

A Dream Denied: The Criminalization of Homelessness in U.S. Cities



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

January 2006

ABOUT THE NATIONAL COALITION FOR THE HOMELESS

Founded in 1984, the National Coalition for the Homeless (NCH) is a private, non-profit, national advocacy organization that exists to educate all levels of society in order to identify and put to an end the social and economic causes of homelessness. NCH is the nation's oldest and largest national homelessness advocacy organization, comprised of activists, service providers, and persons who are, or have been, homeless striving toward a single goal – to end homelessness. It is the mission of NCH to create the systemic and attitudinal changes necessary to prevent and end homelessness, while concurrently working to increase the capacity of local supportive housing and service providers to better meet the urgent needs of those families and individuals now homeless in their communities.

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

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To this end, we employ three main strategies: impact litigation, policy advocacy, and public education. We are a persistent and effective voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide legal and policy support to local organizations.

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

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This report is dedicated to the memory of Rosa Parks. Her spirit sparked a movement that will never perish.

Executive Summary

The housing and homelessness crisis in the United States has worsened in 2005, with many cities reporting an increase in demands for emergency shelter. In 2005, 71 percent of the 24 cities surveyed by the U.S. Conference of Mayors reported a 6 percent increase in requests for emergency shelter.¹ Even while the requests for emergency shelter have increased, cities do not have adequate shelter space to meet the need. In the 24 cities surveyed in the U.S. Conference of Mayors Hunger and Homelessness Survey for 2005, an average of 14 percent of overall emergency shelter requests went unmet, with 32 percent of shelter requests by homeless families unmet.² The lack of available shelter space – a situation made worse by the Gulf Coast hurricanes - leaves many homeless persons with no choice but to struggle to survive on the streets of our cities.

Over the course of the year, 3.5 million Americans experience homelessness.³ The number of people living on the streets threatens to grow as thousands of people are now homeless as a result of Hurricane Katrina. According to the Federal Emergency Management Agency, as of late November, approximately 50,000 hurricane evacuees remained in hotels and motels awaiting alternative housing options.⁴

An unfortunate trend in cities around the country over the past 25 years has been to turn to the criminal justice system to respond to people living in public spaces. This trend includes measures that target homeless persons by making it illegal to perform life-sustaining activities in public. These measures prohibit activities such as sleeping/camping, eating, sitting, and begging in public spaces, usually including criminal penalties for violation of these laws.

This report is the National Coalition for the Homeless' (NCH) fourth report on the criminalization of homelessness⁵ and the National Law Center on Homelessness & Poverty's (NLCHP) eighth report on the topic.⁶ The report documents the top 20 worst

¹ U.S. Conference of Mayors, A Status Report on Hunger and Homelessness in America's Cities: A 24-City Survey 5 (Dec. 2005).

² Id.

³ Martha Burt et al., Helping America's Homeless 49-50 (The Urban Institute Press, 2001).

⁴ Federal Emergency Management Agency, "FEMA Extends Deadline for Evacuees," Nov. 22, 2005, at http://www.fema.gov/news/newrelease_print.fema?id=20818.

⁵ National Coalition for the Homeless (NCH) and National Law Center on Homelessness & Poverty (NLCHP), Illegal to be Homeless: The Criminalization of Homelessness in the United States (2002); NCH, Illegal to be Homeless: The Criminalization of Homelessness in the United States (2003); NCH, Illegal to be Homeless: The Criminalization of Homelessness in the United States (2004).

⁶ NLCHP, Go Directly to Jail: A report analyzing local anti-homeless ordinances (1991) (nine cities); The Right to Remain Nowhere: A report on anti-homeless laws and litigation in 16 U.S. cities (1993); No Homeless People Allowed: A report on anti-homeless laws, litigation and alternatives in 49 U.S. cities (1994); Mean Sweeps: A report on anti-homeless laws, litigation and alternatives in 50 U.S. cities (1996); Out of Sight, Out of Mind? A report on anti-homeless laws, litigation and alternatives in 50 U.S. Cities; NCH and NLCHP, Illegal to Be Homeless: The criminalization of homelessness in the U.S. (2002); Punishing Poverty: The Criminalization of Homelessness, Litigation, and Recommendations for Solutions (2003).

offenders of 2005, as well as initiatives in some cities that are more constructive approaches to the issue of people living in public spaces. The report includes the results of a survey of laws and practices in 224 cities around the country, as well as a survey of lawsuits from various jurisdictions in which those measures have been challenged.

Types of Criminalization Measures

The criminalization of homelessness takes many forms, including:

- Legislation that makes it illegal to sleep, sit, or store personal belongings in public spaces in cities where people are forced to live in public spaces;
- Selective enforcement of more neutral laws, such as loitering or open container laws, against homeless persons;
- Sweeps of city areas where homeless persons are living to drive them out of the area, frequently resulting in the destruction of those persons' personal property, including important personal documents and medication; and
- Laws that punish people for begging or panhandling to move poor or homeless persons out of a city or downtown area.

Criminalization Measures Have Increased

City ordinances frequently serve as a prominent tool to criminalize homelessness. Of the 224 cities surveyed for our report:

- 28% prohibit “camping” in particular public places in the city and 16% had city-wide prohibitions on “camping.”
- 27% prohibit sitting/lying in certain public places.
- 39% prohibit loitering in particular public areas and 16% prohibit loitering city-wide.
- 43% prohibit begging in particular public places; 45% prohibit aggressive panhandling and 21% have city-wide prohibitions on begging.

The trend of criminalizing homelessness appears to be growing. Of the 67 cities surveyed in both NCH and NLCHP's last joint report in 2002 and in this report:

- There is a 12% increase laws prohibiting begging in certain public places and an 18% increase in laws that prohibit aggressive panhandling.
- There is a 14% increase in laws prohibiting sitting or lying in certain public spaces.
- There is a 3% increase in laws prohibiting loitering, loafing, or vagrancy laws.

Another trend documented in the report is increased city efforts to target homeless persons indirectly by placing restrictions on providers serving food to poor and homeless persons in public spaces.

While cities are cracking down on homeless persons living in public spaces, according to the latest U.S. Conference of Mayors Hunger and Homelessness report, cities do not have adequate shelter to meet the need:

- 71% of the 24 cities surveyed by the U.S. Conference of Mayors reported a 6% increase in requests for emergency shelter.
- 16% of overall emergency shelter requests went unmet and 32% of emergency shelter requests by homeless families went unmet in cities surveyed.

The Meanest Cities

Although some of the report's top 20 meanest cities have made some efforts to address homelessness in their communities, the punitive practices highlighted in the report impede progress in solving the problem. The top 20 meanest cities were chosen based on the number of anti-homeless laws in the city, the enforcement of those laws and severities of penalties, the general political climate toward homeless people in the city, local advocate support for the meanest designation, the city's history of criminalization measures, and the existence of pending or recently enacted criminalization legislation in the city. Over the past year, the practices in the following top 5 meanest cities stand out as some of the worst examples of inhumane city treatment of homeless and poor people:

- #1 Sarasota, FL.** After two successive Sarasota anti-lodging laws were overturned as unconstitutional by state courts, Sarasota passed a third law banning lodging outdoors. This latest version appears to be explicitly aimed at homeless persons. One of the elements necessary for arrest under the law is that the person "has no other place to live."
- #2 Lawrence, KS.** After a group of downtown Lawrence business leaders urged the city to cut social services and pass ordinances to target homeless persons, the city passed three "civility" ordinances, including an aggressive panhandling law, a law prohibiting trespass on rooftops, and a law limiting sleeping or sitting on city sidewalks.
- #3 Little Rock, AR.** Homeless persons have reported being kicked out of bus stations in Little Rock, even when they had valid bus tickets. Two homeless men reported that officers of the Little Rock Police Department, in separate incidents, had kicked them out of the Little Rock Bus Station, even after showing the police their tickets. In other instances, homeless persons have been told that they could not wait at the bus station "because you are homeless."
- #4 Atlanta, GA.** Amid waves of public protest and testimony opposing the Mayor's proposed comprehensive ban on panhandling, the City Council passed the anti-panhandling ordinance in August 2005. In the devastating aftermath of Hurricane Katrina, Atlanta stood firm in its resolve to criminalize panhandlers. A Katrina evacuee who was sleeping in his car with his family after seeking refuge in Atlanta was arrested for panhandling at a mall in the affluent Buckhead

neighborhood, even after he showed the police his Louisiana driver's license, car tag, and registration as proof that he was a Katrina evacuee. In addition, during the first week in December, the Atlanta Zoning Review Board approved a ban on supportive housing inside the city limits.

#5 Las Vegas, NV. Even as the city shelters are overcrowded and the city's Crisis Intervention Center recently closed due to lack of funding, the city continues to target homeless persons living outside. The police conduct habitual sweeps of encampments which lead to extended jail time for repeat misdemeanor offenders. In order to keep homeless individuals out of future parks, the city considered privatizing the parks, enabling owners to kick out unwanted people. Mayor Oscar Goodman fervently supported the idea, saying, "I don't want them there. They're not going to be there. I'm not going to let it happen. They think I'm mean now; wait until the homeless try to go over there."

Criminalization Measures Are Bad Policy and Violate Constitutional Rights

These practices that criminalize homelessness do nothing to address the underlying causes of homelessness. Instead, they exacerbate the problem. They frequently move people away from services. When homeless persons are arrested and charged under these measures, they develop a criminal record, making it more difficult to obtain employment or housing. Further, criminalization measures are not cost efficient. In a nine-city survey of supportive housing and jail costs, jail costs were on average two to three times the cost of supportive housing.⁷

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

- For example, when a city passes a law that places too many restrictions on begging, free speech concerns are raised as courts have found begging to be protected speech under the First Amendment.
- When a city destroys homeless persons' belongings or conducts unreasonable searches or seizures of homeless persons, courts have found such actions violate the Fourth Amendment right to be free from unreasonable searches and seizures.
- Courts have found that a law that is applied to criminally punish a homeless person for necessary life activities in public, like sleeping, violates that person's Eighth Amendment right to be free from cruel and unusual punishment if the person has nowhere else to perform the activity.

⁷ See Lewin Group, "Costs of Serving Homeless Individuals in Nine Cities: Chart Book," (2004) available at http://documents.csh.org/documents/ke/csh_lewin2004.PDF.

- Laws that do not give people sufficient notice of prohibited conduct or allow for arbitrary enforcement by law enforcement officials can be unconstitutionally vague. Courts have found loitering and vagrancy laws unconstitutionally vague.

In addition to violating U.S. law, criminalization measures can violate international human rights law. The United States has signed international human rights agreements, many of which prohibit actions that target homeless people living in public spaces.

Constructive Alternatives to Criminalization

While many cities engage in practices that exacerbate the problem of homelessness by pursuing criminalization measures, more constructive approaches do exist in some cities around the country. The following examples can serve as more constructive approaches to homelessness:

- **Broward County, FL.** The Taskforce for Ending Homelessness, Inc., a not-for-profit agency that provides outreach, education, and advocacy services for the homeless population in Broward County, has partnered with the Ft. Lauderdale police department to create an outreach team made up of police officers and a civilian outreach worker who is formerly homeless. In its five years of operation, the Homeless Outreach Team has had over 23,000 contacts with homeless individuals and has placed 11,384 people in shelters. Estimates suggest that there are at least 2,400 fewer arrests each year as a result of the Homeless Outreach Team.
- **Pasadena, CA.** The Pasadena Police Department and the Los Angeles Department of Health have partnered to form the Homeless Outreach Psychiatric Evaluation (HOPE) Team. The program created three teams of mental health and law enforcement officials to provide compassionate assistance to persons in need of mental health assessment and services.
- **Ohio.** In Ohio, the three largest cities, Columbus, Cleveland, and Cincinnati, fund teams of trained workers to go out under the bridges and visit the encampments near the rivers to assist those outside the service system. The critical component to the success of these programs is that they do not put a lot of restrictions on the assistance that they are offering and offer help at non-traditional hours when other services are closed, providing a vital link between mainstream services and a population that resists congregate living.
- **Washington, DC.** The downtown business community in Washington, D.C., created a day center for homeless people who may not have anywhere to go during the day when shelters are closed. Through the Downtown D.C. Business Improvement District, business owners fund this day center that can serve up to 260 people per day, with indoor seating, laundry, showers, and a morning meal.

- **San Diego, CA.** In 1989, a public defender from San Diego created the nation's first Homeless Court Program, which is a special monthly Superior Court session held at local shelters for homeless defendants to resolve outstanding misdemeanor criminal cases. Homeless courts expand access to the judicial system and assist homeless defendants by addressing outstanding warrants and criminal offenses to remove barriers to benefits, treatment, housing, and employment.

Recommendations

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

Cities should dedicate more resources to more affordable housing, shelters, and homeless services. To address street homelessness, cities should adopt or dedicate more resources to outreach programs, such as the ones highlighted in this report. Further, cities and states can set up programs to help homeless individuals apply for federal benefits to which they are entitled but may not be receiving, such as Supplemental Security Income benefits for disabled individuals, food stamps, or the earned income tax credit.

Business groups can play a positive role in helping to address the issue of homelessness. Instead of advocating for criminalization measures, business groups can put resources to solutions to homelessness, such as the Downtown D.C. Business Improvement District's day center.

The federal government can also play a role in encouraging cities to pursue more constructive approaches to homelessness. Federal funding for homeless and poverty programs should be conditioned on local government agreement not to punish homeless persons for conduct related to their status.

As criminalization measures move people away from services, make it more difficult for people to move out of homelessness, and cost more due to incarceration and law enforcement costs than more constructive approaches, cities would be wise to seek constructive alternatives to criminalization. When cities work with homeless persons and advocates toward solutions to homelessness, instead of punishing those who are homeless or poor, everyone can benefit.

Trends in the Criminalization of Homelessness

For the past 25 years, cities have increasingly implemented laws and policies that target homeless persons living in public spaces. This trend began with cities passing laws making it illegal to sleep in public spaces or conducting “sweeps” of areas where homeless people were living. In many cities, more neutral laws, such as open container or loitering laws, have been selectively enforced for years. Other measures that cities have pursued over the past couple decades include anti-panhandling laws, laws regulating sitting on the sidewalk, and numerous other measures.

In some cities where a variety of “status” ordinances have resulted in large numbers of arrests, “habitual offenders” are given longer jail terms and classified as criminals in shelters and other service agencies because of their records.

Unfortunately, over the years, cities have increasingly pursued these measures and expanded their strategies to target homeless people, using vague “disorderly conduct” citations to discourage homeless people from moving freely in public. During the past year, cities have increasingly focused on restrictions to panhandling and public feedings. These restrictions only create additional barriers for people trying to move beyond homelessness and poverty.

I. Restrictions on Panhandling

Some cities have turned their attention to restricting panhandling in the downtown areas of their cities. These targeted restrictions also often include prohibitions on panhandling near ATMs, bus stops, or outdoor restaurants.

In August 2005, Atlanta passed a fairly comprehensive ban on panhandling in the “tourist triangle” and anywhere in the city after sunset. The ordinance, entitled, “Commercial Solicitation,” also bans panhandling within 15 feet of an ATM, bus stop, taxi stand, pay phone, public toilet, or train station in all parts of the city. Upon conviction for a third offense of the ordinance, a violator can be fined up to \$1000 or imprisoned for up to 30 days.⁸

Cleveland also passed an anti-panhandling law in July 2005 that, among other things, prohibits panhandling within 20 feet of an ATM, bus stop, or sidewalk café. The law on “aggressive solicitation” also prohibits panhandling within 10 feet of an entrance to a restaurant or parking lot.⁹

Pittsburgh city leaders amended its panhandling ordinance in November 2005. The new bill expands on the existing panhandling ordinance by restricting solicitation for charity to daylight hours. The bill also bans panhandling within 25 feet of an outdoor eating establishment, 25 feet of an admission line, 25 feet of the entrance to a place of religious

⁸ Atlanta, Ga., Code of Ordinances ch. 43, § 1 (2005).

⁹ Cleveland, Oh., Code § 605.31 (2005).

assembly, within 25 feet of money dispensing areas, and 10 feet of a food vendor or bus stop. The bill also outlaws “aggressive panhandling” and solicitation of money that hinders traffic.¹⁰

Another trend among cities trying to regulate panhandling includes requiring panhandlers to obtain a license to panhandle. Dayton, for example, prohibits persons from panhandling without a “registration” issued by the Chief of Police.¹¹ Additionally, in Cincinnati, panhandling without a permit is considered “improper solicitation.”¹²

The Minneapolis Chief of Police tried to promote the licensing of panhandlers in May 2005. Service providers and advocates spoke out against the proposed scheme, noting that deeper issues must be addressed instead of criminalizing poor and homeless people. The effort by the Chief of Police has been put on hold, as the Mayor of Minneapolis opposes licensing panhandlers. The Mayor is seeking alternatives to licensing to address panhandling, but has not revealed what those alternatives would be.

Yet another form of targeting panhandlers has emerged in city efforts to encourage people to give to organizations or charities instead of to panhandlers. Baltimore, Nashville, Athens, Georgia, and Spokane all have such campaigns to discourage people from giving to panhandlers.¹³

II. Restrictions on Feedings

Cities have been further targeting homeless persons by penalizing those offering outdoor feedings for homeless individuals. These city restrictions are frequently aimed at preventing providers from serving food in parks and other public spaces.

In Dallas, beginning in September 2005, a new ordinance penalizes charities, churches, and other organizations that serve food to the needy outside of designated areas of the city. Anyone who violates this ordinance can be fined up to \$2000.¹⁴

In June 2005, Miami also considered passing a law that would prohibit groups from feeding homeless persons in city parks and on the streets. Local advocates have been negotiating with the city to prevent the city from passing the law.

In Atlanta, Mayor Shirley Franklin issued an Executive Order prohibiting feeding homeless people in parks or in public. Although the order carries with it no legal sanction, it has deterred many churches and communities of faith from continuing with their food ministries.

¹⁰ The bill number is 2005-1598, and was passed by the Pittsburgh City Council on November 1, 2005. The mayor has not yet signed the bill.

¹¹ Dayton, Oh., Rev. Code of Gen. Ordinances § 137.20 (2000).

¹² Cincinnati, Oh., Code § 910-12 (2004).

¹³ Athens uses meters.

¹⁴ Dallas, Tx., Ordinance No. 26023 (2005).

Criminalization Measures Violate Constitutional Rights

Measures that criminalize homelessness are legally problematic and do not make sense from a policy standpoint. Laws that make it difficult for homeless persons to stay in downtown areas of cities force homeless persons away from crucial services and outreach. When a homeless person is arrested under one of these laws, he or she develops a criminal record, making it more difficult to obtain employment or housing. Further, criminalizing homelessness is an inefficient allocation of resources. It costs more to incarcerate someone than it does to provide supportive housing.¹⁵

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

As successful litigation has shown, many of the practices and policies that punish the public performance of life-sustaining activities by homeless persons violate the constitutional rights of homeless persons.

I. Anti-Panhandling Ordinances

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

Some courts have found laws that prohibit begging or panhandling unconstitutionally vague. A law is unconstitutionally vague if its language is not definite enough to give people notice of what is prohibited or if police could enforce the law in an arbitrary manner.

II. Anti-Camping or Anti-Sleeping Measures

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

¹⁵ In a nine-city survey of supportive housing and jail costs, jail costs were on average two to three times the cost of supportive housing. See Lewin Group, "Costs of Serving Homeless Individuals in Nine Cities: Chart Book," (2004) available at http://documents.csh.org/documents/ke/csh_lewin2004.PDF.

people for sleeping outside. For example, in Atlanta, the law prohibits what is called “Urban Camping.”

These punishments for sleeping outside have been challenged in courts for violating 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.

Advocates also have contended that arresting people for sleeping outside violates the fundamental right to travel. If people are arrested for sleeping in public in a city or certain areas of a city, those arrests have the effect of preventing homeless people from moving within a city or coming to a city, thereby interfering with their right to travel.

III. Loitering Measures

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

In several cases, the Supreme Court has found vagrancy and loitering ordinances unconstitutional due to vagueness, in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution. A statute is unconstitutionally vague if it does not give a person notice of prohibited conduct and encourages arbitrary police enforcement. Since many loitering laws have similarly broad and vague language, homeless persons and advocates have a strong argument that such laws violate the Due Process Clause of the Fourteenth Amendment.

IV. Sweeps

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

A seizure of property violates the Fourth Amendment when a governmental action unreasonably interferes with a person or his/her property. Courts have found that police practices of seizing and destroying personal property of homeless people violate these constitutional rights under the Fourth Amendment. In addition, some courts have also affirmed homeless persons’ right to be free from unreasonable searches even if their belongings are stored in public spaces.

V. Curfew Laws

Some cities have passed laws that impose curfews on minors. These laws can pose problems for unaccompanied youth experiencing homelessness. Courts have overturned some of these laws for violating minors' right to free expression, right to freely move, and equal protection rights. In still other cities, many parks impose curfews.

VI. Restrictions on Feedings

Cities also have indirectly targeted homeless people by restricting service providers' feeding programs. Historically, cities have attempted to restrict feedings on providers' property through zoning laws. More recently, some cities have passed laws to restrict feedings in public spaces, such as parks. For faith-based or religious groups conducting feedings as an expression of their religious beliefs, courts have found city restrictions on feedings an unconstitutional burden on religious expression.

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

Criminalization Measures Violate Human Rights Norms

While laws and practices that criminalize homelessness may violate domestic constitutional law, these measures also may violate international human rights law.

I. Using International Human Rights Law in the U.S.

The United States has signed international human rights agreements, many of which prohibit actions that target homeless people living in public spaces. Although the U.S. had signed and/or ratified several human rights treaties that would prohibit actions that criminalize homelessness, those treaties are not directly enforceable in U.S. courts (i.e., "self-executing"). However, once a country has signed an international treaty, it is obligated not to pass laws that would "defeat the object and purpose of [the] treaty."¹⁶ Even if a treaty is not directly enforceable in domestic courts, international human rights treaties can be used persuasively to support legal arguments based on domestic law. For example, if the domestic law is ambiguous on a certain topic, courts can turn to international law for guidance.¹⁷

¹⁶ The Vienna Convention on the Law of Treaties, May 23, 1969, art. 18(a), 1155 U.N.T.S 331.

¹⁷ For more information about the status of the human right to housing in the U.S. see NLCHP, *Homelessness in the United States and the Human Right to Housing* (2004); Maria Foscarinis, et al., *The Human Right to Housing, Making the Case in U.S. Advocacy*, 38 *Clearinghouse Review* 97 (2004); Maria Foscarinis, *Homelessness and Human Rights: Towards an Integrated Strategy*, 19 *St. Louis U. Public Law Review* 317 (2000).

II. Provisions in International Law to Support Combating Criminalization

The U.S. Supreme Court has not ruled explicitly to protect the right to intrastate travel. However, the right to movement has been established in international human rights documents, and has been considered customary international law by both scholars and domestic courts. The International Covenant on Civil and Political Rights (ICCPR), a treaty signed and ratified by the U.S. (though not self-executing), contains provisions that protect the right to movement. The Human Rights Committee (“HRC”), which oversees the ICCPR, states 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.¹⁸ Many laws that target homeless people living in public spaces interfere with their right to freedom of movement, by either keeping them out of certain areas in a city or forcing them to move to other spaces involuntarily.

In addition, the majority of international human rights agreements have non-discrimination clauses. The ICCPR protects “equal protection of the law” and prohibits discrimination based on a variety of statuses. The United States participated in the 1996 Second United Nations Conference on Human Settlements and is signatory to the Habitat Agenda, which states that no one should be “penalized for their status.”¹⁹ Laws that criminalize panhandling or performing life-sustaining activities in public, such as sleeping and sitting, target homeless people based on their economic and housing status. Other laws that are more neutral, such as loitering or public intoxication laws, are frequently applied in a discriminatory manner against homeless persons.

Forced evictions have long been contrary to international human rights agreements, and the United Nations repeatedly has emphasized the importance of a person’s security of tenure in his or her land and home in raising his or her standard of living. In addressing the issue of forced evictions, the Habitat Agenda explicitly prohibits punishment of homeless persons based on their status. Though the Habitat Agenda is non-binding, the U.S. publicly committed to stand behind its principles by signing the document. However, many cities across the country conduct “sweeps” that remove people from outdoor encampments without notice or relocation to other housing. These city actions are a form of forced evictions, contrary to international human rights principles.

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

¹⁸ Human Rights Committee, General Comment 27, Freedom of movement (Art.12), U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).

¹⁹ The United Nations Conference on Human Settlements, Istanbul, June 3-4, 1996, ¶ 61(b), U.N. Doc. A/CONF.165/14 (1996), U.N. Doc. A/CONF.165/14. This comment is made in the context of forced evictions.

Constructive Alternatives to Criminalization

While many cities engage in practices that exacerbate the problem of homelessness by pursuing criminalization measures, more constructive approaches do exist in some cities around the country. The following examples can serve as more constructive approaches to homelessness.

I. Broward County, Florida -Outreach Teams

The Taskforce for Ending Homelessness, Inc., a not-for-profit agency that provides outreach, education, and advocacy services for the homeless population in Broward County, has partnered with the Ft. Lauderdale police department to help homeless persons get off the street. The partnership formed the Homeless Outreach Team, which was incorporated in 2003 to provide direct outreach services to homeless people. In 2005, the team consisted of two full-time Fort Lauderdale Police officers, two part-time officers, and a civilian partner who is formerly homeless. The team informs chronically homeless individuals of social services available in the community and encourages them to access those services. Repeated visits are often necessary to build rapport, trust, and confidence between the workers and homeless individuals.

In addition, the outreach team has partnered with local shelters to ensure access to beds and services. Those accepting shelter assistance receive priority, entering the program if a bed is open. They are also provided with dinner, breakfast, a hot shower, laundry facilities, and a safe night's sleep. In its five years of operation, the Homeless Outreach Team has had over 23,000 contacts with homeless individuals and has placed 11,384 people in shelters. Estimates suggest that there are at least 2,400 fewer arrests each year as a result of the Homeless Outreach Team.

The Taskforce for Ending Homelessness also has partnered with the Fort Lauderdale Police Department to develop a 2-hour course entitled "Homelessness 101." The course is designed to raise police officers' awareness of the reality of homelessness, its causes, and the most effective ways to address this prevalent social problem. The Taskforce also has successfully lobbied the state for a detoxification program specifically for homeless individuals. For more information, contact the Fort Lauderdale Police Department at (954) 828-5700.

II. Pasadena, California - Outreach Team

The Pasadena Police Department and the Los Angeles Department of Health have partnered to form the Homeless Outreach Psychiatric Evaluation (HOPE) Team. The program created three teams of mental health and law enforcement officials to provide compassionate assistance to persons in need of mental health assessment and services. The HOPE Team's roles include: diffusing potentially volatile situations through learned crisis intervention techniques with less confrontational means, providing department-wide training on dealing with mentally ill individuals, helping patrol officers assess a

person's need for mental health care, and identifying chronic or acute disturbances or individuals that could be served best through non-arrest solutions.

The program prevents unnecessary incarceration or hospitalization of people with psychiatric disabilities, frees up patrol officers to handle other calls, and protects the individuals themselves and the community at large from possible dangers resulting from mental illness. For more information, contact the Pasadena Police Department by phone at (626) 744-4501 or visit their website at:

http://www.ci.pasadena.ca.us/police/Div_FieldOps/hopeTeam.asp

III. Ohio – Outreach Programs

A vital component of building a trusting relationship with homeless people is the provision of outreach services in the early morning and evening hours to the populations that are resistant to shelter. In Ohio, the three largest cities, Columbus, Cleveland, and Cincinnati, fund teams of trained workers to go out under the bridges and visit the encampments near the rivers to assist those outside the service system.

Columbus has an outreach team with close contacts to the homeless service providers funded and directed by the Downtown Business Improvement District. In light of the closing of the Open Shelter in Columbus, the staff of this facility now provides an outreach function serving the needs of those who choose not to utilize the shelters. Cleveland has three non-profit organizations divide up the time and each send a team out to assure that no one is dying in the extreme weather of the north coast. After Cincinnati enacted its anti-panhandling ordinance, but did not provide outreach services for homeless persons, Downtown Cincinnati, Inc. hired a part-time outreach worker. Even while city and law enforcement officials supported restrictions on panhandling, the Cincinnati outreach worker has helped frequently arrested panhandlers receive services, such as job placement, mental health counseling, or government benefits. Each of these services is funded by the public sector in partnership with religious and corporate assistance.

The critical component to the success of these programs is that they do not put a lot of restrictions on the assistance that they are offering and offer help at non-traditional hours when other services are closed. While the outcome of these services is hard to quantify, they provide a vital link between mainstream services and a population that resists congregate living or those who have a chronic health condition that leaves them isolated and lonely.

IV. District of Columbia – Day Center

Faced with an increasing number of people forced to live on the streets, the downtown business community in Washington, D.C., decided to create a day center for homeless people who may not have anywhere to go during the day when shelters are closed. Through the Downtown D.C. Business Improvement District, business owners started and continue to fund a day center that can serve up to 260 people per day, with indoor

seating, laundry, showers, and a morning meal. The center also has partnerships with local service providers who come on site once or twice a week to provide medical, psychiatric, legal, and employment services, as well as housing counseling, substance abuse treatment, and case management. Business owners in D.C. finance the day shelter through a 1-cent tax for each square foot of property owned by a business. For more information, contact the Downtown D.C. Improvement District at (202) 638-3232.

V. San Diego, California - Homeless Court Program (HCP)

The City of San Diego historically has targeted homeless people through enforcement of loitering and illegal lodging laws, including a recent campaign of harassment that led to a lawsuit filed in 2004 against the city for such practices. While the city itself has not taken a very constructive approach to homelessness, a public defender from San Diego, Steve Binder, created the nation's first Homeless Court Program (HCP) in 1989, to improve homeless peoples' access to the judicial system. The HCP is a special monthly Superior Court session held at local shelters for homeless defendants to resolve outstanding misdemeanor criminal cases. Homeless people are routinely issued citations for offenses such as illegal lodging, jaywalking, and drinking in public. Caught up in the daily struggle for food, clothing, and shelter, a homeless person typically has few resources to draw upon in order to respond properly to the criminal justice system. Consequently, misdemeanor citations and infractions are often not dealt with, compounding the problem, as warrants are issued and additional fines assessed. These cases often preclude homeless people from accessing desperately needed services such as public benefits and mental health and/or substance abuse treatment, as well as employment and housing.

To counteract the effect of criminal cases pushing homeless defendants further outside society, the HCP combines a progressive plea bargain system, an alternative sentencing structure, assurance of "no custody," and proof of shelter program activities to address a range of misdemeanor offenses. Homeless participants voluntarily sign up for the HCP. The HCP homeless participant is entitled to all protections afforded by due process of law. Homeless courts expand access to the judicial system and assist homeless defendants by addressing outstanding warrants and criminal offenses to remove barriers to benefits, treatment, housing, and employment.

The continued large numbers of homeless people participating in the Homeless Court Program has fostered the program's expansion in San Diego and across the nation. The HCP is replicated in 20 courts across the country and numerous "Stand Down" events. Currently, 15 communities are working to implement a HCP.

While homeless courts benefit homeless people by performing an outreach function, providing legal representation, and educating the judicial system about homelessness, to be truly constructive, certain cautions should be taken with respect to homeless courts.

First, homeless courts should be aware of the nature of the "offenses" with which homeless defendants are typically charged. Often homeless people have been charged

with violations of "quality of life" ordinances that punish conduct, such as sleeping in public, related to their status of being homeless. In such cases, homeless people should not be blamed or seen as having been at fault.

Second, while some homeless people do suffer from disease, and need treatment, some are simply extremely poor and cannot afford housing. Homeless courts do not address these underlying causes of homelessness, such as the extreme shortage of affordable housing and work that pays enough to cover housing costs. These realities should be addressed, otherwise, the hardships of homelessness are minimized and homeless people themselves patronized.

Third, some specialized court systems - such as drug courts or community courts - set aside treatment or program slots for their participants. This can result in services being made contingent on submission to the court process. Homeless courts should be careful to avoid replicating that model - otherwise they will simply further exacerbate the shortage of such services.

Finally, homeless courts are best used to deal with misdemeanor offenses and not felonies; as homeless courts may not be the ideal venue to deal with the complexities of felony charges.

For more information about San Diego's Homeless Court Program, please contact Steve Binder at (619) 338 4708 or steve.binder@sdcounty.ca.gov or the American Bar Association Commission on Homelessness & Poverty at (202) 662-1693 or homeless@abanet.org.

VI. Nationwide- Know Your Rights Pamphlets

Advocacy groups across the country are publishing civil rights guides for people experiencing homelessness. The guides contain information on rights related to search and seizure, trespass, loitering, vagrancy, panhandling, as well as other local laws that may apply to homeless people. The guides also include information on how to interact with police officers. These legal guides are a tremendous resource, as well as an empowerment tool. The guides teach people not only to know their rights, but also to know when their rights are being violated. Some organizations send lawyers to shelters to distribute the guides and answer questions, while others hold more formal "know-your-rights" seminars. See page 147 for an example of a "know your rights" card produced and distributed by the Washington Legal Clinic for the Homeless located in Washington, D.C.

20 Meanest Cities

While most cities throughout the country have either laws or practices that criminalize homeless persons, some city practices or laws have stood out as more egregious than others in their attempt to criminalize homelessness. The National Coalition for the Homeless and the National Law Center on Homelessness & Poverty have chosen the following top 20 meanest cities in 2005 based on one or more of the following criteria: the number of anti-homeless laws in the city, the enforcement of those laws and severities of penalties, the general political climate toward homeless people in the city, local advocate support for the meanest designation, the city's history of criminalization measures, and the existence of pending or recently enacted criminalization legislation in the city. Although some of the report's top 20 meanest cities have made some efforts to address homelessness in their communities, the punitive practices highlighted in the report impede true progress in solving the problem.

- 1. Sarasota, FL**
- 2. Lawrence, KS**
- 3. Little Rock, AR**
- 4. Atlanta, GA**
- 5. Las Vegas, NV**
- 6. Dallas, TX**
- 7. Houston, TX**
- 8. San Juan, PR**
- 9. Santa Monica, CA**
- 10. Flagstaff, AZ**
- 11. San Francisco, CA**
- 12. Chicago, IL**
- 13. San Antonio, TX**
- 14. New York City, NY**
- 15. Austin, TX**
- 16. Anchorage, AK**
- 17. Phoenix, AZ**
- 18. Los Angeles, CA**
- 19. St. Louis, MO**
- 20. Pittsburgh, PA**

Narratives of the Meanest Cities

#1 Sarasota, FL

In February 2005, the City Commission unanimously approved an ordinance prohibiting “lodging out of doors.” The previous “no-camping” rule was ruled unconstitutional by a state court last year because it was too vague and punished innocent conduct. The new rule prohibited using any public or private property for “lodging” outdoors without permission from the property owner. While not completely mitigating the negative impact of the law, the city took a more positive approach to the issue in this law by including a requirement that police officers, once a year, offer people who violate the law a ride to the shelter, instead of jail. The commissioners said that the ordinance would protect public safety and property while helping homeless people find shelter. Although the city was confident that this ordinance would stand up in court, critics said that it was still too vague. It was not clear how many “lodging” activities, such as making a fire, laying down blankets or a sleeping bag, and putting up a tent, would have to be happening in order for a person to be arrested. Moreover, the police were not required to give a person a ride to the shelter if the person was intoxicated, using drugs, or did not have proper identification.

Like its predecessor, this ordinance was short-lived. In June 2005, a state court found the “no lodging law” unconstitutional. County Judge David L. Denkin said the ordinance gave police officers too much discretion in deciding who is a threat to public health and safety, and who is just taking a nap on the beach. The judge, however, recognized the “good intention” of the city commissioners. The city claims it is important to the city’s residents. City commissioners have long insisted that the ordinances are about protecting people, but the ordinance has been used to arrest homeless persons. Assistant Public Defender Chris Cosden believes the city should give up: “The city has tried twice, and failed twice [with its ordinances]. The city has to step back and realize there are some things you just can’t do.” On a positive note, Fredd Atkins, a Sarasota City Commissioner, agreed that the city has “spent enough money trying to do the wrong thing right,” suggesting the money be committed to solving the root causes of homelessness.

Nonetheless, in August 2005, the city commissioners passed yet another ordinance, strangely similar to the previous two that were ruled unconstitutional. The new ordinance makes it a crime to sleep without permission on city or private property, either in a tent or makeshift shelter, or while “atop or covered by materials.” The city commissioners invented a list of criteria to determine if a person violates the new law. One or more of the following five features must be observed in order to make an arrest: “numerous items of personal belongings are present; the person is engaged in cooking activities, the person has built or is maintaining a fire, the person has engaged in digging or earth-breaking activities, or the person is asleep and when awakened states that he or she has no other place to live.”

Advocates are shocked that the ordinance actually includes being homeless, or having “no other place to live” as itself a criterion for arrest. Advocates argue that this ordinance, like its predecessors, targets homeless people.

The new law has been challenged in state court by defendants who were charged under the law. The court upheld the law, finding it constitutional.

#2 Lawrence, KS

Downtown street merchants complained to city officials in December 2004 that homeless people were intimidating customers with “aggressive panhandling,” and that groups of people regularly spent the night camping on the rooftops of their businesses. Downtown Lawrence, Inc. members gave city officials copies of many ordinances used in other communities against homeless people to encourage similar measures in Lawrence. Some of the proposed ordinances make sitting on the sidewalk from 7 A.M. to 9 P.M., and closely following someone to solicit money illegal. In addition to these suggested ordinances, a few businesses proposed cutting social services, arguing “We didn’t have this problem until we had a handout on every corner.” Shelters were viewed as hurting downtown Lawrence’s image rather than providing invaluable and scarce services to homeless people. Loring Henderson, Open Shelter’s director, disagrees, stating that “it doesn’t seem logical to me that when you have a place where there are 21 people who have a place to stay for the night, rather than being on the streets, that you’re contributing to the problem.”

According to Phil Hemphill, a downtown business owner who addressed a meeting of the City Task Force on Homeless Services, efforts to help homeless people are useless without sanctions imposed on the ill-behaved individuals among them. He described how he regularly saw homeless men and women urinate, defecate, and fornicate in public. Hemphill said it was wrong to expect the public and private sectors to finance services for homeless people when such behavior is tolerated. Hemphill later complained that the Task Force balked at imposing sanctions on trespassing, panhandling, and public drunkenness. Several Task Force members replied that Hemphill was misinterpreting their deliberations.

At a January 2005 meeting of the Task Force on Homeless Services, downtown business owners proposed that homeless service providers require people who want to use shelters, soup kitchens, and other services to obtain an official identification badge. The badges would require people to go through an application process and a police background check. This would give police and service providers a way to punish people by denying certain services over a specific period of time. Moreover, business owners argued, the badges would help ensure that homeless services are not enabling people to remain homeless.

In July 2005, city commissioners approved three “civility” ordinances, responding to concerns from downtown patrons about aggressive panhandlers. However, in a more positive step, they rejected an anti-camping law in spite of neighbors’ concerns about

homeless camps along the Kansas River. Commissioners approved ordinances that would prohibit panhandlers from asking for money in an aggressive way, make it illegal for people to trespass on rooftops, and limit how people could sleep or sit on city sidewalks. Yet, Kalila Dalton, a member of Kansas Mutual Aid, views panhandling as a logical response to a basic need: “If it is cold outside and if you have no warm place, it seems reasonable to build a fire. If you have no money, it seems reasonable to ask someone who appears well off for money.”

The anti-panhandling ordinance will ban aggressive panhandling by prohibiting repeated attempts to solicit money from the same individual, blocking someone’s path or touching them, or soliciting within 20 feet of an automatic teller machine or a bus stop or from anyone in a vehicle. Another of the newly-passed ordinances makes it illegal to lay or sit on a sidewalk in a way that blocks the path of a pedestrian or requires pedestrians to reroute their course, with the exception of protests or other activities protected under the First Amendment. This ordinance was approved on a 3-2 vote, with Commissioner Mike Rundle and Councilman Highberger opposing. Highberger said he thought the ordinance simply addressed “things that people didn’t want to look at,” rather than genuine public safety concerns. Lastly, the council approved an ordinance that prohibits going onto the rooftop of a building without the permission of the building owner. The passage of this ordinance was motivated by complaints from several downtown merchants that homeless persons camp on their rooftops.

Fortunately, the Commissioners unanimously rejected the bulk of the proposed anti-camping ordinances because they said the city’s current criminal trespass ordinance allowed them to address the issues when problems arose. The main difference between the trespass ordinance and the proposed anti-camping ordinance was that under the trespass ordinance, campers have to first be given a warning to leave before they could be ticketed. However, the Commissioners did agree to approve a portion of the ordinance that would make it illegal for people to camp on private property without the express permission of the property owner.

#3 Little Rock, AR

In March 2005, Saint Francis House, a daytime homeless center, was forced to reduce its hours for the second time in one month due to decreased funding. The cutback in hours came as police began cracking down on “professional” panhandling in the downtown area. An undercover task force arrested 41 people.

The city’s agenda with regard to homeless people has become more aggressive and blatant in the following incidents. The only day shelter, and only place where homeless people could wash their clothes, Saint Francis House, closed in 2005 after a long history of police harassment of homeless people using that facility, as well as a withdrawal of funds for its operation. When asked to comment upon the closing of Saint Francis House, Sharon Priest, a spokesperson for the Downtown Partnership, said that she was “glad” it was gone, but was still not satisfied, because of “that soup kitchen [Stewpot] which is right there.”

Other reports compiled by Hunger-Free Arkansas indicate the criminalization of homeless men and women throughout the city. In a case of illegal search and seizure, a state trooper illegally searched and detained a homeless man, by claiming he suspected the homeless man was dealing drugs. The state trooper arrested the individual, who spent the night in jail and missed work the next day. The homeless man had no record of any drug-related offenses. Upon release from prison, only his driver's license was returned. He did not receive his wallet or other property before he was told to leave. Due to the arrest, the homeless man was suspended from work for 30 days and taunted by employees for having to spend the night in jail.

In another incident, two homeless men reported officers of the Little Rock Police Department, in separate incidents, had kicked them out of the Little Rock Bus Station. Both men were holding valid tickets and transfers. Despite showing the police their tickets, both men were told that although the buses they were awaiting would arrive within 30 minutes, they could not wait on the premises because they were loitering. The police subsequently evicted the men. In some instances, others have been told that they could not wait at the bus station "because you are homeless."

Over the summer in 2005, a free public event was held at Riverfront Park in Little Rock, at which various businesses and manufacturers of goods (including the Tyson Chicken Company) set up booths and tents to give away free samples of their merchandise to the public. Vendors encouraged homeless persons at the event to take free samples, which many homeless people gratefully did. However, officers of the Pulaski County Sheriff's Department told the homeless individuals, including a handicapped man at a picnic table, that they had to leave the event immediately or be subject to arrest for loitering in a park. Another homeless man was denied entrance by tour operators to the free and public tour of the Old Statehouse Museum.

#4 Atlanta, GA

Amid waves of public protest and testimony opposing the Atlanta City Council's proposed comprehensive ban on panhandling, the city and mayor passed a bill in August 2005. The ban made panhandling illegal within the "tourist triangle" and anywhere after dark. The ordinance also prohibits panhandling within 15 feet of an ATM, bus stop, taxi stand, pay phone, public toilet, or train station anywhere in the city. Many opponents believe the ban outlaws panhandling virtually everywhere, rendering it unconstitutional. The new ordinance also states that anyone who asks for help, both monetary and non-monetary, can be detained until an outreach worker either evaluates the detainee or refers him/her to social services. State Senator Vincent Fort, said the 12-3 vote "was an unabashed rush for campaign support."

Two days after the signing, the Atlanta Police Department announced in *The Atlanta Journal Constitution* that homeless people would be rounded up and identified for entry into the City's new facility called The Gateway, which provides 250 shelter beds and supportive housing. The Gateway, the recipient of \$10 million in private and public

funds, was developed to provide a constructive solution to coincide with the panhandling ban. Unfortunately, although The Gateway houses homeless people, there is an overall net loss of places to sleep in Atlanta; 125 emergency beds for women and children were closed by the Mayor at the end of May 2005. Up to eighty of those women and children now sit up all night, waiting for shelter at the Task Force for the Homeless.

The business community and the city administration claim that many homeless people are “service-resistant” and should be forced to receive the services they need. However, more than half the current requests for shelter and services in Atlanta go unmet because of insufficient resources. Most shelters and support service agencies report turning away dozens of desperate people daily. In addition, the Mayor's Commission is persuading service agencies to relocate into the Gateway, making formerly independent, voluntary services available only there.

“This ordinance affects a huge population of the poor and homeless who just ask for help to eat everyday. We do not need a blanket law for one person asking another person for help,” said Murphy Davis of the Open Door Community. According to Anita Beaty of the Task Force for the Homeless, “Atlanta planners seem to believe that if you remove people’s housing, eliminate emergency shelter that they will then need, and then make asking for help illegal, their necessary support services available only through an incarceration program, the poor people will go someplace else.”

Jason Gibbes, a resident of the Peachtree-Pine facility, testified before City Council, stating, “I work every day. In two weeks, I will have enough to rent my own apartment, and I have it all picked out. I'm sure not proud of it, but when I first got my job, I begged for MARTA fare to get to work -- a couple of times. If I hadn't been able to ask for help, I wouldn't be working today.” He also reported that the police stopped him and forced him to produce identification while merely walking down the street.

In the devastating aftermath of Hurricane Katrina, Atlanta has stood firm in its resolve to criminalize panhandlers. James Scott was sleeping in his car with his brother, his sister, and her two young children after seeking refuge in Atlanta. After living in their car for several days, the family panhandled at a mall in the affluent Buckhead neighborhood. Police arrested Scott for solicitation about a half hour later, even after he showed them his Louisiana driver’s license, car tag, and registration as proof that he was a Katrina evacuee. “It’s the most expensive mall in Atlanta, I thought I could get some help,” Scott said. According to Atlanta Police Department spokesman John Quigley, while soliciting on a public sidewalk is allowed, soliciting in traffic is prohibited. According to Kevin, a homeless man interviewed by the Task Force for the Homeless, “nobody has the right to expect people to help. It’s their money to decide what they want to do with it. I just think I have a right to tell somebody what I need, and let them decide.”

A homeless woman with children was arrested in Atlanta for “impersonating” a Katrina survivor in order to get help for her children. There was an outpouring of emergency assistance from churches that only offered help to hurricane evacuees, thereby creating a desperate competition for much needed shelter.

In addition, the American Civil Liberties Union plans to file a lawsuit against Atlanta once it finds a suitable plaintiff because of the ban's potential violations of the First Amendment. Gerald Weber, the legal director of the ACLU's Georgia branch, calls Atlanta's ordinance "too broad," likening it to a similar ban in Albuquerque, New Mexico, which was ruled unconstitutional in 1999. City Councilman C.T. Martin believes the threat of a potential lawsuit has caused the city to withhold aggressive enforcement of the panhandling ban.

#5 Las Vegas, NV

Although homeless advocates in Las Vegas stated that shelters are overcrowded, city officials have done little to increase resources for individuals experiencing homelessness. Due to a lack of funding, the city's Crisis Intervention Center was recently closed. Similarly, charitable organizations scrambled – albeit unsuccessfully – to replace the services the Crisis Intervention Center provided.

The police conduct habitual sweeps of encampments, which lead to extended jail time for repeat misdemeanor offenders. Homeless inhabitants of a campsite on Owens Avenue were forced to vacate the area just before Christmas 2004. Las Vegas's Department of Neighborhood Services gave the order to clear the lot, because the property owner was "in violation of Las Vegas Municipal Code...dealing with nuisances." Many social service providers were caught off guard by the notice, wishing the city had informed them before the sweep to ensure they could find places for homeless men and women to stay. Former residents of the campsite worried about finding a bed in one of the shelters because most of them are reserved for older men and women.

Despite reports that city, county, and state agencies were working together to provide homeless persons displaced by a January 2005 sweep of a downtown bridge, only 45 people out of 150 residents of the camp were placed in temporary housing. The site was declared a health hazard in August 2005 because people were urinating and defecating in the area around the camp. Bob McKenzie, spokesman for the Department of Transportation, commented, "we need to do whatever we can to help the homeless, but we need to take care of public safety first." Transportation crews threw away inhabitants' possessions, including tents, blankets, and family photos.

City officials' attempt to break up another homeless camp in February 2005 was met with criticism by local homeless advocates, who argued that breaking up the camp would only create another camp elsewhere. They also noted that homeless people need treatment, supportive services, and permanent housing, all of which are not available. Several homeless people were unable to receive help from local agencies, because they were already receiving money from the federal government.

An analysis of Las Vegas police records revealed that arrests for charges such as trespassing, jaywalking, and pedestrians failing to obey traffic signals increased after a recent cleanup of a homeless camp. When homeless people are ejected from the camps,

they move to other public places where they interact more with members of the community. The ACLU of Nevada suggested that Las Vegas police went out of their way to cite and arrest homeless people as a part of the sweep. According to Gary Peck, executive director of the American Civil Liberties Union of Nevada, "It will take political will to dedicate the resources needed to move this situation in a positive direction. I haven't seen anything from any jurisdiction to indicate that exists."

In April 2005, plans to clean up a homeless encampment that had previously been swept at Owens Avenue were postponed due to lack of organization. Officials attempted to avoid criticism by posting signs at the site in both English and Spanish, warning people that the authorities were going to clean the area. The Southern Nevada Homeless Coalition was not informed of the sweep. Linda Lera-Randle El, director of Straight from the Streets, believes the sweep was "like penalizing the homeless for the shortcomings of the city, county, and state."

Frank Wright Plaza, a small park across from City Hall, was a favorite daytime spot for homeless people seeking a place to nap. Regular visitors to the park said that it is a safe and comfortable place to recover from a tough night on the streets. However, city officials saw the park as a public nuisance, and have assigned marshals to patrol the area several times daily. In order to keep homeless individuals out of future parks, the city considered privatizing the parks, enabling owners to kick out unwanted people. Mayor Oscar Goodman fervently supported the idea, saying, "I don't want them there. They're not going to be there. I'm not going to let it happen. They think I'm mean now; wait until the homeless try to go over there."

In a more positive step, Metro Police are expected to begin seeking a liaison for homeless people, raising its level of commitment after being criticized for its handling of the homeless situation. The Metro Police have been at the center of the homelessness controversy on many occasions in recent years. In addition to their role in homeless camp sweeps, the Metro Police have faced allegations that officers were targeting homeless people for misdemeanor crimes, such as urinating in public. The new liaison would work with both public and private agencies to help homeless people, and will hopefully prevent future arrests and sweeps.

#6 Dallas, TX

Officials attempted to address the growing homeless population by making it illegal to take a shopping cart off store property. Instead of acknowledging the root causes of homelessness, the new law only spurred homeless people to become more creative. Fleets of damaged baby strollers and shopping carts are now common in the area.

The Dallas Homeless Neighborhood Association investigated sweeps that occurred in December 2004. A positive result of its investigation was that the Interim City Manager, Mary Suhm, vowed to replace the personal property, including blankets, identification, and medication, that the city officials confiscated during those sweeps. Suhm also

promised to provide oral or written notices at least 24 hours in advance of sweeps, giving homeless people time to relocate.

In an attempt to gain more federal aid for homeless services, volunteer canvassers surveyed and counted homeless people in the Dallas area. Volunteers accompanied by the police walked the streets to gain knowledge and “humanize the condition of homelessness.” The count itself was not an attempt to chase people from their shelters, but the police and transportation crews later evicted dozens of homeless people from their encampments.

One of Dallas’ most elaborate homeless camps, with cardboard shacks, tents, porta-potties and a microwave powered by electricity tapped from a billboard was raided in May 2005. The city bulldozed the camp several times before, but the inhabitants kept rebuilding their homes. City officials hoped that demolition would give the residents an incentive to seek help for their drug and alcohol addictions, as well as mental illnesses. James Waghorne, a formerly homeless social worker, disagrees with the city’s logic, saying “more residents may seek help if the city offered a higher level of services instead of driving people from the only homes they know.”

Starting in September of 2005, a new ordinance will penalize charities, churches and other organizations that serve food to the needy outside of city designated areas. Anyone who violates this ordinance can be fined up to \$2000. Romano’s Hunger Busters pledges to feed homeless people “wherever they are,” and will violate the new ordinance. Romano worries that many people experiencing homelessness will be unable or scared to go to the new feeding locations, falling “through the cracks.” The city claims portable feedings both enable homeless camps to exist and generate litter.

Currently, the city is considering Mayor Laura Miller’s suggestion to ticket people who donate to panhandlers, because a blanket ban on panhandling has proved largely ineffective since its inception two years ago.

#7 Houston, TX

A coalition of businesses and residents, called the Avondale Association, is petitioning city officials to protect the near-downtown neighborhood from homeless persons by using a so-called “civility ordinance” passed by the Houston City Council in late 2004. The Avondale Association has gathered enough signatures to require a public hearing on whether the ordinance should be expanded beyond the Central Business District. The ordinance, which is currently confined to downtown, prohibits people from sitting or lying on sidewalks between 7 a.m. and 11 p.m., as well as placing items of bedding or personal possessions on the sidewalk.

Paul Luccia, owner of Keystar Events Complex, says the conduct of homeless people at nearby Interfaith Ministries hurts his business, which provides a venue for business meetings and weddings. Luccia also claims many of his customers are intimidated by the daily overflow of sidewalk trash and illegal activity around Interfaith Ministries’ site.

Luccia sees the ordinance as the city's main line of defense against the growing encroachment of homeless people on struggling business. Others contend that if local business paid a living wage people could work to get themselves off the streets.

The Coalition for the Homeless of Houston/Harris County believes the civility ordinance is ineffective, as well mean-spirited. "This is just more or less shuffling people around [and we] do not support any laws that somewhat outlaw or consider homelessness a crime," said Anthony Love of the Coalition for the Homeless of Houston/Harris County. Love also argues "blaming service providers for an increase in homelessness is like blaming hospitals for an increase of sick people. If service providers weren't there, the problem would be worse."

