Criminalizing Charity: Can First Amendment Free Exercise of Religion, RFRA, and RLUIPA Protect People Who Share Food in Public?

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* Professor of Law, St. Thomas University School of Law, mtgonzalez@stu.edu, @marctizoc, http://www.foodsharinglaw.net [https://perma.cc/MT34-9LWF]. This Article is the second in a series that critically analyzes the criminalization of people who publicly share food with those who hunger. I again thank all the scholars, lawyers, and activists who supported my first Article in the series, Marc-Tizoc González, *Hunger, Poverty, and the Criminalization of Food Sharing in the New Gilded Age*, 23 AM. U. J. GENDER, SOC. POL'Y & L. 231 (2015) (lead article). For helpful comments on this Article, I also thank Gordon Butler, Amy J. Cohen, Brendan Conley, Richard Delgado, Teague González, Angela P. Harris, Ernesto Hernández-López, John Kang, Christine Klein, Thomas Kleven, Beth Kregor, Tamara Lawson, Stephen Lee, Beth Lyon, Audrey McFarlane, Osha Neumann, Adam P. Romero, Amy Ronner, Sarah Schindler, Francisco Valdes, Patricia E. Wall, Jeff Weinberger, and Brenda Williams. Finally, I thank the outstanding research assistants who have supported this multiyear project: Jessica Biedron, Gracy Crumpton, Marina G. González, Cynthia Lane, Patricia J. Peña, Jesse S. Peterson, and Gwendolyn Richards.

I dedicate this Article to D, an African American elder whom I met in December 2006 while helping to establish the Oakland, California, office of the Alameda County Homeless Action Center. As a staff attorney therein, I represented D in his successful claim for federal disability benefits, defended his liberty against several charges of "quality of life" criminal infractions, and generally counseled him as he contended with the socio-legal conditions of extreme poverty and racism. When we last saw each other, in June 2011, I tried to thank him for all that he had taught me. He replied with a grin, "We're just getting started!"

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.

– Anatole France (April 16, 1844, to October 12, 1924)[1]

> On the morning of Saturday, August, 24 [2013], Love Wins [Ministries] showed up at Moore Square [in Raleigh, North Carolina] at 9:00 a.m., just like we have done virtually every Saturday and Sunday for the last six years. We provide, without cost or obligation, hot coffee and a breakfast sandwich to anyone who wants one. We keep this promise to our community in cooperation with five different, large suburban churches that help us with manpower and funding.
>
> On that morning three officers from Raleigh Police Department prevented us from doing our work, for the first time ever. An officer said, quite bluntly, that if we attempted to distribute food, we would be arrested. . . .
>
> When I asked the officer why, he said that he was not going to debate me. "I am just telling you what is. Now you pass out that food, you will go to jail."[2]

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1. Justice Frankfurter preferred this English translation. *See* Griffin v. Ill., 351 U.S. 12, 23 (1956) (Frankfurter, J., concurring) (citation omitted); s*ee also* ANATOLE FRANCE, LE LYS ROUGE 117 (4th ed. 1894) [hereinafter FRANCE, LE LYS ROUGE], https://fr.wikisource.org/wiki/Le_Lys_rouge/VII [https://perma.cc/29ST-ZTAW] (In the original French: "Ils y doivent travailler devant la majestueuse égalité des lois, qui interdit au riche comme au pauvre de coucher sous les ponts, de mendier dans les rues et de voler du pain."); ANATOLE FRANCE, THE RED LILY 95 (Frederic Chapman ed., Winifred Stephens trans., 6th ed. 1921) [hereinafter FRANCE, THE RED LILY], https://books.google.com/books?id=2-YLAAAAIAAJ [https://perma.cc/R2CT-3NZK] ("At this task they must labour in the face of the majestic equality of the laws, which forbid rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread."); FRANCE, THE RED LILY, *supra*, at ch. VII (Project Gutenberg trans.), http://www.gutenberg.org/files/3922/3922-h/3922-h.htm#link2HCH0007 [https://perma.cc/WL8L-RY77] ("The poor must work for this, in presence of the majestic equality of the law which prohibits the wealthy as well as the poor from sleeping under the bridges, from begging in the streets, and from stealing bread."). I thank activist, artist, and attorney Osha Neumann for introducing me to this quote in 2007 while mentoring me in the legal defense of an elderly Black man whom police arrested for begging in Oakland, California, under former CAL. PENAL CODE section 647(b)(6), which prohibited "[w]illfully disturbing others on or in any system facility or vehicle by engaging in boisterous or unruly behavior."

2. Hugh Hollowell, *Feeding Homeless Apparently Illegal in Raleigh, NC*, LOVE WINS MINISTRIES (Aug. 24, 2013), http://lovewins.info/2013/08/feeding-homeless-apparently-illegal-in-raleigh-nc/ [https://perma.cc/LSP3-GA4L].

INTRODUCTION

Food is necessary for human survival and fundamental to human flourishing.[3] In the United States, however, over forty-eight million people (more than fifteen percent of the populace) suffered "food insecurity" in 2014.[4] Despite these human realities and socio-legal conditions, over the past decade the National Coalition for the Homeless and the National Law Center on Homelessness and Poverty have documented fifty-seven U.S. cities across twenty-five states that have proscribed or otherwise regulated the unauthorized provision of food to hungry people in public.[5]

To criminalize people for publicly sharing food with those who hunger may seem absurd, cruel, or unusual,[6] and indeed, numerous people have challenged these

3. *Accord* Dylan Clark, *The Raw and the Rotten: Punk Cuisine*, 43 ETHNOLOGY 19, 19 (2004) ("Levi-Strauss (1964) saw the process of cooking food as the quintessential means through which humans differentiate themselves from animals, through which we manufacture culture and 'civilization.'"); Michael Gurven & Adrian V. Jaeggi, *Food Sharing*, *in* EMERGING TRENDS IN THE SOC. AND BEHAV. SCI. 1, 4 (Robert Scott & Stephen Kosslyn eds., 2015) ("Among humans, the necessity for sharing [food] in order to provision infants, juveniles, and adolescents—and abundant inter-household sharing among adults—has led to a relatively high intrinsic propensity to share with others, and a high degree of sensitivity to cues of recipient need.") (citation omitted).

4. ALISHA COLEMAN-JENSEN, MATTHEW P. RABBITT, CHRISTIAN A. GREGORY & ANITA SINGH, ECON. RES. SERV., U.S. DEP'T OF AGRIC., ERR-194, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2014, at 6, 10 (2015) [hereinafter HOUSEHOLD FOOD SECURITY IN THE UNITED STATES].

5. NAT'L COAL. FOR THE HOMELESS, SHARE NO MORE: THE CRIMINALIZATION OF EFFORTS TO FEED PEOPLE IN NEED 4–5, 25 (2014) [hereinafter SHARE NO MORE], http://nationalhomeless.org/wp-content/uploads/2014/10/Food-Sharing2014.pdf [https://perma.cc/WCJ7-V496] (reporting that twenty-one cities established restrictions on sharing food publicly from January 2013 to October 2014 and that ten other cities were considering such legislation, and also depicting a map of fifty-seven cities, across twenty-five states, that have attempted to ban, relocate, or otherwise restrict such activity); *see also* NAT'L COAL. FOR THE HOMELESS & NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, A PLACE AT THE TABLE: PROHIBITIONS ON SHARING FOOD WITH PEOPLE EXPERIENCING HOMELESSNESS 10–14 (2010) [hereinafter A PLACE AT THE TABLE], http://www.nationalhomeless.org/publications/foodsharing/Food_Sharing_2010.pdf [https://perma.cc/QPH5-VAZ3] (discussing municipal laws in twelve U.S. cities that "at some point limited the use of public parks for sharing food with homeless people"); NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 8, 24–25 (2014) [hereinafter NO SAFE PLACE], http://nlchp.org/documents/No_Safe_Place [https://perma.cc/P5VJ-Z2MQ] (discussing restrictions on food sharing in seventeen cities); NAT'L LAW CTR. ON HOMELESSNESS & POVERTY & NAT'L COAL. FOR THE HOMELESS, FEEDING INTOLERANCE: PROHIBITIONS ON SHARING FOOD WITH PEOPLE EXPERIENCING HOMELESSNESS vi, 2–3, 7–8, 10–18, 20 (2007) [hereinafter FEEDING INTOLERANCE], http://www.nationalhomeless.org/publications/foodsharing/Food_Sharing.pdf [https://perma.cc/B47S-XQ8A] (listing and summarizing food-sharing restrictions in twenty-two U.S. cities). *See generally infra* App. 2 U.S. Cities with Anti-Food-Sharing Laws (grouping the cities by state).

6. *Cf.* Statement of Interest of the United States at 3–4, Bell v. City of Boise, No. 1:09-cv-540-REB (D. Idaho Aug. 6, 2015), https://www.justice.gov/crt/file/761211/download [https://perma.cc/GWS5-28KF] (arguing that if insufficient shelter space makes it impossible for some homeless individuals to comply with city ordinances that prohibit camping, lodging, or sleeping in public, then enforcement of such ordinances would amount to the criminalization of homelessness in violation of the Eighth Amendment).

laws.[7] Adapting the usage preferred by some of the people who publicly share food with those who hunger, I use the phrase, "the food-sharing cases" to describe when people challenge their criminalization under "anti-food-sharing laws,"[8] and I use the phrase "those who hunger" to evoke the Biblical Beatitudes of the Sermon on the Mount: (viz., "Blessed are they who hunger and thirst for righteousness, for they will be satisfied").[9] Since 1993, legal challenges to these laws have predominantly sounded in federal courts, which have produced over a dozen published and unpublished judicial opinions, including several from the U.S. Courts of Appeals for the Ninth and Eleventh Circuits.[10] Only a few challenges have sounded in state courts,[11] and several recent food-sharing cases have resolved entirely in the court of public opinion.[12]

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7. *See* NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, CRIMINALIZING CRISIS: ADVOCACY MANUAL 132–41 (2011), [hereinafter CRIMINALIZING CRISIS], https://www.nlchp.org/documents/Criminalizing_Crisis_Advocacy_Manual [https://perma.cc/P37C-PSW4] (summarizing twelve published federal judicial opinions regarding such laws); *see also infra* App. 1. The Litigated Food-Sharing Cases (listing the cases chronologically).

8. *Accord* KEITH MCHENRY, HUNGRY FOR PEACE: HOW YOU CAN HELP END POVERTY AND WAR WITH FOOD NOT BOMBS 11, 14, 19–20, 153 (2015), https://www.foodnotbombs.net/hungry_for_peace_book.pdf [https://perma.cc/AF6C-ENKY] (discussing how one of the eight co-founders of the international Food Not Bombs movement understands the ethics of sharing food); SHARE NO MORE, *supra* note 5, at 2, 4 (discussing restrictions on food sharing); Nathan Pim, *Food Sharings Shut Down 11.2.2014, Hunger Strike Declared*, RESIST FT. LAUDERDALE HOMELESS HATE LAWS (Nov. 2, 2014), http://homelesshatelaws.blogspot.com/2014/11/food-sharings-shut-down-1122014-hunger.html [https://perma.cc/QN8K-5YWH] (discussing the initial enforcement of a 2014 City of Fort Lauderdale law against people who publicly share food on the sidewalk by a city park); *see* González, *supra* note *, at 233.

