

2. The citations, arrests, and criminal proceedings against Plaintiffs have been under Arkansas state law: Ark. Code Ann. §5-71-213(a)(3). Many of the arrests and citations under this law are effected by Arkansas State Troopers under Defendant's supervision.

3. The law makes it a crime if a person "Lingers or remains in a public place or on the premises of another for the purpose of begging." It is a complete ban on begging. On its face, it prohibits constitutionally-protected speech. The law is not limited in any manner and applies to public and private property any time -- day or night. Aggressive or disruptive behavior is not a required element of this provision. It therefore fails all possible relevant tests applied by the United States Supreme Court and other federal and state courts. It cannot withstand strict scrutiny; time, place and manner, due process or overbreadth analyses and should be invalidated on its face.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331 and 1343. The Court can grant declaratory relief pursuant to 28 U.S.C. §§ 2201(a) and 2202.

4. Venue is proper under 28 U.S.C. § 1391(b) as Defendant's headquarters is located in Pulaski County, Arkansas.

The Parties

6. Michael Andrews Rodgers is a disabled veteran and resident of Garland County, Arkansas. He has begged in Garland County and would do so in other parts of Arkansas. Because of § 5-71-213(a)(3), he is now chilled from doing so.

7. Plaintiff Glynn Dilbeck is homeless. He has begged in Benton County, Arkansas and other parts of the state. Because of § 5-71-213(a)(3), he is now chilled from doing so.

8. Defendant Colonel Bill Bryant is the Director of the Arkansas State Police. He is sued in his official capacity. Employees of the Arkansas State Police are under the supervision of Col. Bryant. These employees, Arkansas State Troopers, routinely issue warnings and citations under § 5-71-213(a)(3).

9. At all times described herein, the Arkansas State Troopers were and are acting under color of state law.

The Challenged Law

10. Section 5-71-213(a)(3) of the Arkansas Code is the basis for citing, arresting and prosecuting persons in Arkansas for begging.

11. Citations and arrests for begging do not require or depend on observing aggressive, disorderly, dangerous or other problematic conduct by the person seeking money and may be and are based on a peaceful request for a donation.

12. Section 5-71-213(a)(3) applies to all public places, including sidewalks, thoroughfares, and parks and to all private property during the day and night. It contains no time, place or manner exceptions, nor modifies in any way the prohibition on asking for money or other charity anywhere.

13. On its face, the law criminalizes constitutionally-protected speech.

14. Plaintiffs and other individuals are concerned about being cited, arrested, jailed, prosecuted, found guilty and penalized by fines and court fees under the anti-begging law. They are chilled from exercising their constitutional rights to free speech and are refraining and will continue to refrain from begging in this state unless the law is invalidated.

15. The statute selectively criminalizes requests for money and other charity. A solicitation to vote for a candidate, attend a meeting, join an organization or eat at a particular

restaurant, delivered in the same manner and tone as that for money or other charity would not result in citation or arrest under this provision.

16. A law enforcement officer would have to read a sign or listen to the words of the person and the content of the request being made, in order to determine if these fit the message prohibited by this provision – a request for money or other charity.

Facts

17. Plaintiff Rodgers, who is a disabled veteran, begs peacefully in a non-threatening manner by holding up a sign that identifies him as a veteran. In 2015, he was arrested once and cited four times for violating § 5-71-213(a)(3). He was incarcerated, tried, and assessed court fines and fees. One charge was voluntarily dismissed by the Prosecuting Attorney for the 18th Judicial District. He was tried on the citations and found guilty in Garland County District Court. On appeal, the Garland County Circuit Court found the law unconstitutional and dismissed the charges. While Plaintiff Rodgers might now lawfully solicit money in Garland County, he is not assured to be free of other citation or arrest in Garland County, and the law is still in effect in all other parts of Arkansas, and Plaintiff Rodgers is afraid to risk further criminal charges against him. He thus refrains from begging outside Garland County. Therefore, the law has a direct and chilling effect on his right to freedom of speech.

18. Plaintiff Dilbeck begs peacefully in Northwest Arkansas in a non-threatening manner by holding up a sign that asks for money. He was cited by an Arkansas State Trooper in September, 2015, for holding up such a sign alongside a roadway exit in Benton County, Arkansas. The charge subsequently was voluntarily dismissed by the Prosecuting Attorney for the 19th Judicial District. Plaintiff Dilbeck has been harassed for peacefully begging on more than one occasion by law enforcement officers, including the Arkansas State Police. He would

continue to beg in Arkansas but because of fear of further criminal action and harassment is afraid to do so. Therefore, the law has a direct and chilling effect on his right to freedom of speech.

19. The Arkansas State Police regularly issue citations throughout the state for violations of § 5-71-213(a)(3). In so doing, their actions are performed under color of state law.

**COUNT I
(Facial Violation Right to Freedom of Speech)**

20. Plaintiffs restate and incorporate by reference as if fully set forth here the allegations of the proceeding paragraphs.

22. The First Amendment to the United States Constitution prohibits the abridgement and chilling of free speech. The First Amendment is applicable to the states through the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

23. Section 5-71-213(a)(3) is facially invalid under the First Amendment because it criminalizes protected speech and prohibits a substantial amount of protected speech. It is also invalid because it is a content-based restriction on protected speech in all public and private places and is not narrowly tailored to serve any compelling state interest.

**COUNT II
(Violation of the Fourteenth Amendment Prohibition
on Deprivation of Liberty Without Due Process of Law
--Void for Vagueness)**

24. Plaintiffs restate and incorporate by reference as if fully set forth here the allegations of the proceeding paragraphs.

25. The Fourteenth Amendment to the United States Constitution mandates that a criminal state statute provide fair notice of what is forbidden.

26. Section 5-71-213(a)(3) fails to define the term “begging” and does not give fair notice as to what would constitute prohibited conduct. It is thus void for vagueness.

Relief Requested

WHEREFORE, Plaintiffs respectfully requests that this Court:

1. Issue a preliminary and permanent injunction restraining Defendant, his employees, agents and successors from enforcing § 5-71-213(a) (3);
2. Enter a judgment declaring that § 5-71-213(a) (3) on its face violates the United States Constitution and permanently enjoin its enforcement by Defendant;
3. Award Plaintiff costs and attorneys’ fees pursuant to 42 U.S.C. §1988; and
4. Grant such other and further relief as the Court deems just and proper.

Dated: 8/24/16

Respectfully Submitted,

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