Citing a need to "reflect changes in society," the Houston City Council also passed new regulations under which patrons with offensive bodily hygiene that constitutes a nuisance to others will not be allowed inside the library. In addition, these laws prohibit people from sleeping or putting their head, feet or legs on tables, using library restrooms to change their clothes, bathe, or shave, as well as outlawing large backpacks and blankets in the building.

In opposition to the new laws, City Councilwoman Addie Wiseman noted, "When we have heat waves, they encourage people, including homeless [people], to go into public buildings, including our libraries. What is the plan now?" She also said, "I understand what they're trying to do but when you start targeting a community like the homeless [population], I think that's a poor policy."

#8 San Juan, PR

Cieni Rodriguez, Executive Director of La Fondita de Jesus, expressed that "no significant positive advances have been made during the calendar year of 2004." She further states, "it is ironic how frequently city officials publicly say how they are working on behalf of the homeless population, while at the same time they are supporting the passage of new legislation that further countermands civil liberties. Anti-constitutional laws that, if passed, would permit the governments [central and municipal] to intervene with a person's liberty by transporting them somewhere else against their will."

Oswaldo Burgos, attorney and Executive Director of the Commission for Civil Rights stated, "There has been an alarming increase in city ordinances and city codes designed at targeting [...] homeless [people]." A recent study by the commission revealed that over half of Puerto Rico's 78 municipalities have passed anti-homeless ordinances into laws. Sweeps of homeless people are also becoming commonplace in Puerto Rico. Sweeps have taken place in Sicardo, Old San Juan, Caguas, Yabucoa, and Vega Baja, during which 17 homeless people were arrested for violating "quality of life" ordinances. At least five homeless deaths have been attributed to these sweeps.

People experiencing homelessness have also reported being victims of police violence and intimidation. One man reported that he has frequently been a victim of police

violence including being assaulted with nightsticks and pepper sprayed for the fun of it and having his bicycle tires slashed while being mocked by police. Another man also reported verbal abuse by the police while they trashed the place where he slept.

#9 Santa Monica, CA

Under a new proposal soon to be floated by City Council Member Bob Holbrook, city groups that provide meals to homeless people in parks may be fined for clean up costs. Food providers may be required to pick up the yearly-estimated tab of \$40,000 that Santa Monica spends annually providing park rangers and a cleaning service after meals. The free meals are currently being handed out in Reed Park, Palisades Park, and on the City Hall lawn. Holbrook contends that the new “clean up law” would be enforced equally so that it doesn’t target one person or group. Moira LaMountian, co-founder of Helping Other People Eat (HOPE), has been feeding homeless people in Palisades Park for over 13 years. She fears that going after the food providers’ pocketbooks could cause nonprofit groups to stop providing food to those who need it. She also contends that they leave the park cleaner than when they arrive each day, and that there is no need for park ranger supervision.

The city of Santa Monica would also like to move meal dispersion indoors to connect the food programs with other services offered to the homeless people. City officials who work on the issues surrounding homelessness admitted that there is no such indoor location available at this time. An ordinance, enacted in 2002, reduced outdoor feeding locations from 26 to 4, and bans feeding more than 150 homeless persons without a permit, because some official believed food providers were only exacerbating the homeless problem by handing out free meals. Human Services Manager, Julie Rusk, said that moving handouts indoors was essential in stopping what she called the “revolving door” of homelessness. Nonetheless, only one of the feeding sites in the city is linked to established homeless services.

Recently, with the election of Bobby Shriver to the city council, homeless people in Santa Monica are facing what may be the single biggest push in the nation to pass a massive wave of new anti-homeless laws. The new collection of proposed city laws would make it illegal for any homeless person to set down a backpack for more than ten minutes on any sidewalk, lie, or sit, on any sidewalk in the city, shave, bathe, wash clothing items in any public restrooms, and sleep anywhere in a vehicle. The laws would also sweep homeless individuals from all freeway sides and ramps.

In addition to the new local laws, anti-homeless forces are proposing to close all showers that open before six a.m., many of which serve homeless men and women who work. Santa Monica Memorial Park Gym Director, John Hines, estimates that nearly fifty homeless people shower at the park, many before work. The city cites complaints and growth of sports activities at the park as their reasons to close the facilities. The displaced bathers may seek refuge at St. Joseph’s Center, where shower-seekers must sign up a day in advance. Furthermore, they propose that the Santa Monica city police

now transport anyone found intoxicated in the city to a new “sobriety center” five miles out of town in Culver City.

Laws in the city already attempt to ban all outdoor meals from groups, like Food Not Bombs, which serve up to half of the city’s 1,000 homeless people. Another notorious law literally bans even the giving of a cookie to any member of the “public” without a city permit. According to the manager for the City’s Human Services Division, “[...] groups [that] continue to sponsor these [feeding] programs [run] counter to the policy that the City has been trying to promote.”

#10 Flagstaff, AZ

Soon anyone camping or sleeping in a car or in public within the Flagstaff city limits may be subject to trespassing and camping violations, totaling up to \$2,500 in fines and six months in jail time. The current ordinance’s wording only allows prosecution of people arrested in city parks. City Attorney Patricia Boomsma supports the new, stricter ordinance, because “[...] prosecutors need to prosecute the person actually doing the camping.” The proposed ordinance aims to eliminate litter, human waste, and illicit campfires. According to Flagstaff chief of police, J.T. McCann, the ordinance is intended to promote public safety. However, local service providers, such as Stephanie Boardman of Hope Cottage, believe these ordinances are counter-productive, especially to the domestic violence victims that Hope Cottage takes in. Boardman said, “A lot of them are embarrassed to go to shelters. They just want their freedom. You penalize the people in crisis because 10, 15, 20 people are really causing an upheaval.” While Flagstaff law enforcement officials have written 162 citations for camping, all charges were dropped because camping is not yet illegal in the city.

#11 San Francisco, CA

After responding to complaints of homeless people loitering outside the San Francisco Public Library, the police decided to provide homeless individuals, unhappy living in the city, with one-way bus tickets. The plan would “reunite them with loved ones for the holidays.” The Police Department recommended coordination with the bus companies and local businesses to fund tickets, along with boxed lunches.

L.S. Wilson, coordinator for the Coalition on Homelessness, believed that such a plan would only give the police an opportunity to harass homeless people. “If they need a one-way ticket out of here and they can get it, good, but it’s saying they can’t come back. It’s another PR thing...Just try to hide or get rid of our homeless problem.” The Department of Human Services offers bus tickets to anywhere in the continental U.S. if the recipient has housing or a job to go to. While some 10 to 30 people use the program each year, the Director of Human Services pointed out that it was difficult for homeless individuals to start a new life just by moving to another city.

Under Mayor Newsom’s “Care not Cash” ballot initiative, panhandlers who are supposed to be getting services are sometimes going to jail instead. Instead of Care not Cash, San

San Francisco panhandlers are receiving citations, which, are translating into jail time. In his argument for Proposition M in August 2003, Gavin Newsom wrote, “Prop. M seeks to divert people who aggressively panhandle because of addiction or illness away from the jail system and into the public health system.” However, this is not the case as arrested panhandlers spend the time before their court date in jail instead of in service programs.

Under Proposition M, panhandling and solicitation is prohibited in five locations: near ATM machines, in parking lots, on public transit, on median strips, and on freeway on-ramps. Section F of Prop. M gives the Department of Public Health the mandate to “establish, administer and/or certify diversion programs appropriate for treatment of violators.” Nonetheless, “people are going to jail because there aren’t enough services for everyone that needs them.” Panhandling is an infraction that does not bring jail time; after three infractions, future cases are handled as misdemeanors, making the defendant eligible for incarceration. Critics contend that this process of racking up citation convictions does not help homeless people get services. Since Mayor Gavin Newsom took office in 2003, the number of camping citations among the homeless population nearly tripled.

Just the presence of homeless men and women is stirring up negative reactions in the city. In the heart of San Francisco’s downtown shopping district there have been complaints of people loitering outside of a charity organization, St. Vincent DePaul Society, that serves free lunch daily to those in need. The meal service provides for over 100 people a day, most of whom are experiencing homelessness, but many are disabled or elderly. The city has been trying to relocate the charity for over 15 years, nearly as long as it has been in existence. There is heavy criticism from business owners that the sight of homeless people lined up on the street is not conducive to attracting new businesses and customers to the district. The city manager of San Francisco, Barry Nagel, commented, “We know the need to serve [homeless people] is there, we just don’t need them in the downtown area.”

Court records show that the police are writing more tickets for illegal camping in city parks outside the downtown area, and homeless advocates point to the trend as proof that the city’s February homeless count was wrong when it showed that the population dropped by more than 2,000.

#12 Chicago, IL

In September 2004, the City Council unanimously passed an ordinance that prohibits panhandling within 10 feet of a bus stop, ATM, or bank entrance, at sidewalk cafes and restaurants, and fines panhandlers \$50 for first and second offenses and \$100 for each additional offense in the same year. Chicago modified its criteria after a 2002 ordinance banning all panhandling was challenged in a class-action lawsuit, which resulted in a \$474,000 settlement for the plaintiffs, as well as a repeal of the law. According to Deputy Police Chief Ralph Chiczewski, Chicago police fine about 50 panhandlers a month, although collect far few fines.

However, many advocates, including Julie Dworkin of the Chicago Coalition for the Homeless, believe this ordinance does not provide a solution either. She argues, “If you ticket them, they are not going to have money to pay the ticket. So, you haven’t solved the problem. People are panhandling out of great need [...] To get rid of panhandling, you must deal with the issue of homelessness.” Amy Bishop, a downtown worker, believes that “[you] can’t legislate away all the things you don’t want in a city,” demonstrating that even some business owners are skeptical of Chicago’s second attempt in two years to curb panhandling. The city’s initial attempt was repealed after a class-action lawsuit was filed on the grounds that the ordinance violated panhandlers’ civil rights. Even the police chief, that suggested the strict ordinances, recognizes that they will not completely dispel panhandling. Homeless activist, John Maki commented that, “Once people believe that panhandlers represent all homeless [people], it is very difficult to engage them in productive conversation about the reality and causes of homelessness. Too often, such encounters devolve into debates for and against panhandling, which then easily play into the stereotypes and fears many people have.”

#13 San Antonio, TX

After the city passed new ordinances targeting aggressive panhandling, sleeping in public, urinating in public, and camping without a license (including sleeping in vehicles), many local homeless people complained that the City Council was persecuting them. These violations are class C misdemeanors and carry up to \$500 fines. However, District 1 Councilman Roger Perez said that these laws would be applied to everyone equally because they target behaviors rather than people. According to West side Councilwoman, Patti Radle, 400 people have been cited for illegally sleeping on sidewalks or “urban camping” and 82 people have been cited for urination on sidewalks since these activities were criminalized earlier this year.

Reverend John Flowers of Travis Park United Methodist Church said that the ordinance presents a justice issue because of the lack of public restrooms and shelter space downtown, stating “If we’re going to tell people you can’t do this in public, then we need to provide them options.” Instead of spending money on enforcement, the city could use it to strike at the root causes of homelessness. Flowers and other advocates argued that the city has an obligation to provide better facilities for homeless people before cracking down on their activities. Texas Homeless advocate Richard Troxell noted, “As long as people are forced to live on the streets of America due to the lack of affordable housing, adequate health care and livable incomes, we cannot allow their condition to be criminalized. The same things that these people are being targeted, fined, and arrested for in public, are found to be acceptable and considered to be the norm when conducted in the privacy of our own homes.”

#14 New York, NY

In response to a *New York Times* article attributing a January 2005 fire in the subway to the extensive use of the subway tunnels as shelters for homeless men and women, Mayor Bloomberg’s Administration argued that police routinely patrol the tunnels and rarely

find any homeless people. When officials do find anyone, they are transported to shelters or arrested. Arrests of homeless individuals “have skyrocketed in the past few years,” totaling 3,086 last year compared with 737 in 2000.

The New York City Police Department took aim at minor crimes like unlicensed street peddling and fare-beating on buses in an attempt to deter more serious crimes. Undercover police officers began riding the M35 bus at night to arrest those who do not pay the \$2 fare. Many of the arrested bus riders were on their way to homeless shelters. They could not walk to these shelters, because the only footbridge from Manhattan is closed in the late fall and winter. Five criminal court judges, including Kathryn Freed, questioned the wisdom of the arrests, because they interfered with the services the homeless persons were seeking: “I consistently put on the record how outraged I am by the whole thing. It’s a complete waste of the court’s time [to prosecute the illegal bus riders]. It takes a lot of person-power to process them, house them, and feed them. Meanwhile, the shelter, where they’re heading, is set up to do just that.” Shaver, one of the men arrested on a M35 bus, told police “You’re setting me up. They’re the easiest victims, the homeless. It’s entrapment. Why don’t you [the police] go fight some real crime?”

In June 2005, an individual who panhandles filed a suit on behalf of a class of individual panhandlers who had been charged with violations of a New York state law that prohibits begging. The Second Circuit had found the law unconstitutional in the Loper case in 1993. The plaintiffs allege that arrests and prosecutions under the unconstitutional law violate their First Amendment rights. 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. According to the agreement, police officers received notice that the statute is void. As of November 2005, the lawsuit is ongoing.

#15 Austin, TX

In late 2004, the city was considering four proposed changes to ordinances concerning public sleeping, panhandling, and loitering. The proposals are a response to increased pressure from downtown business owners for the city to address the “transient problem.” Highlighted by new restrictions on panhandling, the proposed ordinance would criminalize all door-to-door and roadside solicitation throughout town, sleeping in public, blocking sidewalks, and panhandling near schools, childcare facilities, and outdoor restaurants. On December 14, 2005, council members will vote to fine anyone found lying, sleeping, or sitting anyway in the Downtown area \$500.

Richard Troxell, president of House the Homeless, worries about the potential impact of this ordinance on the *Austin Advocate*, the local newspaper produced by homeless people and sold on the street for donations. He also comments that, “another ordinance they wish to address is the sidewalk ordinance; what they intend to do is outlaw [all] sleeping or resting on the sidewalk whatsoever.” On November 19, 2004, the Austin Area

Homeless Task Force voted to adopt a Ten Year Plan to End Chronic Homelessness, saying, “strategies to solve the problem lie in affordable housing, access to health care including mental health and substance abuse treatment, and livable wages.” On the other hand, downtown business owners are complaining of increased problems with loiterers and panhandlers in the area.

In July 2005, an Austin municipal court found the city’s roadside anti-begging statute unconstitutional, in which panhandling in select roadside locales was illegal. While defending a homeless Austin citizen, who was arrested for carrying a sign that read “Donations of any kind will help,” the Texas Civil Rights Project argued the panhandling ordinance violated the First Amendment rights of people experiencing homelessness. Under the panhandling ordinances, anyone “[...] who is in or next to a street, on a sidewalk, or in a private parking area commits an offense if the person solicits, or attempts to solicit, services, employment business, or contributions from an occupant of a motor vehicle.” According to Wayne Krause, the goal of these ordinances is to decrease visibility of the homeless. He says, “Officials at the city are very anxious to promote 6th Street and their perception of Austin’s tourist image, and they’ll sweep the undesirable urban realities out of sight to do it.” Other advocates say we need to work toward solutions that combat the problem of homelessness rather than targeting homeless people.

In December of 2005, the Austin City Council passed ordinances that ban panhandling after 7 p.m. in the downtown area, ban panhandling totally near schools, child-care facilities, and outdoor food and drink establishments and prohibit sleeping, sitting, and lying down in public areas downtown. People violating the no sleeping/sitting ordinance face a \$500 fine. Only one Council Member, Mayor Pro Tem Danny Thomas, voted against these ordinances. The new ordinances went into effect on December 25.

#16 Anchorage, AK

In April 2005, Ed O’Neill, an advocate who helps maintain homeless camps, wanted to establish a corporate-sponsored legal homeless camp. The camp would include toilets and garbage facilities, as well as require a small fee for residents to live there. After consulting with homeless people, O’Neill concluded that some could benefit from being allowed to camp—safely, legally and securely—at an established place. People would not be allowed to drink in a legal, organized camp. However, Fairview Community Council president, Darrell Hess, does not share O’Neill’s enthusiasm, citing the adverse effects a camp would have on the neighborhood, such as the difficulty of monitoring inhabitants.

In Anchorage, camping anywhere, including both government and private property, is considered trespassing. Police have trouble dealing with camp inhabitants; if they move them on, homeless campers will turn up somewhere else. O’Neill continues to work closely with campers, advising them where to move and how to address the police. For him, having people camp in the woods is perfectly fine, as long as they do it right: haul out trash, use proper toilet facilities, do not drink, and do not disturb others. Even if the

legal camp never wins local approval, O'Neill thinks he and like-minded supporters are improving the living conditions in the city woods.

The city and the Anchorage Downtown Partnership are trying to discourage motorists from giving to panhandlers. The citywide program is titled "Change for the Better" and uses slogans such as "give change in ways that make change." Local businesses and buses sport the signs. The Partnership is urging motorists to give donations to social service agencies rather than panhandlers, because public officials believe voluntary donations to homeless people pay for alcohol or drug addictions. A 2004 law makes panhandling or giving to panhandlers from a motor vehicle stopped on a public street, as well as aggressive panhandling, illegal. According to Anchorage Mayor Mark Begich, "The idea [of the program] is to dry up the source of funding so street people will seek help that might let them to improve their lives."

While Anchorage considers alternatives to proposed homeless camps, Anchorage's SAFE City Program used funds from the Substance Abuse and Mental Health Services Administration (SAMHSA) to implement the Pathways to Sobriety project. According to a 2005 evaluation of the project by the University of Anchorage, "the primary components of this project include involuntary engagement by chronic public inebriates from the target population into detoxification and substance abuse treatment services via individualized intensive care management services; increased access to therapeutic court for the target population involved in criminal act; and invigoration of the alcohol involuntary commitment program." In this way, Anchorage's "sleep-off" center not only shelters public inebriates from potential health risks of cold weather, such as hypothermia, but also the potential risk of being targeted for a quality of life violation.

#17 Phoenix, AZ

The Phoenix City Council voted to ban camping in all city parks in order to preserve the parks as "family places" in December 2004. The measure was aimed at keeping homeless people from areas where children and others gather. Even though few of the homeless people caused trouble, "many people are intimidated by the homeless and won't use the park." Homeless advocates argued that the ordinance would not solve the problem. According to Jeff Taylor of the Phoenix Rescue Mission, "If you close the parks, homeless individuals will gravitate to another area. This will squeeze individuals into other areas where they may be more invisible." The Executive Director of the Phoenix Rescue Mission, Jerry Sandvig, doesn't see any alternative with such an overwhelming homeless population in Phoenix, saying, "There really isn't any place for them to go."

#18 Los Angeles, CA

In February 2005, the L.A. City Council unanimously passed a law that prohibits loitering outside of public facilities, such as libraries, between 9 P.M. and 9 A.M.

Six homeless individuals also filed suit to prevent the Los Angeles Police Department from ticketing and arresting people who sit, sleep or lie on public sidewalks pursuant to city codes. They argued the codes were in violation of the Eighth and Fourteenth Amendments, as applied to homeless persons. The plaintiffs argued that homelessness is an involuntary condition, as long as homeless people outnumber the number of available shelter beds. The court rejected the plaintiffs' arguments and granted summary judgment for the city.

In September 2005, the mayor of Los Angeles ordered an investigation into allegations that other jurisdictions were "dumping" homeless people, mentally ill persons, and criminals onto the streets of Los Angeles' Skid Row. Skid Row is a 50-block area of downtown Los Angeles containing between 8,000-11,000 homeless people. A week later Police Chief William Bratton vowed to get tough and clean up the area he refers to as "Dante's Inferno." His department has conducted sweeps of the area looking for parole violators and strictly enforces "quality of life" statutes such as public urination and sleeping on public sidewalks.

Many believe that the outrage over the "dumping" of homeless people and the increased enforcement are a result of gentrification in the area. "That's why there's a big brouhaha about the 'dumping' now. Five, six, seven years ago there weren't any plans to gentrify Skid Row with condos and lofts that sell for \$700,000 or more and a Grand Hotel a few blocks away. The rich simply don't want the homeless to be part of the landscape anymore," commented a local social worker.

Police Chief Bratton insists that his department does not target homeless people. "What we focus on is behavior, he said. "If the behavior is aberrant, in the sense that it breaks the law, then there are city ordinances.... You arrest them, prosecute them. Put them in jail. And if they do it again, you arrest them, prosecute them, and put them in jail. It's that simple."

#19 St. Louis, MO

In October 2005, the City of St. Louis settled a lawsuit filed against it by twenty-five homeless and impoverished people, claiming they were illegally "swept" from the downtown area before the city's Fourth of July festivities. The city paid \$80,000 in damages to the plaintiffs. The payment of damages will be shared by the city, the police department and the Downtown Partnership, all of whom were defendants in the case. The plaintiffs claimed that homeless people and those who appeared to be homeless were abused, harassed, and illegally detained in order to clear the city streets before the holiday festivities, and alleged that the defendants have a policy "of intimidating and driving homeless people and homeless-appearing people from downtown St. Louis." Plaintiffs also alleged that some of them were told they would be released if they performed free community service - cleaning up after the festivities - even before they saw a judge. City Counselor Patricia Hageman admitted these accounts were accurate. Attorney for the plaintiffs, Steven Gunn, stated, "This agreement makes it clear that sweeps violate the law and human dignity." Although the court ruled in favor of the plaintiffs in granting a

preliminary injunction and the city agreed to the settlement, the city has not admitted any wrong-doing.

As a result of the settlement, the police department has agreed to do the following: avoid arresting homeless people or removing them from downtown areas without probable cause that a crime was committed; institute a policy, where under most circumstances, a summons to court will be issued for “quality of life” violations rather than arrest; re-affirm to its officers that an “individual’s status (homeless or non-homeless) will not be considered in any of [their] decisions;” and acknowledge begging is not a crime, if it is not “aggressive.”

In early November 2005, police officers swept a downtown park, instructing homeless people to leave. No arrests were made but park workers removed belongings for temporary storage. The sweeps sparked a protest march from the park to City Hall. The marchers demanded an end to sweeps and more services for homeless people.

#20 Pittsburgh, PA

Pittsburgh city leaders recently amended its panhandling ordinance. The new law expands on the existing panhandling ordinance by restricting solicitation for charity to daylight hours. The bill also bans panhandling within 25 feet of an outdoor eating establishment, 25 feet of an admission line, 25 feet of the entrance to a place of religious assembly, within 25 feet of money dispensing areas, and 10 feet of a food vendor or bus stop. The bill also outlaws “aggressive panhandling” and solicitation of money that hinders traffic. Activist groups, such as the ACLU, believe such a comprehensive ban infringes on free speech rights.

The ordinance classifies solicitations from religious groups and other charities as panhandling. According to Major Deborah Sedlar, “If we [the Salvation Army] raise less, that could mean we have less resources to support the services we provide.” Dr. James Withers, a medical doctor and founder of Operation Safety Net, believes that services, rather than laws, are what Pittsburgh’s homeless population needs. Dr. Withers said, “The needs of street people are so much more intense than current agencies can grapple with. A lot of people have such complex psychological issues, it’s very difficult to get them off the street.”

The ordinance stems from complaints from downtown business owners. “Our stakeholders feel that panhandling is becoming a bit more of a problem than it used to be,” said Regina Casey of the Downtown Partnership. Police Chief Robert W. McNeilly, Jr. added that crimes, including robbery, retail theft, defiant trespass, simple assault, and disorderly conduct, are “typical” of panhandlers. However, Officer Charles Bosetti, who patrols the Market Square area, sees it differently. Bosetti maintains that businesses were demanding that police drive “grubby looking” people from the area. Bosetti feels that this is outside of law enforcement’s role and should be left to social agencies. “Are you using aggressive police tactics where social solutions are more appropriate?” he asked. Bosetti also believes that writing more citations would take officers off the streets for

hearings and would require the city to pay more overtime. District Attorney Stephen Zappala, Jr. contends the successful panhandling ban would fine or jail aggressive panhandlers, while directing homeless persons to social services.

Narratives of Other Cities

Albany, CA

Responding to complaints from the Albany Waterfront Committee, the city once again began evicting residents from their campsites on a former garbage dump known as the Albany Bulb. City employees tore down 19 encampments, using a backhoe to fill two large green dumpsters with tents, clothing and shopping carts, costing the city \$15,000. The city's environmental resources manager, Nicole Almaguer, stated, "The city has a no-camping ordinance that is being enforced at the bulb."

The bulb has become a sort of cultural icon for its residents and the surrounding community. The area is full of large sculptures, paintings and other artwork, which became the subject of a 2003 documentary. Area residents have also turned it into an unofficial dog park. Simon Abrams, of Oakland, California, said, "I've been coming here all my life, and I've never had any problem with the homeless-they're pretty mellow."

Albany, OR

Albany officials are seeking to monitor "instances of disorderly conduct," such as public urination, trespassing, or creating a mess, because prior anti-camping laws were declared unconstitutional. "We can deal with camping, but we can't keep someone from sleeping on public property," said City Attorney Jim Delapoer. "The best we can do is monitor behavior." The city plans to enforce existing laws more forcefully rather than enacting anti-homelessness ordinances. In addition, Delapoer also notes that if the city tries to legislate against homeless people, they will begin to roam the city rather than stay in their camps on the outskirts of town. However, many local newspapers have been publishing editorials calling for the removal of camps near the riverside area, citing litter and crime as major threats to Albany's residents.

Albemarle, VA

Albemarle County officials in July banned panhandling in roadways and on medians in response to concerns from police and residents. The Board of Supervisors unanimously passed an ordinance prohibiting any person from standing on public roads or highway medians to solicit contributions, distribute materials, or sell merchandise. Supporters of this measure believe panhandlers take advantage of motorists' generosity, intimidate residents, and create safety concerns.

Allentown, PA

Bulldozers, making room for a public works area, cleared Allentown's "Tent City" homeless encampment. Officials gave warning of the clearing, as well as provided inhabitants with information about shelters and other assistance. The eviction was spurred by residents' complaints and redevelopment plans in the area. The city said it

was going to use the former encampment to store piles of gravel and stone for road and public water projects.

Ashland, OR

The Ashland City Council—including its more liberal incoming members—expressed near unanimous doubt that the potential liabilities and safety questions of a proposed permanent homeless camp could be overcome. The council voted against Ashland Housing Alliance’s proposal for a permanent homeless camp on city land, based on Portland’s Dignity Village.

Outgoing Councilman Don Laws said the council, in facing a homeless camp, would have to answer some big questions, including where it would be, how it would be run to avoid creating more problems than it solves, and whether there would be a “mecca effect,” attracting homeless people from all over. He doubts that one solution—a camp—would resolve the myriad problems that create homelessness.

While Councilwoman Care Hartzell, “absolutely” supports the camp concept, Hartzell worries that residents will disapprove of not only the concept, but also the use of city land. Similarly, Mayor John Morrison wants to focus on affordable housing in Ashland rather than the construction of a homeless camp. Like his colleagues, he is concerned about safety and liability issues, as well as the potential “mecca effect” of a camp.

Athens, GA

The Athens Downtown Development Authority (ADDA) is considering a ban on “aggressive” panhandling. Art Jackson, the ADDA’s Executive Director, defines aggressive panhandling as cursing, following someone, and continuing to beg after being rebuffed. Anyone who violates the ban could be subject to a six-month restraining order. However, Courtney Davis of the Athens Area Homeless Shelter does not support a ban on panhandling, because “it would make homeless [people] less visible, rather than solving the [homelessness] problem.” Many people experiencing homelessness in the Athens area report being “barred” from downtown for asking for help. Kevin, who is without a home, stated, “Police will come up to you and tell you that you are barred from downtown and that if you come back you’ll be thrown in jail.”

In addition to outlawing panhandling, signs on small parking meters read, “A donation here will provide help for the homeless – Please do not give cash to panhandlers.” The local homeless coalition distributes ride tokens to homeless persons, but does not provide food or money for food in any way. Lynne Griever of the Georgia Task Force for the Homeless, a statewide effort of the Task Force in Atlanta, equates these signs with signs at the zoo that ask visitors not to feed the animals, and many homeless people contend that they don’t need ride tokens, but rather food and shelter.

Augusta, GA

In May 2003, a series of ordinances was passed that prohibited behavior such as loitering, panhandling, vagrancy, and other routine activities. Camps have been bulldozed in the aftermath of 9/11 and are routinely torn down as they are built anew. Homeless people are no longer allowed to be visible.

Throughout Augusta, any person on the street can be cited for loitering, begging, or accumulating garbage. In addition, there is a separate ban on vagrancy, which applies to anyone who has “no visible means of supporting himself.” Officers are authorized to tell people to “move on,” making it a crime not to do so. Since September 11, 2001, homeless camps have been routinely bulldozed, pushing homeless people both literally and figuratively out of sight. Sandy Wallack of the ACLU said the organization is already in the process of challenging the constitutional violations.

Augusta, ME

While Augusta does not have any formal anti-camping laws, city police may arrest Randy Reed, because he has refused to leave his makeshift home, which Reed carved out of the Kennebec River bank. After an attempt to persuade Reed to accept alternative living arrangements and mental health services, local service providers, including John Applin of Bread of Life Ministries, worries about Reed as the weather grows colder. However, Applin also notes that Reed is industrious, and many members of the community leave their recyclables for Reed to turn in for money. Reed’s situation only gained police attention, though, after heavy rains caused a slumping in a city parking lot near Reed’s riverbank home. Officials attribute the slumping to Reed’s excavation, which then led to the erosion and subsequent slumping.

Baltimore, MD

The Downtown Partnership of Baltimore launched “The Make a Change” campaign to “quell the fears of tourists” and “protect” the downtown area. The program targets panhandlers and Baltimore’s homeless population of nearly 3000 people. The “Make a Change Campaign” discourages visitors from giving money to panhandlers by recommending donations in boxes that the Partnership will distribute to local businesses. This money in turn will go to Baltimore Homeless Services Inc., a quasi-public agency that serves the homeless community.

Kirby Fowler, president of the Downtown Partnership, called the campaign “the supply-side strategy, while law enforcement would be the demand side.” Fowler added that the downtown area is safe but that “an abundance of panhandlers often gives visitors to the city a negative impression.” In the past the Partnership has unsuccessfully tried to pass a bill that would have made sleeping or camping in the downtown area illegal. It is currently illegal to panhandle at night unless passively holding a sign, and aggressive panhandling has also been outlawed.

Amidst Downtown Baltimore's redevelopment, particularly the Westside, advocates are reporting anecdotal increases in arrests for "public nuisance" crimes. People living their private lives in public places collect these citations in great number. When these citations become part of their criminal record they can block access to housing, employment, and public benefit programs in the future. The governor vetoed a state law, which would have permitted the expungement of non-violent "nuisance" crimes, after passage by the House and Senate of the Maryland General Assembly.

Bellevue, WA

The Bellevue City Council has recently proposed a stricter ordinance on temporary homeless encampments within the city limits. Opponents believe the new ordinance would make it nearly impossible to host tent cities, as well as violate freedom of religion laws. According to Rev. Sanford Brown, executive director of the Church Council of Greater Seattle, "[Bellevue] is trying to nit-pick the churches to the point of harassment." Under the city's proposed plan, the following would occur:

- The host or manager must report to Public Health – Seattle and King County the names of occupants suspected of having some communicable diseases.
- Camp hosts or managers must submit a safety plan to the Bellevue Police Department and collect homeless residents' identification. Background checks are not required.
- Camps must have one sink and one toilet for every 15 residents and one shower for every 40. These regulations can be waived if there are alternatives, such as a church's indoor facilities.
- Property owners within 600 feet of a proposed site will be notified of an application, and a public meeting will be held. The permit is decided by the planning director and can be appealed to Superior Court.
- Hosts can apply for hardship exemptions to some rules.

Encampments also would be limited to a 60-day stay rather than a 90-day one. According to critics, the plan would make the siting process a lengthier procedure with a public-comment period. Currently, the same laws that monitor sidewalk sales and Christmas tree lots also regulate Bellevue encampments. While opponents recognize the need for safety and cleanliness concerns, they believe Bellevue's proposed ordinance has not struck the right balance between religious freedom and public interest.

Berkeley, CA

In an attempt at fairness, Berkeley began storing abandoned items left in shopping carts by homeless people in a local storage facility. In fall 2004, the city bought a 40-foot long, 8-foot wide refrigerated container to prevent pests from infesting the stored belongings.

After renewed police harassment in November 2004, a group of homeless people staged a sleep-out in People's Park to protest police repression and seizure of their belongings. In

addition to police harassment, the protestors' belongings were confiscated. Some were arrested, while others were threatened when they refused to leave. The protestors did not influence the city council with their sleep-out, because according to Michael Diehl of *Street Spirit*, "sleep is still a crime for those without housing in this town."

There has been an ongoing attempt by both the Berkeley and University of California police to rid the south campus area of "unsightly" homeless people. They have been selectively applying or misinterpreting several laws to rid the area of homeless people. For instance, police have told people sitting against buildings that they are trespassing, even though the ordinance was withdrawn after the ACLU sued the city. In the fall of 2004, the Suitcase Legal Clinic brought a formal complaint against the Berkeley police department, stating homeless people have "come to believe that their rights to be on the sidewalk depend on the mood and whim of the officer on the beat."

Bettendorf, IA

City officials began to enforce a city ordinance that restricts certain forms of panhandling in December 2004. The ordinance prohibits entering the road to solicit donations, or working the interstate ramps during rush hours, and requires panhandlers to be licensed. Officials stressed that it does not end panhandling, but attempts to put homeless people in touch with others who can help them. Many homeless advocates supported the panhandling ordinance because it prevents certain hazards, but the majority of homeless people in the area do not see it that way. "One of these days, you ain't gonna be able to walk down the street. There are signs everywhere. What's wrong with my sign?" said a local homeless veteran named Thomas.

Other restrictions include a ban on "aggressive" solicitation of donations from anyone in a public area, within 15 feet of a bank or credit union, and within 15 feet of a check cashing business or ATM. The penalty for violating the ordinance is a fine up to \$500 or 30 days incarceration.

Boston, MA

Prompted by residents' complaints of safety, noise, and public drinking, State Police, Department of Conservation and Recreation, and local homeless shelter officials swept the shantytowns under the Massachusetts Avenue Bridge. Crews removed four garbage trucks full of debris, which State Police spokeswoman, called "state property." A shelter official estimates that approximately half of Boston's 6,000 person homeless population spend some time under bridges, although others believe that the number of homeless people living in encampments is much smaller than these figures suggest. Workers from shelters returned to explain the sweep to homeless people returning to find all their belongings, including birth certificates and family photos, gone. State police officers now patrol the area to ensure the shantytown is not reconstructed, and they have been instructed to forcibly remove anyone who attempts to rebuild the camp. City Councilor Michael Ross, who encouraged the sweep, expressed his own concern for homeless people, but also said that his duty to his constituents takes precedent in this situation.

Rebecca Marston, a business owner on Charles Street in Beacon Hill, believes that “to [just] go and rattle them out of their homes is really cruel.”

Bradenton, FL

Construction planned for the south side of the Village of the Arts is soon to be completed. This city project is part of a \$1 million investment plan to improve a formerly crime-ridden, neglected, and dangerous neighborhood. The transformation of this area into an arts district helped raise property values, eliminate slum and blight, and give the area something unique for its community. Subsequently, a proposed plan from local advocates to build a homeless resource center may cause residents to change their minds about the placement of public benches and trash cans in front of their homes and on the sidewalks. One resident is worried that homeless people will use benches as beds.

Furthermore, businesses along 14th Street are interested in supporting an ordinance that could deter homeless people from camping on their properties. An ordinance passed in 2002 prohibits anyone from camping on public or city property anytime after sunset and before sunrise. Penalty for disobeying the law includes a fine of up to \$500, imprisonment not exceeding 60 days, or both.

Lt. Paul Sutton of the nearby Sarasota Police Department said, “We want to try to improve the situation. We want to help people, not enable people to stay in the same situation.” Sarasota police officers often refer homeless people to social services or take them to homeless shelters themselves. However, Bradenton authorities have few other options. “All we can do now, if they are camping on city or public property, is to ask them to leave,” said Maj. J.J. Lewis, spokesman for the Bradenton Police Department.

According to Martha Childress from the Community Coalition of Homelessness, the tension between business owners and officials and homeless people exists because the former does not understand the latter. She poses this scenario, “If I made you homeless for forty-eight hours, taking away all your belongings, including your shoes, and made you start walking, when someone offers you a pillow and blanket, would you sleep on the street or would you keep walking? If you didn’t want to be a prostitute or shoplift for groceries and no one would hire you because of your appearance, would you panhandle for food money? The last thing I would take away from you is your hope, and being hopeless would make you act in ways you won’t normally act. We don’t need laws; we need to address the question of homelessness in a profound way, and restore people’s hope, so they don’t have to camp out on the street or panhandle.”

Burlington, WA

In response to complaints from business owners, Burlington City Council is considering an ordinance that would restrict camping throughout the city on public and private property. The “unlawful camping” ordinance would prohibit campers from residing in city parks or public places that aren’t otherwise designated for camping, as well as outlaw camping in a tent, camper, or recreational vehicle on private property for more than 48

hours. The ordinance would also force homeless people to sleep in parks and other public places during the daytime hours. Chris Hoke, of Tierra Nueva ministries, said the ordinance would essentially make criminals out of homeless people. "They will not admit this is about fear, about class." Many advocates fear the constant movement only exacerbates the situation.

City Council members claimed the ordinance was more of a safety and health issue connected to drug use, robbery, vandalism, and sex offenses that often surround illegal campsites. Rumors of sex offenders camping out in parking lots and stairwells among the public also prompted the proposed ordinance. Corrections Supervisor, Charles Wend, contends that the ordinance would actually make it harder to track and hold sex offenders accountable since they would constantly be on the move.

Mount Vernon Parks and Recreation Director, Larry Otos said that "Most of the time, people camping in the city parks aren't participating in illegal activity and aren't hostile [...] a lot of these folks are just looking for a place out of the public eye."

Cambridge, MA

Cambridge parents who are tired of the human waste and bedrolls left by homeless people in city playgrounds lobbied the city council to discourage overnight sleeping. Complaints from residents have caused the City Council to reevaluate the city's policy of allowing homeless people's personal belongings to remain untouched for 48 hours in city parks. Currently, the policy calls for police officers and city workers to place warning stickers on unaccompanied bags and bedrolls, giving 48 hours' notice until removal. Near Harvard Square, a homeless man said the parents' concerns are "understandable," but he added that safely stowing bags and bedrolls is a big issue for homeless people.

In September 2005, state police removed several "shantytowns" from under bridges in the area. After receiving complaints from local residents regarding alleged harassment and sexual assault, authorities swept the camps twice in one week. Residents of the shantytown returned after the sweeps, although the police have vowed to remove anyone who tries to sleep in the area. State law prohibits overnight camping on public property. "They told us they would arrest us for trespassing under those bridges," said Ronnie, a camp resident. "We are not here to bother or harass anyone. We just want to live in peace."

Chapel Hill, NC

Police Chief Gregg Jarvies thinks there are enough regulations in place on panhandling and would rather see more officers patrolling the downtown area. "We've got plenty of laws on the books," Jarvies said. "I'd rather have more personnel downtown, for many reasons. Not just panhandling."

The panhandling debate has been ongoing in Chapel Hill. It has been discussed in town council meetings and in discussions about the town's future. The town currently has

ordinances against; panhandling near ATMs, bus stops, and bus shelters; aggressive panhandling, panhandling on all roadsides and medians and requesting money from dusk to dawn. The ordinance does allow holding a sign asking for money after dark. Town Councilmember, Mark Kleinschmidt, said, "It's too easy to develop overly broad responses to these problems. The council took the easy way out. We didn't spend the time to figure out how to address the problem."

The police department has also attained legal restrictions to keep some repeat offenders out of specific areas. They are also consulting the department's attorney in order to gain similar restrictions for the central business district as well. Since March of 2003, 46 panhandling related charges have been filed.

Charlotte, NC

When asked about the city ordinance prohibiting panhandling, one homeless man responded, "Charlotte has got the most messed up rules in the United States." The respondent was arrested for asking undercover officers for money to get a sandwich. Some anti-panhandling supporters believe the ordinance helped decrease the number of complaints from uptown workers, tourists, and business owners. However, the local police have no statistics on the number of arrests under the ordinance to determine its effectiveness.

Charlottesville, VA

The issue of panhandling or asking for money by the roadside has prompted a law allowing several Virginia counties to prohibit solicitation on highway medians. The State General Assembly passed legislation enabling counties to vote on an ordinance that prohibits soliciting contributions or distributing materials on roadways and medians. There are, however, allowances for groups that receive permission, such as fire departments that solicit donations. Violations of the ordinance would result in issuing warnings and possible citations for repeat offenses, making it difficult for those who are in need of the donations.

Cleveland, OH

The city of Cleveland gave police permission in July 2005 to crack down on panhandlers who beg too aggressively or shake their cups within 20 feet of bank machines or restaurants. The Cleveland City Council passed an emergency bill that outlaws panhandlers from approaching or following someone in a way that causes intimidation, fear, or harm. The bill also bans persons from soliciting money within 20 feet of an ATM, bus stop, pay telephone, persons waiting in line, sidewalk cafe, or valet zone, as well as prohibits panhandling within 10 feet of an entrance to a restaurant or parking lot.

Brian Davis, Executive Director of the Northeast Ohio Coalition for the Homeless, spoke out against the legislation at a hearing, calling it unconstitutional. In addition, he doubts

the ban will work. “I really don’t think it will have much impact and we’ll be back at the table,” said Davis.

The City Council agreed to a sunset provision in the law, requiring its expiration on October 15, 2006. Council members plan to review it before that date to assess any need for changes or its repeal altogether. The Executive Director of the Warehouse and Gateway neighborhood corporations, Tom Yablonsky, is pleased that the city moved to help businesses address the panhandling problem, saying “You know the law’s on your side, so you can tell people they have to move on now.”

In another incident, the Cleveland Police attempted to enter the main men’s shelter in search of a wanted man. Staff of the shelter blocked entry to the police officer who claimed to be in “hot pursuit.” The staff member was arrested for obstruction of justice, because he refused to allow the officer entry in to the building without a warrant. The police refused to drop the charges, as well as allow the shelter staff member to plead to a lesser charge. After the dispute, the shelter signed an agreement with the police to prevent entry into the facility without a warrant to avoid future problems.

The Community Women’s Shelter in Cleveland has an armed off-duty Cleveland police officer at the door checking every woman for weapons or drug paraphernalia upon entry to the facility. Advocates have objected to the loss of anonymity for the women who enter the shelter when a uniformed police officer is the first to greet a woman as she enters. There is an effort underway to negotiate a resolution between shelter managers and residents on the issue.

Columbus, GA

In Columbus, city law prohibits begging, loitering, or soliciting without a permit. According to Pat Greene of Mercy House, the ordinances are being enforced, and homeless people who come through his organization are aware of the city’s discrimination against them.

Columbus, OH

The closing and bulldozing of The Open Shelter in 2004 by City leaders has resulted in the loss of over 100 emergency shelter beds in Columbus. This loss is being felt throughout the metro area by the increased number of homeless people asking for money, searching for food, and sleeping in stairwells, on sidewalks, and out of view of pedestrians. Sweeps of campsites all over the area continue to leave even more people stranded and wandering. There was a large sweep by railroad officials near the railroad tracks, but also repeated reports of isolated incidents of displacement by police officers of encampments all over the city. The ACLU wrote a letter to the City to learn more about the city’s policy regarding sweeps and destroying campsites.

Meanwhile, the city has toughened the laws and/or enforcement policies on panhandling, littering, and loitering in several of the business districts. This initiative was pushed by

Downtown businesses, and passed City Council in 2004. The City also has attempted to discourage giving to panhandlers with a campaign to urge pedestrians “to give to service agencies rather than individuals.” An outreach worker was hired and supervised by the downtown development agency. This worker cares deeply for the safety of homeless people, but is supervised and directed by downtown businesses. The downtown outreach worker is in place to assist people in finding ways to "get off the streets" and reduce negative encounters between pedestrians and homeless people. There is a great deal of pressure for those asking for money or those experiencing homelessness to move to nearby neighborhoods and adjacent business districts.

Corvallis, OR

Corvallis Municipal Court Judge Mark Donahue upheld the constitutionality of Corvallis’ “illegal camping” ordinance, which was challenged by a local man found sleeping in a van. The man, Jeffrey Sexson, received 11 citations for illegally camping in his van on city streets. Sexson’s lawyer, John Rich, cited *State v. Wicks*, in which the Portland Municipal Court ruled that enforcement of Portland’s camping ordinance violated basic constitutional rights and unfairly punished a person for fulfilling basic activities, such as sleeping. However, while Judge Donahue did not disagree with Rich’s legal argument, he did not believe the defense proved that Sexson was indeed a homeless person. In *State v. Wicks*, evidence and testimony, including bed shortages among shelters in the Portland area and personal history that made it difficult for the defendants to obtain housing, were provided to prove the defendants were unable to obtain housing, subsequently forcing them into homelessness. Thus, Sexson was found guilty on one count of illegal camping under Corvallis’s ordinance, which states, “no person shall sleep or lodge in or upon any sidewalk, street, alley, public right-of-way, park, or any property owned by the City of Corvallis.” Until Sexson’s case is appealed, Corvallis police will not issue any more anti-camping citations. However, both the police department and city attorney are planning to modify the ordinance until it can be an enforceable law if necessary.

Denver, CO

In Denver, panhandlers collect nearly \$4.6 million a year, much to the dismay of the local business community. In an effort to curb what the Downtown Denver Business Improvement District and Denver’s Office of Economic Development deems Denver’s “panhandling problem,” officials urge citizens and visitors alike to refrain from giving money to beggars. According to Mary Buckley, “We need to help the people, [but] we need to help them without feeding addictions or keeping them on the street. However, Reggie Rivers questions the offices’ motives, “Business bureaus and economic development offices typically don’t spend time trying to cure the complex problems of poverty, homelessness, and panhandling. The objective [of their study] was to figure out how to keep unattractive, malodorous, poor beggars from driving away tourists and other customers.”

The Downtown Denver Business Improvement District is developing the initiative to convince its citizens that panhandling is counterproductive in the fight against

homelessness, because it tends to feed substance-abuse problems. In addition, Denver's mayor, John Hickenlooper, developed a 10-year plan, which includes drug rehabilitation and mental health counseling, to offer homeless persons help, rather than merely ticketing them. In addition, the mayor's plan to end homelessness would create 3,193 housing units by 2015, and reduce panhandling by providing homes rather than writing tickets. The business officials propose that the \$4.6 million collected yearly by panhandlers should go directly into funding Mayor Hickenlooper's \$100 million plan. However, most officials also support aggressive police enforcement to stop begging, including Denver's law that prohibits panhandling within 20 feet of transit stops.

Despite a \$10 million grant for permanent housing facilities to the city from the U.S. Department of Housing and Urban Development, more than 10,200 people remain homeless in the Denver metropolitan area, still leaving approximately 6,000 residents without a home under Mayor Hickenlooper's plan. Doug Wayland, a spokesman for the Colorado Coalition for the Homeless, said, "the perception is that homelessness is confined to Denver, but it's a problem throughout the metropolitan area, [and] homelessness is shifting to families and children, and location is spreading into surrounding areas." While Wayland believes the grant will provide housing and aid that is "economical and ethical," the program will only extend to select participants, all of whom must be referred by outreach workers, police, or themselves. Reggie Rivers also contends "[that] panhandlers play an important role in our society, because they are the visible face of poverty," especially to sheltered suburban America. While urban Denver is developing new ways to combat homelessness within its city limits, neighboring areas do not have affordable housing for low-income individuals.

The 10-year plan to eradicate homelessness will first extend to what Roxanne White of the Denver Commission to End Homelessness calls the "[...] toughest cases." However, despite new apartment and substance abuse programs for homeless people, the city also will crackdown on those who do not cooperate with Denver's new program by continuing to panhandle, camp out, and block access to local businesses. In addition, those who decide not to enter the program and stay on the street will be contacted daily by outreach workers after all homeless people are registered in a database. However, many residents, such as Rivers, remain skeptical about the program's underlying motive to "[...] push the poor out of site [rather than pushing] them out of poverty."

Des Moines, IA

In the warmer weather months, business owners have begun to complain about the increased number of panhandlers outside their establishments. One bar owner, Chance Hulten, described panhandling as a nuisance to customers and businesses. He said, "If the city would do something, that would be great." Currently, panhandling is not illegal in Des Moines.

Evanston, IL

Instead of directly targeting panhandlers, local organizations paid for approximately 1,000 posters urging residents to “find another way to give.” Fliers asked shoppers to donate their change to social service agencies rather than to homeless people. Officials intended to curb panhandling at the supply level, giving money to organizations with programs and facilities that can help. Nevertheless, critics of Evanston’s campaign believe that the posters will do little to keep people off the streets.

Forest Park, IL

According to Police Chief James Ryan, “in Forest Park we have zero tolerance for panhandlers and we arrest them immediately.” Upon the request of CSX Rail Corporation in August 2005, the police department raided a homeless encampment that was behind shrubs near local train tracks. Residents of the camp were given four days to clear the area or face trespassing charges. Citing a link between homelessness and crime, police officer Sergeant Michael Murphy warns that CSX could face litigation for crimes committed by homeless people if the area isn’t cleaned up in a timely manner.

Fort Lauderdale, FL

The police and city officials began a new approach to reduce crimes in November 2004 by aggressively enforcing smaller violations, such as panhandling, graffiti, littering, and prostitution in hopes of curtailing more serious crimes. Fort Lauderdale Police Chief Bruce Roberts stated, “paying attention to the small things can really make a difference.” In addition, officers are trained to refer homeless people to appropriate social service facilities. “I think that when your streets are filled with [...] homeless [people], or prostitutes, or panhandlers, it suggests an atmosphere of neglect,” commented Vice Mayor Dean Trantalis. He also went on to say that he hopes officials would strike a balance when enforcing the law.

On any given night, Broward County has 10,000 homeless men, women and children and less than 1,000 emergency shelter units. Laura Hansen, from the Broward Coalition for the Homeless noted that, “This is a situation of neglect and arresting people doesn’t change that. If elected officials don’t want an ‘atmosphere of neglect’ they should get serious about addressing affordable housing and wages in this community.” The rental vacancy rate in Broward is less than 1%, leaving affordable places to live scarce and social services struggling to meet the needs of homeless people.

Ft. Myers, FL

Joan Murphy, a volunteer who organizes a Monday dinner outreach in Centennial Park, was outraged by a proposed ordinance that would prohibit serving weekly dinners to homeless people in public parks. The ordinance, which unanimously passed in December 2004, bans the distribution of food on city property, as well as suggests that services should be allowed only once a year. Murphy points out that “people are hungry 365 days

a year. I think it's a very unkind thing to do, to turn people away from a public park which is supposed to be for the public's use." Regardless, Mayor Jim Humphrey stood by the ordinance, arguing homeless people are scaring families away from the park.

However, in March 2005, Ft. Myers City Council revised the proposed ordinance to exclude picnics, so City Councilwoman Frankie Jennings could host a campaign barbecue on city property.

On April 4, 2005 the City Council approved unanimously the following resolution. It was also approved/signed by the Mayor of Ft. Myers. It reads in part—"The distribution of food or clothing by any organization or individual to the homeless may only be provided on private property or in an indoor facility. Homeless shall mean a person having no home or permanent place of residence."

Despite promises from the Mayor and the City Attorney's Office that the language referring to homeless people would be removed, the resolution is still the official city policy. However, the resolution is not being enforced by city officials due to the commitment of religious groups to continue feeding regardless of the consequences.

In December of 2005, the City of Ft. Myers issued a statement of regret for the delay in having the resolution rescinded. Mayor Humphrey has instructed the City Attorney to prepare the necessary changes for presentation to the City Council in February of 2006.

Gainesville, FL

In November 2004, apple pie was served to protest a ban on serving food to homeless people at City Hall. Former City Manager Wayne Bowers approved a new regulation prohibiting the distribution of food and beverages in front of City Hall, except during city-sponsored events. "We feel it's discrimination against one group of people...if the Chamber of Commerce and the downtown developers were out here doing a barbecue, there wouldn't be any problem," argued homeless advocate Pat Fitzpatrick. The city refused to co-sponsor the event and would not withdraw the law. However, it did allow the event to go on without threatening arrest.

Near downtown Gainesville, residents of the Duckpond neighborhood are calling for the arrest of homeless people who have been sleeping nightly on the Alachua County Housing Authority's front porch. "They're supposed to help [...] homeless [people] and get them into homes...but porches aren't homes, they're not safe places, they're not safe places for the neighborhood," said one resident. Duckpond residents have complained to police about noise and trash, but Alachua County Housing Authority has not given permission to arrest the campers.

In August 2005, the Gainesville City Commission voted unanimously to reword a community redevelopment document, written several years ago, that has been labeled as offensive by homeless advocates. The document refers to people experiencing homelessness as "vagrants" and "transients" and claims they impede downtown

redevelopment. However, Melisa Toothman of Critical Resistance still views the city council's policies as part of the homelessness problem, calling for a repeal of the city's anti-panhandling ordinances. Toothman says, "We demand our city commissioners, mayor, city manager, and police department acknowledge the various needs of our underserved and marginalized citizens and stop using them as scapegoats, as though they are the major problem that hinders our community from functioning securely."

Since the National Coalition for the Homeless' 2004 "Illegal to Be Homeless" report, the City of Gainesville and Alachua County have joined efforts to develop a ten year plan to end homelessness. In May 2005, the City and County began the project by creating several subcommittees made up of government officials, the business community, homeless service providers and advocates, and homeless individuals, to study issues related to homelessness in and around Gainesville and to develop recommendations for addressing these issues within the community.

In December 2005, the City and County issued a written "Ten Year Plan to End Homelessness" that is based on recommendations of the subcommittees. The City and County have begun to commit funding to support the Plan and have matched funds from a local developer to establish a winter shelter. As of December 2005, the goals set forth in the 10 year plan are still aspirational. Until the City and County Commissions render official approval on implementation and funding, it is unclear which goals in the plan will move forward and be adopted. The steps taken in the last year have been in the right direction, however, implementation and a significant commitment of funding by the City and County Commissions to carry out the plan will be critical to truly address these issues.

While the 10 year plan contains some provisions to examine criminalization measures used to target homeless persons, the criminalization of homelessness persists in and around Gainesville. There is, and historically has been, a substantial effort in Gainesville to move homeless individuals from public spaces, especially in the downtown area. For example, in response to pressure from developers, community members, and local government officials, local law enforcement officers have aggressively enforced "quality of life" ordinances against homeless individuals in and around the downtown area.

Law enforcement has also aggressively enforced the local aggressive panhandling ordinance, even resorting to undercover "sting" operations. Although it appears that most homeless individuals are aware of the ordinance and careful not to violate it, police seem to be extending their efforts to target activity that falls outside of the aggressive panhandling ordinance. Specifically, they are threatening, citing, and arresting homeless individuals who hold signs on public sidewalks that request charitable donations and draw public attention to the difficulties faced by homeless persons. Homeless individuals also report regularly being told by law enforcement that they have to move from public spaces without legal justification. Many homeless individuals feel that they are targeted by the police and report being treated poorly by law enforcement. On the other hand, some advocates report the Gainesville Police Department has taken positive steps to keep

open lines of communication with advocates, and to work with advocates to minimize and resolve conflicts between homeless persons and police officials.

Healdsburg, CA

Healdsburg City Council unanimously passed an anti-camping law in October in an effort to discourage homeless people from camping on public and private property, such as Healdsburg's railroad tracks and streambeds. The law imposes a \$100 fine for offenses and up to 30 days in jail for repeat offenses. Critics of the law believe that the city's penalties target poor people, as well as migrant workers, who cannot afford to live in the area.

Hilo, HI

Hawaii County is calling for the eviction of 50 homeless people from county land, many of who have lived there for years, a "restoration of a shoreline area." Hawaii County will provide shipping containers for the residents' belongings, as well as offer other services from area agencies. Billy Kenoi, the Mayor's executive assistant, noted, "It's a difficult housing market. It's not possible to find housing for everybody."

Honolulu, HI

Approximately 200 demonstrators rallied at the Capitol Building to call attention to the plight of homeless people in April 2005. The protesters asked legislators to fund more homeless programs and shelters, and urged them to repeal Act 50, a law aimed at removing squatters from public parks and beaches. Bob Nakata, pastor of the Kahalu'u United Methodist Church, noted, "Legally there's no place a homeless person can be except in a shelter and the shelters are full." In addition, the ACLU of Hawaii challenged the constitutionality of the law in federal court, arguing the law is too vague and could be used to ban anyone from public property for any reason. Consequently, both houses of the legislature voted to repeal Act 50 in part.

In addition, Margot Schrine of Partners in Care says sweeps are conducted throughout the island on an ongoing basis, as well as being instigated by neighborhood resident complaints. According to Schrine, these raids make it difficult for outreach workers to serve people living on beaches or in parks.

Jackson, TN

Under a new ordinance proposed by Police Chief Rick Staples and passed by the City Council in September 2005, panhandling cannot occur after dark or in groups; if panhandlers are refused, they are prohibited from following anyone. Panhandlers also cannot target persons in "captive" situations, such as standing in line. Staples assured hesitant council members that police officers would explain the parameters of the ordinance to homeless shelters and individuals before enforcement occurred. A violation of the ordinance is a misdemeanor charge with an accompanying \$50 fine.

Jacksonville, FL

The city of Jacksonville attempted to reduce the visibility of nearly 600 homeless persons for Super Bowl XXXIX. With funding from a variety of sources, Emergency Services and the Homeless Coalition of Jacksonville opened a temporary homeless shelter specifically for those displaced in Super Bowl planning. Despite criticism, officials insisted that the temporary shelter was not an attempt to hide homeless people from crowds of visitors. While the city exhibited a pressing need for additional shelter space, the temporary shelter opened only two weeks before the Super Bowl and closed the day after the event.

With the help of some local shelters, two new ordinances went into effect in October 2005 to stop street and park distribution of food. The more established shelters have been complaining about several church outreach programs that feed and distribute personal items on the street and in parks. The established shelters are complaining that the street programs are reducing their numbers of service recipients which could have an effect on future grant applications. There is a segment of the homeless population that will not enter the shelters because of their strict conduct rules or indoctrination programs.

Kalamazoo, MI

Pickers, including several members of the Kalamazoo Homeless Action Network (KHAN), gathered in front of a local McDonald's to slow down business at lunchtime in April 2005. The group protested discriminatory practices against homeless and poor people, such as McDonald's 30-minute limit for consuming food. According to the spokesman for KHAN, Mike Kilbourne, the sign stating the 30-minute rule is being used as a "weapon of degradation" against [...] poor and homeless [people], because it is enforced arbitrarily. Kilbourne believes the downtown Kalamazoo McDonald's "has created a volatile situation in the north side of Kalamazoo due to discrimination of poor and homeless customers."

In addition, many homeless people complained about police intimidation and humiliation at an August 2005 meeting of the Kalamazoo Homeless Action Network. Public Safety Officers also swept a homeless camp in Mayors' Riverfront Park, in preparation for a trailway as part of the city's long-term redevelopment river project. On August 20, 2005, the police arrested nearly 12 homeless people for trespassing in Johnson-Howard Lumber Company's offices and warehouse. Kalamazoo County District Judge Vincent Westra fined all the trespassers \$100 or community service. Kilbourne told the City Commission that "the city has picked a fight with poor" in its recent camp sweeps and uneven enforcement of trespassing and camping ordinances.

Kansas City, MO

The Homeless Services Coalition of Greater Kansas City partnered with the National Coalition for the Homeless to be a field site for the National Homeless Civil Rights Organizing Project. The project was created to challenge practices and policies that

discriminate against homeless people, as well as individuals who criminalize homelessness. One of the main goals is to document civil rights abuses of homeless people through interviews and surveys. In Kansas City, the Homeless Services Coalition found that the police on the street frequently stopped homeless people, because “they looked suspicious.” In addition, many homeless individuals reported being verbally or physically abused by police officials. One homeless man commented, “They have pushed me against the police car, searched my coat, kicked me, and knocked me to the ground.” There are several laws in Kansas City associated with homelessness, which prohibit aggressive begging, loitering, trespassing, and camping.

Lake Worth, FL

In an attempt to curb the hiring of laborers on city streets in January 2005, the Lake Worth police started handing out fliers warning employers that knowingly hiring undocumented workers is illegal. The police described the move as a safety measure aimed at preventing employers from stopping in the middle of busy downtown streets during morning rush hour. Immigrant advocates claimed that the measure is illegal and discriminatory, as well as negatively affects those who wait for work. “When you have the local police acting as the Border Patrol, you have pandemonium. [...] If the police want to solve the traffic problem, they should ticket the drivers and pedestrians who block the streets,” argued Marisol Zequiera Burke, an immigration lawyer. Cheryl Little, director of the Florida Immigrant Advocacy Center, adds, “It’s another troubling sign that the welcome mat has been pulled from under these communities.”

Long Beach, CA

In May 2005, a group of homeless men were given only twenty minutes to move their belongings before their encampment was bulldozed. Several highway patrol units and a police helicopter accompanied the bulldozers in case there were problems. Residents were told that the crews would not arrive until June. “So much for the city being honest with us,” one homeless man commented. Officials said that the removal of trees and undergrowth for the plantation of smaller trees and an irrigation system had been planned for a long time.

Macon, GA

Some Macon officials and downtown business owners encouraged officials in Macon to follow in Atlanta’s footsteps by passing an aggressive, anti-panhandling ordinance. Councilman Cole Thomason, who supported the ordinance, said, “I’m sure they’re going to say it’s cold hearted [but] it’s a safety issue for people who go downtown.”

Most business owners are vehemently opposed to panhandling, and one businessman said panhandling is “definitely a problem and I’m definitely uncomfortable [because of it].” Tom Glennon, director of the Children’s Museum, added that panhandling is “threatening the existence of the children’s museum [and that] it is time for a panhandling ordinance.”

However, Councilman Alveno Ross, who represents the downtown area, did not support the measure. While Ross was not opposed to studying the issue, he does not think panhandling is one of “the worst issues pending. [...] What are we going to do, just lock up all the poor people?” Reason prevailed, and the Council turned down the proposed ban. Atlanta advocates use the example to fuel the ongoing effort to get rid of the Atlanta law.

Memphis, TN

Memphis has in place an anti-panhandling law that requires a permit to panhandle and prohibits panhandling at any public transportation stop, in any public transportation vehicle, or in any vehicle on the street or on private property without the owner’s permission. The law also prohibits aggressive panhandling, which includes using profane or abusive language, panhandling in a group of two or more, or acting in an intimidating or physically obstructive manner. Further, it is forbidden to misrepresent the purpose of the donation, such as that it is for food when it is for illegal drugs, or that the panhandler is stranded or homeless, when he or she is not. The penalty for violating the law is no more than \$50 per offense.

According to a 1999 report, entitled “Helping the Progress Continue: Improving Public Spaces in Memphis,” which first established Memphis’s panhandling policy, “downtown business owners and residents understand that vibrancy and progress are not possible...if going into a Downtown store or coffee shop is a gauntlet of panhandling, litter, or people sprawled out on the sidewalk.” In July 2005, Memphis’s Center City Commission agreed to distribute pamphlets, which Janet Plaff, the Center City Commission’s Vice President of Operations, hopes will educate the public that “giving panhandlers cash only [enables] self-destructive behaviors.” Memphis is also tracking other cities’ responses to panhandling in hopes of creating a better solution to their homeless problem.

According to Constance Graham, Executive Director of the Greater Memphis Interagency Coalition for the Homeless, good relations with the police department have enabled her organization to successfully fight against harsher restrictions against homeless people in the area. However, Graham also recognizes that good relations with city officials are sometimes difficult to build, and in many cases, are rather time-consuming. However, she credits Memphis’s small size with their success.

Miami, FL

Miami city officials are contemplating a law forbidding charitable organizations and individuals from feeding homeless people in city parks and public streets. Ben Burton, Executive Director for the Miami Coalition of the Homeless, believes criminalization of homelessness is not “a good idea [...] and that] the goal [should be] accessibility, so that they can get a meal, better services [such as shelter, counseling, and washrooms] and head them in a direction of continual care.” Violators of the proposed law would face fines or arrest. City Manager Joe Arriola stated that once the proposed indoor feeding program is in place, anyone who continues to feed homeless people outdoors would be

prosecuted. The indoor feeding program was developed by the Miami Coalition for the Homeless and would involve three to five feeding locations. The program has no plans to transport homeless people to and from locations, which according to Sean Cononie, CEO and founder of the *Homeless Voice*, is integral to the program's success. Cononie said, "They can't pop a squat anywhere. They have to sleep on their own turf." Moreover, some homeless people argued that the food on the streets is fresher than the food in the shelter.

Burton expands upon the problem in his area in this way: "[...] there has been a proliferation of ordinances put forth and in some cases passed [such as in Miami Beach] against sex offenders that would in essence make them homeless in the County, the City, and several other municipalities. Also, Miami Beach has passed a passive panhandling ordinance last year that they are looking at amending and not for the profit of people experiencing homelessness. There is also concern in Miami that over 600 public housing residents may be evicted if a family member has been charged [or] convicted of a crime."

Minneapolis, MN

The documentary film, *Illegal to be Homeless*, was shown in December 2004 to raise public awareness about homelessness. The documentary reveals how city laws make homelessness illegal without providing homeless people with adequate shelter. In the film, several homeless men and women describe police confiscating their tents and makeshift homes. "One of the problems is there is nowhere to go... police will break up and destroy homeless camps, and there is nothing being done to help them," commented Margaret Hastings, the film's director. City ordinances prohibit people from setting up temporary housing, such as tents, on both public and private property. While the film looked to the city government for assistance, Councilman Dean Zimmerman said that there was little the city can do. "Our budget is very tight. We are cutting back way beyond what we should because of the tremendous budget hits we have taken," said Zimmerman. Yet Zimmerman acknowledges that "[there] is no real shortage of housing. There is a shortage of money for people to pay for housing, and as long as this dislocation is there, there will be people on the street." In other words, there is a shortage of affordable housing for many.

Homeless advocates pressed the city to change city ordinances, arguing that trying to survive on the streets comes into conflict with existing laws. Mackenzie Black, who is formerly homeless, commented that she has had to do things that she knew were illegal, such as camping downtown, because she had no other options.

In response to laws criminalizing homelessness, the Community Advisory Board on Homelessness (CABH) pressured local governments to repeal discriminatory ordinances. The CABH conducted an extensive review of city laws, concluding that homeless people often face criminal charges, civil penalties, or unofficial harassment by police officers. Recommendations submitted to the city included repealing or changing ordinances that prohibit camping, trespassing, panhandling, loitering, and public urination. The CABH also asked for stronger police protocols, as well as the repeal of the state vagrancy statute.

In early April 2005, the Minneapolis City Council unanimously voted to support the CABH's recommendation to repeal the State Vagrancy Statute and fund a Pilot Project for homeless outreach. The Minnesota Coalition for the Homeless led a successful effort at the Minnesota Legislature to repeal Minnesota's Vagrancy Statute and secured \$400,000 for a new street outreach pilot project. The outreach pilot project will fund several new outreach workers in Minneapolis and explicitly requires collaboration between outreach workers and law enforcement. The successful argument to secure this funding centered on promoting effective alternatives to the criminal justice response to homelessness.

The Minneapolis City Police suggested a plan to license panhandlers in a move to curtail downtown street begging. The free licenses would theoretically allow the city to prevent activity that some say is annoying to pedestrians and hurts downtown businesses. The idea is based on an ordinance in Dayton, Ohio, that requires panhandlers to register with the city and display photo ID in order to solicit a passerby. It also prohibits panhandling after sunset or before sunrise. Homeless advocates working to decriminalize homelessness argued that the licenses would be a step in the wrong direction. Robert Yellow Wolf, a homeless man panhandling on an interstate off-ramp, called the plan "ridiculous" but said, "when you're homeless, you have no say." Other panhandlers worried that the police would confiscate IDs to hassle them.

In 2004, a state court overturned Minneapolis' anti-begging law finding it violated First Amendment rights to free speech. In response, the City Council unanimously approved a new law that bans "aggressive solicitation," including intimidation, repeated soliciting, physical contact, abusive language, or intentionally blocking traffic.

Myrtle Beach, SC

Myrtle Beach attracts more homeless people than surrounding areas, and local leaders are torn between being socially-responsible and fiscally-minded as the city tries to foster its tourism and convention industries. In Myrtle Beach, a growing segment of residents complain that the presence of homeless people is hurting the city's efforts to redevelop the downtown business district. However, fluctuating employment and high housing prices cause many people to lose permanent housing, joining the growing number of homeless persons downtown, where shelters and community kitchens exist.

Besides outlawing panhandling, Myrtle Beach has yet to address homelessness on a grand scale. Some businesses fear relocating downtown, because panhandlers project an unsafe image for both employees and customers. A homeless man mentioned that, "police intimidate and threaten homeless so they leave the city, or at least the city parks and beaches. It's a family-oriented town, so they try to run them off. If you don't keep yourself walking, they lock you up."

One city resident has said, "As long as we cater to them [homeless persons], they won't go away. They're hurting the local people, they're hurting the local economy, [and] they're nothing but leeches."

Nashville, TN

In March of 2005, the Homeless-Police Relations Working Group sent a formal proposal to the Nashville Police Academy, suggesting ways to improve relationships between cadets and officers and homeless outreach workers, such as a service center field day and interactive workshops for cadets or new officers. The proposals addressed the Police Academy's frustration with homeless advocates who come to them with grievances rather than concrete solutions.

The Metro Police and several area business owners began a campaign to address panhandling in May 2005, arguing that it is better for people to keep their money rather than fund alcohol or drug addictions. Officials posted signs encouraging people to donate directly to service providers instead of giving money to panhandlers. Police and merchants want to make visiting downtown a "more pleasurable experience," and they believe that the campaign may be so successful that they will not have to prohibit panhandling in many sections of downtown. While the fliers and signs were met with support from many business owners, some businesspeople do not think it will work. For instance, George Gruhn, owner of Gruhn Guitars, commented that "structural solutions" would be more useful.

Newark, NJ

Pressure from the ACLU prompted the New Jersey Transit to renew efforts to ensure that homeless people are not discriminated against at train and bus stations. Both groups had been negotiating for several months and were optimistic that litigation could be avoided. When the weather grew colder, the ACLU received several complaints from homeless individuals, who had been told to leave the rail and bus stations. The NJ Transit did not plan to change any of its policies regarding homeless people, but instead wanted to make sure that its employees applied them consistently. The agency's code of conduct prohibits disrobing or bathing in station bathrooms, spitting, urinating, or defecating in public, drinking alcohol, panhandling, blocking access to seats and entering non-public areas of the transit.

Richard Kreimer, a homeless man who gained national attention when he sued the Morris Township public library over its treatment of him, also sued the NJ Transit for at least \$5 million in damages. Kreimer filed the suit, because police told him that he was loitering on a bench outside the Summit train station. "As soon as you walk into a train station and you look like a bum, the cops come over to you," said Kreimer. A few months later, Kreimer sued a bus company, alleging that it refused to allow him and other homeless men to board buses while allowing clean-cut passengers to ride. In each instance, he claimed that he had a valid ticket for the bus but was prevented from boarding.

Officials in wealthy, suburban Summit, New Jersey are using the USA Patriot Act to justify forcing homeless people to leave a train station – an action that sparked a \$5 million federal lawsuit by Kreimer. Officials argue they are protected by a provision in

the Act regarding attacks and other violence against mass-transportation systems. However, Edward Barocas, legal director of the American Civil Liberties Union of New Jersey, said in *The Seattle Times*, that their defense is weak. “Nothing in the Patriot Act lets them kick homeless [people] out of train stations and such action is unlawful,” said Barocas.

Norwalk, CT

In March 2005, community leaders argued that a proposed anti-loitering ordinance and passage of legislation prohibiting panhandling came dangerously close to violating the civil rights of poor people and minorities. “The belief down here on the street is that developers are moving in and they want a lot of folks down here out. And when you propose ordinances such as those, it kind of reinforces that,” said Common Councilman Carvin Hilliard. Abraham Heisler, a Norwalk housing attorney, countering the city’s argument, disagrees, “The law already says you can’t create a public disturbance or engage in disorderly conduct [...] So why do we need new statutes unless it’s to keep poor people out of designated parts of town?”

Both ordinances were written in response to business owners’ complaints about panhandling and loitering in municipal parking lots or on public sidewalks outside of their stores. Former Mayor William Collins revealed that “the people that live around or come in on business and want to be entertained there are somewhat dissuaded by the fact that they have to share the turf with some very poor people.” Supporters of the ordinances argued that they would improve the quality of life and provide the police with a way to crack down on drug dealing and inappropriate behavior. However, Reverend Lindsey Curtis, president of the Norwalk NAACP, believes that the city should seek other alternatives, such as offering more homeless services or building a youth center, when addressing panhandling or youth loitering in Norwalk.

Orlando, FL

A local chapter of Food, Not Bombs was asked by security guards and police officers to leave a public area when they tried to feed homeless men and women. They were told inaccurately that they needed a permit to feed homeless people and that all of downtown was a “no feeding” zone. Some police officers have told them that feeding homeless people is legal, but other police officers have threatened to arrest them. The leader of Orlando’s Food, Not Bombs, Missy Zandy, said that the group has no plans to stop handing out food, asking, “You can feed the pigeons, but you can’t feed the homeless [people]?” In response to a similar incident, Ripple Effect founder Kelly Franklin said, “We’re tired of this ‘you can’t be here’ crap.”

Palo Alto, CA

In a survey of Palo Alto business owners, loitering and panhandling received the most votes as an “urgent concern” to the downtown business area. Some merchants contend that perennial loiterers, panhandlers, and people who habitually nap or sit on public

sidewalks are nuisances who detract from the upscale ambiance of University Avenue. One area resident said, “We should run them out of town.”

Business owners are pressing for stricter enforcement of the “sit/lie” ordinance that states, “No person shall sit or lie down upon the public sidewalk, or upon a blanket, chair, stool, or any other object placed upon the public sidewalk adjacent to either side of University Avenue...during the hours of 11 a.m. and 11 p.m.” The business community is also hoping to replace some of the benches with others that aren’t as comfortable to dissuade people from napping or sitting for long periods of time.

The concerns of business owners that homeless people harm local business interests stand in stark contrast to tax figures that show that the University Avenue district is having its best sales period in two years. One local business owner said he finds the homeless population harmless, “It hasn’t bothered us. They have a good level of self-control.”

Patchogue Village, NY

In November 2005, Patchogue Village executed “Operation Clean-Sweep Patchogue,” a citywide crackdown on “quality of life” issues, such as drinking in public, loitering, and panhandling. Patchogue Justice Christopher P. McGuire will open the Village Justice Court some weeknights and weekends to arraign the violators, so the influx will not interfere with regular court proceedings. According to Mayor Paul Pontieri, “[this] is an effort to put a stop to violations such as drinking in public, loitering, panhandling, and other quality-of-life violations. This effort will further improve the quality-of-life for our residents and make Patchogue a more attractive place for people to dine, shop, and enjoy a show.”

Paterson, NJ

In July 2005, police received calls from concerned residents about a group of homeless men who lived in tents along the banks of the Pompton River, citing intoxication as their biggest concern. The city sent officials to the wooded river area to both clean up the garbage in the camp and drive the men from the area with state permission. However, Tim Carlucci, a Paterson resident and member of Calvary Temple, believes, “The problem is more than homelessness. There is a drug and alcohol problem in that area, and it’s causing homelessness.”

Portland, OR

In December 2004, Portland took steps to address the problem of homelessness when it announced a new 10 year plan to end homelessness. The plan focuses on moving people directly into affordable housing instead of crowding them into shelters. While homeless advocates support the plan, they object to the city’s recent criminalization of homelessness.

The Portland City Council expanded the list of offenses within city parks, as well as passed another ordinance that permits the police to arrest anyone who obstructs pedestrian traffic downtown.

A fatal shooting in December 2004 left many shoppers and business owners questioning the safety of downtown Portland. Although the shooting was not related to panhandling, merchants argued that the shooting demonstrated that the city has not done enough to curb panhandling and improve the downtown's image. Despite complaints, Police Bureau statistics show that the city is much safer than it was in the 1990s. Reported crimes dropped by thirty percent from 1996 to 2003.

"Panhandling is misunderstood," argued the Sisters of the Road Cafe in May 2005. They pointed to a recent study analyzing data from 522 interviews with homeless men and women. Only 72 reported panhandling was an income source. The top three expenses that panhandling money went to were tobacco, food and hygiene items, or money for laundry. Only 25 of 72 panhandled for drugs or alcohol. The data corresponded to what the Sisters of the Road Cafe have been telling people for years: panhandling buys food after the rent is paid and food stamps are spent.

Letters to the *Street Roots* newspaper detailed a discussion centered on an aggressive anti-panhandling law that was being considered in June 2005, including sentiments that the criminalization of panhandling was mean-spirited and unworthy of its citizens. A local resident commented that she had never felt threatened or intimidated by a single panhandler on the streets, and if there are individuals on the street assaulting, raping, mugging, or harassing others, you already have laws in place to deal with them.

Also in Portland, Wayne Stump, who is homeless by choice on a campaign called Dignity Matters, says he does not agree with recent ideas that city leaders have raised to quell concerns about panhandling in the downtown area. City commissioners have suggested posting signs urging people to give money to social service agencies rather than panhandlers. Portland police also are researching programs in other cities that require a license to panhandle. Stump mentions in the *Portland Tribune*, "I am willing to spend 365 days outdoors if it will help get the City Council's attention and stop putting more bans on panhandling."

In addition, Portland anti-nuisance policies designed to keep people off public property and out of public places increasingly target homeless people. Under pressure from businesses, local officials have taken a tough stance against a growing homeless population, imposing ordinances and policies to make areas off-limits that were once a safe haven for people with nowhere to go. But the zero-tolerance tactic, meant to improve the city's livability, has backfired. The "hidden homeless" are now spilling into neighborhoods and downtown corridors, as well as onto doorsteps of businesses and homes, fueling a perception that Portland's homeless problem is worse than ever.

Business leaders, fed up with aggressive panhandlers and loiterers, have advocated for tighter restrictions on the homeless population, who they say drive away shoppers and

tourists. In the 2004 Portland Business Alliance census and survey, downtown business owners and managers ranked panhandlers and “transients” as the top two factors needing improvement, over the cost of parking, taxes and business fees. In response, the Portland City Council passed a sidewalk ordinance in late 2004 under then-Mayor Vera Katz, giving police broad powers to ticket people for blocking downtown walkways. The ordinance, a pilot project in effect until May 2006, makes it illegal for people to sit in front of businesses with their legs extended or drape their belongings over sidewalks during business hours. It also prohibits blocking window displays and sitting in the downtown bus mall.

Police must warn violators before citing them, says Central Precinct Commander Dave Benson, and only a few tickets have been issued since early May 2005. At the same time, the council expanded its enforcement of ordinances regulating city parks, increasing the number of offenses that can get a person thrown out without warning, as well as lengthening the time – up to 90 days – a person can be barred from re-entering a park. Sidewalk and park ordinances carry penalties up to \$500 or six months in jail. The Oregon Department of Transportation (ODOT) has also clamped down on common campsites under bridges and freeway overpasses. After spending \$15,000 over time to routinely sweep campers off of state property and removing dump trucks of debris, ODOT maintenance and operations manager Karla Keller came up with a new solution, called “transient deterrent fencing.” In the past two years, the state has installed about 27 cages over common homeless camp sites, using money for potholes to pay for fencing and planting roses in grassy dividers. “What we’re trying to avoid is being a maid service,” Keller says. “We don’t want them just moving back in. It’s a revolving expenditure for us.”

The ODOT continues its work by using strategically placed barriers to shut down illegal campsites under Portland’s bridges in hopes of enforcing the state law that prohibits illegal camping in the interest of health and safety. The camps are sometimes dangerous because they may be located close to busy highways or rail tracks. They also draw complaints from neighbors and nearby business owners, who accuse the transients of breaking into cars, vandalizing property, and other crimes.

The ODOT collaborates with Portland police officers to sweep people out from under the bridges, giving at least 24 hours notice before removal and storage of personal belongings for 30 days. Advocates for the homeless population say ordinances that make it illegal for people to be in public places unfairly target those with nowhere else to go. According to Ed Johnson, a lawyer with the Oregon Law Center, there are no daytime drop-in centers, and many emergency shelters close during the day, forcing people into the streets every morning. Anti-nuisance ordinances sweep the poor out of sight, he says, without offering real solutions to poverty.

