

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JEFFREY GRAY,

Plaintiff,

v.

CITY OF ALPHARETTA, *et al.*,

Defendants.

Civil Action No.
1:23-cv-00463-MLB

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between Jeffrey Gray (“Plaintiff”), on the one hand, and the City of Alpharetta, a municipal corporation of the State of Georgia (“Alpharetta”), Arick Furr, a Lieutenant of the Alpharetta Department of Public Safety, in his individual capacity, and Harold Shoffeitt, an officer of the Alpharetta Department of Public Safety, in his individual capacity (“Defendants”), on the other hand.

DEFINITIONS

As used in this Agreement:

“Defendants” includes the City of Alpharetta (“Alpharetta”), any and all of Alpharetta’s past, present, and future council members, departments, administrators, employees, agents, insurers, reinsurers, claims adjusters, and attorneys; Arick Furr, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Arick Furr; and Harold Shoffeitt, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Harold Shoffeitt.

“Plaintiff” includes Jeffrey Gray, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Jeffrey Gray.

“FIRE” is the Foundation for Individual Rights and Expression, a nonprofit organization and counsel for Jeffrey Gray.

“Panhandling” means asking other people for money or other resources in a public place, through written words, gestures, or speech.

RECITALS

WHEREAS, Plaintiff filed a lawsuit against Defendants in the United States District Court for the Northern District of Georgia, captioned *Jeffrey Gray v. City of Alpharetta, a political subdivision of the State of Georgia; Arick Furr, a Lieutenant of the Alpharetta Department of Public Safety, in his individual capacity; and Harold Shoffeitt, an officer of the Alpharetta Department of Public Safety, in his individual capacity*, Case No. 1:23-cv-00463-MLB (the “Lawsuit”);

WHEREAS, Plaintiff alleged in the Lawsuit that Defendants violated the First, Fourth, and Fourteenth Amendments to the United States Constitution by detaining Plaintiff, who was holding a “God Bless the Homeless Vets” sign, under an unwritten policy, practice, or custom prohibiting “panhandling” speech, terminating his video-recording, compelling him to identify himself, searching him, and issuing a trespass notice barring him from continuing to engage in expressive activity;

WHEREAS, Defendants answered the Complaint, denying liability, and continue to deny liability to this day;

WHEREAS, Plaintiff and Defendants wish to resolve all disputes and claims raised in the Lawsuit;

WHEREAS, Plaintiff covenants that he has not assigned, transferred, or subrogated any portion of any claim that he has asserted or could have asserted in the Lawsuit; and

WHEREAS, for and in consideration of the promises set forth herein, the adequacy and sufficiency of which are hereby acknowledged, Plaintiff and Defendants now compromise and settle the Lawsuit under the terms providing

in this Agreement. The foregoing recitals are a substantive part of this Agreement.

I. CONSIDERATION AND RELEASE OF CLAIMS

(A) **“Panhandling” General Order:** For and in consideration of Plaintiff’s promises and obligations under this Agreement, Alpharetta agrees it will amend its Department of Public Safety Manual with the Panhandling General Order attached as Exhibit A. Alpharetta will not rescind or limit in any way the Panhandling General Order for at least three years after it is adopted. Alpharetta will provide to Plaintiff’s counsel a copy of the Panhandling General Order upon its adoption as contemplated in Section III(A) below.

(B) **Trespassing General Order:** For and in consideration of Plaintiff’s promises and obligations under this Agreement, Alpharetta agrees it will amend its Department of Public Safety Manual with the Trespassing General Order attached as Exhibit B. Alpharetta will not rescind or limit in any way the Trespassing General Order for at least three years after it is adopted. Alpharetta will provide to Plaintiff’s counsel a copy of the Trespassing General Order upon its adoption as contemplated in Section III(A) below.

(C) **Amendment to Existing Policies:** For and in consideration of Plaintiff’s promises and obligations under this Agreement, Alpharetta agrees it will amend the following Department of Public Safety Manual policies, and will not rescind or limit these policies, inclusive of the amendments, for at least three years. Alpharetta will provide to Plaintiff’s counsel a copy of the amended Department of Public Safety Manual Policies upon their adoption as contemplated in Section III(A) below.

- a. Alpharetta will amend and enforce its Department of Public Safety Manual Policy 01-12 (“Internal Affairs”), to ensure that alleged violations of First Amendment rights, inclusive of the right to panhandle in public places, are reviewed as potential “Level 2” “civil rights” violations. The definition of “Level 2” shall read: “Any complaint which alleges the misuse of force, deadly force, serious misconduct, criminal conduct, or driving while intoxicated. Brutality, corruption and breach of civil rights (including First Amendment rights, such as the right to panhandle in public places) shall be

included in this classification. This list is a basic guide and should not be considered all-inclusive. Any complaint may be placed in this classification upon the direction of the Chief of Public Safety.”

- b. Alpharetta will amend and enforce its Department of Public Safety Manual, DPS Policy 01-01 (“Rules, Regulations and Disciplinary Process”), to include violations of the First Amendment, including the right to panhandle in public places, among the enumerated “waterline offenses” requiring officer discipline for negligent actions raising “a question as to the [department’s] liability” or those “which may result in a heightened community interest.” The “‘waterline’ offense” enumerated at DPS 01-01 § I(C)(1) will be amended to include “Any action that would violate the First Amendment.”

(D) Notice to Law-Enforcement Officers:

- a. Within three months of the Effective Date of this Agreement, Alpharetta will provide each law-enforcement officer with a copy of the text of the adopted policies and General Orders contemplated above. The copy provided to each officer shall highlight or otherwise identify the amended language.
- b. Alpharetta will certify to Plaintiff’s counsel in writing, no later than December 31, 2024, that all officers not unavailable due to circumstances beyond the control of Alpharetta have received copies of the adopted policies and General Orders contemplated above. No later than December 31, 2025, Alpharetta will certify to Plaintiff’s counsel in writing that it has provided copies of the adopted policies and General Orders contemplated above to any officers employed by Alpharetta whom Alpharetta could not provide copies to before December 31, 2024 due to circumstances beyond Alpharetta’s control but who have since returned to active employment.

(E) **Training of Law-Enforcement Officers:**

- a. Alpharetta will provide quarterly documented roll-call training to all officers, for a period of two years, stating that panhandling in public places is generally a lawful practice protected by the First Amendment.
- b. Alpharetta will provide two hours of First Amendment training per officer while on duty per year in 2024 and 2025. The City Attorney may conduct the training. The training shall primarily focus on the freedom of speech and may include, without limitation, its relationship with the following topics:
 - (1) the parameters of protected speech and expression;
 - (2) the prohibition on viewpoint-based discrimination by government actors;
 - (3) the free speech and assembly rights of demonstrators;
 - (4) the right to record police activity and police facilities;
 - (5) refusals to identify;
 - (6) refusals to answer questions;
 - (7) dealing with bystanders;
 - (8) the use of profanity towards officers; and
 - (9) the seizure of cameras or cell phones that have recorded police activity.

The training must include discussion of the following United States Supreme Court and Eleventh Circuit Court of Appeals cases related to panhandling, the right to demonstrate, and the freedom of speech:

- (1) *Snyder v. Phelps*, 562 U.S. 443 (2011);
- (2) *Houston v. Hill*, 482 U.S. 451 (1987);
- (3) *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969);
- (4) *Catron v. City of Saint Petersburg*, 658 F.3d 1260 (11th Cir. 2011);
- (5) *Terminiello v. Chicago*, 337 U.S. 1 (1949);
- (6) *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000); and

(7) *Smith v. City of Fort Lauderdale*, 177 F.3d 954 (11th Cir. 1999).

