NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

Criminalizing Crisis: Advocacy Manual

A Guide by the
National Law Center on Homelessness & Poverty

November 2011

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Introduction

This advocacy manual is meant to be a resource for individuals working on the ground to combat criminalization in their communities. In companionship with the criminalization report, advocates can use the guide to bring a national perspective to their work and make connections between their efforts and those of advocates in different programs across the country. The guide contains several tools that can be used to push local policy in a positive direction.

Policy Recommendations

Cities have the ability and the responsibility to take concrete steps to ensure that the rights of homeless persons are protected and to do so in a way that permanently reduces the number of people experiencing homelessness. However, it is also imperative for the federal government to provide leadership in ensuring the rights of homeless persons by discouraging criminalization on the local level.

Municipal Policies to Promote Alternatives to Criminalization

Establish a Council that Includes Homeless Persons, Providers, and Advocates

To ensure that homeless persons' rights are respected and that cities pursue constructive approaches to homelessness, cities should work collaboratively with people experiencing homelessness, service providers, and advocates. One way to foster such collaboration is to establish a city-level council or committee on homelessness that includes government officials, service providers, advocates, and people experiencing homelessness. If such a council or committee already exists, ensuring that people experiencing homelessness have fair representation on the committee is essential. This committee can serve as a place where concerns about criminalization measures are raised and brought to the attention of the city for appropriate corrective action. Members of the committee can also collaborate to develop appropriate responses to homelessness. Washington, D.C. for example, has an active city-level interagency council on homelessness that includes government representatives, advocates, service providers, and homeless or formerly homeless individuals.

Stop Passing Laws that Criminalize Homelessness

One obvious step cities can take in promoting constructive alternatives to criminalization is to simply stop passing laws that target or have a negative impact upon homeless persons. Cities should work with local service providers, advocates, and people experiencing homelessness to ensure that legislation before the city council does not negatively impact homeless persons. For example, any legislative proposals that could impact homeless persons should first be referred to a council, such as one mentioned above, that includes broad representation from people experiencing homelessness, service providers, and advocates. City council members should address all concerns raised by the council before passing legislation.

Advocates should also evaluate their cities' existing criminalization measures. Advocates can use the Law Center's Criminalization Grading Tool, found in the Appendix, to establish a baseline

for their city's criminalization measures and their frequency of enforcement, and to compare their cities to others across the country.

Establish Procedures to Protect Homeless Persons' Civil Rights

In addition to not passing laws that target homeless persons, cities should take proactive measures to make sure homeless persons' rights are not being violated. Cities should have protocols for the police department to follow when interacting with homeless persons living in public places. Such protocols should include guidance to prevent singling out homeless persons for stops, searches, and "move on" orders. In addition, protocols should include methods for police officers to connect homeless persons to services. Finally, protocols should address how police officers manage homeless persons' belongings, if needed. A model police order covering these topics can be found in the Appendix.

Cities should also establish protocols for cleaning public spaces. If homeless individuals are located in a public area that is scheduled for cleaning, the procedures should ensure that those persons' property is not destroyed during the cleaning. The procedures should include giving people ample notice of a cleaning to allow people to move themselves and their property. In addition, the city should store and allow for later retrieval any property that is not moved prior to a cleaning. As demonstrated in earlier parts of the report, people who are homeless and living outside may be carrying extremely important items with them, such as medication or identification documents. Much care should be taken when dealing with those items. A model protocol for cleaning public spaces can be found in the Appendix.

Conduct Police Trainings and Establish Liaisons

An additional way to improve police interactions with homeless persons in public spaces is to conduct regular trainings of police officers on homelessness and procedures related to interactions with them. Trainings should include general information about homelessness, including its causes and solutions. Police Officers should also be trained on legal issues related to enforcement of laws against homeless persons, so they are aware of important ways to protect homeless persons' civil rights. Collaborating with local service providers and legal services attorneys can be an efficient way to develop an appropriate curriculum. The Law Center can also serve as a resource for cities wishing to establish a training program.

Establishing a homeless liaison in a police department can also help strengthen relationships between homeless persons, service providers, and the police department. Having one or several officers that serve as a point person in the department on homelessness issues can help build relationships with service providers to help connect homeless people to services. Homeless liaisons often meet regularly with service providers, participate in homelessness councils, and attempt to build relationships with chronically homeless individuals in their cities. They may also help create and review police policies that will have an impact on homeless people. Such a liaison can also serve as a guiding resource for officers in their interactions with homeless persons. The Law Center described one such example of homeless liaisons in a former publication on criminalization with the case of Broward County, FL, where an organization called the Taskforce for Ending Homelessness, Inc. partnered with the local police department to

develop the Homeless Outreach Team. The Team provides outreach services for homeless individuals and collaborates with local shelters. In 2005 it consisted of two full-time police officers, two part-time officers, and a formerly homeless civilian partner. The Taskforce also collaborated with the police department to develop a course on homelessness.[1]

Provide More Affordable Housing and Other Resources

Finally, cities must provide additional affordable housing, supportive housing, and other resources. As described in the Criminalization Report, the lack of affordable housing in the U.S. is one of the most significant reasons individuals and families become homeless. Unsheltered homeless people are often cited for performing necessary and life-sustaining activities in public places despite having no legal place to perform such activities. This criminalization creates barriers to employment, housing, and services that make it more difficult to move out of homelessness. By making sure there is adequate affordable housing, cities will decrease homelessness and the resulting criminalization of homeless persons.

In addition, providing sufficient resources such as supportive housing, adequate and accessible shelter, public restrooms that are open 24 hours/day, 7 days/week, free storage options for personal belongings, free or low-cost medical and mental health care, and case management services would also lessen the criminalization of homelessness. Advocates can use the Law Center's Criminalization Grading Tool, found in the Appendix, to measure the availability of such resources in their cities.

1 The National Coalition for the Homeless and The National Law Center on Homelessness and Poverty, A Dream Denied: The Criminalization of Homelessness in U.S. Cities, available at http://www.nlchp.org/content/pubs/A_Dream_Denied1.pdf.

Promoting Constructive Alternatives

Public Education and Advocacy

Advocates can use a variety of tools to bolster their community anti-criminalization work. Such tools can be used to gather information as to the size and scope of the criminalization problem in one's community and to educate policymakers and the public. An informed advocacy campaign is essential in fighting counterproductive measures. This section provides advocates with ideas and guidance to help develop and utilize tools to support advocacy efforts.

Dispelling Myths on Homelessness

Many of the counterproductive approaches to homelessness arise from public myths and stereotypes about homelessness. Educating the public about homelessness is a crucial first step and powerful technique in promoting a more constructive approach to finding solutions. You should refer to the Homeless Demographics section of the Criminalization Report to familiarize yourself with research on homelessness demographics. Knowing these facts will enable you to dispel myths about homelessness and combat stereotypes about homeless neighbors in your community and nationwide.

Since homelessness can vary between region and between cities, advocates must also know the demographics of their local homeless population in order to effectively address the stereotypes of community members. One of the most important goals you can strive toward is to accurately count and represent the homeless population in your community. National data, such as the data used in the criminalization report, is more representative and useful when cities are able to profile their local homeless population accurately. With accurate information both from the national and community levels, advocates can work to change stereotypes about homeless people and create willpower for positive change.

Using 10-Year Plans in Advocacy

Many state and local governments, as well as the federal government, have created 10-year plans to end homelessness. Some of these 10-year plans include provisions that call for decriminalization as an essential part of ending homelessness in their communities. These plans can be instrumental advocacy tools, as cities' approaches to homelessness should be guided by their 10-year plans to end homelessness.

Many plans are a result of teamwork between local advocates/service providers and city officials and, therefore, can often be found on your city's website or through your city's human services department. If your city has a 10-year plan, you should check to see if there is any language or sections that recommend ways for your city to stop targeting the homeless population through criminalization measures. If your plan does contain such language, the plan can be used to hold city officials accountable for implementing the recommendations made in these provisions. For example, you could ask to see public reports pertaining to these recommendations or attend a hearing on the city's progress implementing the plan.

If your city's plan does not include a section about decriminalization, then you should work with city officials to have one added. Having such a statement is a strong first step to addressing the criminalization of homelessness, and shows that city officials are aware of the problem. If your city does not have a 10-year plan at all, then you should talk with city officials, including your department of human services, to establish one that includes a section addressing any specific ordinances or practices that criminalize homeless individuals and recommending solutions.

A few examples of 10-year plans that have incorporated goals or recommendations relating to decriminalization are provided below.

Opening Doors: Federal Strategic Plan to End Homelessness

In 2010, The U.S. Interagency Council on Homelessness released *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*. The report lays out the key goals of ending chronic homelessness and homelessness among veterans in five years, as well as ending homelessness for families, youth, and children in ten years.

One of the goals of the plan is to improve health and stability of homeless individuals. Objective nine of improving health and stability is to "advance health and housing stability for people experiencing homelessness who have frequent contact with hospitals and criminal justice."[2] Strategies for carrying out this goal include reducing the criminalization of homelessness "by defining constructive approaches and considering incentives to urge cities to adopt these practices."[3]

Opening Doors also promotes targeted outreach efforts to identify people experiencing homelessness who are most likely to end up in an emergency room or jail, as well as efforts to increase the number of jail diversion courts at the state and local levels that are linked to housing and support.[4]

The federal plan provides goals that cities should keep in mind when planning how to end the criminalization of homeless individuals in their own community. Some cities are working to carry out these goals in creative ways.

Minneapolis and Hennepin County, MN

As described in the main report, Hennepin County has developed a 10-year plan to house homeless individuals in its community. The plan includes a Street Outreach program that connects homeless individuals to social services and diverts them from involvement in the criminal justice system. Additional components to the 10-year plan include youth services, educating policymakers, and working to increase access to stable housing.

2 United States Inter-Agency Council on Homelessness, Opening Doors: Federal Strategic Plan to Prevent and End Homelessness, 47-48 (2010), available at http://www.usich.gov/opening_doors/ [hereinafter Opening Doors].

3 Id.

4 Opening Doors at 47-48.

Gainesville Region/Alachua County

Gainesville Region/Alachua County Empowerment (GRACE) is the region's 10-year plan to end homelessness. At the time of the plan's initial publication in 2005, several ordinances existed to criminalize homelessness, including laws against trespassing, sleeping in public, and public urination or defecation.[5] Between January 2004 and August 2005, a total of 527 incidents were reported that involved homeless people. During these 527 incidents, 196 homeless individuals were arrested; nearly 40 percent of these arrests resulted from minor municipal ordinance violations.[6]

The plan lays out several objectives to address this problem with the end result of increasing public safety and reducing costs to the county. The first objective is to increase awareness about homelessness among public safety service providers by creating a homelessness awareness training for police offers, court and criminal justice personnel, EMS workers, Fire Rescue professionals, and the public.[7]

The second objective is to reduce the number of arrests of homeless individuals. The plan proposes several strategies to carry out this objective. First, attorneys and public safety service providers should review city and county ordinances to identify those that may adversely affect the homeless population. Second, a regularly scheduled warrant clearance day should be implemented for minor offenses in order to reduce the number of arrests for outstanding warrants.[8] Third, there should be more community service options as an alternative to a fine for homeless individuals who are cited for minor offenses. Fourth, in order to reduce the number of arrests based on physical necessities such as public urination and defecation, additional public facilities such as bathrooms and places to sleep should be made available.

These plans provide examples of creative ways to address the problem of decriminalization. Through coordination efforts with different municipal departments, they provide models for alternatives to criminalization.

Calculate Local Costs of Criminalization

As discussed earlier in the report, the costs associated with criminalizing homelessness are often much higher than the costs of providing permanent supportive housing or even temporary shelter for people. Plus, studies indicate that once someone is placed into supportive housing his or her medical costs, especially those associated with mental health and rehabilitation, often drop significantly. Cost data can be a strong advocacy tool in convincing lawmakers that criminalizing homelessness is neither fair nor cost-effective.

A number of cities' 10-year plans provide examples of what data to collect, how to find this data in your city and how to conduct a cost analysis comparing criminalization costs with costs of

5 Sarah J. Lawrence et. al., Gainesville Region/Alachua County Empowerment For the Homeless, 16 (2005), available at http://www.endhomelessness.org/content/article/detail/654.

6 Id. at 17.

7 Id. at 29.

8 Id.

supportive housing. These plans provide a variety of strategies. Even if you do not have the time or resources to follow all of these suggestions, you can choose the ones that are most useful for your area.

Opening Doors: Federal Strategic Plan to End Homelessness

The federal plan provides information from homelessness cost studies conducted between 2004 and 2009 in Atlanta, Chicago, Columbus, Denver, Los Angeles, Maine, Massachusetts, New York, Phoenix, Portland (Oregon), Rhode Island, San Francisco, and Seattle.[9] The plan found that on average, cities spend $87 a day for jail and $28 a day for shelter per person. Even if your community is not represented in this analysis, the cost comparisons can be useful to provide a general sense of the costliness of using the criminal justice system to address homelessness.

Quincy, MA

Quincy's 10-year plan provides suggestions for both the costs cities should track and sources of information on these costs. Specifically, the Quincy plan calls for tracking homeless individuals' use of the following services in order to compare these costs with those of providing housing and support services:

- Number of services utilized in Veterans Emergency Systems;
- Number of jail days;
- Emergency room visits;
- Number of emergency shelter beds utilized per night;
- Hospital admissions (both medical and psychiatric);
- Number of detox and/or transitional holding bed utilized per night;
- Number of protective custody calls responded to per night; and
- Number of ambulance calls received.[10]

The plan also explains how advocates can ask service providers for these costs. Advocates can ask ambulance companies and hospitals to track and report the number of homeless individuals they serve. Advocates can also ask their sheriff's department to track and record the number of arrests and jail stays that involve homeless individuals. The Quincy plan also proposes commissioning a study to compare the costs incurred for homeless individuals while they are homeless, and then after they find permanent housing.[11] After tracking these costs, the plan set out goals to reduce these costs by 25-40 percent by reducing chronic homelessness.

Additional Ways to Gather and Calculate Costs

In order to figure out the criminal justice system costs for homeless individuals in your community in a given year, you can conduct a simple cost analysis of projected jail costs over a year using the Point-in-Time Count. Some jurisdictions count homeless individuals who are in

9 Opening Doors at 18.

10 Quincy Leadership Council on Chronic Homelessness, City of Quincy, Massachusetts 10-Year Plan to End Chronic Homelessness (2005) 10-11, available at http://www.endhomelessness.org/content/article/detail/623.

11 Id. at 11.

jail during the Point-in-Time Count. Advocates in those jurisdictions should look at the results from the last local point-in-time count to find out how many homeless people were in jail on that date, as well as the average jail costs per person per day. This information can often be found from your local sheriff's department. In order to calculate the total number of incarcerated homeless individuals per year in your community, do the calculation of:

Jail Costs Per Person x Number of Homeless Persons in Jail on day of count x 365 days =

Estimated Total of Incarceration Costs of Homeless Persons per year.

Public records can also provide sources of information to find trends and identify costs. Local law enforcement will have information on arrests and citations for misdemeanor violations by homeless individuals. One way to search for such arrests and citations is by address. Many times a homeless person will list a local shelter or service provider as his or her address when arrested or cited. Police departments may have other ways of listing homeless persons' address in their records, such as "unknown," "no address," "homeless," or "transient." In addition, a search of ordinances most likely applied to homeless persons, such as anti-camping, anti-sitting, and other similar laws, can provide information about enforcement against homeless people.

Comparing this number to the total number of citations and arrests in an area during a specific time period can provide a picture of how homeless individuals are treated in your community relative to the broader population. To then show the cost benefit analysis of housing individuals rather than allowing them to remain homeless, compare the costs of acute services such as use of the criminal justice system with the cost of providing supportive housing.

Due to the economic recession, most cities are under pressure to reduce costs. Using these cost calculations to demonstrate that addressing homelessness through the criminal justice system is more expensive than providing housing and support services can be very persuasive with policymakers.

Use Public Records Requests in Advocacy Efforts

Public records requests can be made of federal, state, and local governments. The federal Freedom of Information Act (FOIA) gives the public a right to obtain copies of certain documents from federal government agencies and applies to records held by agencies in the executive branch of government. Every U.S. state and some cities have passed laws similar to the federal FOIA that permit the public to request records from state and local agencies. Public records requests can be helpful in identifying practices within your city that are negatively impacting homeless individuals. Any records obtained through such a request can be a very powerful tool in supporting advocacy efforts to combat criminalization measures.

How To Make the Request:

1. <u>Determine what records you need.</u>

   When making a request, it is important to describe the document you are seeking as precisely as possible and include enough information that the record will be reasonably

identifiable. This is also important because there may be a copying or processing fee for records requests. See the list below for ideas on what information can be requested.

2. Identify the agency that has the records.

   Public records requests should be directed to the agency that prepared, owned, or retains the records. If it is unclear which agency has the particular records, requests can be sent to multiple agencies.

3. Make a request to the agency in writing.

   The websites of many state agencies provide detailed instructions on how to make public records requests and contain a form that can be used to submit such requests. If the agency in question does not provide such information, a letter should be sent to the agency reasonably describing the records requested and clearly marked as a public records request.

4. Follow up on the request.

   The federal FOIA requires a response within 20 working days, and state public records laws also impose deadlines by which the agency must respond. The request may be denied in whole or in part, but the agency is required to explain the reasons for denial. Negotiation may be helpful if the agency denies or challenges the scope of the request.

What To Request:

The different types of information advocates may consider seeking through a public records request include the following:

- All available records related to arrest, citation, warning or other actions taken by police officers in relation to violations under anti-camping, anti-panhandling, loitering, and/or other ordinances used in your community to target homeless individuals;
- Any and all internal police department statements of policy, practice, guidance, or similar documents relating to the enforcement of any of the ordinances for which you are seeking records;
- All records related to sweeps and policies related to cleaning public spaces;
- All records related to citizen complaints to the police department related to homeless persons;
- All communications between the police department and city officials related to homelessness;
- Any records related to jail capacity, the cost of incarceration, and judicial resources involved in prosecuting homeless individuals; and
- All records related to official figures on the size of the local homeless population and the maximum capacity of local homeless shelters.

Obtaining some of the above information through a records request can help identify patterns of enforcement and targeting of homeless persons. By having a clearer picture of such patterns, advocates will be able to approach policymakers with concrete information that can inform any

advocacy. In addition, information obtained from public records requests can help identify recurring civil rights violations that will help develop a litigation strategy, should other forms of advocacy with the city to correct the problem fail.

Use Surveys in Advocacy

Surveys can be valuable tools when trying to gather information about homelessness and the impact of criminalization measures in your city. Surveying people who are homeless can help identify which laws are being enforced against homeless people and any problems with enforcement, as well as any policies or practices of the city that are having a negative impact on homeless persons. For an example of an advocacy survey, please see the model survey included in the Appendix.

Developing the Survey

The first step in the survey process is to develop a survey. A sample survey is included below to serve as a starting point. However, the survey should be adjusted to capture appropriate information for your city. For example, if sweeps are a problem in your city, you may want to focus the survey questions specifically on questions related to the sweeps procedures and any property destruction related to sweeps. It may be useful to collaborate with other service provider or advocacy groups to identify the most useful questions to include in a survey, as a wider range of groups may have a good sense of the extent of problems homeless individuals are facing.

Recruiting Surveyors

After the survey is developed, a plan for gathering the information should be developed. If your organization does not have the capacity to survey people, consider collaborating with other organizations. Another good source of surveyors could be students at nearby universities. Students may be interested in the work and have time to devote to the project. If you do not have a current connection to students at the university, try to identify either school groups related to social justice or professors who teach related subjects. They may help spread the word and recruit students.

Ideally, you should have one or two people on your survey team who have some sort of relationship with the people you are surveying. For example, having an outreach worker on your team is a good way to make sure that the people you are surveying have a familiar face and reference point when you are asking to survey them.

Anyone who will be conducting surveys should be trained beforehand to ensure that the surveys are conducted in a uniform manner and that surveyors interact with survey subjects appropriately. It can be helpful to have a group training for all surveyors, so that all participants operate under the same assumptions.

Location of Surveys

Another logistic to sort out before beginning the survey process is to determine where the surveys will be taken, so that you can reach impacted individuals. Overnight and day shelters, as well as meal programs can be a good place to start. However, it is also important to include people on the street to make sure they are represented in the survey. To the extent they do not access indoor services, it will be important to go out to where they are.

If your team has an outreach program involved in the survey process, this can be tremendously helpful in reaching people on the street. Surveyors can accompany the outreach workers to identify impacted individuals. Another way to reach people on the street is to ask outdoor meal programs if you can conduct surveys of the people they are serving.

Confidentiality

Some of the people you are surveying may not want to provide their names, as they may be worried about being targeted after taking the survey – a very valid concern. While it is certainly helpful to be able to identify individuals who have taken a given survey, you can still use the data gathered from the survey even if you do not have a name on the survey. To the extent you can find a way to follow up with the person, should you need to, you might want to ask to record his or her name on a separate document for follow up.

Compiling the Data

Once the surveys are complete, it is helpful to gather all the information into one document or spreadsheet to get a full picture of the types of problems homeless people are facing in your city. Understanding which laws are being enforced and how frequently is extremely important in any advocacy. Further, this data can help you determine what next steps to take.

Next Steps

After completion of the survey and compilation and analysis of the data, you can determine your next steps. If you need to obtain more information about the enforcement of a certain type of law, you may want to consider conducting a public records request.

Once you have all the information you need, you can consider taking the information to policymakers or city officials to demonstrate the negative impact of particular laws or policies upon homeless persons and to work with them to create a more helpful approach.

Before contacting your policymakers or city officials, you may want to consult with a lawyer or the Law Center to identify any rights violations related to problems identified in the surveys. Referencing any legal problems with a city's practices in discussions with the city may provide motivation for a city to change its practices.

Grade Your City's Criminalization Practices

Once you have gained a thorough understanding of the your city's criminalization practices, it may be helpful to compare your city's practices to those of cities across the country. The Law Center has developed a Criminalization Grading Tool, a series of questions designed to measure a city's enforcement of ordinances or practices criminalizing homelessness, as well as the availability of resources for homeless individuals, which by comparison to other cities results in a letter grade of A, B, C, D, or F. Your city's grade can be used as a baseline to measure progress, and can be used to generate media interest. Along with the other advocacy tools discussed above, it can highlight areas where your city needs improvement, and can serve to shape advocacy and policy goals. The Criminalization Grading Tool is included in the Appendix.

In order to grade your city, you should identify several (3-5) advocates, service providers, and/or homeless individuals who are knowledgeable about the city's criminalization practices and resources to participate in the grading process so that it reflects a broader range of experiences and perspectives (you could also see if your city's homeless coalition or council is interested in engaging in this process). It may be helpful to refer to your city's 10 Year Plan, Continuum of Care applications, Point-in-Time studies, survey results, and other materials during the grading process. If you are interested in grading your city, the Law Center is available to provide guidance and to help facilitate this process.

Use Media in Advocacy

The media can play an important role in how homelessness is approached in a community. Newspapers and news programs reach a lot of people and can sway public opinion, depending on what and how topics are reported in the news. Therefore, tracking news coverage of homelessness issues is very important, as is consulting with the media to provide perspectives that encourage non-criminalizing approaches to homelessness.

Following news coverage on homelessness issues in your city may be as simple as watching the local news and reading local papers. However, if many news sources exist in your city, you may want to try a more systematic way of checking the news. Given new technology, tracking articles about homelessness online can be streamlined considerably. For example, Google provides an alert service that can be set up to send you articles based on certain search terms, such as "homeless."

By tracking homelessness news coverage, you can identify any news stories that may bolster or hinder your advocacy efforts. If news coverage is perpetuating harmful approaches to homelessness in your community, it is important to provide another perspective. Writing letters to the editor to respond to such articles can be one way to weigh in. Another way may be to contact the reporter who wrote the article and provide another perspective.

Besides reacting to news coverage, it is also important to be proactive in getting out a constructive point of view. Your organization may want to issue press releases if something newsworthy happens in your community regarding homelessness. For example, it may be helpful to issue a press release in conjunction with the release of the results of your community's annual

homeless count. Such a press release can contain not only the results of the count, but also any information about the lack of adequate resources to address the problem and suggestions for solutions to the problem. As discussed above, using the Law Center's Criminalization Grading Tool to grade your city can also serve as a way to generate media interest and highlight city practices that criminalize homelessness or specific resources that are lacking in your city.

Another way to connect members of the media to the issue of homelessness is to invite local reporters to any conferences, town hall meetings, or other gatherings focused on the issue of homelessness. Including reporters in such events can help them become educated about the topic and also potentially raise public awareness through any subsequent reporting of the event.

Since the media can play such a strong role in swaying public opinion, taking an active approach in homelessness news coverage can be a very useful and important tool in any advocacy efforts to end homelessness.

An Advocate's Success Story by Ted Brackman, Puyallup Homeless Coalition

In 2009, the Puyallup Homeless Coalition (made up of a number of groups interfacing with homeless people in the community of 35,000) decided to organize a presentation to the City Council involving shelterless peoples' description of varieties of mistreatment they received in the city. Mistreatment involved harassment, arrest for petty misdemeanors such as loitering and trespassing, banishment from public places, confiscation and destruction of personal property, etc. The gathering before the City Council was preceded by a walk covering several city blocks with advocates accompanying our homeless neighbors.

During the City Council hearings, council members were moved by the testimony they heard and scheduled a follow-up session a month later. The Homeless Coalition sought out letters providing legal guidance from the National Law Center on Homelessness & Poverty and a Seattle attorney that focused on the constitutional and human rights and responsibilities of shelterless people. These legal letters were submitted to the City Council within two weeks after the testimony of homeless citizens. Soon after receiving the legal letters, Puyallup's city manager constructed an ordinance proposal that would allow homeless people for the first time to exist in a safe and secure place within the city limits.

During the subsequent City Council meeting, numbers of homeless individuals and advocates spoke in support of the proposed ordinance, albeit with significant changes. A few council members received a barrage of emails and phone calls challenging the city manager's ordinance proposal and the council as a whole decided to table the ordinance.

The Puyallup City Council appointed a new city manager during 2010 and a new ordinance proposal was presented to the Homeless Coalition in a more collaborative process. This ordinance proposal embodied a number of appropriate changes that would allow for easier implementation and constructive interventions on behalf of homeless citizens. Once again, the Puyallup Homeless Coalition received a legal letter from the National Law Center on Homelessness & Poverty, which was submitted to individual council members ahead of the public hearing. With many homeless individuals and agencies in the audience, the Puyallup City Council voted unanimously to approve this ordinance and to continue a collaborative relationship with the Puyallup Homeless Coalition regarding its implementation and further housing strategies for shelterless citizens.

The City of Puyallup's homeless ordinance allows for encampments of up to 40 people which may involve tents, parked vehicles, makeshift frames, etc. The encampments on church property are to be regulated carefully regarding drug and alcohol use, disorderly conduct, etc. As it is written, the ordinance ensures that the encampments will have appropriate sanitation, safety, background screenings for adult applicants, and appropriate communication between the hosting church and city authorities. Encampment residents are expected to rotate church sponsored sites every three months. The City has indicated some willingness to be flexible in the execution of the ordinance.

The Puyallup Homeless Coalition is in the process of implementing this ordinance and, with the support of the city manager's office and a majority of the City Council, diligently working on a city-wide emergency shelter strategic plan.

It is very gratifying to witness a process of slow steady collaboration between homeless advocates and city authorities. There is no question that the legal letters from the National Law Center on Homelessness & Poverty played a significant role in alerting city authorities and homeless citizens of the legal and moral imperative in assuring homeless citizens a respectful, secure and safe place to exist and receive services within the city limits. Though the city of Puyallup remains without necessary homelessness prevention, emergency shelter, rapid re-housing, supportive and affordable housing resources, we are now working together to ensure that there are no involuntary shelterless individuals and families in the city of Puyallup.

Legal Strategies

Lawyers may use various legal strategies to combat criminalization measures. When other advocacy fails, lawyers may consider bringing civil rights litigation against a municipality to challenge civil rights violations faced by homeless persons. In addition, criminal defense lawyers may use constitutional arguments in the criminal proceedings to challenge a charge against a person. Further, even if not raising constitutional challenges in the criminal context, simply by providing representation to targeted individuals in citation defense, lawyers can dramatically reduce the negative impact of measures that criminalize homelessness. This section focuses on considerations when bringing civil rights litigation, as well as information about citation defense programs in different parts of the country.

Bringing Litigation

Overview of Potential Legal Claims

Homeless individuals and service providers have brought various legal challenges to municipal ordinances or statutes that criminalize homelessness. Claims may be brought under 42 U.S.C. § 1983 against laws that violate rights guaranteed by the United States (U.S.) constitution. State constitutions may offer differing or broader protections.[12] In addition, human rights protected by international treaties can provide persuasive theories that have gained traction in some courts.

Constitutional Claims

Anti-Panhandling Ordinances

One way municipalities have targeted poor and homeless individuals is by passing laws prohibiting panhandling, solicitation, or begging which may infringe on the First Amendment right to free speech. Courts have found begging to be protected speech and laws that restrict this speech beyond what is necessary to serve a compelling governmental interest, target speech based on content, or do not provide alternate channels of communication can violate the First Amendment.[13] In addition, some courts have found laws prohibiting begging or panhandling to be unconstitutionally vague where the ordinances do not provide clear notice of the conduct prohibited and could be enforced it in an arbitrary or discriminatory manner.[14]

Anti-Camping or Anti-Sleeping Ordinances

Because many municipalities do not have adequate shelter space, homeless persons are often left with no alternative but to sleep and live in public spaces. Despite not dedicating enough resources to give homeless persons access to housing or shelters, some municipalities have enacted laws imposing criminal penalties upon homeless individuals for sleeping outside.

12 See, e.g., Archer v. Town of Elkton, Case No. 1:2007-CV-01991 (Md. Dist. Ct. July 27, 2007) (arguing that the seizure and destruction of personal property violated state constitutional provisions).

13 See Loper v. New York City Police Department, 999 F.2d 699 (2nd 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).

14 See, e.g., Atchison v. City of Atlanta, No 1:96-CV-1430 (N.D. Ga. July 17, 1996) (granting preliminary injunction).

Laws punishing people for sleeping outside have been challenged in courts as a violation of homeless persons' civil rights. Some courts have found that arresting homeless people for sleeping outside when no shelter space exists violates their Eighth Amendment right to be free from cruel and unusual punishment.

Laws penalize travel if they deny a person a "necessity of life."[15] Advocates have contended that arresting people for sleeping outside violates the fundamental right to travel by denying access to a necessity of life, i.e. a place to sleep. At least one court has 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 traveling to a city, thereby infringing upon their right to travel.[16]

Loitering Measures

Municipalities have used broadly-worded loitering ordinances to target homeless individuals in public spaces. The Supreme Court has held that such ordinances are unconstitutionally vague when they do not give clear notice of the prohibited conduct or would allow for selective or arbitrary enforcement.[17] Many loitering ordinances use similarly broad and vague language and could be challenged as violating the Due Process Clause of the Fourteenth Amendment.

Sweeps

Some municipalities also target persons experiencing homelessness by conducting sweeps of areas where homeless individuals sleep, rest, and store belongings. During sweeps, police or city workers may confiscate and destroy belongings in an attempt to "clean up" an area. Although cities may clean public areas, courts have found that seizing and destroying homeless persons' personal property violates Fourth Amendment rights to be free from unreasonable searches and seizures and that failing to follow certain procedures when managing confiscated private property may implicate due process rights.[18]

Anti-Food Sharing Ordinances

Recently, municipalities have indirectly targeted homeless people by restricting service providers' food sharing programs.[19] Historically, municipalities have attempted to restrict food sharing on providers' property through zoning laws. More recently, some municipalities 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.[20] Food sharing restrictions may also violate providers' free speech rights.

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15 Memorial Hosp. v. Maricopa County, 415 U.S. 250, 258-59 (1974).

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

17 Chicago v. Morales 527 U.S. 41 (1999); Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

18 See Lehr v. Sacramento, 624 F. Supp. 2d 1218 (E.D. Ca. 2009); Pottinger v. Miami, 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).

19 For more information about trends in food sharing restrictions, see National Law Center on Homelessness & Poverty and National Coalition for the Homeless, A Place at the Table (2010).

20 See, e.g., Stuart Circle Parish v. Board of Zoning Appeals of the City of Richmond, 946 F. Supp. 1225 (E.D. Va. 1996) (granting temporary restraining order).

