purchase drugs or alcohol with the donation;
- The panhandler requires much more resources than small donations of cash to solve the underlying reasons he or she has to begs;
- The panhandler's needs can be met through social services;
- Giving to panhandlers may jeopardize the donor's safety.[154]

Nevertheless, donors give to beggars for various personal reasons, such as they feel pity for the beggar, they benefit emotionally from giving, they feel guilty for not giving, or they have religious beliefs that compel them to give when asked.[155] Personal reasons can stem from fundamental belief systems or moral beliefs, and ultimately, even the most rational argument

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U.S. CITIES (2009)] (disputing the effectiveness of alternative methods, especially when they are combined).

152. *See Thayer I*, 755 F.3d at 63–64 (summarizing the city's signs advised giving to charities instead of beggars); Masoni, *supra* note 2, at 327 (outlining various alternatives such as a voucher program and information dissemination by groups that distribute cards asking potential donors to give to charities in lieu of beggars); Jon Hilkevitch, *Evanston Fights Panhandlers-with a Smile*, CHICAGO TRIB. (May 27, 1994), http://articles.chicagotribune.com/1994-05-27/news/9405270267_1_panhandlers-emily-guthrie-interveners (surveying the city's education campaign of sending trained public servants to intervene in panhandling transactions to inform, provide literature, and persuade the beggars and potential donors the money is more effective when given to social services organizations); Santos, *supra* note 31 (discussing the city's approach of using billboards and signs to encourage people to donate the money they might give to beggars to fund social services); Scott, *supra* note 1, at 26 (describing the voucher program where potential donors purchase and give beggars vouchers for various goods or services); French, *supra* note 16 (noting the city posted signs at an intersection urging individuals to donate to charities instead of beggars).

153. *See* Scott, *supra* note 1, at 24 (detailing the arguments used as alternative measures that aid in diminishing the problem of panhandling); Clifton French, *supra* note 16 (examining the sheriff's office's attempts to deter dangerous encounters with panhandlers).

154. *See* Scott, *supra* note 1, at 24 (providing three common arguments used in the campaigns); French, *supra* note 16 (reporting the city, responding to increased violent episodes, posted signs warning of the risks associated with giving money to beggars).

155. *See* Ellickson, *supra* note 1, at 1180 (discerning many religions encourage giving but not begging); Helen Hershkoff & Adam S. Cohen, *Begging to Differ: The First Amendment and the Right to Beg*, 104 HARV. L. REV. 896, 908 (1991) ("[B]egging appeals to the listener's sense of compassion or social justice . . . . The beggar . . . makes a request that is in part a plea for personal funds and in part an appeal to the listener's charitable instincts."); Gibbs, *supra* note 6 (identifying various religious teachings that urge people to give); Gieseken, *supra* note 19 (advancing many religions and "an instinct for human decency" advise giving to individuals in need); Thompson, *supra* note 14 (accusing individuals of donating to alleviate their own guilt); THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009), *supra* note 151, at 16 (emphasizing the importance of the "human connection" when people donate to beggars); Headrick, *supra* note 15 (including one nonprofit director's assertion that individuals receive a "false sense of charity" when they donate to beggars).

will not persuade all potential donors not to give to panhandlers.[156] Thus, municipal officials should consider encouraging residents and business owners who are disturbed by panhandling to exercise their own First Amendment rights to discourage donations through pleas to their fellow citizens.[157]

Social and environmental pressures include panhandler self-regulation through relationships with other beggars and the understood rules "the panhandlers [seek] to enforce on each other[.]"[158] To maximize profit, panhandlers who beg as a group maintain a silent code of conduct, which pressures each beggar to remain peaceful and creates a non-threatening setting for potential donors.[159] Panhandlers recognize when one beggar becomes too noisy or aggressive, the police are likely to intervene; therefore, other beggars attempt to calm the situation first, which local law enforcement and municipalities should encourage.[160] Another example of social and environmental pressures is changing the physical features of a location so it deters rather than invites panhandling.[161] Removing inviting features such as areas to sit and rest, shelter from the elements, and an accessible water source significantly reduces the attractiveness for beggars.[162]

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156. *See* Thayer v. City of Worcester (*Thayer I*), 755 F.3d 60, 64 (1st Cir. 2014) (noting Worcester removed their public information campaign signs because of public disapproval), *vacated*, 135 S. Ct. 2887 (2015) (mem.); Gibbs, *supra* note 6 (advancing the decision to give to a beggar depends on the donor's own conscience); Scott, *supra* note 1, at 24 (asserting some individuals will remain uninfluenced by the public information campaigns); Interview with Wilson A. Jackson, *supra* note 1 (opining the city of Austin's public campaign signs were not effective).