9. *Matthew* 5:6.

10. *See* CRIMINALIZING CRISIS, *supra* note 7, at 132–42 (summarizing twelve published federal judicial opinions regarding food-sharing laws from 1993 until 2011); *see also infra* App. 1. The Litigated Food-Sharing Cases (listing the cases chronologically).

11. *See*, *e.g.*, Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs., 712 P.2d 914, 921 (Ariz. 1985) (affirming the trial court's preliminary injunction against a church program that provided one free meal a day to indigent persons and holding that conduct which unreasonably and significantly interferes with the public health, safety, peace, comfort, or convenience constitutes a public nuisance, notwithstanding no violation of criminal or zoning laws); Abbott v. City of Fort Lauderdale (*Abbott II*), 783 So. 2d 1213, 1214 (Fla. Dist. Ct. App. 2001) (affirming the trial court's final judgment that Fort Lauderdale's anti-food-sharing law violated the plaintiffs' rights under the Florida Religious Freedom Restoration Act of 1998, FLA. STAT. ANN. § 761.03 *et seq.* (West 2016)); Wilkinson v. Lafranz, 574 So. 2d 400 (La. Ct. App. 1991) (dismissing plaintiffs' appeal of the denial of its motion for a preliminary injunction against a church's soup kitchen as untimely filed, but finding that plaintiffs' claim for a permanent injunction remained pending).

12. *See, e.g.*, Colin Campbell, *Emails: Legal Advice Sought to "Clean Up" Moore Square*, NEWS & OBSERVER (Sept. 13, 2013), http://www.newsobserver.com/news/local/community/midtown-raleigh-news/article10279163.html [https://perma.cc/MQB6-VBUX] (reporting that the City Council of Raleigh, North Carolina, ordered police to temporarily stop enforcing rules prohibiting food sharing after social media and traditional media uncovered city employees' emails regarding "how to push out charities and suspected criminals to 'clean up' Moore Square").

While the human practice of sharing food is literally prehistoric,[13] and myriad relevant historical antecedents exist,[14] the first wave of modern anti-food-sharing laws in the United States emerged in the 1980s and spread throughout the 1990s. In this period, some cities used their police power to proscribe food sharing on publicly and *privately* owned properties as a regulation of health, parks, nuisance, or zoning.[15] Since the 2000s, however, the second wave of modern anti-food-sharing laws has featured a surge of laws that typically threaten a misdemeanor crime against people who share food with those who hunger while on public (city-owned) properties—such as parks, sidewalks, and streets—without first obtaining the

13. Gurven & Jaeggi, *supra* note 3, at 1 ("Among hunter-gatherers, whose lifeways most closely resemble those of ancestral humans, the direct transfer of food items among individuals (hereafter 'food sharing') is an important and ubiquitous form of cooperative behavior.").

14. *See, e.g.*, Shamhart v. Morrison Cafeteria Co., 32 So. 2d 727, 728 (Fla. 1947) (enjoining the appellee cafeteria owner from creating a public nuisance when his customers' queue on the sidewalk routinely blocked the entrance to appellant's drug store, where the appellee used the entire space of his premises for cooking food and seating customers); HARRY KALVEN, JR., THE NEGRO AND THE FIRST AMENDMENT 123–72 (1965) (discussing First Amendment jurisprudence that the Court created as the National Association for the Advancement of Colored People Legal Defense and Educational Fund (NAACP LDF) defended students and others who protested racial segregation through protest marches and lunch counter sit-ins); EDUARDO MOISÉS PEÑALVER & SONIA K. KATYAL, PROPERTY OUTLAWS: HOW SQUATTERS, PIRATES, AND PROTESTERS IMPROVE THE LAW OF OWNERSHIP 1–3, 64–70 (2010) (interpreting the civil rights lunch counter sit-in protests of the 1960s under the theory of property outlaws and altlaws); THE DR. HUEY P. NEWTON FOUND., THE BLACK PANTHER PARTY: SERVICE TO THE PEOPLE PROGRAMS 30–39 (David Hilliard ed., 2008) (discussing the Free Breakfast for Schoolchildren Program and Free Food Program); William N. Eskridge, *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2334–40 (2002) (discussing how civil rights litigation spurred the Court to evolve First Amendment jurisprudence to protect expressive association and expressive conduct); González, *supra* note *, at 235 n.4 (referencing gendered and racialized socio-legal conflicts concerning the preparing and providing of food to striking California cotton pickers in 1933) (I thank John Kang for encouraging me to read Kalven's classic book and Thomas Kleven for encouraging me to consider relevant public nuisance cases, which led me to *Shamhart*.).

15. *See, e.g.*, McHenry v. Agnos (*McHenry I*), 983 F.2d 1076 (9th Cir. 1993) (unpublished table decision) (affirming the district court's summary judgment in favor of municipal defendants, where the plaintiff sued under 42 U.S.C. § 1983 (2012), alleging that a San Francisco superior court injunction against his distribution of food violated his civil rights); W. Presbyterian Church v. Bd. of Zoning Adjustment of D.C. (*W. Presbyterian Church II*), 862 F. Supp. 538, 547 (D.D.C. 1994) (granting summary judgment for plaintiff church, which argued that its "program to feed the homeless . . . constitutes religious activity protected by the First Amendment of the constitution and the Religious Freedom Restoration Act of 1993 and that application of the District of Columbia's zoning regulations to the feeding program impermissibly infringes upon plaintiffs' right to free exercise of their religion" and enjoining the District of Columbia from interfering with the plaintiffs' program, "so long as the feeding program is conducted in an orderly manner and does not constitute a nuisance."); *Armory Park Neighborhood Ass'n*, 712 P.2d at 921 (affirming the trial court's preliminary injunction against a church program that provided one free meal a day to indigent persons and holding that conduct which unreasonably and significantly interferes with the public health, safety, peace, comfort, or convenience constitutes a public nuisance, notwithstanding no violation of criminal or zoning laws); *Wilkinson*, 574 So. 2d 403 (dismissing plaintiffs' appeal of the denial of its motion for a preliminary injunction against a church's soup kitchen as untimely filed but finding that plaintiffs' claim for a permanent injunction remained pending).

proper permit.[16] Some municipal legislatures promulgated these criminalization efforts in the years preceding the Great Recession of December 2007 to June 2009;[17] others enacted such laws during the Great Recession,[18] and despite the uneven economic recovery,[19] this trend has yet to stop.[20]

The food-sharing cases implicate a number of constitutional doctrines and statutory rights and thus merit scholarly attention on the basis of their legal complexity alone. For example, in 2011, the Eleventh Circuit of the U.S. Court of Appeals created an inter-circuit split in authority when it upheld the City of Orlando's anti-food-sharing law.[21] Where the Eleventh Circuit affirmed Orlando's law "as a reasonable time, place, or manner restriction and as a reasonable regulation of expressive conduct,"[22] in 2006 the Ninth Circuit found that a community events ordinance that regulated diverse uses of public property, including food sharing,

16. *Accord* SHARE NO MORE, *supra* note 5, at 20–21; A PLACE AT THE TABLE, *supra* note 5; CRIMINALIZING CRISIS, *supra* note 7, at 132–41; NO SAFE PLACE, *supra* note 5, at 26; FEEDING INTOLERANCE, *supra* note 5, at 7; *see, e.g.*, First Vagabonds Church of God v. City of Orlando (*First Vagabonds Church of God IV*), 610 F.3d 1274, 1280 n.4 (11th Cir. 2010), *vacated & rev'd en banc*, 616 F.3d 1229, 1230 (11th Cir. 2010) ("Violations of the Ordinance are punishable by a fine of up to $500 or 60 days of imprisonment."); Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1029 (9th Cir. 2006) (quoting SANTA MONICA, CA., MUNICIPAL CODE § 5.06.020 (2017), adopted October 22, 2002, which provides, "Any person violating this Section shall be guilty of a misdemeanor which shall be punishable by a fine not exceeding One Thousand Dollars per violation, or by imprisonment in the County Jail for a period not exceeding six months, or by both such fine and imprisonment.").

17. *See* CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2014, CURRENT POPULATION REPORTS P60-252, at 21 (2015) (discussing the recession concept and showing that the eighteen-month Great Recession was the longest of the eleven recessions on record since 1948); FEEDING INTOLERANCE, *supra* note 5, at 2 ("In the past few years, many cities have adopted a new tactic—one that targets not only homeless persons but also individual citizens and groups who attempt to share food with them.").

18. *See* A PLACE AT THE TABLE, *supra* note 5, at 2–3, 10–17 (discussing anti-food sharing laws in twenty-one cities).

19. *See* Emmanuel Saez, *U.S. Top One Percent of Income Earners Hit New High in 2015 Amid Strong Economic Growth*, WASH. CTR. FOR EQUITABLE GROWTH (July 1, 2016), http://equitablegrowth.org/research-analysis/u-s-top-one-percent-of-income-earners-hit-new-high-in-2015-amid-strong-economic-growth/ [https://perma.cc/N39E-DRFS] (reporting that U.S. families in the bottom ninety-nine percent of income earners have recovered only about sixty percent of their income losses due to the Great Recession).

20. *See* SHARE NO MORE, *supra* note 5, at 4–5 (stating that seven cities were still in the process of trying to pass anti-food-sharing laws at the time of the report).

21. González, *supra* note *, at 233–34, 260–77 (discussing the split in authority between the Ninth and Eleventh Circuits of the U.S. Courts of Appeals regarding the food-sharing cases).