Persuasive Human Rights Theories

Human rights theories provide useful tools when challenging ordinances criminalizing homelessness. Legal arguments supported by human rights treaties signed or ratified by the U.S. can be used to ensure domestic law complies with such treaties, which, when ratified, have the same binding force as federal law.[21] Further, 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."[22]

Freedom of Movement

The U.S. has signed and ratified two treaties protecting the 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 member states' compliance with the ICCPR, has emphasized 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.[23] In *Koptova v. Slovak Republic*, 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.[24]

International law related to the 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 right to freedom of movement recognized in international law.[25] 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 the 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.

Equal Protection/Discrimination

Laws criminalizing aspects of homelessness, such as bans on sleeping or sitting in public, or the selective enforcement against homeless people of neutral laws such as those prohibiting loitering or public intoxication may violate human rights law. 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.[26] Laws that have a disparate impact on homeless individuals who are African-

21 U.S. Const. art. VI, § 2; Id. art. II, § 2, cl. 2.

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

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

24 Koptova v. Slovak Republic, (13/1998), CERD, A/55/18 (8 August 2000) 136.

25 In Re White, 158 Cal. Rptr. 562, 567 (Ct. App. 1979).

26 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).

American violate the ICERD and the ICCPR, both of which the U.S. has signed and ratified. The ICERD protects the right of homeless people who are African-American to access public space and obligates the U.S. to ensure that municipalities do not engage in racial discrimination.[27] In response to reports that "some 50 % of homeless people are African American although they constitute only 12 % of the U.S. population," CERD stated 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."[28]

Forced Evictions/Sweeps

"Sweeps" that remove people from public spaces or outdoor encampments, frequently without notice or housing relocation may violate homeless people's right to freedom from forced evictions under international law. Forced evictions are described as "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."[29] According to human rights law, "[e]victions should not result in rendering individuals homeless or vulnerable to the violation of other human rights."[30] 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."[31] For homeless individuals affected by sweeps, human rights law requires that municipalities "take all appropriate measures, to the maximum of [their] available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."[32] This principle has been applied in cases from South Africa establishing that homeless people could not be evicted unless alternative shelter was available.[33]

Considerations for Litigation

Anticipating Litigation: Factual Research and Identifying Parties

Before a complaint is ever filed, counsel must consider a wide range of factors to present the strongest case.

Factual Research: Topics to Investigate

Counsel should seek to learn as much as possible about the ordinance or statute that will be challenged. This includes developing a firm understanding of the law's enactment, the

27 International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969.

28 Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee (2006).

29 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"].

30 General Comment No. 7.

31 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).

32 General Comment No. 7.

33 See, e.g., Occupiers of 51 Olivia Road, Berea Township and Another v. City of Johannesburg and Others, (24/07) [2008] ZACC 1 (19 Feb. 2008).

jurisdiction's history of and policies regarding enforcement of the ordinance or statute, the municipality's relationship with shelters and other service providers, and difficulties homeless individuals may have complying with the ordinance. This research may be conducted by interviewing homeless individuals and service providers, reviewing municipal documentation found online, and by submitting public records requests.

The jurisdiction's history of or policies regarding enforcement will be critical to persuading a court that the problems identified in the eventual complaint are real, concrete, and recurring (and, therefore, not subject to dismissal on mootness or ripeness grounds). The types of questions counsel should ask about the nature of the enforcement include: (1) whether there have been changes in frequency and magnitude of enforcement; (2) whether any notable swings in enforcement efforts are tied to particular events, political trends, enactment of new laws, or local citizen complaints; (3) whether enforcement spikes during certain seasons or times of day; (4) whether enforcement is focused on a particular area (and, conversely, whether some locations do not see enforcement); and (5) whether enforcement is selective, meaning specific groups, such as homeless individuals, or a certain subset of the homeless population, are targeted. Most importantly, counsel should note how potential defendants are enforcing the statute vis-à-vis specific individuals: is law enforcement issuing verbal warnings or citations, arresting violators, mandating relocation to a local shelter, or enforcing the law through some other means? Identifying municipal or police policies on enforcement is also important. Initial research on policies can be done by reviewing materials (such as press releases and reports) on a municipality's website and reviewing statements made to news media and in municipal or city council meetings. These facts will be critical in determining which of the legal claims discussed above have the greatest chance of success.

Local service providers (such as shelters, food kitchens, clinics, and other social service organizations that serve indigent individuals) can serve as useful resources to understanding the municipality's attitude toward homelessness. Those service providers that are critical of criminalization practices may be important allies in working with plaintiffs and gathering factual information. They may also serve as informal consultants who can help counsel understand the conditions and challenges facing the local homeless population. In contrast, some service providers may not be receptive to assisting in challenges or may be hesitant to publicly support such efforts because of their relationships with the municipality and/or its police department.

Counsel should examine additional barriers that may hinder homeless individuals' abilities to comply with the ordinance or statute at issue. For example, mental health issues may make it incredibly difficult for an individual to function in certain shelter environments and may create obstacles to compliance with relevant ordinances. Transportation issues may also limit access to available services, particularly if these are located away from public transportation or if individuals' physical disabilities make transportation difficult. Individuals with criminal records – even those consisting mostly of violations of quality of life ordinances – may not be eligible for public benefits or housing assistance, or may be turned away by private landlords. Religious differences may inhibit an individual from seeking shelter or services from certain providers, thereby limiting the individual's ability to comply with the law. Similarly, due to limited resources, there may not be sufficient services available for those in need. For instance, emergency and temporary shelters may have insufficient space, leaving homeless individuals or families with no alternative but to inhabit public places. Physical disabilities, alcoholism and

substance abuse, and other factors synergistically increase the likelihood of going without shelter or being unable to access needed services.

Issues To Consider In Working With Plaintiffs

Working effectively with plaintiffs is one of the most important aspects of litigation.[34]

Individual Plaintiffs. Generally speaking, as to individual plaintiffs, counsel should consider whether plaintiffs (1) meet the legal requirements of Article III standing; (2) have claims not barred by applicable statutes of limitation; (3) have compelling facts; and (4) will be able to participate at depositions and trial. Plaintiffs who have ties within the homeless community and will be able to offer counsel guidance on the issues faced by and remedies most likely to benefit the homeless community can be particularly helpful.

With respect to standing, a plaintiff must demonstrate that he or she has personally suffered or will imminently suffer an injury that is fairly traceable to defendant's conduct and that a favorable decision is likely to redress the injury.[35] Injuries to constitutional rights are sufficient to establish standing. Where injunctive relief is sought, a plaintiff must further demonstrate a likelihood of future harm from the unconstitutional enforcement; this additional requirement is unnecessary for claims for monetary damages. While some defendants have successfully argued that plaintiffs without convictions under anti-camping ordinances lack standing,[36] other courts have found that homeless plaintiffs have standing to challenge anti-camping or anti-sleeping ordinances, even if they have not yet been convicted under the ordinances.[37] Defendants may also argue that standing does not exist where a plaintiff, who seeks only injunctive relief, is no longer homeless, is incarcerated, or has moved from the area. Beyond these general points, however, there are several specific considerations.

First, counsel should consider the number of individual plaintiffs appropriate for an action. Having a large number of plaintiffs acts as a cautionary buffer; this will limit the effectiveness of a defense strategy based on eliminating individual plaintiffs. This is particularly important given that unsheltered homeless individuals may move to other areas in hopes of locating permanent shelter and employment or may become unavailable for other reasons. Further, a large number of plaintiffs will serve to underscore the severity of the issues raised in the litigation. A demographically diverse group of plaintiffs, where possible, may likewise represent the broad harm of a given ordinance.

Second, counsel should think carefully about the potential vulnerabilities of specific plaintiffs in order to best address those vulnerabilities, prepare those plaintiffs for deposition and trial, and identify where supplemental information or expert testimony may need to be procured. Plaintiffs will likely need to explain the circumstances of their past and current living situations and how they became homeless, their employment history, any medical or mental health issues that

34 In addition to the issues discussed here, counsel should be aware of any jurisdictional, organizational, or ethical rules or limitations related to establishing the attorney-client relationship.

35 See generally Erwin Chemierinsky, Constitutional Law: Principles & Policies § 2.5 (2d ed. 2002).

36 See Johnson v. Dallas, 61 F.3d 442, 445 (5th Cir. 1995).

37 Jones v. Los Angeles, 444 F.3d at 1126-31; Anderson v. Portland, 2009 U.S. Dist. LEXIS 67519, *12.

impact their claims or damages, any criminal record and periods of incarceration, and the circumstances of their citations. Plaintiffs' mental health or criminal histories may also impact the weight of their testimony. Counsel should consider from the outset whether protective orders may be needed with respect to confidential or sensitive information about the plaintiffs.

Third, counsel should consider how to stay in communication with plaintiffs throughout the duration of any litigation. There are a variety of ways to do so. Some homeless individuals will have email addresses that they check regularly. Others will routinely stay at the same shelter and will be accessible on a regular basis at the same location. To ensure that counsel does not lose touch with plaintiffs (and that counsel is not surprised by any unexpected developments), it is advisable to schedule weekly meetings.

Class Actions – A Special Case. As with having a large number of individual plaintiffs, a class action can demonstrate the severity of the issues addressed in litigation. However, counsel must consider whether the requirements embodied in Rule 23 of the Federal Rules of Civil Procedure and applicable implicit requirements, can be met, as well as the relative strategic merits of a class action. Some legal services organizations are prohibited from participating in class actions as either counsel or party. Filing a lawsuit as a class action has the benefit of being able to seek relief for a large group of individuals. However, obtaining certification of the class is an additional hurdle to overcome in a lawsuit and may be more amenable for certain types of suits than others.

***Organizational Plaintiffs*.** Organizations may be named as plaintiffs if they can demonstrate injury; this may depend on the type of services provided in relation to the challenged ordinance. Having organizations as plaintiffs can be an advantage, in the event that individual plaintiffs' claims are mooted out. Religious groups, shelters, and other service providers may have a stake in the outcome of litigation challenging an ordinance. However, the adversarial nature of litigation may impair existing relationships with a municipality. Organizations that are unwilling or unable to be plaintiffs may nevertheless be able to offer valuable assistance throughout the litigation process.

Issues to Consider in Identifying Defendants

While conducting pre-trial research, counsel should be aware of identifying potential defendants. This may include examining the actions of various government entities, including state and local governments and their agencies and law enforcement departments, depending on the ordinance in question. Actions may be brought against specific individuals, based upon the level of individual knowledge and conduct. Counsel must give special consideration to issues of sovereign and qualified immunity and the requirement of § 1983 that liability is grounded in an official municipal policy.[38]

38 Erwin Chemierinsky, Constitutional Law: Principles & Policies 488-89 (2d ed. 2002).

Litigation and Strategy

Drafting the Complaint

In addition to working with plaintiffs to identify the appropriate claims and defendants, counsel has other strategic considerations when drafting the complaint.

Level Of Detail. Counsel should consider the appropriate level of detail in drafting the complaint. In addition to meeting the requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure, *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the complaint can be persuasive writing that will educate the court, the media, and the public on the effects of criminalizing homelessness.

Jury Demand. Counsel should consider whether a bench trial or jury trial is preferable given the specific claims and parties. This will likely involve research and considering a local counsel's perspective of the court and the potential jury pool.

Remedies. Challenges to criminalization measures have been most successful where plaintiffs have sought narrow, specific declaratory and/or injunctive relief.[39] Monetary damages may also be sought and awarded, though these have been awarded more frequently where a plaintiff's property has been seized or destroyed.[40] Given the needs of the specific plaintiffs, appropriate remedies may also include reimbursement of criminal fines and costs of incarceration and expungement of violations of the challenged ordinances. Attorneys' fees and litigation costs are typically sought, although some organizations may be prohibited from seeking attorneys' fees. Depending on the likelihood of success, it may also be worth pursuing a temporary restraining order or preliminary injunction.

In deciding whether to grant a preliminary injunction, courts frequently consider four factors, or some variation thereof: (1) the moving party is substantially likely to prevail on the merits of his claim, (2) the moving party will suffer irreparable injury unless the injunction issues, (3) the threatened injury outweighs the harm the injunction may do to the opposing party, and (4) that the injunction would not be contrary to the public interest.[41] Irreparable harm is defined as harm that the plaintiff would suffer absent a preliminary injunction that cannot be compensated by damages or a decision on the merits.[42] Some courts do not structure or weigh the factors in any particular order, allowing the judge to exercise more discretion in determining whether a preliminary injunction should be issued; other courts will provide more guidance as to how to weigh or order similar factors.[43]

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39 Jones v. City of Los Angeles, 444 F.3d at 1120, 1138 (noting that plaintiffs sought a declaratory judgment that enforcement violates homeless persons' rights to be free from cruel and unusual punishment and an injunction against enforcement from 9:00 p.m. to 6:30 a.m. and in cases of medical necessity).

40 See, e.g., Pottinger v. Miami, 810 F. Supp. at 1570 ("[A] homeless person's personal property is generally all he owns; therefore . . . its value should not be discounted.").

41 E.g. Vision Center v. Opticks, Inc., 596 F.2d 111 (5th Cir. 1979); Trak Inc. v. Benner Ski KG, 475 F. Supp. 1076, 1077 (D. Mass. 1979); SK&F, Co. v. Premo Pharmaceutical Laboratories, Inc., 625 F.2d 1055, (3d Cir. 1980). CPG Products Corp. v. Mego Corp., 502 F. Supp. 42 (S.D. Ohio 1980); Meridian Mut. Ins. Co. v. Meridian Ins. Group, Inc., 128 F.3d 1111 (7th Cir. 1997).

42 Sampson v. Murray, 415 U.S. 61 (1974) (citing Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958).

43 Lancor v. Lebanon Housing Authority, 760 F.2d 361, 362 (1st Cir.1985) (heightened importance of probability of success); Abbott Laboratories v. Mead Johnson & Co., 971 F.2d 6 (7th Cir. 1992) (making the first two factors requirements); Ilapak Research & Development S.A. v. Record SpA., 762 F. Supp. 1318 (N.D. Ill. 1991) (acknowledging that Seventh Circuit courts are to employ a sliding scale approach).

Filing the Complaint or Sending a Demand Letter?

Sending a demand letter to the defendants, prior to filing the complaint, may provide an unanticipated opportunity to educate decision-makers and resolve the matter outside of litigation. For instance, the municipality may be willing to amend the objectionable ordinance or put in place a policy clarifying and limiting enforcement against persons experiencing homelessness. Counsel who is familiar with municipal decision-makers will have the best sense of whether this is an appropriate strategy. Preliminary research will help inform counsel as to the most appropriate tone of any demand letter and other negotiations with municipalities.

Discovery

Plaintiffs' Discovery

Discovery provides important opportunities for factual development of the case – particularly in the context of challenges to criminalization measures for which many of the relevant documents will be held by the defendants instead of the plaintiffs. Counsel should strategically consider the use of interrogatories, requests for admission, and requests for production to gain information and documentary support needed to prove each element of plaintiffs' affirmative case.

Key categories of documents that may be available through discovery include: (1) copies of citations, police records or reports, audio-recordings, and emails relating to violations of the challenged ordinances; (2) guidance and instructions on enforcement, whether formal or informal (such as in emails) and training materials on the challenged ordinances; (3) internal communications regarding enforcement policies and practices; (4) annual or periodic reports or data relating to enforcement; (5) defendants' organizational/hierarchy charts; (6) reports or policy documents regarding the ordinances at issue or homelessness; (7) defendants' submissions to federal or state government agencies that pertain to homelessness (e.g. submissions to HUD); and (8) citizen complaints or other materials defendants may use to justify their practices. Materials that can be used to demonstrate an official policy or custom are of particular importance in litigating claims brought under § 1983.

As in other litigation, the meet and confer process is an opportunity to negotiate discovery and protection of confidential or sensitive information in documents. However, motions to compel may be necessary to secure materials critical to proving the case.

Depositions provide additional opportunities to develop information necessary to support the affirmative case, particularly with respect to proving an official policy or custom. Documents received earlier in discovery will help identify key witnesses to depose, including officers who have issued citations, persons responsible for the training or supervision of officers, and decision-makers who have created policy or have acquiesced to existing policy.

Defendants' Discovery

Counsel may encounter particular challenges when working with plaintiffs to respond to defendants' discovery requests. Plaintiffs who are homeless and have no reliable place to store

their belongings may not have access to the documents sought. To the extent requests seek materials relating to enforcement, responsive documents may already be in the defendant's possession. Counsel can assist plaintiffs in procuring documents from medical providers, employers, and government agencies; however, this process may be time-consuming. Further, such materials may contain confidential or sensitive information that should be produced only subject to a protective order.