In November 2005, Portland Mayor Tom Potter unveiled his new strategies to fight crime in the downtown area. One new strategy would place an immediate 9 p.m. curfew in the South Park blocks, an area that has been the source of several complaints from business

owners and residents. Pedestrians can still walk through the park but anyone “loitering, harassing visitors or using the park to camp will be arrested,” Potter said.

Portsmouth, NH

An ordinance regulating panhandling was proposed by City Councilor Laura Pantelakos after several men approached her with buckets asking for money. “I want panhandlers – anybody who is going to panhandle in our city – to be identified, and I do not want them to be allowed to go out in the streets to chase the people,” said Pantelakos. When she complained to the police, they responded that the city has no regulations governing panhandlers. The city has received few complaints about panhandlers. Critics of the proposed ordinance questioned why the law was necessary given that the city has disorderly conduct and vagrancy charges for anyone exhibiting aggressive or menacing behavior. An editorial in *The Portsmouth Herald* believes the ordinance “[...] could give the city the ability to simply sweep the streets of those who are down on their luck; to put them somewhere they will not be seen or interfere with the moneyed gentry who now occupy this once shoddy and rowdy Seacoast town.”

As the weather grows warmer, the Portsmouth Police Department receives more complaints about homeless men and women. Residents of Greenleaf Avenue said people were living in the brush near their backyards. The police explained that as the seasons change, homeless people are more likely to be found in wooded areas and around the railroads. People with alcohol and drug problems are also more prone to camp outside than stay in cramped, regulated homeless shelters.

Over the past year, Portsmouth police have arrested 42 residents of the Cross Roads House homeless shelter. The local police department also issued 36 no-trespass orders to residents at the 600 Lafayette Road Shelter, six citations for people living in the wooded area behind it, and even more no-trespass orders for the woods behind Margaritas restaurant, an area known as “Tent City” for its homeless encampments. Meanwhile, beat officers move some of the homeless population off park benches and railroad tracks, as well as out of neighborhood backyards and cemeteries.

Rapid City, SD

Food Not Bombs, an organization that serves meals to homeless people in the back parking lot of Prairie Market, was told to stay off the property. Businesses and residents in the area had concerns about the feeding program. Capt. Steve Allender of the Rapid City Police Department said that Food Not Bombs’ meal program “creates additional problems in an area people are trying to improve.” Allender went on to say that, “I’ve talked with business owners who believe they’ll have to move from the East Boulevard area because they can no longer tolerate the transient people in that area.” However, Food, Not Bombs’ lead volunteer, Ashley Heacock says the situation is “[...] frustrating [because we’re] not bringing people there. We’re there because they’re there.”

Redondo Beach City, CA

A federal court extended its order prohibiting the city of Redondo Beach from arresting day laborers for violating a local ordinance against soliciting work in public. The court found that there are “serious questions” about whether the city’s day laborer ordinance is constitutional. The city’s laborer ordinance has been on the books since 1987, but the city increased enforcement in October. Dozens of men were arrested by undercover police officers posing as people seeking to hire workers. The court’s ruling suspends arrests against day laborers until a lawsuit challenges the ruling.

Rochester, NY

Since a new panhandling ordinance went into effect in June 2005, 40 people have been arrested because of “aggressive panhandling.” Residents and city officials agreed that people stopping cars on the street, or asking people for money has declined. The ordinance bans panhandling in garages, bus shelters, skyways, and tunnels, and near banks and ATMs, and makes it illegal to harass people for money. Those caught violating the law face fines and a second violation results in a 15-day jail sentence. Homeless advocates argue that the law does little to address the problems behind panhandling. “I think our system has unfortunately failed these people,” said Rita Lewis, who works with homeless people at the House of Mercy. David Atias, a local activist, added, “[he] was disappointed that rather than look at something that was long-term and actually worked on the real problem, they [the city of Rochester] went for what appeared to be a quick fix.” Many of those who panhandle are both impoverished and suffering from mental disabilities and addictions that cannot be cured by incarceration.

Sacramento, CA

The city’s law on illegal camping brought homeless man Michael “Gremlin” Tinius, 44, before a jury where he tried to challenge one of his illegal camping charges as well as laws that ban homeless people from camping in alleys, doorways, and along the river. Sacramento County Park Ranger Tim McElheney said rangers have warned Tinius 29 times and arrested him 14 times since 1999 for illegal camping, drinking in public or having his dog off a leash. Rangers also destroyed his paperwork rendering him unable to apply for benefits that provide him with housing and opportunities for work and services.

Tinius is certainly not the only person experiencing homelessness to have to deal with the burden of unlawful camping tickets. In the fiscal year 2004-2005, 858 unlawful camping cases went in front of the city attorney. Police officer, Mark Zoulas, reports that one man went to jail ten times for a single unlawful camping offense. These cases represent hours of work by police officers, city attorneys, judges, public defenders, and jail employees. Assistant Public Defender, Tommy Clinkenbeard, argues that those resources would be more effective if they were reallocated to shelters and services that help homeless people get off the streets. “Anybody with half a brain and even the IQ of a rock has to know that this isn’t doing any good,” said Clinkenbeard.

Advocates argue that ticketing for activities that are inherent to homelessness turns a social problem into a criminal one. Once a ticket is issued, a vicious cycle begins whereby the unpaid ticket turns into a warrant, which then leads to arrest. Arrest then hinders a person's ability to find employment, an apartment, and access to services. "It's like you've got to pay a fine to the police for being homeless," said a local homeless man, Prentice Wysingle, III. The penalty for an unlawful camping ticket can be a fine of up to \$147, jail time, or community service.

Salt Lake City, UT

The city library system launched a new civility campaign designed to teach homeless men and women, as well as children, how to behave while in the library. The campaign was in response to the main library being filled with homeless people, who sometimes bother other library patrons with their odor, intoxication, or noise. "We tend to be a de facto shelter during the day for a lot of homeless," library systems administrator Chip Ward said. Library administrations also planned to begin communication and collaboration with social service providers. Library systems director Nancy Tessman said that the library acts as a barometer for the homeless population with regard to the rest of the city. "We know that the numbers [of homeless persons] are increasing, and the needs are not being met."

San Bruno, CA

Enforcement of an ordinance restricting drinking in parks was seen by several homeless men and women as an effort to create hardship and displace them. John Redmond, a homeless man living in San Bruno, said, "We are not happy about the new law. It keeps us hiding and on the move. It makes our lives more difficult – if that's possible." The city claimed that the law was not targeted at homeless people, but rather designed to control visitors who generate empty beer bottles when renting picnic tables. However, Harry Costa, the city's former Chamber of Commerce CEO, said he would be happy if the new law succeeded in dispersing homeless people. "I think that the homeless are bad for anybody's business...anything that will help clean up the community a bit helps."

San Diego, CA

In a lawsuit filed against the City of San Diego and the San Diego Police Department, a group of volunteer lawyers accused the police of violating the constitutional rights of homeless San Diego residents by ticketing or arresting them for sleeping in public. The plaintiffs argue that tickets and arrests for illegal lodging violate their constitutional protection against cruel and unusual punishment. The lawsuit was filed on behalf of nine homeless persons who were issued tickets on nights when social service agencies had no shelter beds available. These plaintiffs represented between 4,000 to 5,000 homeless people who live in San Diego and have no place to go because of lack of available shelter beds in the city.

One of the lawyers, Tom Cohelan, commented, “The issue is whether being homeless is a status crime – whether homeless [people] are being prosecuted for existing.” Cohelan and the other lawyers wanted the federal court to stop the police from issuing tickets unless the city provides a safe zone where homeless persons can sleep without fear of being cited. They noted that the increase in citations points to a systematic attempt to push homeless people out of certain parts of the city.

In April 2005, the police and prosecutors launched a homeless sweep along the San Diego River that displaced several camps. They offered homeless men and women treatment programs and housing. Sentences for drugs and stolen property ranged from volunteer work to mandatory participation in detoxification centers.

San Luis Obispo, CA

Library employees were given the authority to tell homeless people to leave the premises when an informal rule against foul smelling patrons became official in February 2005. Under this policy, patrons who are kicked out can be denied access to the library if they refuse to leave. Critics of the policy commented that the community should look into providing free shower facilities and public bathrooms rather than kicking people out of the library.

Santa Cruz, CA

Attorneys Kate Wells and David Beauvais, acting on behalf of several homeless organizations and advocates, sent a letter to the City Council in December 2004 outlining plans to challenge specific city ordinances in court. The ordinances in question were ones that “injure and prejudice” homeless people. They included laws that forbid sleep between 11 P.M. and 8:30 A.M. anywhere in public, prohibit covering up with blankets during the same hours, and prohibit protecting oneself with a tent or tarp overnight. Wells and Beauvais described the ordinances as unconstitutional, inconsistently applied, and morally unacceptable. Wells called for the city to take immediate positive steps to address the criminalization of homeless people in Santa Cruz. Wells asked that the city suspend the sleeping, blanket, and camping bans throughout the winter or designate safe places, and dismiss all present and past citations issued when all emergency shelter space was full. Last winter in Santa Cruz, there was shelter space for only 160 people; there is an estimated 1,500 to 2,000 people experiencing homelessness. The attorneys believe that these laws force homeless individuals to hide from law enforcement, thereby denying them the safety of camping or sleeping together. They also believe it discourages homeless people from using police services for protection, makes it riskier to sleep near emergency services, and exposes homeless women to greater risk of rape.

In October 2005, the Sheriff’s Office cleared a homeless encampment located between Carbonera Creek and the county governments’ Emeline Street complex. The camp was known for some of the criminal activity that took place there, including drug sales and use. It was also cited as an environmental hazard and a safety hazard to the public. All of the campers had cleared out before the Sheriff’s Office arrived and no arrests were

made. Ken Cole, Executive Director of the Homeless Services Center, noted that, “Although the Police Department might have good environmental and safety reasons [for dismantling the camp] the reality is there is no place for [...] homeless [people] to go. There are not enough emergency shelters, not enough housing, not enough drug and alcohol treatment centers. What the police are doing is moving the problem onto another greenbelt area.”

According to the 2005 Homeless Survey Census, there are at least 3,371 homeless people in the county, 79% of which are without shelter.

Savannah, GA

Despite the Savannah Homeless Authority’s 2004 report that the city’s ordinance, which prohibits begging, street performers, and spitting, has cut the city’s homeless population from 7,000 to 3,500, homeless people attest they have just learned to hide in order to survive on Savannah streets. Aggressive police force has been used since 2002 to send violators to jail, in which mandatory work programs are a part of their sentence. These same work programs would provide temporary paid employment for homeless individuals before their arrests. Many service providers are reluctant to criticize the city’s policies, because they are worried their funding will be severed.

Sioux Falls, SD

As a result of complaints about litter, loitering, parking violations and human waste outdoors, the City Council began to consider an ordinance that would regulate temporary employment offices, such as Labor Ready. It should be noted that the Health Department visited and cleared Labor Ready on two occasions. The law would ban temporary employment agencies within 2,000 feet of each other and within 1,000 feet of a public park, elementary, or high school. Offices would also be required to provide indoor waiting areas and restrooms. Agencies would have to submit a smoking policy and employee training procedures and then describe how they would supervise waiting workers. Offices next door to residentially zoned areas would not be able to operate between 8 P.M. and 6 A.M. Labor Ready district manager, Dale Erickson, commented, “We’re doing all these things [that the ordinance prescribes], except for the hours. We can’t have our hours of operation dictated. Our customers expect us to be open so we can get workers there on time safely.” Labor Ready branch manager, Olivia Hendrickson adds, “A lot of families live paycheck to paycheck, and when that job isn’t there all of a sudden, they need somewhere to go. I don’t feel like people in this process have wanted to hear how we were able to get people on less public assistance or help them put food on the table or pay an electric bill.”

A proposal for a new city ordinance will be forwarded to the Sioux Falls planning commission and could be ready for the City Council in November 2005. The proposed ordinance would require groups wanting to open temporary or emergency shelters to seek a conditional use permit from the city, locate at least 1,000 feet from a school, seek a compatible location that would not harm the existing neighborhood, hold a neighborhood

meeting before the conditional-use permit was sought, and submit a site and security plan for the shelter.

Somerville, MA

In August 2005, police in Somerville became suspicious of a homeless man, who they mistakenly believed to be a terrorist posing as a homeless person. Upon questioning, they discovered he had a passport from a “country of interest,” such as a Middle Eastern or South Asian nation. Police approached the man as he slept near the Davis Square Social Security Office, which is a federal building. He was apparently unfamiliar to officers, so they decided to question him. He was eventually released.

The U.S. government is now warning that terrorists may pose as “vagrants” to conduct surveillance of buildings and mass transit stations to plot future attacks. An e-mail that circulated among federal employees in Washington, D.C. warns police, fire and emergency personnel to be aware of “vagrants” who seem out of place or unfamiliar. The memo goes on to state that homeless people easily blend into urban landscapes and that “this is particularly true of our mass transit systems, where homeless tend to loiter unnoticed.”

Mark Alston-Follansbee, executive director of the Somerville Homeless Coalition, said, “These are folks who are at the bottom of the barrel, and they get blamed for all kinds of problems in our society. I think if our society spent more thinking about helping them get homes, there’d be less of this kind of hysteria.”

Spokane, WA

In March 2005, Spokane began to address aggressive panhandling in a non-traditional way. Betty Findley, Vice President of Downtown Community Oriented Policing Services (COPS), called for local charities that serve homeless people to “select frequently panhandled areas and solicit donations for their organized causes in competition with the individual panhandlers.” However, Sister Pattie Beattie of Interfaith Hospitality Network, asked, “Are there only homeless who are panhandling? [If not,] then we need to look at the wages we pay people.” In response to the proposal, the Spokane Homeless Coalition solicited the media and advertising companies to produce Public Service Announcements (PSAs) on homelessness in Spokane. The city does not plan on banning panhandling by passing new ordinances. “We already have enough ordinances on the books,” said Marilyn Saunders, the Director of Spokane COPS.

Springfield, MA

City officials supported an ordinance proposed in January 2005 that would ban encampments of homeless people in “tent cities,” by arguing that groups living in tents pose various hazards. The Springfield City Council acted in response to a six-month long tent city constructed by Arise for Social Justice. The hazards cited by officials included

cleanliness and sanitary concerns depending on the availability of running waters and toilets, fires from cooking on campfires, and problems with alcohol and drugs. Even though neighbors complained about the tents, the police and fire officials said that the tent cities were virtually problem free.

The ordinance would also authorize fines of \$50 a day, against private property owners that allow tent cities. “We don’t want to run into a situation where a landowner is going to allow this to take place and the police can’t go on private property,” said Councilor Angelo J. Puppolo, Jr. However, Springfield’s overnight shelter is only funded through March, making more tent cities possible in the near future.

Stamford, CT

After reports of crimes near Interstate 95 in January 2005, city and state officials swept a homeless camp, discarding people's beds and other belongings from under the highway. About twenty men lived under the highway, but only one stayed in a shelter after the sweep. The men that lived there would leave the area in the morning to find work as day laborers or go to steady jobs in the building trades.

Reverend Jerome H. Roberts of Shelter for the Homeless explains that outreach workers are all cognizant of people who choose not to live in shelters, a right which should be respected by both workers and city officials. Police address anyone they see loitering or sleeping in public places, such as the mall, although Roberts believes it is difficult to target homeless persons in Stamford, because the affluent community is not exposed to the homeless problem. With regard to panhandling, Roberts notes that stricter welfare laws and government time-constraints have made it more difficult for single individuals to secure benefits. While Stamford is a service-rich community, Roberts also points out that not all living expenses are covered by shelters and city-funded programs. He says, “Unless we are willing to tolerate felonies, we need to be flexible [about panhandling],” referring to the possibility that people might resort to more drastic measures to survive. He adds that “America is very quick to respond to needs outside its borders, but rather slow to respond to those in its own nation.”

St. Augustine, FL

Social service agencies reported serving more people since Jacksonville started cleaning up the city for Super Bowl XXXIX in January 2005. The Emergency Services and Homeless Coalition requested a temporary shelter to house additional homeless persons during the Super Bowl.

More specifically, Tammy Byrer of Saint Francis House says open container laws are routinely enforced against homeless people. There is also substantial pressure on City Hall to curb panhandling and loitering outside Saint Francis’s facilities, especially from the church across the street from the shelter. An overall gentrification of the area has created an unofficial policy to decrease the visibility of homelessness, because it detracts from tourism revenue. Byrer herself has been treated unprofessionally by police officers

in her city during a meeting to discuss homeless issues. The City Council does not want to build a parking garage downtown, because they are afraid it would attract homeless people, especially overnight, and suggested that homeless people may rape tourists in the complex. In addition, the City Council has suggested moving Saint Francis House to rural Hasting, pushing both homeless people and services that aid them out of sight.

Ukiah, CA

Responding to complaints from business owners, the city passed tough, new panhandling and camping ordinances in February 2005. Under the new ordinance it is illegal to panhandle in an “aggressive” manner or obstruct traffic, panhandle on public transportation, within 20 feet of a check cashing business, supermarket, retail store or automated teller machine without consent from the owner. The newly passed camping ordinance makes it illegal to camp on public or private property without permission of the owners. If permission is given, camping must not be done in a way that creates a “nuisance.” It is also illegal to live in a car or recreational vehicle, on public or private streets, alleys, and parking areas.

First time offenders can receive a citation and a fine for \$300, while repeat offenders can be charged with a misdemeanor, jailed, and fined up to \$500. “I’m shocked by this professional abuse of power. Where do we go? We’re not cockroaches,” said homeless veteran, Julie Bell.

The new ordinance has all but cleared out the visible face of homelessness. Some people have moved into a shelter, while most individuals moved just outside of town. Others went searching for a more tolerant city to call “home” or learned to “hide a little better.” Mary Buckley, Executive Director of Plowshares, hopes that residents don’t think that the problems associated with homelessness stem from being too nice to them. She noted the housing shortage, high unemployment, and insufficient services for the mentally ill.

Ventura, CA

In December 2004, Ventura police and other authorities conducted a sprawling sweep of the riverbed area to uproot illegal encampments that have existed there off and on since World War II. Storage of people’s belongings was provided for 90-days and a three-day live-in triage called Camp Hope was set up. The camp’s goal was to assist people in planning for relocation, now that they would not be permitted to inhabit the river bottom, as well as provide them with medical and other services. Those encountered were relocated to the city’s warming shelter in midtown, which many young adults have vowed to avoid. In Ventura, there has been a growing number of younger faces that are becoming more and more visible on Main Street, which has led to public concern.

Police officers have also begun using certain “enforcement” tactics against homeless people in the downtown area. One such tactic is telling homeless individuals, who are sitting in the parks during daylight hours, that they are illegally camping and if they do not move on, they will be ticketed. There have also been reports of destruction of the

property of homeless individuals and unlawful searches of bags and belongings. Additionally, the city has approached certain “legitimate” service providers to ask them to develop some agreement by which “nuisance offenders” would be denied services by these agencies. These offenders are defined as those who repeatedly engage in specific behaviors such as aggressive panhandling, urinating or defecating in public, drinking in public, public drunkenness, engaging in sexual acts in public, and other similar offenses.

To help battle the rising homeless population, Catholic Charities offered a 12-week, free culinary arts program for jobless people who want to enter the food service industry. Having a job may not be enough though. A local real estate consulting firm found that the average rent for a two-bedroom apartment is about \$1,300 a month. A person earning minimum wage would have to work 113-120 hours a week to afford that.

Wahiawa, HI

Officials evicted a group of homeless men and women under a bridge in Wahiawa citing health and safety issues as the reason. The Department of Transportation gave around 15 families two weeks notice to leave.

Washington, DC

Students interviewed at George Washington University in January 2005 revealed that seeing homeless people on a daily basis required some adjustment when they first arrived in D.C. Students agreed that the campus does a good job of keeping homeless individuals off the campus. They were more likely to see them wandering the outskirts of campus. The university’s protocol prohibits homeless camps in the buildings or on the property. While some students expressed fondness for homeless people they see frequently, many students revealed that they felt uncomfortable walking home alone.

According to Ann Marie Staudenmaier, an attorney at the Washington Legal Clinic for the Homeless, surveys conducted by the Washington Legal Clinic for the Homeless and the National Law Center on Homelessness & Poverty over the past few months show that various police agencies are unfriendly toward homeless people and frequently target them for harassment. These surveys show “[...] that both the Metro Police Department and U.S. Park Police [...] frequently approach homeless persons who are not violating the law in any way and either demand to see their ID, search their bags, or move them out of the area.” Staudenmaier also notes that camp “sweeps” are prevalent, and that police may be violating city’s Memorandum of Understanding the Washington Legal Clinic helped draft, by not providing sufficient notice and not storing people’s belongings when clearing out public spaces.

Wichita, KS

Shocked at the sight of elaborate campsites set up along the river and in back alleys and bridges, Wichita police have begun brainstorming what can be done to address the number of homeless people crowding downtown parks and bridges. In June 2005, the

police and city's legal department began drafting an ordinance that would ban camping and tent-type structures inside city limits. Homeless service providers said that it was not enough to force homeless people to move out of downtown and from the river because they have nowhere to go. "My heart goes out to these guys. Most of the men I talk to would like to go to work. Some of them need job training -- maybe all they can do is construction work -- and a lot of the men don't have the clothing they need to go out and look for work," said Judy Epperson of the Wichita Homeless Coalition.

Woodstock, IL

In April 2005, local merchants asked the City Council for help dealing with a number of homeless people disrupting business and harassing employees and customers. One business owner said, "My staff is afraid to stay there alone." Nonetheless, they agreed that not all homeless men and women were the problem, only a small number who had obviously been drinking.

The Public Action to Deliver Shelter came under heat from the City Council because of claims that their "no drinking policy" was not being enforced. The shelter responded that their no drinking policy is strictly enforced and that there really is nothing it can do about controlling homeless behavior off site.

Case Summaries

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

A. Federal 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 report that they have not heard of police harassment since the suit was filed and are continuing to monitor the situation.

Amster v. City of Tempe, 2001 U.S. App. LEXIS 9239 (9th Cir. 2001). The Ninth Circuit rejected plaintiff's facial challenge of a Tempe ordinance requiring a person wishing to sit or lie down on a city sidewalk for certain types of events first to obtain a permit. Amster had organized several demonstrations on the city's sidewalks without first obtaining permits, although the city had never actually enforced the ordinance during one of his demonstrations. The court found that the ordinance regulated conduct, *i.e.*, sitting or lying on a public sidewalk that was not expressive by itself.²⁰ Accordingly, the ordinance survived a facial challenge.

Ashcraft v. City of Covington, No. 02-124-JGW (E.D. Ky. Sept. 23, 2003). Homeless individuals brought a § 1983 action against the City of Covington, Kentucky, and its mayor alleging violations of their Fourth, Fifth, and Fourteenth Amendment rights when city employees and police raided their camps and seized their property. In reviewing cross-motions for summary judgment, the federal magistrate judge found that the plaintiffs were not trespassing, and therefore had a reasonable subjective privacy interest in their property. The plaintiffs' Fourth Amendment claim thus survived summary judgment. The magistrate also found, however, that there was no substantive due process violation, and that the city's defense of qualified immunity could stand for the other claims. The case settled in 2004 – each of the 5 plaintiffs received \$1000 and their lawyers received attorney's fees.

²⁰ The Ninth Circuit relied heavily on its holding in Roulette v. City of Seattle, 97 F.3d 300 (9th Cir. 1996). See *infra*.

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

In February, 1994, plaintiffs challenged two recently enacted Berkeley ordinances prohibiting sitting or lying down on a sidewalk within six feet of the face of a building during certain hours and soliciting in certain locations or in a “coerc[ive], threaten[ing], hound[ing] or intimidat[ing]” manner.²¹ 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.²² Defendants appealed the court’s decision on the anti-solicitation ordinance to the Ninth Circuit, but the case was settled before the appeal was heard.

Betancourt v. Giuliani, Case No. 04-0926 (2d Cir. 2005).

Augustine Betancourt brought suit against the Mayor, Police Commissioner, and the City of New York for his arrest under Section 16-122(b) of the New York Administrative Code. The arrest occurred late in the evening on February 27, 1997. Plaintiff entered Collect Pond Park in lower Manhattan with some personal belongings, three cardboard boxes, and a loose piece of cardboard. Betancourt made a tube out of the cardboard and slipped inside it on a park bench. He was arrested for violating the statute which 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.”²³ 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.²⁴ The court, reasoning that the statute did not penalize “merely occupying” public space but rather

²¹ 902 F. Supp. at 1086.

²² Berkeley Community Health Project v. City of Berkeley, 902 F. Supp. 1084 (N.D. Cal. 1995)(order granting preliminary injunction).

²³ 2000 U.S. Dist. LEXIS 18516, at *3.

²⁴ Id. at *5.

obstructing public space, held that the statute did not penalize the right to travel.²⁵ Accordingly, the court rejected both arguments and considered whether the statute was vague as applied to Betancourt, under a standard which it characterized as “fairly stringent.”²⁶ The court found that the statute passed muster under this standard and granted summary judgment in favor of defendants. 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, again arguing that the statute is unconstitutionally vague because it does not provide sufficient notice of the conduct it forbids and does not provide adequate guidelines to law enforcement. Betancourt argued that no reasonable person would consider the statute’s terms “shed” and “building” to be in the same category as the “cardboard tube” Betancourt had slipped into. Moreover, Betancourt argued that he was not “obstructing” anything, any more than a person sleeping on a bench in an overcoat would. Regarding minimum guidelines to govern law enforcement, Betancourt contended that the “police confusion and judicial hairsplitting” in the court below evidenced that the statute does not provide adequate guidelines. Betancourt also argued that the statute is unconstitutionally overbroad as applied, that Betancourt was arrested without probable cause, and that the statute violates Betancourt’s fundamental right to travel. The parties are awaiting a decision from the appellate court.

Cash v. Hamilton Department of Adult Probation, 388 F.3d 539 (6th Cir. 2004) *cert. denied*, City of Cincinnati, Ohio v. Cash, 126 S. Ct. 396 (Oct. 3, 2005) (NO. 04-1569) and *cert. denied*, Hamilton County Department of Adult Probation v. Cash, 126 S. Ct. 545 (Oct. 31, 2005) (NO. 04-1631).

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/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. The case is back in district court.

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

The ACLU of Hawaii sued the governor and Hawaii’s Attorney General on behalf of The Center (a nonprofit organization providing services for lesbian, gay, bisexual, transsexual, intersex, and questioning Hawaiians), Waianae Community Outreach (a nonprofit organization providing services to the homeless), and an individual plaintiff to seek an injunction barring the enforcement of a criminal trespass statute. Plaintiffs alleged that the statute violated the First and Fourteenth Amendments as well as the Hawaii

²⁵ Id.

²⁶ Id. at *6.

Constitution. The statute, passed as Act 50, allows authorities to ban a person from any public property for up to one year, after issuing a written trespass warning statement. The individual plaintiff was allegedly banned from Hawaii public libraries for a year for looking at gay-themed web sites on library computers. Plaintiffs also contended that the statute has been used to ban homeless persons from public beaches and public parks and to threaten homeless persons to leave certain public property immediately.