22. First Vagabonds Church of God v. City of Orlando (*First Vagabonds Church of God V*), 638 F.3d 756, 758–59 (11th Cir. 2011) (en banc), *rev'g* 578 F. Supp. 2d 1353 (M.D. Fla. 2008) (upholding an anti-food-sharing law "as a reasonable time, place, or manner restriction and as a reasonable regulation of expressive conduct," which required a permit to conduct a "large group feeding," within public parks located in a two-mile radius of city hall, with no more than two permits available per year to a permittee for any particular park, and where "large group feeding" was defined as, "an event intended to attract, attracting, or likely to attract twenty-five (25) or more people . . . for the delivery or service of food.") (citation omitted).

was unconstitutional for not being narrowly tailored under the First Amendment.[23] In district courts, other food-sharing cases have featured diverse arguments over the free exercise of religion, peaceable assembly, expressive association, and equal protection.[24] Also, some food-sharing cases have implicated federal or state Religious Freedom Restoration Acts,[25] and one has featured the Religious Land Use and Institutionalized Persons Act of 2000.[26] Finally, several of the earliest food-sharing cases featured nuisance law.[27]

Beyond legal doctrines, the food-sharing cases merit scholarly attention because socio-legal conflicts over sharing food in public implicate numerous important jurisprudential principles and socio-legal theories. For example, anti-food-sharing laws might be cognized as one of the new set of laws, regulations, policies, and practices that cities have recently deployed to effect the banishment, exclusion, or exile of socially marginal classes of people (e.g., people who "aggressively beg" or "the homeless").[28] Alternatively, the food-sharing cases might

23. *Santa Monica Food Not Bombs*, 450 F.3d at 1040, 1043 ("[A] narrowly tailored permit requirement must maintain a close relationship between the size of the event and its likelihood of implicating government interests," and finding that a city department's instruction undermined an ordinance's narrow tailoring where it mandated, "that 'any activity or event which the applicant intends to advertise in advance via radio, television, and/or widely-distributed print media shall be deemed to be an activity or event of 150 or more persons.'") (citation omitted).

24. *See* González, *supra* note *, at 233–34, 260–77.

25. *See, e.g.*, Chosen 300 Ministries, Inc. v. City of Phila., No. 12-3159, 2012 WL 3235317, at *26–27 (E.D. Penn. Aug. 9, 2012) (applying the Pennsylvania Religious Freedom Protection Act (PRFPA), 71 PA. STAT. AND CONS. STAT. ANN. §§ 2401 *et seq.* (West 2012), and issuing a preliminary injunction against the defendant city); Big Hart Ministries Ass'n, Inc. v. City of Dall., No. 3:07-CV-0216-P, 2011 WL 5346109, at *5 (N.D. Tex. Nov. 4, 2011) (deciding that the plaintiffs had presented enough evidence to withstand summary judgment on their claim under the Texas Religious Freedom Restoration Act (TRFRA), TEX. CIV. PRAC. & REM. CODE ANN. § 110.003 (West 2017)); First Vagabonds Church of God v. City of Orlando (*First Vagabonds Church of God II*), 2008 WL 2646603 (M.D. Fla. June 26, 2008) (finding no violation of the Florida Religious Freedom Restoration Act (FRFRA), FLA. STAT. ANN. § 761.01 *et seq.* (West 2016)), *rev'd on other grounds* 638 F.3d 756, 758–59 (11th Cir. 2011) (en banc); Stuart Circle Par. v. Bd. of Zoning Appeals of Richmond, 946 F. Supp. 1225 (E.D. Va. 1996) (applying the least restrictive means test of the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.* (2012), and issuing a temporary restraining order against the defendant); Daytona Rescue Mission v. City of Daytona Beach, 885 F. Supp. 1554 (M.D. Fla. 1995) (finding no violation of RFRA); *W. Presbyterian Church II*, 862 F. Supp. at 547 (granting summary judgment for plaintiff church, which claimed that defendants' enforcement of zoning laws violated the RFRA); *Abbott II*, 783 So. 2d 1213 (enjoining the defendant from enforcing its park rule because it violated FRFRA).

26. Pac. Beach United Methodist Church v. City of San Diego, No. 07-CV-2305-LAB-PCL, 2008 WL 7257244 (S.D. Cal. Apr. 18, 2008) (Order of Dismissal).

27. *See*, *e.g.*, *W. Presbyterian Church II*, 862 F. Supp. at 547; *Armory Park Neighborhood Ass'n*, 712 P.2d at 921; *Wilkinson*, 574 So. 2d 403; Greentree at Murray Hill Condo. v. Good Shepherd Episcopal Church, 550 N.Y.S.2d 981 (N.Y. 1989).

28. *See, e.g.*, KATHERINE BECKETT & STEVE HERBERT, BANISHED: THE NEW SOCIAL CONTROL IN URBAN AMERICA 10 (2010) ("[T]he new legal tools we analyze here entail banishment: the legal compulsion to leave specified geographic areas for extended periods of time."); Randall Amster, *Patterns of Exclusion: Sanitizing Space, Criminalizing Homelessness*, 30 SOC. JUST. 195, 195 (2003) ("[P]atterns of spatial exclusion and marginalization of the impoverished that have existed throughout modern history have reemerged."); Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165 (1996);

be understood to resurface old yet ongoing debates, and socio-legal struggles, over homelessness and liberty.[29] Similarly, evaluating the food-sharing cases might help to nuance new theories of "pedestrianism," "property outlaws," the "right to the city," and the "urban commons."[30] Alternatively, they might recapitulate past and present contests over the definitions and limits of police power, private and public property, and public space.[31] Further, some anti-food-sharing laws seem to have responded to recent mass urban protests and social movements like Occupy Wall

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Stephen R. Munzer, *Ellickson on "Chronic Misconduct" in Urban Spaces: Of Panhandlers, Bench Squatters, and Day Laborers*, 32 HARV. C.R.–C.L. L. REV. 1 (1997); Sara K. Rankin, *The Influence of Exile*, 76 MD. L. REV. 4 (2016); Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TULANE L. REV. 631 (1994).

29. *See, e.g.*, Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL'Y REV. 1, 5–6 (1996); Maria Foscarinis, Kelly Cunningham-Bowers & Kristen E. Brown, *Out of Sight—Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. POVERTY L. & POL'Y 145 (1999); Nate Vogel, *The Fundraisers, the Beggars, and the Hungry: The First Amendment Rights to Solicit Donations, to Beg for Money, and to Share Food*, 15 U. PA. J.L. & SOC. CHANGE 537 (2012); Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295 (1991); David M. Smith, Note, *A Theoretical and Legal Challenge to Homeless Criminalization as Public Policy*, 12 YALE L. & POL'Y REV. 487 (1994).

30. *See, e.g.*, NICHOLAS BLOMLEY, RIGHTS OF PASSAGE: SIDEWALKS AND THE REGULATION OF PUBLIC FLOW (2011); DAVID HARVEY, REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION (2012); ANASTASIA LOUKAITOU-SIDERIS & RENIA EHRENFEUCHT, SIDEWALKS: CONFLICT AND NEGOTIATION OVER PUBLIC SPACE (2009); DON MITCHELL, THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE (2003); PEÑALVER & KATYAL, *supra* note 14, at 12–18 (theorizing acquisitive and expressive disobedience to property laws under a theory of "property outlaws and altlaws," social actors who play an important role in the evolution and transfer of property entitlements between owners and nonowners); Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57 (2011); David Harvey, *The Right to the City*, 53 NEW LEFT REV. 23 (2008); Ngai Pindell, *Finding a Right to the City: Exploring Property and Community in Brazil and in the United States*, 39 VAND. J. TRANSNAT'L L. 435 (2006).

31. *See, e.g.*, STEPHEN CARR, MARK FRANCIS, LEANNE G. RIVLIN & ANDREW M. STONE, PUBLIC SPACE (1992); MIKE DAVIS, CITY OF QUARTZ: EXCAVATING THE FUTURE OF LOS ANGELES (1990); MARGARET KOHN, BRAVE NEW NEIGHBORHOODS: THE PRIVATIZATION OF PUBLIC SPACE 3 (2004) ("[T]he privatization of public space undermines the opportunities for free speech . . . the dependence of free speech upon spatial practices is not always clear."); MITCHELL, *supra* note 30; THE POLITICS OF PUBLIC SPACE (Setha Low & Neil Smith eds., 2006); Ellickson, *supra* note 28; Ernesto Hernández-López, *LA's Taco Truck War: How Law Cooks Food Culture Contests*, 43 U. MIAMI INTER–AM. L. REV. 233, 237–39 (2011) (arguing that debates over the legality and illegality of food truck vendors in Los Angeles "reflect larger cultural contests about local and neighborhood identity, local economics, and public space . . . . These arguments focus on how neighborhoods view themselves and the image they project, whether it's in perceived property values, excluding businesses or outside customers, or prejudices concerning the working class and immigrants.") (citations omitted); *see also* Hernández-López, *supra*, at pt. III.c, 262–66 ("Food Trucks Raise Old Questions about Public Space"); Audrey G. McFarlane, *Preserving Community in the City: Special Improvement Districts and the Privatization of Urban Racialized Space*, 4 STAN. AGORA 1 (2003); Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711 (1986); Lawrence J. Vale, *Securing Public Space*, 17 PLACES 38, 38 (2005), http://escholarship.org/uc/item/7203x7dk [https://perma.cc/DR99-7WCK] (theorizing "the securescape—the uneasy confluence of security, landscape, and escape from public contact").

Street,[32] and they bear resemblance to the "ugly laws" of an earlier era.[33] Finally, the food-sharing cases implicate the international human right to food and related notions of food justice, food oppression, and food sovereignty.[34] Engaging with such theories promises great enjoyment and illumination.[35] This Article, however, focuses on existing First Amendment jurisprudence, in particular the Free Exercise Clause and related statutes, to explore what limits might (and should) exist on the power of local government to prohibit, permit, or otherwise regulate people's diverse uses of publicly and privately owned properties that are generally accessible to the public.

The Article proceeds in two major Parts. Guided by anthropological concepts of the "emic" and the "etic,"[36] Part I describes how two different classes of people describe their practices of sharing food in public as well as how cities cognize such activities when they set out to criminalize, or otherwise regulate, them. I distinguish between people who publicly share food for religious, versus political (in the social,

32. *See, e.g.*, Trina Jones, *Occupying America: Dr. Martin Luther King, Jr., the American Dream, and the Challenge of Socio-Economic Inequality*, 57 VILL. L. REV. 339 (2012); Sarah Kunstler, *The Right to Occupy: Occupy Wall Street and the First Amendment*, 39 FORDHAM URB. L.J. 989 (2012); Udi Ofer, *Occupy the Parks: Restoring the Right to Overnight Protest in Public Parks*, 39 FORDHAM URB. L.J. 1155 (2012); *see also About the Black Lives Matter Network*, BLACK LIVES MATTER, http://blacklivesmatter.com/about/ [https://perma.cc/573C-CJJ4] (last updated 2017).

33. *See* SUSAN SCHWEIK, THE UGLY LAWS: DISABILITY IN PUBLIC (2009); Susan Schweik, *Kicked to the Curb: Ugly Law Then and Now*, 46 HARV. C.R.–C.–L. L. REV. AMICUS *1 (2011).

34. *See, e.g.*, CULTIVATING FOOD JUSTICE (Alison Hope Alkon & Julian Agyeman eds., 2011); ROBERT GOTTLIEB & ANUPAMA JOSHI, FOOD JUSTICE (2010); ERIC HOLT-GIMÉNEZ & RAJ PATEL, FOOD REBELLIONS!: CRISIS AND THE HUNGER FOR JUSTICE (2009); KIM KESSLER & EMILY CHEN, FOOD EQUITY, SOCIAL JUSTICE, AND THE ROLE OF LAW SCHOOLS: A CALL TO ACTION (2015), https://law.ucla.edu/centers/social-policy/resnick-program-for-food-law-and-policy/publications/food-equity-social-justice-and-the-role-of-law-schools/ [https://perma.cc/4EXL-PTLT]; Ahmed Aoued, *The Right to Food: The Significance of the United Nations Special Rapporteur*, *in* INTERNATIONAL POVERTY LAW: AN EMERGING DISCOURSE, at 87 (Lucy A. Williams ed., 2006); Christopher J. Curran & Marc-Tizoc González, *Food Justice as Interracial Justice: Urban Farmers, Community Organizations and the Role of Government in Oakland, California*, 43 U. MIAMI INTER–AM. L. REV. 207 (2011); Andrea Freeman, *Fast Food: Oppression through Poor Nutrition*, 95 CAL. L. REV. 2221 (2007); Carmen G. Gonzalez, *The Global Politics of Food: Introduction to the Theoretical Perspectives Cluster*, 43 U. MIAMI INTER–AM. L. REV. 75 (2011).

35. Constrained in numerous ways (e.g., time, ongoing analysis, the law review format), this Article does not delve deeply into how socio-legal theories illuminate the food-sharing cases. Rather, this Article focuses on applying First Amendment Free Exercise of Religion jurisprudence to the food-sharing cases. I plan to elaborate the historical, jurisprudential, and theoretical importance of the food-sharing cases in a book on the subject, tentatively titled: *The Food Sharing Cases: Criminalizing Charity and Deterring Organic Solidarity in the United States*.

36. My understanding of these terms derives from graduate study under visual anthropologist Peter Biella, in particular his lecture of May 10, 2000 at San Francisco State University. In the discipline of anthropology, the "emic" concept may be understood to regard people's "native" usage of language and other cultural practices. In contrast, the "etic" concept regards the outsider specialist's interpretation of such practices. The concepts derive from the linguistic conceptualization of the phonemic and phonetic aspects of language. *See, e.g.*, Alan Dundes, *From Etic to Emic Units in the Structural Study of Folktales*, 75 J. AMER. FOLKLORE 95, 96, 101–03 (1962) (adapting the emic and etic concepts, innovated by KENNETH L. PIKE, LANGUAGE IN RELATION TO A UNIFIED THEORY OF THE STRUCTURE OF HUMAN BEHAVIOR (1954), to the study of folklore).

not electoral, sense) reasons, and elucidate the distinctive meanings that they impute to the public sharing of food. Drawing on published judicial opinions, as well as popular media reportage of select food-sharing cases, Part I also presents a partial history of food sharing in the United States from the late 1980s, after which the Ninth Circuit issued an unpublished opinion regarding a food-sharing case in San Francisco, California, through the most recent food-sharing controversy to be litigated in federal court, which emerged at the end of 2014 in Fort Lauderdale, Florida.[37] I detail salient features of food-sharing practices and anti-food-sharing laws to provide readers with a strong foundation to understand the contemporary practice of sharing food with hungry people in public and how different U.S. cities have proscribed this activity over the past several decades. In turn, this basis should enable readers to better evaluate how courts should apply First Amendment jurisprudence to the food-sharing cases.

Part II then explores how various courts have adjudicated the food-sharing cases under the Free Exercise Clause and related statutes. In other work,[38] I have discussed the split in authority between the Ninth Circuit and Eleventh Circuit of the U.S. Courts of Appeals regarding how to apply several free speech doctrines, including the regulation of expressive conduct and putatively content neutral time, place, and manner restrictions, to the food-sharing cases.[39] Differences regarding how courts have applied free speech doctrines are critically important for pending and future food-sharing cases, but many courts have resolved food-sharing cases under the Free Exercise Clause and related statutes like the federal Religious Freedom Restoration Act of 1993 (RFRA) and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).[40] Also, state Religious Freedom Restoration Acts (state RFRAs) have provided the most consistent way by which courts have disposed of anti-food-sharing laws.[41] Therefore, Part II discusses how courts have adjudicated various food-sharing cases under the Free Exercise Clause, RFRA, state RFRAs, and RLUIPA. I then conclude the Article by arguing for U.S. cities to stop criminalizing the charitable sharing of food in public.

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37. *See McHenry I*, 983 F.2d 1076 (unpublished table decision); Complaint for Declaratory and Injunctive Relief and Damages: Preliminary Statement, Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale (*Fort Lauderdale Food Not Bombs I*), No. 0:15-CV-60185 (S.D. Fla. Jan. 29, 2015) [hereinafter Complaint: Preliminary Statement, *Fort Lauderdale Food Not Bombs I*]. On the concept of "partial history," see ROBERT F. BERKHOFER, BEYOND THE GREAT STORY: HISTORY AS TEXT AND DISCOURSE 38–39 (1995) (theorizing how the paradigm of normal history understands partial histories as contextualized within a "Great Story" about the past).

38. *See* González, *supra* note *, at 233–34, 260–77 (discussing the inter-circuit split).

39. *Compare First Vagabonds Church of God V*, 638 F.3d at 758–59 (en banc), *rev'g* 578 F. Supp. 2d 1353 (M.D. Fla. 2008), *with Santa Monica Food Not Bombs*, 450 F.3d 1022.

40. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), Pub. L. No. 106-274, 114 Stat. 803 (Sept. 22, 2000), *codified at* 42 U.S.C. § 2000cc *et seq.*; Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (Nov. 16, 1993), *codified at* 42 U.S.C. § 2000bb *et seq.*

41. *See, e.g.*, *W. Presbyterian Church II*, 862 F. Supp. 538; *Stuart Circle Par.*, 946 F. Supp. 1225. *But see Daytona Rescue Mission*, 885 F. Supp. 1554 (applying RFRA but finding that the city code did not substantially burden the petitioners' free exercise of religion).

I. CONTESTED (EMIC AND ETIC) MEANINGS OF SHARING FOOD IN PUBLIC

Before discussing how courts have applied First Amendment jurisprudence to food-sharing cases, it is important to establish a baseline understanding of the practice of publicly sharing food with hungry people. Therefore, here I discuss how people who share food publicly explain what they do. For example, religious food-sharing activists (i.e., people who publicly share food with those who hunger because of their religious beliefs) often discuss their conduct in terms of "charity" and "ministry."[42] In contrast, political food-sharing activists (i.e., people who share food because of their political beliefs) often expressly disavow the label of charity and instead describe their conduct in terms of "solidarity" and "mutual aid."[43] Theories and practices of charity, mutual aid, and solidarity have long and distinctive histories that are beyond the scope of this Article. Nevertheless, the emic meanings ascribed by people who publicly share food with those who hunger merit serious consideration, especially by municipal legislators who consider promulgating an anti-food-sharing law and judges who consider the validity of such a law. Indeed, as discussed below in Part II, the food-sharing cases almost always feature a conflict not only about the conduct of publicly sharing food with those who hunger, but also about the meaning of that conduct. Therefore, in addition to discussing how religious and political food-sharing activists explain themselves, this Part also details how various cities cognize food sharing in terms of "food distribution," "homeless feeding," "large group feeding," "outdoor public serving of food," and/or as a "social service, social service facility, or outdoor food distribution center."[44]

Understanding the emic meanings of food sharing is important in at least three ways. First, from a legal perspective, the self-understandings of people who publicly share food may clarify how courts that consider food-sharing cases should apply First Amendment jurisprudence. Understanding the reasons proffered by religious and political food-sharing activists for what they do is essential to a meaningful adjudication of the constitutionality of any particular anti-food-sharing law, especially under First Amendment free speech doctrines like content discrimination, expressive conduct, and viewpoint discrimination, but also including the free exercise of religion and whether a law constitutes a "substantial burden" on the exercise of religion. Second, from a practical perspective, not understanding the emic meanings ascribed by people who practice religious charity or political solidarity around the public sharing of food makes it more likely than not that anti-food-sharing laws will fail to deter public food sharing because food-sharing

42. *See infra* Section I.A.

43. *See infra* Section I.B.

44. *See*, *e.g.*, *First Vagabonds Church of God V*, 638 F.3d at 759 (large group feeding); *Santa Monica Food Not Bombs*, 450 F.3d at 1030 (food distribution); *Chosen 300 Ministries, Inc.*, 2012 WL 3235317, at *1 (outdoor public serving of food); Complaint: Preliminary Statement, *Fort Lauderdale Food Not Bombs I*, *supra* note 37 (social service, social service facility, and outdoor food distribution center); Findings of Fact and Conclusions of Law at 32, *Big Hart Ministries Ass'n*, No. 3:07-CV-0216-P (N.D. Tex. Mar. 25, 2013) [hereinafter Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*] (homeless feeding).

activists' underlying motivations will remain. Thus, understanding the terms under which different food-sharing activists understand their actions would benefit legislators considering the amendment, enactment, or repeal of an anti-food-sharing law. Finally, from a theoretical perspective, critically apprehending food-sharing activists' emic understandings provides insights into their "legal consciousness" and practices of "popular constitutionalism."[45]

A. Religious Charity or Ministry

Selecting from several of the food-sharing cases that featured religiously motivated activists, this Section represents how they typically discussed their activity under terms of charity and ministry.[46] In one of the first food-sharing cases litigated in federal court, *Western Presbyterian Church v. Board of Zoning Adjustment of the District of Columbia*, the plaintiffs argued that their program of providing food on church premises for people who were homeless was "an integral part of their religious beliefs."[47] Collaborating with the then-new nonprofit corporation, Miriam's Kitchen, Inc., the church began its program to feed homeless people in 1984, "in response to the dramatic upsurge in homelessness experienced by [the people of Washington, D.C.] in the early 1980s."[48] Originally, the program provided bag lunches; later it served breakfast in the church basement.[49] Five years later, the church decided to relocate from 1906 H Street, N.W. to 2401 Virginia Avenue, N.W. in the Foggy Bottom neighborhood, and in December 1990 the church applied for city permission to build its new building.[50]

The District of Columbia Zoning Administrator issued the building permit, but the permit application "made no specific reference to the operation of a feeding program at the site."[51] Construction on the new church began in June 1992, but in

45. *See, e.g.*, Austin Sarat, *". . . The Law Is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343, 343–44 (1990) ("I suggest that the legal consciousness of the welfare poor is a consciousness of power and domination, in which the keynote is enclosure and dependency, and a consciousness of resistance, in which welfare recipients assert themselves and demand recognition of their personal identities and their human needs."); Kendall Thomas, Rouge et Noir *Reread: A Popular Constitutional History of the Angelo Herndon Case*, 65 S. CAL. L. REV. 2599, 2609 (1992) ("The perspective of popular historical method permits us to see the extent to which the history of constitutionalism in America, viewed from its underside, can be plotted as a story of a body of law born of sustained struggle, the outcome of painful, passionate political and ideological contests between subordinate groups and dominant institutions.") (citation omitted).

46. *E.g.*, *Big Hart Ministries Ass'n*, 2011 WL 5346109, at *3-4; *Chosen 300 Ministries, Inc.*, 2012 WL 3235317, at *19; *First Vagabonds Church of God V*, 638 F.3d at 758, *rev'd en banc*, *rev'g* 578 F. Supp. 2d 1353 (M.D. Fla. 2008); *Daytona Rescue Mission*, 885 F. Supp. at 1556; *W. Presbyterian Church II*, 862 F. Supp. at 540; *Stuart Circle Par.*, 946 F. Supp. at 1228.

47. W. Presbyterian Church v. Bd. of Zoning Adjustment of D.C. (*W. Presbyterian Church I*), 849 F. Supp. 77, 79 (D.D.C. 1994) (granting the plaintiffs' motion for preliminary injunction).

48. *W. Presbyterian Church II*, 862 F. Supp. at 540 (granting the plaintiffs' motion for summary judgment).

49. *Id.*

50. *Id.*

51. *Id.*

August 1993 the zoning administrator received complaints from a local neighborhood commission and association regarding the church's "plans to provide food for the needy,"[52] and in September 1993, the zoning administrator notified the church in writing "that its feeding program was not a use permitted as a matter of right in a residential zone and was a prohibited use in the special purpose zone."[53] The following month, the plaintiffs appealed to the Board of Zoning Adjustment, but after holding two public hearings, the board voted in March 1994 to uphold the zoning administrator's decision.[54] The plaintiffs thus litigated the matter, filing suit in April 1994 and obtaining a preliminary injunction later that month.[55]

Five months later, in analyzing the plaintiffs' motion for summary judgment, District Judge Stanley Sporkin noted, "The plaintiffs maintain that ministering to the needy is a religious function rooted in the Bible, the constitution of the Presbyterian Church (USA) and the Church's bylaws."[56] Judge Sporkin's opinion also quoted several Biblical passages, which supported "the view that the Church's ministry is not merely a matter of personal choice but is a requirement for spiritual redemption."[57] For example, "For I was an hungred [sic], and ye gave me meat; I was thirsty, and ye gave me drink; I was a stranger, and ye took me in."[58] Similarly, "If a person is righteous and does what is lawful and right . . . and gives his bread to the hungry and covers the naked with a garment . . . he is righteous, he shall surely live, says the Lord God."[59] Finally:

> What does it profit, my brethren, if a man says he has faith, but has not works? Can his faith save him? If a brother or sister is ill-clad and in lack of daily food, and one of you says to them, "Go in peace, be warmed and filled," without giving them the things needed for the body, what does it profit? So faith by itself, if it has no works, is dead.[60]

Judge Sporkin's opinion also referenced Islam, Hinduism, and Judaism as similarly promoting "the concept of acts of charity as an essential part of religious worship."[61] Reserving discussion of the legal issues at play in the case for Part II.B.1, *infra*, here it should suffice to say that Judge Sporkin concluded that:

> The plaintiffs here seek protection for a form of worship their religion mandates. It is a form of worship akin to prayer. . . . The Church may use its building for prayer and other religious services as a matter of right and

52. *Id.*
53. *Id.* (citation omitted).
54. *Id.* at 541–42.
55. *Id.* at 540; *see also W. Presbyterian Church I*, 849 F. Supp. at 79 (granting the plaintiffs' motion for preliminary injunction).
56. *W. Presbyterian Church II*, 862 F. Supp. at 544.
57. *Id.* at 544 n.3.
58. *Id.* at 544 n.3 (quoting *Matthew* 25:35).
59. *Id.* (quoting *Ezekiel* 18:5–9).
60. *Id.* (quoting *James* 2:14–17).
61. *Id.* at 544.

> should be able, as a matter of right, to use the building to minister to the needy.[62]

Using terms of religious charity, ministry, spiritual redemption, works of faith, and worship, one of the first modern food-sharing cases, *Western Presbyterian Church*, thus represented the emic meanings ascribed by the plaintiffs to their provision of food to hungry people. As we shall see, religious food-sharing activists have often used such terms to describe what they believe they are doing when they publicly share food.

A hundred miles away, another of the early food-sharing cases featuring religious activists raised similar socio-legal issues and surfaced similar emic meanings. In *Stuart Circle Parish v. Board of Zoning Appeals of the City of Richmond, Virginia*, the plaintiffs were "a partnership comprised of six churches of different denominations located within about five blocks of each other in the Stuart Circle area of the City of Richmond."[63] Some fifteen years prior to the litigation, the Stuart Circle Parish started "a Meal Ministry, which offers worship, hospitality, pastoral care, and a healthful meal to the urban poor of Richmond on Sunday afternoons."[64] First located in the Pace Memorial Methodist Church, the Meal Ministry eventually outgrew that location and came to attract about "one hundred people, some homeless, some not, but nonetheless needy."[65] Therefore, the plaintiffs shifted the Meal Ministry about half a mile west to the First English Evangelical Lutheran Church.[66] Shortly thereafter, the City of Richmond Zoning Administrator received complaints "about unruly behavior, public urination and noise in the area" and, in a pattern that is typical of the first wave of modern food-sharing cases, the administrator quickly determined that the Meal Ministry violated the city zoning ordinance.[67] In early November 1996, the Board of Zoning Appeals upheld the administrator's determination, and the plaintiffs quickly sued for injunctive relief.[68]

Later that month, when analyzing the plaintiffs' motion for a temporary restraining order, District Judge Robert E. Payne noted, "Plaintiffs view the Meal Ministry as the physical embodiment of a central tenet of the Christian faith, ministering to the poor, the hungry and the homeless in the community."[69] Referencing witness testimony, Judge Payne noted "that the feeding of the urban poor in Richmond is an extension of their morning worship . . . . Indeed, caring for the poor has been central to the Methodist faith, and was a formal teaching of John

62. *Id.* at 547.
63. *Stuart Circle Par.*, 946 F. Supp. at 1228.
64. *Id.*
65. *Id.*
66. *Id.* According to Google Maps, the Pace Memorial Methodist Church is located at 700 West Franklin Street, Richmond, Virginia 23320, and the First English Evangelical Lutheran Church is at 1603 Monument Avenue, Richmond, Virginia 23220. The distance between them is 0.6 miles.
67. *Id.*
68. *Id.*
69. *Id.* at 1228–29.

Wesley, the founder of Methodism."[70] He referenced another witness who "testified that one of the most important facets of her [Catholic] religion is sharing in the Eucharist, which is the equivalent of sharing in a meal with God and the congregation."[71] He continued, "Sharing a meal with the homeless is a natural extension of this practice."[72] Finally, Judge Payne referenced an expert witness in Christian theology, who "pointed to passages in the Bible in both the Old and New Testament, including the Sermon on the Mount and the sharing of the loaves and fishes."[73] Judge Payne thus concluded "that, for the plaintiffs, the feeding of those less fortunate constitutes methods of obtaining a blessing and the means to redemption."[74] He explicated:

> [T]he plaintiffs showed that it was central to their faith to invite the homeless into the church in order to establish a climate of worship. . . . Moreover . . . it is the gathering together as a community to share in the meal that constitutes the essence of their faith.[75]

In the context of the food-sharing cases, therefore, *Stuart Circle Parish* adds to and extends the emic meanings expressed by the plaintiffs in *Western Presbyterian Church*. For the *Stuart Circle Parish* plaintiffs, ministry to "the poor, the hungry, and the homeless in the community" within the largest of the Stuart Circle Parish churches was not merely about fulfilling the alimentary needs of people who were hungry but was also a religious way to "obtaining a blessing and the means to redemption."[76] Indeed, it was "the gathering together as a community to share in the meal that constitute[d] the essence of their faith."[77] *Stuart Circle Parish* thus surfaces an important, yet often underappreciated, insight that I herein elaborate: too often commentators reduce the people who benefit from public food sharing to "the homeless."[78] As noted in *Stuart Circle Parish* and *Western Presbyterian Church*, however, the religious food-sharing activists believed that they benefited greatly from sharing food with hungry people. Obtaining a blessing or redemption may not amount to pecuniary consideration, but it is a profound benefit to those who profess their religion as they share food in communion.

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70. *Id.* at 1236.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* Judge Payne then quoted *Matthew* 25:35, 40–43, 46, which begins, "I was hungered and ye gave me meat; I was thirsty, and ye gave me drink; I was a stranger and ye took me in."

75. *Id.* at 1239.

76. *Cf. id.* at 1228–29; *id.* at 1236.

77. *Id.* at 1239.

78. *See, e.g.*, Adam Nagourney, *As Homeless Line Up for Food, Los Angeles Weighs Restrictions*, N.Y. TIMES (Nov. 25, 2013), http://www.nytimes.com/2013/11/26/us/as-homeless-line-up-for-food-los-angeles-weighs-restrictions.html [https://web.archive.org/web/20170323135126/http://www.nytimes.com/2013/11/26/us/as-homeless-line-up-for-food-los-angeles-weighs-restrictions.html] (focusing on homeless people while reporting on an emerging controversy around food sharing in Los Angeles, California).

Additionally, as Judge Payne noted, the *Stuart Circle Parish* plaintiffs shared food with approximately "one hundred people, some homeless, some not, but nonetheless needy."[79] Naming the multiple classes of people who benefited from the Meals Ministry is important because the people who ate a weekly Sunday afternoon meal in the First English Evangelical Lutheran Church were not exclusively homeless. As I have elsewhere argued, the number of people who are homeless in the United States is a very small proportion of the massive numbers of people who are poor and/or hungry.[80] Depending on the estimate, homeless people number from "3.5% to 7.5% of the population of poor people in the United States."[81] I highlight this fact not to argue that homeless people are less important because of smaller numbers but rather to underscore that food sharing implicates a substantially larger number of people—namely the approximately fifteen percent of the U.S. population that is food insecure.[82]

Religious food-sharing activists feature in several other food-sharing cases,[83] but brevity militates against representing here all of the religious food-sharing cases. Instead, I discuss other religious food-sharing cases *infra* at Part II, detailing how courts have applied First Amendment free exercise of religion, and related statutory, jurisprudence. In the next section, I discuss the food-sharing cases that feature politically motivated activists. The case law often features a particular group, Food Not Bombs, but other politically motivated food-sharing activist groups exist.[84]

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79. *Stuart Circle Par.*, 946 F. Supp. at 1228.

80. González, *supra* note *, at 239 (arguing that poverty should not be conflated with homelessness and noting that the U.S. Census counted almost 46.5 million poor people in 2012 in comparison to the 649,917 people whom the U.S. Interagency Council on Homelessness estimated in 2012 as "without a place to call home on any given night and more than 1.59 million [people who] spent at least one night in emergency shelter or transitional housing over the past year") (citation omitted). As noted earlier, in 2014 over forty-eight million people in the United States were food insecure. *See* COLEMAN-JENSEN ET AL., *supra* note 4, at 6, 10, and accompanying text.

81. González, *supra* note *, at 239–40 (citations omitted). In 2014, the population of poor people was 14.8%. DENAVAS-WALT & PROCTOR, *supra* note 17, at 12. Multiplying that percentage by the 3.5% and 7.5% estimates shows that homeless people constitute from one-half a percent to a little over one percent of the U.S. population, which was 319,849,022 on Dec. 31, 2014. *U.S. and World Population Clock*, U.S. CENSUS, http://www.census.gov/popclock/ [https://perma.cc/JU98-6JYS] (last updated Oct. 28, 2017).

82. *See* COLEMAN-JENSEN ET AL., *supra* note 4, at 6, 10 (regarding food insecurity in the United States); *see also* MCHENRY, *supra* note 8, at 15 ("People that had been living average middle class suburban lives were showing up to eat, having moved in with their families or friends after foreclosing on their homes. Some people reported that they were camping at the state park or told us they ate at Food Not Bombs so they would have enough money to pay their mortgage.").

83. *E.g.*, *Chosen 300 Ministries, Inc.*, 2012 WL 3235317, at 1–2; *First Vagabonds Church of God V*, 638 F.3d at 758; Layman Lessons, Inc. v. City of Millersville, 636 F. Supp. 2d 620, 626 (M.D. Tenn. 2008); *Abbott II*, 783 So. 2d 1213; Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44, at 2.

84. *See, e.g.*, Nagourney, *supra* note 78 (reporting on the introduction of a Los Angeles city council resolution to move "food lines" indoors, in response to complaints organized by the Melrose Action Neighborhood Watch, against the West Hollywood Food Coalition, which was established twenty-seven years earlier and provides free nightly meals to up to 200 people from a large truck). For commentary on the legal and cultural contests over earlier restrictions on commercial food trucks (i.e., trucks which people use to sell meals) in Los Angeles, see Hernández-López, *supra* note 31, *passim*,

It bears highlighting that the categories of "religious" and "political" food-sharing activists are themselves etic (i.e., those of an outsider specialist): they find purchase in the configuration of the First Amendment, which U.S. courts have interpreted to provide substantially different protection for claims cognized under the free exercise of religion versus the freedom of speech or the right of the people peaceably to assemble. While I believe the distinction between religious and political food-sharing activists is useful, I understand people who publicly share food as momentarily occupying changing positions in society (e.g., shaped by, *inter alia*, ability, age, education, gender, health, income, poverty, profession, race, wealth, etc.), and I believe that they likely have mixed motives that change during the time in which they share food in public.

B. Political Solidarity or Mutual Aid

The 1993 unpublished Ninth Circuit memorandum opinion, *McHenry v. Agnos*, is an example of how politically motivated activists challenged the first modern wave of anti-food-sharing laws.[85] The plaintiff-appellant, Keith McHenry, was a "co-founder and member of Food Not Bombs (FNB), an organization which distributes free food to San Francisco citizens and advocates increased public assistance for the homeless and hungry of that city."[86] In the 1996 unpublished Ninth Circuit memorandum opinion, *McHenry v. Jordan*, the court noted, in understated tones, "Since he organized FNB in San Francisco in 1987, McHenry has had a rather acrimonious relationship with San Francisco City authorities."[87] For people familiar with the international Food Not Bombs movement, or with the history of San Francisco, California, in the 1980s and 1990s, these case citations speak volumes. Since its 1980 origin, the Food Not Bombs movement has grown rhizomatically, across and beyond the United States, so that its banner, showing a fist holding a carrot, has become a familiar sight near the foldout tables where Food Not Bombs volunteers serve vegan or vegetarian meals at public protests and public food sharings, which take place in over a thousand cities worldwide.[88] In the same

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and Ingrid V. Eagly, *Criminal Clinics in the Pursuit of Immigrant Rights: Lessons from the Loncheros*, 2 U.C. IRVINE L. REV. 91 *passim* (2012).

85. *McHenry I*, 983 F.2d 1076 (unpublished table decision). The panel consisted of Circuit Judges Proctor Hug, Jr., Harry Pregerson, and Charles E. Wiggins. *Id.*

86. *Id.* at *1; *see also* MCHENRY, *supra* note 8, at 14, 17, 20–21, 28, 33, 99–114, 150–51, 153, 155–60 (describing the history of the Food Not Bombs organization from its 1980 origin in organizing legal defense for an activist arrested following a direct action protest against the construction of the Seabrook Nuclear Power Generating Station, to its 1981 first meals in and around Boston, Massachusetts, to the 1988 founding of the San Francisco chapter, and through the ensuing decades as the Food Not Bombs movement grew across and beyond the United States).

87. McHenry v. Jordan (*McHenry II*), 81 F.3d 169 (9th Cir. 1996) (unpublished table decision). The panel consisted of Circuit Judges Herber Y. C. Choy (senior), Robert R. Beezer, and Michael Daly Hawkins. *Id.*

88. *See* MCHENRY, *supra* note 8, at 116 ("Food Not Bombs is active in over 1,000 cities around the world and often the most visible project accessible to the mainstream."); *see also id.* at 99–114, 155–60 (describing the history and growth of Food Not Bombs). On the notion of rhizomatic growth, see Kristin Lindgren, Amanda Cachia, & Kelly C. George, *Growing Rhizomatically: Disabilities, the Art*

period, San Francisco featured events ranging from the development of its high-rise financial district and the growth of homelessness under the mayoralty of Dianne Feinstein (1978 to 1988), to the catastrophic Loma Prieto earthquake of 1989 during the mayoralty of Art Agnos (1988 to 1992), to the expressly antihomeless "Matrix Quality of Life Program" of the mayoralty of Frank Jordan (1992 to 1996), to the dot-com boom during the mayoralty of former Speaker of the California Assembly, Willie Brown, the first African American mayor of San Francisco (1996 to 2004).[89] The Food Not Bombs movement grew in the same decades when the "City by the Bay" concentrated the wealth generated by myriad technology companies.

For readers who are unfamiliar with Food Not Bombs, *Hungry for Peace*, written by Keith McHenry, is one of the best textual sources to express the emic meanings that some politically motivated people ascribe to food sharing.[90] Other useful textual sources for these meanings are the pleadings and judicial opinions regarding the food-sharing cases in which Food Not Bombs volunteers were plaintiffs.[91] As shown below, the terms under which Food Not Bombs volunteers typically express their emic understandings of publicly sharing food include solidarity and mutual aid. To elaborate the social history of Food Not Bombs and the intellectual history of solidarity and mutual aid is beyond the scope of this Article, but quoting McHenry at length is merited to represent the emic terms under which Food Not Bombs groups publicly share food.

Under a section titled, "Solidarity, Not Charity," McHenry names the three principles of Food Not Bombs:

> 1. The food is always vegan or vegetarian and free to everyone, without restriction, rich or poor, stoned or sober.

Gallery, and the Consortium, 34 DISABILITY STUD. Q. (2014), http://dsq-sds.org/article/view/4250/3590 [https://perma.cc/CCR7-3KHU] ("What does it mean to develop rhizomatically? Botanically speaking, a rhizome is an underground plant stem that grows horizontally, producing roots and shoots from its nodes. Ginger, bamboo, and irises are rhizomes. Deleuze and Guattari contrast rhizomatic growth with arborescent growth: a model based on roots, trees, branches, linear and vertical development. Their philosophical concept of the rhizome, both distinct from and linked to the biological one, has itself traveled in non-linear ways, finding alliance with varied disciplines, modes of thought, and artistic practices."). *See generally* GILLES DELEUZE & FÉLIX GUATTARI, A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA *passim* (Brian Massumi trans., 1987) (theorizing the rhizome).

89. *See* MCHENRY, *supra* note 8, at 14, 19–22, 33, 41, 53–54, 58–59, 63, 65, 88, 91–95, 103–09, 115, 153, 155–60 (discussing the history of Food Not Bombs in San Francisco, including the Matrix program); Foscarinis, *supra* note 29, at 37–38, 55–56, 60 (discussing the Matrix program and its litigation, Joyce v. City of San Francisco, 846 F. Supp. 843 (N.D. Cal. 1994)).

90. *See* MCHENRY, *supra* note 8, at 153 ("The eight founders of Food Not Bombs are Mira Brown, C. T. Lawrence Butler, Jessie Constable, Susan Eaton, Brian Feigenbaum, Keith McHenry, Amy Rothstien, and Jo Swanson.").

91. *E.g.*, *First Vagabonds Church of God V*, 638 F.3d at 758–59; *Santa Monica Food Not Bombs*, 450 F.3d at 1030; *Jordan*, 81 F.3d 169 (unpublished table decision); *Agnos*, 983 F.2d 1076 (unpublished table decision); Sacco v. City of Las Vegas, Nos. 2:06-CV-0714-RCJ-LRL, 2:06-CV-0941-RCJ-LRL, 2007 WL 2429151, at 3 (D. Nev. Aug. 20, 2007) (enjoining permanently the defendants from enforcing a law that barred the feeding of the indigent in city parks); Complaint: Preliminary Statement, *Fort Lauderdale Food Not Bombs I*, *supra* note 37.

