

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

OCT 21 2016

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION

JAMES W. McCORMACK, CLERK  
By: [Signature] DEP CLERK

MICHAEL ANDREW RODGERS and  
GLYNN DILBECK

PLAINTIFFS

vs.

CASE No. 4:16-cv-775-BRW

COLONEL BILL BRYANT,  
IN HIS OFFICIAL CAPACITY  
AS DIRECTOR OF THE ARKANSAS STATE POLICE

DEFENDANT

COMPLAINT This case assigned to District Judge Wilson  
Introduction and to Magistrate Judge Harris

1. This is an action brought to safeguard the most fundamental rights of speech and expression under the First and Fourteenth Amendments to the United States Constitution and to protect Plaintiffs and others from unjustified government intrusion. Plaintiff Rodgers has been cited, arrested, detained, prosecuted, tried and convicted of loitering with intent to beg under Ark. Code Ann. §5-71-213(a)(3). Plaintiff Dilbeck has been harassed and cited for this same “offense.” They are not alone. Many others also suffer this same government persecution for their speech. Predictably, the threat of citation, arrest, detention, prosecution, conviction and penalties under this state law has chilled Plaintiffs and others from exercising their constitutionally-protected rights to peacefully ask others for money, food, or other charity. Plaintiffs need the intervention of this Court to invalidate this law for the entire state and to enjoin its enforcement by Defendant.

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 18<sup>th</sup> 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 19<sup>th</sup> 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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Attorneys for Plaintiffs

On behalf of the Arkansas Civil Liberties Union  
Foundation, Inc.

## CIVIL COVER SHEET 4:16-cv-775 - BRW

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Michael Andrew Rodgers and  
Glynn Dilbeck

(b) County of Residence of First Listed Plaintiff Garland, Arkansas  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Bettina E. Brownstein Monzer Mansour 479-521-6361  
904 W. Second St. Suite 2 70 College Ave, Suite 10  
Little Rock, AR 72201 Fayetteville, AR 72701

**DEFENDANTS**

Col Bill Bryant Director, Arkansas State Police, in official capacity

County of Residence of First Listed Defendant Pulaski, Arkansas  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
43 U.S.C. 1983

Brief description of cause:

Challenge to constitutionality of A.C.A.5-71-213 (a) (3), anti-begging law.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMANDS**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/24/16

SIGNATURE OF ATTORNEY OF RECORD

Bettina E. Brownstein

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE