

***Homes Not Handcuffs:***

**The Criminalization of Homelessness in  
U.S. Cities**



***A Report by***

**The National Law Center on Homelessness & Poverty  
and  
The National Coalition for the Homeless**

***July 2009***

## **ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY**

The National Law Center on Homelessness and Poverty is a 501(c)3 nonprofit organization based in Washington, DC and founded in 1989 to serve as the legal arm of the national movement to end and prevent homelessness. To carry out this mission, the Law Center focuses on the root causes of homelessness and poverty and seeks to meet both the immediate and long-term needs of homeless and poor people. The Law Center addresses the multifaceted nature of homelessness by: identifying effective model laws and policies, supporting state and local efforts to promote such policies, and helping grassroots groups and service providers use, enforce and improve existing laws to protect homeless people's rights and prevent even more vulnerable families, children, and adults from losing their homes. By providing outreach, training, and legal and technical support, the Law Center enhances the capacity of local groups to become more effective in their work. The Law Center's new Homelessness Wiki website also provides an interactive space for advocates, attorneys, and homeless people across the country to access and contribute materials, resources, and expertise about issues affecting homeless and low-income families and individuals.

You are invited to join the network of attorneys, students, advocates, activists, and committed individuals who make up NLCHP's membership network. Our network provides a forum for individuals, non-profits, and corporations to participate and learn more about using the law to advocate for solutions to homelessness. For more information about our organization, membership, and access to publications such as this report, please visit our website at [www.nlchp.org](http://www.nlchp.org).

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Founded in 1982, the National Coalition for the Homeless (NCH) is a private, non-profit, national advocacy organization that exists to educate all levels of society in order to identify and put to an end the social and economic causes of homelessness. NCH is the nation's oldest and largest national homelessness advocacy organization, comprised of activists, service providers, and persons who are, or have been, homeless and are striving toward a single goal – to end homelessness. It is the mission of NCH to create the systemic and attitudinal changes necessary to prevent and end homelessness, while concurrently working to increase the capacity of local supportive housing and service providers to better meet the urgent needs of those families and individuals now homeless in their communities.

NCH focuses its work on four policy areas: civil rights of those who are without homes, housing that is affordable to those with the lowest incomes, accessible/comprehensive health care and other needed support services, and livable incomes that make it possible to afford the basic necessities of life. The strategies we use to implement our mission are: litigation, lobbying, policy analysis, public education, community organizing, research, and providing technical assistance.

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## Acknowledgements

**Published by the National Law Center on Homelessness & Poverty (NLCHP) and the National Coalition for the Homeless (NCH), with outreach and organizing work by NCH's National Homeless Civil Rights Organizing Project (NHCROP).**

**The National Law Center on Homelessness & Poverty would like to thank the following individuals for their tremendous contributions to the research, writing, and layout of the report.**

NLCHP would like to thank Emily Zarins Mason and Donald Saelinger of Covington & Burling, who researched and drafted a significant portion of the case summaries section of the report. NLCHP also thanks Cristin Zeisler, Ted Harrison, Tara Kaushik, Kelly Knudson, and Deniz Haupt of Manatt, Phelps, Phillips, who researched and updated the prohibited conduct chart.

NLCHP gives special thanks to NLCHP legal interns Luis Rodriguez, Taran Nadler, Matthew Korn, Denise St. Just, Kim Evans, and Jessica Gustin for their assistance in researching, drafting, and editing various portions of the report. NLCHP also thanks NLCHP intern Zoe Black for her work formatting the report. Tulin Ozdeger, NLCHP Civil Rights Director, oversaw the project and conducted research, drafting, and editing for the report. Catherine Bendor, NLCHP Legal Director, and Maria Foscarinis, NLCHP Executive Director, provided editorial assistance and guidance.

NLCHP wishes to thank the W. K. Kellogg Foundation for its support to enhance the National Law Center on Homelessness & Poverty's capacity by providing general support of its programs. Established in 1930, the W. K. Kellogg Foundation supports children, families and communities as they strengthen and create conditions that propel vulnerable children to achieve success as individuals and as contributors to the larger community and society. Grants are concentrated in the United States, Latin America and the Caribbean, and southern Africa.

NLCHP would also like to thank the Herb Block Foundation, the Oakwood Foundation, and our anonymous donors for their financial support of the organization's programs. Along with these grants, the annual contributions of NLCHP's LEAP members have made the publication of this report possible.

**The National Coalition for the Homeless (NCH) would like to thank the following NCH board members, staff, and interns who contributed greatly to the research, writing, and layout of the report.**

NCH thanks many unnamed student interns who wrote narratives, did research, and edited sections throughout the report. NCH also thanks student intern Caitlin Schultz and Stephany Whitaker, Bill Emerson Hunger Fellow, who worked on the report through the editing stages.

NCH also thanks Anita Beaty and Brian Davis, Co-Chairs of NCH's Civil Rights Work Group, who provided guidance in the production of this report from beginning to end. NCH also gives thanks to the members of NCH's Civil Rights Work Group/Grassroots Organizing Committee, who met monthly via conference call over the past year. These

members provided input about the civil rights abuses that were happening in their respective cities/states. Michael Stoops, Executive Director of NCH, served as an advisor and co-editor. NCH also would like to thank the numerous advocates, NCH Board Members, and friends across the country for their feedback and support, without which this report would not be possible.

NCH also thanks Presbyterian Church (USA)/National Ministries Division, Sidney Stern Memorial Trust for their financial support of this project.

## Executive Summary

The housing and homelessness crisis in the United States has worsened over the past two years, particularly due to the current economic and foreclosure crises. On March 27, 2008, CBS News reported that 38 percent of foreclosures involved rental properties, affecting at least 168,000 households.<sup>1</sup> The Sarasota, Florida, Herald Tribune noted that, by some estimates, more than 311,000 tenants nationwide have been evicted from homes this year after lenders took over the properties.<sup>2</sup> People being evicted from foreclosed properties and the economic crisis in general have contributed to the growing homeless population.<sup>3</sup>

As more people fall into homelessness, local service providers are seeing an increase in the demand for services. In Denver, nearly 30% of the homeless population is newly homeless. The Denver Rescue Mission has reported a 10% increase in its services.<sup>4</sup> The State of Massachusetts reports that the number of families living in shelters has risen by 33% in the past year.<sup>5</sup> In Atlanta, Georgia, the Metro Atlanta Task Force for the Homeless reports that 30% of all people coming into the Day Services Center daily are newly homeless.<sup>6</sup> In Concord, New Hampshire, the food pantry at First Congregational Church serves about 4,000 meals to over 800 people each month, around double the rate from 2007.<sup>7</sup>

Of the 25 cities surveyed by the US Conference of Mayors for its annual Hunger and Homelessness Report, 19 reported an increase in homelessness in 2008.<sup>8</sup> On average, cities reported a 12 percent increase.<sup>9</sup> The lack of available shelter space leaves many homeless persons with no choice but to struggle to survive on the streets of our cities.

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<sup>1</sup> National Coalition for the Homeless, *NCH Public Policy Recommendations: Foreclosure and Homelessness Prevention*, available at [www.nationalhomeless.org/publications/facts/2008Policy/Foreclosure.pdf](http://www.nationalhomeless.org/publications/facts/2008Policy/Foreclosure.pdf); National Law Center on Homelessness & Poverty, *Indicators of Increasing Homelessness Due to the Foreclosure and Economic Crises* (2009), available at [http://www.nlchp.org/view\\_report.cfm?id=288](http://www.nlchp.org/view_report.cfm?id=288).

<sup>2</sup> Kate Spinner, *You're Paying; Is Your Landlord?*, Herald Tribune, Dec. 1, 2008, available at [http://www.heraldtribune.com/article/20081201/ARTICLE/812010376/2055/NEWS?Title=You\\_re\\_paying\\_Is\\_the\\_landlord](http://www.heraldtribune.com/article/20081201/ARTICLE/812010376/2055/NEWS?Title=You_re_paying_Is_the_landlord).

<sup>3</sup> For more information about renters living in foreclosed properties see National Law Center on Homelessness & Poverty and National Low Income Housing Coalition, *Without Just Cause: A 50-state Review of the (Lack of) Rights of Tenants in Foreclosure* (2009), available at [http://www.nlchp.org/content/pubs/Without\\_Just\\_Cause1.pdf](http://www.nlchp.org/content/pubs/Without_Just_Cause1.pdf).

<sup>4</sup> Nelson Garcia, *Economy goes down, service to homeless goes up*, KUSA-TV CHANNEL 9 NEWS, Nov. 15, 2008, available at <http://www.9news.com/news/article.aspx?storyid=103973>.

<sup>5</sup> Laura Crimaldi, *Evictions Spike Leaving More Bay Staters Out in the Cold*, Boston Herald, Nov. 23, 2008, available at <http://news.bostonherald.com/news/regional/view.bg?articleid=1134253>.

<sup>6</sup> Daily reports from the Metro Atlanta Task Force for the Homeless, April, 2009.

<sup>7</sup> Shira Shoenberg, *Homeless Rolls Grow, Worry Local Agencies: Needs May be Greater than Resources*, The Concord Monitor, Oct. 19, 2008, available at <http://www.concordmonitor.com/apps/pbcs.dll/article?Date=20081019&Category=FRONTPAGE&ArtNo=810190337&SectionCat=s&Template=printart>.

<sup>8</sup> U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities, A 25-City Survey*, (December 2008).

<sup>9</sup> Id.

Even though most cities do not provide enough affordable housing, shelter space, and food to meet the need, many cities use the criminal justice system to punish people living on the street for doing things that they need to do to survive. Such measures often prohibit activities such as sleeping/camping, eating, sitting, and/or begging in public spaces and include criminal penalties for violation of these laws. Some cities have even enacted food sharing restrictions that punish groups and individuals for serving homeless people. Many of these measures appear to have the purpose of moving homeless people out of sight, or even out of a given city.

As criminalization measures can be counterproductive in many ways, the U.S. Congress recently passed and the President signed legislation, the Helping Families Save Their Homes Act of 2009, which requires the federal Interagency Council on Homelessness to devise constructive alternatives to criminalization measures that can be used by cities around the country.

*Homes Not Handcuffs* is the National Law Center on Homelessness & Poverty's (NLCHP) ninth report on the criminalization of homelessness<sup>10</sup> and the National Coalition for the Homeless' (NCH) fifth report on the topic.<sup>11</sup> The report documents cities with the worst record related to criminalizing homelessness, as well as initiatives in some cities that constitute more constructive approaches to street homelessness. The report includes the results of research regarding laws and practices in 273 cities around the country; as well as descriptions of lawsuits from various jurisdictions in which those measures have been challenged.

### ***Types of Criminalization Measures***

The criminalization of homelessness takes many forms, including:

- Enactment and enforcement of legislation that makes it illegal to sleep, sit, or store personal belongings in public spaces in cities where people are forced to live in public spaces.

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<sup>10</sup> NLCHP, *Go Directly to Jail: A report analyzing local anti-homeless ordinances* (1991) (nine cities); *The Right to Remain Nowhere: A report on anti-homeless laws and litigation in 16 U.S. cities* (1993); *No Homeless People Allowed: A report on anti-homeless laws, litigation and alternatives in 49 U.S. cities* (1994); *Mean Sweeps: A report on anti-homeless laws, litigation and alternatives in 50 U.S. cities* (1996); *Out of Sight, Out of Mind? A report on anti-homeless laws, litigation and alternatives in 50 U.S. Cities*; National Coalition for the Homeless (NCH) and National Law Center on Homelessness & Poverty (NLCHP), *Illegal to Be Homeless: The criminalization of homelessness in the U.S.* (2002); *Punishing Poverty: The Criminalization of Homelessness, Litigation, and Recommendations for Solutions* (2003); NCH and NLCHP, *A Dream Denied: The Criminalization of Homelessness in U.S. Cities* (2006).

<sup>11</sup> National Coalition for the Homeless (NCH) and National Law Center on Homelessness & Poverty (NLCHP), *Illegal to be Homeless: The Criminalization of Homelessness in the United States* (2002); NCH, *Illegal to be Homeless: The Criminalization of Homelessness in the United States* (2003); NCH, *Illegal to be Homeless: The Criminalization of Homelessness in the United States* (2004); NCH and NLCHP, *A Dream Denied: The Criminalization of Homelessness in U.S. Cities* (2006).

- Selective enforcement of more neutral laws, such as loitering, jaywalking, or open container laws, against homeless persons.
- Sweeps of city areas in which homeless persons are living to drive them out of those areas, frequently resulting in the destruction of individuals' personal property such as important personal documents and medication.
- Enactment and enforcement of laws that punish people for begging or panhandling in order to move poor or homeless persons out of a city or downtown area.
- Enactment and enforcement of laws that restrict groups sharing food with homeless persons in public spaces.
- Enforcement of a wide range of so-called "quality of life" ordinances related to public activities and hygiene (i.e. public urination) when no public facilities are available to people without housing.

### ***Prevalence of Laws that Criminalize Homelessness and Poverty***

City ordinances frequently serve as a prominent tool for criminalizing homelessness. Of the 235 cities surveyed for our prohibited conduct chart (see p.159):

- 33% prohibit "camping" in particular public places in the city and 17% have city-wide prohibitions on "camping."
- 30% prohibit sitting/lying in certain public places.
- 47% prohibit loitering in particular public areas and 19% prohibit loitering citywide.
- 47% prohibit begging in particular public places; 49% prohibit aggressive panhandling and 23% have citywide prohibitions on begging.

The trend of criminalizing homelessness continues to grow. Based on information gathered about the 224 cities that were included in our prohibited conduct charts in both our 2006 report and this report:

- There has been a 7% increase in laws prohibiting "camping" in particular public places.
- There has been an 11% increase in laws prohibiting loitering in particular public places.

- There has been a 6% increase in laws prohibiting begging in particular public places and a 5% increase in laws prohibiting aggressive panhandling.

### *Examples of Mean Cities*

Since the beginning of 2007, among others documented in this report, measures taken in the following cities stand out as some of the worst examples of cities' inhumane treatment of homeless and poor people:

- **Los Angeles, CA.** According to a study by UCLA released in September 2007, Los Angeles was spending \$6 million a year to pay for fifty extra police officers as part of its Safe City Initiative to crack down on crime in the Skid Row area at a time when the city budgeted only \$5.7 million for homeless services. Advocates found that during an 11-month period 24 people were arrested 201 times, with an estimated cost of \$3.6 million for use of police, the jail system, prosecutors, public defenders and the courts. Advocates asserted that the money could have instead provided supportive housing for 225 people. Many of the citations issued to homeless persons in the Skid Row area were for jaywalking and loitering -- "crimes" that rarely produce written citations in other parts of Los Angeles.
- **St. Petersburg, FL.** Since early 2007, St. Petersburg has passed 6 new ordinances that target homeless people. These include ordinances that outlaw panhandling throughout most of downtown, prohibit the storage of personal belongings on public property, and make it unlawful to sleep outside at various locations. In January 2007, the Pinellas-Pasco Public Defender announced that he would no longer represent indigent people arrested for violating municipal ordinances to protest what he called excessive arrests of homeless individuals by the City of St. Petersburg. According to numbers compiled by the public defender's office, the vast majority of people booked into the Pinellas County Jail on municipal ordinances were homeless individuals from St. Petersburg.
- **Orlando, FL.** In 2006, the Orlando City Council passed a law that prohibited groups sharing food with 25 or more people in downtown parks covered under the ordinance from doing so more than twice a year. A member of one of the groups that shares food regularly with homeless and poor people in Orlando parks was actually arrested under the ordinance for sharing food. A federal district court found the law unconstitutional; however, the City of Orlando has appealed the decision.

### *Policy and Legal Concerns*

These common practices that criminalize homelessness do nothing to address the underlying causes of homelessness. Instead, they drastically exacerbate the problem. They frequently move people away from services. When homeless persons are arrested and charged under these ordinances, they may develop a criminal record, making it more difficult to obtain the employment and/or housing that could help them become self-sufficient.

Criminalization measures also raise constitutional questions, and many of them violate the civil rights of homeless persons. Courts have found certain criminalization measures to be unconstitutional. For example:

- When a city passes a law that places too many restrictions on begging, such restrictions may raise free speech concerns as courts have found begging to be protected speech under the First Amendment.
- When a city destroys homeless persons' belongings, such actions may violate the Fourth Amendment right to be free from unreasonable searches and seizures.
- When a city enforces a law that imposes criminal penalties on a homeless person for engaging in necessary life activities such as sleeping in public, such a law could violate that person's Eighth Amendment right to be free from cruel and unusual punishment if the person has nowhere else to perform the activity.
- When a city passes a law that does not give people sufficient notice of what types of conduct it prohibits, or allows for arbitrary enforcement by law enforcement officials, such a law can be determined to be overly vague in violation of the Constitution. Courts have found certain loitering and vagrancy laws to be unconstitutionally vague.

In addition to violating domestic law, criminalization measures can also violate international human rights law.

### *Constructive Alternatives to Criminalization*

While many cities engage in practices that exacerbate the problem of homelessness by criminalizing it, some cities around the country have pursued more constructive approaches. The following examples illustrate more constructive approaches to homelessness:

- **Daytona Beach, FL.** In order to reduce the need for panhandling, a coalition of service providers, business groups, and the City of Daytona Beach began a program that provides homeless participants with jobs and housing. While in the Downtown Street Team program, participants are hired to clean up downtown Daytona Beach and are provided initially with shelter and subsequently with transitional housing. A number of participants have moved on from the program to other full-time jobs and housing.
- **Cleveland, OH.** Instead of passing a law to restrict groups that share food with homeless persons, the City of Cleveland has contracted with the Northeast Ohio Coalition for the Homeless to coordinate outreach agencies and food sharing groups to prevent duplication of food provision, to create a more orderly food

sharing system, and to provide an indoor food sharing site to groups who wish to use it.

- **Portland, OR.** As part of its 10-year plan, Portland began “A Key Not a Card,” where outreach workers from five different service providers are able to immediately offer people living on the street permanent housing rather than just a business card. From the program’s inception in 2005 through spring 2009, 936 individuals in 451 households have been housed through the program, including 216 households placed directly from the street.

### *Recommendations*

Instead of criminalizing homelessness, local governments, business groups, and law enforcement officials should work with homeless people, providers, and advocates for solutions to prevent and end homelessness.

Cities should dedicate more resources to creating more affordable housing, permanent supportive housing, emergency shelters, and homeless services in general. To address street homelessness, cities should adopt or dedicate more resources to outreach programs, emergency shelter, and permanent supportive housing.

Business groups can play a positive role in helping to address the issue of homelessness. Instead of advocating for criminalization measures, business groups can put resources into solutions to homelessness.

When cities work with homeless persons and advocate for solutions to homelessness, instead of punishing those who are homeless or poor, everyone benefits.



## Introduction

The housing and homelessness situation in the United States has worsened over the past two years, particularly due to the current economic and foreclosure crises. On March 27, 2008, CBS News reported that 38 percent of foreclosures involved rental properties, affecting at least 168,000 households.<sup>12</sup> The Sarasota, Florida, *Herald Tribune* noted that, by some estimates, more than 311,000 tenants nationwide have been evicted from homes this year after lenders took over the properties.<sup>13</sup> People being evicted from foreclosed properties and the economic crisis in general have contributed to the growing homeless population.

As more people are falling into homelessness, local service providers are seeing an increase in the demand for services. In Denver, nearly 30% of the homeless population is newly homeless. The Denver Rescue Mission has reported a 10% increase in its services.<sup>14</sup> The State of Massachusetts reports that the number of families living in shelters has risen by 33% in the past year.<sup>15</sup> In Atlanta, Georgia, the Metro Atlanta Task Force for the Homeless reports that 30% of all people coming into the Day Services Center daily are newly homeless.<sup>16</sup> In Concord, New Hampshire, the food pantry at First Congregational Church serves about 4,000 meals to over 800 people each month, around double the rate from 2007.<sup>17</sup>

Of the 25 cities surveyed by the US Conference of Mayors for its annual Hunger and Homelessness Report, 19 reported an increase in homelessness in 2008.<sup>18</sup> On average, cities reported a 12 percent increase.<sup>19</sup> The lack of available shelter space leaves many homeless persons with no choice but to struggle to survive on the streets of our cities. Even while most cities cannot provide enough affordable housing, shelter space, and food to meet the need, many cities use the criminal justice system to punish people living on the street for doing things they need to do to survive. Such measures often prohibit activities such as sleeping/camping, eating, sitting, and/or begging in public spaces and include criminal penalties for violation of these laws. Some cities have even enacted

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<sup>12</sup> National Coalition for the Homeless, *NCH Public Policy Recommendations: Foreclosure and Homelessness Prevention*, available at

[www.nationalhomeless.org/publications/facts/2008Policy/Foreclosure.pdf](http://www.nationalhomeless.org/publications/facts/2008Policy/Foreclosure.pdf).

<sup>13</sup> Kate Spinner, *You're Paying; Is Your Landlord?*, *Herald Tribune*, Dec. 1, 2008, available at [http://www.heraldtribune.com/article/20081201/ARTICLE/812010376/2055/NEWS?Title=You\\_re\\_paying\\_Is\\_the\\_landlord](http://www.heraldtribune.com/article/20081201/ARTICLE/812010376/2055/NEWS?Title=You_re_paying_Is_the_landlord).

<sup>14</sup> Nelson Garcia, *Economy goes down, service to homeless goes up*, KUSA-TV CHANNEL 9 NEWS, Nov. 15, 2008, available at <http://www.9news.com/news/article.aspx?storyid=103973>.

<sup>15</sup> Laura Crimaldi, *Evictions Spike Leaving More Bay Staters Out in the Cold*, *Boston Herald*, Nov. 23, 2008, available at <http://news.bostonherald.com/news/regional/view.bg?articleid=1134253>.

<sup>16</sup> Daily reports from the Metro Atlanta Task Force for the Homeless, April, 2009.

<sup>17</sup> Shira Shoenberg, *Homeless Rolls Grow, Worry Local Agencies: Needs May be Greater than Resources*, *The Concord Monitor*, Oct. 19, 2008, available at <http://www.concordmonitor.com/apps/pbcs.dll/article?Date=20081019&Category=FRONTPAGE&ArtNo=810190337&SectionCat=s&Template=printart>.

<sup>18</sup> U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities, A 25-City Survey*, (December 2008).

<sup>19</sup> *Id.*

food sharing restrictions that punish groups and individuals for serving food to homeless people.

As criminalization measures can be counterproductive in many ways, the U.S. Congress recently passed and the President signed legislation, the Helping Families Save Their Homes Act of 2009, which requires the federal Interagency Council on Homelessness to devise constructive alternatives to criminalization measures that can be used by cities around the country.

*Homes Not Handcuffs* is the National Law Center on Homelessness & Poverty's (NLCHP) ninth report on the criminalization of homelessness<sup>20</sup> and the National Coalition for the Homeless' (NCH) fifth report on the topic.<sup>21</sup> The report documents cities with the worst record related to criminalizing homelessness and trends in the criminalization of homelessness, as well as initiatives in some cities that constitute more constructive approaches to street homelessness. The report includes the results of research regarding laws and practices in 273 cities around the country, as well as descriptions of lawsuits from various jurisdictions in which those measures have been challenged. The report also includes information about some of the policy and legal problems with criminalization measures.

Instead of criminalizing homelessness, local governments, business groups, and law enforcement officials should work with homeless people, providers, and advocates for solutions to prevent and end homelessness. Cities should dedicate more resources to creating more affordable housing, permanent supportive housing, emergency shelters, and homeless services in general. To address street homelessness, cities should adopt or dedicate more resources to outreach programs, emergency shelter, and permanent supportive housing. Business groups can play a positive role in helping to address the issue of homelessness. Instead of advocating for criminalization measures, business groups can put resources into solutions to homelessness.

When cities work with homeless persons, service providers, and advocates toward solutions to homelessness, instead of punishing those who are homeless or poor, everyone can benefit.

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<sup>20</sup> NLCHP, *Go Directly to Jail: A report analyzing local anti-homeless ordinances* (1991) (nine cities); *The Right to Remain Nowhere: A report on anti-homeless laws and litigation in 16 U.S. cities* (1993); *No Homeless People Allowed: A report on anti-homeless laws, litigation and alternatives in 49 U.S. cities* (1994); *Mean Sweeps: A report on anti-homeless laws, litigation and alternatives in 50 U.S. cities* (1996); *Out of Sight, Out of Mind? A report on anti-homeless laws, litigation and alternatives in 50 U.S. Cities*; National Coalition for the Homeless (NCH) and National Law Center on Homelessness & Poverty (NLCHP), *Illegal to Be Homeless: The criminalization of homelessness in the U.S.* (2002); *Punishing Poverty: The Criminalization of Homelessness, Litigation, and Recommendations for Solutions* (2003); NCH and NLCHP, *A Dream Denied: The Criminalization of Homelessness in U.S. Cities* (2006).

<sup>21</sup> National Coalition for the Homeless (NCH) and National Law Center on Homelessness & Poverty (NLCHP), *Illegal to be Homeless: The Criminalization of Homelessness in the United States* (2002); NCH, *Illegal to be Homeless: The Criminalization of Homelessness in the United States* (2003); NCH, *Illegal to be Homeless: The Criminalization of Homelessness in the United States* (2004); NCH and NLCHP, *A Dream Denied: The Criminalization of Homelessness in U.S. Cities* (2006).

## **Trends in Addressing Panhandling: The Donation Meter**

Over the years, cities have attempted to address community concerns regarding panhandling in a variety of ways. One of the usual responses has been the passage of laws that make it illegal to panhandle in public places. However, panhandling restrictions have not been proven to reduce panhandling, as they do not address the underlying reasons why a poor or homeless individual may need to ask for money.

Recently, some cities have taken another approach to manage the issue of panhandling. A number of cities have installed meters that resemble parking meters to accept money from people who would otherwise give that change to panhandlers. The proceeds from the meters are then usually distributed to local homeless service providers.

While these solutions appear to be an improvement over panhandling restrictions because they do not involve criminally punishing panhandlers, the use of parking meters as a mechanism to discourage panhandling still has some flaws. When coupled with more aggressive criminalization efforts and crafted to push out panhandlers, these campaigns can quickly become counterproductive.

Much like panhandling restrictions, meters do not necessarily eliminate the needs of a poor person asking for money, but may merely move the person asking for money to another location. Further, if meter programs are combined with campaigns telling people not to give to people asking for money, they can have a detrimental impact on people who are in dire need of assistance and can discourage the human connection that occurs when one person gives to another person in need. Finally, the amount of money raised by the meters may not be significant enough to make an actual impact on the larger issue of poverty in any given community.

The following cities have implemented donation meter programs as a way to discourage panhandling within their communities.

### **Albuquerque, NM**

The city initially converted old parking meters into meters that accepted donations. It is now slowly phasing out these curbside meters, in favor of donation kiosks that accept paper money, credit cards, and coins, and print a receipt.

### **Atlanta, GA**

Atlanta unveiled a donation meter program in September 2008 that when reevaluated by city officials in March 2009, only raised \$500. The city decided to create thirteen more donation meters despite the low funds brought in by the program. This program created meters with attached resource cards that provide information about shelters and other places to find help.

## **Baltimore, MD**

The city created meters that, instead of counting down minutes, count down from “Hope” to “Despair.” This program raised nearly \$5,000 in its first year.

## **Chattanooga, TN**

Thirteen donation meters were installed as part of the city’s “Art of Change” program. The initial meters were reinforced with heavier materials in November 2007 after two were stolen.

## **Cleveland, OH**

Cleveland’s campaign will place 15 lime green and red parking meters in the city to raise money for the Downtown Cleveland Alliance's Downtown Homeless Fund. Alliance President Joe Marinucci said that the number of meters will eventually grow to 40. This program marks a partnership between the Alliance, the City of Cleveland, the faith-based community and property owners.

## **Dallas, TX**

Dallas City Hall, the Downtown Dallas association, and the Metro Dallas Homeless Alliance sponsored the city government’s “Lend a Hand” campaign, which includes conversion of parking meters into donation receptacles.

## **Denver, CO**

The “Denver Road Home” campaign began with 36 meters in March 2007; by October 2008 there were 86 meters. This initiative is part of Denver’s 10-year plan to end homelessness. The idea behind the meters is to funnel the \$4 million given to homeless individuals in the city annually, as estimated by the Downtown Denver Partnership, toward agencies better equipped to distribute resources without the fear of money being used for counterproductive purposes. The meters serve two purposes - to be donation receptacles and to raise public awareness. The meters have raised close to \$15,000 in coins, in addition to nearly \$100,000 through private donors and businesses “adopting” a meter. This model has had national influence and more cities have looked to emulate Denver’s example.

## **Little Rock, AR**

Little Rock installed 25 orange “Change for the Better” boxes. The funds from the boxes are distributed to five area organizations: Friendly Chapel, Our House, River City Ministries, The Salvation Army, and the Union Rescue Mission/Dorcas House.

## **Portland, OR**

Initiated by the Portland Business Alliance several years ago, Portland’s “Real Change, Not Spare Change” meter program has raised nearly \$10,000 to-date.

### San Francisco, CA

San Francisco initiated a meter program, advertised as “Be a part of change. Don’t give change.”

A failed proposal sought to create credit card machines, to which passersby could apply their funds, 80% of which would automatically go to homeless programs and the remaining 20% would go directly to homeless individuals. This example illustrates how meters can remove the human interaction component that brings to light the reality of poverty.

### Seattle, WA

An experimental program between the city, service providers, and businesses is using green “giving meters” as part of a city-wide campaign, whose slogan is “Have a heart. Give Smart.”

### St. Louis, MO

The Central West End Association acquired a decommissioned parking meter to collect donations.

### Tempe, AZ

Bright red refurbished meters were installed in March 2008. Funds gathered from the meters are distributed to 4 different agencies. This program, titled “Change for Change,” grew out of a program created by a Tempe Leadership class that initially raised \$8,000 to procure meters.



A photo of a Denver meter.

## **The Cost of Homelessness: Permanent Housing is Cheaper than Criminalization**

In 2004, the Lewin Group issued the results of a nine-city survey that compared jail costs to emergency shelter and permanent supportive housing costs, among other things. According to the survey results, jail costs were two to three times higher than permanent supportive housing or shelter costs.<sup>22</sup> While advocates have had anecdotal evidence for years that suggested it is actually more costly to arrest and convict homeless individuals of misdemeanors relating to their homelessness than it is to provide housing for them, a number of service providers have conducted cost studies that have confirmed that housing is not only the more humane option but also more economical. Below are descriptions of five such studies.

### **Cincinnati, OH**

In May 2007, the Greater Cincinnati Coalition for the Homeless and its partners announced the results of a study<sup>23</sup> in which the groups studied public records from Hamilton County Jails from the period between October 1, 2005 and September 30, 2006. In addition, the groups studied the jail roster on an almost daily basis for the period between August 28, 2006 and November 2, 2006. After examining the public records, the groups identified 2,900 public records that included information about 840 homeless individuals' interactions with the criminal justice system.

The study found that some of the most common charges associated with homeless individuals were for the following violations: open container in public, public indecency due to public urination, sitting on the sidewalk, spitting in a public place, upsetting public and private garbage receptacles (dumpster diving), littering, loitering, solicitation (commonly improper solicitation for panhandling), trespassing, and disorderly conduct. The study noted that these charges are considered the big homeless "crimes" because either they are the most common charges homeless people face or no one other than homeless people is ever arrested on these charges. In addition, based on the review of Hamilton County Jail's rosters, the groups estimated that an average of 5 percent of the jail population between August 28, 2006, and November 2, 2006 were identified as homeless.

The study noted that using the criminal justice system to deal with the consequences of street homelessness is a rather expensive approach, since it costs \$65 per bed per day in the jail. The study pointed to a Lewin Group study that estimated permanent supportive housing costs on average only \$30 a day, a much less costly and productive way of approaching homelessness.<sup>24</sup> This cost difference is particularly significant given that supportive housing is permanent, unlike emergency shelters or even transitional housing,

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<sup>22</sup> Lewin Group, *Costs of Serving Homeless Individuals in Nine Cities*, [http://documents.csh.org/documents/ke/csh\\_lewin2004.PDF](http://documents.csh.org/documents/ke/csh_lewin2004.PDF) (2004).

<sup>23</sup> Greater Cincinnati Coalition for the Homeless, *Criminalization of Homeless Individuals in Cincinnati*, <http://www.cincihomeless.org/> (2007).

<sup>24</sup> Lewin Group, *supra* note 22.

and allows residents to continue working with their case managers as well as receive needed mental health and substance abuse treatment.

### **Indianapolis, IN**

In partnership with the Coalition for Homelessness Intervention and Prevention and other partners, the Center for Health Policy at Indiana University-Purdue University Indianapolis (IUPU) conducted a study of 96 chronically homeless individuals.<sup>25</sup> Participants in this study were 95 percent male, 55 percent African American or black individuals, 39 percent white individuals, and 6 percent from other racial categories and participants had an average age of 45. IUPU reviewed data from January 2003 through June 2006. Over the three and a half year period, researchers noted an increase in both inpatient and outpatient visits over time, suggesting that as people remain on the streets over time, their health suffers and they have an increase in their number of medical visits and health care costs. Similarly, when examining criminal justice encounters, researchers found an increase in costs over time.

The study found that at least three-fourths of study participants who had the most encounters with the criminal justice and health care systems had also been diagnosed with a mental illness or substance abuse problem. Due to this fact, the researchers postulated that each year the city of Indianapolis and Marion County expend between at least \$5,912 and \$15,560 per person in the criminal justice and public health care systems. For the estimated 500 people on the streets of Indianapolis or in shelters, researchers estimate that the collective expenditures are \$3 million to \$7 million annually.

### **Minneapolis, MN**

The Hennepin County Criminal Justice Coordinating Committee (HCCJCC), a working group of the Hennepin County Board of Commissioners released a study in 2005 that evaluated the effectiveness of a downtown Minneapolis public safety initiative.<sup>26</sup> The study included information about 1,891 individuals who had 2,691 police contacts during the time period examined – April 17, 2005 through August 30, 2005. Of the 1,891 individuals included in the study, 291 or 15 percent had more than one contact with police.

In addition to the larger group of people included in the study, HCCJCC focused on 33 homeless individuals who had four or more police contacts in the city's newly established Safe Zone during the period of April 17, 2005 through June 17, 2005. In addition, these

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<sup>25</sup> Eric Wright, Laura Littlepage & Courtney Federspiel, *Serving the Homeless Could Save Taxpayer Dollars*, Indiana University Center for Public Policy (2007), available at [http://www.policyinstitute.iu.edu/PubsPDFs/251\\_Homeless.pdf](http://www.policyinstitute.iu.edu/PubsPDFs/251_Homeless.pdf).

<sup>26</sup> Hennepin County Criminal Justice Coordinating Committee, *Downtown Minneapolis Safe Zone Collaborative Final Report* (2005), available at <http://www.co.hennepin.mn.us/images/HCInternet/Static%20Files/146365432Downtown%20Minneapolis%20Safe%20Zone%20FINAL%20REPORT.pdf>. Information on both the larger group of 1,891 as well as the 33 known as the Downtown 33 can be found in this report.

33 individuals incurred disproportionately high expenditures for minimal desirable results within an otherwise successful public safety initiative. Upon closer examination, HCCJCC estimated the following costs resulting from these 33 individuals' interactions with the criminal justice system as of September 2005:

- \$876,741 for Hennepin County Jail Costs Since 1994
- \$184,200 for Hennepin County Law Enforcement Costs Since 1994
- \$140,251 for Hennepin County Court Costs Since 1985
- \$2,651,732 Total Criminal Justice Related Costs (including \$829,790 in Minnesota State Prison Costs Since 1991)<sup>27</sup>

### **San Francisco, CA**

The organization Religious Witness with Homeless People (RWHP) originally released a report in August 2006 to raise awareness regarding the excessive cost and ineffectiveness of “quality of life” ordinances, particularly when compared to successful supportive housing initiatives.<sup>28</sup>

RWHP completed an extensive review of multiple city documents from the police and sheriff's departments, the district attorney's and public defender's offices, as well as the Traffic Division and Criminal Division of San Francisco Superior Court. RWHP determined that the City of San Francisco spent \$9,847,027 on 56,567 “quality of life” citations between January 2004 and March 2008 that targeted homeless individuals for activities ranging from blocking the sidewalk to camping in the park.

### **Seattle, WA**

In a study published in the Journal of the American Medical Association, researchers concluded that it is cheaper to provide supportive housing to chronically homeless individuals with severe alcohol problems than to have them live on the streets.<sup>29</sup> Chronically homeless individuals with severe alcohol problems often have multiple medical and psychiatric problems and incur high costs in the healthcare and criminal justice systems.

Researchers designed a study to evaluate the effect of a Housing First intervention for chronically homeless individuals with severe alcohol problems on the use and costs of services, including jail bookings, days incarcerated, shelter and sobering center use, hospital-based medical services, publicly funded alcohol and drug detoxification and

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<sup>27</sup> While HCCJCC acknowledges the difficulty of determining cost estimates for government services on a per person or per service level, they consider these and other estimates to be conservative ones.

<sup>28</sup> Religious Witness with Homeless People, *A Study To Determine the Extent and Cost of the Enforcement of 'Quality of Life' Ordinances Against Homeless Individuals in San Francisco during the Newsom Administration (January 2004-March 2008)*, available at <http://www.religiouswitnesshome.org> (last visited March 4, 2009).

<sup>29</sup> Mary E. Larimer et al., *Health Care and Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons With Severe Alcohol Problems*, *JAMA*. 2009;301(13):1349-1357.



treatment, emergency medical services, and Medicaid-funded services. Researchers used a quasi-experimental design comparing 95 participants who were housed against a control group of 39 participants on a housing wait-list between November 2005 and March 2007. According to the study, the median costs of Housing First participants before the study were \$4,066 per person per month. When participating in the Housing First program, median monthly costs decreased to \$1,492 per person per month after 6 months and \$958 after 12 months. The costs of Housing First participants decreased 53% compared to the wait-list control group over the first six months. Participants in the Housing First program used \$2,449 less of services per person per month after accounting for the housing program costs. The benefits of Housing First increased the longer the participants stayed in housing.

## Legal Problems with Criminalization Measures

Homeless persons and advocates throughout the country have worked to prevent the passage of laws and to halt policies and practices that criminalize homelessness. Unfortunately, cities and police departments sometimes do not respond to such advocacy in a productive way. When local governments fail to respond to policy advocacy, homeless persons and their advocates have turned to litigation to put a stop to these practices and enforcement of these laws.

As successful litigation has shown, many of the practices and policies that punish homeless people for the public performance of life-sustaining activities violate homeless persons' constitutional rights.<sup>30</sup>

### Anti-Panhandling Ordinances

One way that cities have targeted poor and homeless individuals is by passing laws that prohibit panhandling, solicitation, or begging. Depending on the scope of the ordinance, these types of laws can infringe on the right to free speech under the First Amendment, as courts have found begging to be protected speech. Laws that restrict speech too much, target speech based on its content, or do not allow for alternative channels of communication can violate the First Amendment.<sup>31</sup>

In addition, some courts have found laws that prohibit begging or panhandling to be unconstitutionally vague.<sup>32</sup> A law is unconstitutionally vague if its language is not clear enough to give people notice of what conduct is prohibited and police could enforce it in an arbitrary manner.

### Anti-Camping or Anti-Sleeping Measures

Since many cities do not have adequate shelter space, homeless persons are often left with no alternative but to sleep and live in public spaces, such as sidewalks and parks. Even though they are not dedicating enough resources to give homeless persons access to housing or shelters, some cities have enacted laws that impose criminal penalties upon people for sleeping outside.

The practice of punishing people for sleeping outside has been challenged in courts as a violation of homeless persons' civil rights. Some courts have found that arresting

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<sup>30</sup> For more information about legal problems with criminalization measures see Maria Foscarinis, *Downward Spiral: Homelessness & Its Criminalization*, 14 YALE L. & POL'Y REV. 1 (1996); Tulin Ozdeger, *Targeting the Homeless: Constructive Alternatives to Criminalization Measures in U.S. Cities*, 41 CLEARINGHOUSE REV. 202 (2007).

<sup>31</sup> See *Loper v. New York City Police Department*, 999 F.2d 699 (2<sup>nd</sup> Cir. 1993); *Blair v. Shanahan*, 775 F. Supp. 1315 (N.D. Cal. 1991), *vacated on other grounds*, 919 F. Supp. 1361 (N.D. Cal. 1996); *Benefit v. Cambridge*, 679 N.E.2d 184 (Mass. 1997).

<sup>32</sup> See, e.g., *Atchison v. City of Atlanta*, No 1:96-CV-1430 (N.D. Ga. July 17, 1996) (order granting preliminary injunction).

homeless people for sleeping outside when no shelter space exists violates their Eighth Amendment right to be free from cruel and unusual punishment.<sup>33</sup>

Advocates also have contended that arresting people for sleeping outside violates the fundamental right to travel. In at least one case, a court found that if people are arrested for sleeping in public, those arrests have the effect of preventing homeless people from moving within a city or coming to a city, thereby interfering with their right to travel.<sup>34</sup>

### **Loitering Measures**

Another tool that cities have used to target people who live outside and on the streets is enforcement of laws that prohibit loitering. Due to the broad scope of prohibited behavior under loitering laws, cities have used these to target homeless people in public spaces. Fortunately, cities have found these laws less useful, as the Supreme Court has overturned some loitering laws for being unconstitutionally vague.

In cases overturning vagrancy and loitering ordinances, the Supreme Court found these laws unconstitutional due to vagueness, in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution.<sup>35</sup> Since many loitering laws have similarly broad and vague language, homeless persons and advocates have a strong argument that such laws violate the Due Process Clause of the Fourteenth Amendment.

### **Sweeps**

Cities also target people experiencing homelessness by conducting sweeps of areas where one or more individuals are living outside. Sometimes, police or local government employees will go through an area where people are living and confiscate and destroy their belongings in an attempt to “clean up” an area. While city workers may have the right to clean public areas, they must take certain measures to avoid violating people’s right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment and due process rights.

A seizure of property violates the Fourth Amendment when a governmental action unreasonably interferes with a person’s person or property. Courts have found that police practices of seizing and destroying personal property of homeless people violate these constitutional rights under the Fourth Amendment.<sup>36</sup> Further, governments may also

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<sup>33</sup> See *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006) *vacated per settlement* 505 F.3d 1006 (9<sup>th</sup> Cir. 2007); *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

<sup>34</sup> *Pottinger v. Miami*, 810 F. Supp. at 1583 (S.D. Fla. 1992).

<sup>35</sup> *City of Chicago v. Morales*, 527 U.S. 41 (1999); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

<sup>36</sup> See *Pottinger*, 810 F. Supp. at 1571-1572; *Kincaid v. Fresno*, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006) (order granting preliminary injunction); *Justin v. City of Los Angeles*, 2000 WL 1808426 (C.D. Cal. Dec. 5, 2000) (order granting preliminary injunction).

violate due process rights by failing to follow certain procedures when managing people's private property.<sup>37</sup>

### **Restrictions on Food Sharing Activities**

Recently, cities have indirectly targeted homeless people by restricting service providers' food sharing programs.<sup>38</sup> Historically, cities have attempted to restrict food sharing on providers' property through zoning laws. More recently, some cities have passed laws to restrict food sharing in public spaces, such as parks. Some courts have found that food sharing restrictions can violate religious groups' right to freely exercise their religious beliefs.<sup>39</sup> Further, at least one court found that one food sharing restriction also infringed on the right to free speech.<sup>40</sup>

### **Conclusion**

Litigation can protect the rights of homeless persons and pave the way for better city approaches to homelessness. Homeless persons bringing a civil action can receive monetary damages or obtain injunctive or declaratory relief. In addition, many cases settle and result in policies or protocols that ensure homeless persons' rights will be protected.

For more information about individual cases challenging criminalization measures, please see the case summaries section of this report.

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<sup>37</sup> See, e.g., *Kincaid*, 2006 WL at 39.

<sup>38</sup> For more information about trends in food sharing restrictions, see National Law Center on Homelessness & Poverty and National Coalition for the Homeless, *Feeding Intolerance* (2007).

<sup>39</sup> See e.g., *First Vagabonds Church of God v. City of Orlando*, 578 F. Supp.2d 1353, (M.D. Fla. 2008); *Abbott v. City of Fort Lauderdale*, 783 So. 2d 1213 (Fla. Dist. Ct. App. 2001).

<sup>40</sup> *First Vagabonds Church of God*, 578 F. Supp. at 1361.

## **Criminalization Measures Violate Human Rights**

In addition to violating U.S. constitutional law, laws and practices that criminalize homelessness violate international human rights law.

### **Using Human Rights Law in the U.S.**

The United States has signed and/or ratified several different human rights treaties that prohibit governmental actions that could include measures that target homeless people living in public spaces. The human rights framework can serve as a useful tool in the fight against criminalization as it recognizes a full range of rights that protect the fundamental human dignity of people experiencing homelessness.<sup>41</sup>

Human rights legal arguments can serve as aides in interpreting domestic law, give content to general concepts in domestic law, and support domestic legal arguments. U.S. courts can use human rights law as guidance in interpreting domestic law in order to ensure that domestic law does not conflict with customary international law or ratified treaties, whether or not they are enforceable on their own in courts in the U.S.<sup>42</sup>

Under the U.S. Constitution, ratified treaties are binding laws that have the same force of law as federal law.<sup>43</sup> Under international law, once the U.S. signs a treaty, it is obligated not to pass laws that would “defeat the object and purpose of [the] treaty.”<sup>44</sup>

### **Right to Freedom of Movement**

Many laws that target homeless people living in public spaces violate their human right to freedom of movement by keeping them out of certain areas or forcing them to move to other spaces in a city. Although the U.S. Supreme Court has not ruled explicitly to protect the right to intrastate travel, the human right to freedom of movement is recognized in customary international law.

The U.S. has signed and ratified two treaties that protect the human right to freedom of movement -- the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on the Elimination of Racial Discrimination (ICERD). While these two treaties may not be enforceable on their own in domestic courts, they can provide guidance for similar domestic legal arguments. The Human Rights Committee (HRC), which oversees the member states’ compliance with the ICCPR, has emphasized

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<sup>41</sup> For more information about the human rights framework in relation to homelessness see Maria Foscarinis and Eric Tars, *Housing Rights and Wrongs: The U.S. and the Right to Housing*, in *Human Rights At Home*, edited by Cynthia Soohoo, Catherine Albisa and Martha Davis (Praeger Publishers, December 30, 2007); Maria Foscarinis, Brad Paul, Bruce Porter, and Andrew Scherer, *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 CLEARINGHOUSE REV. 97 (2004); NLCHP, *Homelessness in the United States and the Human Right to Housing* (2004).

<sup>42</sup> See *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).

<sup>43</sup> U.S. Const. art. VI, § 2; *Id.* art. II, § 2, cl. 2.

<sup>44</sup> The Vienna Convention on the Law of Treaties, May 23, 1969, art. 18(a), 1155 U.N.T.S 331.

that the right to movement and the freedom to choose your own residence are important rights that should only be breached by the least intrusive means necessary to keep public order.<sup>45</sup> In *Koptova v. Slovak Republic*,<sup>46</sup> the Committee on the Elimination of Racial Discrimination (CERD), which oversees the ICERD, held that municipal resolutions in villages in the Slovak Republic, which explicitly forbade homeless Roma families from settling in their villages, and the hateful context in which the resolutions were adopted, violated the right to freedom of movement and residence within the border of a country in violation of the ICERD.

International law related to the human right to freedom of movement can serve as an interpretative aide in U.S. cases related to the right to travel. For example, in *In Re White*, the California Court of Appeals cited the human right to freedom of movement recognized in international law.<sup>47</sup> The petitioner in the case challenged a condition of her probation that barred her from being in certain defined areas of the city. The court turned to concept of the freedom of movement in international law to support its conclusion that both the U.S. and California Constitutions protect the right to intrastate and intra-municipal travel.

## **Discrimination**

Laws that criminalize aspects of homelessness, such as bans on sleeping or sitting in public, or the selective enforcement against homeless people of neutral laws such as laws against loitering or public intoxication can violate human rights law as they discriminate against homeless persons on the basis of their homeless and/or racial status.

Both the ICCPR, which the U.S. has signed and ratified, and the Universal Declaration of Human Rights, a non-binding U.N. declaration, prohibit discrimination on the basis of property and “other status,” which can include homelessness.<sup>48</sup> Laws that have a disparate impact on homeless individuals who are African-American violate the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the ICCPR, both of which the U.S. has signed and ratified. The ICERD defines “racial discrimination” as “any distinction, exclusion, restriction or preference based on race...which has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”<sup>49</sup> The ICERD protects the right of homeless people who are African-American to access public space

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<sup>45</sup> Human Rights Committee, General Comment 27, Freedom of movement (Art.12), U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).

<sup>46</sup> *Koptova v. Slovak Republic*, 13/1998, CERD, A/55/18 (8 August 2000) 136.

<sup>47</sup> *In Re White*, 158 Cal. Rptr. 562, 567 (Ct. App. 1979).

<sup>48</sup> See International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976 [hereinafter “ICCPR”]; Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>49</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969 [hereinafter “ICERD”].

and obligates the U.S. to ensure that cities do not engage in racial discrimination.<sup>50</sup> In response to reports that “some 50 % of homeless people are African American although they constitute only 12 % of the U.S. population,” CERD said that the “[U.S.] should take measures, including adequate and adequately implemented policies, to ensure the cessation of this form of de facto and historically generated racial discrimination.”<sup>51</sup>

## Forced Evictions

Many cities conduct “sweeps” that remove people from public spaces or outdoor encampments, frequently without notice or relocation to other housing. These forced evictions can violate homeless people’s human right under international law to freedom from forced evictions.

Forced evictions are “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>52</sup> According to human rights law, “[e]victions should not result in rendering individuals homeless or vulnerable to the violation of other human rights.”<sup>53</sup> In addition, “[n]otwithstanding the type of tenure [including the illegal occupation of land or property],” under human rights law “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>54</sup> For homeless individuals affected by sweeps who are unable to provide for themselves, human rights law requires that cities “take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>55</sup> For example, a line of cases from South Africa established that homeless people could not be evicted from sheltered spaces unless alternative sheltered public spaces are available to them.<sup>56</sup>

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<sup>50</sup> Article 2(1)(a) states that, “Each [country] undertakes to ... ensure that all public authorities and public institutions, national and local, shall [engage in no act or practice of racial discrimination against persons, groups of persons or institutions].”

<sup>51</sup> Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee (2006). For an example of how advocates have used international human rights mechanisms in homelessness advocacy, go to <http://wiki.nlchp.org/display/Manual/Los+Angeles>.

<sup>52</sup> Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions and the right to adequate housing (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1998), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003) [hereinafter “General Comment No. 7”].

<sup>53</sup> General Comment No. 7 (Forced evictions and the right to adequate housing), *supra* note 11.

<sup>54</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

<sup>55</sup> General Comment No. 7 (Forced evictions and the right to adequate housing), *supra* note 11.

<sup>56</sup> The South Africa Constitutional Court has decided several cases about evicting homeless people from public and private spaces in the context of South Africa’s constitutional right to housing. *See Government of the Republic of South Africa & Ors v Grootboom & Ors* 2000 (11) BCLR 1169; *Port Elizabeth Municipality v. Various Occupiers* 2004 (12) BCLR 1268 (CC); *President of the Republic of South Africa and Anor. v Modderklip Boerdery (Pty) Ltd.* 40 2005 (5) SA 3 (CC) (S. Afr.); *Occupiers of 51 Olivia*

## **Conclusion**

The United States has continued to shield itself from direct enforcement of international human rights treaties in its courts, yet it continues to be a consenting party to such treaties when they are drafted. Many of the rights found in these treaties are not explicitly addressed in United States law, making the treaties useful to support domestic legal arguments. Because the criminalization of homelessness violates many rights protected by international law, advocates can use such law as a framework within which to fight criminalization.

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*Road, Berea Township and Another v. City of Johannesburg and Others*, (24/07) [2008] ZACC 1 (19 Feb. 2008).



## **Constructive Alternatives to Criminalization**

While many cities are pursuing criminalization measures, there are some examples of governmental entities and service provider groups that are working to address street homelessness in a more productive way. Although no city has completely ended homelessness or completely eliminated all criminalization measures, the models below can serve as positive examples of how to address the issue.

### **Alternative to food sharing restrictions, Cleveland, OH**

While many cities are imposing restrictions on groups that share food with homeless individuals in public, Cleveland has pursued a more productive approach to help homeless persons obtain food. The City of Cleveland contracted with the Northeast Ohio Coalition for the Homeless (NEOCH) to bring individuals and groups who serve food to homeless people together to talk about how to improve services. The coordination effort stemmed from a long-standing public debate related to serving food in downtown areas of the city, especially the center of downtown called Public Square.

As part of the project, NEOCH coordinates all the professional outreach teams providing services to homeless people who are living outside. NEOCH began this process by organizing monthly meetings with outreach workers. The goal was to develop one contact number so that individuals could call an outreach worker in lieu of calling law enforcement about any concerns over a homeless person in a public space.

In addition, NEOCH coordinated a disjointed food sharing system with the goal of eventually moving all the food providers indoors, but still supporting the right of groups to share food with individuals who would like to eat outside. For example, NEOCH found that on Sundays on Public Square in the center of downtown over 700 meals are served by six different groups. However, on Monday nights no groups regularly shared food on the Square. The first step was to eliminate duplication and to get every food provider to agree to a uniform set of standards on the preparation and distribution of food. The next step was to relocate the food distribution from the heavily traveled center of downtown to a parking lot 18 blocks east. This was a hardship especially for those living on the near west side of Downtown. In exchange for agreeing to the move, the food sharing groups were given access to bathrooms as well as an indoor location during bad weather.

The final step was making available an overnight indoor location in which any church can bring food or provide warm clothing or spiritual counseling. Cleveland advocates have thus far opened this indoor location only for two nights a week and only in the winter on a trial basis. In 2009, advocates hope to find the funding for a seven day a week overnight drop in center to serve those who choose not to go to shelters.

For more information, please contact the Northeast Ohio Coalition for the Homeless at [neoch@neoch.org](mailto:neoch@neoch.org) or 216.432.0540.

### **Downtown Street Team, Daytona Beach, FL**

The Downtown Street Team officially kicked off the program in January 2009 with the goal of reducing panhandling and homelessness in Daytona Beach. In order to reduce the need for panhandling, the program provides participants with jobs and housing. To participate in the program, a homeless individual must fill out an application that is available at all local service providers and go through an interview process. Upon admission to the Street Team, each individual not only has a job, but also may stay at the Salvation Army and then may move to a transitional housing program. Under the program, participants are hired to clean up the downtown area of Daytona Beach. Though the program is relatively new, a number of participants have already left the program to move on to other full-time jobs and housing.

The program was influenced by a similar program in Palo Alto, California, that developed “kits” that other cities could purchase to help implement comparable programs. Volusia/Flagler County Coalition for the Homeless, the city of Daytona Beach, and Bo Brewer of People Business, Inc. purchased the kit to start the program and city commissioner Rick Shiver currently heads the program. Participating organizations include the Volusia/Flagler County Coalition for the Homeless, the Salvation Army, the Daytona Beach Chamber of Commerce, and the Downtown Business Partners. The Downtown Development Authority, the city of Daytona Beach, local businesses, and private donations currently fund the program.

For more information, please contact the Volusia/Flagler County Coalition for the Homeless at (386) 258-1855 or <http://www.vfch.org/>.

### **“A Key Not a Card,” Portland, OR**

As part of its ten year plan to end homelessness, the City of Portland has funded an initiative, called “A Key Not a Card,” that enables outreach workers at various agencies to offer permanent housing immediately to people living on the street. Five different service provider agencies participate in the program. The funding from the city for housing is flexible in that it can be used to pay rent, back rent, security deposits, and can vary in the level of subsidy. The goal is to get people housed for 1 to 2 years while they can secure permanent subsidies, public benefits, or employment, as appropriate.

From the program’s inception in 2005 through spring 2009, 936 individuals in 451 households have been housed through the program, including 216 households placed directly from the street. At twelve months after placement, at least 74% of households remain housed. At three and six months after placement, at least 93% and 87% remain housed, respectively.

For fiscal year 2008/2009, the program was funded with \$1.93 million in city general funds.

For more information, visit <http://www.portlandonline.com/bhcd/index.cfm?c=30140>.

### **1811 Eastlake Project, Seattle, WA**

1811 Eastlake project provides supportive housing for 75 formerly homeless men and women living with chronic alcohol addiction. The project operator worked with county officials to identify people who were the most frequent users of crisis services. Placement in the housing was offered to 79 people and 75 of those individuals accepted placement. Residents benefit from 24-hour, seven day a week supportive services including onsite mental health and chemical dependency treatment, health care services, daily meals and weekly outings to food banks, case management and payee services, medication monitoring, and weekly community-building activities. Residents are encouraged but not required to participate in treatment.

A first year analysis of the program found that it saved the county \$2.5 million dollars in one year by significantly cutting residents' medical expenses, county jail bookings, sobering center usage, and shelter usage. The savings dwarfed the project's \$1.1 million operating costs. After one year, 66% of the residents remained in the housing. Residents have voluntarily cut their alcohol consumption in half.

For more information, visit <http://www.desc.org/1811.html>.

## **Ten Meanest Cities**

While most cities throughout the country either have laws or engage in practices that criminalize homeless persons, some city laws or practices stand out as more egregious than others in their attempt to criminalize homelessness. The National Law Center on Homelessness & Poverty and the National Coalition for the Homeless have chosen the following top 10 meanest cities during 2007 and 2008 based on one or more of the following criteria: the number of anti-homeless laws in the city, the enforcement of those laws and severity of penalties, the general political climate toward homeless people in the city, local advocate support for the meanest designation, the city's history of criminalization measures, and the existence of pending or recently enacted criminalization legislation in the city. Although some of the report's top 10 meanest cities have made some efforts to address homelessness in their communities, the punitive practices highlighted in the report impede true progress toward solving the problem.

- 1. Los Angeles, CA**
- 2. St. Petersburg, FL**
- 3. Orlando, FL**
- 4. Atlanta, GA**
- 5. Gainesville, FL**
- 6. Kalamazoo, MI**
- 7. San Francisco, CA**
- 8. Honolulu, HI**
- 9. Bradenton, FL**
- 10. Berkeley, CA**

## Narratives of the Meanest Cities

### #1 Los Angeles, CA

A study by UCLA released in September 2007 found that Los Angeles was spending \$6 million a year to pay for fifty extra police officers to crack down on crime in the Skid Row area at a time when the city budgeted only \$5.7 million for homeless services. Advocates found that during an 11-month period 24 people were arrested 201 times, at an estimated cost of \$3.6 million for use of police, the jail system, prosecutors, public defenders and the courts. Advocates asserted that the money could have instead provided supportive housing for 225 people. Many of the citations issued to homeless persons in the Skid Row area were for jaywalking and loitering, “crimes” that rarely produce written citations in Los Angeles outside of Skid Row.

Crime apparently dropped 18 percent in 2006 due to the Safer City Initiative, the formal name for the crackdown that added fifty extra patrols to the Skid Row area, and is ongoing. According to the Los Angeles Times, crime declined 35 percent in the first month of 2007. Nevertheless the Skid row “crackdown” promised by Los Angeles Police Chief William J. Bratton has come under fire by advocates for homeless individuals, civil rights attorneys, and homeless service providers. City leaders promised a strategy to end homelessness, including housing and services to go along with clean-up efforts in Skid Row. However, they have been slow to provide the promised housing.

Police brutality against homeless people intensified during the crackdown on crime in Skid Row. In June 2007, the Los Angeles County Community Action Network reported one example: two L.A. Police officers attacked a petite homeless woman, who may have been mentally disabled, with clubs and pepper spray. Police reportedly beat her and tied her down.

Though many business owners in the Skid Row area believe that the streets are cleaner and safer due to the Safer City Initiative, the changes come at a substantial cost to the homeless population. Advocates believe homeless residents have dispersed to areas without services. According to an Associated Press article, in January 2006, an estimated 1,345 people were living on the streets in Skid Row. A year later, only 875 people remained. Moving homeless individuals from Skid Row not only takes them away from a familiar area, but also moves them farther from service providers. Around the time of the police crackdown on Skid Row the providers in surrounding neighborhoods, such as Santa Monica and Hollywood, noticed an increase in their homeless populations, a problem for which they were unprepared. Richard, a homeless man interviewed by Tidings Online, described the problem: “Unless you get [the homeless] a place to go, they’ve got to go somewhere... They’re going to disperse. You hit a bunch of marbles in the middle, they splatter.”

In June 2009, a UN Expert on Racism, Mr. Githu Muigai, introduced his report to the United Nations Human Rights Council regarding his visit to the United States in May and June of 2008, condemning the disparate law enforcement efforts against African

American homeless persons in Los Angeles' Skid Row. The report, issued by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, drew special attention to the Skid Row area of Los Angeles where law enforcement officers are increasingly arresting homeless persons for minor violations under the Safer Cities Initiative. The report says racial disparities in enforcement result in a "disproportionately high number of African-American homeless persons [taken into] the criminal justice system."

The tactics used by police officers in Skid Row have raised legal questions and have been the target of legal scrutiny in court. In April 2007, a federal district court judge extended an injunction that was originally issued in 2003 in a lawsuit, *Fitzgerald v. City of Los Angeles*, filed by the ACLU to stop police from searching homeless people without probable cause. Many homeless advocates feel that Los Angeles' most vulnerable population is being pointlessly targeted. When homeless individuals are cited for crimes, even for the most innocent violations such as jaywalking or loitering, they are rarely able to pay their fines. As a result, many are jailed and end up with a criminal record. Once a person has a criminal record, it is more difficult for them to get access to housing assistance and other services.

In December 2008, the ACLU and the city agreed to settle the *Fitzgerald* case. According to the settlement, police officers may not search anyone caught jaywalking or sleeping on the street, and may not place handcuffs on anyone unless the officer is truly concerned that the detainee may be harmful, compromise evidence, or may try to escape. Due to the new mandate, Skid Row-placed officers are also required to attend trainings to educate themselves about the constitutional requirements for searching and detaining people.

In October 2007, the city settled another lawsuit – *Jones v. City of Los Angeles* -- in which six homeless plaintiffs challenged a law that makes it illegal to sit or lay on sidewalks. The city agreed not to enforce the law between the hours of 9 p.m. and 6 a.m. until it builds 1,250 units of permanent supportive housing. The parties reached the settlement after the plaintiffs, who had not been successful in District Court, prevailed before the Court of Appeals for the Ninth Circuit. The Ninth Circuit found that enforcement of the law amounted to cruel and unusual punishment in violation of the 8<sup>th</sup> Amendment, as there were thousands more homeless people in L.A. County than there were shelter beds. *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006) *vacated per settlement* 505 F.3d 1006 (9<sup>th</sup> Cir. 2007)

Officials say it will take three to five years to create the new housing contemplated by the settlement agreement, at a cost of \$125 million. The New York Times reported that City Council officials applauded the settlement, which they said will help the local government, advocacy groups, and homeless residents "move... forward toward our shared goal of ending homelessness." Bob Erlenbusch, former Executive Director of the Los Angeles Coalition to End Homelessness and Hunger, was less optimistic, observing that the 1,250 new units of housing would only aid 2.6 percent of the city's homeless population.

In February 2007, Los Angeles began a formalized program to decentralize the provision of shelter and services for homeless people. The project had a price tag of \$100 million and called for the development of five centers throughout Los Angeles County to provide shelter and other services for homeless individuals. The goal of the project was to improve conditions on Skid Row. However, these efforts were temporarily halted because many residents did not want the shelters and other services in their neighborhoods.

Later in 2007, the California Senate passed, and Governor Arnold Schwarzenegger signed into law the Fair Share Zoning Bill, which forces all California cities and counties to make room in their zoning plans for transitional housing and homeless shelters. The bill distributes housing and other services throughout the state instead of keeping them centralized on Skid Row in Los Angeles. Although the bill does not force local governments to build shelters, it prevents them from deterring organizations that do so. Locations for these services are also unspecified, but the bill says that once a local government chooses a site it cannot be re-evaluated or re-zoned even if local residents complain.

## **#2 St. Petersburg, FL**

On January 19, 2007, police and fire officials raided two homeless camps located near a service provider after giving encampment residents a week's notice to relocate. During the raid, police destroyed and slashed tents, ruining nearly 20. A video was posted on youtube.com showing the police cutting tents, some still occupied, with scissors and knives. Writer Abhi Raghunathan of tampabay.com said that the video turned "St. Petersburg ... [into] a national poster child for cruelty against the homeless."

A spokesman for the Fire and Rescue Department tried to justify the actions by saying, "[The camps] were all in violation of [fire] codes." Mayor Baker said he did not know the police chief and a deputy mayor planned this action. According to the Orlando Sentinel, a city council member called the raid an "embarrassment."

During the raid, police slashed tents if the owners would not take them down. The Sentinel quoted Police Chief Harmon as saying, "In hindsight, we didn't discuss the actual property issue, and we probably should have taken that into consideration." After the tent slashing, the City authorized a temporary tent city to be opened on a vacant lot next to St. Vincent de Paul, a homeless service provider. That tent city was closed in May 2007. In December 2007, a new tent city, Pinellas Hope, was established on the outskirts of the city and is run by Catholic Charities.

Since early 2007, St. Petersburg has passed 6 new ordinances that target homeless people. These ordinances include prohibitions on panhandling throughout most of downtown, prohibit the storage of personal belongings on public property anywhere in the city, and make it unlawful to sleep outside at various locations.

In January 2007, the Pinellas-Pasco Public Defender announced that he would no longer represent indigent people arrested for violating municipal ordinances to protest what he called excessive arrests of homeless individuals by the City of St. Petersburg. According to numbers compiled by the public defender's office, the vast majority of people booked into the Pinellas County Jail on municipal ordinances were homeless individuals from St. Petersburg.

Since the passage of an ordinance prohibiting outdoor storage of personal property in 2008, police officers and city workers have swept through the city with signs that tell homeless individuals they have a couple of days to remove their belongings from the street. These sweeps have concentrated on areas where homeless people often converge. People who have had their property seized have 30 days to claim their personal items or they will be discarded.

Also in 2008, the St. Petersburg Times reported that City Hall "kicked off the 'Give a Hand Up, Not a Hand Out' education campaign in January 2008, which consisted of a flier advising residents to redirect panhandlers to local shelters."

### **#3 Orlando, FL**

In 2006, the Orlando City Council passed a law that restricted groups sharing food with 25 or more people from doing so more than twice a year in each of the public parks covered by the ordinance. The city claimed that homeless people who gathered weekly for meals created safety and sanitation problems for the community.

City Commissioner Patty Sheehan originally pushed for the ordinance following grievances from business owners and residents who complained about homeless people causing problems at a downtown park popular with joggers and dog walkers.

Shortly after the ordinance was passed, the ACLU sued the city on behalf of First Vagabonds Church and Orlando Food Not Bombs, two groups that share food with homeless individuals on a weekly basis. Along with other national advocacy groups, the National Law Center on Homelessness & Poverty and the National Coalition for the Homeless filed an amicus brief with the court in support of the ACLU's position. While the litigation was ongoing, Eric Montanez of Food Not Bombs was arrested for serving "30 unidentified people food from a large pot utilizing a ladle." After being held for three hours, he was released on \$250 bond and continued serving food. He explained that the government's inability to provide for homeless people is the reason Food Not Bombs and other organizations are helping homeless and hungry individuals. He believes the community should fill in the gaps the government leaves until the government takes on the responsibility. Montanez was eventually acquitted at trial.

Additionally, Matt Houston, a University of Central Florida student, was banned from Lake Eola Park for a year because he violated Orlando's group food sharing ordinance. Houston said he will not let the ban stop him from continuing his service with Food Not



Bombs. The group has been sharing food with homeless people once a week since 2005 and does not plan to stop, despite the ordinance.

First Vagabonds Church of God and Orlando Food Not Bombs were victorious in their lawsuit against the city, which argued that the ordinance violated their civil rights. According to the Orlando Sentinel, in September 2008 a federal judge permanently barred Orlando from enforcing the law prohibiting large group feedings of homeless individuals in Lake Eola Park because it violates the groups' First Amendment rights to free speech and to freely exercise their religious beliefs. The Orlando Sentinel reported that U.S. District Judge Gregory A. Presnell criticized the city's ordinance saying it had no rational basis. However, in January 2009, the City of Orlando appealed the District Court decision. The appeal is pending.

Over the past several years, the city has passed increasingly severe restrictions on panhandling. For a time, all panhandling was illegal in Orlando, but the city revised that ordinance when courts began declaring similar ordinances in other cities unconstitutional. At a September 2007 meeting, the city council approved a ban on panhandling at night. Now, panhandling is legal only in rectangular boxes painted on the sidewalk during the day. Police insist this ordinance is for the safety of all people and Mayor Buddy Dyer stressed the importance of all residents feeling safe. In an Orlando Sentinel news report Dyer stated, "we get reports just about every day of a panhandler using abusive language or threatening people." Violators can be charged with a \$500 fine and/or 60 days in jail for breaking the anti-panhandling laws even if the violator is not abusive.

#### **#4 Atlanta, GA**

After passing an ordinance in 2007 making panhandling illegal in the "tourist triangle," Atlanta's Central Atlanta Progress, an alliance of downtown businesses, succeeded in persuading Mayor Shirley Franklin to present an ordinance outlawing panhandling in heavily visited downtown areas. The ban made panhandling illegal within the "tourist triangle" and anywhere after dark. The ordinance also prohibits panhandling within 15 feet of an ATM, bus stop, taxi stand, pay phone, public toilet, or train station anywhere in the city. Not even the police could describe the areas included in the "tourist triangle." As a result, enforcement has been sporadic except for "street sweeps," demanded by the developers of the Georgia Aquarium, the Atlanta Convention and Visitors Bureau, and other businesses.

On August 2<sup>nd</sup> 2008, police officers in Atlanta began dressing as tourists in order to catch people "aggressively begging" for money. This undercover effort was part of a "30-day crackdown" conceived and implemented by the commander of the police, Maj. Khirus Williams, who, according to the Atlanta Journal-Constitution, had "received letters from visitors who said the begging was so bad that they were never going to come back to Atlanta." The newspaper noted that while under normal circumstances a tourist typically did not return to testify in court against the defendant, Maj. Williams expressed hope that "having officers pose as tourists or office workers" would result in more convictions because the officers were certain to testify. By August 22, 2008, the officers arrested 44

people for panhandling and warned another 51. The Washington Post reported in October 2008 that the sting resulted in 50 arrests.

In early September 2008, city officials announced a plan to install parking meters in five downtown Atlanta locations as part of its “Give Change That Makes Sense” campaign. The meters are meant to collect donations for selected organizations that aid homeless people, such as United Way and the city owned Gateway Homeless Services Center. Mayor Shirley Franklin was quoted in the Atlanta Journal-Constitution saying that the meters would be an “alternative to panhandling.” The campaign was launched in response to a study conducted by the convention and visitor’s bureau and Central Atlanta Progress, an organization funded by downtown businesses, which found panhandling to be a top complaint of tourists. Other studies report that tourism, Atlanta’s \$11.4 billion industry feeds the hotel-motel industry and has shown no decrease in the past two years. Evaluation of the meter program in March did not provide very successful results, but the city has decided to expand the program to include more meters across the city.

## **#5 Gainesville, FL**

In September 2007, despite opposition from homeless advocates and city officials, the Gainesville City Commission closed down all publicly owned portions of a large homeless encampment – “Tent City” – as part of its 10-year plan to end homelessness. As part of the plan, the City Commission approved a plan to spend up to \$75,000 constructing a fence to keep people off the property, and only \$20,000 to address the housing and service needs of those impacted by the forced eviction (the City ultimately committed \$67,000 to fund additional beds, though only a handful of people were able to meet the strict conditions attached to the assistance offered.)

Jon DeCarmine, Director of the Gainesville/Alachua County Office of Homelessness, stressed the need to focus on “sheltering the residents of Tent City after they leave the campsite.” Similarly, Theresa Harrison, chairwoman of the Alachua County Coalition for the Homeless and Hungry, argued that it was “unrealistic for the city to assume that housing [would] become available for those displaced from Tent City.” Harrison was quoted by the Gainesville Sun prior to the closure of Tent City explaining that “the reality is that [service providers are] stretched to the brink. There’s not enough emergency shelter beds. There is not enough affordable housing space in this community.”

Finally, City Commissioner Jack Donovan, the only city official to vote against the closure, argued that “relocating the residents from the camp was ‘premature and unnecessary’ in light of concerns about shelter space in the county.”

By September 12<sup>th</sup>, 2007, the day on which Tent City was to be officially closed, most homeless campers had already left following a week-long sweep of the site conducted by armed, uniformed police officers. The exodus from Tent City was short-lived, however. In November 2008, the Gainesville Sun reported that hundreds were residing in Tent City. As of April 2009, the number of homeless people living on Tent City land has more than doubled.

In July 2007, the City of Gainesville unanimously passed an ordinance prohibiting “pedestrians from receiving money from motorists.” More specifically, the ordinance “ban[s] all transactions between a motorist and a pedestrian on streets, in bike lanes and on bike paths within the city limits.” Thus, in Gainesville, it is a crime for an occupant of a vehicle to donate money to panhandlers if the transaction occurs while the vehicle is in traffic on a public street. Both the panhandler and motorist can be charged with a “municipal ordinance violation, a crime that carries a potential penalty of \$500 [or] six months in jail [or both] per offense.” According to the Gainesville Sun, city officials believed that the law was necessary to prevent aggressive panhandling and to ensure panhandlers’ safety near major roadways. Gainesville’s current laws prohibit “aggressive panhandling, panhandling in a transportation area such as a bus stop or bike path, panhandling in public buildings, panhandling within 12 feet of an outdoor cafe, ATM, pay phone or entrance to a building, and solicitation on public right of way.”

Southern Legal Counsel, a non-profit public interest law firm, challenged the ordinance as a violation of a settlement agreement it had reached with the city in 2006. That lawsuit had challenged two state statutes and an ordinance that prohibited homeless individuals from standing on public sidewalks while holding signs soliciting donations. The resulting settlement from that lawsuit enjoined the city from amending or enacting “any ordinances which prohibit plaintiffs or other persons from engaging in protected First Amendment activity of standing on a public sidewalk, peacefully holding a sign soliciting charitable donations on behalf of or for their own personal benefit and not otherwise violating any lawful statute, ordinance, or order.”

Southern Legal Counsel challenged the ordinance prohibiting transactions between motorists and pedestrians as a violation of the 2006 settlement on the grounds that it made it a crime to seek donations from a motorist while *standing on a sidewalk*. In response, the city argued that the ordinance was legally permissible because it did not prohibit individuals from engaging in conduct the 2006 settlement was meant to protect - “holding signs peacefully on the sidewalk.” Ultimately, the U.S. District Court for the Northern District of Florida found that the city had not violated the terms of 2006 agreement.

Most recently, the City Planning Board voted to enforce restrictions on the number of daily meals that could be served by St. Francis House, one of two downtown shelters and soup kitchens. A recent surge in need had the shelter serving approximately 250 meals a day, despite previously unenforced restrictions capping daily meals at 130. In March 2009, the Board voted to begin enforcing those restrictions with no additional plans in place to accommodate the 120+ hungry people who are now turned away each day once the facility reaches its limit. Lynch Park sits across the street from the shelter, and has historically absorbed the overflow of people who cannot access shelter or services at St. Francis House. The City has recently proposed to turn that public space into a fenced-in dog park that could also accommodate additional meal services for homeless individuals that currently take place elsewhere downtown.

## **#6 Kalamazoo, MI**

In the summer of 2007, several members of Michigan People's Action were arrested for sleeping in public parks following the enactment of an ordinance prohibiting such activities. In addition, homeless individuals who have been ticketed for sleeping in public parks have been unable to obtain housing. Those homeless individuals and Michigan People's Action members who were ticketed or arrested for sleeping in public parks challenged their arrests in court. By early September 2008, all charges had been dropped against the homeless individuals and activists.

During the same period, homeless advocates and homeless persons began having difficulty accessing the Kalamazoo Transportation Center (a public transportation bus station). Public Safety Chief James Mallery said that due to a large number of calls regarding drugs, fights, loitering, and panhandling, they were attempting to move people out of there that did not appear to be using the buses. However, Michigan People's Action claimed that law enforcement was particularly targeting people who appeared to be homeless. Michigan People's Action said that homeless people were being harassed at the Transportation Center by officers who asked for their identification and proof that they were waiting for a bus to arrive.

Even after being urged by Michigan People's Action to stop the police sweeps at the Transportation Center, the police continued to do so and arrested and jailed dozens of homeless people and activists for violation of the local anti-loitering law. Activists and the homeless individuals arrested in the Transportation Center challenged the arrests in court arguing the loitering law used to arrest them is unconstitutionally vague. Those charges were eventually dismissed. Kalamazoo has instituted a new set of transportation center rules. Michigan People's Action is concerned these new rules will be used to continue to target people who appear to be homeless. Mike Evans of Michigan People's Action reported in an email to NCH that "Over 60 poor and homeless people have been arrested in police sweeps at the transportation center in 2008."

## **#7 San Francisco, CA**

According to a San Francisco Chronicle article, San Francisco police issue about 10,000 citations each year for quality-of-life crimes such as camping, blocking sidewalks, and drinking in public. Violations typically require a court appearance and failing to appear results in issuance of a misdemeanor warrant. About 90% of violators fail to appear. However, people who do appear in court and challenge their citations often have their fines reduced, or their cases dismissed, in part because the city does not send prosecutors to the hearings. The San Francisco Chronicle reported that Paul Henderson, Assistant District Attorney, said as a result of absences, "defendants weren't being held accountable for transgressions." The city planned to change that, and started assigning prosecutors to cases to ensure that the accused did not get off easily.

Homeless advocates said the approach is a misuse of resources. They argued that criminalizing these activities is unfair when there is a shortage of affordable housing and

social services. Many people cannot afford to pay fines, and warrants prevent them from accessing government aid for which they might qualify. Responding to this criticism, prosecutors decided to dismiss fines if the defendant had proof that he or she had received 20 hours of social services per citation. However, prosecutors do not actually offer any services to defendants or help defendants enroll in any program. Moreover, defendants are still prosecuted if they do not have proof that they are currently receiving services because they are on waiting lists for services. Thus, the presence of prosecutors in court increases the city's efforts to punish people for violations that they cannot avoid.

Advocates also argue that it is unfair for the city to spend money on public prosecutors when it does not provide defense attorneys to represent people facing these charges. Homeless people are not entitled to a public defender when they face infraction charges.

The organization Religious Witness with Homeless People (RWHP) originally released a report in August 2006 to raise awareness regarding the excessive cost and ineffectiveness of "quality of life" ordinances, particularly when compared to successful supportive housing initiatives.<sup>57</sup> RWHP completed an extensive review of multiple city documents from the police and sheriff's departments, the district attorney's and public defender's offices, as well as the Traffic Division and Criminal Division of San Francisco Superior Court. RWHP determined that the City of San Francisco spent \$9,847,027 on 56,567 "quality of life" citations between January 2004 and March 2008 that targeted homeless individuals for activities ranging from blocking the sidewalk to camping in the park.

Rabbi Peretz Wolf-Prusan said that, "[t]he Administration has become addicted to using the police as social service agencies." The group reported that the issuance of citations sent otherwise innocent people into the criminal justice system, making it more difficult for them to escape homelessness and poverty. Michael Bien of RWHP explained, "[a] quality-of-life citation begins an extremely expensive process . . . that includes police officers, police clerks, court commissioners, and court deputies. Then there's scheduling, copying, filing, data entry, testifying, booking, reporting, and completing voluminous forms." The group pointed out that the money used in issuing quality of life citations could be used to provide supportive housing to 492 people, put 300 people in a three month detox center, or pay the salaries of 113 psychiatric outreach workers.

The city also toughened its stance on homeless encampments by prohibiting cooking and modifying any landscaping area. This included putting up shelters. These measures allowed the police to arrest campers at any time of day. The San Francisco Chronicle reported that the city already had a park code that did not allow modifying "the landscape in any way in order to create a shelter or accumulate household furniture or appliances or construction debris in any park." Additionally, homeless people are not allowed to sleep in the parks between 8 p.m. and 8 a.m., which Mayor Gavin Newsom believes will rid parks of homeless people and the trash and debris they sometimes leave behind.

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<sup>57</sup> Religious Witness with Homeless People, *A Study To Determine the Extent and Cost of the Enforcement of 'Quality of Life' Ordinances Against Homeless Individuals in San Francisco during the Newsom Administration (January 2004-March 2008)*, available at <http://www.religiouswitnesshome.org> (last visited March 4, 2009).

However, if the individual does not have an outstanding citation and accepts social services (addiction treatment, other medical attention, or temporary housing assistance) within 30 hours of issuance of the sleeping citation, they will not be considered in violation of the new sleeping code.

In order to discourage people from giving spare change directly to homeless people, and to keep the panhandlers out of sight, San Francisco's parking department donated "homeless parking meters." Street Sheet, the local street newspaper, reported that the message on the meters read, "Be a part of the change, don't give change." The change was distributed to different agencies serving homeless people. The author of the article, TJ Johnston, argued that he found this to be an ineffective idea. After all the costs of installing and paying a PR person, the city may not have even generated that much money. He ended the article by writing, "better yet, how about promoting real change instead of just collecting it?"

## **#8 Honolulu, HI**

Since 2006, the City Council has closed a large number of beach parks on the leeward coast of Oahu for "cleaning," sending teams of police officers to remove people from their temporary homes; the Council has also banned overnight sleeping in at least seven leeward coast parks in two years. According to the Honolulu Advertiser, a local newspaper, City Council Member Todd Apo said it was important that homeless individuals not get too closely attached to certain beaches or parks because it makes it harder to move them when the time comes. "When they put up structures and really move in, it's just more difficult to deal with them later," Apo said. In response to a Hawaii Supreme Court decision striking the City and County of Honolulu's anti-camping law, the Honolulu City Council simply passed yet another anti-camping law in August 2008 to make it easier to move homeless campers out of public parks.

The ban on overnight sleeping has not worked – homeless individuals simply stay up at night and sleep during the day, making it even more difficult for them to find employment. Because tourism is so important to the economy of Honolulu, city officials feel that it is important to clear the major parks of homeless people: according to the Honolulu Advertiser, Council Member Charles Djou said, "Having it go on at such a prominent park is bad for the economy."

The City Council seems particularly aggrieved at the sleeping habits of the homeless population: they have proposed bills making it a crime to sleep at a bus stop and have spent thousands of dollars retrofitting bus stops to discourage sleeping. In November 2008, the City and County of Honolulu replaced benches at bus stops with round concrete stools in response to complaints about homeless individuals sleeping at the stops. Street Roots, a street newspaper located in Portland, Oregon, reported that bus officials said that the problem is not new, just "more visible as more people ride the bus." According to Street Roots, the city spent \$11,000 on the seating initiative as of November 2008. The Honolulu Advertiser reported that city employees offer help to displaced homeless people when benches are removed. Street Roots reported that advocates feel that the new initiative is part of a series of city policies designed to "push the homeless out of sight."

However, as Street Roots reports, “the city says its effort to reclaim everything from parks to benches to bus stops is about making sure everyone has equal access to public spaces.”

Homeless service providers spoke out against the new ordinance voicing their concerns about the lack of adequate shelter space and the criminalization of homelessness. The Honolulu Advertiser reported that Bob Erb, founder of the Waikiki Beach Outreach Ministry, thinks homelessness is “getting worse” in Waikiki and believes the city should find more positive ways to help homeless individuals. “Let’s find them a shelter so they don’t have to sleep on the bus stop,” said Erb. Doran Porter, Executive Director of the Affordable Housing and Homeless Alliance, an advocacy agency and homeless service provider, similarly explained that, “we’re dealing with the side effects of the problem rather than finding solutions to the actual problem.” The ACLU also voiced concern about the new ordinance. The Honolulu Advertiser reported that an ACLU attorney, Laurie Temple, said that this bill was “criminalizing homelessness and exacerbating the problem.”

Both the City Council and the Hawaii State Legislature have also been considering legislation to purchase one-way airplane tickets for homeless individuals to send them to other states.

## **#9 Bradenton, FL**

In early 2007, a Bradenton police officer was punished for attempting to help a homeless woman he arrested maintain her possessions. Officer Nicholas Evans arrested a homeless woman, whose entire collection of possessions was in a shopping cart. Evans moved the cart by pulling it alongside his patrol car for the entire 12-mile drive to the county jail.

Evans was criticized by supervisors for bringing negative attention upon himself and the department. Supervisors condemned him for failing to follow state laws and for unsafely operating a vehicle.

While homeless advocates praised Evans’ actions, Police Chief Michael Radzilowski responded, “I think they are misguided. I don’t think they understand a police officer’s responsibility in protecting the public safety.” In the February 2, 2007 issue of the Bradenton Herald, Adrian Lazeroff, Executive Director of the Suncoast Partnership to End Homelessness replied, “I am not in a position to decide whether a person did the correct thing as a police officer. But I am certainly supportive of respecting the rights of homeless individuals, including the right they have to have their possessions taken to corrections facilities.” Evans was suspended for 30 days for his misconduct.

In October 2007, three homeless men won a legal battle when the state decided not to prosecute them for violating Bradenton’s lodging ordinance. The law requires police to drive homeless persons to a shelter, but it does not make clear what actions police should take when a shelter is full. Furthermore, as The Herald Tribune noted, “a person who refuses a ride can be arrested for violating the ordinance.” Because police did not offer to

take the three men to a shelter, and because the men did not have bedding, the state decided to drop the charges.

Homeless advocates say the law has been ineffective in reducing homelessness. City leaders and police say the law is helpful, and police are fair. Court records reveal that since the law was enacted in August 2006, there have been only 24 court cases for people who have violated the ordinance. According to the Herald Tribune, City Council member Bemis Smith said, “It appears to me that the police have shown pretty restrained use of the ordinance.”

## **#10 Berkeley, CA**

On June 12, 2007, Berkeley’s City Council unanimously passed the “Public Commons for Everyone” initiative to “clear the streets of aggressive and disruptive behavior.” This law targets a wide range of behavior, including lying on or blocking the sidewalk, smoking near doorways, having a shopping cart, tying animals to fixed objects, littering, drinking in public, public urination and defecation and shouting in public.

The two-part law authorizes penalties for minor public offenses while extending funding for services including public restrooms. Critics say the law is unfairly aimed at homeless individuals, but defenders argue that it will affect everyone: college students are caught doing these acts as often as homeless people. Berkeley has long had a reputation as a liberal, open-minded town that provided plenty of social services, which in turn attracted a large homeless population. According to one study, although it represents just 7% of Alameda County’s total population, Berkeley now hosts 40% of the county’s chronically homeless people.

Osha Neumann, an attorney who defends homeless individuals, told Indybay.org that homeless people are frightened by these measures and many are thinking about leaving town. He also indicated that funding for meals and other services for homeless people have been reduced, and there are not enough shelter beds.

Homeless advocates fought vehemently to stop the Public Commons initiative because they believe it victimizes the defenseless. Additionally, they argue that the \$2 million in annual funding for the initiative would be better spent on homeless services. The Los Angeles Times reported that council member Dona Spring abstained from several votes because “there is no detox available, there are no (new) services. I see no place in this package to help people get out of poverty.”

On June 8, 2008, the Berkeley City Council passed an ordinance repealing a 1946 loitering ordinance, which made it “unlawful for any person to loiter about any school or public place at or near which schoolchildren attend.” The City Council acted after Kim Nemirow filed a suit challenging the law as unconstitutional. Nemirow was issued a citation in 2007 for loitering while resting on a blanket in Berkeley’s Willard Park with her wheelchair nearby. After the repeal, the Oakland Tribune quoted Nemirow saying, “It makes it a little more difficult to criminalize homeless people.” Osha Neumann,



Nemirow's attorney with the East Bay Community Law Center, agreed and said, "This one just didn't make any sense at all. What the heck are parks for, if not for loitering? It's only poor people who loiter. The rich never loiter. They just engage in leisure time activities."

## **Narratives of Other Cities**

In addition to the cities referenced above, many of the following cities have also passed laws or implemented practices that target homeless individuals. The narratives below provide examples of both positive and negative ways in which cities around the country approached street homelessness in 2007 and 2008.

### **Anne Arundel County, MD**

In 2007, the Maryland General Assembly passed a law that prohibits panhandling by roadways. According to the Washington Post, Anne Arundel County joined a growing list of “counties that have adopted such measures” to eliminate panhandling.

### **Ashland, OR**

In October 2008, the Ashland City Council passed an anti-camping ordinance, prohibiting camping “in or on any sidewalk, street, alley, land, public right-of-way, park, or any other publicly-owned property or under any bridge or viaduct, unless otherwise specifically authorized by [the Ashland City Code].” In addition, the law prohibited “sleeping on public benches between the hours of 9:00 pm and 8:00 am” and sleeping on “any pedestrian or vehicular entrance to public or private property abutting a public sidewalk.” The ACLU Southern Oregon Chapter, argued that the “Prohibited Camping” ordinance was cruel and unusual punishment and proposed several revisions in its report, “Decriminalizing Poverty: Reform of Ashland’s Camping Ordinance.” On November 5<sup>th</sup>, 2008, the City Council amended the ordinance, adopting many of the ACLU of Oregon’s recommendations, including providing notice of the removal of property from a campsite in English and Spanish, providing 60-day storage for confiscated property during which “it will be reasonably available to any individual claiming ownership,” lowering the related offense from an “infraction” to a “violation,” and limiting the penalty to up to 48 hours of community service.

### **Athens, GA**

In June 2008, the Atlanta Journal-Constitution characterized Athens as a “regional hub for the homeless.” According to the newspaper, “homeless people from surrounding counties are routinely dropped off downtown” by law enforcement officers. The unfamiliar faces seen around College Square, an urban area across from the University of Georgia campus, have raised concerns about the city’s growing homeless population. Because of this influx, the Downtown Athens Business Association has pushed the local government to toughen its panhandling law, which at the time of the release of this report only prohibits aggressive or persistent begging.

### **Atlantic City, NJ**

In 2007, police in Atlantic City conducted sweeps under the boardwalk in search of homeless people violating a city ordinance, which prohibits “venture[ing] beneath the

boards.” Instead of issuing citations, the police and community outreach agencies directed those found to homeless service providers. Captain Joseph Nolan, quoted by NBC 40, explained that, “the city has a social responsibility to both civilians whether millionaires or penniless and we try to treat people equally, we’re trying to get them help.”

Captain Nolan further noted that his team found between thirty and forty people sleeping under the boardwalk during previous sweeps from 2005 and 2006. A May 2007 sweep, however, concluded with seven homeless persons being directed toward social services.

### **Austin, TX**

In late 2007, the Austin City Council considered a proposal to extend its laws prohibiting panhandling to all roadways and areas within 1,000 feet of schools and day care centers. By December 2007, however, the council decided to fund studies of the panhandling population before acting on the proposed extension. According to the Austin-American Statesman, the Austin/Travis County Health and Human Services Department hired University of Texas Social Work students to survey panhandlers. By August 2008, Dr. Laura Lein, a researcher with University of Texas at Austin, explained in a press release that roadside solicitors are “usually experiencing multiple barriers to work, including health and mental health problems, recent losses of home . . . lack of identification and difficulties with transportation, food and other basic necessities for work.” She further found that Austin’s panhandlers did not generally “engage in roadside solicitation for years-long periods,” but, on average, five months. Finally, she found that, “most solicitors made a persistent effort to work and, in fact, had a strong history of working. They reported efforts to obtain jobs, including the use of temporary agencies, day labor services and applications for work. Most solicitors had worked for pay in the 12 months preceding the interview, but often at insecure jobs.”

Richard R. Troxell, a National Coalition for the Homeless (NCH) Board Member as well as a member of Help the Homeless Inc. in Austin, discussed similar statistics in his report, “Solicitation/Panhandling.” Troxell noted surveys conducted by the University of Texas School of Social Work, Unsheltered Homeless Count Survey, City of Houston Health & Human Services Department and House the Homeless, Inc. between 2007 and 2008, which found that unemployment and inadequate income were key causes of homelessness. In particular, a House the Homeless, Inc. survey of 536 people experiencing homelessness in November 2007 found that 38% were “working at the time of the interview” and 91% said “they would work 40 hours for a living wage.”

### **Baltimore, MD**

On August 15, 2007, employees from the Downtown Partnership of Baltimore, a non-profit organization supported by local businesses, cleared out a homeless encampment under a bridge along Guilford Avenue and destroyed the property of some of the individuals living there. The encampment had grown steadily after a large part of the homeless population was forced to move away from City Hall.

In a more productive approach to encampments, the City of Baltimore worked with local service providers in December 2007 to address the potential fire hazards of an encampment in a way that did not involve law enforcement officials. Outreach workers went to the site and the city offered shelter, 30-day hotel stays, and Section 8 vouchers to the group of individuals living at the encampment. In addition, the city's Department of Homeless Services opened the Guilford Avenue shelter in January 2008 to ensure that homeless individuals had a place to go during the winter.

### **Billings, MT**

In May 2007, the City Council of Billings passed an aggressive solicitation ordinance. The ordinance banned all commercial solicitation in certain areas, as well as any solicitation at night. The ordinance also made it illegal to "aggressively solicit" and/or give false or misleading information by claiming or pretending to be from out of town, a veteran, disabled, or homeless while soliciting. The penalties for a violation include a citation with mandatory court appearance and a fine of up to a \$100.

### **Birmingham, AL**

Birmingham police targeted encampments of homeless persons living under interstates and near rail yards in May 2007. This marked a new approach for the police after years of maintaining an amicable relationship with the homeless encampment.

### **Boerne, TX**

With the city frustrated by a growing homeless population, City Council members voted unanimously to approve an amendment to the city's code in late 2007. Recommended by Police Chief Gary Miller, the amended ordinance would require all panhandlers to purchase a license—at a cost of \$115. The Boerne Star reported that Police Chief Miller stated, "Some of [the panhandlers] have made out quite well... They eat at Whataburger and Chili's three times a day and buy tents at Wal-Mart... Hopefully, [the ordinance] will cause them to move on down the road." Other solicitors, peddlers, and vendors are already required to have the permit. However, advocates point out that many homeless individuals do not have the money or the identification documents necessary for a permit. Those caught panhandling without a license would receive a warning for the first offense, and repeat violators would face a fine of up to \$500.

### **Boise, ID**

There are between 2,000 to 3,000 people experiencing homelessness in and around the City of Boise. Boise's 10 Year Plan to Reduce and Prevent Chronic Homelessness, estimated that approximately 300 homeless individuals and families are unsheltered and are forced to live on the streets or in their vehicles.

The homeless problem in Boise was exacerbated in 2005 when the City leased the Community House shelter to a Rescue Mission that only provided shelter to men.

Community House previously provided emergency shelter to men, women, and families and also provided transitional housing and SRO units to low-income persons without any religious participation requirements. The City could not relocate all of the families with children and single female residents because the other shelters that housed these individuals were at capacity and had waiting lists. The Salvation Army shelter, that does house single women and families with children, was threatened with closure unless it secured a new conditional use permit to expand its capacity to meet the increased shelter demand. Other shelters have religious or limited-stay requirements that deter many persons from staying and cause them to sleep in public places. As a result of the lack of shelter, homeless persons have been sleeping on vacant land and alleys around the shelters, in vehicles, under bridges, in the vegetation along the Boise River that runs through the City and up in the foothills that surround the area.

In 2007, the Boise Police began using bike patrol officers to aggressively enforce the anti-camping ordinance against homeless persons for sleeping or engaging in the daily life activities in public places despite the fact the shelters have no room to legally house them. Police officers have cited hundreds of homeless individuals for violations of the City's anti-camping ordinance, Section 9-10-02 of the Boise Municipal Code. Section 9-10-02 makes it "unlawful for any person to use any of the streets, sidewalks, parks or public places as a camping place at any time." In addition, the police have begun citing homeless persons under the Disorderly Conduct Ordinance, Section 6-01-05(A), which defines disorderly conduct as "occupying, lodging or sleeping in any building, structure or place, whether private or public place, or in any motor vehicle without the permission" of the owner of the property. A new development is that a homeless person was recently cited under the state statute for "theft" for allegedly attempting to plug in a cell phone charger at a park picnic shelter.

When homeless persons are cited, they are often arrested for outstanding warrants as a result of failure to appear on other Code violations such as open containers, prior camping citations, and the failure to pay fines. Because they are homeless, disabled and/or fearful of the legal system, they may not appear at their criminal proceedings, do not understand how to make an appearance, and/or cannot obtain legal assistance. A person can spend several days in jail until they are released by pleading guilty and getting credit for time served. The courts have sentenced individuals to jail for up to 90 days for violation of the anti-camping ordinance. The jail charges them \$25 per day for the cost of incarceration and reports any failure to pay fines to collection agencies. This process makes it more difficult for these persons to obtain public housing. While it costs \$9.00 a day to provide emergency shelter for one person, the County pays \$55.00 per day to house an individual in jail.

### **Boston, MA**

After a rise in drug-related crimes culminating in a shooting that left a bullet lodged in the State House, police began enforcing a nightly curfew in Boston Common Park in August 2007. This left approximately 50 homeless people with the task of finding a new place to sleep.

City officials arranged for vans to transport homeless individuals from the park to shelters each night, but many are reluctant to leave. Those who took up the offer found themselves sleeping in the lobbies of crowded shelters or driving to several shelters before finding available beds. When shelter officials offered to bring people to a shelter on Long Island in the Boston Harbor, the homeless people declined, citing an abundance of violence, disease, and drugs. They said it would be safer to sleep at the Common.

### **Brookville, PA**

In November 2008, the ACLU filed a lawsuit on behalf of the First Apostles' Doctrine Church against the Borough of Brookville, claiming its officials violated the church's religious-liberty rights under the federal Religious Land Use and Institutionalized Persons Act, which prohibits government entities from imposing land use regulations that substantially burden the exercise of religion, the First and Fourth Amendments, and Pennsylvania's Religious Freedom Restoration Act. The lawsuit stems from Brookville's attempt to shut down the church's shelter and an incident where four Brookville police officers forced their way into the church through windows without a warrant and ordered the homeless individuals there to leave the church sanctuary.

### **Cave Creek, AZ**

In September 2007, the Cave Creek Town Council passed an anti-solicitation ordinance prohibiting solicitation of employment, business, or contributions from the occupants of vehicles when standing on or next to a street or highway, including on the sidewalk.

On March 26, 2008 the American Civil Liberties Union filed a lawsuit against the town of Cave Creek, the town's mayor, and the deputy mayor. In the lawsuit the ACLU argues that the ordinance violates the individuals' right to free speech, which includes soliciting employment.

### **Charlotte, NC**

At a place in uptown Charlotte called "the wall," homeless people often congregate to enjoy a meal. However, due to complaints from nearby business owners, the longstanding practice of volunteers sharing food with homeless individuals is being threatened. The police department cracked down on misdemeanor crimes, such as littering and trespassing and suggested moving the meals to another location, but no other permissible locations have been offered. According to the Charlotte Observer, the deputy police chief, Jerry Sennett, said, "police are not trying to stop advocates from feeding the homeless. It is not the intention of police officers to create an intimidating atmosphere or harass anyone... We're there to protect the adjoining property owners based on complaints from them and make sure the feeding is done in an orderly manner." It was reported in a blog that one woman was arrested for disorderly conduct while she was standing up to the police and arguing on behalf of homeless people.

## **Chattanooga, TN**

On October 2, 2007, after giving two-weeks notice in late September 2007, Norfolk Southern Railway bulldozed a tent city that had existed beside the tracks for the last 3 years. Norfolk Southern decided to bulldoze the camp because homeless people were wandering across the tracks and were soliciting workers on stopped trains for food, water, and money. Local advocate Ron Fender of Community Kitchen indicated that he expected that most of the 30-40 residents would try to relocate to a different part of town. Community Kitchen and Forrest Avenue United Methodist Church helped former residents find temporary housing. Norfolk Southern also donated an unspecified amount of money to help find housing.

## **Cincinnati, OH**

In May 2007, the Greater Cincinnati Coalition for the Homeless and its partners announced the results of a study<sup>58</sup> in which the groups studied public records from Hamilton County Jails from the period between October 1, 2005 and September 30, 2006. In addition, the groups studied the jail roster on an almost daily basis for the period between August 28, 2006 and November 2, 2006. After examining the public records, the groups identified 2,900 public records that included information about 840 homeless individuals' interactions with the criminal justice system.

The study noted that using the criminal justice system to deal with the consequences of street homelessness is a rather expensive approach, since it costs \$65 per bed per day in the jail. The study pointed to a Lewin Group study that estimated permanent supportive housing costs on average only \$30 a day, a much less costly and more productive way of approaching homelessness.<sup>59</sup> This cost difference is particularly significant given that supportive housing is permanent, unlike emergency shelters or even transitional housing, and allows residents to continue working with their case managers as well as receive needed mental health and substance abuse treatment.

A four-year-old legal battle ended in the fall of 2007 when the Cincinnati City Council unanimously voted to settle a lawsuit challenging panhandling registration, a requirement that panhandlers in Cincinnati go through a process to register themselves with the city of Cincinnati. The settlement provided for a substantially revised solicitation ordinance that eliminated registration requirements and made time, place and manner restrictions on panhandling significantly less onerous. In addition, the city agreed to pay \$10,000 in attorneys' fees.

Larry Winslow, a homeless man, filed a lawsuit against the City of Cincinnati in U.S. District Court challenging an Ohio state law that was used to prohibit him from staying at a shelter called the Drop Inn Center after his conviction as a sex offender. The law he

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<sup>58</sup> Greater Cincinnati Coalition for the Homeless, *Criminalization of Homeless Individuals in Cincinnati*, <http://www.cincihomeless.org/> (2007).

<sup>59</sup> Lewin Group, *Costs of Serving Homeless Individuals in Nine Cities*, [http://documents.csh.org/documents/ke/csh\\_lewin2004.PDF](http://documents.csh.org/documents/ke/csh_lewin2004.PDF) (2004).

challenged prevents sex-offenders from living in buildings within 1,000 feet of schools or day-care centers. Because he was unable to stay at the Center, Winslow lived outside. In the lawsuit, he claimed that he was diagnosed with walking pneumonia after having to live outside.

On February 16, 2007, county prosecutors gave Larry Winslow permission to stay at the Drop Inn Center for a few days while his lawyers attempted to get him exempted from a state sex offender law.

County prosecutors had planned to meet again to see if Winslow could remain in the shelter. Winslow's attorney argued it made sense for Winslow to stay at the shelter because housing will keep him off the streets and officers will know where to find him. The case was eventually dropped because Winslow left the area.

### **Citrus Heights, CA**

The Sacramento Bee reported that in early September 2008 the city of Citrus Heights passed new ordinances to "combat the city's homeless problem." The ordinances, which prohibit camping without a permit or possessing an open container, took effect in October 2008. According to the Sacramento Bee, civil rights attorney Mark Merin decried the policies as criminalizing homelessness and being overly broad in their scope. The Sacramento Bee reported that Lt. Jeff Mackanin said the intent of the ordinances was not to criminalize those without shelter. He pointed out that officers will have to give 72 hours' notice to people caught camping illegally on public or private land before citing them. Lt. Mackanin told The Sacramento Bee this will give them time to collect their belongings and find a spot in a shelter. However, the Sacramento Bee reports Citrus Heights has no homeless shelters.

### **Cleveland, OH**

An anti-panhandling law passed by Cleveland City Council in 2005 was scheduled to sunset in October of 2006. However, in November of 2006, the Council elected to make the law permanent – thereby ignoring the one concession put into the law in order to reach a compromise with local advocates. No one representing the opposition was notified of, nor invited to, the hearing. The law prohibits individuals from soliciting within 10 feet of an entrance to a building or parking lot; within 15 feet of a public toilet facility; and within 20 feet of a bus stop, line of pedestrians, ATM machine, valet zone, and outdoor patio. Following an individual or acting in an aggressive manner during solicitation is also prohibited, as is asking an individual for a contribution more than once. At the time of its enactment as a permanent city law, hundreds of people had been ticketed, although only one of those people had actually paid the \$250 fine.

From 2006 to 2008, city officials, including law enforcement officers, worked with advocates to relocate homeless people who slept in sensitive locations. In 2000, the city had signed a binding legal agreement as part of a settlement monitored by a federal court to resolve a case challenging sweeps of homeless persons. In the settlement, the City agreed not to arrest or threaten to arrest anyone sleeping on the sidewalk within the City



of Cleveland. In response to a fire started by a homeless person at the Convention Center, the City began working with outreach workers and advocates to relocate homeless people from the Convention Center, the airport and a tent city near Cleveland Browns Stadium. These moves were done in a cooperative manner, and many of those resistant to shelter received housing. All of these locations were on private property or located in high security locations like the airport, and so did not fall under the 2000 settlement regarding sweeps.

In July of 2007, during the City Council's summer session the City passed a 10 p.m. curfew on Public Square, a popular location for homeless people to sleep. The Council declared Public Square a park and thus was subject to the 10 p.m. curfew for everyone including homeless people. Activists protested, but homeless people just moved to other locations just off of the Square.

### **Colorado Springs, CO**

The Gazette reported that the Colorado Veterans Alliance requested at a town meeting in October 2008 that the city stop its sweeps of homeless encampments, as the sweeps amounted to illegal searches and seizures of homeless persons' property. The city worked with Keep Colorado Springs Beautiful, a nonprofit that received \$45,000 last year from the city, to conduct the sweeps.

The Colorado Veterans Alliance gave notice of its intent to sue the city and the "Keep Colorado Springs Beautiful" group that supervises the sweeps if the city does not end what the director of the Veterans Alliance, Rick Duncan, called its "illegal activities." The Gazette reported that shortly thereafter Mayor Lionel Rivera and other city leaders said that Colorado Springs would "suspend publicly financed cleanups of homeless camps until the city can clarify legal and ethical issues surrounding the monthly sweeps." According to an article in the Denver Post, dated February 16, 2009, the city is contemplating changing the way it deals with homeless encampments. The new rules would require the nonprofit Keep Colorado Springs Beautiful to "post a notice in areas where a cleanup is planned, giving the occupants 72 hours' warning." Further, the city is contemplating creating a storage space for confiscated property, so that individuals may later reclaim their property.

### **Concord, NH**

In Concord, state representatives took action to fix a loophole in the law that places people who urinate in public on the sex offender registry. The new bill aims to separate the indecent exposure cases from public urination and defecation incidents, reducing the punishment for the latter offenses to a fine. According to Seacoast Online, a local online news source, Rep. Stephen Shurtleff said, "It's about keeping people off the registry that really shouldn't be on it. For example, you have some homeless people with varying degrees of mental problems who might (urinate or defecate in public) and it's not a sexual offense." To resolve the discrepancies, a new state law, went into effect January 1, 2009, making public urination or defecation a violation punishable by up to \$1,000.

## **Dallas, TX**

On January 31, 2007, two homeless ministries in Dallas, Rip Parker Memorial Homeless Ministry and Big Heart Ministries, filed a lawsuit against the City of Dallas. The ministries claim that city restrictions on where charities can share food with homeless individuals violate their 1<sup>st</sup> Amendment right to practice religion, among other rights.

The ordinance, implemented in February 2006, severely limits where groups can share food in public and requires groups planning to provide food for homeless individuals in public places to register with the city and take a food-handlers class. Fines can run up to \$2,000 per violation. The lawsuit is pending in federal court in Dallas.

In May 2007, the Dallas City Council added several provisions to Dallas' existing anti-panhandling law. The Dallas Morning News reported that in addition to the existing prohibitions on soliciting near automated teller machines, pay phones, public transportation stops, gas stations and fuel pumps, new provisions now make it illegal to solicit a person: 1) anytime between sunset and sunup, 2) at any hour near restaurants, and 3) when the person is placing money into a parking meter. Violators face fines of up to \$500.

From April 2003 through November 2005, 2,652 citations were issued under the older anti-panhandling ordinance, resulting in the jailing of 539 individuals while eight others paid fines. All other cases have been either settled, dismissed, or remain outstanding.

Dave Levinthal of the Dallas Morning News reported that Mayor Pro Tem Don Hill, the only city council member who opposed the ordinance, believes that new laws are not the solution. "This is going to cost us, in terms of resources and money," he said. "This is a step that's a false step. Its effectiveness is questionable."

Dallas Mayor Tom Leppert supports the anti-panhandling campaign. He stated that the city is trying to have people donate the money that they would give to panhandlers to charity drop boxes to be placed around the city. Mayor Leppert stated, as reported by the Dallas Morning News, "Also, we want to take the supply away. We want to make it so the panhandlers don't have anyone giving them money." In recent years Dallas has directly targeted panhandling, criminalizing the act. Panhandlers are restricted from asking for money between sunset and sunrise, approaching people placing money in parking meters, near outdoor dining spaces, within 25 feet of an ATM, bank entrance, pay phone, car wash, gas pump or public transit stop.

In an email sent to the National Coalition for the Homeless, Dallas Police Chief David Kunkle repeated that the police receive a lot of complaints about panhandling. The city has an ordinance that prohibits many forms of panhandling, but the chief explained that this does not pertain to all panhandling. "Panhandling is not illegal unless it's next to a roadway, in a financial institution, at a car wash or a few other limited locations...." He added that it is also illegal to panhandle at night. Finally, he noted that he believes Dallas may not have any more panhandlers than other US cities, but Dallas has a smaller

population, so “our panhandlers tend to dominate the street landscape.... In fact, I think we have fewer panhandlers, but in those cities, you get safety by the fact that there’s a lot of people out on the streets.”

Responding to increased police targeting of homeless individuals in the city of Dallas, First Presbyterian Church opened its parking lot in October 2007 as a place for homeless people to spend their nights. As many as 150 people camped out while a night security guard kept watch. The church invited homeless people to come after police began Operation Rescue, a crime prevention campaign. In an Associated Press report, Police Department Deputy Chief Vince Golbeck explained, “A majority of property crimes in downtown Dallas are caused by the homeless.” During Operation Rescue, police increased their presence in a four-block area, and began removing people sleeping in public places.

Reverend Joseph Clifford, of The First Presbyterian Church of Dallas, said he does not object to the police, but does object to laws that criminalize homelessness. In an Associated Press report, he stated, “we continue to approach the homeless issue as a criminal issue... It is a social problem and requires a societal response.” Clifford sees the “safe haven” parking lot as a temporary solution, since other options are limited. Dallas has a homeless population of about 5,000, but only 1,300 shelter beds.

The “camp out” in the church’s parking lot ended in November 2007, when Rev. Joseph Clifford met with the city and developed a partnership of public and private funds to provide beds for people. Furthermore, as winter approached First Presbyterian Church donated \$50,000 to keep the city’s day resource center open at night. These services lasted through the winter until the construction of a new \$23.8 million 24-hour shelter was complete. The shelter, which opened in April 2008, provides beds, showers, restrooms, mental health services, job training, and an outdoor pavilion for those reluctant to sleep inside. First Presbyterian Church is still extremely involved in the new shelter, providing all of its meals.

### **Davie, FL**

In November 2008, the Davie Town Council passed a law that prohibits lodging outdoors. The South Florida Sun-Sentinel reported that the law “would prohibit people from ‘lodging’ outside on public and private property... in an effort to reduce litter and human waste on town streets.”

### **Daytona Beach, FL**

The Downtown Street Team program officially began in January 2009 with the goal of reducing panhandling and homelessness in Daytona Beach. In order to reduce the need for panhandling, the program provides participants with jobs and housing. To participate in the program, a homeless individual must fill out an application that is available at all local service providers and go through an interview process. Upon admission to the Street Team, each individual not only has a job, but also may stay at the Salvation Army and then may move to a transitional housing program. Under the program, participants

are hired to clean up the downtown area of Daytona Beach. Though the program is relatively new, a number of participants have already graduated from the program to other full-time jobs and housing.

The program was influenced by a similar program in Palo Alto, California, that developed “kits” that other cities could purchase to help implement comparable programs. Volusia/Flagler County Coalition for the Homeless, the city of Daytona Beach, and Bo Brewer of People Business, Inc. purchased the kit to start the program and city commissioner Rick Shiver currently heads the program. Participating organizations include the Volusia/Flagler County Coalition for the Homeless, the Salvation Army, the Daytona Beach Chamber of Commerce, and the Downtown Business Partners. The Downtown Development Authority, the city of Daytona Beach, local businesses, and private donations currently fund the program.

## **Denver, CO**

According to the Denver Westword News, two women were confronted by police at the 16<sup>th</sup> Street Mall when trying to help out homeless individuals. One of the women gave a homeless man a hamburger and a dollar in front of two undercover police officers. One of the police officers proceeded to chase her down and forced her back to where she gave the homeless man the burger. One undercover officer said that he could arrest her for giving money and food to a panhandler after dark. When she questioned that such a law exists and asked to see his badge, the police refused to do so and told her to leave.

The other incident involved a woman who purchased a fleece blanket for a man she saw sitting in a wheelchair outside of the mall. The Denver Westword News reported that when she tried to give the man the blanket, an officer told her to stop and asked her for identification. While the police confronted her, the man in the wheelchair left. She was subsequently arrested for interfering with law enforcement.

Both incidents were reported and disciplinary action was taken against the officers involved. Since the incidents, the patrolling of the 16<sup>th</sup> Street Mall has increased.

As part of the city’s ten-year plan to end homelessness, Mayor John Hickenlooper has installed 86 refurbished parking meters where passersby can donate money to homeless service providers. According to USA Today, Hickenlooper has stated that he believes that when people give directly to homeless individuals, “99% [of the money] is being used for self-destructive consumption,” namely drugs and alcohol. Every \$1.50 collected by the meter will cover the cost of one meal for a homeless person. According to The Colorado Star, a local newspaper, people in Denver give as much as \$4.5 million each year to panhandlers.

In the past year, people have responded to anti-panhandling campaigns by looking for alternative places to donate their spare change such as “parking meters” for homeless services. USA Today reported that in the first six months, the meters collected \$8,446.50 in coins. Businesses and individuals can also donate \$1,000 a year by “adopting” a meter. USA Today also reported that since beginning the “Please Help, Don’t Give”

campaign two years ago, panhandling on the 16<sup>th</sup> Street Pedestrian Mall is down 92%, and the city has placed about 300 families in permanent housing.

Denver's ten-year plan includes establishing a homeless court for unsheltered homeless people to challenge tickets, asking religious congregations to offer comprehensive support to people in need, and building more affordable housing.

### **Durham, NC**

In January 2008, Durham County Commissioners approved and finalized an ordinance banning roadside panhandling in parts of the county outside city limits. The vote had been postponed from the spring of 2007 as debates about panhandling continued.

The News Observer reported that Commissioner Lewis Cheek, who is responsible for introducing the idea to expand the ordinance, said the new ordinance would protect pedestrians by keeping them out of dangerous traffic areas, and would also help to identify people struggling with alcohol and drug addiction. People who wish to continue panhandling within the city limits must pay \$20 for a permit and are allowed to solicit money during daylight only.

### **Elkton, MD**

Nine homeless people, represented by the ACLU, filed a federal lawsuit against the city in August 2007, challenging the bulldozing of their camp and destruction of their belongings the previous year. Police had supervised the camp's destruction, forcing the residents to stand aside as they watched police and Department of Public Works employees destroy the residents' belongings. The suit also challenged an anti-loitering ordinance that prohibits an individual from loitering, remaining or wandering about in a public place for the purpose of begging. In September 2007, the Elkton Town Commission voted unanimously to rescind the loitering ordinance. In December 2008, the city settled the lawsuit with respect to the property destruction. The city agreed to compensate each plaintiff with \$7,500 for destroying their property.

### **Fayetteville, NC**

In January 2008, the Fayetteville City Council passed an ordinance that prohibits panhandling anywhere in the city after dark, in the downtown area, near busy roadways, and within 50 feet of ATM's and outdoor dining areas. If caught violating this law, one could be fined up to \$500.

### **Federal Way, WA**

In February 2008, the Federal Way Council toughened panhandling laws by extending the areas where panhandling is banned. Panhandling is now prohibited within 15 feet of an ATM, near bus stops, and next to roadways. The new restrictions also prohibit panhandling in an aggressive manner.

## **Fredericksburg, VA**

In June 2008, the Fredericksburg City Council passed an anti-panhandling law that prohibits panhandling or soliciting on city streets, sidewalks, pathways, parks, and parking lots. The penalty for violating the ordinance is a \$250 fine. The Free Lance Star reported that Natalie Bledsoe, spokeswoman for the city police, said that between July and September 2008 there were roughly two dozen charges against at least 15 defendants for violating the new law.

## **Fresno, CA**

In October 2006, a class of homeless plaintiffs filed a lawsuit against the City of Fresno and the California Department of Transportation (Caltrans) for its policy and practice of confiscating and destroying homeless people's personal property, including essential personal possessions, without adequate notice and in a manner that prevented the retrieval of such personal property prior to destruction. The court granted a preliminary injunction in favor of the plaintiffs in November 2006 to stop the further destruction of encampments and property without proper procedures.

The parties ultimately settled the lawsuit in June 2008, with two separate settlement plans, one between the plaintiffs and the City and the other between the plaintiffs and Caltrans. Under the settlement agreements, the City and Caltrans set up certain procedures they must follow that protect homeless persons' property rights when cleaning public spaces. In addition, the City and Caltrans agreed to contribute \$400,000 and \$85,000, respectively, to a cash fund to compensate the plaintiff class. In addition, the City contributed \$1,000,000 to a living allowance fund to distribute funds to third parties for the payment of various living expenses on behalf of verified members of the plaintiff class. The City also agreed to pay attorneys' fees in the amount of \$750,000 and costs in the amount of \$100,000.

## **Green Bay, WI**

In March 2008, Green Bay's Improvement and Services Committee approved a plan to install specially marked parking meters in heavy foot-traffic areas to collect money for homeless services. The Green Bay Press-Gazette reported that the city hopes to raise money for local shelters or agencies.

## **Humboldt County, CA**

People experiencing homelessness have been affected by ongoing homeless sweeps in Southern Humboldt County and by a police raid on a political encampment demonstration in April 2007 in the City of Arcata. In the ongoing homeless sweeps, homeless people who are living on public and private property have been warned, ticketed, or arrested for trespassing by the Humboldt County Sheriff's Department even though there is inadequate available shelter space. Staff of an environmental nonprofit called the Eel River Clean Up Crew follows behind the sheriff's deputies during the

sweeps and immediately seizes and destroys any personal possessions of homeless individuals that the individuals are unable to take with them.

Members of the PEOPLE PROJECT, a homeless grassroots organization in Arcata, filed a civil rights lawsuit in June 2008 in relation to a police raid on a political encampment demonstration in the City of Arcata in April 2007. The PEOPLE PROJECT set up the encampment as a political demonstration against the criminalization of homelessness in Arcata. A few days later, the Arcata Police Department arrested and temporarily detained 18 demonstrators before releasing them from jail and later dropping the charges. During the raid, a demonstrator suffered a seizure and the Police Department failed to provide medical assistance. The Police Department took some personal possessions to the police station for demonstrators to claim a few days later, but it immediately seized and destroyed other personal possessions.

There are different estimates about the number of people experiencing homelessness in Humboldt County. In 2006, the Humboldt County Continuum of Care (CoC) reported that there are 1,847 men, women, and children who are experiencing homelessness in Humboldt County. A local newspaper recently reported that there are 700 people experiencing homelessness in Humboldt County.

Based on statistics reported by the Humboldt County CoC, there is a lack of shelter space for homeless individuals in Humboldt County. Of the 1,847 total homeless persons, 1,481 persons or 80% are unsheltered. Humboldt County is in the process of creating a 10-year plan to end homelessness.

The criminalization of homelessness in Humboldt County has many causes. According to advocates, the two historic industries in the County, timber and fishing, are declining. Tourism is being promoted as the new main industry. The City of Arcata passed anti-homeless ordinances in the 1990's. Authorities sometimes give homeless people the choice between going to a mental health facility, going to jail, or leaving the county.

## **Indianapolis, IN**

In the summer of 2007, the police reported a significant rise in the number of homeless people living on the streets of Indianapolis and responded by stepping up enforcement of littering, loitering and aggressive panhandling laws. The Indy Star reported that homeless people said they were being rousted by the police, even when they were asleep, to show identification. Some witnesses of these police activities criticized the police for pushing homeless people out of the downtown area where they could receive services.

In August 2007, a class of plaintiffs filed a lawsuit against the Indiana War Memorials Commission (an entity that controls and manages certain public parks and memorials in the city of Indianapolis and throughout the state of Indiana), alleging that the commission has a policy or practice of removing from grounds controlled by the commission persons deemed to be "loitering" or engaging in other lawful conduct based on unwritten and amorphous standards. The complaint specifically challenges the commission's practice

of giving certain homeless individuals “no trespass” orders subjecting them to arrest and prosecution if they enter property controlled by the commission in the future.

In June 2008, the ACLU filed another suit against the city on behalf of four other homeless men challenging the city’s anti-solicitation law. Two of the men were asked to move on despite their claim they were lawfully soliciting. The other two men were repeatedly forced to show identification so the officers could check their records.

A few of the plaintiffs involved in the suit challenging the anti-solicitation law have also been ticketed under an ordinance against obstructing sidewalks. The ACLU has requested an injunction barring police from stopping lawful solicitation or forcing homeless individuals to produce identification without probable cause.

Mayor Greg Ballard announced the creation of a Boxes Campaign, aimed at encouraging community members to donate to organizations that serve homeless individuals instead of handing money directly to panhandlers. The Coalition for Homelessness Intervention and Prevention of Greater Indianapolis, Inc., will administer the program. Five donation boxes were installed in May 2008.

However, Kelley Curran of The News and Tribune believes that the mayor is not doing this out of concern for the poor. According to The News and Tribune, Mayor Ballard told the Indianapolis Star that “the immediate goal is to get them out of downtown so that citizens and visitors don’t have to look at it.” His proposal contains three major points: first, to launch a public awareness campaign encouraging people to give money to organizations dealing with poverty issues; second, to enforce current aggressive panhandling laws more aggressively; and third, to require that panhandlers purchase a \$400 license.

### **Issaquah, WA**

In January 2008, the City of Issaquah passed an ordinance that prohibits panhandling on highway ramps and within 300 feet of 13 specific intersections. Penalties for violating the ordinance include a maximum fine of \$1,000 or 90 days in jail. The Seattle Times reported that Bill Block, project director for the Committee to End Homelessness in King County, said that “[i]t’s not going to change the situation... Cities need to deal with the barriers that cause people to be homeless in the first place.” However, an Issaquah Councilman said that for now, “this is a good first step. It catches the main areas where activity has been most pronounced.”

### **Jacksonville Beach, FL**

A growing number of people have been living on the streets in Jacksonville Beach over the past few years. According to the Florida Times-Union, police, residents, and city government officials held a community meeting in 2007 to discuss what alternatives exist to keep people from living on the streets, as community members felt the current trespass, anti-camping, and public drinking laws were not adequately addressing the problem. Advocates urged the city to address the issue in a more humane way.



## **Jacksonville, FL**

In September 2008, city leaders revised the city's food sharing restrictions to allow a person with a bonafide religious belief to share food with homeless individuals, as long as he or she has a permit to do so. The city council revised the food sharing restrictions pursuant to a settlement agreement from a lawsuit filed by Michael Herkov, a professor at the University of North Florida, in 2007. Mr. Herkov had argued that the original food sharing restrictions violated his right to exercise his religious beliefs.

## **Kansas City, MO**

In March 2007, the Kansas City Council passed an ordinance to limit panhandling in certain parts of the city. Many street performers objected that the proposed legislation would ban their activities as well. The police chief announced concerns about the constitutionality of the law soon after it passed. Councilwoman Bonne Sue Cooper says she is not sure the ordinance will actually cure the problem and people will most likely simply break the law.

## **Knoxville, TN**

In July 2007, the Knoxville police and Tennessee Department of Transportation continued an effort to move homeless individuals out from under bridges and overpasses into shelter spaces. According to WATE.com, the police do not usually issue citations when asking someone to move from underneath a bridge, unless the person is intoxicated or has been asked to move repeatedly. Some members of the police department recognize that the city lacks available places for homeless individuals to go to during the day.

## **Laguna Beach, CA**

In March 2007, the city formed a homeless task force to come up with solutions to the homelessness problem in the city. One recommendation from the task force was to build a multi-service center to provide outreach, case management services, emergency shelter, and detoxification services. Although the city has approved funds to carry out the recommendation, the city has been unable to find a suitable location for the center.

Laguna Beach also has a new community outreach officer, whose position was created as part of the city's efforts to reduce complaints from residents and business owners about homeless people. According to the Los Angeles Times, Officer Jason Farris said, "[y]ou can't force them into getting off the street... It's not a crime for them to be homeless." He hopes to persuade Laguna Beach's homeless population to seek services. The city is also drafting numerous recommendations regarding how to move chronically homeless people off the streets. Homelessness is not only a concern to city officials; in 2008, Laguna Beach residents voted homelessness as the second most pressing issue in town.

Despite its efforts to find solutions to homelessness, problems persist with police harassment of homeless individuals. In December 2008, the ACLU filed a lawsuit against the city on behalf of 5 homeless individuals to challenge the city's anti-camping ordinance and selective targeting and harassment of homeless individuals by police. The complaint highlights a range of conduct by the local police department that prohibits homeless individuals from carrying out their daily activities, including the criminalization of sleeping in public places, selective enforcement of local ordinances and laws, unwarranted stops and interrogations, and confiscation of property.

### **Lancaster, CA**

In February 2007, deputies responded to a tip about a theft in a homeless encampment. Although they found no evidence of theft, the deputies arrested sixteen people on various charges including parole violations, trespassing, and drug possession.

The homeless population in Lancaster was allowed to build makeshift homes in the undeveloped parts of the desert. However, The LA Daily News reported that just a month after the incident described above, sheriff's deputies arrested another nineteen people at a homeless encampment in an empty field. The arrests were made to address theft and drug-related crimes in the area. The camp was destroyed to keep homeless individuals from returning and because police believed the shelters were "unsanitary and unsafe." According to the LA Daily News, the Sheriff's Department claimed that they gave the camp's residents warnings, so they had plenty of time to leave.

The Antelope Valley is home to around 4,000 homeless people according to Grace Resource Center. Approximately 40 percent of these are homeless veterans.

### **Las Vegas, NV**

In June 2006, Food Not Bombs Las Vegas filed a lawsuit in federal court challenging the enforcement of a Las Vegas law that prohibits "the providing of food or meals to the indigent for free or a nominal fee." In August 2007, the court ruled in favor of the homeless advocates, holding that enforcement of the no feeding laws is unconstitutional and violates due process and equal protection rights.

City officials "mistakenly" allowed a law to be created prohibiting anyone from sleeping within 500 feet of a deposit of urine or feces. The law was rescinded the month after it was created, but law enforcement officials were apparently unaware that it was rescinded and arrested three homeless men sleeping in a park. The three men sued the city for the arrests. The legal battle picked up considerable media attention and Las Vegas drew criticism because of the egregious manner in which Las Vegas has addressed the issue of homelessness.

Due to the tensions between the police and homeless individuals, on April 19, 2007, the Las Vegas Metro Police held a law enforcement summit to address the situation. At the summit, several law enforcement agencies discussed the positive moves made in

attempting to develop a less antagonistic relationship. However, advocates point out that relations could not be worse. Many homeless advocates were unaware of the meeting and only one had a chance to speak. According to City Life, a Southern Nevada alternative weekly newspaper, Linda Lera-Randle El said, “the presentation should have led into a more open and productive discussion on the issue.” Deputy Chief Marc Joseph said the biggest challenge is to educate the personnel and let them know there are alternatives to incarceration and that homelessness is an important issue. Gary Peck of the ACLU said that local law enforcement agencies are not entirely to blame. He explained, “I think it’s important to say that the criminalization of homelessness is, in part, a byproduct of the fact that our entire community has fallen far short of its responsibility to reach out to those who are in distress.”

In September 2007, an independent research group commissioned by the city to study panhandling released the results of its research. The study found that 94 percent of panhandlers had been homeless at some point in their lives, and 58 percent were chronically homeless. Although local residents gave about \$8.4 million to panhandlers in the previous year, and tourists offered \$16 million, the median income a panhandler received was \$192 a month. Combined with other sources of income, the average total income of panhandlers in Las Vegas is \$385 a month.

Shannon West, Regional Homeless Coordinator, told City Life the statistics will be used in a campaign against panhandling. “We’ll be able to use [the survey] to talk to the public about where they could give their money so that it would actually make an impact on someone’s life,” she explained. A local campaign might focus on helping “people better understand where their contributions could go.” Conversely, activist Linda Lera-Randle El was cautious about an anti-panhandling campaign. She said, “I don’t think we should harden people’s hearts to the point that they don’t want to give away a dollar.”

Peter Connery, Vice President of Applied Survey Research, a nonprofit social research firm, said the study showed that panhandlers have “a lot of issues and barriers that require social service assistance—and they need to be treated accordingly, not like con artists and criminals.”

Although Las Vegas has continued to have problems with criminalizing homelessness in recent years, the city of Las Vegas has begun two new programs that use a more constructive approach to homelessness. The Las Vegas Review-Journal reported that the city, partnering with the Community Interfaith Council, announced a program called “One Congregation, One Family,” which pairs religious congregations with families leaving transitional housing. The religious organizations commit to giving \$1,500 to help families pay for deposits, first month’s rent, or emergencies, and they also provide volunteer mentors to meet with the family during the first six months. The initiative is modeled on a similar effort in Denver, which found 83 percent of the adopted families are still in their housing a year after mentoring, compared with success rates of 15-40 percent of families not in the mentoring program in Southern Nevada who are still in their housing.

Las Vegas took another positive step with its adoption of a “Housing First” program. In late 2007, a housing first building called Horizon Crest created 66 new low-rent apartments and 12 new apartments for chronically homeless individuals. The tenants have an on-site case manager Monday through Friday and a helpline on the weekends. The project is funded in part by local money. The Las Vegas Sun reported that “it’s based on the simple notion that the foremost need of homeless people is a place to close the door behind them at the end of every day, no strings attached and with lots of help readily available.”

### **Lincoln, NE**

In 2007, advocates and city officials organized a campaign to encourage University of Nebraska students and residents of Lincoln to donate money to organizations rather than giving to panhandlers. Since a law banning panhandling in Lincoln was overturned in federal court in 2004, the city has seen a growing number of panhandlers. New ordinances limit panhandling to daylight hours and certain locations and ban aggressive panhandling.

### **Little Rock, AR**

The Arkansas Times reported the installation of twenty-five donation boxes in downtown Little Rock in September 2008 to collect change for homeless services. There has been some criticism about the plan, however, there are some proponents of the collection boxes. Sharon Priest, Executive Director of the Downtown Little Rock Partnership Program, told the Arkansas Times, “Panhandlers are often not using the money for food, but to buy alcohol and/or drugs. Even though we want to do something good, we are actually becoming enablers... If people don’t give the money, [panhandlers will] quit asking.”

Patty Lindeman, Executive Director for Hunger-Free Arkansas, reported in November 2008 that homeless people were being targeted in Little Rock. She said that although there have not been organized sweeps, “there continues an aggressive attempt to ‘sweep’ the downtown area of the homeless.” She also mentioned that church and other groups who regularly share food with homeless individuals have experienced “increased police harassment.” Finally, Lindeman said that police are threatening to charge homeless individuals with ‘criminal trespass’ if they are seen in public parks, on sidewalks, or on other public property in the downtown area.

### **Lodi, CA**

In an effort to prevent illegal activity in Lawrence Park and make neighbors feel safer, the Lodi Police increased their presence in the park. The crackdown targeted public drinking, drug abuse, and urination. Record Net reported that Officer Mindy Smith said, “If we show no tolerance, it will give them incentive to move along.” Yet the police department acknowledges that many people are in the park because they have moved along from other locations. Police try to direct people to services when they write

citations. According to Record Net, Shawn Blair, a 32-year-old homeless man, said he understands the reasons for the increased patrol, and that sometimes police “just come out here to do their job. [Other times] they just come to harass us.”

### **Long Beach, CA**

The pastor, Reverend Stinson, and the congregation of the First Congregational Church of Long Beach, have refused to block homeless people from sleeping outside of their church. According to the Long Beach Press Telegram, the city prosecutor, Sayge Castillo, had threatened to fine the church \$1,000 for allowing homeless individuals to sleep on the property. The L.A. Times reported that the pastor said, “The city’s threats are ludicrous. We’re not going to do what they want us to do. Allowing these people to sleep on our property is, for us, a religious act.” Castillo says her office is “complaint-driven” by anonymous callers who complain about waste, litter, and safety issues, adding that, “I didn’t intend for this to be about homeless people.”

According to KTLA a local news affiliate, many residents in the area are not sure how to feel about the people sleeping on the church’s property. Although many would prefer that homeless individuals were not in their neighborhood, they also understand the church’s commitment and responsibility to helping those who are less fortunate. Additionally, the church claims that the complaints of Long Beach residents are unwarranted because there have been no crimes and church custodians keep the area clean. Reverend Stinson is hoping to install a portable bathroom for its guests to use. The church also invites mental health workers to visit and help those who need the care.

The pastor and congregation are using this opportunity to educate the public about the lack of shelter space and mental health care available to the people who have been sleeping at the church for more than three years.

### **Louisville, KY**

In December 2007, the Louisville Metro Council passed, and Mayor Jerry Abramson signed, an ordinance prohibiting “menacing” panhandling, which causes “fear, intimidation, and disorder” city-wide, and panhandling within 20 feet of an ATM, city bus stops, outdoor dining, shopping areas, parking garages, public restrooms, and schools when students are present. Violators face a \$250 fine and/or up to 90 days in jail.

In a Louisville Courier-Journal article, Maria Price of the St. John Center said the ordinance’s many stipulations “seem to have the intent of banning panhandling altogether without saying it.” The Courier-Journal reports that one city council member, George Unseld, who favored the measure, said, “I, for one, am tired of panhandling.... I don’t think a person has an innate right to come up and ask me for a dollar.” The ordinance replaces the previous ordinance that prohibited all forms of panhandling citywide.

## **Madison, WI**

In September 2008, Channel 3000 online news reported that surveillance cameras were installed and Madison police officers patrolled Brittingham Park to move “chronic loiterers” from the area. In response to police targeting of homeless persons, Brenda Konkel, a Madison Alderwoman, introduced ordinances that would keep police from fining homeless individuals for sleeping in parks and for public urination, as well as an ordinance that would prevent police from discarding the personal items of homeless people without a warning.

## **Manatee County, FL**

In March 2007, Manatee County legislators passed a law that bans panhandling within 15 feet of public roads. For the first thirty days, police informed violators of the new ordinance and issued warnings. On April 24, 2007, the ordinance went into full effect.

According to the Centre Daily Times, the county wrote the ordinance because there had been many complaints in the county about panhandlers being hostile. He said that the panhandling law addresses safety and welfare. Getman also told Centre Daily Times that increasing numbers of very aggressive panhandlers alarmed him. Getman and others who supported this ordinance believe that keeping homeless and impoverished people from panhandling will encourage them to look for help at the various service organizations in the area. However, Adell Erozer, Director of the Community Coalition on Homelessness, pointed out that there are not enough shelters, housing, and health services in the county, so some panhandlers may not be able to get the help they need.

To prevent people from bathing and/or doing laundry in their bathrooms, the Manatee library instituted a new set of rules that prohibit people from storing personal items in the building and would only allow people to use the sinks to wash their face and hands. These rules are directed towards homeless people who often visit libraries for the purpose of gaining shelter.

According to the Herald Tribune, officials claim they are not targeting the homeless population. Instead, they are simply tired of large pieces of luggage taking up seating areas and being abandoned for days. The Manatee library system already prohibits people from sleeping in the library.

## **Manchester, NH**

The New Hampshire Union-Leader reported on August 27, 2008 that earlier that month Teddy DeJesus, a Manchester resident, was given a \$50 ticket for violating the city’s curfew. DeJesus is one of several dozen people who have been cited for being in a public park between 11 p.m. and 7 a.m. In early August, nearly two dozen people were on the court docket for violating curfews at Veterans Memorial, Bronstein, Derryfield, Victory and other city parks. Lt. Robert Cunha told The New Hampshire Union-Leader, “the theory is you can head off a lot of the more serious quality of life issues by addressing the day-in and day-out issues... police also are ramping up enforcement of ordinances

barring alcohol in public parks and lounging in public doorways. It is part of an effort to ensure people who live in urban neighborhoods enjoy the same quality of life and rights as those who live elsewhere in the city.” Manchester City Library, which is located near Victory Park, security officer Bonnie Wood-Owens said that she has seen an influx of homeless people coming into Victory Park and other smaller parks since the city began pushing them out of the Veterans Memorial Park. As she told the New Hampshire Union-Leader, “They excluded them from being there because some people didn’t like the looks of it.”

In early September, some local activists decided to take action by protesting the curfew. Their act of civil disobedience, collecting litter in Veterans Memorial Park after curfew, was organized after police issued dozens of summonses to people in the park during curfew. Police ignored the protest. The New Hampshire Union-Leader noted that although “police cruisers passed by the park at least eight times, none stopped and only one officer seemed to glance their way.”

### **Miami, FL**

The creation of a new arts center in downtown Miami has prompted the city to increase police presence and restrict panhandling in the area. Many city officials, however, are bothered by the negative attitude displayed by the arts center in regard to homeless people.

Around 850 people were evicted from public housing complexes in 2004, and even though the city promised them new homes, no new housing has been built for them. Instead, a homeless camp has arisen on a lot that was designated for creation of new affordable housing over ten years ago. The residents of the camp organized art parties and a “Tour of Shame” to reveal aspects of Miami that the Super Bowl organizers tried to hide. Twenty reporters from outside Miami took a bus “reality tour” put on by the Miami Workers Center. On this tour they saw the homeless camps and met residents who were being evicted.

Housing is an important problem in Miami because in February 2007, around the time of the Super Bowl, over one third of the county’s residents were supported by workers who earned \$5.15 or less an hour. According to HUD, for housing to be considered affordable a household should spend only one-third of its income on housing. This means that individuals earning \$5.15 an hour can only afford \$268 a month for rent. Even studio apartments from the 1950s rented for a minimum of \$600 a month.

According to the Los Angeles Times, officials of the Super Bowl host committee did not want information concerning the city’s homeless population to leak during the festive times of the nation’s largest sporting event. They called the protesting “inappropriate” and did not want tourists coming for the Super Bowl to be exposed to city issues for which they were not directly responsible.

## **Miami Beach, FL**

In June 2007 the ACLU sued the City of Miami Beach on the behalf of a homeless man named Russell Harvey in state court to challenge its anti-panhandling law and regulations of street performers. Mr. Harvey claimed that the laws were so broad that they limited all types of street performers, as well as political, religious, and artistic free speech activity. On July 28, 2007, the Miami-Dade County Circuit Court ruled in favor of Mr. Harvey, allowing him to continue panhandling, as well as street performing in Miami Beach.

## **Minneapolis, MN**

Advocates say that even in the bitter cold of January about 600 people will sleep outside in Minneapolis and St. Paul over the course of winter. Many of these people sleep under bridges despite bridge rods that have been put up a number of years ago to prevent loitering. The bridge rods, which were installed by Minnesota Department of Transportation in 25 different locations, look like pyramid frames that are bolted into the concrete. A spokesman for the Department of Transportation said these rods were installed because they believe it is hazardous for people to sleep under the bridges. It is also not safe for workers to clean up the trash homeless individuals leave behind.

Richard Wright, a homeless man who lives under a bridge, told television station WCCO that the bridge rods “are not going to stop people from coming...[and] sleeping here.” Monica Nillson, a homeless advocate, offered a counter argument that the rods help people store their belongings, thus assisting the people they are designed to keep away.

Nillson, who believes the rods have not helped the taxpayers or homeless people, estimates the rods cost about \$10,000 a year. Consequently Nillson proposed to WCCO that the money could be been spent in more productive ways, such as providing services, rather than pushing homeless people away.

In February 2007, Lance Handy was frisked, put in a squad car, and taken to the precinct house for violating section 385.80 of the Minneapolis City Code, also known as the “lurking law.” This law prohibits lurking, lying in wait or being concealed. Guy Gambill, a criminal justice advocate, has reported that the ordinance has been used to target African American and homeless individuals. Handy told City Pages that he had simply been walking down the street after buying a pack of cigarettes. Handy was not charged under the “lurking law” after two appearances in court. Even though Handy was not convicted, Gambill explains that each charge costs taxpayers around \$750. Not all people arrested for lurking are homeless. While 58 percent of the total number of people arrested under the ordinance are African American, 100 percent of the homeless people charged with lurking since 2003 are black. Assistant Police Chief Sharon Lubinski defends her office by pointing out that around 80 percent of homeless people in Minneapolis are black. She goes on to say that racist cops are not to blame because she believes many of the lurking charges have been due to calls by concerned citizens.



According to a City Pages news report, Cam Gordon, a Second Ward City Council member, introduced a measure in December 2007 to repeal the lurking law due to concerns the law may be used discriminatorily. Another member of the City Council calls the ordinance “useful” and believed that race has little to do with calls from citizens who are scared by those “lurking.” The measure to repeal the lurking law failed by one vote in the Minneapolis City Council.

The Minnesota Daily further reported that in June 2007 the city council of Minneapolis passed an amendment to increase the restrictions on its anti-panhandling law. The city claims the new ordinance “address[es] aggressive behavior, and not a socioeconomic group.” The new law limits panhandling to daylight hours and within 10 feet of a crosswalk or 80 feet of an ATM.

The push for the new law came after a panhandler accosted two council members and a state senator while they were dining. Many council members are afraid panhandling will create an atmosphere that discourages patrons from visiting the downtown area. Minneapolis already had aggressive panhandling laws on the books from 2002, but they were not being enforced. The city is now encouraging anyone who “feels unsafe” because of panhandling to immediately call 911 and report the incident.

A growing number of homeless people in Minneapolis are living in their cars. If their cars are towed, their belongings are therefore subject to confiscation. As a result, advocates pushed for a new state law that was passed in the 2008 session that allows homeless individuals to retrieve their belongings from vehicles in impound lots, regardless of whether they can afford to get the car back. Ron Elwood, a legal aid lawyer, told the Star Tribune, “[M]ost of these things are valuable to nobody but their owners, but they are all just destroyed.”

## **Nashville, TN**

During the summer of 2007, city police began a Quality of Life Initiative that called for undercover police officers to cite people for vagrancy, trespassing, public intoxication, and panhandling. In the first two months of the initiative, 91 different people were arrested a total of 113 times. Their incarceration cost the city \$1.2 million. After factoring in other expenses, the Nashville Homeless Power Project (NHPP) estimates the total expense at \$3 million. From July to December 2007, Nashville police charged 454 people—nearly all of them homeless—with “quality of life” violations, adding to these already high expenses. Homeless advocates say these arrests are evidence that the laws target homeless individuals unfairly and accomplish nothing. In a Nashville City Paper report, Policeman Andy Garrett asserts, “[w]e don’t categorize people, and we don’t go out looking for a category of people.” Most of the violations are for public drunkenness, indecent exposure, and trespassing.

On January 15, 2008, the Metro Council banned aggressive panhandling and implemented restrictions for panhandlers. Similar to new ordinances in other cities, this law prohibits panhandling near any bus stop, open-air café, ATM, school, within 10 feet

of any building open to the public, including commercial establishments, and any panhandling between sunset and sunrise.

The city has begun a street newspaper, *The Contributor*, which will allow homeless individuals to make money without panhandling. Homeless advocates insist the new anti-panhandling law will not make people any safer and may violate peoples' constitutional rights.

On February 7, 2007, homeless people and other advocates marched from a downtown Nashville church to the front of City Hall and delivered 700 petitions showing support for Mayor Purcell's plan to build 1,800 permanent supportive housing units by 2015. Those who signed the petition believe permanent housing would be a good solution because it could allow homeless individuals to find work more easily, obtain preventative healthcare to reduce emergency room visits, and minimize the number of times they are thrown in jail for sleeping on public benches. Finally, they encouraged the Mayor to use funds from the 2007/2008 budget to build 200 units of housing for homeless people, especially chronically homeless individuals. The petition came on the heels of the Homeless Power Project Housing campaign that called for \$2.3 million from the Metro Budget to go towards housing.

Sixty-four year old Charlie Strobel was arrested in Nashville for protesting in March 2007. Strobel, a former Catholic priest, started an urban ministry center, *Room in the Inn*, in 1986. He was arrested during an all-night outdoor sleepover outside the Metro Courthouse, which is near the Riverfront Park, arranged by the Nashville Homeless Power Project to raise awareness about homelessness issues. More than 150 people participated in this peaceful gathering that did not block traffic or cause a disturbance. However, police eventually decided the group's permit had expired, and told the group to disband. Most of them did, but 16 people, including Charles Strobel, stood their ground and were arrested.

Strobel explained to *The Tennessean* that he believes "the crisis of homelessness is the crisis of death." Therefore, he did not feel he could leave the protest. Strobel said that the police told the protestors to move away from Riverfront Park, but he believed they just wanted them all to be "out of sight, out of mind." During the protest Strobel thought of his many homeless friends who had died, and he remained to recognize the humanity of his homeless friends. Despite his arrest, Strobel still supports Mayor Bill Purcell who included \$2.4 million in the city's budget to spend on solutions for homelessness.

Over the past year, the city has been attempting to shut down a homeless camp, called "Tent City." The original date for the camp to be cleared out by was September 22, 2008, however, the date was extended to allow the residents of Tent City to find new places to stay.

### **New York, NY**

In an ongoing case from New York City, *Brown v. Kelly*, challenging a New York state anti-begging statute, a U.S. District Court judge granted class certification in July 2007 to

a class of thousands of people who have been arrested for panhandling under the law. The law had been previously found unconstitutional by the Second Circuit. The estimated size of the class of plaintiffs in the suit will likely be between 5,000 and 10,000 people.

### **Oahu, HI**

The City of Oahu forced many homeless people from beach parks between March 2006 and March 2007. However, many observers and city residents believe that this measure will not solve the problem. Homeless people have not disappeared, but have simply moved to shelters, and other parks, including those in small neighborhoods. Recent counts show that the homeless population has risen 28.2 percent. The Mo'ili'ili Community Park is one of several places that have recently become a home for many homeless people. A large bathroom facility in the back of the park along with a covered pavilion has turned into a common hangout and resting place for homeless individuals.

### **Ocala, FL**

Many are upset about the new camping restrictions in the Ocala National Forest issued in 2006. The new restrictions, which limit stays to two weeks, are criticized for pushing out squatters to give more space to vacationers. Before this law, people were allowed to stay in the forest for as long as they wanted, as long as they moved their campsite every two weeks. The Forest Service estimates there are now 100 squatters in the camp compared to 600 a year ago. Most say the regulation further exacerbates the problem, pushing homeless individuals out of sight without giving them a second glance. After the new law went into effect, two homeless men were arrested for threatening to kill one of the officials enforcing the regulation. When brought to trial, however, jurors concluded that the men were angry, but harmless.

Ocala has several laws that make it illegal to panhandle. Ocala.com reported that Stanley Lee Curles, a homeless panhandler, said he was unaware the laws existed. However, because he has panhandled on a ramp near Interstate 75, he could be put in jail for 60 days or given a \$500 fine. Both homeless people and advocates are opposed to Ocala's anti-panhandling laws.

According to a Star-Banner report, Southern Legal Counsel Inc. and Florida Institutional Legal Services filed a federal lawsuit on behalf of David Booher, challenging the constitutionality of the city's anti-panhandling ordinance. Mr. Booher, has been arrested six times in less than a year for violating the ordinance. Mr. Booher claimed the law violated his First and Fourteenth Amendment rights.

The ordinance was unanimously approved in May 2006 because of safety concerns about panhandlers near I-75. According to the ordinance, a person must pay a \$100 fee and have a permanent address, which could be a shelter address, in order to receive a permit. A permit allows panhandling. The permit is not given to anyone who has committed a felony or misdemeanor that involves "moral turpitude."

In September 2007, the court granted Booher's motion for a preliminary injunction prohibiting the county from enforcing the ordinance while the case was ongoing. In March 2008, the county repealed the ordinance.

In August 2008, the parties submitted a settlement agreement. The county agreed not to reenact the challenged version of the ordinance and will pay Booher \$10,000 for settlement of his damages claims. Defendants also agreed that Booher was the prevailing party in the action and to pay reasonable litigation costs and attorneys' fees.

### **Olympia, WA**

On February 1, 2007, homeless people and their advocates set up tents in downtown Olympia in an area they call "Camp Quixote." They set up the camp in response to a pedestrian interference ordinance that prohibits lying, sitting, or asking for money within six feet of a building downtown.

Advocates felt that the ordinance targeted homeless people unjustly and subsequently set up a camp to draw attention to their cause. They hoped to establish the encampment permanently, but also wanted the new ordinance to be repealed.

Police forced residents of the camp to leave one week after the camp was established. In a Seattle Post Intelligencer report, Police Commander Tor Bjornstad said the homeless individuals did not complain too much and did a good job moving their belongings. Twenty police officers and some city maintenance workers told the camp residents to leave at six in the morning. No one was arrested or given a citation.

Rob Richards, an activist who helped develop the tent city, believes the encampment brought attention to the city's homeless problem. He hopes that the city will provide land for a permanent homeless camp. Despite an \$800,000 appropriation in 2007 for homeless services, many, including Councilman T.J. Johnson, believe that more support is necessary, as the demand for services exceeds the current supply.

The Olympian reported that as of September 28, 2008, Camp Quixote moved to the St. John Episcopal Church on Capitol Way. Over the past twenty months, the camp has been forced to move on nine separate occasions.

### **Palm Springs, CA**

In 2007, the Desert Sun discovered that police gave six homeless individuals free bus tickets, without verifying that they had any support in their destination cities. Palm Springs Police Sergeant Mitch Spike explained that he would be upset if he realized another city was sending their homeless residents to Palm Springs.

In response, the Palm Springs Police Department enacted a measure that requires a homeless person to verify that he or she will have support at his or her destination before

purchasing a ticket. Sergeant Spike stated the police will call ahead to contact family or friends, and will also check to see if the person has any outstanding warrants before letting him or her leave the city.

According to the Desert Sun, Vice-President Arlene Rosenthal of the Well in the Desert, a homeless advocacy group, was excited about the creation of the measure aimed at confirming the support network of homeless leaving town. Her agency and others like it were worried that the city was simply sending the homeless from one place to another, without caring about what would happen to them or making a real effort to get them off the street. Now these anxieties have been eased, and Rosenthal believes that the department is trying to better the entire community.

### **Philadelphia, PA**

U.S. Representative Bob Brady and a cleanup crew went to a homeless camp at 65<sup>th</sup> and Vine Streets in Philadelphia to clean up the area. Brady, along with City Councilwoman Carol Campbell, had received complaints about the camp, which was near a school and playground. In an ABC news report, Brady said a murder suspect was caught living in the camp.

Brady assured reporters that the twenty or more homeless people who had been living in the camp would receive assistance from social service workers and would be connected with services that provide food and shelter.

### **Pittsburgh, PA**

Food Not Bombs, an organization that has served free, healthy, vegetarian food to hungry people at Market Square for the last 15 years, was displaced by the Pittsburgh Downtown Partnership, an organization that aims to maximize city development. The Partnership secured permits to use the Market Square almost every day until December 2008. In the beginning of June 2008, the Downtown Partnership called police to force Food Not Bombs out of the area. Infoshop News reported that many advocates believed the police were trying to “economically revitalize” Market Square because “hungry people scare off the rich people.” The Downtown Partnership also stated that homeless individuals do not contribute to a safe and comfortable atmosphere for the new demographic they are trying to attract.

### **Plano, TX**

For several years, Fifty-five-year-old Dallas native, John Williamson, had parked his van in the parking lot of Plano’s Haggard Library at night to sleep. In response, the city council passed a law that was directly aimed at removing him from the area. The new ordinance prohibited people from parking in the lots of the city’s five libraries between the hours of 11 p.m. and 5 a.m. Homeless advocates called this a misguided approach to tackling homelessness. In response, Williamson said, “I’m in my van. I don’t bother people, don’t leave trash, don’t ask people for money. Isn’t it my constitutional and human right to exist somewhere? Doesn’t that take precedence over library patrons not

liking the fact I'm an eyesore? All I need is a place to park my van. It just doesn't seem like that much to ask society."

### **Port Charlotte, FL**

In May 2008, police conducted more than five sweeps targeting homeless people in just one week. The targeted people reported that officers called them "scum," "hobos," "low life," and the "trash of the underbelly of the city." The police made them line up for a "class" picture and called them the "Homeless Class of 2008." They were told to leave the county immediately.

In another instance, homeless individuals were told that police had sworn affidavits from landlords to have the homeless individuals charged with trespassing. There were no such affidavits. Officers maintained that the homeless individuals misunderstood what they said.

### **Portland, OR**

Downtown businesses and a local private security company joined forces to patrol downtown Portland in the Portland Business Alliance's (PBA) "Clean and Safe" program. The private security guards (PPI), wearing uniforms similar to Portland Police, are able to write exclusions (a form of ticket that requires individuals to leave) and ask people to leave from the guards patrol areas. There is no public oversight or complaint process for the private company, which many claimed can be aggressive and "mean" in their interactions with both homeless individuals and the public. Advocates tried to pressure the company or the city to institute a complaint procedure and allow more public oversight. Many advocates and homeless individuals urged the PBA to reconsider the \$625,000 spent on the private security firm and spend the money on housing or services for homeless individuals. PPI wrote 1,980 park exclusions in 2007, with a peak of 275 exclusions in September 2007.

The city installed thirty-one benches, opened a day shelter, and created an overnight bathroom to pave the way for a law prohibiting people from "blocking sidewalks." According to a Street Roots article, police would begin enforcing the so-called "sit-lie" ordinance in the Fall of 2007, but according to Mark Reese, Police Bureau Central Precinct Commander, they anticipated "very few written warnings or citations." Reese expected more verbal warnings, which homeless advocates worried could cause some difficulty in measuring how harshly the law is enforced. Critics also argued that the law unfairly targets homeless and poor people. Lawyer and homeless advocate, Adam Arms, considered the law "constitutionally-questionable" and believes it will be another tool used to make the homeless move away from the area.

WWeek.com reported that City Commissioner Randy Leonard asked the City Council to wait before enforcing the ordinance. The commissioners initially agreed that the ordinance would not be enforced until new facilities for the homeless, such as public restrooms and a day center, were created. However, by December 2007, the city began enforcing the law, which prohibits sitting or lying down on public sidewalks in Portland

from 7 a.m. until 9 p.m. The penalty for each offense is a fine of up to \$250. Street Access for Everyone, an organization made up of law enforcement agencies, homeless advocates, representatives, and the local community, created the new laws.

Street Roots, a local street newspaper run by homeless advocates and homeless individuals, reported that a defendant charged with violating the “sit-lie” law filed a motion in his case to declare the law unconstitutional. However, the court dismissed the motion, ruling that the ordinance is constitutional. Attorney William A. Meyer was defending a man named Douglas Newman who received three “sit-lie” citations in November and December of 2007. Street Roots reported that Newman was found guilty on all three counts and the court found that “(sit-lie) is constitutional and reasonable.” According to Street Roots, the ruling was based on the fact that the violation of the law was not a criminal offense (a warning is required before a citation is issued). He compared the statute to public safety laws that ban bicycling on the sidewalk and open container restrictions. However, homeless advocates, along with Meyer, said that the law specifically punishes homeless individuals.

On May 22, 2007, the Portland Police conducted a sweep of homeless individuals who sleep downtown. They threatened arresting them under Portland’s anti-camping ordinance, which has a penalty of 30 days in jail. Such sweeps are annual events in the weeks leading up to the Rose Festival. According to Street Roots, the coordinator of public safety for the Mayor, Maria Rubio, said the sweeps have always been performed due to anonymous complaints.

### **Redmond, WA**

Starting in February 2007, St. Jude Catholic Church began hosting a homeless encampment called “Tent City 4” on its grounds. The city threatened to make the church pay a fine of \$500 per day for keeping the camp on its property. The church originally planned to let the camp stay there for 90 days, which would cost the church \$37,000.

The church was originally given a permit that would allow the camp to remain at the church as long as sidewalk monitors were present when children were walking to and from school. After ten appeals were filed, the city examiner overturned the permit. In late March of 2007, the Redmond City Council overturned the hearing examiner’s decision and granted the temporary-use permit. St. Jude’s was allowed to host the encampment with some restrictions for the 90 to 110 day period.

### **Reno, NV**

In early October 2008, city officials in Reno ordered homeless individuals to move out of a tent city on the edge of downtown. According to the Associated Press, city officials said that the “evictions coincide with the scheduled opening later in October of two new homeless-services facilities nearby.” One of the facilities is a women’s drop-in center and family resource center and the other is a men’s shelter with 60 beds. According to the Associated Press, some women were frustrated that they will have to be separated

from their boyfriends or husbands. Some people also expressed concern about signing up daily for a bed because the check-in times conflict with work.

## **Sacramento, CA**

On August 2, 2007, alleging violations of their Fourth, Eighth, and Fourteenth Amendment rights, a group of homeless plaintiffs challenged Sacramento's enforcement of an ordinance that prohibits homeless persons from sleeping outside, and the city and county actions of taking and destroying their personal property, without adequate notice and the opportunity to retrieve or reclaim personal possessions before they are destroyed.

The plaintiffs argued that because sleeping is necessary to maintain human life, enforcement of the ordinance punishes plaintiffs based on their status as homeless persons, and therefore violates the Eighth Amendment protection against cruel and unusual punishment. Plaintiffs noted in their complaint that rental housing in Sacramento is beyond the means of most homeless people, and the waiting time for persons on waiting lists for public housing or subsidized housing is more than two years, with thousands of people waiting for housing. Further, shelters in Sacramento city and county cannot accommodate all the homeless people in the area on any given night.

The plaintiffs further argued that defendants' confiscation of plaintiffs' property without notice is a violation of the Fourteenth Amendment right to due process of law and the Fourth Amendment right against unreasonable search and seizure. Lastly, plaintiffs argued that defendants' conduct reflects their "animus towards this disfavored group and lacks a rational relationship to any legitimate state interest," in violation of the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs are seeking \$4,000 in damages for every person who had his or her belongings illegally taken or was cited for sleeping outside, as well as attorneys' fees and costs. The case is pending.

In November 2007, Union Pacific Railroad called police to clear out homeless people who were camping on the railroad's property. Dozens of homeless people were camping on the mostly flat, dirt land away from the tracks. The Sacramento Bee reported that company spokesman James Barnes stated, "we don't want them on our property," citing liability concerns and complaints from local businesses.

After the railroad complained, police gave campers a warning. On the day of the eviction, there were still people camping on the property. Some had made preparations, packing up their tents and stowing sleeping bags at local shelters so they would not be confiscated. Mark Merin, the attorney involved in the lawsuit challenging Sacramento's anti-camping ordinance, asked not only that the city stop evictions, but also asked that Union Pacific install portable toilets and trash cans.

The city, along with local homeless service agencies, provided 70 motel vouchers for a two-night stay. Some of the camp's residents were hesitant to take the vouchers because they would have to leave most of their belongings at the camp. People who owned pets were thrilled, because although some motels accept pets, very few shelters do. The



vouchers helped to provide shelter for individuals until a winter shelter opened at Cal Expo, a week earlier than usual. Still, on eviction day, some campers remained, and despite the presence of police and railroad authorities, no citations were written.

After the police evicted the campers, bail bondsman Leonard Padilla offered them a new place to live—on his land. Padilla owns 60 acres in the middle of a developing neighborhood, and local residents were displeased with the idea of the new neighbors.

## **San Diego, CA**

In February 2007, the city settled a lawsuit filed by a number of homeless plaintiffs challenging enforcement of a California illegal lodging statute in San Diego. The settlement gave anyone without a place to sleep permission to do so on public property between 9 p.m. and 5:30 a.m. Mayor Jerry Sanders said this was a “fair and equitable solution to a large societal problem.” A lawyer representing the homeless plaintiffs said, “[t]he real solution is more shelter beds to get the 9,600 homeless off the streets,” according to the San Diego Union-Tribune.

The San Diego Union-Tribune reported that if a proposed permanent shelter was built in San Diego, the city planned to reinstate “sleeping tickets” for those who did not use the shelter.

According to USA Today, San Diego’s new alcohol ban on beaches was impacting a group that it did not intend to affect – “homeless drunks.” Violators of this ban could face jail time and up to \$1,000 in fines. Getting rid of homeless drinkers was not the focus of the ban, but this effect was being well received by locals. “More people and more families are already enjoying the beach,” said Julie Klein of Ocean Beach.

In another lawsuit, the city entered into a settlement with Pacific Beach United Methodist Church in April 2008 by allowing the church to continue sharing food with homeless people without the threat of fines or citations. On Wednesday nights, the church shares food with over 100 people without a city permit as part of a food program they have operated for more than 14 years.

In the summer of 2008, several homeless camps in Spring Valley were approached by sheriff’s deputies who warned people to either leave or be arrested. At the time, as many as 30 people lived in this area in tents and other structures. Deputies called this “Operation Clean Sweep.” A homeless task force commented that living in a camp gives homeless people a feeling of safety they cannot find sleeping on the street. The deputies distributed small bags of supplies and a list of shelters and other resources to individuals living there. After giving inhabitants of this campsite an initial warning, deputies did not return.

## **Santa Ana, CA**

In May 2008, members of Welcome INN (Interfaith Needs Network) filed a lawsuit against the state parks department after the group was threatened with citations if they continued sharing food with homeless individuals in a picnic area in Dana Point Park. Park rangers who contended that the group was engaging in unlawful assembly had approached the group. Officials argued that a public recreation area is not an appropriate place for sharing food with homeless people.

The state parks department settled the lawsuit with Welcome INN in September 2008. As a result of the settlement, the group can continue sharing food at the state beach and the state is to pay attorneys' fees.

## **Santa Cruz, CA**

Homeless activists held demonstrations and boycotted the Bookshop Santa Cruz, owned by then Vice Mayor Ryan Coonerty, who later became mayor in November 2007. Activists urged the mayor to revise the city's 40-year-old anti-camping law, which they said was used to target homeless individuals. The ban made it illegal to sleep on sidewalks or public property at night. The Santa Cruz Sentinel reported that Councilman Mike Rotkin defended the ban as an effective method for telling homeless people, "[s]leeping outside is not something you can do whenever and wherever you want." Although protestors questioned the constitutionality of the law, the city claimed it was legal and fair. City officials said the activists' in-your-face strategy was a deterrent. Coonerty said their presence increased vandalism near the bookstore and made him less sympathetic to their cause.

The anti-sleeping law, introduced in 1977 to control summer tourists, has changed many times over the last three decades, but still bans people from sleeping on public property between 11 p.m. and 8:30 a.m. Covering oneself with a sleeping bag is also considered an offense under the sleeping ban. The city has 252 beds for 1,500 homeless individuals -- many people sleep out on the streets on any given night due to a general lack of housing and shelter. According to a Santa Cruz Sentinel September 2007 article, the city had been issuing between 30 and 60 tickets each month under the sleeping ban, despite limited shelter accommodations.

In a February 2007 article on Indybay.org, Tim Rumford, homeless advocate and activist, showed pictures suggesting that police harassment of homeless individuals in Santa Cruz was on the rise. While walking near a mall area, Rumford noticed fewer homeless people than usual, and those he did see were unfamiliar to him. He described homeless people in the area as "fearful" and "moving around a lot;" they seemed scared to stay in one place.

Rumford witnessed Police Sergeant Flippo approach a young man, who was apparently sober and well behaved, sitting on the wall near the bus station. However, Flippo asked for his ID. When the man asked what he was doing wrong, Flippo simply responded, "you're sitting against the wall." After checking for warrants and finding the man had none, Sgt. Flippo still wrote a warning. He said that if another officer caught him that

day, he would be given a ticket. Rumford noticed that many other people who did not appear homeless were also sitting against walls, unnoticed by the police. However, Rumford believed that this young man was given a warning because he appeared to be homeless.

Other incidents noted by Rumford included: homeless men receiving tickets for having dogs; the interrogation of a man by three police officers for no apparent reason; and a police search of a homeless man without an obvious reason.

### **Santa Monica, CA**

The city passed a law in September 2008 that prohibits panhandling when seated on the Third Street Promenade. People are still allowed to sit on the seats as long as they are not begging. The city justified the law by arguing that the city needs to be open to the public and that there is competition for limited seats.

### **Sarasota, FL**

The Sarasota Herald-Tribune analyzed that it cost taxpayers about \$925 every time a police officer arrested a homeless person for drinking beer in public or sleeping behind a church. Law enforcement agencies' targeting of homeless people led to 1,427 arrests between early 2005 and early 2008, which cost taxpayers an approximate total of \$1.3 million.

### **Seattle, WA**

The Seattle Times reported in November 2007 that Mayor Greg Nickels implemented a new policy to move homeless people from their camps, even though the emergency shelter system is full and people have nowhere to go. The city's response to homeless camps was to destroy the makeshift shelters, force the residents to move, and discard their belongings during unannounced sweeps. While it was known that the camps would be cleared out in November of 2007, camps were cleared out in the summer of 2007 without notice. At some camps, clearing notices were posted with an outdated contact phone number. In other cases, the city gave a 48-hour notice to homeless people living on the streets and on other public property.

During sweeps, the city agreed to store personal items such as prescriptions for up to 60 days. The city would throw away items that were thought to be worth less than \$25. Anyone being displaced would be referred to shelters and to other resources.

In November 2007, the Human Services Department said the cleanups would be temporarily stopped while the Mayor's office developed more uniform guidelines. In April 2008, the Seattle Post-Intelligencer reported that a new plan for homeless camp sweeps had been developed: "Seattle officials added capacity for 20 shelter beds and promised to give three days' notice to homeless people forced from unauthorized tent camps in controversial sweeps . . . The city also pledged to provide them additional

services and a chance to later retrieve their belongings.” Although many advocates believed that this was a step in the right direction, they did not think that this was enough.

In May 2008, 21 tons of debris was removed from a homeless camp in Queen Anne Park and taken to a landfill. This was a result of a more aggressive effort to limit illegal camping in city parks. The Seattle Times reported that these efforts sparked protests from homeless advocates who argued that the “wholesale trashing of the 44-person encampment violates a new city of Seattle policy of salvaging such personal belongings.” Better training could help future crews decide what is salvageable and worth more than \$25.

In June 2008, the advocates made their position clear by camping out at City Hall in protest of the tent camp sweeps. Over 200 homeless individuals and advocates camped out on the concrete exterior of City Hall. The homeless advocates told the Seattle Post-Intelligencer that “protocols for homeless encampment sweeps don’t address the shortage of emergency shelter and services, and contain loopholes that deny protection to homeless campers.”

Another “tent city” was set up at dawn on September 22, 2008. However, as the West Seattle Herald reported, it was quickly dismantled when Mayor Nickels ordered an eviction of the tent city, called “Nickelsville,” for safety and health concerns. The Seattle Times reported that it was a relaxed scene as “protestors calmly waited for their turn to be arrested.” The police arrested 25 homeless people and advocates for trespassing on city property. After being interviewed at the Southwest Precinct, everyone was released, except those with outstanding warrants. According to The Seattle Times, prior to the sweep, an adviser to Gov. Christine Gregoire traveled to Seattle to negotiate with the city about how long the homeless individuals could stay. They reached an agreement that the city would allow them to stay at the lot for a short period of time, but after that time the city had the right to conduct the sweep. The city also offered shelter to anyone who requested it and 16 of the camp residents took the offer. The city provided 60-70 new beds for victims of the sweeps, but there are 2,827 homeless people who are unsheltered at any given point in time in King County.

### **Simi Valley, CA**

On February 8, 2007, Rancho Simi Recreation and Parks District began a cleanup of the Arroyo Simi recreation area to reduce the safety and health risks they believe the area’s homeless encampments pose. In a Simi Valley Acorn news article, the general manager of the Park District, Larry Peterson, said his department’s main mission is to “provide parks and recreation activities.” The department is not, however, responsible for giving homeless people a place to sleep.

The police department was also on hand to help with the cleanup. They issued nine citations for camping. Peterson said there are services for homeless people in the area, but illegal camping in the parks and on city property was not one of them.

An area church held a rally the morning of the cleanup to lend a hand to the homeless individuals.

### **Sonora, CA**

The city of Sonora has only one shelter that houses sixteen homeless persons. In late 2007, local law enforcement tore down homeless encampments and cleared out other spots where homeless people spend time. In addition, in early 2007, police took action to prevent homeless individuals from staying at a local church, leaving them with fewer and fewer places to go.

### **Springfield, IL**

On June 5, 2007, the city of Springfield removed all the belongings of homeless people that were being stored outside Lincoln Library. A spokesman for the city said the property was transported to a storage space at St. John's Breadline. The storage system units, Portable On Demand Storage (PODS), were intended to keep piles of possessions and shopping carts from being eyesores outside the library.

### **Tacoma, WA**

In April 2007, the Tacoma City Council expanded regulations on panhandling. The new regulations prohibit solicitation within 15 feet of ATM's, bus stops, pay phones, gas pumps, and self-service carwashes, and all prohibit all solicitation from dusk to dawn. The new regulations also prohibit solicitation at any intersection or any private property without permission. Penalties include fines up to \$1,000 and 90 days in jail.

### **Towson, MD**

Eight months after a county law requiring permits to ask for donations in intersections was passed in 2006, an article in the Towson Times stated that the law is "largely ignored by the public and may be impossible to enforce." Introduced by Councilman Sam Moxley, the law aimed to decrease the number of individuals and groups who solicit money from drivers. Under the law, permits are required of anyone who intends to ask for money on medians on county roads; those in violation receive a \$100 fine. However, a number of applications for the permit were denied because applicants could not provide an address or phone number. Enforcement has been an issue because the language in the law did not specify which government entity is responsible for issuing notices of infractions. Councilman Moxley intended for the police to enforce the law, however, county officials delegated the responsibility to code enforcement inspectors as "the fine is a civil matter and carries no criminal penalty."

### **Tucson, AZ**

The Tucson Citizen reported in September 2007 that private security forces funded by the Downtown Tucson Partnership are teaming up with police to crackdown on the "criminal

homeless.” Businesses have bought two-way radios for police, so they can be in direct contact with private security. The two groups met to review what qualified as illegal behavior. The Tucson Citizen reports that Deputy City Attorney Laura Brynwood emphasized, “[Y]ou can’t punish someone for who they are. Laws that criminalize vagrancy, loitering and homelessness are unconstitutional.”

### **Ventura, CA**

On January 31, 2007, Ventura police arrested homeless people living near the Ventura River for illegal camping and other violations. The week before, the police had marked camps with spray paint, warned people to leave, and threatened them with arrest and citations if they had not moved in a week. The police also swept the area and many of the homeless individuals lost their belongings. According to the Ventura County Star, Peter Brown, Ventura’s social services director, said that the sweep was meant to keep people safe from flooding that almost drowned several people. However, camp residents said they felt safe prior to the sweep because they kept “troublemakers” out, and also had learned to watch the water level, so they would know when to expect a flood.

### **West Palm Beach, FL**

Over the past decade, Westgate Tabernacle Church has made efforts to house homeless residents. However, their efforts have been thwarted by the city. In 1999, city officials decided the church was in violation of zoning laws for operating a shelter in a residential neighborhood and imposed a \$50.00 a day fine on the church. The city ceased imposing fines when the church discontinued sheltering homeless individuals. However, interest costs on the fines grew and the county government put a lien on the church.

The church eventually opened itself up again to serve as a shelter and in 2002 filed a lawsuit in state court claiming that the county’s actions infringed on its right to freely exercise its religious beliefs and other constitutional rights. The case went to trial in January 2007. In February 2007, a jury decided that Palm Beach County was not violating the church’s constitutional rights. The church appealed this decision and filed a new action related to the matter in federal court in January 2009.

In a Palm Beach Post report, Barry Silver, the church’s attorney, argued that the church should be allowed to provide a place to sleep and that the government does not provide enough shelters to meet the need. In response, county attorney Amy Petrick pointed to the millions of dollars from federal and state funds that go towards homeless services. She added that West Palm Beach has also spent its own money on aiding the poor.

The lawsuit has brought a lot of attention to homelessness issues and whether or not the county has enough shelter space available to serve the homeless population. The Palm Beach Post reported that the church has argued that some of the requirements of existing shelters, such as sobriety, are very difficult for some homeless individuals to achieve and that many shelters only serve specific portions of the homeless population (i.e. men, families, or veterans) and are not inclusive enough.

In September 2007, West Palm Beach City Commissioners approved a ban on food sharing programs in several downtown city parks, despite public protests from city residents and providers. In December 2007, groups that share food with homeless people in those parks sued the city to challenge the ordinance. In December 2008, the city council voted to settle the lawsuit, which included repealing the ordinance.

# Case Summaries

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## Case Summaries

### I. Challenges to Restrictions on Sleeping, Camping, Sitting, or Storing Property in Public Places

#### A. Federal Court Cases

Acevedo v. City of Jacksonville Beach, No. 3:03-CV-507-J-21HTS(M.D. Fla. 2003).

Homeless individuals and a non-profit homeless services provider brought a § 1983 action against the City of Jacksonville Beach, Florida, and the city police alleging violations of their First, Fourth, Fifth, Eighth, and Fourteenth Amendment rights (and similar claims under the Florida Constitution) when the police arrested them for violating an anti-camping ordinance and seized and destroyed their belongings. The parties jointly dismissed the case, because none of the plaintiffs was able to continue with the suit. The plaintiffs' counsel reports that they have not heard of police harassment since the suit was filed and are continuing to monitor the situation.

Amster v. City of Tempe, 2001 U.S. App. LEXIS 9239 (9th Cir. 2001).

The Ninth Circuit rejected plaintiff's facial challenge of a Tempe ordinance requiring a person wishing to sit or lie down on a city sidewalk for certain types of events to first obtain a permit. Amster had organized several demonstrations on the city's sidewalks without first obtaining permits, although the city had never actually enforced the ordinance during one of his demonstrations. The court found that the ordinance regulated conduct, *i.e.*, sitting or lying on a public sidewalk that was not expressive by itself. Accordingly, the ordinance survived a facial challenge.

Ashcraft v. City of Covington, No. 02-124-JGW (E.D. Ky. Sept. 23, 2003).

Homeless individuals brought a § 1983 action against the City of Covington, Kentucky, and its mayor alleging violations of their Fourth, Fifth, and Fourteenth Amendment rights when city employees and police raided their camps and seized their property. In reviewing cross-motions for summary judgment, the federal magistrate judge found that the plaintiffs were not trespassing, and therefore had a reasonable subjective privacy interest in their property. The plaintiffs' Fourth Amendment claim thus survived summary judgment. The magistrate also found, however, that there was no substantive due process violation, and that the city's defense of qualified immunity could stand for the other claims. The case settled in 2004 – each of the 5 plaintiffs received \$1,000 and their lawyers received attorney's fees.

Berkeley Community Health Project v. City of Berkeley, 902 F. Supp. 1084 (N.D. Cal. 1995).

In February, 1994, plaintiffs challenged two recently enacted Berkeley ordinances prohibiting sitting or lying down on a sidewalk within six feet of the face of a building during certain hours and soliciting in certain locations or in a “coerc[ive], threaten[ing], hound[ing] or intimidat[ing]” manner. Plaintiffs alleged violations of their rights under the First and Fourteenth Amendments to the U.S. Constitution and various provisions of the California Constitution. The U.S. District Court for the Northern District of California issued a preliminary injunction forbidding enforcement of the anti-solicitation ordinance, finding that it was a content-based regulation of speech in violation of the Liberty of Speech Clause of the California Constitution. The court also issued a preliminary injunction prohibiting enforcement of the restriction on sitting, finding that sitting can sometimes constitute expressive activity, and that the ordinance did not further a substantial government interest unrelated to expression, was not narrowly tailored, and did not leave open ample alternative channels of communication. Defendants appealed the court’s decision on the anti-solicitation ordinance to the Ninth Circuit, but the case was settled before the appeal was heard.

Betancourt v. Giuliani, 448 F.3d 547 (2d Cir. 2006), cert. denied, 127 S. Ct. 581 (2006).

Augustine Betancourt brought suit against the Mayor, Police Commissioner, and the City of New York for his arrest under a New York law that makes it “unlawful for any person[s] . . . to leave . . . or permit to be left, any box, barrel, bale of merchandise or other movable property whether or not owned by such person[s], upon any . . . public place, or to erect or cause to be erected thereon any shed, building or other obstruction.” . At the time of arrest, Betancourt had made a tube out of the cardboard and slipped inside it on a park bench. After his arrest, he was strip-searched and placed in a holding cell. He was not prosecuted. Betancourt brought a number of claims against the city, including a claim that the statute was unconstitutionally vague and overbroad as applied to his arrest. He also alleged that the strip search violated his Fourth Amendment rights because he was arrested for a minor offense and police did not have reasonable suspicion that he was concealing a weapon or other contraband.

Betancourt asserted the statute should be analyzed for vagueness using an “especially stringent” standard because the statute involved his fundamental right to travel and imposed criminal penalties without requiring a finding of criminal intent. The court, reasoning that the statute did not penalize “merely *occupying*” public space but rather obstructing public space, held that the statute did not penalize the right to travel and was not void for vagueness. The court found Betancourt had sufficient notice that his conduct was prohibited, and there are sufficient guidelines in place to limit police discretion in its application. The court granted Betancourt summary judgment on his illegal strip search claim but granted summary judgment in favor of defendants on all other claims.

Betancourt appealed and the appellate court affirmed the lower court judgment, holding that the code provision was not unconstitutionally vague as applied. Judge Calabresi

dissented, finding that the statute did not sufficiently “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited” and did not “provide explicit standards for those who apply them.” In Judge Calabresi’s view, the word “erect” does not reasonably mean “fitting together of materials or parts,” as the majority posited. Judge Calabresi further stated that Betancourt’s boxes were not an “obstruction” but rather Betancourt was “occupying [a] public place with a few of [his] personal belongings.” Judge Calabresi also criticized the majority’s dismissal of the right-to-travel question, but did not pursue this issue since he found the statute undeniably void for vagueness even under the moderately stringent test that the majority applied. Finally, Judge Calabresi also pointed out in his dissent that the statutory context also made the statute difficult to understand, as the surrounding sections and the statement of legislative intent all pertain to abandoned automobiles.

Cash v. Hamilton Department of Adult Probation, 2006 WL 314491 (S.D. Ohio Feb. 8, 2006), No. 1:01-CV-753 (not reported in F. Supp. 2d).

Homeless individuals brought a § 1983 action against the City of Cincinnati and Hamilton County alleging that the city violated their Fifth and Fourteenth Amendment rights when their personal property was taken and destroyed by a city clean-up crew instructed to clean out under bridges and viaducts where homeless individuals resided. The District Court for the Southern District of Ohio granted summary judgment for defendant government officials. The Sixth Circuit reversed the district court’s summary judgment and remanded the case. The Sixth Circuit received two petitions for rehearing en banc, which it denied on the grounds that the issues raised in the petitions had been fully considered.

On remand, plaintiffs moved for partial summary judgment, arguing that the evidence overwhelmingly showed that they lost their possessions pursuant to a policy or custom of the city, and that notice provided by the city was inadequate as a matter of law. Also on remand, the city moved to dismiss for lack of subject matter jurisdiction. The city relied on *Arnett v. Myers*, to support its argument that plaintiffs’ claims were not ripe because plaintiffs had not exhausted state remedies to obtain just compensation for their loss.

The court denied plaintiffs’ motion because questions of fact remained regarding whether plaintiffs’ property was indeed discarded pursuant to a policy or custom of the city, and plaintiffs had not submitted any new evidence in support of their argument regarding the city’s policy of discarding property of homeless persons without notice and a hearing. The court, also however, denied the city’s motion to dismiss because plaintiffs abandoned their takings claim; their remaining procedural due process claim did not require plaintiffs to exhaust any state remedies in order for their claim to be ripe. The case was settled on September 20, 2006. Under current procedures, personal property that is taken is retained and notice is given at the site regarding where such property may be retrieved.

The Center v. Lingle, No. 04-537 KSC (D. Haw. 2004).

The ACLU of Hawaii sued the governor and Hawaii's Attorney General on behalf of The Center (a nonprofit organization providing services for lesbian, gay, bisexual, transsexual, intersex, and questioning Hawaiians), Waianae Community Outreach (a nonprofit organization providing services to the homeless), and an individual plaintiff to seek an injunction barring the enforcement of a criminal trespass statute. Plaintiffs alleged that the statute violated the First and Fourteenth Amendments as well as the Hawaii Constitution. The statute, passed as Act 50, allows authorities to ban a person from any public property for up to one year, after issuing a written trespass warning statement. The individual plaintiff was allegedly banned from Hawaii public libraries for a year for looking at gay-themed web sites on library computers. Plaintiffs also contended that the statute has been used to ban homeless persons from public beaches and public parks and to threaten homeless persons to leave certain public property immediately.

The plaintiffs alleged that this law lacks standards for determining what speech or conduct is prohibited and fails to provide any procedural safeguards. Therefore, plaintiffs claimed that the statute violates the First and Fourteenth Amendments of the U.S. Constitution and a provision of the Hawaii Constitution. Plaintiffs also argued that the statute is unconstitutionally vague and fails to establish the required minimal guidelines to govern law enforcement. Plaintiffs also challenged the statute for impermissibly making a distinction based on content, by favoring speech related to union activities. Finally, the plaintiffs claimed the statute infringed on one's right to move freely. The plaintiffs' complaint sought declaratory and permanent injunctive relief, as well as a declaration that the statute is unconstitutional as applied.

The ACLU lawsuit, combined with strong opposition from other homeless service providers, sparked the legislature to consider a repeal of Act 50. The legislature ultimately did not completely repeal the law, but came to a compromise with legislators concerned about squatters. The law as passed does not allow police or others to ban individuals from public property, but it does create a petty misdemeanor offense for criminal trespass if an individual remains in a public park or public recreational grounds after an officer tells him or her to leave, pursuant to a posted sign or notice governing the activity on the grounds. The ACLU continues to worry about discriminatory enforcement. The governor signed the new bill into law on July 8, 2005. Although the most egregious provisions of the original law were repealed, the ACLU lobbied the legislature to pass Senate Bill 2687, which would have repealed the rest of the act. This bill died at the end of the 2006 legislative session.

Church v. City of Huntsville, 30 F.3d 1332 (11th Cir. 1994).

A class of homeless plaintiffs alleged that Huntsville, AL had a custom, policy and practice of arresting and harassing plaintiffs for performing essential activities in public



places, seizing and destroying their personal property, and using zoning and building codes to close or condemn private shelters for homeless people. In 1993, the U.S. District Court for the Northern District of Alabama issued a preliminary injunction prohibiting the City of Huntsville from removing homeless people from city property, and also from harassing, intimidating, detaining, or arresting them for walking, talking, sleeping or gathering in public places solely because of their status as homeless persons, and finally, from using zoning or building codes to close or condemn private shelters in the absence of a clearly demonstrable threat to health or safety. On appeal, the Eleventh Circuit vacated the injunction, holding that the plaintiffs had not demonstrated that the actions they sought to prevent were part of an official city policy nor had they shown that there was a pervasive practice or custom of violating plaintiffs' rights. Thus they were unlikely to succeed on the merits. Furthermore, the Eleventh Circuit held that the plaintiffs did not have standing to challenge the city's application of its zoning and building codes. On remand, the district court, finding that plaintiffs could not prevail under the burden of proof established by the court of appeals, granted summary judgment for the defendant, City of Huntsville.

City of Chicago v. Morales, 527 U.S. 41 (1999).

The city of Chicago challenged the Supreme Court of Illinois' decision that a Gang Congregation Ordinance was unconstitutional for violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution for impermissible vagueness -- lack of notice of proscribed conduct and failure to govern law enforcement. The ordinance prohibited criminal street gang members from loitering in a public place. The ordinance allowed a police officer to order persons to disperse if the officer observed any person loitering that the officer reasonably believed to be a gang member.

The Supreme Court affirmed the judgment of the Illinois Supreme Court and ruled the ordinance violated the due process clause of the fourteenth amendment to the U.S. Constitution for vagueness. Specifically, the court ruled that the ordinance violated the requirement that a legislature establish guidelines to govern law enforcement. Additionally, the ordinance failed to give the ordinary citizen adequate notice of what constituted the prohibited conduct -- loitering. The ordinance defined "loitering" as "to remain in any one place with no apparent purpose." The vagueness the Court found was not uncertainty as to the normal meaning of "loitering" but to the ordinance's definition of that term. The court reasoned that the ordinary person would find it difficult to state an "apparent purpose" for why they were standing in a public place with a group of people. "[F]reedom to loiter for innocent purposes," the court reiterated, is part of the liberty protected by the due process clause of the Fourteenth Amendment. The Court declined to decide whether the Chicago ordinance's impact was a constitutionally protected liberty to support a facial challenge under the overbreadth doctrine. NLCHP filed an amicus brief in support of plaintiffs-appellees.

Clark v. City of Cincinnati, No. 1-95-448 (S.D. Ohio Oct. 25, 1995).

Homeless persons and advocates challenged two City of Cincinnati ordinances prohibiting sitting or lying on sidewalks and certain types of solicitation on First and Fourteenth Amendment grounds. In May 1998, U.S. District Court Magistrate Judge Jack Sherman, Jr., of the Southern District of Ohio, struck down, on First Amendment grounds, the ordinances meant to criminalize certain actions by homeless and low-income individuals. One ordinance made it a crime for a person to sit or lie on sidewalks in downtown Cincinnati or on the Cincinnati skywalk between the hours of 7 a.m. and 9:30 p.m. The other ordinance criminalized soliciting funds, whether by asking or through gesturing, within certain distances of some buildings, automatic teller machines and crosswalks, and in all areas after 8 p.m.

Accepting the Magistrate Judge's determination that the ordinances "likely infringe[d] upon plaintiffs' First Amendment right to freedom of speech to some degree," the U.S. District Court for the Southern District of Ohio issued a preliminary injunction enjoining the city from enforcing the ordinances, with the exception of the specific provision of the sidewalk ordinance that prohibited lying down. In light of its ruling in favor of plaintiffs on their First Amendment claim, the court did not reach a decision on plaintiffs' Fourteenth Amendment claims.

Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984).

In 1982, the Community for Creative Non-Violence (CCNV) held a round-the-clock protest demonstration on national park property near the White House, and was granted a permit to erect a symbolic campsite but denied permission to sleep at the campsite. CCNV challenged the applicable Park Service Regulation as unconstitutionally vague on its face and discriminatorily enforced in violation of the protesters' rights under the First Amendment. The U.S. Supreme Court reversed the holding of the Court of Appeals for the D.C. Circuit, finding that the regulation advanced a substantial government interest unrelated to the suppression of expression and was narrowly tailored to advance that interest. The court held that even if sleeping in connection with the demonstration is expressive conduct that is protected to some degree under the First Amendment, the challenged regulation was facially neutral and constituted a reasonable time, place, and manner restriction.

Clements v. City of Cleveland, No. 94-CV-2074 (N.D. Ohio 1994).

In 1994, four individual plaintiffs and the Northeast Ohio Coalition for the Homeless challenged the Cleveland Police's practice of removing homeless people by coercion and force from downtown Cleveland to transport them to remote locations and abandon them. Plaintiffs sought a preliminary injunction that would prohibit the practice on the grounds that it violates plaintiffs' rights under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution and various provisions of the Ohio Constitution.

In February 1997, the four individual plaintiffs and the Coalition settled the lawsuit. Under the terms of the settlement, the city agreed (i) to issue a directive to the police forbidding them from picking up and transporting homeless people against their will, (ii) to issue a public statement that violating homeless people's rights to move around downtown Cleveland is not and will not be city policy, (iii) to pay \$9,000 to the Coalition to be used for housing, education and job training for the homeless plaintiffs; and (iv) to pay \$7,000 to cover a portion of the plaintiffs' costs in bringing suit.

Davidson v. City of Tucson, 924 F. Supp. 989 (D. Ariz. 1996).

Plaintiffs sought an injunction against a Tucson resolution barring homeless encampments from city-owned property on Eighth Amendment and Equal Protection grounds. The court held that the plaintiffs did not have standing to raise a cruel and unusual punishment claim because they had not been arrested or convicted under the ordinance. The court also held that plaintiffs' Equal Protection claims—that the ordinance discriminated against homeless people and that it violated their right to travel—were unlikely to succeed on the merits. The Equal Protection claim failed because the court did not consider homeless people a suspect class, and the fundamental right to travel does not include the right to ignore trespass laws or remain on property without regard to ownership.

Doucette v. City of Santa Monica, 955 F. Supp. 1192 (C.D. Cal. 1997).

In early 1995, a class of homeless plaintiffs filed a complaint alleging that the City of Santa Monica's adoption and discriminatory enforcement of a series of ordinances to criminalize homelessness violated plaintiffs' rights under the First and Eighth Amendments. Plaintiffs also alleged violations of the Fourth Amendment's prohibition on unreasonable searches and seizures and the Fifth Amendment's prohibition of takings without just compensation. The U.S. District Court for the Central District of California denied plaintiffs' motion for summary judgment on their claim that the anti-solicitation law violated the First Amendment, and granted defendants' motion for summary judgment on that claim. The court held that the city's ordinance prohibiting "abusive solicitation" was a valid place and manner restriction, finding that it was content-neutral, narrowly tailored to meet a significant government interest, left open ample alternative channels of communication, and did not allow law enforcement officers excessive discretion in enforcement. The court concluded that some of the manner restrictions imposed by the ordinance only affected conduct, not speech, and that the remaining provisions that did implicate the First Amendment were valid under the above three factor analysis.

In February 1997, the court granted summary judgment in favor of the defendants regarding the two remaining ordinances. The court held that the plaintiffs lacked standing to challenge one of the ordinances because it was no longer being enforced. Regarding the second ordinance, which included solicitation restrictions, the court indicated that: (i) there was no evidence that the ordinance discriminated against speakers

based on the content of their speech; (ii) the ordinance was narrowly tailored so as to achieve the significant government interest of preventing “intimidating, threatening, or harassing” conduct; (iii) sufficient “alternative channels” for communicating would still be available; and (iv) the ordinance did not place excessive discretion in the hands of law enforcement officials. Therefore, the court granted summary judgment for the defendants regarding the second ordinance.

Fifth Avenue Presbyterian Church v. City of New York, 177 Fed. Appx. 198 (2d Cir. 2006), cert. denied, 127 S. Ct. 387 (2006).

The Fifth Avenue Presbyterian Church sought a preliminary injunction preventing the City of New York from dispersing homeless persons whom the church invited to sleep on its outdoor property. In January 2004, the district court granted a preliminary injunction against the defendants with respect to the church property, finding that the church’s use of its own property was a protected religious activity. However, the court denied the injunction as to the public sidewalk bordering the church’s property. The city appealed to the Second Circuit.

NLCHP filed an amicus brief in the Second Circuit supporting the Church. It argued that the Church’s activity was protected by the First Amendment, and that the activities of the Church were traditional forms of effective core outreach to homeless people. NLCHP also argued that the city’s actions were plainly arbitrary and therefore violated the due process clause of the Fourteenth Amendment. The city’s practice of forced removal of homeless people from the area around the Church also infringed on the homeless individuals’ constitutionally protected freedom of movement.

In affirming the district court’s decision to grant a preliminary injunction, the Second Circuit agreed that the Church’s provision of sleeping space to homeless people was the manifestation of a sincerely held religious belief deserving of protection under the Free Exercise Clause.

After the grant of the preliminary injunction, the Church moved, and the city cross-moved, for summary judgment. The Church requested that (i) the district court reconsider its decision that denied an injunction as to the Church’s sidewalk and (ii) the preliminary injunction be made permanent as to the Church staircases, as well as the Church sidewalk area. The Church claimed that the city’s actions violated its rights under the Free Exercise Clause of the First Amendment and that, therefore, the city’s actions must be subject to strict scrutiny. The court rejected the city’s claim that its actions were necessary to address a public nuisance. In October 2004, the district court granted the permanent injunction with respect to the Church staircases, based on the Church’s First Amendment claim. The city appealed to the Second Circuit.

NLCHP filed another amicus brief on the Church’s behalf in the Second Circuit. In addition to agreeing with the lower court’s holding, NLCHP argued that the city’s raids violated the homeless persons’ fundamental right of association, right to free speech, and right to travel. Further, NLCHP contended that selective enforcement of nuisance and

health laws under which the police conducted the raids violated the plaintiffs' equal protection rights.

In April 2006, the Second Circuit affirmed the lower court's decision. The court rejected the city's public nuisance argument because there was no evidence proffered that the conduct at issue constituted a health risk to anyone. Further, the Second Circuit held that the district court could not rely upon a city administrative code to conclude that the Church's sidewalk was a public place.

In October 2006, the U.S. Supreme Court denied the city's petition for writ of certiorari.

Glover v. Executive Director of the Indiana War Memorials Commission, No. 1:07-cv-1109 (S.D. Ind., filed Aug. 30, 2007).

A class of plaintiffs filed a complaint against the Indiana War Memorials Commission an entity that controls and manages certain public parks and memorials in the city of Indianapolis and throughout the state of Indiana. In the complaint they alleged that the commission has a policy or practice of removing persons from grounds controlled by the commission who are deemed to be "loitering" or engaging in other unlawful conduct based on unwritten and amorphous standards. The complaint specifically challenges the commission's practice of giving certain homeless individuals "no trespass" orders subjecting them to arrest and prosecution if they enter property controlled by the commission in the future. Additional practices challenged in the lawsuit include the imposition of a requirement by the commission that charitable groups obtain (and pay for) a permit in order to provide food to homeless individuals and that such groups limit the locations for food distributions.

The plaintiffs seek an injunction against the issuance and/or enforcement of no-trespass orders and the banning of persons from commission property based on what commission employees deem to be "loitering." The case is pending.

Halfpap v. City of Las Vegas, No. 2:06-CV-01636-RCJ-RJJ (D. Nev. Dec. 20, 2006).

In November 2006, three men were arrested for violating a repealed provision of a Las Vegas city ordinance, which prohibited, among other acts, sleeping within 500 feet of a deposit of feces or urine. The pertinent provisions of the law, which the city had passed a law in August 2006 prohibiting sleeping within 500 feet of a deposit of feces or urine, the pertinent provisions of the law were repealed in September 2006.

The three individuals filed a lawsuit against the city that included numerous causes of action including violation of their civil rights, negligence, false imprisonment and assault and battery. In March 2007, the three plaintiffs entered into a settlement with the city under which the city paid each plaintiff \$15,000 in damages.

Henry v. City of Cincinnati, No. C-1-03-509 (S.D. Ohio 2003).

Homeless individuals brought a § 1983 action against the city alleging violations of First, Fourth, Eighth, and Fourteenth Amendment rights when the city (i) passed restrictive anti-panhandling ordinances and (ii) threatened to arrest plaintiffs and seize their property after putting “no trespassing” signs up at an encampment serving as shelter for the plaintiffs. The District Court granted plaintiffs’ motion for a temporary restraining order against arresting plaintiffs or taking their belongings from the encampment. The case with respect to the sweeps settled soon after it was filed. An agreement was reached whereby the police must give a homeless individual who is engaging in prohibited activity 72 hours notice before arresting that person. The officer must transmit this notification to a designated social service agency to conduct any outreach needed to help the person find a place to go or services. The 72-hour time period does not begin until the officer contacts the social service agency. See Section II Challenges to Anti-begging, Anti-soliciting, and Anti-panhandling Laws, for status of the challenge to anti-panhandling law.

Henry v. City of New Orleans, No. 03-2493 (E.D. La. 2005).

In September 2003, New Orleans Legal Assistance, NLCHP, and two New Orleans lawyers filed a § 1983 action against the city and police department on behalf of five homeless plaintiffs alleging violations of their First, Fourth, Ninth, and Fourteenth Amendment rights when the plaintiffs were arrested or given citations for sitting on the sidewalk outside their employer’s door waiting for their paychecks. Approximately two months after the suit was filed, the police department made an announcement that it was changing its policy in dealing with homeless persons on the streets. The police department’s new policy includes discontinuing mass round-ups and arrests for obstructing the sidewalk. Under the new policy, police are to call for a homeless assistance unit when encountering homeless people on the street, instead of arresting people. Federal and local funds have been dedicated to the new outreach program and to the construction of a new shelter. The program also includes the creation of more shelter beds in an existing shelter, the expansion of shelter hours, subsidies by the city for shelter fees and homeless contact sheets for all officers.

In April 2005, the claims of three of the plaintiffs settled, with the two individuals who were issued citations receiving \$500 each and the individual who spent 12 hours in jail receiving \$1,000. The claims of the remaining plaintiffs were withdrawn and dismissed after those plaintiffs could not be reached.

Hershey v. City of Clearwater, 834 F.2d 937 (11th Cir. 1987).

A motorist challenged the constitutionality of Clearwater’s town ordinance prohibiting “lodg[ing] or sleep[ing] in, or about any” motor vehicle. The U.S. Court of Appeals for the Eleventh Circuit held that the ordinance’s prohibition on sleeping in a motor vehicle was unconstitutionally vague and overbroad. In upholding the prohibition on lodging, the

court found that it was a reasonable restriction within the police power of the city and gave proper notice of the conduct prohibited, and thus survived a void for vagueness challenge.

Joel v. City of Orlando, 232 F.3d 1353 (11th Cir. 2000), cert. denied, 149 L.Ed.2d 480 (2001).

James Joel, a homeless person, filed suit against the City of Orlando, arguing that the city ordinance prohibiting “camping” on public property violated his rights under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. City of Orlando police officers arrested Joel for violating Section 43.52 of the City’s Code for “camping” on public property. “Camping” under the code was defined to include “sleeping out-of-doors.” The District Court granted summary judgment in favor of the City, and Joel appealed to the Circuit Court. The Circuit Court affirmed the District Court’s decision, holding that Joel had failed to prove that the ordinance was enacted for the purpose of discriminating against homeless people.

Considering the equal protection claim, the Court held that homeless persons are not a suspect class and that sleeping out-of-doors is not a fundamental right. Therefore, the Court used the rational basis test and held that the City was pursuing a legitimate governmental purpose by promoting aesthetics, sanitation, public health, and safety. Further, it rejected Joel’s argument that even if the City met the rational basis test standard, the code nonetheless violated equal protection because it was enacted to “encourage ‘discriminatory, oppressive and arbitrary enforcement’” against homeless people. The Court found no such purpose behind the code.

The Court also rejected Joel’s argument that the code was impermissibly vague on its face, and as applied to him. The court held that Joel’s conduct was clearly within the scope of the code, and that the code was specific enough for a reasonable person to understand. Further, while the court agreed that police officers would have to use discretion in deciding what constitutes prohibited conduct, it found that guidelines promulgated by the City to assist police in enforcement were sufficient to decrease the likelihood of arbitrary and discriminatory enforcement. Finally, the Court rejected Joel’s argument that the City code violates his right to be free of cruel and unusual punishment. The Court stated the City of Orlando has never reached its maximum capacity in its homeless shelters and no individual is turned away; therefore, Joel had an opportunity to comply with the ordinance. The Court ruled that unlike *Pottinger v. City of Miami*<sup>60</sup> and *Johnson v. City of Dallas*,<sup>61</sup> where sleeping out-of-doors was involuntary for homeless people, here it was voluntary.

Johnson v. City of Dallas, 61 F.3d 442 (5th Cir. 1995).

A class of homeless plaintiffs challenged Dallas’ ordinances prohibiting sleeping in public, solicitation by coercion, removal of waste from garbage receptacles, and

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<sup>60</sup> 810 F. Supp. 1551 (S.D. Fla. 1992), *remanded for limited purpose*, 40 F.3d 1155 (11th Cir. 1994).

<sup>61</sup> 860 F. Supp. 344, 350 (N.D. Tex. 1994), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995).

providing for the closure of certain city property during specific hours. Plaintiffs alleged that the city's enforcement of these ordinances violated their rights under the Eighth, Fourth, and Fourteenth Amendments. Plaintiffs also claimed the city's conduct constituted wrongful (tortious) malicious abuse of process. The U.S. District Court for the Northern District of Dallas granted plaintiffs' motion for a preliminary injunction in part, holding that the sleeping in public prohibition violated the Eighth Amendment because it imposed punishment on plaintiffs for their status as homeless people. Nevertheless in its ruling on the motion for a preliminary injunction, the court, in dicta, rejected plaintiffs' other claims, including the Equal Protection claims, finding that the challenged ordinances did not impinge on plaintiffs' right to travel, homeless people do not constitute a suspect or quasi-suspect class, and the laws were rationally related to a legitimate state interest.

On appeal, the Fifth Circuit reversed the district court's order, vacated the preliminary injunction, and remanded the case with instructions to dismiss plaintiffs' Eighth Amendment claims for lack of standing. The court held that the Constitution's prohibition on cruel and unusual punishment applies only after conviction for a criminal offense, and, on the record before it—compiled prior to the district court's certification of the action as a class action—there was no apparent evidence that plaintiffs had actually been convicted of sleeping in public as opposed to merely being cited or fined. The District Court did not dismiss the case as ordered by the Fifth Circuit. Defendants then filed a motion for summary judgment, which was denied.

Defendants next filed a petition for a Writ of Mandamus asking the Fifth Circuit to order the district court to dismiss the Eighth Amendment claim. Without seeking a response from plaintiffs, the Fifth Circuit issued the writ ordering the district court to dismiss the entire case. The district court dismissed the case as ordered. Plaintiffs filed a motion for reconsideration with the Fifth Circuit. As the thirty-day deadline for filing a notice of appeal for the dismissal approached, the Fifth Circuit still had not ruled on the motion for reconsideration. Therefore, plaintiffs filed a notice of appeal of dismissal to the Fifth Circuit. The Fifth Circuit then entered a modified writ ordering the district court to dismiss the Eighth Amendment claim only.

On April 24, 2001, the trial court granted Defendants' motion to dismiss the remaining claims, in addition to the Eighth Amendment claim.<sup>62</sup> The court ruled there could be no violation of the Fourth Amendment where Plaintiffs failed to establish they were ever actually arrested for sleeping in public. The court did not address plaintiffs' arguments attacking the vagueness of the Ordinances. Instead, the court described the issue before it “a simple one” and ruled that because plaintiffs failed to present any evidence of their arrest, probable cause is factually uncontested and the arrests presumptively constitutional. Therefore, the court dismissed the case.

NLCHP filed two amicus briefs in support of plaintiffs; the U.S. Department of Justice also filed an amicus brief in support of plaintiffs.

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<sup>62</sup> No. 3:94-CV-00991-X (N.D. Tex. Apr. 24, 2001).



Johnson v. Freeman, 351 F. Supp. 2d 929 (E.D. Mo. 2004).

Several individuals who are homeless or who were mistakenly identified as being homeless by police filed a § 1983 action, seeking injunctive and declaratory relief and damages against the City of St. Louis and the St. Louis Board of Police Commissioners. The plaintiffs alleged police “sweeps” against individual plaintiffs during the July Fourth holiday, in which arrests were apparently made without probable cause and for arguably fabricated charges, and during which firecrackers were used to intimidate plaintiffs. Moreover, plaintiffs alleged that police gave them the “option” to either perform community service and be released before adjudication of guilt or remain in jail. Plaintiffs’ claims included violations of their Fourth, Fifth, Thirteenth, and Fourteenth Amendment rights, for unlawful searches and seizures, unlawful restraints on travel, punishment without due process, and involuntary servitude.

In October 2004, the district court issued a preliminary injunction, which requires the police to stop harassment of homeless people, downtown sweeps of the homeless before events, and arrests of homeless individuals without probable cause. When issuing the preliminary injunction, the court found the probability of a threat of irreparable harm because “so long as the practice of targeting homeless and homeless-appearing people to remove them from the Downtown area continues, plaintiffs are likely to suffer repeated violations of their constitutional rights [and such practice] is likely to deter individuals from seeking out the services required for daily living.” The court also found that plaintiffs were likely to succeed on the merits and that the great harm to plaintiffs far outweighed any harm to defendants. The court granted plaintiffs’ motion for preliminary injunctive relief “to protect the public interest and restore the public’s faith in the fair application of law to all citizens.” Subsequently, the court denied the city’s motion to dismiss.<sup>63</sup>

In July 2005, plaintiffs filed to add 13 plaintiffs (for a total of 26) and added as defendants the Downtown St. Louis Partnership and 15 individual police officers. In October 2005, the City settled the case, awarding plaintiffs \$80,000 in damages. The settlement includes a series of protections for homeless persons. For example, the settlement agreement provides that all persons, including homeless persons, have the right to use public spaces so long as their activities are lawful; police shall not take any action to physically remove homeless persons from such spaces; police shall not order any person to move to another location when the person has a legal right to be there; police shall not destroy personal property of homeless persons; and police shall inventory the property of a homeless person who is arrested.

Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006).

Six homeless individuals filed suit to prevent the Los Angeles Police Department from ticketing and arresting people who sit, sleep or lie on public sidewalks. The plaintiffs contended that a city code provision prohibiting sitting, lying or sleeping on any street or sidewalk, as applied to homeless persons, violated the Eighth and Fourteenth

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<sup>63</sup> 370 F. Supp. 2d 892 (E.D. Mo. 2005).

Amendments. The plaintiffs argued that homelessness is an involuntary condition, as long as homeless people outnumber the available shelter beds. The court rejected plaintiffs' arguments and granted summary judgment for the city. The court did not accept plaintiffs' reliance on *Pottinger v. City of Miami*,<sup>64</sup> because plaintiffs were not a certified class and because the court preferred the reasoning in *Joyce v. City and County of San Francisco*,<sup>65</sup> in which the court ruled that homelessness is not a cognizable status. In granting summary judgment to the city, the court noted that the U.S. Supreme Court had never used the Eighth Amendment to protect "discrete acts of conduct even if such acts can be characterized as 'symptomatic' or 'derivative' of one's status."<sup>66</sup>

The plaintiffs appealed the case to the Ninth Circuit. Plaintiffs argued on appeal that because the number of homeless people in the city exceeds the number of shelter beds, homeless persons are forced to "involuntarily break the law each night." Therefore, enforcing the city code provision against plaintiffs essentially criminalizes the status of homelessness, in violation of the Eighth Amendment's cruel and unusual punishment clause. The city argued on appeal that plaintiffs lacked standing to pursue a claim under the Eighth Amendment because plaintiffs were not actually convicted under the city ordinance at issue and cannot demonstrate "real and immediate threat of repeated injury." The city noted that if a homeless person who is unable to find available shelter is charged under the city ordinance, he or she may raise the necessity defense to remove any threat of conviction. In addition, the city rejected plaintiffs' claim that homelessness is a status and contended that protection under the Eighth Amendment does not extend to conduct stemming from one's status.

In response, plaintiffs reiterated the extreme shortage of available shelter beds. Plaintiffs further demonstrated that two plaintiffs claimed they were convicted and they all legitimately feared future conviction and punishment under the city code. Plaintiffs also illustrated practical realities that limit any effectiveness of the necessity defense, as a homeless individual may not know to raise the necessity defense or be able to obtain an attorney to do so.

In April 2006, the Ninth Circuit struck down the ordinance, ruling that the Eighth Amendment prohibits the City from arresting people for sleeping on the street when there are no available shelter beds. The City filed a motion for rehearing and a request for rehearing *en banc*. The Ninth Circuit ordered mediation, and the parties settled the case. The settlement provides that the Los Angeles Police Department will not enforce the city code provision at issue between the hours of 9:00 p.m. and 6:00 a.m. until an additional 1,250 units of permanent supportive housing are constructed within the City of Los Angeles, at least 50% of which are located in Skid Row and/or greater downtown Los Angeles. The city may, however, enforce the code within ten feet of any operational and utilizable entrance to a building, exit, driveway or loading dock. In addition, before any person may be cited or arrested for a violation of the ordinance, a police officer must first

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<sup>64</sup> 76 F.3d 1154 (11th Cir. 1996).

<sup>65</sup> 87 F.3d 1320 (9th Cir. 1996).

<sup>66</sup> Order Denying Plaintiffs Motion for Summary Judgment; Granting Defendants' Motion for Summary Judgment ¶ 18.

provide a verbal warning and reasonable time to move. In the settlement of the case the plaintiffs consented to the city's request that the Ninth Circuit vacate its opinion. Ultimately, the Ninth Circuit opinion was vacated, and remanded to the District Court for dismissal with prejudice against all defendants.<sup>67</sup>

Joyce v. City and County of San Francisco, 87 F.3d 1320 (9th Cir. 1996).

In 1993, plaintiffs filed suit against the City of San Francisco challenging the "Matrix" program, San Francisco's official policy of vigorously enforcing a set of ordinances against homeless people. The U.S. District Court for the Northern District of California denied plaintiffs' motion for a preliminary injunction on the ground that the proposed injunction lacked specificity, would lead to enforcement problems, and that plaintiffs were unlikely to succeed on the merits. The court rejected plaintiffs' claim that the Matrix program punished them for their status in violation of the Eighth Amendment, finding that homelessness is not a status, and that the Matrix program targeted particular behavior. The court also rejected plaintiffs' claims alleging violations of their right to equal protection, due process, and their right to travel, as well as plaintiffs' vagueness and overbreadth challenges. In 1995, the district court granted defendants' motion for summary judgment.

On appeal, the U.S. Court of Appeals for the Ninth Circuit held, over plaintiffs' objections, that the case was moot because, under its new mayoral administration, the city had eliminated the official Matrix policy, dismissed numerous citations and warrants issued to homeless people under Matrix, and was unlikely to resume the program.<sup>68</sup> NLCHP filed an amicus brief on behalf of plaintiffs-appellants.

Kincaid v. City of Fresno, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006).

Plaintiffs brought suit against the City of Fresno and the California Department of Transportation (CalTrans) for their alleged policy and practice of confiscating and destroying homeless persons' personal property, including essential personal possessions, without adequate notice and in a manner that prevents the retrieval of such personal property prior to destruction. Plaintiffs argued that the sweeps of temporary shelters violate their federal and state constitutional rights to be free from unreasonable search and seizure, to due process of law and equal protection of the laws, as well as their other rights under California statutory and common law. Plaintiffs moved for a temporary restraining order and preliminary injunction prohibiting defendants' conduct.

Defendants contended that there are enough beds for homeless people in the City of Fresno, so they do not need to be present on private or other property within the City; temporary shelters and congregations of homeless persons are a risk to public health and safety and generate significant complaints from residents, businesses and property owners; the City provides sufficient advance notice, orally or sometimes in writing, to homeless persons if they must move or if any unclaimed property will be discarded; and

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<sup>67</sup> 505 F.3d 1006 (9th Cir. 2007).

<sup>68</sup> 87 F.3d 1320 (9th Cir. 1996).

the City has no funds or resources to transport or store the property of homeless persons until it is reclaimed.

The court found that plaintiffs were likely to succeed on the merits of their unlawful seizure claim because the City's "seizure of homeless people's personal property without probable cause and the immediate and permanent destruction of such property without a method to reclaim or to assert the owner's right, title, and interest to recover such personal property violates the Fourth Amendment." The court also found that, because the City was seizing "the very necessities of life: shelter, medicine, clothing, identification documents, and personal effects of unique and sentimental value," the inconsistent and confusing notice of up to a few days was inadequate. There was no post-deprivation remedy or opportunity to reclaim the property because all property was destroyed upon seizure. In addition, the court held that the balance of hardships weighs heavily in favor of plaintiffs. The court granted plaintiffs' motion for preliminary injunction.

In June 2008, the court approved two separate preliminary settlement plans, one between the plaintiffs and the City and the other between the plaintiffs and Caltrans. Under the settlement agreements, the City and Caltrans will contribute \$400,000 and \$85,000, respectively, to a Cash Fund to distribute cash and cash equivalent to verified members of the plaintiff class. In addition, the City will contribute \$1,000,000 to a Living Allowance Fund to distribute funds to third parties for the payment of various living expenses on behalf of verified members of the plaintiff class. The City also agreed to pay plaintiffs' attorneys' fees in the amount of \$750,000 and costs in the amount of \$100,000.

Under the settlement agreement with the City, for at least five years the City must provide written notice to residents of the encampment of any need to vacate an encampment or remove personal property from an encampment. Any personal property of value collected by the City must be stored for 90 days, during which time the property shall be available to be reclaimed. The City must also serve notice to organizations that assist residents of temporary shelters.

Under the settlement agreement with Caltrans, for at least five years Caltrans must follow the legal principles set forth in the preliminary injunction and certain procedures when property is found. In general, Caltrans employees must inform the owner of the property within a reasonable time and return the property to the owner. When the owner is unknown, depending on the value of the property found, the property must be turned over to the city police or the sheriff's department, or held for three months. For any property held by Caltrans, a Lost and Found Report must be kept for 24 months. The notice to the plaintiff class will include a statement encouraging homeless people in Fresno not to set up camps or otherwise trespass or illegally encroach upon Caltrans property. In July 2008, the court approved final settlement of the case.

Kreimer v. State of New Jersey, No. 05-1416 (DRD) (D.N.J. 2005).

A homeless man filed a suit against the State of New Jersey, the Governor of New Jersey, the City of Summit, New Jersey Transit, nine police officers and others, claiming that he and other homeless people have been unlawfully thrown out of train stations since August 2004. Several times the plaintiff had a train ticket, but was asked to either leave the station or a train by various NJ Transit employees or face arrest for trespassing and/or loitering. The plaintiff contends that those actions violated his federal constitutional rights, including his rights under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution, as well as his rights under the New Jersey constitution and various state statutes. The City of Summit has filed 15 defenses against the lawsuit, including an invocation of the U.S. Patriot Act. The Justice Department opposed use of the Patriot Act, claiming that “to apply it to this case is . . . an overreaching application of the law.” The plaintiff voluntarily dismissed his complaint in February 2006 and the case was terminated in April 2006.

Lee v. California Department of Transportation, 1992 U.S. Dist. LEXIS 21916, No. 3:92-CV-03131-SBA (N.D. Cal. Oct. 26, 1992).

A group of homeless individuals, who were arrested for illegally lodging on state property, brought a class action against the California Department of Transportation and local and state police departments, alleging that their essential personal belongings were intentionally confiscated and destroyed without even rudimentary process or compensation. Plaintiffs’ Section 1983 claims alleged denial of due process and equal protection. In addition, plaintiffs alleged that defendants violated state laws relating to handling of lost property and establishment of tort liability.

The California State Police and its Chief moved to dismiss plaintiffs’ complaint, and thereafter reached a settlement with plaintiffs. The State Police agreed not to destroy certain items of personal property of homeless persons, including eyeglasses, books and blankets, without providing a reasonable opportunity to recover the property. The City of Oakland defendants reached a similar settlement with plaintiffs.

The California Department of Transportation (“CALTRANS”) and its director also moved to dismiss the case. CALTRANS argued that the Ninth Circuit’s ruling in *Stone v. Agnos* required dismissal of plaintiffs’ Section 1983 claim because *Stone* held that the disposal of property in connection with arrests for illegal lodging does not violate due process. Plaintiffs argued in response that *Stone* applies only to negligent confiscation of property, not the intentional destruction that was at issue in this case.

The court granted in part and denied in part defendants’ motion to dismiss. Because Section 1983 only applies to “persons,” the court dismissed the Section 1983 claims against CALTRANS. As for the director of CALTRANS, the court rejected defendants’ argument based on *Stone*, because the motion in *Stone* was for summary judgment, where

plaintiffs had to put forward evidence that the destruction of property was deliberate. In the present motion to dismiss, however, the court must accept plaintiffs' allegations (that the destruction of property was planned and deliberate) as true. Therefore, the court denied defendants' motion to dismiss the Section 1983 claims against the director of CALTRANS.

In May 1993, CALTRANS, its director, and plaintiffs reached a settlement. Under the agreement, CALTRANS must conspicuously post, in Spanish and in English, the location where property is found on a state right of way for 48 hours before the property (except immediate hazards) is removed. The posting must include the date and approximate time of the expected removal of the property; an advisement that property is subject to confiscation, and possible disposal, if not removed; a brief explanation of how to reclaim confiscated property; and the Department of Transportation public information telephone number. CALTRANS must retain items confiscated for 20 days, but its employees "will not be required to sift through piles of garbage to find items of value" or "spend inordinate time or resources collecting or storing property." Possessions will be released to persons who can identify them. Lastly, CALTRANS will not interfere with any law enforcement agencies' handling of arrestees' personal property in connection with arrests of homeless persons on state rights of ways.

Lehr v. City of Sacramento, No. 2:2007 at 00707 (E.D. Cal Aug. 2, 2007).

Alleging violations of their Fourth, Eighth, and Fourteenth Amendment rights, a group of homeless plaintiffs challenged and sought to enjoin enforcement of a Sacramento ordinance that prohibits homeless persons from sleeping outside. They also challenged the City's and County's practice of taking and destroying their personal property, without providing adequate notice and the opportunity to retrieve or reclaim personal possessions before they are destroyed.

Plaintiffs argued that because sleeping is necessary to maintain human life, enforcement of the ordinance punishes plaintiffs based on their status as homeless persons, and therefore violates the Eighth Amendment's prohibition on cruel and unusual punishment. Plaintiffs noted in their complaint that rental housing in Sacramento is beyond the means of homeless people, and, with thousands of people waiting for housing, the waiting time for persons on waiting lists for public housing or subsidized housing is more than two years. Further, shelters in Sacramento city and county cannot accommodate all homeless people in the area on any given night.

In relation to the confiscation of plaintiffs' property, the plaintiffs further argued that the property confiscation without notice is a violation of their Fourteenth Amendment rights to due process of law and to be free from unreasonable searches and seizures. Lastly, plaintiffs argued that defendants' conduct reflects their "animus towards this disfavored group and lacks a rational relationship to any legitimate state interest," in violation of the Equal Protection Clause of the Fourteenth Amendment.

Plaintiffs sought class certification, as well as a temporary restraining order and/or preliminary injunction and permanent injunction, declaratory judgment, return of Plaintiffs' property, damages of at least \$4,000 per incident and attorneys' fees and costs.

The city argued in response that the ordinances at issue are typically only enforced during the daylight hours and only in response to complaints by private property owners. The city stated that it provides a form to any person whose personal property is taken by the city as part of any citation or arrest, indicating when and where such property can be claimed. On December 12, 2008, the parties agreed to mediate the matter, but the case is still pending. Trial is scheduled for January 2010. On March 24, 2009, the City Council held a closed meeting in which it discussed the lawsuit. It then held a special meeting in which it passed resolutions to approve a strategy to improve and expand homeless services and funding of over \$1 million to implement the strategy. The strategy includes providing shelter beds, transitional housing, permanent supportive housing, permanent housing, storage for personal property, kennel services for pets, and other supportive services. The first statement in the background section of the resolution states, "housing is a basic human right."

Love v. City of Chicago, No. 96-C-0396, 1998 U.S. Dist. LEXIS 1386 (N.D. Ill. Feb. 5, 1998).

Alleging violations of their Fourth, Fifth, and Fourteenth Amendment rights, a group of homeless plaintiffs challenged Chicago's policy and practice of seizing and destroying the personal property of homeless people in the course of cleaning particular areas of the city. After the city made some of plaintiffs' requested modifications to the challenged procedures, the U.S. District Court for the Northern District of Illinois denied plaintiffs' motion for a preliminary injunction, finding that the city's practice was reasonable and did not violate plaintiff's rights.<sup>69</sup>

On March 11, 1997, plaintiffs sought to certify a class of homeless persons whose possessions were destroyed due to the city's off-street cleaning program. The court held that plaintiffs had satisfied all requirements for certification, and granted plaintiffs' class certification motion.

In December 1997, the city discarded the possessions of homeless individuals despite the fact that the possessions had been stored in "safe areas" as allowed by the Temporary Procedures. This action prompted plaintiffs to bring a renewed motion for a preliminary injunction claiming that the procedures violated plaintiffs' Fourth, Fifth and Fourteenth Amendment rights. The amount of possessions was greater than usual owing to Thanksgiving charity donations, and they were discarded along with others that had fallen off the safe areas and obstructed roadways.

While finding that the city violated its own procedures, the court was unwilling to require sanitation workers to sort through possessions of homeless people for reasons of sanitation and impracticability, stating that homeless people have the burden of

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<sup>69</sup> *Love v. City of Chicago*, No. 96-C-0396 (N.D. Ill. Oct. 10, 1996).

separating and moving those items they deem valuable. Specifically, the court found that the program did not violate the Fourth Amendment, as it was reasonable, minimally intrusive and effective in preserving possessions of homeless people. The court stated that property normally taken by the city under the program is considered abandoned. The court ruled, however, that losses of possessions that had been placed in safe areas and subsequently discarded must be compensated. But as plaintiffs had not yet attempted to recover any compensation, any action was premature. Finally, the court held that the city adequately provided notice to homeless people through its practice of posting signs in the area, having city employees give oral notice a day before cleaning, and a second oral notification minutes before cleaning.

Metropolitan Council Inc. v. Safir, 99 F. Supp. 2d 438 (S.D.N.Y. 2000).

Plaintiff, a tenants' advocacy organization, filed suit to enjoin the city from preventing vigil participants who were protesting city rent increases from lying and sleeping on city sidewalks. The city took the position that it had authority to forbid all sleeping on city sidewalks because of the interest in safeguarding sleeping persons from the dangers of public places and keeping the sidewalks clear of obstructions. The court granted the preliminary injunction ruling that the First Amendment to the U.S. Constitution does not allow the city to prevent an orderly political protest from using public sleeping as a symbolic expression. The Court held a statute that bans all public sleeping in any manner on public sidewalks is overbroad. However, the Court did not maintain that the city could never regulate "disorderly public sleeping." On that issue, "the Court expresse[d] no opinion on and erect[ed] no bar to the City's prosecution for disorderly conduct of persons who are vulnerable and/or risk creating obstructions when they sleep prone on a City sidewalk."

Patton v. City of Baltimore, No. S-93-2389, (D. Md. Sept. 14, 1994).

Plaintiffs filed an action in federal court against the City of Baltimore, the Downtown Management Authority, and the Downtown Partnership to prevent the continued arrest and harassment of homeless individuals engaged in ordinary and essential daily activities in public, such as sleeping, sitting, and meeting with friends, as well as begging. In its ruling on plaintiffs' motion for a preliminary injunction, the court struck down the city's anti-aggressive panhandling ordinance, holding that it violated the Fourteenth Amendment's Equal Protection Clause because it unlawfully discriminated between solicitation for charity and other types of solicitation. However, the court also found that the ordinance was narrowly tailored to meet a compelling state interest in protecting citizens and promoting tourism and thus did not violate the First Amendment. The court dismissed plaintiffs' claims alleging violations of their rights to privacy, freedom from cruel and unusual punishment, freedom of association, freedom from unreasonable search and seizure, and due process; and refrained from deciding whether there is a right to freedom of intrastate movement.

In September 1994, the parties reached a settlement agreement in which the city was to amend its panhandling ordinance to reflect that panhandling is protected speech and that



persons are allowed to remain in public places unless they are violating other laws. The city also agreed to repeal a park solicitation rule, inform all officers and employees of these changes, adopt policies with respect to homeless people and panhandlers, train officers, notify the public, and monitor compliance.<sup>70</sup>

Picture the Homeless v. City of New York, No. 02 Civ. 9379 (S.D.N.Y. March 31, 2003).

The New York Civil Liberties Union brought a § 1983 action on behalf of Picture the Homeless, a grass-roots organization led by homeless and formerly homeless persons, against the city and its police department alleging violations of the Due Process Clause of the Fourteenth Amendment for police harassment of homeless persons. The plaintiff alleged that the police were targeting homeless persons by arresting them for offenses for which non-homeless persons were not arrested. The parties settled the suit shortly after it was filed in 2003. The defendants issued directives to all officers on the Homeless Outreach Unit and the NYPD Transit Bureau forbidding them to enforce laws selectively against homeless people, and, in the case of the Homeless Outreach Unit, to confirm that their primary mission is to provide outreach services to the homeless.

Project Share v. City of Philadelphia, No. 93-CV-6003 (E.D. Pa. 1993).

Plaintiffs sought a temporary restraining order and permanent injunction to prevent the City of Philadelphia from carrying out a proposed plan to seize, arrest, and remove homeless persons from concourses in the center city in the absence of alternative shelter. Plaintiffs alleged that the city's actions would violate their rights under the Fourth, Eighth, and Fourteenth amendments. The motion was voluntarily dismissed after the city agreed to find shelter for the homeless people who were likely to be affected by the proposed plan.

Pottinger v. City of Miami, 76 F.3d 1154 (11th Cir. 1996).

A class of homeless plaintiffs challenged Miami's policy of arresting homeless people for conduct such as sleeping, eating, and congregating in public, and of confiscating and destroying homeless people's belongings. At trial, the U.S. District Court for the Southern District of Florida found that some 6000 people in Miami were homeless, that there were fewer than 700 shelter spaces, and that plaintiffs were homeless involuntarily. The court found that the criminalization of essential acts performed in public when there was no alternative violated the plaintiffs' rights to travel and due process under the Fourteenth Amendment, and right to be free from cruel and unusual punishment under the Eighth Amendment. In addition, the court found that the city's actions violated plaintiffs' rights under the Fourth Amendment. The court ordered the city to establish "safe zones" where homeless people could pursue harmless daily activities without fear of arrest.<sup>71</sup>

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<sup>70</sup> Settlement Agreement, *Patton v. City of Baltimore*, No. S-93-2389 (D. Md. Sept. 14, 1994).

<sup>71</sup> *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1584 (S.D. Fla. 1992).

On appeal, the Eleventh Circuit remanded the case to the district court for the limited purpose of clarifying the injunction and considering whether it should be modified, since the “safe zones” were not operating as the district court envisioned.<sup>72</sup> On remand, the district court modified its injunction, enjoining the city from arresting homeless persons until the city established two safe zones.<sup>73</sup> In February 1996, the Eleventh Circuit referred the case for mediation.<sup>74</sup>

The parties negotiated a settlement during the court-ordered mediation process. The city agreed to implement various forms of training for its law enforcement officers for the purpose of sensitizing them to the unique struggle and circumstances of homeless persons and to ensure that their legal rights shall be fully respected. Additionally, the city instituted a law enforcement protocol to help protect the rights of homeless people who have encounters with police officers. The city also agreed to set up a compensation fund of \$600,000 to compensate aggrieved members of the community. NLCHP filed an amicus brief on behalf of plaintiffs-appellees.

Richardson v. City of Atlanta, No. 97-CV-2468 (N.D. Ga. Aug. 28, 1997).

Nine Atlanta homeless people filed a federal lawsuit asking a judge to declare unconstitutional Atlanta’s “urban camping” ordinance, which makes it a crime to sleep or lie down on public grounds. The city ordinance, which had been in effect more than six months, made it a crime to use any public place, including city parks and sidewalks, for living accommodations or for camping. It also made it illegal “to sleep, to lie down” or store personal property in any park owned by the city. Anyone found guilty of the crime could be imprisoned up to six months. Among those arrested were Charles Richardson, who was lying on a bench waiting for a soup kitchen to open and Christopher Parks, a homeless, seven-year employee at a restaurant, who missed one week of work sitting in jail after he was arrested for “urban camping” outside the city’s Traffic Court building. The lawsuit stated that the police violated the Fourteenth Amendment’s equal protection clause by targeting homeless people when enforcing the law, saying it constitutes punishment for individuals solely because they are homeless. The lawsuit also contended that city police were violating the rights of homeless people by either leaving or disposing of their belongings after they are arrested. The lawsuit settled and the plaintiffs received damages. As part of the settlement, the city has revised the ordinance to significantly limit the scope. Atlanta police officers must also now designate on arrest records the housing status of all detainees, in order to more effectively track patterns of discriminatory arrests of homeless people. Finally, police officers will undergo training regarding the issues and challenges those that face those who are homeless.

Roulette v. City of Seattle, 78 F.3d 1425 (9th Cir. 1996).

Homeless residents of Seattle challenged the city’s ordinances that prohibited sitting or lying on downtown sidewalks during certain hours and aggressive begging. Plaintiffs

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<sup>72</sup> 40 F.3d 1155 (11th Cir. 1994).

<sup>73</sup> No. 88-2406 (S.D. Fla. Apr. 7, 1995).

<sup>74</sup> 76 F.3d 1154 (11th Cir. 1996).

alleged violations of their rights of freedom of speech, due process, equal protection, and the right to travel. The district court granted the city's motion for summary judgment, rejecting plaintiffs' vagueness, substantive due process, equal protection, right to travel, and First Amendment challenges to the sidewalk ordinance. In addition, the court also dismissed plaintiffs' challenge to the aggressive begging ordinance on vagueness and overbreadth grounds. However, the court did limit the construction of the ordinance to prohibit only threats that would make a reasonable person fearful of harm, and struck down the section of the ordinance that listed criteria for determining whether or not there was the intent to intimidate.<sup>75</sup>

On appeal, the Ninth Circuit affirmed the district court's decision, upholding the sidewalk ordinance. The Court of Appeals rejected plaintiffs' facial substantive due process and First Amendment challenges, holding that sitting or lying on the sidewalk is not integral to, or commonly associated with, expression.<sup>76</sup> In dissent, Judge Pregerson asserted that Seattle's time, place, and manner restrictions on expressive content are not narrowly tailored to serve a significant government interest and do not leave open ample alternative channels of expression, and thus constitute a violation of plaintiffs' First Amendment rights.<sup>77</sup> The Ninth Circuit denied plaintiffs' petition for rehearing *en banc*. NLCHP filed an amicus brief on behalf of plaintiffs-appellants.

Ryden v. City of Santa Barbara, Case No. CV09-1578 SVW (C.D. Cal. March 6, 2009).

A class of homeless plaintiffs in Santa Barbara, California, brought a lawsuit with the assistance of the ACLU of Southern California, brought a lawsuit against the City of Santa Barbara and its police department challenging city ordinances that prohibit sleeping in public places. The plaintiffs' alleged that the City of Santa Barbara is violating the Fourth, Fifth, Eighth, and Fourteenth Amendments and the Americans with Disabilities Act when it criminalizes plaintiffs for sleeping in public places when there is not shelter available. The plaintiffs are requesting preliminary and permanent injunctions to prevent the defendants from enforcing the city ordinances and a declaration that the defendants' actions violate the plaintiffs' constitutional rights.

The plaintiffs are chronically homeless individuals who will be displaced from a 200-bed winter emergency shelter in Santa Barbara when it is transformed into a 100-bed transitional housing facility. The plaintiffs have mental and/or physical disabilities that prevent them from working or obtaining shelter for themselves. Two of the four named plaintiffs are veterans and all four named plaintiffs worked before becoming disabled. A conditional use permit requires the transitional housing facility to exclude the plaintiffs who are unable to work because the permit allows the facility to house only episodically homeless individuals who are able to work. None of the plaintiffs are able to work. The plaintiffs allege that when the shelter closes and they are displaced, they will be forced to

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<sup>75</sup> *Roulette v. City of Seattle*, 850 F. Supp. 1442 (W.D. Wash. 1994), *aff'd*, 78 F.3d 1425 (9th Cir. 1996).

<sup>76</sup> 78 F.3d 1425, *amended*, 97 F.3d 300 (9th Cir. 1996). Plaintiffs did not appeal the district court's ruling on the aggressive begging ordinance.

<sup>77</sup> 97 F.3d 300, 308 (Pregerson, J., dissenting).

sleep in public places because Santa Barbara fails to provide available alternative shelter despite having the authority and the resources to do so. The case is pending.

Sager v. City of Pittsburgh, No. 03-0635 (W.D. Pa. 2003).

A class of homeless plaintiffs brought a § 1983 action against the City of Pittsburgh alleging violations of their Fourth, Fifth, and Fourteenth Amendment rights when the city asked the Pennsylvania Department of Transportation to conduct repeated sweeps of homeless peoples' property located on PennDOT land.

The parties reached a settlement agreement that provided procedures for: pre-collection notification, collection of personal items during clean-ups, and for the return of property collected. The city agency responsible for the clean-up is now required to give 7 days written notice to homeless persons by posting the notice at each encampment or at each identifiable group of possessions, and by faxing the notice to homeless service providers. All items that are not health/safety hazards or refuse are to be placed in large, transparent trash bags and properly tagged and itemized. Notice will be posted as to recovery procedures. The agreement outlines specific days and times that a secure storage area must be available to persons reclaiming their belongings.

Sippelle v. City of Laguna Beach, No. 08-01447 (C.D. Cal., filed Dec. 23, 2008).

Homeless individuals in Laguna Beach, California with the assistance of the ACLU of Southern California and local law firms filed a lawsuit against the City of Laguna Beach and its police department challenging both a city ordinance that prohibits sleeping in public places and the selective targeting and harassment of homeless individuals by the police. The complaint highlights a range of conduct by the local police department that prevents homeless individuals from carrying out life-sustaining activities, including criminalization of sleeping in public places, selective enforcement of local ordinances and laws, unwarranted stops and interrogations, and confiscation of property.

In their complaint the plaintiffs contend that Laguna Beach had, prior to the filing of the complaint, organized a "Homeless Task Force" comprised of local leaders and that the city council had fully adopted the findings of the task force. The task force found that the city's homeless population, most of whom suffer from mental and/or physical disabilities, do not receive necessary mental health or medical care nor are there a sufficient number of shelter beds available. The complaint alleges that in spite of the findings of the task force, the defendants continue to harass and intimidate homeless residents pursuant to the anti-sleeping ordinance and other quality of life ordinances, and that the city has obstructed volunteers' efforts to assist the homeless community.

The complaint specifically alleges violations of the Fourth, Eighth and Eighteenth amendment, as well as violations of certain provisions of the Americans with Disabilities Act. On March 4, 2009, the Laguna Beach City Council repealed the city ordinance challenged in the complaint. However, the case is still pending as the plaintiffs seek to

seal or expunge the citations and arrests that the plaintiffs suffered as a result of the city's enforcement of the ordinance.

Spencer v. City of San Diego, No. 04 CV-2314 BEN (S.D. Cal. May 2, 2006).

A class of homeless plaintiffs brought a § 1983 action challenging the issuance of illegal lodging citations to homeless individuals sleeping on the street. Plaintiffs alleged that the citations violate their Eighth Amendment rights to be free from cruel and unusual punishment because there is no alternative sleeping area available. The city filed a motion to dismiss, claiming that none of the plaintiffs were actually convicted under the illegal lodging law. The plaintiffs filed an amended complaint alleging that 7 of the 10 plaintiffs were convicted under the law. The city filed another motion to dismiss, stating that the plaintiffs did not receive any punishment and thus could not raise their Eighth Amendment claims.

In April 2006, the court denied the city's motion to dismiss, citing *Jones v. City of Los Angeles*. In November 2006, plaintiffs filed a memorandum of points and authorities supporting their application for preliminary injunction. Plaintiffs contended that they would succeed on the merits because the issuance of "sleeping tickets" to San Diego's homeless people impermissibly criminalizes involuntary acts "at all times and all places." Plaintiffs cited *Jones v. City of Los Angeles*, which held that a city cannot "criminalize acts (such as sleeping) that are an integral aspect" of the status of being homeless. Plaintiffs also cited announcements by the Mayor and the Police Chief vowing to continue to issue "illegal lodging" tickets to homeless people pursuant to the statute.

In February 2007, the parties entered into a settlement agreement. Under the agreement, the parties agreed that the San Diego Police Department officers "will not ordinarily issue Penal Code section 647(j) citations between the hours of 2100 and 0530." The settlement agreement was based on, and incorporated by reference, the S.D.P.D.'s training bulletin, dated November 17, 2006, regarding the illegal lodging statute. The training bulletin emphasizes that officers must remember that part of their role is to provide information to people about relevant social services and to assist those who cannot assist themselves. It provides guidelines that limit the enforcement of the illegal lodging statute (e.g., only in areas where the city has received complaints and not ordinarily between the hours of 2100 and 0530). The bulletin also outlines various procedures that should be followed before issuing a citation (e.g., establishing that the person's conduct constitutes "lodging" and then establish that the lodging is "without permission"), as well as additional investigative issues that should be considered.

Stone v. Agnos, 960 F.2d 893 (9th Cir. 1992).

A homeless man arrested for lodging in public alleged that his arrest violated his First Amendment rights and the destruction of his property following his arrest violated his Fourteenth Amendment right to due process. The court held that because sleeping is not protected under the First Amendment, there was no violation. The court also rejected the

plaintiff's due process claim on the ground that he did not show that the police had acted unreasonably.

Streetwatch v. National R.R. Passenger Corp., 875 F. Supp. 1055 (S.D.N.Y. 1995).

Plaintiffs challenged the Amtrak Police's policy of arresting or ejecting persons who appeared to be homeless or appeared to be loitering in the public areas of Penn Station in the absence of evidence that such persons had committed or were committing crimes. The District Court issued a preliminary injunction prohibiting Amtrak police from continuing to engage in the practice, finding that in light of Amtrak's invitation to the public, the practice implicated the Due Process Clause. The court held that Amtrak's Rules of Conduct were void for vagueness, and that their enforcement impinged on plaintiffs' right to freedom of movement and due process.

Whiting v. Town of Westerly, 942 F.2d 18 (1st Cir. 1991).

Two non-homeless out-of-state residents challenged the constitutionality of two Westerly, Rhode Island town ordinances banning sleeping outdoors on either public property or private property of another on overbreadth, vagueness, and equal protection grounds. The U.S. Court of Appeals for the First Circuit affirmed the district court's finding that—absent expressive activity possibly covered by the First Amendment—sleeping in public is not constitutionally protected, neither ordinance was vague or overbroad as applied to plaintiffs' conduct, and enforcement procedures did not violate the equal protection rights of non-residents of Westerly.

Williams v. City of Atlanta, No. 95-8752 (11th Cir. 1996).

A formerly homeless man in Atlanta challenged the constitutionality of Atlanta's ordinance that prohibited "remaining on any property which is primarily used as a parking lot" under the First, Fourth, Ninth, and Fourteenth Amendments and various provisions of the Georgia Constitution. The U.S. District Court for the Northern District of Georgia granted Defendant City of Atlanta's motion for summary judgment, holding that the plaintiff lacked standing to challenge the ordinance since he was no longer homeless and thus no longer among the group of people vulnerable to arrest under it.<sup>78</sup> Plaintiff appealed to the U.S. Court of Appeals for the Eleventh Circuit. However, while the appeal was pending, the city revised the challenged ordinance. The plaintiff still opposed one section of the revised ordinance, but that section was subsequently struck down in the later case, *Atchison v. City of Atlanta* (see below), and *Williams v. City of Atlanta* was dismissed in August 1996.

## **B. State Court Cases**

Archer v. Town of Elkton, Case No. 1:2007-CV-01991 (Md. Dist. Ct. July 27, 2007).

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<sup>78</sup> *Williams v. City of Atlanta*, No. 1:94-CV-2018 (N.D. Ga. Mar. 28, 1995).

Eight homeless individuals sued the town of Elkton, Maryland challenging (i) the August 23, 2006 seizure and destruction of their personal property that they had stored on public property, and (ii) the constitutionality of a city ordinance enacted on June 6, 2007 prohibiting loitering in public places.

On August 23, 2006 the town of Elkton, its police department and its Department of Public Works conducted a raid on a homeless encampment in a wooded area on public property behind a shopping center. During the raid, the plaintiffs were allegedly threatened with arrest and a \$2,000 fine if they attempted to retrieve their belongings from the site. Following the incident, personal property owned by the plaintiffs was removed and destroyed. As a result of these events, the plaintiffs sought actual and consequential damages based on a claim that the town's actions violated the plaintiffs' right to (i) be free from unreasonable search and seizure (under the Fourth Amendment), (ii) due process (under the Fourteenth Amendment), and (iii) equal protection under the Fourteenth Amendment, as the town's actions singled out homeless persons with the goal of driving them from the town. Further, the plaintiffs argued that the seizure and destruction of property violates state constitution and statutory provisions and also constitutes common law conversion, among other claims.

Following the 2006 seizure of plaintiffs' property, the town of Elkton passed an ordinance prohibiting loitering in public places. Specifically, the ordinance defines loitering as "loiter[ing], remain[ing] or wander[ing] about in a public place for the purpose of begging."<sup>79</sup> In addition to challenging the 2006 seizure of their property, the plaintiffs challenged the validity and enforcement of this ordinance. They argued in their complaint that the ordinance violates the First Amendment by prohibiting seeking charitable contributions in public places – an activity that has been held to be protected speech under the First Amendment. Further, among other constitutional arguments, the plaintiffs contend that the ordinance, by not defining key terms therein, is void for vagueness.

As part of their complaint, the plaintiffs sought to enjoin enforcement of the loitering ordinance, in order to prohibit the town from charging, arresting or threatening to arrest anyone under the ordinance. Although the injunction was denied by the circuit court, the plaintiffs succeeded in obtaining an injunction from the Maryland Court of Special Appeals, pending appeal of the circuit court decision. In September 2007, the Elkton Town Commission voted unanimously to rescind the loitering ordinance. In December 2008, the city settled the lawsuit with respect to the property destruction. The city agreed to provide each plaintiff with \$7,500 in compensation for the property destruction.

Cervantes v. International Services, Inc., Case No. BC220226 (Cal. Super. Ct. 2002).

In November 1999 the ACLU filed a class action on behalf of a group of homeless individuals in downtown Los Angeles. The class action sought relief from conduct carried out by private security guards. Local merchants and businesses, pursuant to state law, had formed Business Improvement Districts (BIDs) and used the guards to

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<sup>79</sup> Town of Elkton, Md. Code § 9.12.010(3) (2007).

supplement regular municipal police efforts. The lawsuit alleged that the guards intimidated and harassed homeless individuals through illegal searches, seizures, detentions, and threats in an effort to coerce the individuals into leaving the BID. The complaint, based entirely on state law, alleged violations of the California Constitution and Civil Code, as well as numerous intentional torts.

The plaintiffs have since reached settlement agreements with some of the defendants. At least one of the final settlements included protocols establishing behavioral guidelines for the security guards, as well as agreements by the private security agencies that they would train their employees to comply with the settlement. The defendants agreed to compensate the Los Angeles Inner City Law Center for monitoring the conduct of the security guards for a period of two years. The plaintiffs also obtained a preliminary injunction prohibiting the confiscation of personal property left on public sidewalks. A motion for class certification is pending at this time.

City of Sarasota v. McGinnis, No. 2005 MO 16411 NC (Fla. Cir. Ct. 2005), cert. denied, 947 So. 2d 1173 (Fla. App. 2 Dist. Jan. 24, 2007).

After two Sarasota ordinances aimed at prohibiting sleeping outside were overturned by state courts, the City of Sarasota passed a third ordinance that prohibits lodging out-of-doors. Under this ordinance, it is illegal to use any public or private property for sleeping without the consent of the City Manager or property owner. The ordinance requires that one or more of the following conditions exist in order for police to make an arrest: numerous personal items are present; the person is engaged in cooking; the person has built or is maintaining a fire; the person has engaged in digging; or the person states that he or she has no other place to live. A homeless individual who was charged for violating the ordinance moved to find the ordinance unconstitutional in violation of substantive due process for criminalizing innocent conduct and void for vagueness, since the ordinance does not give sufficient notice of what conduct is prohibited or sufficient guidelines for law enforcement. In December 2005, the court denied the defendant's motion to find the law unconstitutional. The court determined that the law was constitutional, was not void for vagueness, and did not violate substantive due process. Further, the court found the law did not violate equal protection rights. Plaintiff's petition for writ of certiorari was denied by the Court of Appeal of Florida in January 2007.

City of Sarasota v. Nipper, No. 2005 MO 4369 NC (Fla. Cir. Ct. 2005).

Defendant homeless individuals were charged with violation of Section 34-41 of the Sarasota City Code, which prohibited lodging out-of-doors in a wide variety of situations. They defended the charges on the ground that Section 34-41 was unconstitutional as applied because it offends substantive due process by penalizing otherwise innocent conduct and did not establish sufficient guidelines for enforcement.



In June 2005, the Sarasota County Court found that Section 34-41 was unconstitutional as written, because the ordinance punished innocent conduct and because it left too much discretion in the hands of the individual law enforcement officer.

City of Sarasota v. Tillman, No. 2003 CA 15645 NC (Fla. Cir. Ct. 2004).

Five homeless individuals were charged with violating Section 34-40 of the Sarasota City Code, which was an anti-sleeping ordinance that prohibited camping on public or private property between sunset and sunrise. The public defender who represented the defendants challenged the constitutionality of the anti-camping ordinance in the context of the criminal case, arguing that the ordinance violated substantive due process and was void for vagueness and overbroad because it penalized innocent conduct. The lowest level county trial court upheld the constitutionality of the city ordinance, finding it was constitutional because it served a valid public purpose, it was not vague in that a person of ordinary intelligence was on notice of the prohibited conduct, and there were sufficient guidelines to prevent selective enforcement of the ordinance. The homeless defendants appealed.

The Circuit Court for the Twelfth Judicial Circuit for the State of Florida reviewed the case in its appellate capacity and found the ordinance unconstitutional on the grounds that the ordinance was void for vagueness and violated substantive due process by effectively making criminal the non-criminal act of sleeping. The city then petitioned the Second District Court of Appeal for certiorari review and the court denied the petition. Instead of asking for rehearing, the city enacted a criminal lodging ordinance. However, the lodging ordinance was subsequently struck down in *City of Sarasota v. Nipper*.

City of Seattle v. McConahy, 937 P.2d 1133 (Wash. Ct. App. 1997).

Plaintiffs challenged the constitutionality of an ordinance prohibiting sitting on sidewalks in Seattle's downtown area during business hours.<sup>80</sup> Plaintiffs claimed that the ordinance violated their substantive due process and free expression rights and infringed upon their right to travel. They also alleged the ordinance was contrary to the Privileges and Immunities Clause of the Washington State Constitution and Washington's ban on discriminating against persons with disabilities. In rejecting plaintiffs' arguments, the court held that the ordinance furthered the legitimate police power interest of promoting pedestrians' safety and reducing crime and infringed only minimally upon the freedoms of movement and expression. The court reasoned that sitting is mere conduct and has no inherent expressive value and that the Privileges and Immunities Clause was not implicated because homelessness was not a protected class. Further, the right to travel was not implicated by the statute, as the statute did not exact a penalty for moving within a state or prohibiting homeless people from living on streets. In *City of Seattle v. McConahy*, 133 Wn. 2d 1018, 948 P.2d 388 (1997), the Supreme Court of Washington denied a petition for review of this Appellate Court decision.

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<sup>80</sup> This case concerns the same statute as *Roulette v. City of Seattle*, *supra*.

Delacruz v. City of Sarasota, No. 2D06-5419 (Fla. Dist. Ct. App. Nov. 2, 2006), cert. denied No. 2D06-5419 (Fla. Dist. Ct. App. April 20, 2007).

Felix Delacruz, David M. Brezger and Dennis E. Smith were defendants (Defendants) in criminal cases for allegedly violating Sarasota City Ordinance No. 05-4640 by engaging in “illegal lodging.” Each Defendant entered a plea of nolo contendere, and reserved the right to appeal the constitutionality of the law under which he was arrested. Defendants challenged the constitutionality of the ordinance in a consolidated appeal. Defendants argued that the ordinance was void for vagueness, encouraged arbitrary and discriminatory enforcement, penalized innocent conduct and impermissibly criminalized homelessness. Defendants argued that the ordinance failed to give a person of ordinary intelligence fair notice of what constituted forbidden conduct because the ordinance used the term “materials” and failed to define what length of time using a temporary shelter as a place of abode would constitute a violation of the ordinance.

The Circuit Court entered an order affirming the judgment of the county court in each case and finding the ordinance to be constitutional. In denying Defendants’ void for vagueness argument, the court cited *Betancourt v. Bloomberg* and noted that an ordinance does not have to achieve “meticulous specificity” which would come at the cost of “flexibility and reasonable breadth,” and that words of common usage (such as “materials”) are construed in their plain and ordinary sense.

The court also rejected Defendants’ argument that the language of the ordinance gives police too much discretion and would lead to discriminatory enforcement. The court cited *Joel v. City of Orlando*, noting that officers may “exercise some ordinary level of discretion as to what constitutes prohibited conduct” if they must also “abide by certain guidelines” such as the list of activities in the Sarasota ordinance at issue. In addition, the court rejected Defendants’ argument that a list of factors, of which an officer must find at least one to exist in order to establish probable cause, are vague because it is unclear whether the factors are actually elements of the offense of “lodging”, or merely meant to limit prosecution for the offense to a particular group of people.

With respect to Defendants’ argument that the ordinance as written penalizes innocent conduct, the court held that homeless persons are not a suspect class, and sleeping outside is not a fundamental right. Therefore, the ordinance passed the rational basis test. Lastly, regarding Defendants’ argument that the ordinance impermissibly criminalizes homelessness, the court held that the ordinance “is a legitimate and rational attempt to promote the public health, sanitation, safety and welfare of the city,” again citing *Joel v. City of Orlando*.

Defendants filed a petition for writ of certiorari, elaborating on these claims, which was denied in April 2007.

In re Eichorn, 81 Cal. Rptr. 2d 535 (Cal. App. Dep’t. Super. Ct. 2000).

Police officers arrested James Eichorn for sleeping in a sleeping bag on the ground outside a county office building in the civic center. Eichorn was convicted of violating a City of Santa Ana, California ordinance that banned sleeping in certain public areas. Prior to Eichorn's trial, the California Supreme Court found the ordinance to be facially neutral and therefore constitutional. At trial, Eichorn had to argue the necessity defense and he attempted to prove that on the night of his arrest, there were no shelter beds available.

The court found Eichorn had not made a sufficient enough showing to allow a jury to consider the defense. After objecting to the judge's ruling, Eichorn's lawyer decided to go forward without a jury on the constitutionality of the ordinance. The trial judge convicted Eichorn of violating the city ordinance and Eichorn lost an appeal to the Appellate Department. Eichorn then filed a writ of habeas corpus. In the habeas decision, the Appeals Court found Eichorn was entitled to raise the necessity defense, granted the writ and remanded to the municipal court with instructions to set aside judgment of conviction. Ultimately, the municipal court set aside Eichorn's misdemeanor conviction for illegal camping and his sentence of 40 hours of community service. The District Attorney also decided not to retry him.<sup>81</sup>

Oregon v. Kurylowicz, No. 03-07-50223 (Or. Cir. Ct. 2004).

Defendants, homeless individuals, were charged with violating a Portland "obstructions as nuisances" ordinance. In short, the ordinance made it unlawful and declared it a public nuisance to block any street or sidewalk or to place, permit to be placed, or permit to remain on the sidewalk or street any object that obstructs or interferes with the passage of pedestrians or vehicles. On defendants' demurrer, they asserted that the ordinance was unconstitutionally vague and overbroad, infringed upon constitutional guarantees of equal protection and due process, and violated Oregon's constitutional prohibition against disproportionate sentences.

The court sustained defendants' demurrer and held that the ordinance was unconstitutionally vague and overbroad. Because the ordinance made no exceptions to avoid infringing on the right to assemble peacefully, or to exclude conduct that "merely causes others to step around a person who happens to be standing on any part of a sidewalk in a manner that is not causing any harmful effect," the ordinance was unconstitutionally overbroad. Furthermore, the court held that the ordinance's terms were indefinite, allowing officers leeway in determining, for example, whether a person or an object is "obstructing" a sidewalk, or whether "normal flow" of traffic is "interfer[ed]" with. In addition, the ordinance lacked a mental state requirement and contained no guidelines for police officers, giving a violator no opportunity to abate his or her behavior and failing to provide fair notice of prohibited conduct.

People v. McManus, Case No. 02M09109 (Cal. Super. Ct. 2002).

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<sup>81</sup> Sanchez, Felix, "Vietnam Veteran's convictions set aside after long legal odyssey," THE ORANGE COUNTY REGISTER, April 1, 1999, at B4.

Police arrested the defendant for violating an anti-camping ordinance by sleeping on public property. The defendant, relying upon *In re Eichorn*, 69 Cal. App. 4th 382 (2000), planned to raise the necessity defense, arguing that he could not gain admission to a shelter because he owned three dogs. However, at trial, the judge refused to let the defendant argue that he slept in the park because he had no other place to go. A jury convicted McManus of two misdemeanor counts of illegal camping.

State v. Folks, No. 96-19569 MM (Fla. Cir. Ct. Nov. 21, 1996).

A Florida county court invalidated a city ordinance prohibiting individuals from “sleep[ing], lodg[ing] or lying on any public or semipublic area.”<sup>82</sup> The ordinance requires that prior to an arrest or charge, police must first warn the individual that his conduct violates the ordinance, notify him of at least one shelter the officer believes to be accessible to him, and give him a reasonable opportunity to go to the shelter. In dismissing a charge based on the ordinance against Warren Folks, the County court determined that the challenged section of the ordinance violated both the Florida and U.S. Constitutions.

The court found the ordinance to be overbroad as well as unconstitutionally vague in that it did not specify exactly what must be done to satisfy its requirements. The court opined that “if in fact the ordinance requires a person to remain in a shelter for an unspecified period of time or be arrested, this amounts to incarceration in the shelter without a violation of law having been committed.” In addition, the court found that the ordinance violated defendant’s rights to be free from cruel and unusual punishment by punishing innocent conduct, and his right to due process in that it allowed for arbitrary enforcement.

State of Connecticut v. Mooney, 218 Conn. 85, 588 A.2d 145 (1991).

A homeless man who was convicted of murder challenged the legality of a search that had been conducted of his duffel bag and a closed cardboard box in an area under a highway bridge that he had made his home. The search, which was conducted without a warrant after the defendant had been arrested, had uncovered items that were used as evidence to link him to the crime. At trial, the court denied defendant’s motion to have the items excluded from evidence at his trial on the ground that they had been obtained in the context of an unreasonable search of his belongings—in which he had a reasonable expectation of privacy—in violation of his Fourth Amendment right to be free from unreasonable searches and seizures.

The Connecticut Supreme Court overturned the defendant’s conviction, finding that he had a reasonable expectation of privacy in the interior of the duffel bag and the cardboard box, which “represented, in effect, the defendant’s last shred of privacy from the prying eyes of outsiders.”<sup>83</sup> The court found that he had an actual, subjective expectation of privacy, and that this expectation was reasonable under the circumstances of the case.

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<sup>82</sup> JACKSONVILLE, FLA., Ordinance Code § 614.138(h) (1994).

<sup>83</sup> 588 A.2d 145, 161 (Conn. 1991).

State v. Penley, 276 So. 2d 180 (2 D.C.A. Fla. 1973).

This case is the result of the September 1972 arrest of Earl Penley for sleeping on a bench in a St. Petersburg city bus stop, in violation of St. Petersburg City Ordinance 22.57. The ordinance held that “[n]o person shall sleep upon or in any street, park, wharf or other public place.” Upholding the lower court’s finding, the second circuit of the Florida appellate court held that the statute was unconstitutional, as it “draws no distinction between conduct that is calculated to harm and that which is essentially innocent,” is “void due to its vagueness in that it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,” and “may result in arbitrary and erratic arrest and convictions.”

State v. Wicks, Nos. 2711742 & 2711743, (Ore. Cir. Ct. Multnomah County 2000).

Police officers arrested the Wicks, a homeless father and his son, for violating Portland City Code, Title 14, 14.08.250, which prohibits “camping” in any place where the public has access or under any bridge or viaduct. The Wicks claimed the ordinance violated their right to be free of cruel and unusual punishment, the right to equal protection under the Fourteenth Amendment, and their right to travel. The court agreed and found the ordinance as applied to homeless people violated Article I § 16 of the Oregon Constitution and the Eighth Amendment to the U.S. Constitution. The court reasoned that one must not confuse “status” with an immutable characteristic such as age or gender as the State of Oregon did in its arguments.

The court held that, although certain decisions a homeless person makes may be voluntary, these decisions do not strip away the status of being homeless. Citing the Supreme Court’s decision in *Robinson v. California*, 370 U.S. 660 (1962) holding that drug addiction is a status, the *Wicks* court held that homelessness is also a status. Furthermore, the court determined it impossible to separate the status of homelessness and the necessary acts that go along with that status, such as sleeping and eating in public when those are “the only locations available to them.” Because the ordinance punished necessary behavior due to a person’s status, the court reasoned it was cruel and unusual. Moreover, the court found the ordinance in violation of both equal protection and the right to travel on the basis that the ordinance denied homeless people the fundamental right to travel. The court rejected the state’s argument that it had a legitimate state interest in protecting the health and safety of its citizens, noting that there were less restrictive means available to address these interests, such as providing sufficient housing for homeless people and adequate services. According to a newspaper report, the state attorney general’s office has dismissed its appeal, citing its inability to appeal from an order of acquittal.<sup>84</sup>

Tobe v. City of Santa Ana, 9 Cal. 4th 1069, 892 P.2d 1145 (1995).

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<sup>84</sup> Wade Nkrumah, “Portland Anti-Camping Ordinance in Legal Limbo,” THE OREGONIAN, Oct. 19, 2001, <<http://www.oregonlive.com/portland/oregonian>>.

Homeless persons in Santa Ana, California filed suit in state court against the City of Santa Ana facially challenging the constitutionality of a city ordinance prohibiting (1) the use of “camp paraphernalia”—including cots, sleeping bags, or non-designated cooking facilities; (2) pitching, occupying, or using “camp facilities” including tents, huts, or temporary shelters; (3) storing personal property on any public land within the city; or (4) living temporarily in a “camp facility” or outdoors in public within Santa Ana. The California Court of Appeals overturned the ruling of the lower court in which the lower court upheld the ordinances with the exception of the provision prohibiting living temporarily in a camp facility or outdoors. The Court of Appeals held that the anti-camping ordinance violates Appellants’ right to travel, which “includes the ‘right to live or stay where one will,’” and, by punishing them for their status as homeless people, violates their right to be free from cruel and unusual punishment. The court also held that the ordinance was unconstitutionally vague and overbroad.<sup>85</sup>

In 1995, the California Supreme Court reversed the judgment of the Court of Appeals. The court held that the challenged ordinance, which may have an incidental impact on travel, does not violate the right to travel as it has a purpose other than the restriction of travel and does not discriminate among classes of persons by penalizing the exercise of the right to travel for some. In addition, the court found that the ordinance penalized particular conduct as opposed to status and thus did not violate plaintiffs’ rights under the Eighth Amendment, and was not unconstitutionally vague or overbroad. However, the Court noted that the result might be different in an as-applied, as opposed to a facial, challenge.

NLCHP filed an amicus brief in support of plaintiffs-appellees, as did the U.S. Department of Justice.

Voeller v. The City of The Dalles, No. CC02155 (Or. Cir. Ct. 2003).

A homeless individual challenged an anti-camping ordinance under which he had been convicted and fined, alleging that it violated an Oregon State law, ORS 203.077, which requires municipalities and counties to develop a camping policy that recognizes the social problem of homelessness, and contains certain other explicit elements. The case was dismissed at plaintiff’s request in 2003 when the City of The Dalles repealed the anti-camping ordinance, expunged plaintiff’s convictions, and refunded the fines he had paid. The ordinance had been modeled on a similar Portland ordinance, which was found to be unconstitutional in *State of Oregon v. Wicks*.<sup>86</sup>

## II. Challenges to Anti-Begging, Anti-Soliciting, and Anti-Peddling Laws

### A. Federal Court Cases

American Civil Liberties Union of Nevada v. City of Las Vegas, 333 F.3d 1092 (9th Cir. 2003).

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<sup>85</sup> *Tobe v. City of Santa Ana*, 22 Cal App. 4th 228, 27 Cal. Rptr. 2d 386 (1994).

<sup>86</sup> *State v. Wicks*, Nos. 2711742 & 2711743, (Ore. Cir. Ct. Multnomah County 2000).

Plaintiffs, including the Civil Liberties Union of Nevada, sued, among other defendants, the City of Nevada and Fremont Street Experience Limited Liability Corporation (“FSELLC”), challenging prohibitions on distributing written material and soliciting funds and restrictions on educational and protest activities at an open mall area. Plaintiffs sought a preliminary injunction against the enforcement of several Las Vegas Municipal Code sections and rules and policies of the FSELLC. The district court granted the preliminary injunction, barring enforcement of a section of the Las Vegas Municipal Code prohibiting leafleting and a “standardless licensing scheme,” but did not grant a preliminary injunction regarding enforcement of a second section regarding solicitation.<sup>87</sup> The district court granted defendants’ motion for summary judgment regarding plaintiff’s challenge to the anti-solicitation ordinance. The court found that the ban on solicitation did not violate the First Amendment because (i) the mall in question was a non-public forum, (ii) the ban on solicitation was viewpoint neutral, and (iii) the ban was reasonable considering the commercial purposes of the mall.

Plaintiffs appealed to the Ninth Circuit. In its “forum analysis,” the Ninth Circuit emphasized three factors: “the actual use and purposes of the property . . . the area’s physical characteristics, including its location and the existence of clear boundaries delimiting the area . . . and traditional or historic use of both the property in question and other similar properties.” Because the area at issue was used as a public thoroughfare, was open to the public and integrated into the city’s downtown, and, like other “public pedestrian malls and commercial zones,” was historically used as a public forum, the court held that the mall was a traditional public forum for purposes of the First Amendment. The court remanded the case regarding the anti-solicitation ordinance to the lower court, where, because the area is a public forum, the city must “show that the limitation is narrowly tailored to serve a significant government interest without ‘burden[ing] substantially more speech than is necessary to further the government’s legitimate interests.”

The city petitioned for a writ of certiorari to the Supreme Court, arguing that the Ninth Circuit decision (i) diverges from the public forum jurisprudence of the Supreme Court and the Seventh and Eleventh Circuits, which would allow the city to treat the property as a non-public forum by changing the property’s primary use; (ii) conflicts with the Second Circuit, which emphasizes the primary function and purpose of a property; (iii) unduly constricts the government’s ability to make optimal use of publicly owned property for commercial and entertainment purposes; and (iv) expands the public forum doctrine to the point of incentivizing cities to privatize public space.

Opposing the city’s petition for writ of certiorari, the ACLU argued that the Ninth Circuit applied traditional forum analysis to the facts of the case, the city and businesses have always faced the Court’s established view that streets and sidewalks are natural public fora, and the Ninth Circuit decision does not involve analysis with respect to when a city

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<sup>87</sup> 13 F. Supp. 2d 1064, 1068 (D. Nev. 1998).

can close a public forum because Fremont Street remains open to public pedestrian traffic. The Supreme Court denied the petition for writ of certiorari.<sup>88</sup>

Atchison v. City of Atlanta, No 1:96-CV-1430 (N.D. Ga. July 17, 1996).

Seven homeless individuals filed suit in federal court one month prior to the opening of the Olympic Games in Atlanta challenging Atlanta's ordinances prohibiting aggressive panhandling and loitering on parking lots, its enforcement of Georgia's criminal trespass law, and unlawful police harassment under 42 U.S.C. § 1983. The U.S. District Court for the Northern District of Georgia granted a temporary restraining order barring enforcement of one provision of the parking lot ordinance, finding that the plaintiffs were likely to succeed on the merits of their claim that the provision was unconstitutionally vague.<sup>89</sup> In its ruling on plaintiffs' motion for a preliminary injunction, the court held that the provision of the anti-aggressive panhandling ordinance that prohibited "continuing to request, beg or solicit alms in close proximity to the individual addressed after the person to whom the request is directed has made a negative response" was unconstitutionally vague, and granted a preliminary injunction prohibiting enforcement of that specific provision. The court found that with the above exception, the ordinance "appears narrowly tailored to address the significant interests while affording panhandlers ample channels with which to communicate their message." The court also rejected the plaintiffs' equal protection claim, holding that they failed to show a city policy of violating their rights or failing to train police officers.

Before the appeal was heard, the case was settled. As part of the settlement, the city agreed to redraft the panhandling and parking lot ordinances and require various forms of training for its law enforcement officers for the purpose of sensitizing them to the unique struggle and circumstances of homeless persons and to ensure that their legal rights be fully respected.

Blair v. Shanahan, 919 F. Supp. 1361 (N.D. Cal. 1996).

In 1991, plaintiff challenged a California state statute that prohibited "accost[ing] other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms."<sup>90</sup> The U.S. District Court for the Northern District of California held the California state anti-begging statute to be unconstitutional on its face, concluding that the statute violated the First Amendment because it was content-based, was aimed specifically at protected speech in a public forum, and was not narrowly tailored to meet a compelling state interest. The court also held that the statute violated the plaintiff's right to equal protection under the Fourteenth Amendment since it distinguished between lawful and unlawful conduct based on the content of the communication at issue.<sup>91</sup>

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<sup>88</sup> *City of Las Vegas v. American Civil Liberties Union of Nevada*, 540 U.S. 1110 (2004).

<sup>89</sup> *Atchison v. City of Atlanta*, No 1:96-CV-1430 (N.D. Ga. June 21, 1996). The court later held that the plaintiffs lacked standing to challenge this ordinance.

<sup>90</sup> *Blair v. Shanahan*, 775 F. Supp. 1315, 1327 (N.D. Cal. 1991), *aff'd in part and dismissed in part on other grounds*, 38 F.3d 1514 (9th Cir. 1994).

<sup>91</sup> *Id.*



The city settled its case with the plaintiff for damages, but then, joined by the State, moved to have the declaratory judgment modified or vacated. The district court rejected this motion.<sup>92</sup> On appeal, finding that the city had mooted its own appeal by settling the case, the Ninth Circuit refused to order the district court to vacate the declaratory judgment but remanded the case to the district court for a decision on whether to do so.<sup>93</sup> The district court then vacated its declaratory judgment on the ground that in light of the specific circumstances of the case, it would be inequitable to the state to permit the order invalidating a state statute to stand without the possibility of intervention by the state and appellate review of the constitutional issue involved.

Booher v. Marion County, No. 5:07-CV-282-Oc-10GRT (M.D. Fla. filed July 11, 2007).

David Booher, a homeless individual living in Marion County, sued the county challenging the constitutionality of a county ordinance adopted in May 2006, that requires all persons who solicit, beg, or panhandle in public places to obtain a “panhandler’s license.”<sup>94</sup> In order to obtain such a license, an individual must pay a \$100 application fee, pass a background check regarding past panhandling violations and felonies or misdemeanors, and complete an application (which includes a requirement that a permanent home address and description of the location and timing of solicitation activity be provided). Further, in deciding whether to grant the license, the county administrator must find that “the location and time of the [panhandling] activity will not substantially interfere with the safe and orderly movement of traffic.”<sup>95</sup>

Following the adoption of the ordinance, plaintiff Booher was repeatedly arrested, fined and sentenced to jail in violation of the ordinance. In response, Booher filed suit against the county seeking compensatory damages and to enjoin the enforcement of the ordinance, based on claims that the ordinance violates his right to free speech, due process and equal protection. In September 2007, the court granted Booher’s motion for a preliminary injunction prohibiting the county from enforcing the ordinance during the pendency of the action. In granting the preliminary injunction, the court found that there is a substantial likelihood that the ordinance is an unlawful prior restraint on speech, is a content based restriction on speech, violates the Equal Protection Clause by impermissibly distinguishing between who can and cannot engage in charitable solicitation and is overbroad and void for vagueness by failing to sufficiently define prohibited conduct and providing the county administrator with excess discretion.

After Booher had filed a motion for partial summary judgment and a permanent injunction, the county repealed the ordinance. In August 2008, the parties submitted a settlement agreement. The county agreed not to reenact the challenged version of the ordinance and to pay Booher \$10,000 for settlement of his damages claims. Defendants agreed that Booher was the prevailing party in the action and to pay reasonable litigation costs and attorneys’ fees.

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<sup>92</sup> 795 F. Supp. 309 (N.D. Cal. 1992).

<sup>93</sup> 38 F.3d 1514, 1519-20 (9th Cir. 1994).

<sup>94</sup> Marion County Code of Ordinances, Art. XIV, §10-403 (2007).

<sup>95</sup> *Id.*

Brown v. Kelly, No. 05-CV-5442, 2007 WL 1573957 (S.D.N.Y. May 31, 2007); 2007 WL 2156400 (S.D.N.Y. July 24, 2007).

An individual who panhandles, Eddie Wise, filed a suit on behalf of a class of individual panhandlers who had been charged with violations of a New York state law that prohibits begging. The Second Circuit had previously found the law unconstitutional in *Loper v. New York City Police Department*, 999 F.2d 699 (2d Cir. 1993). The plaintiffs alleged that arrests and prosecutions under the unconstitutional law violated their First Amendment rights. For relief, the plaintiffs sought a judgment declaring the defendants have violated the law, as well as an injunction to cease enforcement of the law, mandating trainings for police officers and district attorneys, and removing all arrest records for those convicted under the law. The plaintiffs also requested compensatory and punitive damages.

On June 11, 2005, the day after the suit was filed, the Bronx District Attorney's office admitted that they should not have prosecuted any arrests made under the unconstitutional part of the state penal code and issued a written agreement with the City and the police to stop arresting and prosecuting people under this statute.

In July 2007, the court granted plaintiffs' motion for class certification.

Chad v. City of Ft. Lauderdale, 66 F. Supp. 2d 1242 (S.D. Fla. 1998).

Plaintiffs challenged enforcement of Ft. Lauderdale's ordinance prohibiting soliciting, begging, or panhandling on the city's beach and adjacent sidewalk. The district court denied plaintiffs' motion for a preliminary injunction, and both parties filed motions for summary judgment. The district court granted the City's motion and denied plaintiffs' motion. Plaintiffs argued the ordinance violated the Fourteenth Amendment to the U.S. Constitution because it unconstitutionally limited free speech by prohibiting speech "asking for" something. Plaintiffs argued this prohibition was vague and therefore unconstitutional. The court rejected this argument, noting that the "asking for" behavior the statute covers is sufficiently clear as to what is being prohibited. Plaintiffs also argued the ordinance was overbroad because begging, panhandling, and solicitation are forms of protected expression. The court also rejected this contention holding that although the ordinance was broad enough to include protected speech, it satisfied the reasonable time, place, and manner restrictions on such speech, the ordinance was content neutral, and was narrowly tailored to promote the significant governmental interest of promoting a safe, healthful, and aesthetic environment.

Chase v. City of Gainesville, 2006 WL 2620260 (N.D. Fla. Sept. 11, 2006).

In March 2006, a group of homeless individuals brought suit to challenge the constitutionality of three anti-solicitation laws under which they had been cited and/or threatened with citations. Two of the laws prohibited holding signs on sidewalks or by the side of the road to solicit charitable contributions. The third law required anyone

soliciting charitable contributions on sidewalks or by roadways to obtain a permit. The plaintiffs alleged that the laws were content-based, overbroad and vague, and that they constituted prior restraint on speech. Plaintiffs argued that charitable solicitation is protected speech activity; public streets and sidewalks are traditional public fora; and the permit requirements under the laws at issue were prior restraints on speech. Furthermore, the permit requirements were not subject to narrow, objective and definite standards and adequate procedural safeguards. Plaintiffs also argued that the laws were not reasonable time, place and manner regulations; that the laws were overbroad to address the interests of public safety and vehicular safety; and that the laws were void for vagueness for failing to define core terms and phrases, such as “solicit” and “impeding, hindering, stifling, retarding, or restraining traffic.”

The court found that plaintiffs had shown a substantial likelihood of success on the merits and granted plaintiffs’ motion for a preliminary injunction. The court noted that the City Code only allowed 501(c)(3) organizations, and not individuals, to qualify for a charitable solicitation permit. The court also found that plaintiffs’ loss of their First Amendment freedoms constituted irreparable injury and that an injunction would not harm the public interest.

In September 2006, the parties agreed to a partial settlement, under which the City and all of its officers and employees would be subject to a permanent injunction enjoining enforcement of the three laws at issue. The parties agreed that “the activity of standing on a public sidewalk, peacefully holding a sign and not otherwise violating any lawful statute, ordinance, or order is a protected First Amendment activity.” The City also agreed to pay reasonable damages to plaintiffs and reasonable litigation costs and attorneys fees to plaintiffs’ counsel. In December 2006, the parties reached a full and complete settlement of the case against the defendant sheriff. The court granted plaintiffs’ unopposed motion for a permanent injunction against the defendant sheriff and for a declaration that the challenged statutes were facially unconstitutional. In July 2007, after the case had been dismissed, the City approved an ordinance prohibiting “[b]eggars, panhandlers, or solicitors . . . from begging, panhandling, or soliciting from any operator or occupant of a vehicle that is in traffic on a public street . . . .” Plaintiffs subsequently filed a motion for order to show cause why defendant should not be held in contempt for violating the court’s order ratifying, approving and adopting the parties’ settlement agreement and issuing a permanent injunction. Plaintiffs noted that an individual could violate the ordinance even if the individual did not “step into a public roadway, pose any risk to public safety, or impede traffic flow.” Further, the ordinance would “necessarily include portions of the public sidewalk and would serve to prohibit Plaintiffs and other individuals from peacefully holding a sign and engaging in charitable solicitation on City sidewalks.”

In March 2008, the court denied the motion for order to show cause. The court reasoned that for a person to violate the amended ordinance, “he would have to solicit charitable donations *and* accept the donation *while* the vehicle is in a public street currently in use;” which was not contemplated by the permanent injunction. The court also found no chilling effect on First Amendment protected speech that was the subject of the

permanent injunction, on the ground that the amended ordinance does not prohibit the right to solicit charitable contributions from a sidewalk, but rather restricts transactions in traffic.

Community for Creative Non-Violence v. Turner, 893 F.2d 1387 (D.C. Cir. 1990).

Community for Creative Non-Violence (CCNV) members challenged the constitutionality of Washington Metropolitan Area Transit Authority (WMATA) regulations requiring individuals to obtain permits to engage in free speech activities on WMATA property, permitting suspension of permits in emergencies, requiring that the speech be in a “conversational tone,” and restricting the number of individuals who may engage in free speech at each station. The U.S. Court of Appeals for the D.C. Circuit affirmed the trial court ruling that struck down all of the provisions, finding that the aboveground free areas of the stations were public fora. The D.C. Circuit found that the permit requirement was an impermissible prior restraint, the suspension provision was not severable from the permit provision, the “conversational tone” provision was unconstitutionally vague, and the limit on the number of individuals burdened more speech than was necessary.

Dellantonio v. City of Indianapolis, No. 1:08-cv-0780 (S.D. Ind., filed June 11, 2008).

A class of plaintiffs sued the city of Indianapolis, alleging that Indianapolis police were illegally prohibiting homeless individuals from passively soliciting contributions in public by holding out a cup. An existing city ordinance prohibits only the oral or written solicitation of contributions; passive solicitations are permissible. The complaint also alleges that, in connection with stops by the police for violations of the ordinance, the police have illegally seized homeless persons without cause or reasonable suspicion by detaining them until their identification was reviewed by the police, and have illegally seized their property

The plaintiffs allege that (i) the police’s actions related to the interference with lawful solicitations of contributions are violations of the First Amendment, (ii) the seizure of plaintiffs without cause or suspicion violates the Fourth Amendment and (iii) the seizure of property related to such police actions violates the Fourth and Fourteenth Amendments. The plaintiffs seek a permanent injunction against illegal enforcement of the existing anti-solicitation ordinance as well as an injunction against such illegal seizures of person and property. The case is pending.

Greater Cincinnati Coalition for the Homeless v. City of Cincinnati, 56 F.3d 710 (6th Cir. 1995).

Plaintiffs, which included the Greater Cincinnati Coalition for the Homeless (the “Coalition”) and a homeless man, originally filed a complaint against the City of Cincinnati in District Court seeking injunctive, declaratory, and monetary relief for damages allegedly suffered as a result of a municipal ordinance which prohibited people from “recklessly interfere[ing] with pedestrian or vehicular traffic in a public place.”

Activities that were considered reckless interference included walking, sitting, lying down, and/or touching another person in a public place so as to interfere with the passage of any person or vehicle, or asking for money or anything else of value in a way that would “alarm” or “coerce” a reasonable person. The District Court found that the plaintiffs lacked standing to challenge the ordinance and the plaintiffs appealed. The Court of Appeals for the Sixth Circuit found that neither the Coalition nor the homeless man had demonstrated a “direct injury-in-fact” or a threatened injury that could potentially result from enforcement of the ordinance, and that therefore plaintiffs did not have standing to challenge the ordinance. The Court of Appeals, however, did indicate that other potential challenges that demonstrated that the ordinance violated plaintiff’s protected First Amendment rights under the U.S. Constitution might be successful.

Gresham v. Peterson, 225 F.3d 899 (7th Cir. 2000).

Jimmy Gresham, a homeless person, challenged an Indianapolis, Indiana ordinance that prohibited panhandling in public places from sunset to sunrise and also prohibited “aggressive panhandling.” Gresham claimed the city ordinance violated his First Amendment right to free speech and his Fourteenth Amendment right to due process. The city argued the ordinance was a response to the public safety threat that panhandlers cause. The District Court granted the city’s motion for summary judgment and Gresham appealed to the Seventh Circuit. The Circuit Court affirmed the District Court’s opinion. The Court held Mr. Gresham’s First Amendment right was not violated simply because it forbade him to panhandle at night. It found Mr. Gresham had many other feasible alternatives available to him during the day and during the night to reach Indianapolis crowds. Furthermore, the Court affirmed the district court’s opinion that a state court could not find the statute unconstitutionally vague.

Henry v. City of Cincinnati, 2005 WL 1198814 (S.D. Ohio Apr. 28, 2005).

Four homeless individuals and the CEO of the Homeless Hotline of Greater Cincinnati brought suit to challenge the constitutionality of a city ordinance that prohibits engagement in vocal solicitation without a valid registration. The city moved to dismiss on standing grounds. Because the plaintiffs asserted that they fear arrest due to their solicitation activities without registration, the court held that plaintiffs had alleged sufficient facts to overcome the motion to dismiss. Furthermore, because plaintiffs claimed that the registration scheme lacks the necessary procedural safeguards, they have standing to challenge the ordinance’s allegedly overbroad registration requirements. Plaintiffs also alleged that the time, place, and manner restrictions are unconstitutionally vague and that the city ordinance is not narrowly tailored to serve a compelling government interest, but serves as a prior restraint on speech.

The court rejected the city’s argument that the ordinance regulates only panhandling and that panhandling is merely commercial speech. However, the court held that the ordinance was content-neutral under the *Hill v. Colorado*<sup>96</sup> standard. The court characterized the regulation as a time, place, and manner restriction and noted that the

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<sup>96</sup> 530 U.S. 703 (2000).

ordinance is not concerned with the message a solicitor communicates by requesting money. Lastly, the court found that the ordinance was justified by reference to the act of solicitation, not the content of the speech. Regarding constitutional review under intermediate scrutiny, the court held that the parties should be afforded an opportunity to present evidence. In addition, the court did not dismiss the registration requirement claim because it was not convinced by the city's argument that registration for solicitors is required to prevent fraud.

The parties settled in the fall of 2007. The settlement provided for a substantially revised solicitation ordinance that eliminated the registration requirement altogether and made the time, place and manner restrictions on panhandling significantly less onerous. In addition, the city agreed to pay \$10,000 in attorneys' fees.

Jones v. City of Denver, No. 96-WY-1751 (D. Colo. 1996).

Four homeless individuals, along with two non-homeless individuals with an interest in the information communicated by those who beg, brought an action against the City and County of Denver, Denver Chief of Police, and two police officers challenging the constitutionality of Colorado's state law making it a crime to "loiter . . . for the purpose of begging."<sup>97</sup> The parties reached a settlement agreement in which defendants stipulated that the law violates the Due Process Clause, and have agreed to a declaratory judgment and injunction prohibiting enforcement of the law in the City of Denver. The court approved the proposed settlement agreement and the state legislature subsequently repealed the suspect language.

Heathcott v. Las Vegas Metropolitan Police Officers, No. CV-S-93-045 (D. Nev. Mar. 3, 1994).

A homeless man challenged a Nevada state statute that prohibited loitering with the intent to beg. The district court found that the law effectively prohibited all begging, which is constitutionally protected speech, and that since the statute was not narrowly tailored to meet any compelling government interest it was constitutionally overbroad. The court also noted that there was no serious harm posed to the public by peaceful begging and that conduct that may require regulation, including fraud, intimidation, coercion, harassment, and assault, are all covered by separate statutes.

Loper v. New York City Police Department, 999 F.2d 699 (2d Cir. 1993).

Plaintiffs challenged the New York City Police Department's enforcement of a New York statute prohibiting "'loiter[ing], remain[ing], or wander[ing] about in a public place for the purpose of begging.'" The Second Circuit affirmed the district court's order granting summary judgment to plaintiffs and invalidating the statute on First Amendment grounds. The Court of Appeals held that begging constitutes expressive conduct or communicative activity for the purposes of First Amendment analysis, and that there was no compelling government interest served by prohibiting those who beg peacefully from

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<sup>97</sup> CO. REVISED STAT. ANN. tit. 18, art. 9, § 112(2)(a) (West 1996).

communicating with their fellow citizens. The court further held that even if the state had such an interest, a statute banning all begging was not narrowly tailored, not content-neutral, and left open no alternative channels of communication “by which beggars can convey their messages of indigency.”

Los Angeles Alliance for Survival v. City of Los Angeles, 224 F.3d 1076 (9th Cir. 2000).

This suit challenged the city’s ordinance banning aggressive solicitation. The ACLU and co-counsel argued that the ordinance was overbroad and violated the First Amendment to the United States Constitution and the Liberty of Speech Clause of the California Constitution. The federal district court issued a preliminary injunction in October 1997. The city appealed, and requested certification of three questions to the California Supreme Court. On September 15, 1998, the Ninth Circuit issued an order requesting the California Supreme Court to certify the question of whether an ordinance regulating the time, place, and manner of solicitation of money or other thing of value, or the sale of goods or service, is content-based, for purposes of the liberty of speech clause of the California Constitution.

The California Supreme Court accepted certification and issued an opinion concluding that regulations like the ordinance should be deemed content neutral for purposes of the California Constitution.<sup>98</sup> The Ninth Circuit affirmed the District Court’s decision that granted a preliminary injunction barring enforcement of Los Angeles Ordinance No. 171664. The Court ruled that even though, as the California Supreme Court certified, regulation of solicitation is content-neutral, Los Angeles’ particular statute infringed upon the right to free speech under the U.S. Constitution, and when a statute regulating solicitation does that, it raises serious questions of hardship. The court found the “balance of hardships” tipped in favor of the appellees, who would be irreparably injured without the preliminary injunction. The case ultimately settled, resulting in the removal of ordinance language that had permitted persons to order panhandlers off property surrounding restaurants, bus stops and other places. The prohibition on solicitation within 10 feet of an ATM remains in the ordinance.

NLCHP filed an amicus brief in support of plaintiffs-appellees.

Northeast Ohio Coalition for the Homeless v. City of Cleveland, 105 F. 3d 1107 (6th Cir. 1997).

The Northeast Ohio Coalition for the Homeless, which publishes a homeless street newspaper, *The Homeless Grapevine*, and a Mosque whose members sell the Nation of Islam newspaper *The Final Call*, challenged a Cleveland city ordinance requiring distributors to apply and pay \$50 for a peddler’s license in order to distribute their papers in public places. The plaintiffs filed suit in U.S. District Court in 1994 alleging that imposition of a license requirement violated their rights to freedom of speech and press. On February 3, 1997, the U.S. Court of Appeals for the Sixth Circuit reversed the district court’s decision and held that the licensing requirement and fee constituted permissible

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<sup>98</sup> No. 97-06793 RAP (C.D. Cal. July 25, 2000).

time, place, and manner restriction and were sufficiently narrowly tailored to further a legitimate government interest in preventing fraudulent solicitations.

Earlier, the district court had granted plaintiff's motion for summary judgment, holding that the licensing requirement violated their rights under the U.S. and Ohio Constitutions.<sup>99</sup> Noting that pursuant to the Supreme Court's decision in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), nominal fees are allowable to cover the costs associated with permissible regulation of speech, the district court stated that the city failed to claim that the fee was designed for such a purpose. Additionally, the district court stated that the license prevented some "speakers" from distributing their message since the fee was not tied to the peddler's ability to pay.

The Sixth Circuit subsequently denied plaintiffs' petition for a rehearing en banc,<sup>100</sup> and the Supreme Court denied plaintiff's petition for a writ of certiorari.<sup>101</sup>

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

James Dale Smith, a homeless person, challenged a Ft. Lauderdale city regulation Rule 7.5(c) that proscribes begging on a certain five-mile strip of beach and two adjacent sidewalks on behalf of himself and a class of homeless persons. Plaintiff initially brought suit in the U.S. District Court for the Southern District of Florida; that court granted summary judgment in favor of the defendant city. The Court of Appeals affirmed the District Court's decision. The Court ruled that, although begging is a form of speech and beaches and sidewalks are public forums, the city made a determination that begging negatively affected tourism. Furthermore, since tourism is a major contributor to the city's economy and begging can occur in other parts of the city, the court found the anti-begging ordinance "narrowly tailored to serve the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach."

Sunn v. City and County of Honolulu, 852 F. Supp. 903 (D. Haw. 1994).

Plaintiff, a street musician, was arrested nine times during 1991 and 1992 for peddling. The state court later found that the peddling ordinance did not cover Sunn's activity, and Sunn subsequently brought suit against the City and County of Honolulu and certain police officers for violation of Sunn's rights under 42 U.S.C. § 1983 and for common law false arrest. On March 4, 1994, the court granted summary judgment regarding the §1983 claim in favor of the individual officers because they had demonstrated the requirements for qualified immunity—a "reasonable officer" could have "reasonably" believed that his or her conduct was lawful in light of clearly established law and the information that the officer had at the time. The City and County of Honolulu (the "City") subsequently moved for summary judgment based on the § 1983 claims arguing that if the officers had been found to be immune from liability under the statute, vicarious

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<sup>99</sup> *Northeast Ohio Coalition for the Homeless v. City of Cleveland*, 885 F. Supp. 1029 (N.D. Ohio 1995), *rev'd on other grounds*, 105 F.3d 1107 (6th Cir. 1997).

<sup>100</sup> 1997 U.S. App. LEXIS 9056 (6th Cir. Apr. 10, 1997).

<sup>101</sup> *Northeast Ohio Coalition for the Homeless v. City of Cleveland*, 522 U.S. 931 (1997).



liability could not attach to the city for the officer's actions. The District Court found that granting summary judgment in favor of the officers based on qualified immunity did not mean that the plaintiff did not possibly suffer a violation of his constitutional rights. The city argued that the test used to conclude that the officers had qualified immunity was the same as the test to determine if there had been probable cause for Sunn's arrests. The court indicated that the test to determine whether the officers had qualified immunity was not the same as the test for probable cause and that there were still pending issues of fact concerning probable cause. Therefore, the court concluded that the officers could potentially be found to have arrested Sunn without probable cause and the city could potentially be held liable for such a Constitutional violation. Accordingly, the city's motion for summary judgment of the § 1983 claims was denied. Subsequently, following a bench trial the court permanently enjoined the defendants from arresting Sunn for his musical performances and awarded him \$45,220 in general and special damages.

Thompson v. City of Chicago, 2002 WL 31115578 (N.D. Ill. Sept. 24, 2002).

Homeless plaintiffs, on behalf of themselves and a proposed class,<sup>102</sup> filed a § 1983 and First and Fourth Amendment claim against the city of Chicago for its enforcement of an ordinance prohibiting begging or soliciting money on public ways. The plaintiffs alleged that police officers had repeatedly ticketed and arrested them pursuant to the ordinance. The city moved to dismiss for failure to state a claim, and the court denied the motion. The court held that, although the plaintiffs' § 1983 claims were not exceedingly clear, they nevertheless met the bare pleading requirements necessary to state a claim for municipal liability under *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978). It next ruled that the plaintiffs had sufficiently stated a claim for municipal interference with their First Amendment interest in panhandling. Finally, the court found that the plaintiffs had stated a claim under the Fourth Amendment because police officials should have been aware that an ordinance similar to the Chicago ordinance had previously been held to violate the Constitution, and thus the police could not have had a good faith belief in the constitutionality of the ordinance.

The case settled with the city paying \$99,000 in damages and an additional \$375,000 in attorney's fees and other administrative costs. The city also repealed the panhandling ordinance as a result of the suit.

Young v. New York City Transit Authority, 903 F.2d 146 (2d Cir. 1990).

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<sup>102</sup> In *Thompson v. City of Chicago*, 2002 WL 1303138 (N.D. Ill. 2002), the magistrate judge dismissed as moot the plaintiffs motion for class certification for injunctive relief, but recommended that the court certify the proposed class for monetary relief. In assessing the requirements for class certification, the magistrate found the common question of the city's enforcement of the panhandling ordinance predominated over individual damages questions. He also found that the class action device was a superior method for resolving the dispute, because the potential class size was great, and there was a substantial likelihood that many members of the class were either unaware of the alleged violations of the ordinance or incapable of bringing their own actions.

Plaintiffs challenged New York City Transit Authority regulations that prohibited begging on subway cars and platforms. The Second Circuit reversed the holding of the district court and vacated the lower court's order enjoining enforcement of the regulations holding that begging, which is "much more 'conduct' than 'speech,'" is not protected by the First Amendment. The court held that even if the First Amendment did apply, the regulation was reasonable because it was content-neutral, justified by a legitimate government interest, and allowed alternative channels of communication in that it did not ban begging in locations other than the subway.

## **B. State Court Cases**

ACLU of New Mexico v. City of Albuquerque, No. 2004 00355 (N.M. Dist. Ct. Bernalillo County 2004).

Plaintiff ACLU Chapter and an individual panhandler requested a declaratory judgment and an injunction against the enforcement of a pending anti-panhandling ordinance, alleging that it violated both free speech and due process rights under the New Mexico Constitution. The state district court judge granted a temporary restraining order in January 2004 barring the implementation of the ordinance. The ACLU settled with the city for a watered-down version of the ordinance, which went into force in January 2005. Under the new ordinance, Section 12-2-28, a police officer must give a warning before a citation is issued. If the person is caught violating the ordinance a second time in a 6-month period, then a citation can be written. The city also agreed to limit panhandling at night only in downtown or Nob Hill, that "flying a sign" is legal anytime and anywhere, and to rewrite or delete some of the more oppressive restrictions that infringed on people's First Amendment rights. The ordinance still, however, contains a number of restrictions on panhandling.

As of August 2005, local advocates do not believe that anyone has been cited under the new ordinance, although police are still citing people under the old one. Local advocates are determining how to respond.

Benefit v. Cambridge, 424 Mass. 918 (1997).

On May 14, 1997 the Massachusetts Supreme Judicial Court invalidated a state statute that prohibited "wandering abroad and begging," or "go[ing] about...in public or private ways...for the purpose of begging or to receive alms." The court found the prohibition to be a violation of plaintiff's right to freedom of speech.

This constitutional challenge was initiated in 1992 by the American Civil Liberties Union of Massachusetts on behalf of plaintiff Craig Benefit, a homeless man who had been arrested three times on Cambridge, MA for begging in violation of the statute. In 1996, the Superior Court of Middlesex County ruled that the law was an unconstitutional restriction on speech in violation of the plaintiff's rights to freedom of speech and equal protection of the laws under the First and Fourteenth Amendments.

On appeal, in a strongly worded unanimous opinion the state's highest court held (1) that peaceful begging involves communicative activity protected by the First Amendment, (2) that the criminal sanction imposed was an improper viewpoint-based restriction on speech in a public forum, based on the content of the message conveyed, and (3) that the statute was not constitutionally viable when subjected to strict scrutiny. The court also emphasized that the prohibition on begging not only infringes upon the right of free communication, it also suppresses "an even broader right – the right to engage fellow human beings with the hope of receiving aid and compassion." The court soundly rejected the state's argument that the statute supports a compelling government interest in preventing crime and maintaining safe streets. NLCHP filed an amicus brief in support of the plaintiff-appellee.

C.C.B. v. Florida, 458 So.2d 47 (Fla. Dist. Ct. App. 1984).

The defendant was arrested and charged with violating a Jacksonville ordinance prohibiting all begging or solicitation of alms in public places. On appeal, the court struck the ordinance as facially unconstitutional under the First Amendment. The court found the ordinance represented an attempt to deprive individuals of a first amendment right, and it lacked a compelling justification, in that protecting citizens from mere annoyance was not a compelling reason for the ordinance.

City of Cleveland v. Ezell, 121 Ohio App.3d 570, 700 N.E.2d 621 (1997).

Defendants in this case, who had been soliciting sales of newspapers to motorists stopped at red lights, were charged with violating a city ordinance which prohibited individuals from "standing on the street or highway and transferring any items to motorists or passengers in any vehicle or repeatedly stopping, beckoning to, or attempting to stop vehicular traffic through bodily gestures." Defendants appealed their lower court conviction, and argued that the ordinance was unconstitutional because it was overbroad and void for vagueness. On appeal, defendants argued that the ordinance at issue was impermissibly vague because it did not delineate specifically enough what type of conduct was prohibited. The Court of Appeals did not accept either argument and upheld the ordinance and defendants' convictions (however, one judge dissented asserting that the ordinance should have been found unconstitutional because it violated the free-speech public-forum doctrine).

Ledford v. State, 652 So.2d 1254 (Fla. Dist. Ct. App. 1995).

The defendant was arrested and charged with violating a St. Petersburg ordinance prohibiting begging for money upon any public way. On appeal, the court found that the ordinance could not survive strict scrutiny under a First Amendment analysis. The court held that begging was an expressive activity entitled to some First Amendment protection. The ordinance failed to distinguish between "aggressive" and "passive" begging. The City lacked a compelling reason for proscribing all begging in a traditional public forum, because protecting citizens from mere annoyance was not a compelling

reason to deprive a citizen of a First Amendment right. The court also found the ordinance void for vagueness for its failure to define the terms “beg” or “begging.”

McFarlin v. District of Columbia, 681 A.2d 440 (D.C. 1996).

Two consolidated cases involved charges under the District of Columbia Panhandling Act.<sup>103</sup> Defendant Williams was arrested and charged with aggressive panhandling. Police discovered him panhandling and allegedly impeding the flow of pedestrian traffic at the top of a subway escalator. Defendants McFarlin and Taylor were arrested for panhandling at the top of a subway escalator. At the time, the two men had been giving a musical performance and had placed a bucket nearby where passersby could drop money. The court upheld Williams’ conviction against his constitutional challenge while dismissing the charges against McFarlin and Taylor for insufficient evidence.

As to Williams, the court denied his First Amendment claim because the Act did not prohibit panhandling generally; instead, as interpreted by a transit authority regulation, the Act was limited to areas within fifteen feet of subway entrances. As such, the Act did not reach public fora, and was subject only to a reasonableness review. Since the Act did not target a specific viewpoint and served the significant government interest in promoting safety and convenience at a subway station, it did not violate the First Amendment. The court also denied Williams’ vagueness claim, finding that the transit authority’s construction of the Act as applying within fifteen feet of a subway station was a sufficiently definite description of the proscribed conduct.

As to McFarlin and Taylor, the court found that the Act was properly applied to them, since it reached broadly all attempts to solicit donations. However, due to the inexact testimony of the arresting officer, the court found the evidence insufficient to sustain the conviction.

People v. Schrader, 162 Misc. 2d 789, 617 N.Y.S. 2d 429 (Crim. Ct. 1994).

Defendant was charged with unlawfully soliciting in a subway station in violation of a New York City Transit Authority rule. Defendant argued that the charge should be dismissed because the rule violated his right to free speech, which is protected by the New York State Constitution, and because the rule was broader than necessary to achieve a legitimate state objective. The court held that although begging in general was a form of protected speech under both the New York State and U.S. Constitutions, the subway system was not a public forum, and that a ban on begging in the subway system was a reasonable limitation on speech in the particular forum as a safety precaution. The court also found that the rule was not a viewpoint-based restriction on speech.

State of Florida v. O’Daniels, 2005 WL 2373437 (Fla. App. 3 Dist. Sept. 28, 2005).

Defendant O’Daniels was arrested and charged with violating a city ordinance requiring street performers and art vendors to have a permit. O’Daniels moved to dismiss the

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<sup>103</sup> See D.C. Code §§ 22-2301 to 2306 (2002).

charge, claiming that the ordinance violated the First and Fourteenth Amendments of the U.S. Constitution and a provision of the Florida Constitution. The county court found the ordinance unconstitutional because it unnecessarily infringed on various constitutional rights.<sup>104</sup> First, the permit-issuing scheme lacked adequate procedural safeguards to avoid unconstitutional censorship. Second, the ordinance was not content-neutral, was not narrowly tailored to serve a significant government interest, and did not leave open ample alternative channels of communications. Third, the ordinance was void for vagueness because it failed to give fair notice of the conduct it prohibited and lacked guidelines for police to avoid arbitrary application. Fourth, the ordinance was facially invalid because it was overbroad. Finally, the ordinance violated substantive due process.

The city appealed, arguing that the ordinance was content neutral and was a reasonable time, place, and manner regulation. The city contended that the ordinance did not violate the First Amendment and was not overbroad in that it only restricted street performers and art vendors in certain areas. Furthermore, the city argued that it provided alternative channels of communication.

On appeal, the ACLU of Florida filed a brief amicus curiae supporting O’Daniels. The ACLU’s argument focused on the First Amendment right to artistic expression. The ACLU contended that the ordinance has a chilling effect because of its permit requirements, criminal penalties, and provisions regarding indemnification. Moreover, the ordinance unconstitutionally delegates to the private sector the power of review. The appellate court affirmed the lower court’s ruling. First, the court acknowledged that street performances and art vending are protected forms of expression under the First Amendment. Next, the court held that the ordinance was content neutral, noting that the city’s principal justification for the ordinance was its “desire to preserve the ‘reasonable expectations of residents to the enjoyment of peace and quiet in their homes, the ability to conduct their businesses and serve their patrons uninterrupted, and the public’s use of the City’s rights-of-way.’” Therefore, the court applied the time, place, and manner test. Because the ordinance bans street performances and art vending throughout the city except for 11 specified locations, the court held that it is “substantially broader than necessary to address the City’s stated traffic concerns.” Lastly, while the city argued that the ordinance only prohibits performing and vending that takes place in a fixed location, the court held that “[i]t is up to the street performer to decide whether to stand in a fixed position rather than to perform on the move” and the alternative means of communication must not only exist but also be “ample.” Accordingly, the court affirmed the holding that the ordinance violated the Constitutions of the United States and Florida.

State of Minnesota v. McDonald, No. 03085478 (Minn. Dist. Ct. 2004).

A homeless man charged with violating a Minneapolis ordinance that prohibited begging in public or private areas challenged the ordinance. The defendant was holding a begging sign and had approached vehicles when the police ticketed him. He had been cited under

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<sup>104</sup> Case No. B03-30046 (Miami-Dade County Ct. 2003).

the same ordinance several times before. The City of Minneapolis argued that the governmental interest behind the statute is to address the dangers of begging because the manner in which beggars ask for money can be intimidating, dangerous, can involve unwanted touching, and frighten people who are approached.

The court found that begging is free speech protected by the First Amendment and that the ordinance offers no alternatives for beggars to express themselves. The judge looked to *Loper v. New York City Police Department*,<sup>105</sup> in which the court found begging to be a protected right, and noted that there was little difference between those who solicit for themselves and those who solicit for organized charities. The court rejected the city's argument, saying that there are at least some beggars who are peaceful as well as charity workers who are aggressive or intimidating, and there also are other state statutes that address threatening behavior generally that would already cover the behavior the ordinance was trying to address.

State of Texas v. John Francis Curran, No. 553926 (Tex. Mun. Ct. City of Austin 2005).

In 2003, the Austin police issued John Curran a \$500 ticket for holding a sign asking for donations at a downtown intersection. Curran is a homeless man represented by Legal Services Corporation grantee Texas RioGrande Legal Aid. Although Curran did not contest his guilt, he fought the ticket on constitutional grounds. The ordinance, under which the police issued the ticket, prohibited people from soliciting "services, employment, business or contributions from an occupant of a motor vehicle." The municipal court judge declared the city ordinance prohibiting panhandling to be unconstitutional because the law violates the First Amendment, explaining that it is not "narrowly tailored in time, place, and manner."

### **III. Challenges to Vagrancy, Loitering, and Curfew Laws**

#### **A. Federal Court Cases**

City of Chicago v. Morales, 527 U.S. 41 (1999).

The city of Chicago challenged the Supreme Court of Illinois' decision that a Gang Congregation Ordinance violated the due process clause of the Fourteenth Amendment of the U.S. Constitution for impermissible vagueness -- lack of notice of proscribed conduct and failure to govern law enforcement. The ordinance prohibited criminal street gang members from loitering in a public place. The ordinance allowed a police officer to order persons to disperse if the officer observed any person loitering that the officer reasonably believed to be a gang member. The Supreme Court affirmed the judgment of the Illinois Supreme Court and ruled the ordinance unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Specifically, the court ruled that the ordinance violated the requirement that a legislature establish guidelines to

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<sup>105</sup> 999 F.2d 699 (2d Cir. 1990).

govern law enforcement. Additionally, the ordinance failed to give the ordinary citizen adequate notice of what constituted the prohibited conduct – loitering. The ordinance defined “loitering” as “to remain in any one place with no apparent purpose.” The vagueness the Court found was not uncertainty as to the normal meaning of “loitering” but to the ordinance’s definition of that term. The court reasoned that the ordinary person would find it difficult to state an “apparent purpose” for why they were standing in a public place with a group of people. “Freedom to loiter for innocent purposes,” the court reiterated, is part of the liberty protected by the due process clause of the fourteenth amendment.

Gaffney v. City of Allentown, 1997 U.S. Dist. LEXIS 14565 (D. Pa. 1997).

Plaintiffs challenged a juvenile curfew ordinance on due process and equal protection grounds. The court applied strict scrutiny and found the ordinance unconstitutional. The court held that the statute burdened a minor’s right to move freely and that the case did not present factors justifying differential treatment of minors that would allow the court to employ a lesser standard of review. Although the parties agreed that the city had a compelling interest in passing the ordinance, *i.e.*, the protection of minors from nighttime crime and the prevention of the same, it nevertheless failed because it was not narrowly tailored to advance that interest. The statistical evidence the city presented to the court showed no correlation between the passage of the ordinance and the incidence of juvenile crime, and the city did not present evidence that comparatively more juveniles were victims of nighttime crime.

Hodgkins v. Peterson, 355 F.3d 1048 (7th Cir. 2004).

A parent and her minor children brought a class action to seek a preliminary injunction against the enforcement of Indiana’s juvenile curfew ordinance on First Amendment and due process grounds.<sup>106</sup> The district court maintained that a First Amendment exception was necessary in a juvenile curfew ordinance to ensure that it was not overly broad. The plaintiffs argued that since a minor arrested under the ordinance could use the First Amendment only as an affirmative defense, the ordinance unduly chilled a minor’s First Amendment rights. The district court found no evidence, however, that the threat of arrest actually chilled minors’ exercise of their First Amendment rights. The court also found that the ordinance left ample alternative channels for minors’ communication. The court went on to find that the right of a parent to allow her minor children to be in public during curfew hours was not a fundamental right, and accordingly applied intermediate scrutiny to the statute. The ordinance survived intermediate scrutiny, because of its limited hours of operation and numerous exceptions.

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<sup>106</sup> The district court had struck down a previous version of the Indianapolis juvenile curfew ordinance on overbreadth grounds because it lacked an exception for First Amendment activities. *See Hodgkins v. Peterson*, 2000 U.S. Dist. LEXIS 11801 (S.D. Ind. 2000), *amended by* 2000 U.S. Dist. LEXIS 11758 (S.D. Ind. 2000). Subsequently, the plaintiff challenged an amended version of the ordinance on grounds that it violated her liberty interest in raising her children without undue government interference. The court denied a preliminary injunction on those grounds. *See Hodgkins v. Peterson*, 2000 U.S. Dist. LEXIS 20850 (S.D. Ind. 2000).

The plaintiffs appealed, and the Seventh Circuit reversed. While the court recognized that the curfew ordinance did not have a disproportionate impact on First Amendment rights, it did regulate the ability of minors to participate in a range of traditionally protected forms of speech and expression, including political rallies and various evening religious services. Applying the “no more restrictive than necessary” standard, the court found that even with the First Amendment affirmative defense, whereby arrest is avoided based on the facts and circumstances in a police officer’s actual knowledge, the ordinance did not pass intermediate scrutiny because it violated minors’ free expression rights.

Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999).

The district court granted summary judgment to plaintiff’s challenge of a juvenile curfew ordinance and found it unconstitutional on due process and vagueness grounds. A divided panel of the D.C. Circuit initially affirmed, but upon a rehearing en banc, the ordinance was upheld. The court refused to recognize a fundamental right for juveniles to be in a public place without adult supervision during curfew hours, nor was it willing to acknowledge a fundamental right for parents to allow their children to be in public places at night. The court applied intermediate scrutiny to the ordinance and held that the District had adequate factual bases to support its passage of the ordinance. In addition, the court found the ordinance enhanced parental authority as opposed to challenging it, owing to the ordinance’s exceptions for activities where parents were supervising their children. The court dismissed plaintiffs’ vagueness and Fourth Amendment claims.

Johnson v. City of Cincinnati, 310 F.3d 484, 2002 WL 31119105 (6th Cir. 2002).

Two plaintiffs, including a homeless man, successfully challenged a Cincinnati ordinance creating “drug-exclusion zones.” The ordinance prohibited an individual from entering a drug-exclusion zone for up to ninety days if the individual was arrested or taken into custody within such a zone for any number of enumerated drug offenses. If the individual was thereafter convicted of the offense, the ordinance extended the exclusion to a year. People who violated the ordinance could be prosecuted for criminal trespass. The ordinance empowered the chief of police to grant variances to individuals who were bona fide residents of the zone, or whose occupation was located in the zone. The homeless plaintiff claimed that he had been prohibited from entering the drug-exclusion zone in question for four years for drug-related offenses and spent four hundred days in jail for violating the ordinance. He regularly sought food, clothing, and shelter from organizations located in the zone, and his attorney’s office was located in the zone. The district court held the ordinance unconstitutional on its face and as applied to the plaintiffs, finding that it violated their rights to free association, to travel within a state, and, as to the homeless plaintiff, to be free from double jeopardy.

The Sixth Circuit affirmed.<sup>107</sup> The court held that the ordinance burdened the plaintiffs’ fundamental right to intrastate travel and the homeless plaintiff’s First Amendment

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<sup>107</sup> The Sixth Circuit agreed to hear the appeal even though the Ohio Supreme Court had already found that the ordinance violated both the state and federal constitutions. See *State v. Burnett*, 93 Ohio St. 3d 419 (2001) *infra*.



associational right to see his attorney. Applying strict scrutiny, the court found the ordinance was not narrowly tailored to advance the compelling state interest in enhancing the quality of life of its citizens. The ordinance swept too broadly as it forbade innocent conduct within the zones. In addition, it did not provide for any particularized finding that an individual was likely to engage in recidivist drug activity within the zones. Nor had the city adequately demonstrated that there were no less restrictive alternatives to the ordinance.

In discussing the homeless plaintiff's interest in his relationship with his attorney, the court noted that since he was homeless he had "no readily available, realistic alternative to communicate with his attorney" other than meeting him at his office in the drug-exclusion zone. His attorney could not visit him anywhere, and he had no phone available for a private conversation. "An urban street corner simply does not provide a sufficient guarantee of privacy and a realistically effective guard against disclosure of privileged and confidential information to be considered a viable alternative. ... [the plaintiff] is a homeless man, existing at the margin of our society, where he is uniquely vulnerable and in particular need of unobstructed access to legal representation and a buffer against the power of the State."

Justin v. City of Los Angeles, No. CV-00-12352 LGB, 2000 U.S. Dist. LEXIS 17881 (C.D. Cal. Dec. 5, 2000).

Plaintiffs, a group of homeless people living on the streets and in shelters of Los Angeles, filed suit alleging a violation of their First and Fourth Amendment rights and then filed for a temporary restraining order (TRO) in federal district court. Plaintiffs were ultimately seeking only injunctive relief. Plaintiffs sought the TRO to stop defendants from using two anti-loitering statutes, California Penal Code § 647(e) and Los Angeles Municipal Code § 41.18(a), to harass plaintiffs. The court denied the TRO as to preventing the authorities from using the codes to ask homeless individuals to "move along." However, the court granted the TRO as to all other acts because plaintiffs established that they had shown a substantial likelihood of prevailing on the merits, would suffer irreparable harm if the TRO was not granted, and that the balance of equities tipped in their favor.

The case has now been settled and a permanent injunction is in force for 48 months with the possibility of a court-granted extension for up to an additional 48 months. Defendants did not admit liability but were "enjoined as follows with respect to all members of the Class, when such Class members are in the Skid Row area described in plaintiffs' complaint: (1) Officers will not conduct detentions or 'Terry' stops without reasonable suspicion. However, officers may continue to engage in consensual encounters with persons in the Skid Row area, including members of the Class; (2) Officers will not demand identification upon threat of arrest or arrest individuals solely due to their failure to produce identification in circumstances where there is no reasonable suspicion to stop or probable cause to arrest; (3) Officers will not conduct searches without probable cause to do so, except by consent or for officer safety reasons as permitted by law; (4) Officers will not order individuals to move from their position on

the sidewalk on the basis of loitering unless they are obstructing or unreasonably interfering with the free passage of pedestrians on the sidewalk or 'loitering' for a legally independent unlawful purpose as specified in California Penal Code section 647; (5) Defendants will not confiscate personal property that does not appear abandoned and destroy it without notice. However, defendants may continue to clean streets and sidewalks, remove trash and debris from them, and immediately dispose of such trash and debris. Where applicable, defendants will give notice in compliance with the temporary restraining order issued in *Bennion v. City of Los Angeles* (C637718). Any personal property that does not appear intentionally abandoned collected by defendants will be retained for 90 days as provided by California Civil Code section 2080.2; (6) Officers will not cite individuals for violation of either Penal Code section 647(e) (loitering) or that portion of Los Angeles Municipal Code section 41.18 which makes it unlawful to "annoy or molest" a pedestrian on any sidewalk. However, officers may cite for obstructing or unreasonably interfering with the free passage of pedestrians on the sidewalk."<sup>108</sup>

Kolender v. Lawson, 461 U.S. 352 (1983).

Plaintiff challenged the constitutionality of a California state statute that required persons who loiter or wander on the streets to provide "credible and reliable" identification and account for their presence when asked to do so by a police officer. The Supreme Court found that the statute failed to adequately explain what a suspect must do to satisfy its requirements, and thus vested complete discretion in the hands of the police officers enforcing it, encouraging arbitrary enforcement. The court held that the statute was unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment.

Langi v. City and County of Honolulu, Civil No. 06-428 DAE/LEK (D. Haw. Aug. 6, 2006).

In March 2006, defendants Julia Matsui Estrella and Utu Langi, homeless advocates, along with at least 50-60 others, marched to the City Hall grounds to protest the nightly closure of Ala Moana Beach Park. The closure displaced more than 200 homeless individuals; no adequate living alternatives were provided. Estrella and Langi were cited for simple trespass on city property and ultimately arrested for criminal trespass in the second degree. In August 2007, the ACLU filed a motion in criminal court on behalf of Estrella and Langi, alleging that the City conduct unlawfully interfered with Estrella and Langi's First Amendment rights to free expression and assembly and subjected them to unlawful arrest. The motion also alleged violations of the Fourth Amendment right to be free from unlawful seizure and arrest and the Fourteenth Amendment right to equal protection, and alleged claims of false arrest/false imprisonment, battery and negligent infliction of emotional distress.

Shortly after the ACLU filed its motion, the prosecution dropped all criminal charges against Langi and Estrella. In January 2007, the parties entered into a settlement and

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<sup>108</sup> *Justin v. City of Los Angeles*, No. CV 00-12352 LGB (AIJx) (C.D. Cal. Nov. 5, 2001).

mutual release agreement, in conjunction with and simultaneous to the settlement of *Nakata v. City and County of Honolulu* (discussed below). Under the terms of the agreement, the City will pay \$65,250 to settle claims of damages, attorneys' fees and other costs. The majority of this money will be paid by the City to one or more non-profit organizations, including H-5 Project (Hawaii Helping the Hungry Have Hope), whose mission is to assist Honolulu's homeless population. In addition, the City will implement training for Honolulu law enforcement personnel on the use of trespass laws on public property and recent changes in the law. Lastly, the City agreed to notify and consult with the ACLU of Hawaii in the future concerning the public's right of access to the grounds of City Hall.

Leal v. Town of Cicero, 2000 WL 343232 (N.D. Ill. March 31, 2000).

The plaintiff was arrested for violating a Cicero ordinance prohibiting loitering on a street corner after a police officer has made a request that the individual move on. The officer had observed the plaintiff doing no more than remaining in a certain area for a short period of time. The plaintiff challenged the ordinance on vagueness grounds, and the court agreed that the law was unconstitutionally vague. The fact that the ordinance made the police officer's request to move on the basis for any potential arrest, as opposed to the loitering *per se*, did not save it from constitutional scrutiny. As in *City of Chicago v. Morales*, 527 U.S. 41 (1999), if the loitering is harmless or justified, then the dispersal order itself is an unjustified impairment of liberty. Additionally, the ordinance invited uneven police enforcement, as it contained no guidelines for the exercise of official discretion.

NAACP Anne Arundel County Branch v. City of Annapolis, 133 F. Supp. 2d 795 (D. Md. 2001).

The NAACP brought a facial challenge on federal and state constitutional grounds to an Annapolis ordinance prohibiting loitering within certain posted drug-loitering free zones. The ordinance made it a misdemeanor for a person observed, *inter alia*, "making hand signals associated with drug related activity" or "engaging in a pattern of any other conduct normally associated by law enforcement with the illegal distribution, purchase or possession of drugs" within a designated drug-loitering free zone to disobey the order of a police officer to move on. After finding that both the individual members of the NAACP and the NAACP itself had standing to bring the lawsuit, the district court ruled that the ordinance was unconstitutionally vague and overbroad. The court held that the plain language of the ordinance contained no mens rea requirement, and that, as it was interpreting a state law, the court had no authority to read a specific intent requirement into the ordinance. Without the narrowing device of the mens rea requirement, the ordinance was void for vagueness since it failed to provide adequate warning to the ordinary citizen to enable her to conform her conduct to the law and it vested unbridled discretion in police officers enforcing the ordinance. The ordinance was also unconstitutionally overbroad since without the specific intent requirement it reached a host of activities ordinarily protected by the constitution, such as selling lawful goods, communicating to motorists, and soliciting contributions.

Nakata v. City and County of Honolulu, Civil No. CV 06 004 36 SOM BMK (D. Haw. Aug. 10, 2006).

In a case related to and settled simultaneously with *Langi v. City and County of Honolulu* (discussed above), Reverend Robert Nakata and other homeless advocates sued the city and county of Honolulu alleging that they had been harassed and unlawfully threatened with arrest during the course of March and April 2006 protests against the nightly closure of Ala Moana Beach Park, where over 200 homeless individuals regularly slept. The lawsuit specifically charged that the city unlawfully restrained free speech by subjecting protests by people experiencing homelessness and their advocates to more restrictive conditions than other members of the public.

In January 2007, in conjunction with the settlement of the *Langi* case, the *Nakata* parties entered into a settlement agreement. Under the terms of the settlements of the cases, the City will pay \$65,250 to settle claims of damages, attorneys' fees and other costs. The majority of this money will be paid by the City to one or more non-profit organizations, including H-5 Project (Hawaii Helping the Hungry Have Hope), whose mission is to assist Honolulu's homeless population. In addition, the City will implement training for Honolulu law enforcement personnel on the use of trespass laws on public property and recent changes in the law. Lastly, the City agreed to notify and consult with the ACLU of Hawaii in the future concerning the public's right of access to the grounds of City Hall.

Nunez by Nunez v. City of San Diego, 114 F.3d 935 (9th Cir. 1997).

Minors and parents brought an appeal challenging constitutionality of San Diego's juvenile curfew ordinance. The Court of Appeals for the Ninth Circuit held that the statute was unconstitutionally vague, that it violated the First and Fourteenth Amendments, and that it violated the right of parents to rear their children. The phrase "loiter, idle, wander, stroll or play" did not provide reasonable notice of what conduct was illegal and allowed the police excessive discretion in stopping and arresting juveniles. While the court found that the city had a compelling interest in protecting children and preventing crime, the city failed to provide exceptions in the statute allowing for the rights of free movement and expression, and thus struck down the statute as not narrowly tailored to meet the city's interest.

Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

Eight individuals convicted under Jacksonville's vagrancy ordinance challenged the constitutionality of the law. The Supreme Court overturned the decision of the Florida Circuit Court and found that the ordinance was void for vagueness under the Due Process Clause of the Fourteenth Amendment on the ground that the ordinance "fails to give a

person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute” and “encourages arbitrary and erratic arrests and convictions.”

Quib v. Strauss, 11 F.3d 488 (5th Cir. 1993), cert. denied, 511 U.S. 1127 (1994).

The district court permanently enjoined the operation of a juvenile curfew ordinance on grounds that it violated the First Amendment and the equal protection clause. The Fifth Circuit reversed. The court assumed that the ordinance burdened a fundamental right of minors to travel, and applied strict scrutiny. The statute survived because the city provided sufficient data to establish that the ordinance was narrowly tailored and the defenses in the ordinance ensured that it employed the least restrictive means available. The court also relied on the defenses in rejecting the parental plaintiffs’ argument that it burdened their fundamental right to make decisions concerning their children.

Ramos v. Town of Vernon, 353 F.3d 171 (2d Cir. 2003).

Plaintiffs sought a preliminary injunction against the enforcement of Vernon, Connecticut’s juvenile curfew ordinance on First Amendment, Fourth Amendment, equal protection, vagueness, due process, and state constitutional grounds. The district court denied the injunction.<sup>109</sup> The court found that the ordinance’s exception for First Amendment activities saved it from an overbreadth challenge. The ordinance did not authorize unconstitutional searches and seizures. In analyzing the equal protection claim, the court applied intermediate scrutiny to the statute and found that the history and perception of crime in Vernon and some evidence that the ordinance was effective indicated that it was substantially related to its goals. Further, the ordinance adequately described the conduct it prohibited, and provided police with reasonable guidelines for its enforcement. Finally, since the ordinance contained an exception for minors accompanied by their parents, it did not unduly burden parents’ liberty interest in raising their children. The court certified the state constitutional claims to the Connecticut Supreme Court.<sup>110</sup>

Plaintiffs appealed, and the Second Circuit reversed, applying intermediate scrutiny to hold that the city ordinance infringes on minors’ equal protection rights. The court noted that although the curfew ordinance sought to reduce nighttime juvenile crime and victimization, the city did not consider nighttime aspects of the ordinance in its drafting process. Furthermore, the ordinance’s age limit is not targeted at those who were likely to cause trouble or to be victimized. Indeed, one of the city’s expert witnesses stated that “the adoption of the curfew itself probably could be considered a knee jerk reaction.”

Richard v. Nevada, No. CV-S-90-51 (D. Nev. Apr. 25, 1991).

Four Franciscan clergymen and four homeless individuals challenged Nevada’s statute prohibiting criminal loitering and vagrancy and related provisions of the Las Vegas

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<sup>109</sup> 48 F. Supp. 2d 176 (D. Conn. 1999).

<sup>110</sup> The Connecticut Supreme Court upheld the ordinance against each of the plaintiffs’ state constitutional claims. See *Ramos v. Town of Vernon*, 254 Conn. 799 (2000).

Municipal Code alleging that they were unconstitutionally vague and/or overbroad. The U.S. District Court for the District of Nevada held that the section of the Nevada statute defining vagrancy was unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment. However, the court abstained from making a decision on the other challenged section of the Nevada statute or sections of the Las Vegas Municipal Code. The court certified those matters to the Nevada Supreme Court, which subsequently held that both provisions were unconstitutionally vague.<sup>111</sup>

Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Cir. 1998), cert. denied, 1999 U.S. LEXIS 1908 (1999).

Plaintiffs challenged a juvenile curfew ordinance on due process and equal protection grounds. The district court upheld the ordinance, and the Fourth Circuit affirmed. Recognizing the greater state latitude in regulating the conduct of minors, the court applied intermediate scrutiny to the statute. The ordinance sought to advance compelling state interests, *i.e.*, the reduction of juvenile crime, the protection of juveniles from crime, and the strengthening of parental responsibility for children. The court found that the ordinance was substantially related to these interests, as the city had before it adequate information that the ordinance would create a safer community and protect juveniles from crime. Further, the court found the ordinance narrow enough to survive strict scrutiny, were it to be applied. Nor did the ordinance burden parents' privacy interests in raising their children. The Fourth Circuit also rejected the plaintiffs' vagueness claim, citing the ordinance's exceptions for First Amendment activities.

## **B. State Court Cases**

City of Salida v. Edelstein, Case No. 97CR62 (Colo. Dist. Ct. 1998).

Defendants were arrested for violating a Salida ordinance prohibiting anyone from loitering in one place for more than five minutes after 11:00 PM at night. One defendant had been speaking with friends on the sidewalk outside his home, while another defendant had been observing a police officer issue loitering citations to other individuals. The defendants challenged the ordinance on First Amendment, due process, and vagueness grounds. The municipal court found the ordinance unconstitutional, and the district court affirmed. The court held that the ordinance interfered with citizens' fundamental rights to stand and walk about in public places. The ordinance was not narrowly drawn to regulate that right, and the city failed to convince the court that any plausible safety concerns existed to justify the ordinance. Additionally, the court found the ordinance void for vagueness, since it failed to provide law enforcement with proper standards to prevent its arbitrary and discriminatory enforcement.

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<sup>111</sup> *State v. Richard*, 108 Nev. 626, 836 P.2d 622 (Nev. 1992).

Commonwealth v. Asamoah, 2002 Pa. Super. LEXIS 2896 (Pa. Super. Ct. 2002).

The defendant was convicted for loitering pursuant to a York, Pennsylvania ordinance. Police observed Asamoah near a man they believed to be carrying drugs, although Asamoah himself did no more than stand on the sidewalk with money in one of his hands. Police arrested him for violating that part of the ordinance forbidding “acts that demonstrate an intent or desire to enter into a drug transaction.” The Superior Court overturned his conviction, finding the ordinance was unconstitutionally vague and overbroad. The ordinance’s language provided inadequate guidance as to what constituted illegal behavior and left police free to enforce it in an ad hoc and subjective manner. The ordinance also proscribed and punished protected activities such as “hanging around” and “sauntering.”

Johnson v. Athens - Clarke County, 529 S.E.2d 613 (Ga. 2000).

Plaintiff was arrested for violating an Athens municipal ordinance prohibiting loitering or prowling. A policeman had observed Johnson at a particular intersection four times over a two-day period. At trial, the policeman testified that the location where he arrested Johnson was a known drug area, although the state presented no evidence of drug activity. The Georgia Supreme Court found the ordinance void for vagueness, since there was nothing in the ordinance’s language that would put an innocent person on notice that particular behavior was forbidden. There was no way a person of average intelligence could be aware of what locations were known drug areas and what innocent-seeming conduct could seem to be drug-related in the opinion of a police officer. The ordinance also failed scrutiny because it did not provide adequate safeguards against arbitrary or discriminatory enforcement.

State v. Burnett, 755 N.E.2d 857 (Ohio 2001).

The defendant successfully challenged a Cincinnati ordinance creating “drug-exclusion zones.”<sup>112</sup> The defendant was arrested for one of the designated drug offenses and given a ninety-day exclusion notice from the Over-the-Rhine exclusion zone, which the city extended to one year. He was subsequently arrested for criminal trespass for being present in the zone.

The Ohio Supreme Court denied the defendant’s freedom of association claim, but found that the ordinance impermissibly burdened his fundamental right to travel and that it violated the Ohio state constitution. As to the first amendment claim, the court found that the ordinance did not, on its face, interfere with the defendant’s fundamental, personal relationships. However, the court went on to hold that the due process clause of the federal constitution included the fundamental right to intrastate travel. Under the required compelling interest analysis, the ordinance failed because it was not narrowly tailored to serve Ohio’s compelling interest in protecting the health, safety, and welfare

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<sup>112</sup> See *Johnson v. City of Cincinnati*, 310 F.3d 484, 2002 WL 31119105 (6th Cir. 2002), *supra*.

of its citizens. The ordinance reached a host of innocent conduct, including visiting an attorney, attending church, and receiving emergency medical care. Finally, the court found the ordinance violated the Ohio state constitutional provision forbidding municipalities from adopting laws that conflicted with the “general laws” because it added a criminal penalty for a drug offense that was not imposed by a court or authorized by a statute.<sup>113</sup>

## **IV. Challenges to Restrictions on Food Sharing**

### **A. Federal Court Cases**

Big Hart Ministries v. City of Dallas, No. 3-07CV0216-P, 2007 WL 606343 (N.D. Tex. Jan. 31, 2007).

In January 2007, following extensive negotiation with the city of Dallas to reduce the impact of an ordinance that restricts sharing food with homeless individuals in public, two groups that serve food to homeless individuals in public spaces sued the city to challenge its food sharing restrictions. Plaintiffs Big Hart Ministries and Rip Parker Memorial Homeless Ministry are each non-profit religious organizations that conduct food sharing programs for and share religious teachings with homeless individuals in the City of Dallas. These organizations jointly filed a suit challenging the enforcement of Dallas City Ordinance 26023, which requires all operators of “Food Establishments” (as defined in the ordinance and including churches and other charitable organizations operating out of a mobile facility) to obtain a permit from the Director of the Department of Environmental Health Services for the City of Dallas in order to provide food in public places. Exceptions are made to the permit requirement, but only if food distribution takes place in specified areas of the city, of which only two areas are practicable for the plaintiffs. Violation of the ordinance is punishable by a fine of between \$50 and \$2,000 per day.

Plaintiffs’ allege that the ordinance (i) violates such organizations’ right to freely exercise their religious beliefs, guaranteed by the First and Fourteenth Amendments, (ii) violates such organizations’ and homeless persons’ right to free association, also guaranteed by the First and Fourteenth Amendments, (iii) violates such organizations’ and the homeless persons’ right to travel, as guaranteed by the Fourteenth Amendment, and (iv) violates certain Texas state constitutional and statutory provisions.

The city of Dallas indicated an intention to make substantial changes to the ordinance in connection with the opening of a new Homeless Assistance Center (“the Bridge”) in downtown Dallas in the spring of 2008. However, the city has not yet made any changes to the ordinance. The city has agreed to continue to refrain from enforcing the current

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<sup>113</sup> One justice concurred only in the state constitutional holding, arguing that no fundamental right to intrastate travel existed under the federal due process clause. *See* 93 Ohio St. 3d at 869.



ordinance against the plaintiffs other than by issuing written warnings. The case is pending.

Daytona Rescue Mission, Inc. v. City of Daytona Beach, 885 F. Supp. 1554 (M.D. Fla. 1995).

Plaintiffs, Daytona Rescue Mission and its founder, president and executive director, Gabriel J. Varga, brought suit against the City of Daytona Beach and the Daytona Beach City Commission, alleging that enforcement of a city ordinance would violate their rights under the Establishment Clause and the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment and the Religious Freedom Restoration Act of 1993 (the “RFRA”). Plaintiffs, who provide the homeless with portable bags of food and other services, sought injunctive and declaratory relief. Plaintiffs argued that because the zoning code’s definition of Church or Religious Institution “excludes homeless shelters and food banks as customarily related activities,” their application for semi-public use in their facility’s zone was denied.

The court held that because the zoning code provisions were neutral and generally applicable and furthered the city’s significant interest, plaintiffs’ rights under the Free Exercise Clause were not violated. Similarly, “the burden on religion is at the lower end of the spectrum” and other facilities exist for the homeless in the city. Therefore, the court held that protections under the RFRA did not apply. Lastly, the court found that the city had a compelling interest in regulating shelters and food banks for the homeless and the zoning code was the least restrictive means to furthering that interest.

Family Life Church v. City of Elgin, 2008 WL 2440658 (N.D. Ill. June 18, 2008).

Family Life Church invited H.E.L.P.S., A Ministry of Caring (“HELPS”) to operate a homeless shelter in its church and challenged the city’s requirement to obtain a conditional use permit and the delays it encountered in obtaining the permit. Responding to a complaint that HELPS was operating the shelter without proper approval, a city code enforcement officer inspecting the premises found three violations, including the lack of a permit to run a shelter and the lack of an occupancy permit for the building. When HELPS applied for the permit in September 2006, a further inspection purportedly revealed 105 building, fire and life-safety code violations. In October 2006, the city insisted the shelter be shut down until the permits were obtained.

In November 2006, the City of Elgin zoning board recommended that the permit application be approved subject to certain conditions. When the matter was still not on the city council’s agenda on January 11, 2007, Family Life and Frank Cherrye, a homeless individual, filed a lawsuit in federal court. The court denied plaintiffs’ request for a temporary restraining order against the city. The permit was granted on May 9, 2007.

The court granted the city’s motion for summary judgment, as it found that the permit application process and accompanying delays did not violate plaintiffs’ rights under the

First Amendment's Free Exercise Clause and the "substantial burden" provision of the federal Religious Land Use and Institutionalized Persons Act (the "Act"). The court found that the permit requirement was facially neutral and that the eight-month permit process did not rise to the level of a substantial burden. Furthermore, the court found that much of the delay was self-imposed: Family Life prematurely opened the shelter before seeking a permit and then had to close down the shelter during the pending permit process. With the same reasoning, the court rejected Family Life's Equal Protection claim and claim of disparate treatment under the Act, as well as Family Life's state claim under the Illinois Religious Freedom Restoration Act. Finally, the court rejected Cherrye's individual Equal Protection claim regarding the city's requirement that homeless persons staying at a particular shelter for more than three days demonstrate a connection with the city prior to entering the shelter. Because this residency requirement did not require someone to live in Elgin for any particular period of time, the court applied a rational basis standard and found that the requirement did not violate Cherrye's fundamental right to travel.

First Assembly of God of Naples, Florida, Inc. v. Collier County, Florida, 27 F.3d 526 (11th Cir. 1994).

First Assembly was zoned as a multi-family residential district that also permitted various community uses, including churches and their "customary accessory uses." In 1989, First Assembly converted a relatively new building into a homeless shelter. The surrounding community raised health and safety concerns. In 1991, a county official alleged that First Assembly's shelter violated several zoning ordinances. The Collier County Code Enforcement Board agreed that the shelter did not constitute a "customary accessory use" of the church. First Assembly closed the shelter.

First Assembly and plaintiffs brought suit against Collier County, seeking a temporary restraining order, a preliminary injunction, and permanent injunctive relief. The lower court denied plaintiffs' motions and granted the County's motion for summary judgment. First Assembly filed an appeal, arguing that it was denied due process in the enactment of the zoning laws and in the County's failure to codify the laws annually as required under Florida law. In addition, First Assembly argued that by enforcing the zoning laws, the County prevented the church from practicing an essential aspect of its religion: sheltering the homeless. Therefore, the County violated the Free Exercise Clause of the First Amendment.

The Eleventh Circuit affirmed the lower court ruling. Regarding the due process claim, the court found that although First Assembly had a protectable property interest, it was given a notice and an opportunity to be heard that was adequate under the federal Constitution. The court did not agree with plaintiffs that the published notice, which was smaller than a quarter page in size, did not include a geographic location map, and did not have a headline in 18-point font, was inadequate. Regarding the Free Exercise claim, the court found that the zoning law was neutral and of general applicability. The law applied to group homes generally and provided regulations and locations for their operation. The intent was to address health and safety concerns, not to inhibit or oppress any religion.