157. *See* Amanda Castro, *Group Protests Panhandlers in Seminole County*, WKMG NEWS 6 (Dec. 24, 2015 6:13PM), http://www.clickorlando.com/news/group-protests-panhandlers-in-seminole-county (interviewing a group of protestors who stood at a busy intersection with signs pleading that citizens not give to beggars); Dan Good, *Iowa Man Shows Up Panhandlers with Homemade Sign*, NEW YORK DAILY NEWS (Dec. 16, 2015, 3:01PM), http://www.nydailynews.com/news/national/iowa-man-shows-panhandlers-homemade-sign-article-1.2467893 (discussing one business owner's effort to deter donations by holding a sign near two panhandlers who refused his job offer).

158. Goldstein, *supra* note 2, at 327.

159. *See id.* at 328 (surveying the York district solicitors' intricate system of standards).

160. *See id.* at 327 (expressing the "regulars' attempt to control the problem regulars"). The author observed a similar situation in the French Quarter of New Orleans, Louisiana in December of 2015. A panhandler was pacing the sidewalk while asking pedestrians if they could spare a cigarette—increasing the volume of his voice each time. As more individuals passed without acknowledging him, the panhandler's requests became offensive. Another nearby beggar approached the man, stood directly in front of him, spoke in a quiet, soothing voice, and convinced him to sit on the sidewalk. The intervening beggar then asked about the distressed panhandler's woes. After a few minutes, the upset panhandler calmed down, and the men counted their earnings while they discussed pooling their money to purchase cigarettes.

161. *See* Scott, *supra* note 1, at 26 (enumerating situational responses for deterring begging).

162. *See* Berkeley Cmty. Health Project v. City of Berkeley, 902 F. Supp. 1084, 1087 (N.D. Cal

Supplying suitable social services may "reduce panhandlers' need to panhandle."[163] Social services are most effective when they target the main reasons beggars resort to panhandling, such as alcohol and drug abuse, mental health disorders, "lack of marketable skills," and few shelter or housing options.[164] However even assuming the local government could provide the requisite amount of social services, some panhandlers may still refuse help for their own personal reasons, including unwillingness to fight a drug addiction or preference for the freedom of panhandling over routine employment.[165]

VI. CONCLUSION

Whether regulating panhandling through laws or less formal means, local governments are balancing complex issues that have no ultimate solution.[166] An increasing number of courts are using the *Reed* decision and

1995) (discussing the plaintiffs' preference to beg near a building because they are protected from the weather), *vacated in part*, 966 F. Supp. 941 (N.D. Cal 1997); Isabel Wilkerson, *supra* note 1 (reporting one city removed seats from a public square); Scott, *supra* note 1, at 26 (identifying attractive features).

163. Scott, *supra* note 1, at 28; *see also* Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 704 (2d Cir. 1993) (suggesting the mere existence of a beggar with an outstretched hand or cup communicates a "message of need for support and assistance"); Stark, *supra* note 7, at 346 ("Panhandling is generally engaged in when other economic resources . . . have been exhausted.").

164. Scott, *supra* note 1, at 28; *see also* Thayer v. City of Worcester (*Thayer II*), 144 F. Supp. 3d 218, 225 (D. Mass. 2015) (explaining the city manager found, out of thirty-eight beggars, sixteen were homeless, twenty-eight suffered with mental illness, and 75% abused drugs or alcohol); Rose, *supra* note 1, at 205 (illustrating panhandlers, by begging, demonstrate a lack of adequate chemical dependency programs, housing, and shelters); Stark, *supra* note 7, at 350–51 (announcing the need for social services providing dependency treatment, employment skills training and placement, and housing); Gibbs, *supra* note 6 (explaining experts found one reason for the increase in panhandlers was lack of affordable housing); Gieseken, *supra* note 19 (outlining of the 955 individuals who requested assistance from local social services organizations, 219 required housing, 300 suffered with a mental disorder, and 319 abused drugs or alcohol); Interview with Wilson A. Jackson, *supra* note 1 (noticing the prevalence of panhandlers struggling with mental illnesses and drug abuse).

165. *See* Gibbs, *supra* note 6 (writing one Red Cross spokesperson asserts organizations are available to meet panhandlers' needs but they continue to beg instead of seeking help); Gieseken, *supra* note 19 (interviewing a chef who panhandled for many years to buy drugs or alcohol and disregarded any help from social services); Silavent, *supra* note 150 (including a local social services organization director's claims that begging allows the most defenseless individuals to remain on the streets instead of taking advantage of social services); Interview with Wilson A. Jackson, *supra* note 1 (demonstrating that the interviewee made a personal choice to be a beggar and receive minimal government assistance occasionally); French, *supra* note 16 (reporting one panhandler denied assistance offered by police deputies).