Memory issues may also be a hurdle both in responding to requests and in depositions. For instance, plaintiffs who frequently violate the challenged ordinances, out of necessity, may not recall the specific circumstances that led to the violation for which they were cited or arrested. Care should be given to adequately prepare plaintiffs for questioning.

Third-Party Discovery. Shelters and other service providers may also have key materials and information needed in the litigation. Service providers who are supportive of the litigation may be willing to provide documents or information without a subpoena or court order. Defendants will likely also seek such discovery from third-party service providers.

Experts

Experts can play an important role in helping fact-finders better understand conditions faced by many homeless individuals and reasons why compliance with ordinances may be impossible. Experts may address the conditions and causes of homelessness, the local conditions and availability of shelter and services, safety concerns at shelters and in sleeping outdoors, and the effects of medical and mental health issues on compliance with the ordinances at issue.

Summary Judgment

Based on the information gleaned in discovery, counsel should evaluate whether there is sufficient evidence to seek summary judgment as to some or all of plaintiffs' claims, or as to liability. Strategically, there may be an advantage to resolving certain issues before trial, particularly if there is uncertainty in the applicable law. Additionally, counsel should consider the likely strengths and weaknesses of plaintiffs' and other witnesses' trial testimony.

Trial

When litigation leads to trial, counsel should carefully consider trial strategy and themes in light of the locality, its population and potential jury pool (or, if plaintiffs have selected a bench trial, in light of the judge's prior cases and jurisprudence). Counsel should consider the most effective way to convey a compelling message about the impact of the given ordinance in the lives of the plaintiffs. In crafting the affirmative case, counsel should consider which witnesses and evidence can best support that message and the elements of each claim. As with depositions, counsel must take special care to prepare trial witnesses.

Settlement

Settlement negotiations, although at times used as a delaying tactic, offer potential for a constructive solution that may balance the rights of homeless individuals with a municipality's

goals. Settlements may limit enforcement against homeless individuals under certain circumstances, such as when shelters are full, or in specified locations or during certain hours. Settlements have frequently included funds set aside to assist homeless individuals. Conditions for settlement need to be clear to the parties involved, others similarly situated, and law enforcement, so that all understand what is permitted. Settlement conditions should also be tailored to allow effective monitoring to prevent future violations of rights.

Citation Defense as a Strategy to Combat Criminalization
by Paul Boden, Elissa Della-Piana, Becky Dennison, and Bob Offer-Westort

As the criminalization of homelessness continues across the country, police have issued thousands of citations to homeless people for sitting, sleeping, drinking, and camping. In San Francisco alone, over 100,000 homeless people have been cited in the past 15 years. The consequences are severe: the resulting warrants and criminal records often keep homeless people on the street by creating barriers to jobs, services, and housing. Additionally, warrants and arrests often result in a loss of housing – pushing many people back into homelessness. Point-in-time counts of the San Francisco County Jail population have indicated that a quarter of the jail population is homeless.

This occurs in a context in which more people are being forced by economic circumstances to live outdoors, and in a budget that may reduce staffing for public defense by 15-20 percent. In many cities, the Public Defender's Office does not represent defendants at all in homeless citation cases, because the charges are initially cited as infractions. While infractions cannot by themselves result in incarceration, failure to pay is a misdemeanor. When homeless people cannot afford to pay up to hundreds of dollars in punishment for being in public spaces, they are getting criminally punished without representation. Community and legal work to confront this criminalization is essential to preserving a society that values the human rights of all people.

Citation defense projects are working to do just that. For example, citation defense projects in San Francisco, Los Angeles, and Berkeley have proven that when homeless people have legal representation, their citations do not stand up in court: between 75 percent and 90 percent are eventually dismissed.

The legal defense work in San Francisco, started by the Coalition on Homelessness in 1995, has incorporated extensive street outreach and recruitment of pro bono attorneys to form a relatively rare collaboration between community organizers, legal non-profits and large law firms. The Coalition on Homelessness, the ACLU, Bay Area Legal Aid, and volunteers from other community and legal service organizations established a program for citation defense at the Coalition. Volunteers at the Coalition would conduct "intakes" for homeless defendants, collecting narratives and legally pertinent information that *pro bono* defense attorneys would then use in court to provide competent legal counsel.

While the Coalition has experimented with different structures for the program, homeless citation defense has continued uninterrupted for two decades. In 2009, the program provided representation in over 3,200 cases for over 1,300 individuals, which represents 10-25 percent of

status crime citations issued each year. This program does not discriminate based on housing status, so it serves poor people across the housing spectrum. Homelessness lies at the intersection of numerous kinds of societal oppressions. Therefore, through addressing what was initially seen as a homeless issue, the program has been able to address one kind of racial disparity. In a city that's 6.5 percent African American, 32 percent of the program's defendants are identified by police officers as black. Whereas 54.5 percent of people in San Francisco self-identify as white, 55 percent of defendants in the Coalition on Homelessness' citation defense program are identified by police officers as people of color.

Citation defense also addresses a disability justice issue: As homelessness is very frequently immediately precipitated by the difficulty of accessing employment or housing services for people with disabilities, it should not be surprising that 40 percent of citation defense participants have physical or mental disabilities.

Given recent politics in San Francisco, citation defense has become an increasingly important defense for migrant workers who face the threat of deportation in the same kind of sweeps that land homeless people in county jails. Sixteen percent of defendants in the Coalition on Homelessness' citation defense program face documentation issues.

In addition, through regular daily intake at the Homeless Youth Alliance, the program helps many young people to avoid longer-term involvement in the criminal justice system.

The work that the program does is amazingly successful, resulting in a 96 percent "success" rate (with "success" defined as dismissal, a "not guilty" finding, or a fine waiver with a "guilty" finding). This model has spread to the East Bay and to Los Angeles, and is being developed in Portland. However, it is clear that the benefits for racial justice, undocumented immigrant defense, the prevention of the incarceration of people with mental illnesses, and for indigent youth are greatly augmented by the involvement of attorneys working with local organizers directly on these issues.

In all the citation defense projects, volunteer local attorneys provide representation in court that homeless people could not get from the Public Defender's Office. Their participation also allows for stronger strategic planning for possible class action litigation or legislative remedies. Legal defense work documents the racial and disability discrimination that is so prevalent in the implementation of campaigns that target homeless people. Legal defense work attempts to set local precedent that curbs civil rights violations by police and by unconstitutional legislative attempts to criminalize homelessness.

For more information about these citation defense projects, contact Paul Boden at pboden@wraphome.org.

Appendix

Model Practices and Procedures

Based on positive practices in communities around the country, the Law Center has developed the following model policies and procedures that cities can adopt to ensure their homeless residents are treated with respect and that their rights are protected.

MODEL GENERAL POLICE ORDER:

TITLE: Interactions with Homeless Persons

I. BACKGROUND

a. The purpose of this policy is to ensure that employees of the Police Department understand and are sensitive to the needs and rights of homeless persons and to set forth procedures for Members to follow during contacts with homeless persons. This policy recognizes that all persons, including people experiencing homelessness, have the right to be peacefully in any public place so long as their activities are lawful. It also explicitly affirms that homelessness is not a crime.

II. POLICY

a. The policy of the Police Department is to treat homeless persons in a manner that protects their needs, rights and dignity, while providing appropriate law enforcement services to the entire community. The Department recognizes that in law enforcement situations involving homeless individuals, it is preferable to make referrals to organizations that provide services to them, and to refrain from initiating contacts that interrupt innocent activity and may violate an individual's constitutional rights.

III. DEFINITIONS

a. A homeless person is an individual who lacks a fixed, regular and adequate night-time residence, or has a primary night-time residence that is:

i. A supervised publicly or privately operated shelter designed to provide temporary living accommodations;

ii. An institution that provides a temporary residence for individuals intended to be institutionalized; or

iii. A private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

IV. PROCEDURE

a. Contact

i. A Member may at any time approach a homeless person who has not been observed engaging in criminal conduct, to offer advice about shelters, services, or other assistance that is available. In appropriate situations, a Member may also contact an outreach worker from a public or private homeless services provider. The homeless person is free to choose whether or not to accept any referral or not.

ii. Members shall refrain from detention, arrest, interrogation, or initiation of any other criminal law enforcement interaction with any persons based solely upon their "status" of being or appearing to be homeless, so long as they are not engaged in unlawful activities.

iii. Members shall refrain from communicating in any way, to persons who are or appear to be homeless, that they are not allowed to be in a particular public space because of their homeless status.

b. "Move On" Orders

i. Members shall not order any person to move to another location when that person has a legal right to be present where he or she is, absent safety, security, or other constitutionally permissible reasons.

ii. It is Department policy not to give "move on" orders and not to arrest people for failure to move on if there is any other reasonable way to resolve the situation. Members shall not give "move on" orders to persons merely because they are or appear to be homeless.

c. Requests for Identification

i. Requests for identification made to a person who is or appears to be homeless shall be subject to the same legitimate law enforcement requirements as are applicable to such requests when made to any other person, but with sensitivity to the special needs and circumstances of the individual situation.

1. Requests or demands for identification shall be made only with good cause. Requests for identification shall not be made pursuant to casual contact with persons who are or appear to be homeless. At no time shall requests or demands for identification be made in order to harass, intimidate, threaten or make any other unwarranted show of authority.
2. When a person who is or appears to be homeless is unable to produce a valid form of identification, the Member shall not penalize the person for failing to produce the requested identification.

d. Personal Property

i. The personal property of homeless individuals shall be treated with the same respect and consideration given to the personal property of any other person, with particular sensitivity to the special needs and circumstances of the individual situation.

ii. In arrest situations, homeless persons shall not be required to abandon personal property they identify as their own at the arrest site. Members shall not damage, hide or cause to be abandoned the personal property of any such person. Where practical, Members shall adopt or facilitate measures that will best safeguard personal property, as identified by the arrestee.

1. The personal property of homeless arrestees is to be handled in the same manner as the property of other arrestees.
2. Homeless individuals have a constitutionally protected expectation of privacy in their personal belongings and closed containers. Members shall refrain from instituting any search, frisk, or other such investigation where the elements of reasonable suspicion or probable cause are not met. A person's status of being or appearing to be homeless, without more, does not constitute reasonable suspicion for such a search.
3. In no event shall any Member destroy personal property known to belong to a homeless person, or recognizable as property of a homeless person, unless it poses a health hazard.

e. Arrest Situations

i. Arrests of all persons, including those who are homeless, shall comply with the law and Department policies and procedures.

1. A Member always has the right to approach any individual, including a person who is or appears to be homeless, to allay any suspicions the Member may have about the individual, and ascertain that no criminal activity is occurring or is imminently threatened.
2. When encountering a homeless person who has allegedly committed a nonviolent misdemeanor, where the continued freedom of the individual would not result in a breach of the peace or a more serious crime, Members are encouraged to utilize referral to an appropriate social service provider in lieu of physical arrest, such referral being contingent on the voluntary agreement of the individual.
3. The discretion to make a physical arrest of a homeless person for misdemeanor violations shall be the responsibility of the individual Member.

MODEL POLICY FOR CLEANING PUBLIC SPACES:

I. PURPOSE

The purpose of this protocol is to establish procedures for disposition of property discovered during the cleaning of public spaces, including areas where individuals who are homeless may be located. The goal is to ensure that the owners of any property discovered during a cleaning are afforded due process of law and support by appropriate service provider agencies.

II. NOTICE

The city agency responsible for cleaning public spaces shall provide 14 days notice prior to cleaning a space in which homeless individuals are located. Written notice should be provided to each person at the location and shall also include a posted written notice in conspicuous places at the location. The written notice shall be in both English and Spanish and include the date and time the cleaning will occur, advisement that property is subject to confiscation if not removed, the procedure for retrieving any confiscated property, the current contact information of the government agency responsible for storing the property, and the contact information of an appointed service provider agency.

Prior to posting written notice of the cleaning, the city agency shall contact a pre-designated service provider to provide notice of the cleaning. The agency should have the ability to conduct outreach to the individuals located at the cleaning site. The 14-day notice period will not commence until the city agency has made contact with the service provider agency.

The 14-day notice period refers to regular business days and does not include weekends or holidays. This will allow outreach workers a reasonable period of time to contact the persons at the cleaning location and to arrange for any necessary services.

III. Sorting and Storing Property

Any property remaining at the cleaning site after the 14-day notice period shall be sorted through. Any items that are spoiled or mildewed shall be considered trash. Appropriate arrangements shall be made to have those items disposed of.

Personal items that do not appear to be spoiled or mildewed, such as clothing, bedding, photographs, personal papers, and keepsakes, shall be processed and stored for 6 months at a designated storage site from which its owner may retrieve it.

Model Survey:

Below is a sample survey that can serve as a starting point when developing your own survey.

****

Name of Surveyor: _____ Date of Survey: _____
Location of Survey: _____

Sample Police Interaction Survey

Name: _____

Where you can be reached: _____

Alternate contact or mailing address:
_____
_____

Age: _____ Gender: _____ Employment: _____

1. Have you had any recent interaction or been harassed by the police? If so, please give details:

2. What did the officer(s) say or do to you?

3. Were you arrested? If yes, for how long were you detained? When were you released? Were you charged with a violation of any law? Under which laws were you charged?

4. The following apply to me:

   ( ) I pled guilty, the sentence was _____

   ( ) I pled not guilty and the charge was dismissed.

   ( ) I pled not guilty and was convicted. The sentence was _____

   ( ) The charge was dismissed without a pleading.

5. When you were arrested, did the officer(s) take your belongings? If yes, were you given a voucher or receipt for your belongings? Were your belongings returned to you upon being released? If no, do you know what happened to them?

6. Have the police ever taken or destroyed your belongings in a situation when you were not arrested?

7. In the last year, how many tickets or citations have you been given by the police?

8. Did you ever retain the public defender to defend you on any of these charges? If no, why not?

9. How many times in the past year have the police asked you to "move on," leave a particular area, or see identification? Please describe any details:

10. Have you ever utilized any of the homeless services/shelters in the community? When? Which ones? What was your experience like?

11. Have you ever tried to stay at a homeless shelter and been refused? Why?

12. If you don't generally go to shelters, why? Have you stayed at any of them in the past? If applicable, why do you choose not to return?

13. Do you utilize any of the food distribution services/meals provided by local groups/shelters? Which ones? How frequently?

Criminalization Grading Tool:

Some cities have done a better job than others in avoiding the criminalization of homeless individuals and ensuring that their housing, health, and financial needs are met. As an advocate, you have insight into your city's success or failure to effectively and humanely address homelessness. This tool will help you compare your city's practices and resources with those of other cities across the country.

Keep in mind that the best results are often the product of collaboration among individuals: the more perspectives on a city that are taken into account, the more accurate the tool's results will be. In completing the questions below it will be helpful to seek out the perspectives of homeless individuals and service providers, as well as to refer to your city's 10 Year Plan, Continuum of Care applications, Point-in-Time studies, and other materials.

Directions: In the table below, indicate which conduct is criminalized by city ordinances or policies and the frequency of enforcement. Enforcement includes citing, arresting, or warning homeless individuals engaged in the restricted conduct.

Measuring Criminalization

Does your city prohibit or restrict …	**No**	Yes (indicate frequency of enforcement)			
		Almost Always	**Often**	**Occasionally**	**Never**
Camping or sleeping in public spaces?					
Sitting or lying in particular public places?					
Panhandling or "aggressive panhandling"?					
Loitering or vagrancy?					
Public urination/defecation?					
Public storage of belongings?					
Free meal distribution to homeless people?					
Homeless encampments (or allow for "sweeping" of encampments)?					
Sleeping in a vehicle?					
Does your city selectively enforce otherwise neutral laws against homeless individuals (e.g. public intoxication, littering, jaywalking)?					
Does your city ask homeless persons to "move on" or otherwise limit their access to public space when no crime has been committed?					

Start with 0. For each "*No,*" give your city 2 points. = _____

For each "*Almost Always,*" take 4 points from your city. = _____

For each "*Often,*" take 3 points from your city. = _____

For each "*Occasionally,*" take 2 points from your city. = _____

For each "*Never,*" give your city 0 points. = _____

Total points from Section 1 (could be a negative number)

= _____

Directions: In the table below, indicate whether the listed resources are available in your city and whether the resources meet the needs of your city's homeless population. Consider not only the quantity or quality of available resources, but also whether these are truly available to homeless individuals in the community (i.e. evaluate the location, hours, accessibility, and policies that enable or hinder homeless persons' ability to make use of the resource). Include all resources available in your city, regardless of whether these are provided by the city or a non-governmental organization.