On or before December 31, 2024, and again on or before December 31, 2025, Alpharetta will provide to Plaintiff's counsel a copy of the training materials and proof of officers' completion (such as a sign-in sheet or any subsequent course evaluations) of the in-service training required in Section I(E)(b). Alpharetta will not be in breach of this requirement when an officer cannot attend the training for reasons outside of Alpharetta's control (such as when the officer is on extended leave, as opposed to the officer having conflicting job duties imposed by Alpharetta).

(F) **Oversight:** For and in consideration of Plaintiff's promises and obligations under this Agreement, Alpharetta agrees it will provide Plaintiff's counsel with the following each quarter for three years (that is, each January 1, April 1, July 1, and October 1, commencing July 1, 2024 and concluding with a production on or before July 31, 2027): (1) copies of any police report generated the preceding quarter pertaining to panhandling or solicitation; and (2) any trespass notice issued the preceding quarter involving a public park, City Hall, or any sidewalk adjacent to City Hall (meaning the sidewalks bounded on the north by Academy St., on the east by Haynes Bridge Rd., on the south by the Alpharetta Branch Library, and on the west by Park Plaza). Alpharetta will produce these records within 30 days of the end of each quarter (that is, by each January 31, May 31, July 31, and October 31). Alpharetta will not be in breach of this requirement unless, following notice from FIRE, Alpharetta fails to produce the records within five business days of receipt of the notice. Notice of failure to produce records may be made by Plaintiff to the City Clerk, City Administrator, or City Attorney of the City of Alpharetta via U.S. Mail or electronic mail.

(G) **Damages, Attorneys' Fees, and Costs:** For and in consideration of Plaintiff's promises and obligations under this Agreement, Alpharetta agrees to pay the gross sum of \$55,000.00 (fifty-five thousand dollars and zero cents) (the "Payment"). Of the Payment, \$41,250.00 (forty-one thousand, two-hundred and fifty dollars and zero cents) in damages shall be made by one check payable directly to Jeffrey Gray. The \$13,750.00 (thirteen-thousand, seven-hundred and fifty dollars and zero cents) remainder of the Payment shall

be paid by check payable to the Foundation for Individual Rights and Expression, in satisfaction of attorneys' fees and costs. Upon execution of this Agreement, FIRE will promptly provide Alpharetta an IRS Form W-9 or other suitable written communication providing the tax identification number for FIRE. The Payment shall be made in accordance with Section III(B) of this Agreement.

(H) **Dismissal of the Lawsuit:** For and in consideration of Defendants' promises and obligations under this Agreement, Plaintiff agrees to dismiss with prejudice all claims asserted in the Lawsuit or that could have been asserted in the Lawsuit in accordance with the process set forth in this Agreement.

(I) **Release by Plaintiff:** For and in consideration of Defendants' promises and obligations under this Agreement, Plaintiff hereby releases and forever discharges any and all Claims against the Defendants arising out of or relating to the Lawsuit and the facts and circumstances underlying the Lawsuit, both past and present, occurring on or before the Effective Date of this Agreement, known and unknown, foreseen and unforeseen. For purposes of the Releases herein, "Claims" means any debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, losses, expenses (including attorneys' fees and costs incurred), rights under any and all federal and state laws, and any and all claims, demands, and liabilities whatsoever of every name and nature, both in law and in equity. This Release does not bar action necessary to enforce the terms of this Agreement.

(J) **Release by Defendants:** For and in consideration of Plaintiff's promises and obligations under this Agreement, Defendants hereby release and forever discharge any and all Claims against Plaintiff arising out of or relating to the Lawsuit, both past and present, occurring on or before the Effective Date of this Agreement, known and unknown, foreseen and unforeseen. For purposes of the Releases herein, "Claims" means any debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, losses, expenses (including attorneys' fees and costs incurred), rights under any and all federal and state laws, and any and all claims, demands, and liabilities whatsoever of every name and nature, both in law and in equity. This provision does not bar action necessary to enforce the terms of this Agreement.