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

The ALCU lawsuit, combined with strong opposition from other homeless service providers, sparked the legislature to consider a repeal of Act 50. The legislature ultimately did not completely repeal the law, but came up to a compromise with legislators concerned about squatters. The law as passed does not allow police or others to ban individuals from public property, but it does create a petty misdemeanor offense for criminal trespass if an individual remains in a public park or public recreational grounds after an officer tells him/her to leave, pursuant to a posted sign or notice governing the activity on the grounds. The ACLU continues to worry about discriminatory enforcement. The governor signed the new bill into law on July 8, 2005. The ACLU is presently in settlement negotiations with the state.

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 the city, 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.²⁷ 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

²⁷ Church v. City of Huntsville, No. 93-C-1239-S, 1993 U.S. Dist. LEXIS 20429 (N.D. Ala. Sept. 23, 1993)(order granting preliminary injunction).

unlikely to succeed on the merits.²⁸ 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.²⁹

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

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

The Supreme Court affirmed the judgment of the Illinois Supreme Court and ruled the ordinance violated the due process clause of the fourteenth amendment to the U.S. Constitution for vagueness. Specifically, the court ruled that the ordinance violated the requirement that a legislature establish guidelines to govern law enforcement. Additionally, the ordinance failed to give the ordinary citizen adequate notice of what constituted the prohibited conduct – loitering. The ordinance defined “loitering” as “to remain in any one place with no apparent purpose.”³⁰ 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.³¹ 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

²⁸ Church v. City of Huntsville, 30 F.3d 1332 (11th Cir. 1994). The Eleventh Circuit held that the plaintiffs did not have standing to challenge the city’s application of its zoning and building codes.

²⁹ Church v. City of Huntsville, No. 93-C-1239-S (N.D. Ala. Sept. 30, 1994).

³⁰ 528 U.S. at 51 n. 14.

³¹ Id. at 53.

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.³²

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.³³

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.³⁴ 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 individuals and the Coalition settled the lawsuit. Under the terms of the settlement, the city agreed to issue a directive to the police forbidding them from picking up and transporting homeless people against their will; to issue a public statement that violating homeless people's rights to move around downtown Cleveland is not and will not be city policy; to pay \$9,000 to the Coalition to be used for housing,

³² Clark v. City of Cincinnati, No. 1-95-448 (S.D. Ohio Oct. 25, 1995)(order granting preliminary injunction in part). 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.

³³ Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293-97 (1984).

³⁴ Plaintiffs' Motion for Preliminary Injunction, Clements v. Cleveland, No. 94-CV-2074 (N.D. Ohio Oct. 4, 1994).

education, and job training for the homeless plaintiffs; and to pay \$7,000 to cover a portion of the plaintiff's 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.³⁵ 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.³⁶

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

³⁵ 955 F. Supp. at 1206.

³⁶ Doucette v. Santa Monica, No 95-1136 (C.D. Cal. Sept. 30, 1996).

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.³⁷ Therefore, the court granted summary judgment for the defendants regarding the second ordinance.

Fifth Avenue Presbyterian Church v. City of New York, 2004 WL 2471406 (S.D.N.Y. 2004) (appeal pending).

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 on the Church’s behalf in the Second Circuit. 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.³⁸

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 their 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

³⁷ 955 F. Supp. at 1209.

³⁸ 293 F.3d 570 (2nd Cir. 2002).

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.

The parties are awaiting a decision from the Second Circuit.

Henry v. City of Cincinnati, No. C-1-03-509 (S.D. Ohio July 23, 2003).

Homeless individuals brought a § 1983 action against the city alleging violations of First, Fourth, Eighth, and Fourteenth Amendment rights when the city (1) passed restrictive anti-panhandling ordinances and (2) 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 a two New Orleans lawyers filed a § 1983 action on behalf of five homeless plaintiffs against the city and police department 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 2 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 \$1000. 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.³⁹ 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.⁴⁰

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.⁴¹ 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*⁴² and

³⁹ Hershey v. Clearwater, 834 F.2d 937, 939 (11th Cir. 1987).

⁴⁰ Id.

⁴¹ 232 F.3d at 1359.

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

Johnson v. City of Dallas,⁴³ where sleeping out-of-doors was involuntary for homeless people, here it was voluntary.

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

A class of homeless plaintiffs challenged Dallas' ordinances prohibiting sleeping in public, solicitation by coercion, removal of waste from garbage receptacles, and 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.⁴⁴

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.⁴⁵ 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.

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

⁴⁴ *Johnson v. City of Dallas*, 860 F. Supp. 344 (N.D. Tex. 1994)(order granting preliminary injunction in part), *rev'd on other grounds*, 61 F.3d 4451 (5th Cir. 1995).

⁴⁵ 61 F.3d at 445.

On April 24, 2001, the trial court granted Defendants' motion to dismiss the remaining claims, in addition to the Eighth Amendment claim.⁴⁶ 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.⁴⁷ 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.⁴⁸ Therefore, the court dismissed the case.

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

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, for arguably fabricated charges, and firecrackers were used to intimidate plaintiffs. Moreover, plaintiffs alleged that police gave them the "option" to 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 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."⁴⁹ 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."⁵⁰ Subsequently, the court denied the city's motion to dismiss.⁵¹

⁴⁶ No. 3:94-CV-00991-X (N.D. Tex. Apr. 24, 2001).

⁴⁷ Id. at 4.

⁴⁸ Id.

⁴⁹ 351 F. Supp. 2d at 946.

⁵⁰ 351 F. Supp. 2d at 951.

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

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. Among other things, 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, No. CV 03- 1142 ER (C. D. Cal. 2004).

Six homeless individuals filed suit to prevent the Los Angeles Police Department from ticketing and arresting people who sit, sleep, or lie on public sidewalks. The plaintiffs contended that a city code 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 rejected 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 which 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 and the case is now before the Ninth Circuit. Plaintiffs have 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 against plaintiffs essentially criminalizes the status of homelessness, in violation of the Eighth Amendment's cruel and unusual punishment clause. Plaintiffs further argued that they may obtain equitable relief that also extends to non-parties if necessary for the provision of their own relief to which they are entitled.

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

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.

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. Furthermore, plaintiffs dismissed the city's necessity defense argument because arresting and prosecuting people with meritorious defenses would violate the Due Process Clause as well as the Eighth Amendment. Plaintiffs also illustrated practical realities that limit any effectiveness of the necessity defense.

The parties are awaiting a decision from the Ninth Circuit.

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.⁵⁵ In 1995, the district court granted defendants’ motion for summary judgment.⁵⁶

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.⁵⁷ NLCHP filed an amicus brief on behalf of plaintiffs-appellants.

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 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

⁵⁵ Joyce v. City and County of San Francisco, 846 F. Supp. 843 (N.D. Cal. 1994)(order denying preliminary injunction).

⁵⁶ No. C-93-4149 (N.D. Cal. Aug. 18, 1995).

⁵⁷ 87 F.3d 1320 (9th Cir. 1996).

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 US 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 case is pending.

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.⁵⁸

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 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

⁵⁸ Love v. City of Chicago, No. 96-C-0396 (N.D. Ill. Oct. 10, 1996).

area, having city employees give oral notice a day before cleaning, and a second oral notification minutes before cleaning.

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

Plaintiff, a tenants' advocacy organization, filed suit to enjoin the city from preventing vigil participants who were protesting city rent increases from lying and sleeping on city sidewalks. The city took the position that it had authority to forbid all sleeping on city sidewalks because of the interest in safeguarding sleeping persons from the dangers of public places and keeping the sidewalks clear of obstructions. The court granted the preliminary injunction ruling that the First Amendment to the U.S. Constitution does not allow the city to prevent an orderly political protest from using public sleeping as a symbolic expression. The Court held a statute that bans all public sleeping in any manner on public sidewalks is overbroad. However, the Court did not maintain that the city could never regulate "disorderly public sleeping."⁵⁹ 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."⁶⁰

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.⁶¹

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.⁶²

⁵⁹ 99 F. Supp. 2d at 439.

⁶⁰ Id.

⁶¹ Patton v. City of Baltimore, No. S-93-2389 (D. Md. Aug. 19, 1994).

⁶² Settlement Agreement, Patton v. City of Baltimore, No. S-93-2389 (D. Md. Sept. 14, 1994).

Picture the Homeless v. City of New York, No. 02 Civ. 9379 (S.D.N.Y. March 31, 2003). The New York Civil Liberties Union brought a § 1983 action on behalf of Picture the Homeless, a grass-roots organization led by homeless and formerly homeless persons, against the city and its police department alleging violations of the Due Process Clause of the Fourteenth Amendment for police harassment of homeless persons. The plaintiff alleged that the police were targeting homeless persons by arresting them for offenses for which non-homeless persons were not arrested. The parties settled the suit shortly after it was filed in 2003. The defendants issued directives to all officers on the Homeless Outreach Unit and the NYPD Transit Bureau forbidding them to enforce laws selectively against homeless people, and, in the case of the Homeless Outreach Unit, to confirm that their primary mission is to provide outreach services to the homeless.

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

Plaintiffs sought a temporary restraining order and permanent injunction to prevent the City of Philadelphia from carrying out a proposed plan to seize, arrest, and remove homeless persons from concourses in the center city in the absence of alternative shelter. Plaintiffs alleged that the city's actions would violate their rights under the Fourth, Eighth, and Fourteenth amendments.⁶³ 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.⁶⁴

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.⁶⁵ On remand, the district court modified its injunction, enjoining the city from arresting homeless persons

⁶³ Plaintiffs' Initial Memorandum in Support of Restraining Order, Project Share v. City of Philadelphia, No. 93-CV-6003 (E.D. Pa. 1993).

⁶⁴ Pottinger v. City of Miami, 810 F. Supp. 1551, 1584 (S.D. Fla. 1992).

⁶⁵ 40 F.3d 1155 (11th Cir. 1994).

until the city established two safe zones.⁶⁶ In February 1996, the Eleventh Circuit referred the case for mediation.⁶⁷

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

NLCHP filed an amicus brief on behalf of plaintiffs-appellees.

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

Nine Atlanta homeless people filed a federal lawsuit asking a judge to declare unconstitutional Atlanta's "urban camping" ordinance, which makes it a crime to sleep or lie down on public grounds.⁶⁸ 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.⁶⁹ Anyone found guilty of the crime could be imprisoned up to six months. Among those arrested were Charles Richardson, who was lying on a bench waiting for a soup kitchen to open and Christopher Parks, a homeless, seven-year employee at a restaurant, who missed one week of work sitting in jail after he was arrested for "urban camping" outside the city's Traffic Court building.

The lawsuit stated that the police violated the Fourteenth Amendment's equal protection clause by targeting homeless people when enforcing the law, saying it constitutes punishment for individuals solely because they are homeless. The lawsuit also contended that city police were violating the rights of homeless people by either leaving or disposing of their belongings after they are arrested. The lawsuit settled and the plaintiffs received damages. As part of the settlement, the city has revised the ordinance to significantly limit the scope. Atlanta police officers must also now designate on arrest records the housing status of all detainees, in order to more effectively track patterns of discriminatory arrests of homeless people. Finally, police officers will undergo training regarding the issues and challenges those that face those who are homeless.

⁶⁶ No. 88-2406 (S.D. Fla. Apr. 7, 1995).

⁶⁷ 76 F.3d 1154 (11th Cir. 1996).

⁶⁸ Atlanta, Ga., Ordinance 106-12 (November, 1996).

⁶⁹ Id.

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 an intent to intimidate.⁷⁰

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.⁷¹ In dissent, Judge Pregerson asserted that Seattle's time, place, and manner restrictions on expressive content are not narrowly tailored to serve a significant government interest and do not leave open ample alternative channels of expression, and thus constitute a violation of plaintiffs' First Amendment rights.⁷² The Ninth Circuit denied plaintiffs' petition for rehearing *en banc*.

NLCHP filed an amicus brief on behalf of plaintiffs-appellants.

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

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

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

⁷⁰ Roulette v. City of Seattle, 850 F. Supp. 1442 (W.D. Wash. 1994), *aff'd* 78 F.3d 1425 (9th Cir. 1996).

⁷¹ 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.

⁷² 97 F.3d at 308 (Pregerson, J., dissenting).

Spencer v. City of San Diego, No. 04 CV-2314 BEN (S.D. Cal. 2004).

A class of homeless plaintiffs brought a § 1983 action challenging the issuance of illegal lodging citations to homeless individuals sleeping on the street. Plaintiffs allege 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 none of the plaintiffs was 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, alleging the plaintiffs did not receive any punishment and could not raise their 8th Amendment claims. The next hearing is set for December 2005.

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.⁷³

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.⁷⁴

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.⁷⁵

⁷³ Stone v. Agnos, 960 F.2d 893 (9th Cir. 1992).

⁷⁴ Streetwatch v. National R.R. Passenger Corp., 875 F. Supp. 1055 (S.D.N.Y. 1995).

⁷⁵ Whiting v. Town of Westerly, 942 F.2d 18 (1st Cir. 1991).

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"⁷⁶ 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.⁷⁷ 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

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. A motion for class certification is pending at this time.

City of Sarasota v. McGinnis, No. 2005 MO 16411 NC (Fla. Cir. Ct. 2005).

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 says that one or more of the following must exist in order to make an arrest: numerous personal items

⁷⁶ ATLANTA, GA., CODE § 17-1007 (1994).

⁷⁷ Williams v. City of Atlanta, No. 1:94-CV-2018 (N.D. Ga. Mar. 28, 1995).

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. The defendant 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 to prohibited conduct or sufficient guidelines for law enforcement. In December 2005, the court denied the defendants' motion to find the law unconstitutional. The court determined that the law was constitutional as it was not void for vagueness and did not violate substantive due process. Further, the court found the law did not violate equal protection rights.

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. The city has not appealed the decision and the time for appeal has expired.

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.⁷⁸ 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.

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.⁷⁹

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

⁷⁸ This case concerns the same statute as Roulette v. City of Seattle, *supra*.

⁷⁹ Sanchez, Felix, "Vietnam Veteran's convictions set aside after long legal odyssey," THE ORANGE COUNTY REGISTER, April 1, 1999, at B4.

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 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.”⁸⁰ 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.”⁸¹ 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.

⁸⁰ JACKSONVILLE, FLA., Ordinance Code § 614.138(h) (1994).

⁸¹ State v. Folks, No. 96-19569 MM (Fla-Cir. Ct., Duval County, Nov. 21, 1996).

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.”⁸² The court found that he had an actual, subjective expectation of privacy, and that this expectation was reasonable under the circumstances of the case.

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.”⁸³ 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

⁸² 588 A.2d 145, 161 (Conn. 1991).

⁸³ State v. Wicks, No. Z711742 & Z711743 (Or. Sept. 27, 2000).

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.⁸⁴

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 "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 Appeal 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.⁸⁵ The court also held that the ordinance was unconstitutionally vague and overbroad.⁸⁶

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.⁸⁷ 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

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

⁸⁵ 9 Cal. 4th at 1103, 892 P.2d at 1165.

⁸⁶ Tobe v. City of Santa Ana, 22 Cal App. 4th 228, 27 Cal. Rptr. 2d 386 (1994).

⁸⁷ 9 Cal. 4th 1069, 892 P.2d 1145 (1995).

paid. The ordinance had been modeled on a similar Portland ordinance, which was found to be unconstitutional in State of Oregon v. Wicks.⁸⁸

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.⁸⁹ 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.”⁹⁰ 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.⁹¹ 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.”⁹²

⁸⁸ State v. Wicks, Nos. 2711742 & 2711743, (Ore. Cir. Ct. Multnomah County 2000).

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

⁹⁰ 333 F.3d at 1100-01.

⁹¹ Id. at 1103-04.

⁹² Id. at 1108.

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

Opposing the city's petition for writ of certiorari, the ACLU argued that the Ninth Circuit applied traditional forum analysis to the facts of the case, the city and businesses have always faced the Court's established view that streets and sidewalks are natural public fora, and the Ninth Circuit decision does not involve analysis with respect to when a city can close a public forum because Fremont Street remains open to public pedestrian traffic. The Supreme Court denied the petition for writ of certiorari.⁹³

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.⁹⁴ 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."⁹⁵ 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.⁹⁶

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

⁹³ City of Las Vegas v. American Civil Liberties Union of Nevada, 540 U.S. 1110 (2004).

⁹⁴ 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.

⁹⁵ No 1:96-CV-1430, slip. op. at 17 (N.D. Ga. July 17, 1996).

⁹⁶ Id.

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.”⁹⁷ 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.⁹⁸

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.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹

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

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

⁹⁷ 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).

⁹⁸ Blair v. Shanahan, 775 F. Supp. 1315 (N.D. Cal. 1991).

⁹⁹ 795 F. Supp. 309 (N.D. Cal. 1992).

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

¹⁰¹ 919 F. Supp. 1361 (N.D. Cal. 1996).

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.

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.¹⁰² 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 above-ground 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.¹⁰³

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.”¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶ 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.

¹⁰² 893 F.2d at 1389.

¹⁰³ Community for Creative Non-Violence v. Turner, 893 F.2d 1387 (D.C. Cir. 1990).

¹⁰⁴ 56 F.3d at 713.

¹⁰⁵ Id.

¹⁰⁶ Id. at 718.

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. Cincinnati, 2005 WL 1198814 (S. D. Ohio 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. Colorado¹⁰⁷ 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.

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

¹⁰⁷ 530 U.S. 703 (2000).

constitutionality Colorado's state law making it a crime to "loiter... for the purpose of begging."¹⁰⁸ The parties reached a settlement agreement in which defendants stipulated that the law violates the Due Process Clause, and have agreed to a declaratory judgment and injunction prohibiting enforcement of the law in the City of Denver. The court approved the proposed settlement agreement and the state legislature subsequently repealed the suspect language.

Heathcott v. Las Vegas Metropolitan Police Officers, No. CV-S-93-045 (D. Nev. Mar. 3, 1994).

A homeless man challenged a Nevada state statute that prohibited loitering with the intent to beg. The district court found that the law effectively prohibited all begging, which is constitutionally protected speech, and that since the statute was not narrowly tailored to meet any compelling government interest it was constitutionally overbroad. The court also noted that there was no serious harm posed to the public by peaceful begging and that conduct that may require regulation, including fraud, intimidation, coercion, harassment, and assault, are all covered by separate statutes.¹⁰⁹

Loper v. New York City Police Department, 999 F.2d 699 (2nd 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."¹¹⁰ 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 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."¹¹¹

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

¹⁰⁸ CO. REVISED STAT. ANN. tit. 18, art. 9, § 112(2)(a) (West 1996).

¹⁰⁹ Heathcott v. City of Las Vegas, No. CV-S-93-045 (D. Nev. Mar. 3, 1994).

¹¹⁰ 999 F.2d at 701 *quoting* N.Y. Penal Law §240.35(1).

¹¹¹ Loper v. New York City Police Department, 999 F.2d at 705.

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. The Ninth Circuit affirmed the District Court's decision¹¹² 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 peddlers 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 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.¹¹³ 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.

¹¹² No. 97-06793 RAP (C.D. Cal. July 25, 2000).

¹¹³ 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).

The Sixth Circuit subsequently denied plaintiffs' petition for a rehearing en banc,¹¹⁴ and the Supreme Court denied plaintiff's petition for a writ of certiorari.¹¹⁵

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."¹¹⁶

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 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.

¹¹⁴ 1997 U.S. App. LEXIS 9056 (6th Cir. Apr. 10, 1997).

¹¹⁵ Northeast Ohio Coalition for the Homeless v. City of Cleveland, 522 U.S. 931 (1997).

¹¹⁶ 177 F.3d at 956.

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. 2002).

Homeless plaintiffs, on behalf of themselves and a proposed class,¹¹⁷ 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 attorneys 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.¹¹⁸ The court held that even if the First Amendment did apply, the regulation was reasonable because it was content-neutral, justified by a legitimate government interest, and allowed alternative channels of communication in that it did not ban begging in locations other than the subway.¹¹⁹

¹¹⁷ 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.

¹¹⁸ 903 F.2d at 153.

¹¹⁹ Young v. New York City Transit Authority, 903 F.2d 146 (2d Cir. 1990).

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.”¹²⁰ 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

¹²⁰ 424 Mass. at 919.

communication, it also suppresses “an even broader right – the right to engage fellow human beings with the hope of receiving aid and compassion.”¹²¹ 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.”¹²² 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.¹²³

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.”

¹²¹ Id. at 926.

¹²² 121 Ohio App.3d at 574-75.

¹²³ One judge dissented asserting that the ordinance should have been found unconstitutional because it violated the free-speech public-forum doctrine.

McFarlin v. District of Columbia, 681 A.2d 440 (D.C. 1996)

Two consolidated cases involved charges under the District of Columbia Panhandling Act.¹²⁴ Defendant Williams was arrested and charged with aggressive panhandling. Police discovered him panhandling and allegedly impeding the flow of pedestrian traffic at the top of a subway escalator. Defendants McFarlin and Taylor were arrested for panhandling at the top of a subway escalator. At the time, the two men had been giving a musical performance and had placed a bucket nearby where passersby could drop money. The court upheld Williams' conviction against his constitutional challenge while dismissing the charges against McFarlin and Taylor for insufficient evidence. As to Williams, the court denied his First Amendment claim because the Act did not prohibit panhandling generally; instead, as interpreted by a transit authority regulation, the Act was limited to areas within fifteen feet of subway entrances. As such, the Act did not reach public fora, and was subject only to a reasonableness review. Since the Act did not target a specific viewpoint and served the significant government interest in promoting safety and convenience at a subway station, it did not violate the First Amendment. The court also denied Williams' vagueness claim, finding that the transit authority's construction of the Act as applying within fifteen feet of a subway station was a sufficiently definite description of the proscribed conduct.

As to McFarlin and Taylor, the court found that the Act was properly applied to them, since it reached broadly all attempts to solicit donations. However, due to the inexact testimony of the arresting officer, the court found the evidence insufficient to sustain the conviction.

People v. Schrader, 162 Misc. 2d 789, 617 N.Y.S. 2d 429 (Crim. Ct. 1994).

Defendant was charged with unlawfully soliciting in a subway station in violation of a New York City Transit Authority rule. Defendant argued that the charge should be dismissed because the rule violated his right to free speech, which is protected by the New York State Constitution, and because the rule was broader than necessary to achieve a legitimate state objective. The court held that although begging in general was a form of protected speech under both the New York State and U.S. Constitutions, the subway system was not a public forum, and that a ban on begging in the subway system was a reasonable limitation on speech in the particular forum as a safety precaution. The court also found that the rule was not a viewpoint-based restriction on speech.

State of Florida v. O'Daniels, 2005 WL 2373437 (Fla. App. 3 Dist.).

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.¹²⁵ First, the permit-issuing scheme lacked adequate procedural safeguards to

¹²⁴ See D.C. Code §§ 22-2301 to 2306 (2002).

¹²⁵ Case No. B03-30046 (Miami-Dade County Ct. 2003).

avoid unconstitutional censorship. Second, the ordinance was not content-neutral, was not narrowly tailored to serve a significant government interest, and did not leave open ample alternative channels of communications. Third, the ordinance was void for vagueness because it failed to give fair notice of the conduct it prohibited and lacked guidelines for police to avoid arbitrary application. Fourth, the ordinance was facially invalid because it was overbroad. Finally, the ordinance violated substantive due process.

The city appealed, arguing that the ordinance was content neutral and was a reasonable time, place, and manner regulation. The city contended that the ordinance did not violate the First Amendment and was not overbroad in that it only restricted street performers and art vendors in certain areas. Furthermore, the city argued that it provided alternative channels of communication.

On appeal, the ACLU of Florida filed a brief amicus curiae supporting O’Daniels. The ACLU’s argument focused on the First Amendment right to artistic expression. The ACLU contended that the ordinance has a chilling effect because of its permit requirements, criminal penalties, and provisions regarding indemnification. Moreover, the ordinance unconstitutionally delegates to the private sector the power of review. The appellate court affirmed the lower court’s ruling. First, the court acknowledged that street performances and art vending are protected forms of expression under the First Amendment. Next, the court held that the ordinance was content neutral, noting that the city’s principal justification for the ordinance was its “desire to preserve the ‘reasonable expectations of residents to the enjoyment of peace and quiet in their homes, the ability to conduct their businesses and serve their patrons uninterrupted, and the public’s use of the City’s rights-of-way.’”¹²⁶ 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.”¹²⁷ 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.”¹²⁸ 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

126 2005 WL 2373437 at *3.

¹²⁷ *Id.* at *4.

¹²⁸ *Id.* at *5.

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 the Loper¹²⁹ case from New York City, 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." The city, which admits it enacted the law to stop day laborers from soliciting jobs, is deciding whether to appeal.

Wise v. Kelly, No. 05-CV-5442 (S.D.N.Y. 2005).

An individual who panhandles filed a suit on behalf of a class of individual panhandlers who had been charged with violations of a New York state law that prohibits begging. The Second Circuit found the law unconstitutional in the Loper case in 1993. The plaintiffs allege that arrests and prosecutions under the unconstitutional law violate 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, mandate trainings for police officers and district attorneys, and remove 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. According to the agreement, police officers received notice that the statute is void. The lawsuit is ongoing.

¹²⁹ Loper v. New York City Police Department, 999 F.2d 699 (2d Cir. 1990).

III. CHALLENGES TO VAGRANCY, LOITERING, AND CURFEW LAWS

A. Federal 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.”¹³⁰ 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.¹³¹ “Freedom to loiter for innocent purposes,” the court reiterated, is part of the liberty protected by the due process clause of the fourteenth amendment.¹³²

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

¹³⁰ 527 U.S. at 51 n. 14.

¹³¹ Id. at 56.

¹³² Id. at 53.

due process grounds.¹³³ 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.

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

¹³³ 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).

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.¹³⁴ 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 communicate with his attorney" other than meeting him at his office in the drug-exclusion zone.¹³⁵ 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."¹³⁶

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

¹³⁴ 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*.

¹³⁵ 2002 WL 31119105 at *18.

¹³⁶ *Id.*

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.”¹³⁷

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.¹³⁸ 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.

¹³⁷ Justin v. City of Los Angeles, No. CV 00-12352 LGB (AIJx) (C.D. Cal. Nov. 5, 2001).

¹³⁸ 461 U.S. at 355.

Leal v. Town of Cicero, 2000 WL 343232 (N.D. Ill. 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.¹³⁹ 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.

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.¹⁴⁰ While the court found that the city had a compelling interest in protecting

¹³⁹ 133 F.Supp.2d at 797-98.

¹⁴⁰ 114 F.3d at 942.

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."¹⁴¹

Outb 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.¹⁴² 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.¹⁴³

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

¹⁴¹ Papachristou v. Jacksonville, 405 U.S. 156, 162 (1972)(citations omitted).

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

¹⁴³ 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).

that although the curfew ordinance sought to reduce night-time juvenile crime and victimization, the city did not consider night-time 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 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.¹⁴⁴ The court certified those matters to the Nevada Supreme Court, which subsequently held that both provisions were unconstitutionally vague.¹⁴⁵

Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Cir. 1998), *cert. denied*, 1999 U.S. LEXIS 1908 (1999).

