Criminalization of Homelessness Legal Strategy Guides

Since the 1960s, when multiple courts ruled it unconstitutional to pass laws that explicitly penalize a person because they are homeless or impoverished,¹ some lawmakers have turned to criminalizing behaviors that are closely associated with homelessness and poverty. Because of the more subtle way in which today's laws criminalize homelessness, advocates must be able to recognize and articulate the constitutional violations that exist behind the justifications these laws employ.

The Criminalization of Homelessness: Legal Strategy Guides² were designed to educate individuals and advocates about the legality of laws that criminalize homelessness. In addition, the guides are designed to help advocates identify ordinances in their locality that may be susceptible to legal challenges. This packet includes four legal strategy guides for identifying and overcoming laws that criminalize homelessness. Each guide focuses on a discrete type of law that criminalizes homelessness, including (1) sleeping, camping and storing belongings in public space; (2) begging, panhandling and solicitation; (3) loitering; and (4) food sharing and distribution.

Please distribute these guides to members of your organization, network or community who would benefit from this information.

² The Criminalization of Homelessness: Legal Strategy Guides were developed by Senior Policy Students enrolled in Loyola University of Chicago School of Law's Health Justice Project. For more information, visit www.luc.edu/healthjustice.
This Legal Strategy Guide is designed to educate individuals and advocates about the legality of laws that criminalize homelessness. In addition, the guide is designed to help advocates identify ordinances in their locality that may be susceptible to legal challenges.

This guide outlines individual rights and legal strategies surrounding laws criminalizing sleeping and camping in public spaces. These laws include: (1) bans on sleeping and camping in public spaces; and (2) bans on the storage of personal property in public spaces.

"To camp" means to set up, or to remain in or at a campsite, for the purpose of establishing or maintaining a temporary place to live.¹

"Campsite" means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.²

COMMON PUBLIC SPACE LAW: BAN ON SLEEPING AND CAMPING IN PUBLIC SPACES

Sample Unconstitutional Law: "No person shall sit, lie or sleep in or upon any street, sidewalk or other public way."³

Rights of People Experiencing Homelessness
- In many places, people experiencing homelessness have the right to sleep in public places when shelter space is unavailable.⁴
- People experiencing homelessness have the right to express themselves, and sleeping in a public space can be a form of expression.

Legal Strategy
- Laws that prohibit people experiencing homelessness from sleeping in public spaces when they have no available alternative violate the prohibition on cruel and unusual punishment under the Eighth Amendment.⁵
- Laws that improperly restrict innocent behavior violate the Fourteenth Amendment.⁶
• If the law does not give clear notice of what constitutes a crime, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.7
• If a law does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.8

COMMON PUBLIC SPACE LAW: RESTRICTION ON STORAGE OF PERSONAL PROPERTY IN PUBLIC SPACES

Sample Unconstitutional Practice: Law enforcement officials engaged in “the practice of seizing and destroying private property of homeless individuals.”9

Rights of People Experiencing Homelessness
• People experiencing homelessness have the right to own private property.
• People experiencing homelessness have the right to privacy in their belongings.
• Property of people experiencing homelessness may not be confiscated without notice and a reasonable basis.
• Property of people experiencing homelessness may not be destroyed without providing an opportunity to reclaim it.

Legal Strategy
• Confiscating the property of people experiencing homelessness without a reasonable basis violates the freedom from unreasonable search and seizure under the Fourth Amendment.10
• Confiscating the property of people experiencing homelessness without notice violates the due process requirement of the Fourteenth Amendment.11
• Destroying the property of people experiencing homelessness without first giving them the chance to reclaim it violates the due process requirement of the Fourteenth Amendment.12
• If a law does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.13
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2 Id.

3 Jones v. City of Los Angeles, 444 F.3d 1118, 1138 (9th Cir. 2006) vacated, 505 F.3d 1006 (9th Cir. 2007) (citing Los Angeles Municipal Code §41.18(d)).

4 Some form of this right has been recognized in the following states: Alaska, Arizona, California, Florida, Hawaii, Idaho, Montana, Nevada, Oregon and Texas.