First Assembly's petition for writ of certiorari was denied.

First Vagabonds Church of God v. City of Orlando, No. 6:06-CV-1583-Orl-31KRS (M.D. Fla. filed Oct. 12, 2006).

First Vagabonds Church of God and Food Not Bombs, a homeless ministry and anti-poverty group, respectively, filed suit in federal court challenging a city ordinance that prohibits "large group feedings" in parks in downtown Orlando without a permit, and also limits the number of permits for each park to two per year per applicant.<sup>114</sup> "Large group feedings" are defined under the ordinance as events that intend to, actually or are likely to feed 25 or more people.

Prior to the enactment of the ordinance, the plaintiff organizations had been regularly distributing free food to homeless persons in certain Orlando parks for a long period of time. Following enactment of the ordinance, the organizations attempted to remain in compliance with the law by distributing food outside of or adjacent to city parks, but found such distribution to be impracticable. The plaintiffs' suit sought a declaration that the ordinance is unconstitutional (under the First Amendment's free speech and religious exercise clauses and Fourteenth Amendment's due process clause) and in violation of certain Florida statutes, including Florida's Religious Freedom Restoration Act. Further, the plaintiffs sought an injunction prohibiting enforcement of the ordinance and unspecified damages.

In January 2008, the City of Orlando moved for summary judgment. The court held that resolution of the FRFRA claim involves disputed issues of material fact that cannot be resolved by summary judgment. With respect to the Free Exercise claim, the court held that the City had provided no rational basis for the law because no evidence showed that moving group feedings from one park to another would help to alleviate the City's concerns. Therefore, the Free Exercise claim survived summary judgment. Similarly, the court found that the City had not provided a defense to the Free Assembly claim. The court dismissed plaintiffs' facial challenge because the conduct regulated by the ordinance is not, on its face, an expressive activity. In contrast, however, the court found that the as-applied challenge was not entitled to summary judgment, because it is possible that, after examining the context, the conduct of feeding people could be expressive. The City was entitled to summary judgment on the Equal Protection and Due Process claims.

In September 2008, the court ruled in favor of the plaintiffs on their claims that the food sharing restriction violated their rights to free speech and to freely exercise their religious beliefs under the First Amendment. The court found that Orlando Food Not Bombs' food sharing activities was expressive conduct, the ordinance did not further a substantial interest of the city, and the ordinance placed too great a burden on plaintiffs' free speech rights. With respect to the free exercise claim, the court found that there was no rational basis for the ordinance, as none of the interests claimed by the city were served by the

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<sup>114</sup> Code of the City of Orlando § 18A.09-2 (2007).

ordinance. Further, the ordinance was more than an incidental burden on First Vagabonds Church's free exercise rights.

NLCHP filed an amicus brief in favor of the plaintiffs in this case. The case is currently on appeal.

Layman Lessons, Inc. v. City of Millersville, 2008 WL 686399 (M.D. Tenn. Mar. 7, 2008).

In 2005, Layman Lessons set up Blessingdales Charity Store, which was both a place to store donated clothing and personal items and distribute them to the needy, and a retail store to sell these items to raise money. Layman Lessons applied for a Certificate of Occupancy, but its application was placed on hold due to a then-pending ordinance that would have limited Layman Lessons' use of the property as planned. In addition, the city required the construction of a "buffer strip," such as a fence or landscaping to serve as a buffer between properties. Layman Lessons' property only abutted commercial properties, however, and buffer strips were typically only required on properties abutting residential property.

In 2006, Layman Lessons filed a complaint, alleging that the city's actions violated its rights under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") of its constitutional rights under the First and Fourteenth Amendments and the Tennessee Constitution.

In March 2008, the court ruled on both parties' respective motions for summary judgment, granting in part and denying in part each motion. The court found Layman Lessons did not state a valid claim under RLUIPA for enforcement of the buffer strip requirement as it was not a substantial burden and was neutral. Because the city planner did not have authority to unilaterally deny an application for a Certificate of Occupancy, the court did not find the city liable under § 1983 for the city planner's actions. The court also found that Layman Lessons failed to prove its Equal Protection claim.

However, the court granted Layman Lessons' summary judgment motion on its claim that city actions (aside from the city planner's actions) that delayed issuance of a Certificate of Occupancy burdened Layman Lessons' free exercise rights in violation of the RLUIPA. In addition, the court found that the city's "arbitrary and irrational implementation and enforcement of [the buffer strip ordinance]" violated Layman Lessons' right to Due Process.

McHenry v. Agnos, 983 F.2d 1076 (9th Cir. 1993).

Keith McHenry is the co-founder of Food Not Bombs, an organization which distributes free food to, and advocates increased public assistance for, the homeless and hungry of San Francisco. McHenry filed suit against the city of San Francisco and various city officials after being enjoined from distributing food to members of the homeless community in San Francisco based on the organization's failure to comply with

ordinances regarding the distribution of food in public. Specifically, the ordinances required that organizations which distribute food to more than 25 persons in public parks obtain a permit and meet certain sanitation standards.

McHenry's suit alleged that such city ordinances and the injunction violated his First Amendment rights and were facially invalid. The district court granted summary judgment in favor of the defendants, finding that McHenry's food distribution activity did not constitute protected expression and that even if it did, the permit ordinances would constitute reasonable time, place, and manner restrictions on such expression. On appeal, the Ninth Circuit upheld the district court's decision, finding that the ordinances were constitutional, as the government interests behind the ordinances were substantial and the ordinances were sufficiently content neutral and narrowly tailored.

Pacific Beach United Methodist Church v. City of San Diego, Docket No. 07-CV-2305-LAB-PCL (S. D. Cal. Dec. 7, 2007).

Pacific Beach United Methodist Church, its pastor and its congregation brought suit against the City of San Diego, alleging that the city had threatened to fine and punish them for sharing a meal and religious services with hungry, homeless, and other individuals. Plaintiffs argued that ministering to and caring for hungry, homeless and poor individuals is at the core of their religious and spiritual identities and, therefore, the city's actions violated the United States and California Constitutions and the Religious Land Use & Institutionalized Persons Act.

Plaintiffs alleged that, on October 31, 2007, while Plaintiffs were preparing for that evening's service, defendants "raided" Plaintiffs' church property "without warning, in a show of authority designed to chill the Plaintiffs' exercise of their ministry and intimidate Plaintiffs." Defendants stated that they were acting on an anonymous complaint to perform an inspection to determine whether Plaintiffs' activities were violating any laws, ordinances or municipal codes. Further, In November 2007, Defendants informed Plaintiffs that their religious activities were a violation of four San Diego municipal codes relating to residential multiple unit dwelling developments, use regulations of residential zones, and homeless facilities.

Plaintiffs argued in their complaint that these ordinances are facially inapplicable to Plaintiffs' activities. Further, Plaintiffs argued that the city's actions violated the Religious Land Use and Institutionalized Persons Act of 2000 and the First, Fourth, Fifth, Ninth and Fourteenth Amendments of the United States Constitution. Plaintiffs sought injunctive relief to protect their freedom to continue their ministries to the poor, hungry and homeless. In April 2008, the parties settled the case. Under the settlement agreement, Plaintiffs will be allowed to continue their Wednesday Night Ministry without a permit and without the threat of fines or citations from the City of San Diego. The City may conduct inspections at the church and enforce other laws and ordinances.

Sacco v. City of Las Vegas, Docket No. 2:06-CV-0714-RCJ-LRL (D. Nev. June 12, 2006).

Several individuals who share food with homeless individuals as a component of their charity work and as a part of a broader political demonstration associated with Food Not Bombs, an all-volunteer organization dedicated to nonviolent social change, filed suit in federal court challenging (i) the enforcement of Las Vegas Municipal Code § 13.36.055(A)(6), which prohibits “the providing of food or meals to the indigent for free or a nominal fee” in public parks, (ii) city ordinances requiring that a permit be obtained in order to hold events in city parks that are attended by more than 25 people, (iii) restriction that three particular parks may be used solely by children or supervisors/guardians of children and (iv) laws permitting the police to ban people who commit crimes on city property from entering public parks.

In January 2007, the federal district court granted a preliminary injunction enjoining enforcement of the ordinance prohibiting provision of food or meals to indigent persons. In August 2007, the court ruled on the plaintiffs’ motion to make the injunction permanent and to approve the other measures being sought, including the challenges to the permit requirements and the children’s parks and trespass laws (described above). Basing its decision on the plaintiff’s equal protection and due process arguments, the court granted the motion for a permanent injunction against enforcement of the ordinance restricting food sharing with indigent persons, but denied the plaintiffs’ other challenges.

Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022 (9th Cir. 2006).

Santa Monica Food Not Bombs, an all-volunteer organization dedicated to nonviolent social change, and other organizations and individuals seeking to share food with homeless individuals brought suit against the City of Santa Monica, California, alleging that certain permit requirements and limitations on outdoor meal programs violated plaintiffs’ rights under the First and Fourteenth Amendments of the U.S. Constitution, and various provisions of the California Constitution. The district court granted Santa Monica’s motion for summary judgment, holding that the challenged ordinances were not facially unconstitutional. Food Not Bombs appealed to the Ninth Circuit.

The Ninth Circuit held that Food Not Bombs’ challenges to an ordinance prohibiting banners outside of city-sponsored events and an ordinance prohibiting food distribution on sidewalks were moot because those ordinances had been amended after the suit was filed. The court held that the third events ordinance being challenged, which required permits for parades, events drawing 150 people or more, and events involving setting up tents, was a content-neutral time, place and manner regulation that did not violate the First Amendment. The court found the ordinance was not directed to communicative activity as such, and the object of the permitting scheme was “to coordinate multiple uses of limited space, to assure preservation of the park facilities, to prevent uses that are dangerous, unlawful, or impermissible” under the park district’s rules, and to assure financial accountability for damage the event may cause. In addition, an instruction to the ordinance provided that “no consideration may be given to the message of the event,

the content of speech, the identity or associational relationships of the applicant, or to any assumptions or predictions as to the amount of hostility which may be aroused in the public by the content of speech or message conveyed by the event.”

Food Not Bombs also contended that the events ordinance was not sufficiently narrowly tailored. The court rejected this argument as applied to sidewalks and park paths because a limiting instruction limited the application of the ordinance to activities that are “likely to interfere” with traffic flow. However, the court held that the ordinance was insufficiently narrowly tailored with respect to all other city streets and public ways, to which the limiting instruction did not apply. The court also found that there were ample alternatives for speech.

Stuart Circle Parish v. Board of Zoning Appeals of the City of Richmond, 946 F. Supp. 1225 (E.D. Va. 1996).

Stuart Circle Parish, a partnership of six churches of different dominations in the Stuart Circle area of Richmond, Virginia, sought a temporary restraining order and permanent injunctive relief to bar enforcement against them of a zoning code limiting feeding and housing programs for homeless individuals. The ordinance limited feeding and housing programs to up to 30 homeless individuals for up to seven days between October and April. Plaintiffs conduct a “meal ministry” for 45 minutes every Sunday, to provide “worship, hospitality, pastoral care, and a healthful meal to the urban poor of Richmond.” Some, but not all, of the attendees are homeless. Neighbors of the host church complained to the city’s zoning administrator, alleging unruly behavior by attendees of the meal ministry. The zoning administrator found that plaintiffs violated the city ordinance limiting feeding and housing programs. Although plaintiffs appealed, the Board of Zoning Appeals upheld the determination.

Plaintiffs then brought suit in federal district court. Plaintiffs alleged that their rights to free exercise of religion were protected by the First Amendment and the Religious Freedom of Restoration Act (the “RFRA”)<sup>115</sup> and would be violated if the ordinance were enforced against them. To plaintiffs, the meal ministry is “the physical embodiment of a central tenet of the Christian faith, ministering to the poor, the hungry and the homeless in the community.” Furthermore, plaintiffs argued that injunctive relief would not work irreparable injury on the city and that the city failed to show a compelling state interest, especially given that there was no showing of unruly and disruptive behavior on more than one occasion.

The court granted plaintiffs’ motion for a temporary restraining order. The court held that plaintiffs would suffer irreparable injury without such injunctive relief because they would otherwise be prevented from engaging in the free exercise of their religion. In addition, defendants failed to show that the injunctive relief would work irreparable injury on them; such injunctive relief would only “return the parties to their status quo ante positions.” The court also found that plaintiffs were likely to succeed on the merits

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<sup>115</sup> In 1997, the RFRA was struck down as unconstitutional. *City of Boerne v. Flores*, 521 U.S. 507. However, a number of states have similar laws.

because the plaintiffs demonstrated that the meal ministry is a central tenet of their religious practice and that it is important that the meal ministry be provided in the church. On the other hand, the city failed to show a compelling state interest in prohibiting plaintiffs from continuing their meal ministry as currently conducted. Lastly, the court found that granting the temporary restraining order serves the public interest by providing a federal forum in which plaintiffs can vindicate their federal rights, which they were unable to do in the state process.

Western Presbyterian Church v. The Board of Zoning Adjustment of the District of Columbia, 862 F. Supp. 538 (D.D.C. 1994).

Western Presbyterian Church brought suit against defendants to enjoin enforcement of (i) a decision of the District of Columbia Zoning Administrator, which was upheld by the Board of Zoning Adjustment of the District of Columbia, and (ii) the District of Columbia zoning regulations as applied to the Church's program to feed homeless individuals on its premises. Section 216 regulates programs conducted by church congregations or groups of churches in an R-1 (residential) district. The zoning regulations provide that "any other accessory use . . . customarily incidental to the uses otherwise authorized by this chapter shall be permitted in [a special purpose] district."

Plaintiffs sought protection of their rights under the Religious Freedom Restoration Act of 1993 (the "RFRA"),<sup>116</sup> the Civil Rights Act of 1964, and the First and Fifth Amendments. Plaintiffs argued that defendants violated their rights to free exercise of religion and their due process and equal protection rights by (i) enforcing the Zoning Regulations in an arbitrary and capricious manner, (ii) denying fair notice and chilling their First Amendment rights, (iii) interpreting the Zoning Regulations so as to impose a more onerous burden on churches in special purpose zones than that imposed on churches in residential zones, and (iv) interpreting the Zoning Regulations to deny churches the ability to engage in accessory uses as a matter of right in special purpose zones, to the extent such uses are considered church programs under Section 216.

The court granted plaintiffs a permanent injunction and granted plaintiffs' motion for summary judgment. The court noted that "[i]t is difficult to imagine a more worthwhile program," and that "[t]he federal government and the District of Columbia have been unable to deal with the problem of the homeless, but here, a private religious congregation is spending its own funds to help alleviate a serious societal problem." The court added that "[i]t is paradoxical that local authorities would attempt to impede such a worthwhile effort." The court held that the enforcement of the zoning laws to regulate religious conduct violated plaintiffs' right to free exercise of religion in violation of the First Amendment and the RFRA.

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<sup>116</sup> In 1997, the RFRA was struck down as unconstitutional. *City of Boerne v. Flores*, 521 U.S. 507. However, a number of states have similar laws.



## **B. State Court Cases**

Abbott v. City of Fort Lauderdale, 783 So. 2d 1213 (Fla. Dist. Ct. App. 2001).

Plaintiff, who conducted a feeding program on the beach in Fort Lauderdale for homeless individuals, sought injunctive and declaratory relief to prevent the city from enforcing against him a city ordinance that prohibited the use of parks “for business or social service purposes unless authorized pursuant to a written agreement with the City.” Arnold Abbot and his group, Love Thy Neighbor, had fed poor and homeless people each Wednesday on the public beach across from the Radisson Bahia Mar, as part of their religious beliefs. The city believed that the regular feedings at a set location constituted a social service agency. Moreover, the city noted that there were other services and agencies in the city that the homeless could rely upon, including at the Homeless Assistance Center, which allegedly made plaintiff’s feedings unnecessary.

The trial judge rejected plaintiff’s claims that the ordinance violated his rights to equal protection and due process of law as well as his First Amendment rights under the Florida Religious Freedom Restoration Act of 1998 (the “FRFRA”). The trial judge held that because the rule violated plaintiff’s rights under the FRFRA, the city would have to provide an alternative public property site where plaintiff could conduct the feeding program.

Plaintiff appealed, challenging on post-trial motion that the city’s site selection did not follow the intent of the trial court’s order. The city cross-appealed the trial court’s holding that the rule violated the FRFRA. On appeal, the court concluded that the trial court’s order implied that the alternative public property site “would at least be minimally suitable for the purposes intended” and would “represent[] the ‘least intrusive means’ of furthering the government’s compelling interests.” The court reversed and remanded to the trial judge to determine whether the selected site complied with the order’s requirements and with the FRFRA.

## **V. Miscellaneous**

### **A. Federal Court Cases**

Currier v. Potter, 379 F.3d 716 (9th Cir. 2004), cert. denied, 125 S. Ct. 2935 (2005).

Three homeless individuals in Seattle brought suit against the Postal Service for denying them certain types of mail service, such as no-fee postal boxes available to other classes of individuals, and general delivery service at all postal branches. The plaintiffs alleged violations of postal service regulations, the Postal Reorganization Act, the Administrative Procedures Act, and the Constitution. Defendants moved to dismiss for lack of subject matter jurisdiction and failure to state a claim. The lower court dismissed the complaint

in its entirety. It held that postal service regulations as well as the Administrative Procedure Act did not create a cause of action for the plaintiffs in this case. While the plaintiffs did establish the court's jurisdiction under a provision of the Postal Reorganization Act prohibiting discrimination among users of the mail, the court dismissed that claim *sua sponte* on the basis that the postal service regulations passed muster under an ordinary rational basis review.

The court also dismissed plaintiffs' constitutional claims. As to the First Amendment, the court agreed that the right to receive mail is fundamental, but refused to apply strict scrutiny because the Postal Service was not purporting to censor the content of any mail. Under a reasonableness review, the court found the regulations content-neutral and that they reasonably advanced "Congressionally-mandated goals of delivering mail efficiently and economically."<sup>117</sup> Turning to the equal protection claim, the court found that the Postal Service's distinctions among persons who could and could not receive no-fee post office boxes were reasonable. "The relevant postal regulations that govern the no-fee boxes make it clear that only residents who have a physical residence or a business location at a fixed delivery point are eligible for the [no-fee boxes]."<sup>118</sup> Moreover, providing general delivery service at all post office branches would increase costs and complicate investigations of illegally shipped material.

The plaintiffs appealed the court's ruling. NLCHP filed an amicus brief on Currier's behalf, arguing that the postal service regulations provide a private right of action and that the Postal Service has waived its immunity with respect to claims under those regulations. NLCHP contended that the district court erred in finding it did not have subject matter jurisdiction over some of Currier's claims because the Postal Reorganization Act confers federal jurisdiction in actions involving the postal service, and the postal service regulations provide a substantive legal framework creating a cause of action. The court also had jurisdiction under the Administrative Procedure Act, which does not foreclose judicial review of Postal Service regulations. NLCHP also argued that the postal service regulations violate the First Amendment rights of homeless people by requiring them to pay for post office boxes and by limiting the locations and hours of operation of post offices that offer general delivery. Finally, NLCHP argued the regulations violate the Equal Protection Clause by automatically denying homeless people no-fee post office boxes while simultaneously offering them to other customers who are ineligible for carrier delivery.

The Ninth Circuit affirmed the lower court decision. Regarding jurisdiction, the Ninth Circuit upheld both the lower court's dismissal of plaintiffs' claim regarding the no-fee box regulation, and the lower court's exercise of subject matter jurisdiction over plaintiffs' statutory claim. The court limited the relevant forum to the general delivery service and concluded that such forum is a nonpublic forum because the postal service's "provision of general delivery service is meant merely to facilitate temporary mail delivery to a limited class of users."<sup>119</sup> The court then ruled that the postal service acted

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<sup>117</sup> *Currier v. Henderson*, 109 F. Supp. 2d 1221, 1230 (W.D. Wash. 2002).

<sup>118</sup> *Id.* at 1231.

<sup>119</sup> 379 F.3d at 729.

reasonably in confining general delivery service to a single Seattle location. Furthermore, the court rejected plaintiff's First Amendment challenge to the no-fee postal box regulations, holding that such boxes are nonpublic fora and that the postal service is "not constitutionally obligated to provide no-fee boxes to homeless persons."<sup>120</sup> Because these First Amendment claims fail, the court also rejected plaintiffs' Equal Protection claims on rational-basis review.<sup>121</sup>

Plaintiffs filed a petition for a writ of certiorari, arguing that the Ninth Circuit erred in determining that the forum at issue was the general delivery service. Instead, because general delivery is the only means homeless people have to access the mail system, the plaintiffs argued the proper forum is the entire "mail system," which they argued is a public forum.<sup>122</sup> Alternatively, even if the entire mail system is not the relevant forum, plaintiffs contended that general delivery and no-fee boxes are public fora because they are modes of public communication.<sup>123</sup> In response, defendants argued that the Ninth Circuit was correct in evaluating general delivery and no-fee boxes as the relevant forum and determining that they were nonpublic fora.<sup>124</sup> Plaintiffs' petition for writ of certiorari was denied on June 20, 2005.

Fitzgerald v. City of Los Angeles, No. CV 03-1876 NM (C.D. Cal. 2003), 485 F. Supp. 2d 1137 (C.D. Cal. 2007).

Plaintiffs brought suit to challenge a police practice of taking homeless people from the Skid Row area of the city into custody and detaining them after performing warrantless searches without reasonable suspicion to believe such persons' parole or probation had been violated. Plaintiffs alleged that the Los Angeles Police Department (LAPD) had adopted a policy and practice of harassment, intimidation and threats against the residents of the Central City East area of Los Angeles, including homeless individuals in that area and residents of Skid Row's Single Room Occupancy (SRO) housing units. Plaintiffs claimed that the police's stated reason for such actions – that they were looking for parole violators and absconders – was a pretext.

The court certified the plaintiff class for settlement purposes and issued an injunction against such police practices, based on plaintiffs' Fourth Amendment claims as well as "Plaintiffs' rights under California Civil Code § 52.1 to be free from interference and attempts to interfere with Plaintiffs' Fourth Amendment rights by threats, intimidation, or

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<sup>120</sup> *Id.* at 731.

<sup>121</sup> Judge Gould, in his concurring opinion, leaves open the possibility of a homeless person's as-applied challenge, in which case he "would hold that, although the Post Office need not routinely make general delivery available at all branch post offices for all persons who are homeless, the Postal Service's regulations, to comply with the First Amendment, must make due provision for general delivery to a homeless person at a branch office when that person has shown undue hardship in retrieving mail at the main post office." *Id.* at 733.

<sup>122</sup> Brief of Petitioner-Appellant at 17, *Seattle Housing and Resource Effort (SHARE) v. Potter*, 2005 WL 415085 (Feb. 15, 2005).

<sup>123</sup> *Id.* at 21

<sup>124</sup> Brief for Respondent-Appellee, *Seattle Housing and Resource Effort (SHARE) v. Potter*, 2005 WL 415085 (May 20, 2005).

coercion.” In December 2003, the parties settled the case, agreeing to a stipulation to a permanent injunction limiting detentions, “Terry” stops and searches without the necessary reasonable suspicion, probable cause and/or search warrants. The injunction would remain in effect for 36 months, and could be extended upon a showing of good cause for an additional 36 months.

In November 2006, plaintiffs learned of allegations that the police were violating the injunction. The court granted the plaintiffs’ motion to extend the injunction. The parties settled the case in December 2008 and the court approved the settlement agreement in February 2009. The settlement agreement set forth specific rules officers must follow with respect to searches incident to arrest, searches of parolees and probationers, handcuffing and frisks and prolonged detention for the purpose of running warrants. Warrant checks may only be conducted “if the time required to complete the warrant check does not exceed the time reasonably required to complete the officer’s other investigative duties.” In addition, the settlement agreement requires that the LAPD develop and conduct training sessions covering these issues. All officers assigned to patrol the Skid Row area must attend the training sessions.

Hiibel v. Sixth Judicial District of Nevada, 542 U.S. 177 (2004).

Larry Hiibel was arrested and convicted under Nevada’s stop and identify statute for refusing to identify himself during an investigatory stop for a reported assault. Hiibel appealed the conviction, claiming that his arrest and conviction for refusing to identify himself violated his Fourth and Fifth Amendment rights. The appellate court and the Nevada Supreme Court affirmed his conviction. The Supreme Court granted Hiibel’s petition for certiorari.

NLCHP, NCH, and other homelessness advocacy groups filed an amicus brief supporting Hiibel in the Supreme Court. The advocacy groups contended that arresting people for failing to identify themselves violated their Fourth Amendment rights to be free from unreasonable searches and seizures, particularly in light of the difficulty homeless persons have maintaining and obtaining identification. The advocacy groups noted that police were more likely to stop homeless people and ask for identification, and homeless people were more likely not to have identification. The advocacy groups pointed to restrictive state documentation requirements as one reason many homeless persons did not have identification.

The Supreme Court ruled that Hiibel’s arrest for refusing to identify himself did not violate either his Fourth or Fifth Amendment rights. However, the Court’s holding merely applied to refusing to identify oneself in a situation where a police officer has reasonable suspicion to investigate, but did not reach the question whether a person could be arrested in the same circumstances for failure to produce an identification card.

Horton v. City of St. Augustine, 272 F.3d 1318 (11th Cir. 2001).

Plaintiff, a “one-man band” street performer, challenged an ordinance regulating street performances in a four-block area of St. Augustine on grounds of vagueness, overbreadth, and as an invalid time, place, and manner restriction. The district court granted a preliminary injunction against the enforcement of the ordinance, finding that it failed to give proper notice as to what conduct it prohibited, and it promoted arbitrary and discriminatory enforcement. On the city’s appeal, the Eleventh Circuit first held that the case was not mooted by the city’s amendment of the ordinance following entry of the preliminary injunction. The court then ruled that the district court had applied the wrong standard for facial challenges based on vagueness, and that under the proper standard, the ordinance did not suffer for vagueness. It precisely identified where in the city it applied and included a sufficiently precise definition of the word “perform.” The court distinguished the loitering ordinance invalidated in *City of Chicago v. Morales*, 527 U.S. 41 (1999). The ordinance also gave law enforcement adequate guidelines for what constitutes a street performance. The Eleventh Circuit also held that the ordinance was not unconstitutionally overbroad on its face, as it specified a limited area in which distinct means of expression and conduct could not take place. The ordinance left many types of speech untouched. As to the time, place, and manner challenge, the court found that the restriction was valid. It was viewpoint neutral and promoted justifiable enumerated municipal purposes.

Mason v. City of Tucson, No. CV 98-288 (D. Ariz. June 12, 1998).

Plaintiff sought a preliminary injunction, damages, declaratory and injunctive relief against the City of Tucson and the Tucson City Police for engaging in a policy of “zoning” homeless people charged with misdemeanors in order to restrict them from the downtown areas. Plaintiff argued that such restrictions violated his constitutional right to travel, constituted a deprivation of liberty without due process of law in violation of the 5th amendment and implicated the Equal Protection Clause of the 14th amendment. The zone restrictions placed on the plaintiff included a two-mile square area covering most of downtown Tucson. This area includes all of the local, state and federal courts, voter registration facilities, a soup kitchen, places of worship and many transportation and social service agencies.

On July 13, 1998, the District Court granted a preliminary injunction stating that the plaintiff had demonstrated some probability of success on the merits in that the zone restrictions promulgated against the plaintiff were likely unconstitutionally broad as to geographical area.<sup>125</sup> The District Court granted plaintiff’s preliminary injunction to the extent that, as to the plaintiff, defendants were enjoined from enforcing the zone restrictions, from imposing or enforcing similarly overbroad zone restrictions, or from imposing or enforcing any zone restrictions unless such restriction is specifically authorized by a judge.

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<sup>125</sup> *Mason v. City of Tucson*, No. CV 98-288 (D. Ariz. July 13, 1998).

Subsequent to the court's ruling on the preliminary injunction, the parties settled.

Osborn v. City of Atlanta, No. 1:90-CV-1553 (N.D. Ga. 1991).

Plaintiff was a homeless activist who voluntarily became unemployed and homeless. Police repeatedly asked him to leave a public park, and arrested him on at least one occasion. The plaintiff challenged the police conduct on equal protection and due process grounds. The court granted the defendant's motion for directed verdict as to the equal protection claim, and the jury found against the plaintiff on his due process claim.

### **B. State Court Cases**

Homes on Wheels v. City of Santa Barbara, 119 Cal. App. 4th 1173 (Cal. App. 2 Dist. 2004); 2005 WL 2951480 (Cal. App. 2 Dist. Nov. 7, 2005) (not reported in Cal. Rptr. 3d).

Plaintiffs, a homeless advocacy group and 3 homeless individuals, brought suit in March 2003 challenging the newly enacted Santa Barbara Vehicle Code Sections 22507 and 22507.5, which prohibited the parking of trailers, semis, RV's, and buses on all city streets between the hours of 2:00 and 6:00 a.m. This ordinance had the effect of requiring homeless persons living in vehicles to park in a designated area of the city or on private property. The city posted 33 signs throughout the city stating: "No Parking Trailers, Semis, Buses, RV's or Vehicles Over 3/4 Ton Capacity Over 2 Hours or from 2 am to 6 am SBMC 10.44.200 A & B Violator subject to fine and/ or tow-away...." The city did not post signs at all the entrances into the city. Plaintiffs filed a complaint for injunctive, declaratory, and mandamus relief seeking to enjoin enforcement of the ordinance. Plaintiffs then moved for a preliminary injunction alleging, *inter alia*, that the ordinance exceeded the city's authority under Vehicle Code Sections 22507 and 22507.5 and that the signs did not provide sufficient notice for the ordinance to be effective under Vehicle Code Section 22507.

On March 27, 2003, the Santa Barbara Superior Court granted a TRO for the plaintiffs, halting all ticketing under the ordinance until April 11, 2003. The trial court later denied the plaintiff's motion for a preliminary injunction. The appellate court affirmed the city's power to enact the ordinance, but reversed and remanded for a factual determination as to whether the city's signs provided adequate notice of the parking restriction.

On remand, the trial court determined that the city did not provide adequate notice of the parking restriction and issued a preliminary injunction to enjoin the city from enforcing the law. The city appealed.

In November 2005, the appellate court affirmed the lower court's decision in an unpublished opinion. The court found that there was no conclusive evidence regarding whether posting "perimeters" was as effective as "posting each block." Therefore, the

court concluded that substantial evidence supported the trial court's finding that the city did not provide adequate notice to motorists of the parking restrictions required by the provision at issue.

## Prohibited Conduct Chart

The chart below provides data regarding prohibited conduct in cities around the country. With the assistance of the law firm Manatt, Phelps, Phillips, NLCHP and NCH gathered the data by examining the city codes of the cities listed in the chart and identifying laws that target or are likely to have a particularly heavy impact on homeless individuals.

<b>Prohibited Conduct Chart</b>											
		Sanitation	Begging		Sleeping	Camping	Sitting/Lying	Loitering	Vagrancy	Other	
		Bathing in particular public waters	Urination/defecation in public	Begging in public places city-wide	Begging in particular public places	"Aggressive" panhandling	Sleeping in public city-wide	Sleeping in particular public places	Camping in public city-wide	Camping in particular public places	
				Sitting or lying in particular public places	Loitering/Loafing/Vagrancy city-wide	Loitering/Loafing in particular public places	Obstruction of Sidewalks/Public places	Closure of particular public places	See end notes for explanation of number codes for particular prohibited acts.*		
Adjuntas	PR		X						X		
Aguada	PR		X						X	16, 17	
Aguas Buenas	PR			X						16	
Aibonito	PR	X		X	X				X	16	
Albany	GA		X	X	X		X		X	4, Note A	
Albuquerque	NM		X		X	X	X		X	X	3, 5
Allentown	PA				X	X			X	X	1, 2, 12, 13
Amarillo	TX		X		X			X		X	
Anchorage	AK	X	X		X	X			X	X	13
Arecibo	PR										16
Asheville	NC	X	X		X	X	X		X	X	3
Athens	GA	X	X		X	X		X		X	5, 7
Atlanta	GA	X	X		X	X	X	X	X	X	1, 6, 10, 12
Atlantic City	NJ	X			X	X	X		X	X	1, 5



Augusta	GA	X			X				X		X	X	X	1, 3, Note B
Augusta	ME											X		3, Note C
Austin	TX	X	X		X	X		X	X		X	X	X	
Bakersfield	CA	X			X		X				X		X	2
Baltimore	MD		X		X	X					X		X	1, 2, 10
Bangor	ME	X							X		X	X	X	3, Note A
Barceloneta	PR	X	X								X			16
Barranquitas	PR	X	X	X						X		X		16
Baton Rouge	LA	X	X											1, 2, 5, 10
Bayamón	PR			X			X							16
Beaverton	OR				X							X		Note D
Berkeley	CA	X			X	X		X	X		X	X	X	12, 16
Bettendorf	IA	X	X		X	X			X			X	X	15
Billings	MT	X	X		X	X			X			X	X	1, Note E
Biloxi	MS										X	X	X	1, 3
Bloomington	IN	X	X	X				X			X	X	X	1, 3, 11
Boise	ID	X	X			X	X		X		X		X	1, 3, 9
Boston	MA				X	X		X			X	X	X	2, 7
Boulder	CO	X	X		X	X		X				X		9
Bradenton	FL		X				X	X				X	X	1, 13
Brunswick	GA				X				X		X		X	5, Note F
Buffalo	NY	X			X	X		X			X	X	X	1, 5, 7
Burlington	VT	X	X		X	X		X			X		X	16
Cabo Rojo	PR		X								X			16
Caguas	PR	X	X			X								19
Camuy	PR			X										
Carolina	PR	X	X	X			X				X		X	9,16
Cataño	PR				X									
Cayey	PR	X	X			X						X		16
Cedar Rapids	IA		X									X	X	3
Ceiba	PR			X										12,16
Charleston	SC				X	X		X			X		X	1, 9
Charleston	WV			X								X	X	1, 2
Charlotte	NC	X	X		X	X		X			X	X	X	13
Cheyenne	WY		X								X		X	1
Chicago	IL		X		X	X						X	X	2, Note G
Ciales	PR			X							X		X	16
Cidra	PR			X		X		X			X			
Cincinnati	OH	X	X		X	X				X		X	X	1
Clearwater	FL	X			X	X		X	X			X	X	9, 16, Note H
Cleveland	OH	X			X	X		X				X	X	10, 15 ***
Coamo	PR	X	X	X								X		16

Colorado Springs	CO	X	X		X	X		X		X	X	X	X	X	3, 4, 13	
Columbia	SC		X		X	X				X	X		X	X		
Columbus	GA	X		X	X			X				X	X			
Columbus	OH	X	X		X	X		X		X	X		X	X	1, 3	
Comerio	PR	X	X										X		16	
Concord	NH		X		X			X					X	X		
Corozal	PR			X			X								16	
Corpus Christi	TX	X	X					X		X			X	X	X	1
Corvallis	OR		X	X			X		X				X	X		9
Covington	KY	X			X	X		X		X			X	X		2, 4, 13
Dallas	TX	X	X		X	X	X			X			X	X	X	2, 3, 6
Davenport	IA	X	X		X	X				X			X	X	X	3, 6
Dayton	OH	X			X	X							X	X	X	3, 4, 5, 6, 15
Daytona Beach	FL	X			X	X	X		X		X		X	X	X	1, 3
Denver	CO	X	X		X	X		X		X	X		X	X	X	1, 3
Des Moines	IA	X	X		X							X	X	X	X	1, 3
Detroit	MI	X		X								X	X	X		1, 2, 4, 6, 16
Dorado	PR		X	X	X					X				X		6, 7
Dover	DE	X			X	X				X		X	X	X		3, 13
Eau Claire	WI		X						X	X		X	X	X	X	1, 4
El Cajon	CA	X			X	X	X	X	X	X			X	X		
El Paso	TX							X		X			X	X	X	1, 7, 10, 12
Elkton	MD		X	X		X							X	X		2, 3, 4, 6
Eugene	OR		X					X	X		X			X		3, 21
Evanston	IL	X	X		X	X		X					X	X	X	1, 3
Fairbanks	AL		X													13, 21
Fajardo	PR							X								
Fall River	MA													X	X	
Fargo	ND				X	X								X		1, 3
Fayetteville	AR	X	X		X					X			X	X	X	21
Fort Lauderdale	FL	X	X	X				X			X	X		X		1, 3, 4, 7, 9, 21
Fort Myers	FL	X			X	X		X		X			X	X	X	3, 12
Fort Worth	TX	X		X						X		X		X	X	3, 12, 13
Frederick	MD	X	X	X		X				X			X	X	X	1,3,9
Fresno	CA	X			X	X				X	X		X	X	X	2,4,13
Gainesville	FL	X	X		X	X							X	X	X	3, 12, 13
Glendale	AZ	X	X						X						X	4,9, 13
Grand Forks	ND	X	X													3, 7, 21
Gurabo	PR		X			X								X		
Hallandale Beach	FL						X		X	X				X	X	3, 4, 6, 9, 15
Hartford	CT		X	X	X	X						X	X	X	X	1, 3
Hatillo	PR		X		X									X		7

Honolulu	HI	X	X			X		X		X		X		X	1		
Houston	TX	X	X		X	X				X	X	X		X	X	7	
Humacao	PR	X	X		X									X			
Huntington	WV		X	X		X								X	8		
Idaho Falls	ID													X	3, 4		
Indianapolis	IN	X			X	X		X		X		X		X	X	1, 3, 14	
Isabela	PR		X											X		7, 16, 17	
Jacksonville	FL	X			X	X	X		X		X		X	X	X	1, 3, 9, 12	
Jeffersonville	IN		X		X	X		X		X				X		2,4,6,7,9,10,21	
Juneau	AK		X	X	X	X		X		X	X		X	X	X	1, 10, 21	
Kalamazoo	MI		X	X				X		X				X	X	X	1
Kansas City	MO		X		X	X				X				X	X	X	1, 3
Key West	FL	X			X	X		X	X	X	X			X	X	X	1, 3, 10
Lafayette	LA		X	X		X						X		X	X	X	3, 4, 7, 14
Lajas	PR	X	X											X			16
Lake Worth	FL	X	X				X		X					X	X	X	9
Lakewood	CO		X		X	X				X				X	X	X	
Las Piedras	PR				X												
Las Vegas	NV		X		X	X		X		X				X	X	X	1, 2, 3, 9
Lawrence	KA		X											X	X	X	1
Lexington	KY	X		X				X						X	X	X	1, 3
Lincoln	NE	X	X	X	X	X								X	X	X	1, 3, 4, 13
Little Rock	AR	X			X			X		X				X	X	X	2, 3, 5, 15
Long Beach	CA	X	X					X		X				X	X	X	1, 2, 10
Los Angeles	CA	X	X		X	X		X		X	X			X	X	X	2, 3, 12, 14
Louisville	KY	X	X	X		X	X	X						X	X	X	3, 6, 21
Madison	WI		X		X	X		X		X				X	X	X	1, 4
Manatí	PR	X	X	X						X				X			16, 20
Manchester	NH						X	X		X	X	X	X	X	X	X	3
Maricao	PR																16
Maui County	HI		X							X				X	X		
Mayaguez	PR													X			16
Memphis	TN	X			X	X								X	X	X	3, 5
Mesa	AZ	X	X					X		X	X			X	X	X	1, 3, 7
Miami	FL	X			X	X	X			X				X	X	X	9, 14
Milwaukee	WI	X			X	X		X		X		X		X	X	X	1, 2, 4
Minneapolis	MN	X	X		X	X			X	X	X			X	X	X	1, 2, 8, 9
Mobile	AL	X		X				X				X		X	X		1, 3, 6, 14
Moca	PR	X	X											X			
Modesto	CA	X			X	X	X		X		X			X	X	X	2, 3, 4
Montgomery	AL	X			X			X		X	X			X	X	X	1, 3, 9
Montpelier	VT		X	X										X			14, 15

Morovis	PR	X	X										X		6, 16
Naples	FL				X			X					X		3
Naranjito	PR			X		X						X			7, 16
Nashville	TN	X			X				X				X	X	1, 4
New Haven	CT	X			X			X	X				X	X	1, 3
New Orleans	LA	X	X	X			X	X		X	X			X	1, 9, 12
New York	NY	X	X	X		X			X				X		1, 7
Newark	NJ	X	X	X	X	X				X			X	X	1, 3
Newport	RI		X				X						X	X	7
Norfolk	VA	X	X		X	X				X			X	X	1, 2, 6
North Las Vegas	NV	X	X					X	X				X	X	2, 15
North Little Rock	AR	X	X							X				X	
Norwalk	CT					X				X			X		
Oakland	CA	X		X				X	X	X			X	X	1, 3
Oklahoma City	OK	X		X	X	X		X	X				X	X	
Olympia	WA		X			X				X	X			X	1,3
Omaha	NE	X												X	3, 6,15
Orlando	FL	X	X		X	X	X		X				X	X	3, 6
Pahrump	NV				X	X		X					X	X	
Palm Bay	FL	X			X			X	X				X		
Patillas	PR														16
Philadelphia	PA		X		X	X				X			X	X	1, 2, 3
Phoenix	AZ		X		X	X	X		X				X	X	9
Pierre	SD			X									X	X	
Pittsburgh	PA	X			X	X				X				X	1
Pocatello	ID	X						X					X	X	1, 3
Ponce	PR	X	X	X						X	X				7, 16
Pontiac	MI				X	X							X	X	1
Portland	ME	X	X			X							X	X	5
Portland	OR	X	X		X			X		X			X	X	1, 6, 13
Providence	RI	X	X			X		X		X			X	X	1, 7
Raleigh	NC	X	X	X			X		X				X	X	3, 4, 15
Rapid City	SD				X	X		X		X	X		X	X	1, 3
Redondo Beach	CA	X						X	X				X	X	7
Reno	NV	X	X		X	X		X		X	X		X	X	3, 4, 9
Richmond	VA	X	X			X			X				X	X	1
Rincón	PR	X	X	X		X							X		15
Roanoke	VA	X	X		X	X				X			X	X	1, 4, 6, 12
Rochester	NY	X			X	X		X		X			X		1
Sacramento	CA		X		X	X			X				X	X	1, 2, 4
Salinas	PR	X	X											X	
Salt Lake City	UT	X	X					X		X	X		X	X	1, 3

San Antonio	TX	X	X			X		X	X			X		X	1, 7, 12, 13	
San Bruno	CA				X	X				X		X		X		
San Diego	CA	X	X			X		X		X		X	X		1, 7, 13, 15	
San Francisco	CA	X	X		X	X		X		X		X	X	X	2, 9, 3	
San Germán	PR	X		X											7, 16	
San Jose	CA		X							X		X	X	X	13, 2	
San Juan	PR	X	X	X						X			X		16	
San Lorenzo	PR	X				X							X		16	
San Louis Obispo	CA		X		x	X								X		
Santa Barbara	CA	X				X		X		X	X		X	X		
Santa Cruz	CA	X	X		X	X	X		X		X		X	X	7, 9	
Santa Fe	NM								X	X		X	X	X	7	
Santa Isabel	PR	X	X	X						X						
Sarasota	FL	X	X		X	X	X		X			X	X	X	1, 3, 7	
Savannah	GA	X	X	X	X							X	X		1, 5, 7, 9	
Scottsdale	AZ	X	X						X				X	X	4, 9	
Seattle	WA	X	X			X				X	X		X	X	3	
Shreveport	LA	X	X		X			X		X	X		X	X	1, 2, 7	
Sioux Falls	SD		X	X								X	X	X	3	
South Bend	ID	X			X	X			X		X			X	1	
South Lake Tahoe	CA	X			X		X		X					X	4, 9, 13	
Spokane	WA	X	X			X				X		X		X	3, 8, 15	
St. Augustine	FL				X	X							X	X	1, 3	
St. Louis	MO		X			X						X		X	1, 2, 5, 11, 13	
St. Paul	MN	X	X	X				X			X	X		X	1,4	
Stamford	CT	X										X		X	1	
Statesboro	GA											X	X	X		
Stone Mountain	GA						X	X				X	X		X	3, 9
Suffolk	VA		X		X	X								X		
Tampa	FL					X							X		2, 7	
Tempe	AZ	X	X		X	X			X		X			X	X	9
Toa Baja	PR		X		X										X	7
Toledo	OH		X	X									X	X	X	3, 7
Topeka	KA		X					X						X	X	1, 6, 12
Tracy	CA		X		X			X		X			X		X	
Trenton	NJ	X	X		X	X	X		X		X		X	X	1	
Tucson	AZ	X	X		X	X		X		X	X		X	X	X	
Tulsa	OK	X	X			X			X	X			X	X	X	1, 5, 9
Ukiah	CA		X		X	X		X		X	X		X		X	4, 9, 12
Union City	CA									X		X	X	X		9, 10, 12
Utuaado	PR					X					X					12, 16
Vega Alta	PR		X	X										X		16, 18

Vega Baja	PR					X										16
Virginia Beach	VA	X	X	X	X		X	X		X		X	X			3, 9
Washington ***	DC		X		X	X		X	X		X	X		X		3, 6, 9, 12
Washington	GA		X								X	X	X			6, 7, 12
Waterloo	IA	X	X								X	X	X	X		4, 12
Wichita	KA	X			X							X	X	X		3, 4, 14
Wilmington	DE	X			X	X				X		X	X	X		3, 15
Woodinville	WA	X								X		X		X		2, 3
Woodstock	IL	X												X		
Worcester	MA	X											X			
Yauco	PR	X	X										X			16

\* 1) Spitting, 2) Having/Abandoning shopping carts away from premises of owner, 3) Failure to disperse, 4) Maintaining junk or storage of property, 5) Street performer, 6) Prohibition on entering vacant building, 7) Rummaging/scavenging, 8) Creating odor, 9) Vehicular residence, 10) Walking on highway, 11) Bringing paupers/insane persons into city, 12) Washing cars or windshields, 13) Demolition of vacant property habitually inhabited by “vagrants”, 14) Prohibition to allow “vagrants” to use one’s property, 15) Prohibition on panhandling w/out permit, 16) Prohibition on helping park a car or watching over cars, 17) improper or inopportune kind of begging, 18) being without a shirt, 19) inadequate use of property, 20) required to present personal ID/information to public officers, 21) Making “unreasonable” or “improper” noise

\*\*This information was obtained through online research, city clerk offices, and localized researchers. Some sources could only be updated every three months and so pending or recently passed resolutions may not appear in this report.

\*\*\* Sitting/lying in a particular public space is not expressly prohibited by D.C. law (which outlaws setting up a "camp or temporary abode" in a public place), but is prohibited by federal law, which applies to most of the parks in the District of Columbia.

Note A: Prohibits peddlers and transient merchants at certain times and locations

Note B: Prohibits “vagrants” – able-bodied persons with no means of supporting themselves who are not engaged in pursuit of business or occupation calculated to support themselves.

Note C: Prohibits parking on streets at night for more than one hour without a permit.

Note D: Prohibits parking of vehicular residences in commercial lots overnight.

Note E: Prohibits using recreational vehicles for living or sleeping for more than five days when parked off-street or in a residential neighborhood.

Note F: Prohibits unlawful use of any square, park, or public place for any private use.

Note G: Prohibits pick-up of hitchhikers

Note H: Prohibits hitchhiking

## Appendix

### Sources for Narratives

#### **Anne Arundel County, MD**

Raymond McCaffrey and Lisa Rein, *State Bans Panhandling Along Roads in County*, The Washington Post, Apr. 12, 2007, at AA03. Also available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/11/AR2007041100665.html>.

#### **Ashland, OR**

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