> 2. Food Not Bombs has no formal leaders or headquarters, and every group is autonomous and makes decisions using the consensus process.
>
> 3. Food Not Bombs is dedicated to nonviolent direct action and works for nonviolent social change.[92]

According to McHenry, these principles "were first formally suggested and adopted at the 1992 Food Not Bombs International Gathering in San Francisco."[93] For McHenry, "It cannot be stressed enough that Food Not Bombs is not a charity and is working to inspire a dramatic change in society. Sharing food for free without restriction is a revolutionary act in a culture devoted to profit."[94] As he explains:

> [W]e invite people who receive the food to become involved in participating in the collection, cooking or sharing of the food. Food Not Bombs volunteers work in solidarity with many members of their community and encourage everyone's participation in all aspects of our local chapters, including help with decision making. People eating with Food Not Bombs should never feel that they are in any way inferior to those who are sharing the food. We are all equal. This isn't charity. This provides an opportunity for people to regain their power and recognize their ability to contribute and make a change. This could be one of the most important ways Food Not Bombs contributes to social change.[95]

He continues:

> We build solidarity by sharing food and literature at events and actions organized by other groups. We also distribute literature at our meals that is provided by the organizations we support, promoting solidarity and the building of coalitions. Offering food and logistical support is a great way to create lasting relationships with activists working on issues related to the goals of Food Not Bombs. We are working against the perception of scarcity, which causes many people to fear cooperation among groups.[96]

McHenry also discusses Food Not Bombs in terms of mutual aid. For example, he notes:

> The founders of Food Not Bombs thought that there might be a way to encourage the public to seek an end to war and poverty, with a living theater and mutual aid on the streets. No lengthy theories and long winded speeches to bore the public. We also made sure there would never be any charismatic leaders for the authorities to discredit or leadership for them to replace. Food Not Bombs is about action, reliability, respect, trust and relationships in the community. We are about making sure everyone is free to express their best self and has the food, clothing, healthcare and housing they deserve. In short, we were searching for a way to reach a public

92. MCHENRY, *supra* note 8, at 19.
93. *Id.* at 21.
94. *Id.* at 20.
95. *Id.*
96. *Id.* at 32.

> unfamiliar with alternative ways of organizing society and of relating to our fellow animal and human beings.[97]

McHenry's representations of solidarity and mutual aid resonate throughout four twenty-first century food-sharing cases in which Food Not Bombs volunteers were plaintiffs.[98] Courts, however, do not often adopt these emic meanings but instead impose their etic understandings. Consider, for example, *Santa Monica Food Not Bombs v. City of Santa Monica*, in which the plaintiffs' opening brief to the Ninth Circuit, appealing the lower court's grant of the defendants' motion for summary judgment, explained:

> Plaintiff Santa Monica Food Not Bombs . . . is an unincorporated association devoted to drawing attention to the connection between the lack of food for the poor and the war preparation activities of the federal government . . . . Some of its members are homeless residents of the City [of Santa Monica], who not only help provide meals but also join their fellow homeless in eating the meals.[99]

In the panel's opinion, Ninth Circuit Judge Marsha S. Berzon recognized this plaintiff's self-identification (viz., "Plaintiff Santa Monica Food Not Bombs is an unincorporated association that seeks to highlight a 'connection between the lack of food for the poor and war-preparation activities of the United States government'").[100]

In contrast, consider the difference between the plaintiffs' amended complaint in *First Vagabonds Church of God v. City of Orlando*, and how various courts represented these plaintiffs. The complaint explained that:

> Plaintiff Orlando Food Not Bombs is an unincorporated association affiliated with the grassroots international Food Not Bombs movement, which is organized according to principles of egalitarianism, consensus, cooperation, autonomy, and decentralization. The group shares food with homeless and hungry people in Orlando to call attention to society's failure to provide food and housing to each of its members and to reclaim public space. The name Food Not Bombs states the group's most fundamental principle: society needs to promote life, not death.[101]

Reviewing the various judicial opinions in *First Vagabonds Church of God* suggests the existence of a struggle over emic versus etic meanings. For example,

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97. *Id.* at 15.

98. *First Vagabonds Church of God V*, 638 F.3d at 758–59 (en banc); *Santa Monica Food Not Bombs*, 450 F.3d at 1030; *Sacco*, 2007 WL 2429151 (permanently enjoining the defendants from enforcing a law that barred the feeding of the indigent in Las Vegas parks); Complaint: Preliminary Statement, *Fort Lauderdale Food Not Bombs I*, *supra* note 37.

99. Plaintiff's Opening Brief on Appeal from the Order Granting Defendants' Motion for Summary Judgment at 15, *Santa Monica Food Not Bombs*, 450 F.3d 1022 (9th Cir. 2006) (No. 03-56623), 2004 WL 443395, at *15.

100. *Santa Monica Food Not Bombs*, 450 F.3d at 1030.

101. Amended Complaint for Declaratory and Injunctive Relief and Damages at 4, First Vagabonds Church of God v. City of Orlando (*First Vagabonds Church of God III*), 578 F. Supp. 2d 1353 (M.D. Fla. 2008), 2006 WL 3916070 (M.D. Fla. Dec. 29, 2006).

District Court Judge Gregory A. Presnell initially accepted Orlando Food Not Bombs' self-description.[102] After a bench trial and post-trial submissions, however, Judge Presnell characterized Orlando Food Not Bombs (OFNB) as:

> [A] loosely structured organization of political activists, including anarchists, communists, vegans, and those generally opposed to war and violence. Notwithstanding their diffuse views, all OFNB members share in OFNB's core belief: that food is a right which society has a responsibility to provide to all of its members.[103]

By the time the case reached the Eleventh Circuit Court of Appeals, however, Circuit Judge James Larry Edmondson significantly truncated the plaintiff's self-description (viz., "Plaintiff Orlando Food Not Bombs is a loosely structured organization of political activists who share the view that society has a responsibility to provide food to all of its members").[104] In contrast, dissenting Circuit Judge Rosemary Barkett cognized OFNB in the terms preferred by its members.[105] Finally, in the en banc opinion, Circuit Judge William H. Pryor, reduced the plaintiff's self-identification into, "a group of political activists dedicated to the idea that food is a fundamental human right."[106]

While some readers may find the different descriptions of the various Food Not Bombs plaintiffs unimportant, I find the changing descriptors of the OFNB plaintiffs in *First Vagabonds Church of God* significant and perhaps even predictive: they suggest a critical contest over the terms by which a court comes to understand public food sharing. The results of such contests seem to be that when a court adopts the emic terms of a plaintiff, as in the first two religious food-sharing cases discussed above in Part I.A., then the plaintiff prevails. In contrast, when courts disregard the emic terms of a plaintiff, as the majority opinions of the Eleventh Circuit Court of Appeals arguably did in *First Vagabonds Church of God*, then the court rules against the plaintiff. This hypothesis is certainly not novel. Socio-legal scholars have critiqued deconstruction, binary metaphors, and framing for

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102. First Vagabonds Church of God v. City of Orlando (*First Vagabonds Church of God I*), No. 6:06-CV-1583-Orl-31KRS, 2008 WL 899029, at *1 (M.D. Fla. Mar. 31, 2008) (granting in part and denying in part the defendants' motion for summary judgment) ("Plaintiff Orlando Food Not Bombs ('OFNB') is an unincorporated association with the international Food Not Bombs movement. This group shares food with homeless and hungry people at Lake Eola Park to draw attention to 'society's failure to provide food and housing to each of its members and to reclaim public space.'") (citation omitted).

103. *First Vagabonds Church of God III*, 578 F. Supp. 2d at 1356 (permanently enjoining defendants from enforcing their Large Group Feeding Ordinance), *rev'd*, 638 F.3d at 758–59 (en banc).

104. *First Vagabonds Church of God IV*, 610 F.3d at 1280 (affirming in part, reversing in part, and vacating the district court's permanent injunction), *rev'g*, 578 F. Supp. 2d 1353 (M.D. Fla. 2008), *vacated by* 616 F.3d 1230 (11th Cir. 2010), *reinstated in part en banc*, 638 F.3d 756 (11th Cir. 2011).

105. *Id.* at 1293 n.1 ("Orlando Food Not Bombs is an association of political activists affiliated with the international Food Not Bombs movement. It is undisputed that its members are opposed to war and violence and share the core belief that food is a right which society has a responsibility to provide to all.").

106. *First Vagabonds Church of God V*, 638 F.3d at 758.

decades.[107] Because the food-sharing cases often sound in the First Amendment, however, how courts cognize public food sharing and whether they extend constitutional protection to its practitioners seem to depend on whether judges accept, or at least not reject as incomprehensible, the plaintiffs' emic explanations for sharing food in public. Perhaps the judges even come to identify with the plaintiffs' reasons for seeking protection under the First Amendment?

Possibly accounting for this phenomenon, in the latest food-sharing case to be litigated in federal court, *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*,[108] it appears that the plaintiffs seek to make themselves cognizable to the court by mixing emic terms of solidarity with etic terms of First Amendment jurisprudence:

> Plaintiffs share food during their Friday demonstrations at Stranahan Park as symbolic expression of the group's political beliefs that food is a human right and to communicate a message of social unity and solidarity with people who are hungry, which is a human condition shared by all.[109]

Time will tell how Southern District of Florida District Judge William J. Zloch comes to understand the plaintiffs, as well as the municipal defendant, which has its own distinctive view on sharing food in public.[110]

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107. *See, e.g.*, J. M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743, 753 (1987) ("But we can read Derrida's work as challenging this commonsense conception. When we hold an idea in our minds, we hold both the idea and its opposite; we think not of speech but of 'speech as opposed to writing,' or speech with the traces of the idea of writing, from which speech differs and upon which it depends. The history of ideas, then, is not the history of individual conceptions, but of favored conceptions held in opposition to disfavored conceptions . . . . Our understanding of legal ideas may indeed involve, as Derrida says of speech and writing, the simultaneous privileging of ideas over their opposites.") (citations omitted); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 607 n.123 (1990) (comparing Balkin's interpretation of Derrida, with George Lakoff and Mark Johnson's theorization of the concepts that underlie binary spatial metaphors, and Audre Lorde's critique of simplistic binary oppositions as applied to human differences); Mark L. Johnson, *Mind, Metaphor, Law*, 58 MERCER L. REV. 845, 867 (2007) ("As humans we understand things by framing them via what George Lakoff calls 'idealized cognitive models.' Much of ethical and legal reasoning is a matter of framing situations and problems relative to various cognitive models, and image schemas, radial categories, and metaphors play a central role in defining our models.") (citation omitted); *see also* Martha F. Davis, *Law, Issue Frames and Social Movements: Three Case Studies*, 14 U. PA. J.L. & SOC. CHANGE 363, 364–65 (2011) ("While there are many definitions of framing and specific types of frames, there is general agreement that frames are 'schema of interpretation' that 'give meaning to key features of some topic or problem.'") (citation omitted).

108. Complaint: Preliminary Statement, *Fort Lauderdale Food Not Bombs I*, *supra* note 37.

109. *Id.* at 10; *see also id.* at 4 ("Plaintiff Fort Lauderdale Food Not Bombs is an unincorporated association affiliated with the grassroots international Food Not Bombs movement that engages in peaceful political direct action to communicate its message that our society can end hunger and poverty if we redirect our collective resources from the military and war and that food is a human right, not a privilege, which society has a responsibility to provide to all. Food Not Bombs shares food with anyone, without restriction, to communicate this message and organize for positive social change. The group does not serve food as a charity, but instead as an expression of and to further their political message. Food Not Bombs serves vegan or vegetarian food to reflect its political dedication to nonviolence against all, including animals.").

110. During the editing of this Article, Judge Zloch issued an order granting the City of Fort Lauderdale motion for summary judgment and denying the Plaintiffs' similar motion. Order, *Fort*

C. Municipal Terms

Cities that promulgate anti-food-sharing laws claim markedly different concerns than those expressed by religious and political food-sharing activists. In Part II *infra*, I discuss a few of the governmental interests that cities claim as compelling, important, or substantial justifications for their anti-food-sharing laws (e.g., competing uses, park aesthetics, public health, public safety, or zoning). Here, I overview four cities' labeling of public food sharing in terms of "food distribution" (Santa Monica, California) "homeless feeding" (Dallas, Texas), "large group feeding" (Orlando, Florida), and "social service facility" (Fort Lauderdale, Florida).[111] To provide readers with a sense of how these laws have recently evolved, I discuss these cities' different anti-food-sharing laws in the chronological order in which the cities promulgated them. I end the Part by briefly contrasting these labels with the emic meanings expressed by religious and political food-sharing activists.