Plaintiffs challenged a juvenile curfew ordinance on due process and equal protection grounds. The district court upheld the ordinance, and the Fourth Circuit affirmed. Recognizing the greater state latitude in regulating the conduct of minors, the court applied intermediate scrutiny to the statute. The ordinance sought to advance compelling state interests, *i.e.*, the reduction of juvenile crime, the protection of juveniles from crime, and the strengthening of parental responsibility for children. The court found that the ordinance was substantially related to these interests, as the city had before it adequate information that the ordinance would create a safer community and protect juveniles from crime. Further, the court found the ordinance narrow enough to survive strict scrutiny, were it to be applied. Nor did the ordinance burden parents' privacy interests in raising their children. The Fourth Circuit also rejected the plaintiffs' vagueness claim, citing the ordinance's exceptions for First Amendment activities.

B. State Court Cases

City of Salida v. Edelstein, Case No. 97CR62 (Colo. Dist. Ct. 1998).

Defendants were arrested for violating a Salida ordinance prohibiting anyone from loitering in one place for more than five minutes after 11:00 PM at night. One defendant had been speaking with friends on the sidewalk outside his home, while another defendant had been observing a police officer issue loitering citations to other individuals. The defendants challenged the ordinance on First Amendment, due process,

¹⁴⁴ Richard v. Nevada, No. CV-S-90-51 (Apr. 25, 1991).

¹⁴⁵ State v. Richard, 108 Nev. 626, 836 P.2d 622 (Nev. 1992).

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."¹⁴⁶ 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."¹⁴⁷

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."¹⁴⁸ 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.

¹⁴⁶ 2002 Pa. Super. LEXIS 2896 at **10.

¹⁴⁷ Id. at **11.

¹⁴⁸ See Johnson v. City of Cincinnati, -- F.3d --, 2002 WL 31119105 (6th Cir. 2002), *supra*.

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.¹⁴⁹

IV. CHALLENGES TO RESTRICTIONS ON FEEDINGS

A. Federal Cases

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."¹⁵⁰ 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")¹⁵¹ 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

¹⁴⁹ 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.

¹⁵⁰ 946 F. Supp. 1225, 1228 (E. D. Va. 1996).

¹⁵¹ 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.

in the community.”¹⁵² 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.”¹⁵³ 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.

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.¹⁵⁴

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.¹⁵⁵ 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.

¹⁵² 946 F. Supp. at 1228-29.

¹⁵³ 946 F. Supp. at 1236.

¹⁵⁴ 885 F. Supp. 1554, 1558 (M.D. Fla. 1995).

¹⁵⁵ *Id.* at 1558-59.

B. State 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.”¹⁵⁶

Arnold Abbot and his group, Love Thy Neighbor, had fed poor and homeless people each Wednesday on the public beach across from the Radisson Bahia Mar, as part of their religious beliefs. The city believed that the regular feedings at a set location constituted a social service agency. Moreover, the city noted that there were other services and agencies in the city that the homeless could rely upon, including at the Homeless Assistance Center, which allegedly made plaintiff’s feedings unnecessary.

The trial judge rejected plaintiff’s claims that the ordinance violated his rights to equal protection and due process of law as well as his First Amendment rights under the Florida Religious Freedom Restoration Act of 1998 (the “FRFRA”). The trial judge held that because the rule violated plaintiff’s rights under the FRFRA, the city would have to provide an alternative public property site where plaintiff could conduct the feeding program.

Plaintiff appealed, challenging on post-trial motion that the city’s site selection did not follow the intent of the trial court’s order. The city cross-appealed the trial court’s holding that the rule violated the FRFRA. On appeal, the court concluded that the trial court’s order implied that the alternative public property site “would at least be minimally suitable for the purposes intended” and would “represent[] the ‘least intrusive means’ of furthering the government’s compelling interests.”¹⁵⁷ 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 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

¹⁵⁶ 783 So. 2d 1213, 1214 (Fla. Dist. Ct. App. 2001).

¹⁵⁷ 783 So. 2d at 1215.

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."¹⁵⁸ Turning to the equal protection claim, the court found that the Postal Service's distinctions among persons who could and could not receive no-fee post office boxes were reasonable. "The relevant postal regulations that govern the no-fee boxes make it clear that only residents who have a physical residence or a business location at a fixed delivery point are eligible for the [no-fee boxes]."¹⁵⁹ 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."¹⁶⁰ The court then ruled that the postal service acted

¹⁵⁸ Currier v. Henderson, 109 F. Supp. 2d 1221, 1230 (W. D. Wash. 2002).

¹⁵⁹ Id. at 1231.

¹⁶⁰ 379 F.3d at 729.

reasonably in confining general delivery service to a single Seattle location. Furthermore, the court rejected plaintiff's First Amendment challenge to the no-fee postal box regulations, holding that such boxes are nonpublic fora and that the postal service is "not constitutionally obligated to provide no-fee boxes to homeless persons."¹⁶¹ Because these First Amendment claims fail, the court also rejected plaintiffs' Equal Protection claims on rational-basis review.¹⁶²

Plaintiffs filed a petition for a writ of certiorari, arguing that the Ninth Circuit erred in determining that the forum at issue was the general delivery service. Instead, because general delivery is the only means homeless people have to access the mail system, the plaintiffs argued the proper forum is the entire "mail system," which they argued is a public forum.¹⁶³ 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.¹⁶⁴ 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.¹⁶⁵ 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).

Plaintiffs brought suit to challenge a police practice of taking homeless people from Skid Row into custody and detaining them after performing warrantless searches without reasonable suspicion to believe such person's parole or probation had been violated. Plaintiffs alleged that the Los Angeles Police Department (LAPD) 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 were operating under the unsatisfactory pretext of looking for parole violators and absconders.

The court certified the plaintiff class for settlement purposes. In addition, the court provided 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."

¹⁶¹ Id. at 731.

¹⁶² 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.

¹⁶³ Brief of Petitioner-Appellant at 17, Seattle Housing and Resource Effort (SHARE) v. Potter, 2005 WL 415085 (Feb. 15, 2005).

¹⁶⁴ Id. at 21

¹⁶⁵ Brief for Respondent-Appellee, Seattle Housing and Resource Effort (SHARE) v. Potter, 2005 WL 415085 (May 20, 2005).

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, (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 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.¹⁶⁶ 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 plaintiff challenged the police conduct on equal protection and due process grounds. The court granted the defendant's motion for directed verdict as to the equal protection claim, and the jury found against the plaintiff on his due process claim.

B. State Cases

Homes on Wheels v. City of Santa Barbara, 119 Cal.App.4th 1173 (Cal.App.2 Dist. 2004).

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

¹⁶⁶ Mason v. City of Tucson, No. CV 98-288 (D. Ariz. July 13, 1998).

ordinance. Plaintiffs then moved for a preliminary injunction alleging, *inter alia*, that the ordinance exceeded the city's authority under Vehicle Code Sections 22507 and 22507.5 and that the signs did not provide sufficient notice for the ordinance to be effective under Vehicle Code Section 22507.

On March 27, 2003, the Santa Barbara Superior Court granted a TRO for the plaintiffs, halting all ticketing under the ordinance until April 11, 2003. The trial court later denied the plaintiff's motion for a preliminary injunction. The appellate court affirmed the city's power to enact the ordinance, but reversed and remanded for a factual determination as to whether the city's signs provided adequate notice of the parking restriction.

On remand, the trial court determined that the city did not provide adequate notice of the parking restriction and issued a preliminary injunction to enjoin the city from enforcing the law. The city has appealed.

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		Obstruction of Sidewalks/Public places		See end notes *		
Adjuntas	PR				X																													
Aguada	PR																															16		
Aguas Buenas	PR				X																													
Aibonito	PR				X																											16		
Albany	GA				X	X										X																4		
Albuquerque	NM		X			X	X			X				X	X	X																	3,5	
Allentown	PA					X	X						X			X	X																1,2,13	
Amarillo	TX		X			X					X																					10		
Anchorage	AK	X	X	X		X	X			X						X	X																13	
Arecibo	PR																																16	
Asheville	NC	X	X			X	X			X			X	X		X	X																3	
Athens	GA	X	X	X		X	X									X																	5,7	
Atlanta	GA	X	X			X	X	X	X	X			X		X	X	X																1,5,6,10,12	
Atlantic City	NJ					X	X	X							X	X	X																1	
Augusta	GA				X	X										X																	3	
Augusta	ME															X																	3	
Austin	TX	X	X			X	X			X	X			X	X	X																		
Bakersfield	CA	X				X				X					X																			2
Baltimore	MD		X			X	X							X		X	X																	1,2,10,12
Bangor	ME	X	X			X					X			X		X	X																	

		See end notes *																				
Other		Closure of particular public places																				
Vagrancy		Obstruction of Sidewalks/Public places																				
		Loitering/Loafing in particular public places																				
Loitering		Loitering/Loafing/Vagrancy city-wide																				
		Sitting or lying in particular public places																				
Sitting/Lying		Camping in particular public places																				
		Camping in public city-wide																				
Camping		Sleeping in particular public places																				
		Sleeping in public city-wide																				
Sleeping		"Aggressive" panhandling																				
		Begging in particular public places																				
Begging		Begging in public places city-wide																				
		Urination/defecation in public																				
Sanitation		Bathing in particular public waters																				
		Barceloneta	PR																			
Barranquitas	PR																					16
Baton Rouge	LA	X	X																			1,2,10
Bayamón	PR				X			X														16
Beaverton	CA					X																
Berkeley	CA	X				X	X		X		X	X		X	X	X						
Bettendorf	IA	X	X								X					X	X					15
Billings	MT	X														X	X					1
Biloxi	MS		X		X								X			X	X					1,3
Bloomington	IN	X	X	X					X		X	X				X	X					1,3,11
Boise	ID	X	X	X				X		X						X	X					1,9
Boston	MA					X	X	X				X			X	X						2,7
Boulder	CO		X		X	X					X					X						9
Bradenton	FL															X	X					1,13
Brunswick	GA				X	X					X	X		X	X							5
Buffalo	NY	X			X					X						X	X					1,5,7
Burlington	VT	X	X			X	X			X		X			X	X	X					16
Cabo Rojo	PR																					16
Carolina	PR				X			X						X		X						16
Cayey	PR																					
Cedar Rapids	IA		X																X	X		3
Ceiba	PR				X																	12,16
Charleston	SC				X										X	X	X					1,3,9
Charleston	WV				X															X		1,2

		See end notes *												
		Closure of particular public places												
		Obstruction of Sidewalks/Public places												
		Loitering/Loafing in particular public places												
		Loitering/Loafing/Vagrancy city-wide												
		Sitting or lying in particular public places												
		Camping in particular public places												
		Camping in public city-wide												
		Sleeping in particular public places												
		Sleeping in public city-wide												
		"Aggressive" panhandling												
		Begging in particular public places												
		Begging in public places city-wide												
		Urination/defecation in public												
		Bathing in particular public waters												
		Sanitation												
		Other												
Charlotte	NC	X	X		X	X		X			X	X	X	13
Cheyenne	WY		X									X		1
Chicago	IL		X		X	X						X	X	2
Ciales	PR			X										16
Cidra	PR					X		X			X			
Cincinnati	OH	X	X		X	X				X		X	X	1,10,15
Clearwater	FL	X			X	X		X		X		X	X	9
Cleveland ****	OH	X			X	X		X				X	X	10 ****
Coamo	PR			X										16
Colorado Springs	CO	X	X		X	X		X		X		X	X	3,4,13
Columbia	SC			X		X				X	X	X	X	
Columbus	GA	X		X	X						X	X	X	15
Columbus	OH	X	X			X		X		X		X	X	1,3
Comerio	PR													16
Concord	NH		X		X			X				X		
Corozal	PR			X			X							16
Corpus Christi	TX	X			X				X			X	X	1,9,12
Corvallis	OR		X	X			X		X			X	X	
Covington	KY	X			X	X		X				X	X	2,4,5,13
Dallas	TX	X	X		X	X	X		X			X	X	2,6,10
Davenport	IA	X	X						X			X	X	3,6
Dayton	OH	X			X	X						X	X	3,4,5,6,15
Daytona Beach	FL	X			X	X	X		X			X		1,3
Denver	CO	X	X		X	X		X		X		X	X	1,3

												Other		
												See end notes *		
												Closure of particular public places		
												Obstruction of Sidewalks/Public places		
												Loitering/Loafing in particular public places		
												Loitering/Loafing/Vagrancy city-wide		
												Sitting or lying in particular public places		
												Camping in particular public places		
												Camping in public city-wide		
												Sleeping in particular public places		
												Sleeping in public city-wide		
												"Aggressive" panhandling		
												Begging in particular public places		
												Begging in public places city-wide		
												Urination/defecation in public		
												Bathing in particular public waters		
Des Moines	IA	X	X									X	X	3,14,15
Detroit	MI	X		X								X	X	1,2,4
Dorado	PR				X									6
Dover	DE	X			X	X			X			X	X	3,13
Eau Claire	WI		X					X			X	X	X	1
El Cajon	CA	X			X	X	X	X	X		X	X	X	10
El Paso	TX	X	X					X			X	X	X	1,10
Elkton	MD		X	X		X					X			2,3,4,6
Eugene	OR		X					X				X	X	3
Evanston	IL	X	X		X	X					X	X	X	1,3
Fairbanks	AL		X											13
Fajardo	PR						X							
Fall River	MA											X	X	7
Fargo	ND				X	X						X		1,3
Fayetteville	AR	X			X			X			X	X	X	
Fort Lauderdale	FL		X	X			X		X	X		X		3,9
Fort Myers	FL	X			X	X	X	X		X		X	X	3,12
Fort Worth	TX	X		X				X				X	X	3
Frederick	MD	X	X			X		X			X	X	X	1,3,9
Fresno	CA	X	X		X	X		X	X		X	X	X	
Gainesville	FL	X	X		X	X			X			X	X	3
Glendale	AZ	X	X				X	X					X	4,9
Grand Forks	ND		X				X	X				X		

		See end notes *												
		Other												
		Closure of particular public places												
		Obstruction of Sidewalks/Public places												
		Loitering/Loafing in particular public places												
		Loitering/Loafing/Vagrancy city-wide												
		Sitting or lying in particular public places												
		Camping in particular public places												
		Camping in public city-wide												
		Sleeping in particular public places												
		Sleeping in public city-wide												
		"Aggressive" panhandling												
		Begging in particular public places												
		Begging in public places city-wide												
		Urination/defecation in public												
		Bathing in particular public waters												
		Sanitation												
Lincoln	NE	X	X		X	X						X	X	1,3
Little Rock	AR	X			X			X	X			X	X	2,5,15
Long Beach	CA	X	X	X				X				X	X	1,10
Los Angeles	CA	X	X		X	X		X	X	X		X	X	2,12
Louisville	KY	X	X	X				X				X	X	3,6
Madison	WI		X		X	X		X	X	X		X	X	1,4
Manchester	NH							X	X	X		X	X	3
Maricao	PR													16
Maui County	HI		X						X				X	
Mayaguez	PR													16
Memphis	TN	X			X	X						X	X	3,5
Mesa	AZ	X	X					X	X	X		X	X	3,7
Miami	FL	X				X	X					X	X	9
Milwaukee	WI	X			X	X				X	X	X	X	1,2,4
Minneapolis	MN	X	X		X	X		X		X		X	X	1,2,8,9
Mobile	AL	X		X				X				X	X	1,3,6
Modesto	CA	X			X	X	X	X		X		X	X	2,3,4
Montgomery	AL													
Montpelier	VT		X	X								X		14,15
Morovis	PR													6,16
Naples	FL				X			X				X		3
Naranjito	PR			X		X					X			7,16
Nashville	TN	X			X					X		X	X	1

		See end notes *											
Other		Closure of particular public places											
Vagrancy		Obstruction of Sidewalks/Public places											
Loitering		Loitering/Loafing in particular public places											
Sitting/Lying		Loitering/Loafing/Vagrancy city-wide											
Camping		Sitting or lying in particular public places											
Sleeping		Camping in particular public places											
Begging		Camping in public city-wide											
Sanitation		Sleeping in particular public places											
		Sleeping in public city-wide											
		"Aggressive" panhandling											
		Begging in particular public places											
		Begging in public places city-wide											
		Urination/defecation in public											
		Bathing in particular public waters											
New Haven	CT	X		X			X		X				1,3
New Orleans	LA			X		X				X	X		1,9,12
New York	NY												
Newark	NJ			X	X			X		X	X	X	1,1
Newport	RI		X			X			X		X	X	1,7
Norfolk	VA	X	X	X	X		X		X		X	X	1,2,6
North Las Vegas	NV	X	X				X	X		X	X	X	2,15
North Little Rock	AR	X						X				X	
Norwalk	CT							X	X			X	
Oakland	CA	X	X				X	X	X		X	X	1,3
Oklahoma City	OK	X	X	X	X		X	X		X	X	X	
Olympia	WA		X		X			X	X		X	X	1,3
Omaha	NE	X										X	3,6,15
Orlando	FL	X	X	X	X	X	X		X		X	X	3
Pahrump	NV			X	X		X				X	X	
Palm Bay	FL	X		X			X	X			X		
Patillas	PR												17
Philadelphia	PA		X	X	X				X		X	X	1,2,3
Phoenix	AZ		X	X	X	X	X		X		X	X	9
Pierre	SD			X			X	X			X	X	3,7
Pittsburgh	PA	X		X	X				X			X	1
Pocatello	ID	X					X				X		1,3
Pontiac	MI			X	X						X	X	1

		Sanitation		Begging		Sleeping	Camping	Sitting/Lying	Loitering	Vagrancy	Other	
		Bathing in particular public waters	Urination/defecation in public	Begging in particular public places	"Aggressive" panhandling	Sleeping in public city-wide	Camping in public city-wide	Sitting or lying in particular public places	Loitering/Loafing/Vagrancy city-wide	Obstruction of Sidewalks/Public places	Closure of particular public places	See end notes*
Portland	ME	X	X		X				X	X	X	5
Portland	OR	X	X	X			X	X	X	X	X	1,5,6,7,13
Providence	RI	X	X		X	X		X		X	X	1,7
Raleigh	NC	X	X	X		X	X	X		X	X	3,4,15
Rapid City	SD			X	X	X	X	X		X	X	1,3
Redondo Beach	CA	X				X	X			X		7
Reno	NV	X	X	X	X	X	X	X		X	X	3,4,9
Richmond	VA	X	X		X		X	X		X	X	1
Rincón	PR			X	X				X			
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	1,2,4
Salt Lake City	UT	X	X			X	X	X		X	X	1,3
San Antonio	TX	X				X				X	X	1,7,13
San Bruno	CA			X	X			X		X	X	
San Diego	CA	X	X		X	X	X			X	X	1,7,13,15
San Francisco	CA	X	X	X	X	X	X			X	X	2,9
San Germán	PR			X								16
San Jose	CA		X					X		X	X	13
San Juan	PR	X	X	X				X		X		16
San Louis Obispo	CA		X		X						X	
Santa Barbara	CA	X			X	X	X	X		X	X	
Santa Cruz	CA	X	X	X	X	X	X	X		X	X	7,9

		See end notes *													
Other															
Vagrancy															
Loitering															
Sitting/Lying															
Camping															
Sleeping															
Begging															
Sanitation															
Santa Fe	NM									X	X				7
Santa Isabel	PR														
Sarasota	FL	X	X		X	X	X		X			X	X	X	1,3,7
Savannah	GA	X	X	X	X							X	X		1,5,7,9
Scottsdale	AZ	X	X						X				X	X	4,9
Seattle	WA	X	X			X				X	X		X	X	3
Shreveport	LA	X	X					X		X	X		X	X	1,2,7
Sioux Falls	SD		X	X							X		X	X	3
South Bend	ID	X			X	X			X		X			X	1
South Lake Tahoe	CA	X			X		X		X					X	4,9,13
Spokane	WA	X	X			X				X		X	X	X	3,8,15
St. Augustine	FL				X	X						X	X		1,3
St. Louis	MO		X			X					X		X	X	1,2,11,13
St. Paul	MN	X	X	X				X			X	X	X	X	1,4
Stamford	CT	X									X		X		1
Statesboro	GA										X	X	X		
Stone Mountain	GA						X	X			X	X		X	9
Suffolk	VA		X		X	X							X		
Tampa	FL					X							X		7
Tempe	AZ	X	X		X	X			X		X		X	X	9
Toa Baja	PR				X										
Toledo	OH			X								X	X	X	3,7
Topeka	KA		X					X					X	X	1,6,12

		Other											See end notes*		
		Closure of particular public places													
		Obstruction of Sidewalks/Public places													
		Loitering/Loafing in particular public places													
		Loitering/Loafing/Vagrancy city-wide													
		Sitting or lying in particular public places													
		Camping in particular public places													
		Camping in public city-wide													
		Sleeping in particular public places													
		Sleeping in public city-wide													
		"Aggressive" panhandling													
		Begging in particular public places													
		Begging in public places city-wide													
		Urination/defecation in public													
		Bathing in particular public waters													
Tracy	CA		X											X	
Trenton	NJ	X	X		X	X	X		X				X	X	1
Tucson	AZ	X	X		X	X		X		X		X	X	X	
Tulsa	OK	X	X			X			X				X	X	9
Ukiah	CA		X						X			X		X	9,12
Union City	CA									X		X	X	X	9,10,12
Vega Alta	PR			X											16
Vega Baja	PR					X									16
Virginia Beach	VA		X		X		X			X			X		3,9
Washington ***	D.C.		X		X	X		X	X	X	X		X		3,6,9,12
Washington	GA										X	X			6
Waterloo	IA	X	X											X	
Wichita	KA	X			X							X	X	X	3
Wilmington	DE	X			X	X				X		X	X	X	15
Woodinville	WA									X		X		X	2,3
Woodstock	IL	X												X	
Worcester	MA	X											X		
Yauco	PR														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 to enter 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 to panhandle

w/out permit, 16)Prohibition to help park a car or watch over cars

**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 passed resolutions since that day are not evident 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 tempoary abode" in a public place), but is prohibited by federal law, which applies to most of the parks in the district

**** Cleveland added an "aggressive solicitation" ordinance in July 2005, but it will expire in October 2006.

Survey Questions

Advocates, service providers, and/or people experiencing homelessness were surveyed in each of the cities and asked the following questions:

- (1) How has your city's treatment of homeless people changed over the past year?
- (2) How are anti-homeless ordinances, laws that prohibit acts that homeless people have to do in public because they live outdoors (e.g. camping, sleeping, panhandling) or any laws that are aimed at clearing the streets of homeless people, being enforced in your city?
- (3) Are there any more general laws (e.g. drug-free zones, jaywalking, or sitting on the sidewalk) used or misused to target homeless people? Please cite examples.
- (4) Have there been any recent sweeps of homeless people in your city and are they conducted in certain areas? Please cite examples.
 1. Are local government officials seeking to decrease visibility of homeless people and are there any laws being considered or used that do that?
 2. If your city has any Business Improvement Districts (BIDs), how are homeless people treated within these districts?
 3. Are sweeps connected to any major athletic, political events or other special occasions?
 4. Other?
- (5) How many anti-homeless citations/arrests were issued in your city over the last two years?
- (6) Is there anyone in your city bringing litigation challenging anti-homeless laws or policies? If so, do you have any contact information?
- (7) Are there any constructive alternatives?
 1. police sensitivity/awareness trainings? Who provides the trainings?
 2. successful public education or grassroots organizing campaigns?
 3. other?

Please provide quotes from homeless people, advocates and/or service providers that describe civil rights abuses in your city.

FACTS ABOUT STREET RIGHTS

Your Rights on the Street

- "Vagrancy" or loitering is not a crime – you can't be stopped or arrested by the police for simply being on the street, a sidewalk or in a public park, and police do not have the right to tell you to move from a particular area if you are doing nothing illegal.
- You have the right to keep or carry your belongings with you, in any type bags or containers, as long as you don't leave them unattended or block the sidewalk or the right of way.
- You have the right to panhandle, as long as you are not within 10 feet of an ATM or 15 feet of Metro property, and as long as you aren't "aggressively panhandling", which means touching or threatening someone with bodily harm; asking for money after someone says no; or blocking someone's way.
- **NOTE:** All panhandling is illegal on *federal* parkland, which includes McPherson Square, Rock Creek Park, Lafayette Park, and the Mall.
- You generally have the right to lie down or sleep in public, as long as you are not on *federal* parkland, or in an automobile, a tent or

Dealing with D.C. Metropolitan Police Department (MPD)

- If you are approached or questioned by the D.C. police and they do not say that you are suspected of a crime, you do not have to answer any questions or give them any information, and are free to leave. (MPD General Order 304-10).
- If the police ask or order you to move from a particular area, you do not have to move unless they say that you are violating the law by being there. The police cannot order you to "move on" unless you are in a group of 3 or more and are disturbing the peace or blocking the street/sidewalk. (MPD Special Order 92-9).
- If you are not under arrest, the police may only frisk you or search your belongings if they reasonably suspect that you are carrying a concealed weapon and are a threat to their safety. (MPD General Order 304-10).
- If you are stopped by the police, always ask for the names and badge numbers of the officers and write this down immediately, along with the date, time and location of the incident. **MAKE SURE TO SAVE ALL DOCUMENTS THEY GIVE YOU, SUCH AS TICKETS, WARNINGS, ETC.**
- For more information, or if you feel you've been a victim of police harassment or mistreatment, call the **WASHINGTON LEGAL CLINIC FOR THE HOMELESS** at 202-328-5500, or the **OFFICE OF CITIZEN COMPLAINT REVIEW (OCCR)** at 202-727-3838.

other structure, in the street, or blocking the sidewalk or a building, BUT beware that the police may attempt to move you or ticket you for "temporary abode". If this occurs, contact the **WASHINGTON LEGAL CLINIC FOR THE HOMELESS** at 202-328-5500.

- You have the right to have your personal property registered and retained for at least 30 days if it's confiscated by the D.C. police, but make sure that all of your bags are prominently marked with identification to prevent police from throwing them away.

Illegal Conduct

- Aggressive panhandling; panhandling from someone in an automobile; panhandling in exchange for cleaning car windows, reserving a parking space, or protecting a car; panhandling within 10 feet of an ATM or 15 feet of Metro property.
- Drinking alcohol or having an open container in public, or being intoxicated in public. (**Note:** If you are intoxicated and outside in severe cold weather, the Police can require you to go to Detox.)
- Urinating or defecating in public.
- Camping, sleeping, panhandling, or storing property on *federal* parkland.

SHELTER HOTLINE **1-800-535-7252**

**Comprehensive Psychiatric
Emergency Program (CPEP)**
888-793-4357 or 202-561-7000

Domestic Violence Hotline
202-347-2777

DC Rape Crisis
202-333-7273

Substance Abuse/Detox
202-698-6080

**Office of Citizen Complaint Review
(OCCR)**
(Deals with complaints re: the MPD)
202-727-3838

**Metropolitan Police
Emergency: 911
Non-Emergency: 311
Property Clerk: 202-645-0132**

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