Measuring Resources

Does your city have…	**Adequate**	**Inadequate**	**Severely inadequate**	**Not available**
Permanent affordable housing?				
Permanent supportive housing?				
Transitional housing?				
Rental assistance and/or motel vouchers?				
Overnight shelter?				
Daytime shelter?				
Organized encampments or safe grounds?				
Public restrooms available 24/7?				
Free food pantries and soup kitchens (7 days a week, 3 meals a day)?				
Free or low-cost storage options for personal belongings?				
Street outreach services and/or social services hotline?				
Free or low-cost medical care for homeless individuals?				
Case management for homeless individuals to assist in securing permanent housing, jobs, etc.				
Positive police policies that limit enforcement of criminalization measures against homeless individuals and/or emphasize diversion from the criminal justice system (i.e. service provider referrals, internal trainings on homelessness, homeless liaisons?)				
If your city has a homeless coalition or other homeless advocacy group that includes homeless individuals, does your city government support or work with this organization?				

For each "*Adequate,*" give your city 4 points. = _____

For each "*Inadequate,*" give your city 2 points. = _____

For each "*Severely inadequate*," give your city 0 points. = _____

For each "*Not available*," take 1 point from your city. = _____

Total points from Section 2: ___ = _____

Grading:

Total points from Section 1 =

Total points from Section 2 = +

Final score =

Find your city's grade, based on the rubric below:

Criminalization Grading Rubric

Point Range	**Grade**	**Explanation**
Greater than 30	A	The city is doing a good job of working to end homelessness in choosing to avoid criminalization and provide needed services to homeless individuals. The city should work to ensure the sustainability in its approach by dedicating necessary resources to alternatives to criminalization.
11 through 30	B	The city is doing a fair job of supporting its homeless population, perhaps avoiding certain types of criminalization and providing a number of resources. However, the city still has room for improvement and should build upon its current efforts to ensure better care of homeless individuals.
-10 through 10	C	The city is doing a poor job of addressing the needs of homeless individuals in its community. Though some positive resources may exist, the city needs to work harder to avoid criminalization and develop further supports for the homeless population.
-30 through -11	D	The city is doing a bad job of supporting its homeless population. A detailed plan should be made that will develop more supportive resources for homeless individuals and move away from criminalization policies.
Less than -30	F	The city is completely failing to take care of its homeless individuals, arguably the most vulnerable members of the community. In order to address this criminalization of homelessness and clear disregard for human dignity, the city should entirely reevaluate its approach in dealing with homelessness.

Model Press Release:

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

FOR IMMEDIATE RELEASE
June 17, 2011

Contact: Whitney Gent
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HUD Report: Family Homelessness Up 20 Percent

Still, Congress considers eliminating homeless services program

WASHINGTON, D.C. - While a report released by the U.S. Department of Housing and Urban Development earlier this week indicated a 20 percent increase in family homelessness, the Administration and members of Congress are considering eliminating a federal program that provides services to more than 2 million homeless people annually.

HUD's 2010 Annual Homelessness Assessment Report to Congress noted several important trends. Between January 2009 and January 2010, thanks to $1.5 billion in time-limited stimulus funding for homelessness prevention and re-housing, homelessness only increased marginally. But since the recession began in 2007, family homelessness increased 20 percent (Jan. 2007- Jan. 2010). During that same time span, use of emergency shelter in rural and suburban areas increased by 57 percent. The homeless population in these communities is more likely to be composed of families than in urban communities.

Maria Foscarinis, executive director of the National Law Center on Homelessness & Poverty, said, "This trend is disturbing, particularly because it is almost certainly an undercount. For example, these numbers do not reflect families living in hotels, or doubled up with family or friends out of economic necessity-even though federal law now requires many of them to be included. Homelessness is rising, and the federal government should be increasing assistance, not trying to cut it back."

Despite this rising need, the Administration has recommended and members of Congress are currently considering eliminating a key homeless services program. Their proposals threaten to eradicate Title V of the McKinney-Vento Homeless Assistance Act, a law which allows homeless service providers to receive federal property that is no longer being used by the government, at no cost, to provide housing and other services to people who are homeless. These properties are used to provide homeless persons with housing and/or supportive services across the country. If the law were eliminated, providers would have fewer means to obtain property for these services.

Efforts to abolish Title V are in direct opposition to the U.S. government's stated commitment to ending homelessness. In June, 2010, the U.S. Interagency Council on Homelessness released *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*. The plan's central tenet is that "no one should experience homelessness-no one should be without a safe, stable place to call home." Congress has made a similar pledge: the HEARTH Act of 2009 established "a Federal goal

of ensuring that individuals and families who become homeless return to permanent housing within 30 days."

Foscarinis said, "It is unconscionable for our government to try to cut effective programs that are helping homeless people-while more families lose their homes. Using vacant government property to house people who are homeless is cost effective, makes sense, and meets urgent needs. This program should be expanded, not cut."

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The National Law Center on Homelessness and Poverty's mission is to prevent and end homelessness by serving as the legal arm of the national movement. To achieve its goal, the Law Center pursues three main strategies: impact litigation, policy advocacy, and public education.

Prohibited Conduct Chart:

The following chart provides data regarding prohibited conduct in cities around the country. With the assistance of the law firm Manatt, Phelps, & Phillips LLP, NLCHP 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 negative impact on homeless individuals. It is important to note that while the chart provides a look into the laws in existence in different cities, enforcement of these laws may vary widely.

Of the 188 cities included in the 2009 chart and the chart below, the number of city codes prohibiting begging or panhandling has increased by 7 percent. The number of city codes prohibiting camping in particular public places has increased by 7 percent. The number of city codes that prohibit loitering in particular public places has increased by 10 percent.

Of the 234 cities surveyed for the prohibited conduct chart:

- 40 percent prohibit "camping in particular public places in the city and 16 percent have city-wide prohibitions on "camping."
- 33 percent prohibit sitting/lying in certain public places.
- 56 percent prohibit loitering in particular public places and 22 percent prohibit loitering city-wide.
- 53 percent prohibit begging in particular public places; 53 percent prohibit aggressive panhandling; and 24 percent have city-wide prohibitions on begging.

Prohibited Conduct Chart

		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
Adjuntas	PR			X							X				X	
Aguada	PR		X								X			X		16, 17
Aguas Buenas	PR			X												16
Aibonito	PR	X		X		X								X		16
Albany	GA		X	X	X				X			X		X		4, Note A
Albuquerque	NM		X		X	X		X		X			X	X	X	3, 5, 12, 13,16, 17, 21
Allentown	PA				X	X						X		X	X	1, 2, 12, 13
Amarillo	TX		X		X			X		X					X	
Anchorage	AK	X	X		X	X				X				X	X	1, 3,13, 21
Arecibo	PR															16
Asheville	NC	X	X	X	X	X	X	X			X	X	X	X	X	3, 5, 17, 21
Athens	GA	X	X		X	X				X				X		5, 6, 7, 13, 14, 21
Atlanta	GA	X	X		X	X		X		X	X		X	X	X	1, 3, 6, 10, 12
Atlantic City	NJ	X			X	X	X						X	X	X	1, 5
Augusta	GA	X			X					X		X		X	X	1, 3, Note B
Augusta	ME													X		3, 21, Note C
Austin	TX	X	X		X	X		X	X		X		X	X	X	4
Bakersfield	CA	X			X		X	X	X				X		X	2, 21

Prohibited Conduct Chart

		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
Baltimore	MD		X		X	X						X		X	X	1, 2, 10
Bangor	ME	X					X			X		X	X	X	X	3, 14, Note A
Barceloneta	PR	X	X										X			16
Barranquitas	PR	X	X	X							X		X			16
Baton Rouge	LA	X	X											X		1,2,5,10,4,H,21
Bayamón	PR			X			X									16
Beaverton	OR				X									X		Note D,4,9,6,21
Berkeley	CA	X			X	X		X		X	X		X	X	X	12, 16, 4, 9, 21
Bettendorf	IA	X	X		X	X				X				X	X	15, H
Billings	MT	X	X		X	X				X				X	X	1, Note E, 4, 21
Biloxi	MS		X									X		X	X	1, 3, 4, 21
Bloomington	IN	X	X	X	X			X		X	X		X	X	X	1,3,11,4,8,H,7
Boise	ID	X	X			X	X		X			X	X	X	X	1, 3, 9
Boston	MA				X	X		X			X		X	X		2, 7, 21
Boulder	CO	X	X		X	X			X	X				X		9, H, 21
Bradenton	FL		X				X		X				X	X	X	1, 13, 4, H,20,21
Brunswick	GA				X					X		X	X		X	5, Note F, 21
Buffalo	NY	X	X		X	X		X			X	X	X	X	X	1, 5, 7, 3, 21
Burlington	VT	X	X		X	X		X		X		X	X	X	X	16, 5, H, 21
Cabo Rojo	PR		X							X			X			16
Caguas	PR	X	X			X										19

Prohibited Conduct Chart

		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
Camuy	PR			X												
Carolina	PR	X	X	X			X					X		X		9,16
Cataño	PR					X										
Cayey	PR					X										
Cedar Rapids	IA	X	X										X	X	X	3, 4
Ceiba	PR			X												12,16
Charleston	SC		X			X	X		X			X	X	X	X	1,9
Charleston	WV			X									X	X	X	1,2, 3, Note H
Charlotte	NC	X	X		X	X		X			X		X	X	X	13, 16, Note A, Note H
Cheyenne	WY		X									X		X		1
Chicago	IL		X		X	X							X		X	2, 5, 7, Note G, Note A, Note C, Note D, Note E, Note H
Ciales	PR			X												16
Cidra	PR					X		X				X				
Cincinnati	OH	X	X		X	X					X		X	X	X	1, 16, Note A, Note G, Note H

Prohibited Conduct Chart

		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
Clearwater	FL	X		X	X	X		X		X			X	X	X	9, 16, Note H, Note A
Cleveland	OH	X			X	X		X					X	X	X	3, 5, 6, 10, 15, Note A, Note H
Coamo	PR			X												16
Colorado Springs	CO	X	X		X	X		X		X	X		X	X	X	3,4, 10,13, Note A, Note H
Columbia	SC		X	X	X	X					X	X		X	X	3, 9, Note A, Note C
Columbus	GA	X		X	X				X			X	X	X		3, 6, 15, Note D-E
Columbus	OH	X	X		X	X		X		X	X		X	X	X	1,3, Note D, Note H
Comerío	PR															16
Concord	NH		X		X				X				X	X		15, Note A, Note D
Corozal	PR			X			X									16
Corpus Christi	TX	X	X					X		X			X	X	X	1
Corvallis	OR		X	X	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

Prohibited Conduct Chart

		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
Dayton	OH	X			X	X							X	X	X	3, 4, 5, 6, 15, 21, 22
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, 21
Des Moines	IA	X	X		X						X	X	X	X	X	1, 3
Detroit	MI	X		X								X	X	X	X	1, 2, 4, 6, 16, 21
Dorado	PR		X	X	X						X			X		6, 7
Dover	DE	X			X	X				X		X	X	X	X	3, 13, 21
Eau Claire	WI		X						X	X		X	X	X	X	1, 4
El Cajon	CA	X	X		X	X	X	X	X	X			X	X		21
El Paso	TX		X					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, 21
Fairbanks	AL		X													13, 21, 22
Fajardo	PR							X								
Fall River	MA													X	X	
Fargo	ND		X		X	X								X		1, 3, 21
Fayetteville	AR	X	X		X					X			X	X	X	21, Note A
Fort Lauderdale	FL	X	X	X				X			X	X		X		1, 3, 4, 7, 9, 21

Prohibited Conduct Chart

		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
Fort Myers	FL	X			X	X		X		X		X		X	X	3, 12, 21, Note A
Fort Worth	TX	X	X	X						X		X		X	X	3, 12, 13, Note A
Frederick	MD	X	X	X		X				X			X	X	X	1, 3, 7, 9, 12
Fresno	CA	X	X		X	X				X	X		X	X	X	2, 4, 13
Gainesville	FL	X	X		X	X				X			X	X	X	3, 12, 13
Glendale	AZ	X	X						X						X	4, 9, 13
Grand Forks	ND	X	X							X						3, 4, 7, 21
Gurabo	PR		X			X								X		
Hallandale Beach	FL				X		X		X	X				X	X	2, 3, 4, 6, 7, 9,
Hartford	CT		X	X	X	X						X	X	X	X	1, 3, 7
Hatillo	PR		X		X									X		7
Honolulu	HI	X	X			X		X		X			X		X	1, 7, 12
Houston	TX	X	X		X	X				X	X	X	X	X	X	7
Humacao	PR	X	X		X									X		
Huntington	WV		X	X		X							X	X		3, 8, 21
Idaho Falls	ID													X		3, 4
Indianapolis	IN	X	X		X	X		X		X		X		X	X	1, 3, 7, 14, 21
Isabela	PR		X											X		7, 16, 17
Jacksonville	FL	X			X	X	X		X		X		X	X	X	1,3,9,12, Note H

Prohibited Conduct Chart

		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
Jeffersonville	IN		X		X	X		X		X			X			2, 4, 6, 7, 9, 10, 21, Note A
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, Note G, Note H
Kansas City	MO		X		X	X				X			X	X	X	1, 3, 4, 12, 16, Note H
Key West	FL	X			X	X		X	X	X	X			X	X	1,3,10, Note A, Note H
Lafayette	LA		X	X	X	X						X		X	X	3, 4, 7, 12, 14, 16
Lajas	PR	X	X											X		16
Lake Worth	FL	X	X				X		X				X	X	X	9,21,Note H
Lakewood	CO		X		X	X				X			X	X	X	Note H
Las Piedras	PR				X											
Las Vegas	NV		X		X	X		X		X				X	X	1,2,3,9,16, Note
Lawrence	KA		X		X	X				X			X	X	X	1
Lexington	KY	X		X				X					X	X	X	1,3, Note H
Lincoln	NE	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	1, 2, 4, 10

Prohibited Conduct Chart

		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
Los Angeles	CA	X	X		X	X		X		X	X		X	X	X	2, 3, 12, 13, 14, 21
Louisville	KY	X	X	X	X	X	X	X			X	X	X	X	X	3, 6, 10, 12, 15, 16, 17, 21
Madison	WI		X	X	X	X	X	X			X	X	X	X	X	1, 4, 21
Manatí	PR	X	X	X							X			X		16, 20
Manchester	NH						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	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	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		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	X	14, 15
Morovis	PR	X	X											X		6, 16

Prohibited Conduct Chart

		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
Naples	FL				X			X					X	X		3
Naranjito	PR			X		X						X				7, 16
Nashville	TN	X			X	X				X	X		X	X	X	1, 4
New Haven	CT	X			X			X		X			X	X	X	1,3
New Orleans	LA	X	X	X			X	X		X	X			X	X	1, 7, 9, 12
New York	NY	X	X	X		X			X				X			1, 7
Newark	NJ	X	X	X	X	X				X			X	X	X	1,3,14
Newport	RI		X				X					X		X	X	3, 4, 7, 12
Norfolk	VA	X	X		X	X		X		X		X		X	X	1,2,6
North Las Vegas	NV	X	X					X		X			X	X	X	2, 8,15
North Little Rock	AR	X	X							X				X	X	8
Norwalk	CT				X	X				X		X		X	X	12, 16
Oakland	CA	X		X	X			X		X	X		X	X	X	1,3, 9, 13
Oklahoma City	OK	X		X		X		X		X			X	X	X	
Olympia	WA		X			X				X	X			X	X	1,3
Omaha	NE	X												X	X	3,6,15
Orlando	FL	X	X		X	X	X		X		X		X	X	X	3
Pahrump	NV				X	X		X		X			X	X		21
Palm Bay	FL	X			X			X		X			X		X	
Patillas	PR															
Philadelphia	PA		X		X	X					X		X	X		1,2,3

Prohibited Conduct Chart

		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
Phoenix	AZ	X	X		X	X	X		X		X		X	X	X	3, 9
Pierre	SD			X									X	X		3, 6
Pittsburgh	PA	X	X		X	X				X					X	1
Pocatello	ID	X						X					X		X	1,3
Pontiac	MI		X		X	X							X	X		1, 3
Portland	ME	X	X			X						X		X	X	3, 5, 9
Portland	OR	X	X		X				X		X		X	X	X	1, 4, 6, 13
Providence	RI	X	X			X		X			X		X	X	X	1, 7
Raleigh	NC	X	X	X	X	X	X		X		X		X	X		3, 4, 15
Rapid City	SD				X	X		X		X	X		X	X	X	1, 3
Redondo Beach	CA	X						X	X				X	X	X	7, 4
Reno	NV	X	X		X	X		X		X	X			X	X	3, 4, 9
Richmond	VA	X	X		X	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	X	X	1, 2, 4
Salinas	PR	X	X											X		
Salt Lake City	UT	X	X	X				X		X	X		X	X	X	1, 3
San Antonio	TX	X	X			X		X	X		X		X	X	X	1, 7, 12, 13
San Bruno	CA				X	X					X		X	X	X	