5 Jones v. City of Los Angeles, 444 F.3d 1118, 1138 (9th Cir. 2006) (holding that “involuntary sitting, lying, or sleeping on public sidewalk that is an unavoidable consequence of being human ad homeless without shelter in the City of Los Angeles” to be a violation of the Eight Amendment); vacated because parties entered into a voluntary agreement, 505 F.3d 1006 (9th Cir. 2007); Johnson v. City of Dallas, Tex., 860 F. Supp. 344, 350 (1994) vacated on standing grounds, 61 F.3d 442 (5th Cir. 1995); Bell v. City of Boise, No. CV 09-540-S-REB, 2011 Westlaw 2650204 at*9 (D. Idaho July 06, 2011); Pottinger v. City of Miami, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992); Anderson v. City of Portland, No. CV 08-1447-AA, 2009 Westlaw 2386056 at *6 – 7 (D. Or. July 31, 2009) (finding that “homeless persons should not be subject to criminal prosecution for merely sleeping in public at any time of day”); Contra Lehr v. City of Sacramento, 624 F. Supp. 2d 1218, 1231, 1234 (E.D. Cal. 2009) (declining to “provide constitutional recourse to anyone convicted on the basis of conduct derivative of a condition he is allegedly ‘powerless to change’”).


8 Id. at 361.


10 See Pottinger v. Miami, 810 F. Supp. 1551, 1571 (S.D. Fla. 1992) (finding that a “search is unreasonable if the government’s legitimate interest in the search or seizure outweighs the individual’s legitimate expectation of privacy in the object of the search”) (citing Maryland v. Buie, 494 U.S. 325 (1990)).

11 Kincaid v. Fresno, No. 1:06-CV-1445 OWW SMS, 2006 Westlaw 3542732 at *37 (E.D. Cal. Dec. 8, 2006) (stating “before the government seizes an individual’s property, even temporarily, it must provide notice an opportunity to be heard prior to the seizure,

12 Id. at *38 (stating “the state may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement”) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 434 (1982).

BEGGING, PANHANDLING & SOLICITATION

This Legal Strategy Guide is designed to educate individuals and advocates about the legality of laws that criminalize homelessness. In addition, the guide is designed to help advocates identify ordinances in their locality that may be susceptible to legal challenges.

This guide outlines individual rights and legal strategies surrounding common laws that criminalize begging. There are two categories of laws that criminalize begging: (1) specific restrictions on begging, which penalize beggars but not other groups who ask for funds, such as charities;\(^1\) and (2) general bans on solicitation, which criminalize all requests for contributions.\(^2\)

Begging (or panhandling) is generally defined as speech in which a person seeks assistance either by verbally asking or expressing the need through some other clear form of communication such as a sign, a donation cup, or an outstretched hand.\(^3\)

COMMON BEGGING LAW: SPECIFIC RESTRICTION ON BEGGING

Sample Unconstitutional Law: "Persons wandering abroad and begging, or who go about from door to door or in public or private ways, areas to which the general public is invited, or in other public places for the purpose of begging or to receive alms...shall be deemed vagrants and may be punished by imprisonment for not more than six months in the house of correction."\(^4\)

Rights of People Experiencing Homelessness

- People experiencing homelessness have the right to express themselves in public spaces by begging.
- Laws restricting begging cannot specifically target laws restricting begging.
- The only allowable restrictions on begging are those related to the time, place and manner of the activity (for example, begging may be not be allowed within fifty feet of a bank ATM or subway stop).

Legal Strategy

- Begging is a form of speech, not behavior, and laws that specifically target begging violate the free speech clause of the First Amendment.\(^5\)
• If a law regulating begging in public space does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impossibly vague in violation of the due process clause of the Fourteenth Amendment.\textsuperscript{6}

• If a law regulating begging in public space does not give clear notice of what constitutes a crime, it is impossibly vague in violation of the due process clause of the Fourteenth Amendment.\textsuperscript{7}

COMMON BEGGING LAW: GENERAL BAN ON SOLICITATION

**Sample Unconstitutional Law:** “It shall be unlawful for any person to stand on a street or highway and solicit, or attempt to solicit, employment, business, or contributions from an occupant of any motor vehicle. For purposes of this section, ‘street or highway’ shall mean all of that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, medians, alleys, sidewalks, curbs, and public ways.”\textsuperscript{8}

**Rights of People Experiencing Homelessness**

• People experiencing homelessness generally have a right to access public space to peacefully ask for help.

• In some instances, the government may limit the use of public spaces for solicitation, but it cannot entirely restrict an individual’s right to beg.

**Legal Strategy**

• In many places, laws that criminalize solicitation in a wide variety of public spaces\textsuperscript{9} violate the First Amendment right to free speech if they do not leave people experiencing homelessness with alternative public spaces in which to ask for help.\textsuperscript{10}

• Laws that criminalize solicitation in a wide variety of public places or circumstances may violate the free speech clause of the First Amendment if they restrict more speech than is necessary to achieve the government’s goal.\textsuperscript{11}

• If a law criminalizes solicitation in a public space, it must be for a significant government purpose, or it may violate the free speech clause of the First Amendment.\textsuperscript{12}

• If a law criminalizes solicitation in a limited-public space,\textsuperscript{13} such as a subway station, it need only serve a reasonable government interest.\textsuperscript{14}

• If a law regulating solicitation does not give clear notice of what constitutes a crime, it is impossibly vague in violation of the due process clause of the Fourteenth Amendment.\textsuperscript{15}
If a law regulating solicitation in public spaces does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.16

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2 Specific restrictions on begging are “content-based” restrictions. Content-based restrictions are government measures “enacted for the purpose of restraining speech on the basis of its content.” *City of Renton v. Playtime Theatres*, 475 U.S. 41, 47 (1986).

3 General bans on solicitation are “content-neutral” regulations. A content-neutral regulation “may impose reasonable restrictions on the time, place, and manner of protected speech, provided the restrictions ‘are justified without reference to the content of the regulated speech.’” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

4 *Id.* at 921 (citing M.G.L.A. 272 § 66).


7 *See id.* at 357.
8 Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936, 941-42 (9th Cir. 2011) (citing Redondo Beach Municipal Code § 3–7.1601 (ruled unconstitutional 2011)).

9 A public space, or public forum, is a place that has traditionally been devoted to public assembly and debate, such as parks and sidewalks. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983).

10 See, e.g., Gresham v. Peterson, 225 F.3d 899, 905 (7th Cir. 2000) (upholding ban on begging at night and specific locations within a city); Frisby v. Schultz, 487 U.S. 474, 486 (1988) (citing Linmark Assocs., Inc. v. Township of Willingboro, 431 U.S. 85, 93 (1977)).

11 Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936, 941-42 (9th Cir. 2011) (finding that a law that banned begging on public property that was used in conjunction with streets was too restrictive.)


13 A limited public space, or limited public forum, is a place that “is not by tradition or designation, a forum for public communication.” Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 46 (1983).

14 The following are examples of acceptable government purposes: ensuring public safety, People v. Schrader, 617 N.Y.S.2d 429, 437 (Crim Ct. 1994); and orderly maintenance of the flow of customers and avoiding traffic congestion that could lead to injury. McFarlin v. Dist. Of Columbia, 681 A.2d 440, 449 (D.C. 1996).


16 See id. at 361.
Legal Strategy Guide: Challenging Laws that Criminalize

LOITERING

This Legal Strategy Guide is designed to educate individuals and advocates about the legality of laws that criminalize homelessness. In addition, the guide is designed to help advocates identify ordinances in their locality that may be susceptible to legal challenges.

This guide outlines individual rights and legal strategies surrounding laws criminalizing loitering. Generally, these laws target the activity of loitering by: (1) requesting identification; (2) restricting innocent behavior; and (3) restricting free travel.

Loitering is “[t]he criminal offense of remaining in a certain place (such as a public street) for no apparent reason.”¹

COMMON LOITERING LAW: REQUEST FOR IDENTIFICATION

Sample Unconstitutional Law: “Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: (e) who loiters or wanders upon the streets or from place to place without an apparent reason or business and who refuses to identify himself and to account for his presence when request by any peace officer so to do, if the circumstances are such as to indicate to a reasonable man that the public safety demands such identification.”²

Rights of People Experiencing Homelessness

- People experiencing homelessness cannot be fined or arrested simply because they lack identification.
- Law enforcement officials may only briefly question a homeless person for identification.
- People experiencing homelessness are not required to answer questions about identification.
- Law enforcement officials cannot arrest a homeless person simply for refusing to answer questions about identification.

Legal Strategy

- Arresting and fining homeless persons without a reasonable basis of criminal conduct violates the freedom from unreasonable search and seizure right under the Fourth Amendment.³
• Even with a reasonable suspicion of criminal activity, arresting a homeless person for failure to provide identification violates the prohibition on unreasonable search and seizure under the Fourth Amendment.4
• Coercing an explanation about identification violates the right to remain silent under the Fifth Amendment.5
• Laws that allow police officers to arrest loiterers for failure to provide identification violate the vagueness doctrine under the due process requirement of the Fourteenth Amendment if they assign complete discretion to the police.6

COMMON LOITERING LAW: RESTRICTION ON INNOCENT BEHAVIOR

Sample Unconstitutional Law: “A person is guilty of loitering when he: 1. Loiters, remains or wanders about in a public place for the purpose of begging.”7

Rights of People Experiencing Homelessness
• People experiencing homelessness have the right to occupy public spaces for legal purposes, including spending time with friends and family, and hanging around.
• In many places, being in a public space for the purpose of begging is innocent behavior and cannot be entirely restricted.8
• People experiencing homelessness do not have to provide an explanation to police officers about why they are spending time in a public space.

Legal Strategy
• Laws that improperly restrict innocent behavior violate the Fourteenth Amendment.9
• Laws that create overly broad prohibition on free exercise violate the First Amendment.10
• If the law does not give clear notice of what constitutes a crime, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.11
• If a law does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.12
• Coercing a homeless person for an explanation of his conduct violates the right to remain silent under the Fifth Amendment.13
COMMON LOITERING LAW: RESTRICTION ON TRAVEL IN PUBLIC SPACES

Sample Unconstitutional Law: An ordinance created drug exclusion zones and "ban[ned] all persons from all drug exclusion zones who [were] arrested or taken into custody within any designated drug exclusion zone for drug abuse or any drug abuse-related activities."14

Rights of People Experiencing Homelessness

- A person’s right to travel cannot be infringed upon just because he is experiencing homelessness.
- People experiencing homelessness have the right to freely associate with whomever they choose.

Legal Strategy

- In some places, restrictions on a person’s ability to travel to public spaces violate the right to intrastate travel under the due process clause of the Fourteenth Amendment. 15
- In some places, prohibiting a homeless person’s ability to travel to public spaces to visit family, friends, and legal representatives is an unlawful infringement upon the First Amendment right to freedom of association.16
- If a law preventing travel in public spaces regulates innocent conduct, it may be overly broad in violation of the due process clause of the Fourteenth Amendment.17
- If a law regulating travel in public space does not give clear notice of what constitutes a crime, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.18
- If a law regulating travel in public space does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.19

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1 BLACK’S LAW DICTIONARY 1027 (9th ed. 2009); see U.S. v. Hernandez, 634 F.3d 317, 320 n. 13 (5th Cir. 2011).
2 Kolender v. Lawson, 658 F.2d 1362, FN 1 (9th Cir. 1981) (citing Cal.Penal Code §647(e)).


Governments may limit innocent behavior to certain areas of a municipality. See e.g. City of Renton v. Playtime Theatres, Inc. 475 U.S. 41 (1986).


Id. at 52. In Morales, the overbreadth doctrine did not apply. However, the court noted that the doctrine may be the basis to invalidate other loitering laws.


Id. at 361.


Johnson v. City of Cincinnati, 119 F.Supp.2d 735, 736 (S.D. Ohio 2000). (citing City of Cincinnati Ordinance No. 229 at ¶ 1(A)).

See King v. New Rochelle Municipal Housing Authority, 422 F.2d 646, 649 (2d. Cir. 1971) (stating “it would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not acknowledge correlative constitutional right to travel within a state”); Lutz v. City of York, 889 F.2d 255, 267 (3rd Cir. 1990) (stating “we . . . reject York’s argument that the Due Process Clause does not substantively protect a right to intrastate travel”); Johnson v. City of Cincinnati, 310 F.3d 484, 498 (6th Cir. 2002) (stating “in view of the historical endorsement of a right to intrastate travel and the practical necessity of such a right, we hold that the Constitution protects a right to travel locally through public spaces and roadways”); Standley v. Town of Woodfin, 661 S.E.2d 728, 730 (N.C. 2008) (stating “this court has recognized a right to intrastate travel”); Treacy v. Municipality of Anchorage, 91 P.3d 252 264 – 65 (Alaska 2004) (stating “there is no question that . . . the rights to move about . . . are fundamental” ), State v. Burnett, 755 N.E.2d 857, 864 (Ohio 2001) (stating “our own precedent cause[s] us to conclude that such a constitutional right of travel within a state exists”); Commonwealth v. Weston W., 913 N.E.2d 838 – 40 (Mass. 2009) (stating “the Declaration of Rights protects a fundamental right of free movement); In re Marriage of Giffin, 209 P.3d 225, 228 (Mont. 2009). Contra Wright v. City of Jackson, 506 F.2d 900, 901 (5th Cir. 1975) (holding “we can find no fundamental constitutional right to intrastate travel”).

Johnson v. City of Cincinnati, 310 F.3d 484, 505 (6th Cir. 2002).

Id. at 503.


Id. at 361.
This Legal Strategy Guide is designed to educate individuals and advocates about the legality of laws that criminalize homelessness. In addition, the guide is designed to help advocates identify ordinances in their locality that may be susceptible to legal challenges.

This guide outlines individual rights and legal strategies surrounding laws pertaining to religious organizations and community groups that criminalize food sharing in places of worship and on city property, including parks, streets, and sidewalks. These laws include: (1) bans on sharing or social service; (2) zoning restrictions that generally restrict land use; and (3) specific permit requirements to participate in food sharing.

Food sharing is the distribution of food to the needy for free or a nominal fee.¹

COMMON FOOD SHARING & DISTRIBUTION LAW: BAN ON FOOD SHARING OR SOCIAL SERVICES

Sample Impermissible Law: An ordinance prohibited “the providing of food or meals to the indigent for free or for a nominal fee” in city parks. The ordinance defined an indigent person as “a person whom a reasonable ordinary person would believe to be entitled to apply for and receive [public benefits].”²

Right to Provide Food for People Experiencing Homelessness

- In many states, city governments must allow religious organizations and community groups to distribute food and provide social services to homeless individuals in at least some locations.

Legal Strategy

- Laws that prohibit food sharing with homeless individuals without adequate justification are a violation of the equal protection clause of the Fourteenth Amendment.³
- Laws that prohibit food sharing by religious organizations may violate the free exercise clause of the First Amendment.⁴
• If the law does not give clear notice of what constitutes a crime, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.⁵
• If a law does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.⁶
• Laws that restrict religious organizations from sharing food with homeless individuals without allowing for alternate sites for such programs may violate state-enacted Religious Freedom of Restoration Acts.⁷
• In certain circumstances, food sharing may constitute expressive conduct, and laws prohibiting such conduct may violate the free speech clause of the First Amendment.⁸

COMMON FOOD SHARING LAW: ZONING ORDINANCES THAT GENERALLY RESTRICT LAND USE

Sample Impermissible Law: An ordinance required “conditional use permits” for “feeding programs” conducted within “churches or other places of worship” and strictly limited such programs to “not more than thirty (30) homeless individuals . . . for up to a total of seven days within [a seven-month period].”⁹

Right to Provide Food for People Experiencing Homelessness
• In many states, religious organizations have the right to use their places of worship to serve food to homeless individuals.
• Zoning laws may not place a greater burden on religious organizations providing services to people experiencing homelessness than other organizations.

Legal Strategy
• Zoning boards that inconsistently apply zoning ordinances may violate the equal protection clause of the Fourteenth Amendment.¹⁰
• Zoning laws that substantially burden religious organizations’ ability to serve food to homeless individuals may violate the free exercise clause of the First Amendment.¹¹
• Zoning laws that substantially burden religious organizations’ ability to serve food to homeless individuals may be unlawful under the federal Religious Land Use and Institutionalized Persons Act of 2000.¹²
• Zoning laws that substantially burden religious organizations’ ability to serve food to homeless individuals may be an unlawful regulation on religious practice in violation of state-enacted Religious Freedom of Restoration Acts.¹³
• If the law does not give clear notice of what constitutes a crime, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.\textsuperscript{14}

COMMON FOOD SHARING LAW: SPECIFIC PERMIT REQUIREMENTS TO ENGAGE IN FOOD SHARING

Sample Impermissible Law: As part of an ordinance regulating food distribution, a city required that groups also adhere to the requirements of a community events ordinance which required permits for events which “may impede, obstruct, impair or interfere” with the free flow of traffic.\textsuperscript{15}

Right to Provide Food for People Experiencing Homelessness
• Religious organizations and community groups have the right to gather in small numbers in public parks.
• Religious organizations and community groups have the right to gather in streets and sidewalks as long as they do not interfere with traffic, safety, or public use.
• Cities must allow religious organizations and community groups to hold an impromptu gathering in at least some public space.
• Religious organizations and community groups have the same right to obtain permits to share food as any other group that shares food.