II. COOPERATION OF THE PARTIES

(A) Plaintiff and Defendants agree to cooperate fully, to execute any documents necessary to effectuate this Agreement, and to take such additional actions that reasonably may be necessary or appropriate to give force and effect to the terms and intent of this Agreement and which are not inconsistent with its terms. Each party (to include Arick Furr and Harold Shoffeitt) shall bear his, her, or its own attorneys' fees, costs, and expenses arising from the negotiation, preparation, and implementation of this Agreement, other than any fees or costs necessary to enforce this Agreement as identified in Section VI(A) and those attorneys' fees and costs identified in Section I(G).

(B) Plaintiff and Defendants represent and certify that they each have full authority to sign this Agreement, and that no further approvals or consents by any other persons or entities are necessary for Plaintiff and Defendants to enter this Agreement and fulfill the conditions herein.

III. EFFECTIVE DATE OF AGREEMENT AND TIME FOR PAYMENT

This Agreement shall be effective after it is signed by all parties ("Effective Date").

(A) Within ten (10) business days of the Effective Date, Alpharetta shall send to Plaintiff's counsel (via email to adam@thefire.org) a copy of each of the following:

- a. The Department of Public Safety Manual as amended by the General Orders identified in Sections I(A) and (B);
- b. The Department of Public Safety Manual Policy 01-12 ("Internal Affairs") identified in Section I(C)(a), as amended under this Agreement; and
- c. The Department of Public Safety Manual, DPS Policy 01-01 ("Rules, Regulations and Disciplinary Process") identified in Section I(C)(b), as amended under this Agreement.

(B) Within ten (10) business days of the Effective Date, Alpharetta or its agent or insurer shall mail, via overnight Federal Express with tracking information provided to Plaintiff's counsel by email to adam@thefire.org, the Payment checks described in this Agreement to:

Adam Steinbaugh
Foundation for Individual Rights and Expression (FIRE)
510 Walnut Street, Suite 900
Philadelphia, PA 19106

(C) Within five (5) business days after the latest of (1) Receipt by Plaintiff's counsel of each of the as-amended policies required by Section III(A); and (2) Receipt by Plaintiff's counsel of the payment checks required by Section III(B), Plaintiff shall file the agreed-upon Stipulation of Dismissal with Prejudice, attached as Exhibit C, in the Lawsuit.

IV. NO PENDING LITIGATION

Plaintiff represents and confirms that, as of the date of his execution of this Agreement, other than the Lawsuit, he has not filed or otherwise initiated any lawsuit, complaint, charge, appeal, or other proceeding against any of the Defendants in any local, state, or federal court or with any other governmental agency based upon events occurring prior to the date of this Agreement. To the extent permitted by law, Plaintiff expressly waives any right to damages awarded by any governmental agency or court relating to any claims that are released by this Agreement.

V. TREATMENT FOR PURPOSES OF TAXATION

Jeffrey Gray agrees and understands that Defendants have made no representations or guarantees regarding the proper tax treatment of the Payment set forth in this Agreement. Jeffrey Gray assumes full and sole responsibility to any federal, state, or local taxing authority for any tax consequences, including interest, penalties, damages, or expenses, regarding income or other taxes arising out of the Payment. Jeffrey Gray agrees and understands that the treatment of payments under this Agreement by governmental taxing authorities has no bearing on the validity of this Agreement.

VI. MISCELLANEOUS

(A) Any dispute related to the meaning or enforcement of this Agreement shall be brought in the U.S. District Court for the Northern District of Georgia. Georgia law shall govern the validity and interpretation of this Agreement insofar as federal law does not control. If the U.S. District Court for the Northern District of Georgia declines to exercise jurisdiction of any such dispute, the parties agree that the dispute will be brought in the Fulton County Superior Court. If any action at law or in equity is necessary by Plaintiff to successfully enforce this Agreement, Plaintiff shall be entitled to reasonable attorney's fees and costs necessary to bring such action.

(B) This Agreement contains the entire understanding between Plaintiff and Defendants. This Agreement supersedes any prior written or oral agreements. This Agreement shall not be modified, amended, or terminated unless such modification, amendment, or termination is executed in writing by Plaintiff, on the one hand, and an authorized agent for Defendants on the other. No representations, warranties, recitals, covenants, or statements of intention have been made by, or on behalf of, any party hereto which are not embodied in this Agreement, and no party hereto shall be bound by, or liable for, any alleged representation, warranty, recital, covenant, or statement of intention not so set forth.

(C) All the terms, provisions, conditions, covenants, warranties, recitals, and statements of intention in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by Plaintiff and Defendants.

(D) If any single paragraph or clause of this Agreement should be found unenforceable, invalid, or illegal, it shall be severed, and the remaining paragraphs and clauses shall be enforced in accordance with the intent of this Agreement.

(E) Nothing in this Agreement prohibits either party from complying with any state or federal law.

(F) Any headings or subheadings used herein are for reference purposes only and do not affect the substantive provisions of the Agreement.

(G) The waiver by any part of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or simultaneous breach.

(H) A copy of this Agreement may be executed in duplicate originals. Any required signatures or acknowledgments communicated by facsimile transmission or PDF (portable document format) are as effective as the originals thereof.

(I) Plaintiff hereby represents and certifies that he has entered into this Agreement knowingly and voluntarily. Plaintiff certifies that he (i) has carefully read all of this Agreement and understand its provisions; (ii) has been advised to consult with an attorney of his choice before signing this Agreement and in fact have had an opportunity to consult with legal counsel; (iii) has not been influenced to sign this Agreement by any statement or representation by Defendants or their attorneys that is not contained in this written Agreement; and (iv) has been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

(J) Defendants hereby represent and certify that each has entered into this Agreement knowingly and voluntarily. Defendants each certify they (i) have carefully read all of this Agreement and understand its provisions; (ii) have been advised to consult with an attorney of their choice before signing this Agreement and in fact have had an opportunity to consult with legal counsel; (iii) have not been influenced to sign this Agreement by any statement or representation by Plaintiff or his attorneys that is not contained in this written Agreement; and (iv) have been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

ACCEPTED and AGREED TO on the date stated below:

JEFFREY GRAY

 J Gray

7/12/24

Date:

CITY OF ALPHARETTA

By:

Jim Gilvin, Mayor

Its:

7-15-2024

Date:

LIEUTENANT ARICK FURR

Date:

07/15/24

OFFICER HAROLD SHOFFEITT

Date:

7-15-2024

EXHIBIT A:

Panhandling General Order

XX-XX Panhandling and the First Amendment

PURPOSE:

To ensure that police department members do not violate the First Amendment rights of citizens who are engaged in lawful panhandling or other forms of protected speech in public spaces.

Definitions:

Panhandling: Asking other people for money or other resources in a public place, through written words, gestures, or speech.

Freedom of speech: The right, protected by the First Amendment of the United States Constitution, to engage in expression without censorship or interference from the government. This includes, but is not limited to, what people say, write, read, sing, paint, perform, draw, and even wear.

Traditional public forum: A place that, by tradition or by law, has been devoted to assembly or debate. Traditional public fora include streets, parks, and public sidewalks.

POLICY:

It is the policy of the Alpharetta Department of Public Safety to respect and protect the First Amendment rights of members of the public to engage in protected speech in public spaces, including the right to protest or express unpopular views. Panhandling, like other charitable solicitation, in traditional public fora, is a lawful expressive practice that is protected by the Free Speech Clause of the First Amendment to the U.S. Constitution. *See Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999).

When enforcing ordinances restricting loitering (Sec. 30-1), congregating on or near a street (Sec. 30-2), or disorderly conduct (Sec. 30-3), officers will not investigate, order to move, detain, arrest, or cite members of the public for panhandling in the absence of conduct violating a written ordinance or state law.

Officers may not assert that asking for money (or “panhandling”) is unlawful, generally. However, officers may explain that ordinances or state law limits

panhandling in certain areas or manners, provided that explanation accurately conveys existing ordinances or state law. Officers may offer connection to relevant social services.

Enforcement:

Sustained violations of this policy will result in disciplinary actions up to and including termination of employment. The first violation may result in counseling or a written warning; subsequent violations will result in more serious discipline.

EXHIBIT B:

Trespassing General Order

XX-XX Trespassing Notices in Public Spaces

PURPOSE:

To ensure that police department members do not violate the First Amendment rights of citizens to engage in protected speech in public spaces.

Definitions:

Trespass notice: A notice, oral or written, that prohibits or warns someone from remaining on or returning to particular property.

Traditional public forum: A place that, by tradition or by law, has been devoted to assembly or debate. Traditional public fora include streets, parks, and public sidewalks.

Designated or limited public forum: A place that has been opened up, by the City of Alpharetta or another government actor, for the purpose of expressive activity by the public or a designated class of speakers. Designated public fora include, for example, but are not limited to, meetings open to public comment or meeting rooms open to public use.

Time, place, and manner restrictions: These restrictions define when, where, and how a speaker may present a message. For example, while it may be permissible to shout "Stop the war!" or "Support our troops!" at noon in a public park, law-enforcement officers may be able to prevent someone from shouting the same speech in front of a residence at 3:00 AM. Time, place, and manner restrictions must, however, be "reasonable," which means they must be necessary to serve an important government interest. Valid time, place, and manner restrictions must not be based on the content or viewpoint of the speech.

POLICY:

It is the policy of the Alpharetta Department of Public Safety to respect and protect the First Amendment rights of members of the public to engage in protected speech in public spaces.

All trespass notices will be in writing. Oral trespass orders are not permitted and constitute a violation of this policy, unless providing a written order would pose a substantial risk of physical injury to the officer or other individuals.

Officers will not issue written trespass notices to members of the public barring them from traditional, designated, or limited public forums, such as public streets, sidewalks, parks, or the areas of government buildings open to the public.

This policy does not prohibit an officer from enforcing content- and viewpoint-neutral ordinances, regulations, or rules, including reasonable time, place, or manner regulations. These include, by way of example, limits on the hours of operation of a given space.

Enforcement:

Sustained violations of this policy will result in disciplinary actions up to and including termination of employment. The first violation will result in counseling or a written warning; subsequent violations will result in more serious discipline.

EXHIBIT C:

Stipulation of Voluntary Dismissal

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JEFFREY GRAY,

Plaintiff,

v.

CITY OF ALPHARETTA, *et al.*,

Defendants.

Civil Action No.
1:23-cv-00463-MLB

STIPULATION OF VOLUNTARY DISMISSAL

Under Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff Jeffrey Gray and Defendants City of Alpharetta, Arick Furr, and Harold Shoffeitt stipulate to the dismissal with prejudice of all claims and affirmative defenses arising out of or relating to this lawsuit. The parties stipulate that a settlement has been reached.

DATED: July __, 2024

Respectfully submitted,

/s/ Adam Steinbaugh

ADAM STEINBAUGH*

PA Bar No. 326475; CA No. 304829

JAMES M. DIAZ*

VT Bar No. 5014

COLIN MCDONELL*

PA Bar No. 331247; CA No. 289099

/s/ Phillip E. Friduss+

PHILLIP E. FRIDUSS

Georgia Bar No. 277220

HENRY CLELAND

Georgia Bar No. 663931

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*Admitted *Pro Hac Vice*

+Signed with permission

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