Prohibited Conduct Chart

		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
San Diego	CA	X	X		X	X		X		X			X	X		1, 7, 13, 15
San Francisco	CA	X	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		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	X			X	X	X		X	X	
Santa Barbara	CA	X			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	X	X	7,5,14,17,A
Santa Isabel	PR	X	X		X	X	X		X				X	X	X	1, 3, 7, 19, C,D
Sarasota	FL	X	X	X	X			X		X	X		X	X		1, 5, 7, 9
Savannah	GA	X	X					X	X	X	X			X	X	4, 9, 8, 21
Scottsdale	AZ	X	X	X		X	X	X		X	X			X	X	3,5,21
Seattle	WA	X	X		X		X	X		X	X		X	X	X	1, 2, 7, 9, 21
Shreveport	LA		X	X								X	X	X	X	3,4,15,A
Sioux Falls	SD					X				X	X	X	X	X	X	7,5,14,17,A
South Bend	IN	X			X	X			X		X		X	X	X	1,21
South Lake Tahoe	CA	X			X		X		X				X	X	X	4, 9, 13,14,21
Spokane	WA	X	X			X				X		X		X	X	3, 8, 15
St. Augustine	FL				X	X	X		X				X	X		1, 3, 10, 21,D

Prohibited Conduct Chart

		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
St. Louis	MO		X			X				X		X	X	X	X	1, 2, 5, 11,
St. Paul	MN	X	X	X				X			X	X	X	X	X	1,4 ,21
Stamford	CT	X										X	X	X		1,4,7,
Statesboro	GA											X	X	X		
Stone Mountain	GA						X	X	X			X	X	X	X	3, 9, 21
Suffolk	VA		X		X	X								X		21, C, D
Tampa	FL					X							X	X		2, 7,21
Tempe	AZ	X	X		X	X			X		X			X	X	9, 21,F
Toa Baja	PR		X		X										X	7
Toledo	OH		X	X	X								X	X	X	3, 5, 7, 12
Topeka	KA		X	X				X						X	X	1, 4, 6, 8, 12, 14
Tracy	CA		X		X	X		X		X			X		X	17, 21
Trenton	NJ	X	X		X	X	X	X	X		X		X	X	X	1, 3
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, 12, 21
Ukiah	CA		X		X	X		X		X	X		X		X	4, 9, 12, 17
Union City	CA										X		X	X	X	9, 10, 12
Utuado	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, 6, 9, 12

Prohibited Conduct Chart

		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
Washington ***	DC		X		X	X		X	X		X	X		X		1, 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	X	3, 4, 14
Wilmington	DE	X			X	X					X		X	X	X	3, 7, 15
Woodinville	WA	X								X			X		X	2, 3
Woodstock	IL	X														
Worcester	MA	X												X		21
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" or "disturbing" noise, 22) Curfew for minors in public places

**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

Case Summaries:

A number of homeless individuals and advocates have sought to challenge laws and policies that criminalize homelessness in the courts. This section describes the outcome or, if the case is still pending, the status, of the majority of these cases.

TABLE OF CONTENTS:

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, 248 F.3d 1198 (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 obtaining permits, although the city had never actually enforced the ordinance during one of his demonstrations. The court found that the ordinance regulated conduct that was not expressive by itself, *i.e.*, sitting or lying on a public sidewalk. Accordingly, the ordinance survived a facial challenge.

Anderson v. City of Portland, 2009 WL 2386056 (D. Or. July 31, 2009)

The Portland City Code renders it unlawful "for any person to camp in or upon any public property or public right of way"[44] and "to erect, install, place, leave, or set up any type of permanent or temporary fixture or structure of any material(s) in or upon non-park property or public right-of-way without a permit."[45] The Plaintiffs, Marlin Anderson, Mary Bailey, Matthew Chase, and Jack Golden, are four homeless individuals who were all warned or cited by police officers for violating the aforementioned City ordinances.

On August 30, 2007, Anderson was cited for unlawful camping when he was found napping on top of his sleeping bag in the park. On May 7, 2008, Chase and Golden were in a temporary campsite under a bridge, when police officers posted a no-camping notice on each of their tents with handwritten notes stating "1 p.m., time to be moved or this stuff will be taken away." At 9 pm that night, an officer arrived and ordered them to remove their belongings immediately. Both men were cited for "erecting a structure on public

44 PCC § 14A.50.020(B).

45 PCC § 14A.50.050(A).

property." In September 2008, Bailey and Chase were living in a parking lot of a private building, with permission from the building manager, when the manager told them that police officers had threatened to shut down the building if Bailey and Chase did not remove their belongings. About a month later, they moved their property to the nearby street, but the next day they found a "notice of illegal camping" and most of their belongings gone. They went to the address on the notice to retrieve their property, and found only a few wet pieces of clothing, while the majority of their personal items (including bicycles, clothing, personal items and mementos) were gone.

The Plaintiffs filed suit on December 12, 2008 alleging that the City's enforcement of the anti-camping and temporary structure ordinances essentially criminalize the status of homelessness in violation of the Eighth Amendment. Plaintiffs also alleged that they were denied equal protection and that the defendants' enforcement of the ordinances interfered with their fundamental rights of travel and freedom of movement, and infringed on their substantive liberty interests.

The defendants moved to dismiss for failure to state a claim. The court dismissed the plaintiffs' right to travel, freedom of movement, and substantive due process claims since the City's enforcement of the ordinances did not restrain, prevent them from traveling to or from the city, nor exclude them from certain areas of the City. The court denied the defendants' motion with respect to the plaintiff's Eighth Amendment and Equal Protection claims.

The parties engaged in extensive settlement negotiations during the latter half of 2009, reaching agreements in principle on a set of policy changes as well as specific amounts for monetary damages and attorneys' fees, but after continued negotiations regarding the details of the settlement agreement, they were unable to agree as to the scope of the policy changes.[46]

After a settlement conference before the judge, the parties were still unable to resolve their differences, and the plaintiffs eventually filed an Amended Complaint on April 27, 2011. During the intervening period between the original Complaint and the Amended Complaint, plaintiffs' counsel were unable to locate Bailey and Golden and discovered that Anderson and Chase had moved into housing outside of the Portland area and were unlikely to be cited again under the city ordinances.[47] The Amended Complaint adds two new plaintiffs, seeks class certification, and alleges Eighth Amendment and Equal Protection violations. The case is currently pending in the Portland Division of the Oregon District Court.

46 See Joint Alternative Dispute Resolution Report at 3, Anderson v. City of Portland, Case No. 08-CV-1447-AA, Docket No. 42 (D. Or. March 1, 2011).

47 See Decl. of Monica Goracke ISO Pl.'s Mot. to Amend Complaint 4-7, Anderson v. City of Portland, Case No. 08-CV-1447-AA, Docket No. 45 (D. Or. April 27, 2011).

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, CA 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.

Bell v. City of Boise, Case No. 1:09-CV-540-REB, (D. Idaho filed October 22, 2009)

In October 2009, a group of homeless plaintiffs filed a lawsuit against the City of Boise, the Boise Police Department, and the Chief of Police, challenging the enforcement of Boise's anti-camping and disorderly conduct ordinances against homeless individuals for sleeping in public spaces. The plaintiffs claim there is insufficient shelter space to meet the need in the city and, therefore, enforcement of these ordinances against homeless individuals violates their 8th Amendment right to be free from cruel and unusual punishment, their right to travel, and the 14th Amendment due to its vagueness and overbreadth. In September 2010, the Defendant filed a motion for summary judgment, for which the court held a hearing on December 2010. As of April 2011, the parties are awaiting a ruling on the motion for summary judgment. NLCHP is serving as co-counsel on this case, along with Idaho Legal Aid Services and Latham & Watkins.

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, 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.

Catron v. City of St. Petersburg, 2009 WL 3837789 (M.D. Fla. Nov. 17, 2009), 2010 WL 917609 (M.D.Fla. Mar 11, 2010), No. 8:09-cv-923-T-23EAJ

On May 20, 2009, Plaintiffs filed a complaint against the City of St. Petersburg under §1983 alleging violations of the First, Fourth, Eighth, and Fourteenth Amendments of the U.S. Constitution and Article I, Section IX of the Florida Constitution, based on the city's "anti-homeless policies." The policies included the enforcement of ordinances that ban trespassing in public spaces, storing belongings on public property, sleeping in or on a right-of-way, and public urination/defecation. The Plaintiffs also alleged that the city had a policy of stopping homeless people and asking for identification, searching their possessions, and directing them to vacate public areas. The Plaintiffs sought injunctive and declaratory relief.

Plaintiffs filed a motion for class certification, which was denied. The Defendant filed a motion to dismiss which argued that the plaintiffs lacked standing to sue, and failed to state a claim for relief. The court disagreed and found that the plaintiffs had standing to challenge the constitutionality of each ordinance but lacked standing to make facial challenges to the ordinances on vagueness grounds, since they were engaging in clearly proscribed conduct. Despite finding that the plaintiffs had standing, the court went on to grant the Defendant's motion as to all of the claims except for the plaintiff's Fourth and Eighth Amendment claims.

On March 29, 2010, the parties filed a stipulation in which the plaintiffs voluntarily dismissed the Fourth and Eighth Amendment claims. On April 1, 2010, judgment was

entered in favor of the City. A few weeks later the plaintiffs filed an appeal to 11th Circuit, where the case is now pending. NLCHP is serving as co-counsel on this case, along with Southern Legal Counsel and Florida Institutional Legal Services.

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 non- profit 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 an amendment to the criminal trespass statute, Hawaii Statute § 708-815, violated the First and Fourteenth Amendments as well as the Hawaii Constitution. The amendment, passed as Act 50, Session Laws 2004, amended § 708-814(1) to protect public property from trespassers by applying the offense of criminal trespass in the second degree, a petty misdemeanor, to persons who enter or remain unlawfully on any public property after a reasonable warning or request to leave has been given by the owner or lessee of the property. The representative 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 repealed part of Act 50 on July 8, 2005, including the amendments made to the offense of criminal trespass in the second degree.

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. The ACLU continues to worry about discriminatory enforcement of these laws.

Chlubna v. City of Santa Monica, Case No. CV 09-5046 GW (C.D. Cal.)

The ACLU of Southern California, on behalf of a prospective class of homeless individuals, sued the city of Santa Monica in federal court for criminalization of homelessness in violation of their Eighth Amendment right to be free from cruel and unusual punishment, right to equal protection, due process, Fourth Amendment right to be free from illegal search and seizure and freedom of movement and statutory protection against discrimination based on disability. The complaint alleges, that despite lack of adequate space in homeless shelters, Santa Monica in the previous year has undertaken a campaign to criminalize homelessness by selectively enforcing various city ordinances, including those prohibiting camping in public places, prohibiting sitting or lying in building entrances during certain hours, and prohibiting smoking in public. The selective enforcement of these ordinances was seemingly undertaken with the intent to make Santa Monica's homeless population move to other cities.

On October 27, 2009, the plaintiffs moved for certification of a class consisting of "All current and former disabled homeless residents of Santa Monica who have been, are, or will be subject to harassment, citation or arrest by the Santa Monica Police Department for camping, sleeping, loitering, smoking in public, trespassing, or any other conduct related to the presence of the individual in a purportedly proscribed area ('presence offenses')." Before the class certification motion was decided, the parties reached a settlement agreement and the case was dismissed on May 24, 2010.

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 and lack of notice of proscribed conduct. 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 sought 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." After the filing of the complaint, the IWMC transferred control of policing functions of the memorials and parks to the Indiana State Police, who were not a party to the case.

In early 2009, before the class was certified, the case settled for $100 in damages, $25,000 in attorney fees, the purging of many no-trespass orders (including Glover's), and a promise from the Indiana State Police that they would enforce the law uniformly against everyone regardless of whether the individual is believed to be homeless.

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.

The Isaiah Project, Inc. v. City of San Diego, Case No. 09 CV 2699 BTM (S.D. Cal.)
A prospective class of homeless individuals, and The Isaiah Project, a homeless services organization, challenged in federal court the destruction of homeless people's property on at least three separate occasions. The plaintiffs had temporarily left their property, many of it stored in shopping carts provided to homeless individuals by the Isaiah Project, on the sidewalk in front of a vacant lot while seeking services at a nearby day center or church. Apparently as part of a prearranged action, San Diego police and environmental services arrived and disposed of the plaintiffs' property in a garbage truck, despite the fact that some of the individuals claimed the property as theirs. Similar raids and disposal of personal property occurred on two separate occasions. The plaintiffs alleged that posted notice regarding seizure of property was inadequate, because, among other things, it predated plaintiffs' temporary placement of their property and was not posted where the raids occurred. Plaintiffs' lawsuit alleged violations of the Fourth Amendment protection against unreasonable search and seizure, denial of due process, equal protection, and state constitutional protections.

In March 2011, the parties reached a settlement agreement. The agreement provided for $160,000 to be paid to plaintiffs, of which $100,000 would go to the Isaiah Project to staff and operate a storage facility for homeless persons, $20,000 would go to compensate individual class members, and $40,000 would be used to pay attorneys' fees and costs. The city also agreed to lease to the Isaiah Project a large warehouse in downtown San Diego and to provide 250 storage bins. The city agreed to comply with certain policies and procedures for handling personal property. The parties' joint motion for certification of a settlement class and preliminary approval of the settlement is currently pending.

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*[48] and *Johnson v. City of Dallas*,[49] where sleeping out-of-doors was involuntary for homeless people, here it was voluntary.

48 810 F. Supp. 1551 (S.D. Fla. 1992), remanded for limited purpose, 40 F.3d 1155 (11th Cir. 1994).

49 860 F. Supp. 344, 350 (N.D. Tex. 1994), rev'd on other grounds, 61 F.3d 442 (5th Cir. 1995).

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 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.[50] 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.

50 No. 3:94-CV-00991-X (N.D. Tex. Apr. 24, 2001).

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

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.[51]

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

51 370 F. Supp. 2d 892 (E.D. Mo. 2005).

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 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*,[52] because plaintiffs were not a certified class and because the court preferred the reasoning in *Joyce v. City and County of San Francisco*,[53] 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."[54]

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 percent 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

52 76 F.3d 1154 (11th Cir. 1996).

53 87 F.3d 1320 (9th Cir. 1996).

54 Order Denying Plaintiffs Motion for Summary Judgment; Granting Defendants' Motion for Summary Judgment ¶ 18.

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 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.[55]

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.[56] 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

55 505 F.3d 1006 (9th Cir. 2007).

56 87 F.3d 1320 (9th Cir. 1996).

they must move or if any unclaimed property will be discarded; and 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. 2:07-cv-01565 (E.D. Cal Aug. 2, 2007).

A group of homeless plaintiffs challenged and sought to enjoin enforcement of a Sacramento ordinance that prohibits homeless persons from sleeping outside, alleging violations of their Fourth, Eighth, and Fourteenth Amendment rights. 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 in need of 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.

The plaintiffs also 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.

In March 2010, Sacramento County settled the case for $488,000 in damages and a promise

to give 48 hours notice before sweeping a homeless camp. Of the settlement money, (1) $200,000 was allocated to pay verified claims with the residuum, if any, distributed to such non-profit corporation or corporations to provide for the needs of the homeless; (2) each of the Representative Plaintiffs received either $2,000 or $3,000, depending upon whether they lost property to the County Defendant during the Class Period, or not; (3) up to $100,000 was allocated for Claims Administration, including providing notice of the settlement of this action and the claims procedure; and (4) $150,000 went to attorney fees.

The City of Sacramento is still fighting the case. In May 2009, the City was successful on motion for summary judgment as to plaintiff's first cause of action, an Eighth Amendment claim alleging cruel and unusual punishment, as to all plaintiffs. The City was also successful in receiving summary judgment on the second cause of action, the Fourth and Fourteenth Amendment privacy claims based on unreasonable confiscation of property, as to all individual plaintiffs aside from one plaintiff, Connie Hopson, who was the only one to allege that her property had been taken against her will and thus the only one with standing. Accordingly, only one plaintiff remained with a claim against the City. In August, 2009, the class containing "[a]ll persons in the City of Sacramento...who were, or are, or will be homeless at any time after August 2, 2005, and whose personal belongings have been taken and destroyed, or will be taken and destroyed, by one or more of the defendants," was certified with Hopson as representative plaintiff.

Despite not settling, the City Council held a special meeting in March 2009 in which it passed resolutions to improve and expand homeless services and to use $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."

Trial is scheduled for May 9, 2011.

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.[57]

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 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

57 Love v. City of Chicago, No. 96-C-0396 (N.D. Ill. Oct. 10, 1996).

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.[58]

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.

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

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 Center City concourses 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.[59]

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.[60] On remand, the district court modified its injunction, enjoining the city from arresting homeless persons until the city established two safe zones.[61] In February 1996, the Eleventh Circuit referred the case for mediation.[62]

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.

59 Pottinger v. City of Miami, 810 F. Supp. 1551, 1584 (S.D. Fla. 1992).

60 40 F.3d 1155 (11th Cir. 1994).

61 No. 88-2406 (S.D. Fla. Apr. 7, 1995).

62 76 F.3d 1154 (11th Cir. 1996).

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 faced by 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 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.[63]

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.[64] 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

63 Roulette v. City of Seattle, 850 F. Supp. 1442 (W.D. Wash. 1994), aff'd, 78 F.3d 1425 (9th Cir. 1996).

64 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.

expression, and thus constitute a violation of plaintiffs' First Amendment rights.[65] 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. 09-CV-1578 (C.D. Cal. March 6, 2009).

A class of homeless plaintiffs in Santa Barbara, California, 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 were displaced from a 200-bed winter emergency shelter in Santa Barbara when it was 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 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 settled in September 2009. In the settlement, Ryden agreed to dismiss the suit in exchange for the city's promise to (1) fund with substantial loans or grants the construction of 105 to 115 very-low-income house units, (2) facilitate outreach to chronically homeless individuals and identify the 50 most chronically homeless people in Santa Barbara for purposes of offering them right of first refusal to those housing units, and (3) create a program to avoid having chronically homeless people subject to prosecution under the public sleeping criminal and municipal ordinances.

The implementation of these programs is still underway, as the parties debate the meaning and language of the settlement agreement.

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

65 97 F.3d 300, 308 (Pregerson, J., dissenting).

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.

Sipprelle 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 Fourteenth 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. The case was dismissed and arrests of plaintiffs expunged in July 2009.

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.

Veterans for Peace Greater Seattle, Chapter 92 v. City of Seattle, Case No. C09-1032 RSM (filed July 21, 2009)

Plaintiffs were a group of about 70 homeless people living in a homeless encampment on property partially owned by the City of Seattle and partially owned by the Washington State Department of Transportation. The encampment was known as "Nickelsville" after the mayor of Seattle, Greg Nickels. The plaintiffs filed suit in federal court on July 21, 2009, along with a motion for a temporary restraining order and preliminary injunction, to prevent a noticed sweep of the encampment, which, they asserted, would result in loss of their home, community, and property.

The court denied plaintiffs' motion, finding that there was no showing of irreparable harm because the encampment had only been in existence a short time and the plaintiffs had no legal right to live on the government property. The court noted that social services had been offered to the residents of the encampment. The court also found that the plaintiffs did not have a likelihood of success on the merits under their two constitutional causes of action, the fundamental right to travel and the Eighth Amendment right to be free from cruel and unusual punishment. The court found that the right to remain at a certain place does not implicate the constitutional right to travel and, even if it did, the compelling government interests in protecting its public spaces and protecting itself against liability outweigh any such rights. The court also rejected the plaintiffs' claim that the sweep would constitute cruel and unusual punishment, finding that the protection only applies to criminal defendants. The parties stipulated to a dismissal of the suit on October 8, 2010.

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.[66]
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).

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."[67] In addition to challenging the 2006 seizure of their property, the plaintiffs

66 Williams v. City of Atlanta, No. 1:94-CV-2018 (N.D. Ga. Mar. 28, 1995).

67 Town of Elkton, Md. Code § 9.12.010(3) (2007).

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 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. The case settled before the class was certified.

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.[68] 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.

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

68 This case concerns the same statute as Roulette v. City of Seattle, 850 F. Supp. 1442 (W.D. Wash. 1994), aff'd, 78 F.3d 1425 (9th Cir. 1996)..

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.

Engle v. Anchorage, Case No. 3AN-10-07047CI (Alaska Super. Ct.)
The ACLU of Alaska, on behalf of a class of homeless people, sued the city of Anchorage in state court alleging that an ordinance governing the abatement of homeless camps violated due process and equal protection rights and constituted an unreasonable search and seizure. The ordinance permitted city officials to clean up or "abate" illegal homeless camps after providing residents of the camps with 5 business days' notice. Individuals remaining in the camps at the time of abatement were given 20 minutes to gather their belongings, after which their property was considered abandoned and could be disposed of by city officials as waste. The ordinance also provided for an appeal process. This was the third version of the ordinance to be passed since the complaint was filed. Prior versions included a 12-hour notice period and no provisions for appeal.

A class of homeless people was certified on June 8, 2010, and the court entered a preliminary injunction preventing the city from enforcing the ordinance on July 26, 2010. Plaintiffs then moved for summary judgment, asserting that the ordinance violates due process by providing an inadequate notice period and allowing for destruction of personal property instead of storage and the opportunity for retrieval. Noting that other city ordinances provide for longer notice periods (i.e. 15 days notice for confiscation of an abandoned vehicle), the court found that 5-business-day notice period violates due process. The court further found a due process violation from the requirement that administrative appeals must be made within the 5-day notice period, with only a 2-day automatic stay for further appeals if the administrative hearing officer affirms the decision to abate the homeless camp. Finally, the court found a violation from the destruction of the property, noting that in other situations the city stores the property for retrieval by its owner for up to 30 days.

The city has not filed an appeal and is currently revising the ordinance to comply with the court's opinion.

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.[69]

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).

Police arrested the defendant for violating an anti-camping ordinance by sleeping on public

69 Sanchez, Felix, "Vietnam Veteran's convictions set aside after long legal odyssey," THE ORANGE COUNTY REGISTER, April 1, 1999, at B4

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."[70] 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."[71] The court found that he had an actual, subjective expectation of privacy, and that this expectation was reasonable under the circumstances of the case.

70 JACKSONVILLE, FLA., Ordinance Code § 614.138(h) (1994).

71 588 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 bridgeway 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.[72]

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

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

72 Wade Nkrumah, "Portland Anti-Camping Ordinance in Legal Limbo," THE OREGONIAN, Oct. 19, 2001, available at http://www.oregonlive.com/portland/oregonian.

"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.[73]

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*.[74]

73 Tobe v. City of Santa Ana, 22 Cal App. 4th 228, 27 Cal. Rptr. 2d 386 (1994).

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

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).

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.[75] 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

75 13 F. Supp. 2d 1064, 1068 (D. Nev. 1998).

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 can close a public forum because Fremont Street remains open to public pedestrian traffic. The Supreme Court denied the petition for writ of certiorari.[76]

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.[77] 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."[78] 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.[79]

76 City of Las Vegas v. American Civil Liberties Union of Nevada, 540 U.S. 1110 (2004).

77 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.

78 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).

79 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.[80] 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.[81] 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."[82] 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."[83]

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.

80 795 F. Supp. 309 (N.D. Cal. 1992).

81 38 F.3d 1514, 1519-20 (9th Cir. 1994).

82 Marion County Code of Ordinances, Art. XIV, §10-403 (2007).

83 Id.

Brown v. Kelly; Casale v. Kelly, No. 05-CV-5442, 2007 WL 1573957 (S.D.N.Y. May 31, 2007); 710 F. Supp. 2d 347 (S.D.N.Y. 2010).

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 case was consolidated with another case, *Casale v. Kelly*, which challenged the City of New York's enforcement of three unconstitutional subsections of New York's loitering statute-section 240.35 of the New York Penal Law. In three separate cases, the New York Court of Appeals previously declared all three challenged sections unconstitutional:

- Section 240.35(3) which provides that a person is guilty of loitering when he "loiters or remains in a public place for the purpose of engaging, or soliciting another person to engage, in oral sexual conduct, anal sexual conduct or other sexual behavior of a deviate nature." *See People v. Uplinger*, 58 N.Y.2d 936 (1983).

- Section 240.35(7) which provides that a person is guilty of loitering when he "loiters or remains in a transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation for his presence." *See People v. Bright*, 71 N.Y.2d 376 (1988).

- Section 240.35(1) which provides that a person is guilty of loitering when he "[l]oiters, remains or wanders about in a public place for the purpose of begging." *See Loper v. New York City Police Dept.*, 802 F.Supp. 1029, 1047 (S.D.N.Y. 1992).

Despite the statutes being declared unconstitutional, the NYPD has unlawfully enforced them tens of thousands of times. 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. The court issued an order on June 24, 2005, requiring the city to halt enforcement of the statute. Meanwhile, according to the court, the New York Legislature's decades-long failure to rescind these unconstitutional laws is "but another example of that body's notorious dysfunction."[84]

But the city did not stop the police from enforcing the unconstitutional statutes. Despite the June 2005 agreement to halt enforcement of the statutes, NYPD continued to make 772 further arrests under the statutes in nineteen months following the court order. In light of this failure to deliver on the city's promise, on December 14, 2006, the court ordered the city to take a number of additional remedial actions, including increased education of

84 710 F. Supp. 2d at 350 n.6.

officers who had illegally enforced the statute.

In March 2008, plaintiffs filed *Casale v. Kelly*, a putative class action contending that the city of New York through the NYPD continued to enforce unconstitutional sections 3 and 7. This case was consolidated with *Brown v. Kelly* and, on May 1, 2008, the court issued a similar order requiring the city to take action to stop enforcement of the challenged statutory sections.

During discovery, the plaintiffs discovered that despite the fact that the city took some steps to comply with the court orders, the NYPD was still using "cheat sheets" or a list of punishable offenses that included the unconstitutional criminal statutes. Though the city claims they are making additional efforts to eliminate these cheat sheets and provide new and accurate written materials to the police officers, by April 2010 there were still summons being issued under all three statutory sections.

In April 2010, on motion of the plaintiffs, the court found the City of New York in civil contempt for failure to comply with the court orders. The court sanctioned the city for each future violation of the orders, with a fine beginning at $500 per instance to grow by $500 every three months with a maximum fine of $5,000 per incident. The court intended the sanctions to coerce compliance with the court orders. The court also granted punitive discovery sanctions and attorneys fees to plaintiffs.

The case is still ongoing, but parties are in settlement negotiations.

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 statue 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, 1:2006-cv-00044; 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 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 was settled as to three of the plaintiffs before class was certified in March 2009. Two of the defendants lost touch with plaintiff's counsel and the court and were dismissed from the case for failure to prosecute.

Eggleston v. City of Cincinnati, Case No. 1:10 CV 395 (S.D. Ohio)

Paul Eggleston, a homeless individual, Greater Cincinnati Coalition for the Homeless, and Grace Place Catholic Worker House, challenged a city policy adopted on June 3, 2010, that conditions certification and funding of homeless shelters on the requirement that they discourage and punish panhandling. The policy would not take effect until enacted as a city ordinance. The policy would also change the certification entity from the Greater Cincinnati Coalition for the Homeless to a city-funded agency. Plaintiff Eggleston alleged that he solicits money on the streets to support himself, plans to continue to do so, and as a result will no longer be able to reside at his current shelter or any other shelter in Cincinnati. The plaintiffs asserted that such a policy violates their First Amendment rights to free speech.

On November 11, 2010, the court dismissed the case without prejudice finding that, because the policy had not yet been adopted as a city ordinance and was therefore not yet effective, the claims were not ripe. No further action has been taken by the city to adopt the policy as a city ordinance.

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*[85] standard. The court characterized the regulation as a time, place, and manner restriction and noted that the 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.

85 530 U.S. 703 (2000).

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."[86] 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.

Jones v. Wasileski, Case No. 09 CV 00032 (W.D. Va., filed Feb. 5, 2009)
Plaintiff Reuben Jones, a homeless individual proceeding pro se, brought suit under Section 1983 against an five individual Roanoke police officers and the Roanoke police chief for his arrests or citations for violating an ordinance prohibiting aggressive soliciting. Each time Jones was standing on a highway on-ramp or street median holding a sign stating "If Jesus was right here, would you help him? God bless you!" The plaintiff alleged that these arrests and citations violated his First Amendment rights.

The court granted the defendants' motion for summary judgment finding they were subject to qualified immunity. The court further found that the ordinance prohibiting solicitation in certain areas, such as roadways, was content neutral and furthered the government's significant interest in ensuring safe and efficient roadways.

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 communicating

86 CO. REVISED STAT. ANN. tit. 18, art. 9, § 112(2)(a) (West 1996).

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.[87]98 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 time, place, and manner restriction and were sufficiently narrowly tailored to further a

87 No. 97-06793 RAP (C.D. Cal. July 25, 2000).

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.[88] 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,[89] and the Supreme Court denied plaintiff's petition for a writ of certiorari.[90]

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 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

88 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).

89 1997 U.S. App. LEXIS 9056 (6th Cir. Apr. 10, 1997).

90 Northeast Ohio Coalition for the Homeless v. City of Cleveland, 522 U.S. 931 (1997).

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,[91] 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).

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

91 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.

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.[92] 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. Hoffstead, 905 N.Y.S.2d 736 (N.Y. App. Term, Second Dep't. 2010).

A New Rochelle, New York police officer arrested a homeless man who had asked the officer for a dollar. The defendant was charged with violating the state's law forbidding all begging[93] and with seventh-degree possession of a controlled substance found on his person during a search incident to arrest. The trial court granted his motion to dismiss both charges on the ground that the blanket begging prohibition was unconstitutional, following the reasoning of the U.S. Court of Appeals for the Second Circuit, which had invalidated the state law in Loper v. New York City Police Dep't, 999 F.2d 699 (2d Cir. 1993). Maintaining that the Second Circuit ruling was not binding outside of New York City, the District Attorney appealed.[94]

The Appellate Term affirmed. Citing the United States Supreme Court's case law establishing a First Amendment right to charitable solicitation, the state court found "no significant difference between making a contribution that is funneled through the administrative process of a charitable organization before reaching its ultimate recipients, and making a contribution directly to a beggar." After the appellate court's ruling, the New

92 See D.C. Code §§ 22-2301 to 2306 (2002).

93 N.Y. Penal Law §240.35(1) (repealed by L.2010, c. 232, §1, eff. July 30, 2010).

94 Meanwhile, a separate lawsuit maintained that New York City had continued to enforce the begging prohibition, despite the fact that the city clearly was bound by the Second Circuit ruling. See Brown v. Kelly, 609 F.3d 467 (2d Cir. 2010) (reversing state-wide class certification but affirming city-wide class certification).

York legislature repealed the begging prohibition, along with other provisions of the state loitering law that had been held invalid by the courts. The New York Court of Appeals then declined to review the Appellate Term's ruling.

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 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.[95] 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

95 Case No. B03-30046 (Miami-Dade County Ct. 2003).

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 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*,[96] 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."

96 999 F.2d 699 (2d Cir. 1990).

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 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.

Desertrain v. City of Los Angeles, Case No. CV10-9053-RGK (FMOx)
On November 23, 2010, a group of homeless plaintiffs, many of whom are disabled, brought suit in federal court against the City of Los Angeles challenging an increased enforcement of statutes preventing sleeping in vehicles overnight and parking of oversized vehicles (including RVs) in certain areas. In early September 2010, the city announced a "Streets to Homes" project to offer services to homeless people and transition those living in vehicles to other housing. The plaintiffs allege that none of the services referred to by this program are in Venice and that the shelters are located instead many miles away in downtown Los Angeles. The plaintiffs allege that despite a lack of available services or shelters, police have engaged in a pattern of issuing citations or arrests for owners of vehicles in which it appears they are sleeping overnight, whether or not this is actually the case. Other homeless vehicle owners have been subject to selective enforcement ticketing for parking their oversized vehicles in certain parking lots or areas.

The plaintiffs allege that the city's actions violate their rights to due process and equal protection, are in violation of the Americans with Disabilities Act and Rehabilitation Act and similar California state laws, and that the actions constitute threats, intimidation or coercion. The plaintiffs whose vehicles were seized additionally allege violation of their right to be free from unreasonable search and seizure. The case is set for trial starting November 29, 2011.

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.[97] 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.

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.

97 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).