Legal Strategy
• Requiring a permit for a small group gathering in an open public space is a violation of the free speech clause of the First Amendment.\textsuperscript{16}
• Requiring a permit for gatherings on streets and sidewalks that do not present serious traffic, safety, or competing use concerns beyond those presented on an ordinary basis, violates the free speech clause of the First Amendment.\textsuperscript{17}
• Permit laws that require long periods of advance notice to engage in food sharing may unreasonably limit freedom of speech under the First Amendment.\textsuperscript{18}
• Permit laws that prohibit spontaneous gatherings impermissibly burden freedom of speech under the First Amendment.\textsuperscript{19}
• Overly expensive permit fees to engage in food sharing may be an unlawful infringement on freedom of speech under the First Amendment.\textsuperscript{20}
• Laws that improperly restrict religious organizations from sharing food with the homeless, including requiring religious organizations to meet overly burdensome health codes, may be a violation of state-enacted Religious Freedom of Restoration Acts.\textsuperscript{21}
• Laws requiring religious organizations to obtain pre-approval for specific locations in which they plan to share food with people experiencing...
homelessness may be a violation of state-enacted Religious Freedom Restoration Acts.²²

- If a law does not clearly outline the obligations of law enforcement officials, or if it gives law enforcement too much discretion in how to carry out the law, it is impermissibly vague in violation of the due process clause of the Fourteenth Amendment.²³

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³ Id.


⁶ Id. at 361.

⁷ Abbot v. City of Fort Lauderdale, 783 So.2d 1213, 1214 (Fla. App. 4th Dist. 2001) (holding that a law, stating “Parks shall not be used for business or social service purposes unless authorized pursuant to a written agreement,” violated the Florida Religious Freedom Restoration Act of 1988.)

⁸ See First Vagabonds Church v. City of Orlando, 638 F.3d 756, 758 (11th Cir. 2011) (“We assume, without deciding, that the feeding of homeless persons is expressive conduct”).


¹⁰ See Daytona Rescue Mission v. City of Daytona Beach, 885 F.Supp 1554, 1561 (M.D. Fla. 1995) (quoting Brown v. Borough of Mahaffey, Pa., 35 F.3d 846, 850 (3d Cir. 1994), that “to maintain an equal protection claim . . . [the Church] must allege and prove that they received different treatment from other similarly situated individuals or groups”).

¹¹ Family Life Church v. City of Elgin, 561 F.Supp.2d 978, 986 (N.D. Ill. 2008) (stating that “delay, uncertainty, and expense’ as to whether a religious land use is legal are sufficient to constitute a substantial burden” in certain circumstances) (citing Sts. Constatine & Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895 (7th Cir. 2005)).

13 See Stuart Circle Parish v. Board of Zoning Appeals of the City of Richmond, 946 F.Supp. 1225, 1237-41 (E.D. Va. 1996) (finding an ordinance likely invalid under the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C.A. §§ 2000bb to 2000bb-4 (1993). Note: although the Supreme Court invalidated the RFRA in 1997, some states have responded by enacting their own versions of the law). See also Western Presbyterian Church v. Board of Zoning Adjustment of the District of Columbia, 862 F.Supp. 538, 547 (D.D.C. 1994); First Assembly of God v. Collier County, 27 F.3d 526 (11th Cir. 1994) (adding to its previous opinion published at 20 F.3d 419 (11th Cir. 1994) that the RFRA may have applied); Jesus Center v. Farmington Hills Zoning Board of Appeals, 215 Mich. App. 54, 68 (1996); Daytona Rescue Mission v. City of Daytona, 885 F. Supp. 1554, 1560 (11th Cir. 1995) (holding that denying an application for a permit for a religious organization, only because there were other sites available, was not a violation of the RFRA.)


15 Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1027 (9th Cir. 2006) (citing Santa Monica, Cal. Mun. Code § 5.06.010 (2004)) (emphasis added).

16 See id. at 1042-43 (9th Cir. 2006) (citing Grossman v. City of Portland, 33 F.3d 1200, 1205-08 (9th Cir. 1994), finding permit requirement potentially applicable to groups as small as six to eight people insufficiently narrowly tailored); Douglas v. Browell, 88 F.3d 1511, 1524 (8th Cir. 1996) (expressing doubt that the application of a permit requirement to groups with as few as ten people is sufficiently narrowly tailored.)

17 See id. at 1039.

18 See id. at 1043-45 (noting that ordinances requiring fewer than three days advance notice of large expressive events have survived challenge).

19 See id. at 1045-48.


22 Id.at *4.

23 Id. at 361.