166. *See* Ellickson, *supra* note 1, at 1247 ("The reconciliation of individual rights and community values on the streets is a profoundly difficult problem."); Masoni, *supra* note 2, at 328 (recognizing the lack of available resolutions to address panhandling); Rose, *supra* note 1, at 228 (referring to panhandling as a "perplexing problem"); Gibbs, *supra* note 6 ("[T]he dilemma remains complex . . . ."); Reid, *supra* note 4 (arguing panhandling is part of a much larger problem that cannot be solved easily).

invalidating anti-panhandling ordinances.[167] The government has a responsibility to regulate the safety concerns associated with begging while respecting panhandlers' fundamental rights. As a result, local governments may only implement a law banning particular acts of panhandling if it is the least restrictive means of regulating the speech and it is narrowly tailored to expressly address a compelling governmental interest, such as a specific behavior posing a threat to public safety and it is the least restrictive means of regulating the speech.[168] Yet, begging behaviors that threaten public safety are collectively known as aggressive panhandling, and existing traffic and criminal laws, which are less restrictive on speech, probably address most of the concerns associated with coercive and threatening begging.[169] Accordingly, municipalities, having only a very limited opportunity to pass ordinances that potentially withstand legal challenge, must be more creative in their attempts to regulate panhandling—and on balance, the alternative approaches, which attempt to persuade and educate the public instead of punishing beggars, are the better courses of action.[170] Further complicating

167. *See* Homeless Helping Homeless, Inc. v. City of Tampa, No. 8:15-cv-1219-T-23AAS, 2016 WL 4162882, at *5–6 (M.D. Fla. Aug. 5, 2016) (applying *Reed* and declaring an ordinance was unconstitutional); *Thayer II*, 144 F. Supp. 3d at 238 (concluding the ordinances were unconstitutional under *Reed*); McLaughlin v. City of Lowell, 140 F. Supp. 3d 177, 178 (D. Mass. 2015) (using the *Reed* standard to strike two ordinances); Browne v. City of Grand Junction, 136 F. Supp. 3d 1276, 1289–90 (D. Colo. 2015) (following the *Reed* definition of a content-based restriction to nullify provisions of one ordinance); City of Lakewood v. Willis, 375 P.3d 1056, 1063 (Wash. 2016) (invalidating an ordinance as content based in accordance with *Reed*).

168. Reed v. Town of Gilbert (*Reed II*), 135 S. Ct. 2218, 2231 (2015); *see also* Thayer II, 144 F. Supp. 3d at 237 ("Post *Reed*, municipalities must . . . craft solutions[,] which recognize an individual's [right] to continue to solicit in accordance with their rights under the First Amendment, while at the same time, ensuring that their conduct does not threaten their own safety[ ] or that of those being solicited."); Teir, *supra* note 2, at 290, 338 (summarizing the dangerous consequences to public areas if beggars are allowed an unrestricted right to panhandle).

169. *See* Loper v. N.Y.C. Police Dep't, 999 F.2d 699, 701–02 (2d Cir. 1993) (providing four statutes that ban behavior typically exhibited by an aggressive beggar); (*Thayer II*), 144 F. Supp. 3d at 223–24 (listing five traffic and criminal laws applicable to aggressive panhandling); Blair v. Shanahan, 775 F. Supp. 1315, 1324 (N.D. Cal. 1991) (pointing to pre-existing content-neutral laws the defendants may enforce to curb aggressive behaviors), *appeal dismissed*, 38 F.3d 1514 (9th Cir. 1994) and *vacated*, 919 F. Supp. 1361 (N.D. Cal. 1996); Masoni, *supra* note 2, at 325 ("[T]here are already laws in existence prohibiting threatening public behavior."). *But see* Teir, *supra* note 2, at 290 (noting the importance of restraining aggressive solicitation).

170. *See* Masoni, *supra* note 2, at 327 (advancing Saint Paul, Minnesota successfully tackled the issues associated with panhandling by administering social services without needing to enact an anti-begging ordinance); Rose, *supra* note 1, at 228 (deducing the criminalization of panhandling is not a suitable solution); Stark, *supra* note 7, at 350 (concluding social services targeting specific needs are more successful at reducing panhandling than laws that punish beggars); Moulton, *supra* note 140 (including one expert's claims that regulating panhandling will be nearly impossible); THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009), *supra* note 151, at 23, 31 (highlighting the legal issues associated with laws prohibiting begging and commending Daytona Beach, Florida for

the situation, panhandlers resort to begging for many different reasons, some of which are not addressed by the alternative approaches; therefore, local governments will never absolutely eliminate panhandling, but with the public's cooperation, the problematic effects can be abated and made less intrusive so citizens can enjoy public space.[171]

implementing a creative alternative approach by providing employment and housing).

171. *See* Teir, *supra* note 2, at 292 (contending "if these behaviors can be kept within defined limits, made more discreet and walk down the street in peace"); *see also* Gibbs, *supra* note 6 (proposing thousands will continue to beg regardless of the actions taken); Interview with Wilson A. Jackson, *supra* note 1 (indicating he chooses to panhandle because it's his lifestyle).