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.[98] The court held that the ordinance burdened the plaintiffs' fundamental right to intrastate travel and the homeless plaintiff's First Amendment 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

98 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.

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."[99]

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.

Kreimer v. City of Newark, Case No. 08-cv-2364 (D.N.J.)
Plaintiff Richard Kreimer, a homeless individual, brought a Section 1983 action against the City of Newark, New Jersey Transit, and members of the New Jersey Transit police for attempted enforcement of an anti-loitering ordinance that had been ruled unconstitutional in 1982 and for denying him access to a train even though he was a ticketed passenger. The complaint alleged that the second incident was motivated by retaliation against the plaintiff, who was known to transit employees for bringing a previous lawsuit asserting the rights of homeless individuals (see Kreimer v. State of New Jersey, No. 05-1416 (DRD) (D.N.J. 2005)).

The court granted the defendants' motion to dismiss, finding that the individual defendants were protected by qualified immunity and that the plaintiff had failed to adequately allege constitutional violations.

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.

99 Justin v. City of Los Angeles, No. CV 00-12352 LGB (AIJx) (C.D. Cal. Nov. 5, 2001).

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 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."

Qutb 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.[100] 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.[101]

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 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

100 48 F. Supp. 2d 176 (D. Conn. 1999).

101 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).

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.[102]

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.

Williams v. DeKalb County, 327 Fed. Appx. 156, 2009 WL 1215961 (11th Cir. 2009)

Plaintiff Robert Williams, a homeless man, filed suit in state court against the county, an individual police officer, and the police chief asserting Section 1983 claims for failure to adequately train or supervise the officer and for negligently hiring the officer. Williams also asserted state law claims for false imprisonment, kidnapping, and aggravated assault. The action was removed to federal court.

The underlying incident occurred in the fall of 2004, when Williams was arrested for loitering. He had been sitting at a bus stop in the early morning hours, but after being told to move by police office Ronald Jones he went to a nearby restaurant to lie down. Office Jones again approached him and told him to find somewhere else to sleep or else be taken to jail. Williams opted for jail, but rather than being taken there, Office Jones drove him to a neighboring county where he beat Williams with a baton and stabbed him repeatedly with a knife.

Williams presented one theory of § 1983 liability that his injuries were caused by the County's policy of solving its homelessness problem by having police officers take homeless people to neighboring counties. He presented evidence in the form of testimony from at least five members of the DeKalb County Police Department who testified of a homeless relocation policy. The District Court found "little direct evidence, other than the belief of a few police officers, that these types of removals were actually carried out," and granted summary judgment for the county. The appellate court reversed and remanded on

102 State v. Richard, 108 Nev. 626, 836 P.2d 622 (Nev. 1992).

this point saying that this was a factual issue for the jury.

Before the case could be retried, the county settled with Williams for $165,000.

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.

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."[103] 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 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.[104]

IV. Challenges to Restrictions on Food Sharing

A. Federal Court Cases

Big Hart Ministries v. City of Dallas, No. 3-2007-cv-00216, 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 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

103 See Johnson v. City of Cincinnati, 310 F.3d 484, 2002 WL 31119105 (6th Cir. 2002).

104 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.

at the time of filing the case only two areas were practicable for the plaintiffs. Violation of the ordinance is punishable by a fine of between $50 and $2,000 per day.

The plaintiffs claimed the ordinance restricting food sharing violates homeless persons' right to life (through third party standing), and the plaintiffs' free exercise rights, free speech rights, right to travel, right to freedom of association, right to due process, and equal protection rights, as well as their rights under the Texas Religious Freedom Restoration Act.

In June 2009, the City of Dallas filed a motion to dismiss. The court granted it in part and denied it in part, allowing the free exercise, due process, equal protection, and liberty claims to proceed, as well as the claim under the Texas Religious Freedom Restoration Act.

The case was originally set for trial in February 2011. The parties both filed motions for summary judgment in October 2010, with the plaintiffs filing a motion for partial summary judgment that the ordinance is impermissibly vague and the City of Dallas filing a motion for summary judgment on all issues. As of April 2011, the court has yet to rule on the motions, and has continued the trial date upon the parties' request until 90 days after the court decides the motions. NLCHP is serving as co-counsel in this case along with Akin Gump Strauss Hauer & Feld.[105]

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.

105 Howrey had served as lead counsel until April 2011.

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, --- F.3d ----, 2011 WL 1366778 (11th Cir. April 12, 2011.), vacating 578 F.Supp.2d 1353 (M.D. Fla. filed Oct. 12, 2006); Case No. 6:2006-CV-1583.

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.[106] "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.

106 Code of the City of Orlando § 18A.09-2 (2007).

In January 2008, the court granted summary judgment in favor of the City on the claims under the Due Process and Equal Protection clauses. 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.

In September 2008, the court ruled in favor of the plaintiffs on their First Amendment claims that the food sharing restriction violated their rights to free speech and to freely exercise their religious beliefs. 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 ordinance. Further, the ordinance was more than an incidental burden on First Vagabonds Church's free exercise rights.

Defendant appealed and plaintiffs filed a cross-appeal. An 11th Circuit panel vacated the permanent injunction and reversed the district court decision that the ordinance violated the First Amendment on freedom of speech and freedom to exercise grounds, finding that the feeding of homeless people is not expressive or religious conduct. The 11th Circuit also denied plaintiff's cross appeal, affirming the district court's judgment that the ordinance was constitutional under the Fourteenth Amendment.

On appeal *en banc*, the 11th circuit affirmed the panel's decision and specifically ruled on narrower grounds with respect to the free speech claim. Thus, the ordinance was ultimately found constitutional and the permanent injunction vacated. The *en banc* court held that there was no free speech violation because even if feeding of homeless persons is expressive conduct, the ordinance as applied to the organization was a reasonable time, place, or manner restriction, and a valid regulation of expressive conduct.

The *en banc* opinion issued on April 12, 2011. There is not yet record of appeal to the Supreme Court.

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") and 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. The city filed a notice of appeal but settled as to all plaintiffs before the appeal was heard.

Pursuant to the settlement agreement, the city enacted an ordinance (1) allowing for gatherings of up to 75 people in city parks without a permit, up from the previous limit of 25, (2) stating that city marshals cannot force a person to leave a park "under authority of any statute or ordinance relating to trespassing" and cannot ban a person from a park unless there is evidence of unlawful activity documented by an arrest or citation, and (3) repealing the ban on feeding indigent people at parks which the court struck down.

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")[107]115 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 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.

107 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.

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"),[108] 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.

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.

108 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.

Moreover, the city noted that there were other services and agencies in the city that the homeless could rely upon, including 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."[109] Turning to the equal protection claim, the court found that the Postal

109 Currier v. Henderson, 109 F. Supp. 2d 1221, 1230 (W.D. Wash. 2002).

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]."[110] 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."[111] The court then ruled that the postal service acted 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."[112] Because these First Amendment claims fail, the court also rejected plaintiffs' Equal Protection claims on rational-basis review.[113]

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

110 Id. at 1231.

111 379 F.3d at 729.

112 Id. at 731.

113 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.

forum.[114] 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.[115] 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.[116] 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 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.

114 Brief of Petitioner-Appellant at 17, Seattle Housing and Resource Effort (SHARE) v. Potter, 2005 WL 415085 (Feb. 15, 2005).

115 Id. at 21.

116 Brief for Respondent-Appellee, Seattle Housing and Resource Effort (SHARE) v. Potter, 2005 WL 415085 (May 20, 2005).

Garber v. Heilman, 2009 WL 409957 (C.D. Cal. Feb. 18, 2009).

Plaintiff Robert Garber, acting pro se, filed a § 1983 complaint alleging that certain police officers engaged in "a quasi-official pattern and practice" involving "the deliberately indifferent training of [their] officers in the execution of arrests without probable cause, filing of false reports, the ratification of officer misconduct, deficient supervision, bias and discrimination against homeless and aliens" and that most recently, this conduct led to plaintiff's arrest and citation on June 3, 2007 for living in a vehicle on the streets in violation of Los Angeles Municipal Code § 85.02. Plaintiff alleged that he had been arrested five times, prosecuted four times and acquitted or had the cases dismissed all four times. He alleges that he has received multiple citations by the LAPD and Parking Enforcement, which, plaintiff alleged are part of the defendants' efforts to harass plaintiff and retaliate against him because of his homeless status.

The plaintiff, again without lawyer, attempted to alleged seven separate causes of action against all defendants for violations of the First, Fourth, Fifth, and Fourteenth Amendments, and for retaliation, harassment, obstruction of justice, malicious prosecution, and personal injury in violation of state law. The court dismissed these pleadings for failure to state a claim for which relief can be granted and dismissed the complaint with prejudice.

Greater Cincinnati Coalition for the Homeless, et. al. v. City of Cincinnati, 2010 WL 3448085 (S.D. Ohio August 27, 2010)

Plaintiffs are social service agencies (greater Cincinnati Coalition for the Homeless, The Mary Magdalen House, The Drop Inn Center, The Joseph House, Inc., Cincinnati Interfaith Workers' Center, and St. Francis-St. Joseph Catholic Worker House) that filed a § 1983 against the City of Cincinnati for violating their constitutionally protected rights by the adoption of City Resolution No. 41-2008. This resolution, passed in June 2008, states that "social service agencies and programming shall not be concentrated in a single geographic area and shall not locate in an area that is deemed impacted; and further DIRECTING the City Manager to use his authority to the extent permitted by law, to carry out any actions necessary to adhere to such policy." The Plaintiffs alleged that the resolution violated their First Amendment rights. The Plaintiffs also alleged that the resolution was an attempt to regulate land use without using the required process which was a violation of their substantive due process rights.

The Plaintiffs, which are all located in the neighborhood of Cincinnati called Over-the-Rhine, claimed that Resolution 41-2008 prohibited them from opening or expanding services and discouraged the delivery of social services in the community. Plaintiffs also alleged that the proposed changes were being implemented in such a way that contravened the City Charter which required zoning code changes to be reviewed by the Planning commission. The Defendants filed a motion to dismiss alleging that the Plaintiffs' claims were not yet ripe since no action had been taken that adversely affected plaintiffs and that the complaint otherwise fails to state a claim upon which relief can be granted.

The Plaintiffs responded by filing a motion for leave to file a supplemental complaint, which alleged that Resolution 41-2008 had impacted a non-profit housing development

corporation called Over-the-Rhine Community Housing ("OTRCH"). Plaintiffs alleged that OTRCH did not receive needed certification of a $145 million dollar project because the City Planning and Building Dept. interpreted Resolution 41-2008 to apply to the OTRCH project. Defendants renewed their motion to dismiss. After the filing of the supplemental complaint, the City approved and funded a 25-unit permanent housing project in Over-the-Rhine for long-term homeless individuals.

The Magistrate Judge found the Plaintiffs' claims to be hypothetical and speculative, and therefore unripe based on the following reasons: (1) No social service agency had yet been deprived of a constitutionally protected right; (2) The Resolution was not an ordinance and did not have binding legal effect. Rather it merely instructed the City Manager to act in the future "as permitted by law."

Following the recommendation of the Magistrate Judge (2010 WL 3448097), the court dismissed the case for lack of subject matter jurisdiction.

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.[117] 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.

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

117 Mason v. City of Tucson, No. CV 98-288 (D. Ariz. July 13, 1998).

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.

A Society Without a Name for People Without a Home Millennium-Future-Present v. Commonwealth of Virginia, 699 F.Supp. 2d 787 (E.D. Va. 2010), No. 3:09CV480

Plaintiff A Society Without a Name, for People Without a Home Millennium-Future-Present ("ASWAN") is an unincorporated association made up of homeless and formerly homeless individuals which advocates for the rights of homeless people. On February 17, 2009, ASWAN filed a complaint against the Commonwealth of Virginia, the state of Richmond, and the Virginia Commonwealth University alleging violations concerning the decision to relocate the Conrad Center, which provides free services to homeless individuals, from its former location in downtown Richmond to a "remote area removed from downtown Richmond" called Oliver Hill Way. The Conrad Center at the Oliver Hill Way location opened its doors to the public on February 5, 2007 after a groundbreaking which occurred in 2006.

ASWAN contended that the Defendants actively sought to relocate the homeless outside of downtown Richmond, alleging violations of the ADA, FHA, Equal Protection Clause, and Section 1983. ASWAN asserted a claim of conspiracy to violate civil rights under 42 U.S.C. § 1983(5). The court found that the ADA, FHA, and Equal Protection claims were barred by the statute of limitations and that ASWAN had failed to establish continuing violations of the ADA and FHA. As to the Section 1983 claim, the court found that this claim was also time-barred by Virginia's two-year statute of limitations. As a result, all claims were dismissed with prejudice.

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 enjoy in 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.

Additional Resources

The following resources provide supplementary information about homelessness in the U.S. They provide background on demographics, lack of resources, problematic approaches in addressing homelessness, and proven solutions for positive change.

American Civil Liberties Union

- *Domestic Violence and Homelessness* (2008): http://www.aclu.org/files/pdfs/womensrights/factsheet_homelessness_2008.pdf

Corporation for Supportive Housing

- *Ending Homelessness Through Systems Change* (2010): http://documents.csh.org/documents/doclib/THCH.Summary.FINAL.pdf

- *Frequent Users of Public Services: Ending the Institutional Circuit* (December 2009): http://documents.csh.org/documents/pubs/FUFReportFINAL1209.pdf

The Joint Center for Housing Studies of Harvard University

- *America's Rental Housing: Meeting Challenges, Building on Opportunities* (2011): http://www.jchs.harvard.edu/publications/rental/rh11_americas_rental_housing/AmericasRentalHousing-2011.pdf

- *The State of the Nation's Housing 2010* (2010): http://www.jchs.harvard.edu/publications/markets/son2010/son2010.pdf

Los Angeles Community Action Network

- *Community-Based Human Rights Assessment: Skid Row's Safer Cities Initiative* (December 2010): http://cangress.files.wordpress.com/2010/12/sci-2010-report-final1.pdf

National Alliance to End Homelessness/Homelessness Research Institute

- *State of Homelessness in America* (January 2011): http://www.endhomelessness.org/content/article/detail/3668

National Coalition for the Homeless

- *How Many People Experience Homelessness?* (2009): http://www.nationalhomeless.org/factsheets/How_Many.html

- *Tent Cities in America: A Pacific Coast Report* (March 2010): http://www.nationalhomeless.org/publications/tent_cities_pr.html

- *Who is Homeless?* (July 2009): http://www.nationalhomeless.org/factsheets/who.html

- *Why Are People Homeless?* (2009): http://www.nationalhomeless.org/factsheets/why.html

National Coalition for Homeless Veterans

- *Homeless Veterans Fact Sheet*: http://www.nchv.org/docs/HomelessVeterans_factsheet.pdf

National Law Center on Homelessness & Poverty

- *A Place at the Table: Prohibitions on Food Sharing with People Experiencing Homelessness* (July 2010): http://www.nlchp.org/content/pubs/A%20Place%20at%20the%20Table%20Revised-2.pdf

- *Indicators of Increasing Homelessness Due to the Foreclosure and Economic Crisis* (November 2010): http://www.nlchp.org/content/pubs/ForeclosureFactSheet_November2010.pdf

- *Statement from the National Law Center on Homelessness & Poverty on the Criminalization of Homelessness in the United States* (March 2011): http://www.nlchp.org/content/pubs/GenevaCriminalizationMeeting1.pdf

- *Tent City Fact Sheet 2009* (May 2009): http://www.nlchp.org/content/pubs/Tent_City_Fact_Sheet_20091.pdf

National Low Income Housing Coalition

- *2011 Advocate's Guide* (March 2011): http://www.nlihc.org/doc/2011-Advocates-Guide.pdf

- *Out of Reach 2011* (May 2011): http://www.nlihc.org/oor/oor2011/

U.S. Conference of Mayors

- *Hunger and Homelessness Survey* (December 2010): http://www.usmayors.org/pressreleases/uploads/2010_Hunger-Homelessness_Report-final%20Dec%2021%202010.pdf

U.S. Department of Housing and Urban Development

- *The Annual Homeless Assessment Report to Congress—2010* (June 2011): http://www.hudhre.info/documents/2010HomelessAssessmentReport.pdf

- *Costs Associated With First-Time Homelessness for Families and Individuals* (March 2010): http://www.huduser.org/publications/pdf/Costs_Homeless.pdf

U.S. Interagency Council on Homelessness

- *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* (2010): http://www.usich.gov/PDF/OpeningDoors_2010_FSPPreventEndHomeless.pdf