1. Food Distribution

On October 22, 2002, the city council of Santa Monica, California, enacted an ordinance with two provisions to regulate the distribution of food in public parks, streets, and sidewalks.[112] In a new chapter of the Santa Monica Municipal Code (SMMC), entitled "Food Distribution on Public Property," Section 5.06.010 regulated food distribution in city parks and on the city hall lawn, and SMMC Section 5.06.020 regulated food distribution on public streets and sidewalks.[113] Section 5.06.010 required any person who would serve or distribute "food to the public" to comply with state health and safety standards, display a valid permit from the county Department of Health, obtain city approval as to location, and otherwise comply with Santa Monica's community events law, which the city had enacted the prior year.[114] Section 5.06.020 banned food distribution without city authorization

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Lauderdale Food Not Bombs I, No. 15-60185-CIV (S.D. Fla. Sept. 30, 2016), 2016 WL 5942528. Critiquing Judge Zloch's reasoning is not feasible here, but the Plaintiffs have appealed to the Eleventh Circuit. *See* Appellants' Initial Brief, Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale (*Fort Lauderdale Food Not Bombs II*), No. 16-16808, (11th Cir. Jan. 18, 2017), 2017 WL 1076817; *see also* Oral Argument, *Fort Lauderdale Food Not Bombs II*, No. 16-16806 (11th Cir. Aug. 24, 2017), http://www.ca11.uscourts.gov/system/files_force/oral_argument_recordings/16-16808.mp3?download=1 [https://perma.cc/BKR7-2ULT] (linking to the digital recording of the oral arguments).

111. *See, e.g.*, *First Vagabonds Church of God V*, 638 F.3d at 759 (en banc) (large group feeding); *Santa Monica Food Not Bombs*, 450 F.3d at 1030 (food distribution); *Chosen 300 Ministries, Inc.*, 2012 WL 3235317 (outdoor public serving of food; Complaint for Declaratory and Injunctive Relief and Damages, Ordinance C-14-42 at 1–7, *Fort Lauderdale Food Not Bombs I*, *supra* note 37 (social service, social service facility, and outdoor food distribution center); Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44 (homeless feeding).

112. *Santa Monica Food Not Bombs*, 450 F.3d at 1029 (discussing SANTA MONICA, CAL. MUNICIPAL ORDINANCE No. 2055 (adopted Oct. 22, 2002), codified at SANTA MONICA, CAL. MUN. CODE § 5.06 (amended Feb. 24, 2004)).

113. *Id.* at 1029.

114. *Compare id.* at 1026 (dating the enactment of the community events ordinance as May 8, 2001, and noting its subsequent amendments), *with id.* at 1029 (discussing the food distribution ordinance).

under threat of a misdemeanor punishable by a fine not to exceed $1000, imprisonment in the county jail not to exceed six months, or both.[115]

On January 3, 2003, the plaintiffs filed their complaint in federal court seeking declaratory and injunctive relief from several Santa Monica ordinances, which regulated community events, food distribution, and street banners. On August 11, 2003, District Court Judge Manuel L. Real granted the city defendants' motion for summary judgment.[116] The plaintiffs appealed, and during its pendency, on February 24, 2004, the city amended its food distribution ordinance.[117] As to Section 5.06.010, Santa Monica clarified that city approval as to location would be controlled by state guidelines as administered by the County of Los Angeles, that the city would adopt new guidelines to administer the ordinance, and that compliance with the city's park maintenance code would be necessary.[118] As to Section 5.06.020, the amendment clarified four kinds of city authorization (vending permit, use permit, outdoor dining license, or community event permit) and, in an important concession to the plaintiffs, provided that "no permit or license shall be required for a noncommercial food distribution that does not interfere with the free use of the sidewalk or street by pedestrian or vehicular traffic."[119]

Santa Monica Food Not Bombs thus established the first terms under which some cities in the second modern wave of anti-food-sharing laws have cognized people who share food in public. The City of Santa Monica paired its "food distribution on public property" ordinance with a community events ordinance that further regulated the use of city properties. When challenged in court, Santa Monica prevailed at the district court, and predominantly prevailed at the Ninth Circuit, but the city nevertheless amended the part of its food distribution ordinance that regulated the use of streets and sidewalks so not to require a permit or license for "noncommercial food distribution that does not interfere with the free use of the sidewalk or street."[120] This clear exception for noncommercial food distribution is in marked contrast to other cities' approaches to regulating public food sharing. Moreover, after its amendment and litigation, Section 5.06.010 only required a permit for public food sharing in groups of 150 or more persons.[121]

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115. *See id.* at 1029 (quoting SANTA MONICA, CAL. MUN. CODE § 5.06.020 (adopted Oct. 22, 2002)).

116. *Id.* at 1031.

117. *See id.* at 1029 (dating the amendment as Feb. 24, 2004); *see also* Plaintiff's Opening Brief, *Santa Monica Food Not Bombs*, 450 F.3d 1022 (No. CV-03-0032), 2004 WL 443395.

118. *Santa Monica Food Not Bombs*, 450 F.3d at 1029 (citing SANTA MONICA, CAL. MUN. CODE § 5.06.010 (adopted Oct. 22, 2002)).

119. *Id.* at 1030 (citing SANTA MONICA, CAL. MUN. CODE § 5.06.020 (adopted Oct. 22, 2004)) (emphasis removed).

120. SANTA MONICA, CAL. MUN. CODE § 5.06.020 (amended Feb. 24, 2004).

121. *See* González, *supra* note *, at 270–74 (discussing *Santa Monica Food Not Bombs*, 450 F.3d at 1025, 1035–45, which determined that a mandatory administrative instruction, requiring a community events permit for groups below 150 persons, failed the narrow tailoring requirement of First Amendment free speech strict scrutiny because it detached the ordinance from the city's asserted governmental interest in allocating the use of public open space by large groups).

2. Homeless or Large Group Feeding

On June 8, 2005, Dallas enacted its "Food Establishment Ordinance," which amended the city code to regulate "food establishments, including organizations that feed the homeless."[122] As noted by the court, District Judge Jorge A. Solis, "The stated purpose of the Ordinance [was] 'to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.'"[123] At first glance, the ordinance might seem to apply only to commercial food establishments, but it expressly applied to organizations that feed the homeless when it articulated a nine-element "Homeless Feeder Defense."[124] While including the Homeless Feeder Defense in the ordinance might suggest that Dallas intended to provide a reasonable exception to its food establishment ordinance, after six years of litigation, on March 28, 2013, Judge Solis permanently enjoined the City of Dallas from enforcing the ordinance against the two organizational plaintiffs and one individual plaintiff.[125]

Orlando, Florida, evidenced a third approach to regulating food sharing in public. On July 24, 2006, its city council enacted an ordinance to amend Chapter 18A (Parks and Outdoor Public Assemblies) of its city code by adding and defining the terms "large group feeding" and "Greater Orlando Park District (GDPD)" and by creating a new section to regulate large group feeding in parks and park facilities owned or controlled by the city and within the GDPD.[126] As I have discussed the

122. Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44, at 11 (citing and quoting DALL. CITY CODE § 17-1.1; TEX. ADMIN. CODE § 229.161 *et seq*.; *Minutes of the Dallas City Council Wed., Jun. 8, 2005*, DALL. CITY HALL (approved June 22, 2005), http://citysecretary.dallascityhall.com/pdf/CC2005/cc060805.pdf [https://perma.cc/ZM47-YCF2]).

123. Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44, at 11.

124. *Id.* at 11–12 (citing DALL. CITY CODE § 17-1.6 (5), "known as the 'Homeless Feeder Defense,' [which] provides that an organization serving food to the homeless need not comply with the Ordinance if it meets other criteria, such as: (1) obtaining location approval from the City; (2) providing restroom facilities; (3) having equipment and procedures for disposing of waste and wastewater; (4) making available handwashing equipment and facilities, including a five-gallon container with a spigot and a catch[,] bucket, soap, and individual paper towels; (5) registering with the City; (6) obtaining written approval from the property owner; (7) having a person present at all times who has completed the City's food safety training course; (8) complying with food storage and transport[ation] requirements; and (9) ensuring the feeding site is left in a clean, waste-free condition").

125. Final Judgment at 1, *Big Hart Ministries Ass'n*, No. 3:07-CV-0216-P (N.D. Tex. Mar. 28, 2013). Judge Solis ultimately found that the Homeless Feeder Defense substantially burdened the plaintiffs' rights to freely exercise their religion without the compelling justification required by the Texas Religious Freedom Restoration Act of 1999 (TRFRA). Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44, at 39 (citation omitted). TRFRA provides that, "a government agency may not substantially burden a person's free exercise of religion" unless the agency, "demonstrates that the application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that interest." TEX. CIV. PRAC. & REM. CODE ANN. § 110.003 (West 2017).

126. ORLANDO CITY COUNCIL, CITY OF ORLANDO COUNCIL MINUTES, at 18–19 (Fla. July 24, 2006); *see also First Vagabonds Church of God IV*, 610 F.3d at 1292–93 (reproducing relevant parts of the ordinance); González, *supra* note *, at 267–68 (discussing the ordinance).

political history of the ordinance's enactment at length elsewhere,[127] here I make five brief points. First, Orlando defined a "large group feeding" as:

> [A]n event intended to attract, attracting, or likely to attract twenty-five (25) or more people, including distributors and servers, in a park or park facility owned or controlled by the City, including adjacent sidewalks and rights-of-way in the GDPD, for the delivery or service of food. Excluded from this definition are activities of City licensed or contracted concessionaires, lessees, or licensees.[128]

Second, Orlando defined its new GDPD "as an area within the limits of the City of Orlando, Florida, extending out a two (2) mile radius in all directions from City Hall and including all of the parks and park facilities owned or controlled by the City touched by that radius, in their entirety."[129] Third, within the GDPD, which included "approximately forty-two public parks,"[130] the ordinance made it "unlawful to knowingly sponsor, conduct, or participate in the distribution or service of food at a large group feeding at a park or park facility . . . without a Large Group Feeding Permit."[131] Fourth, the ordinance provided that "[n]ot more than two (2) Large Group Feeding Permits shall be issued to the same person, group, or organization . . . for the same park in the GDPD in a twelve (12) consecutive month period."[132] Finally, violation of the ordinance was punishable by "a fine not to exceed $500.00" or "a definite term of imprisonment not to exceed sixty (60) days, or by both such fine and imprisonment."[133]

Thus, in 2006 the city of Orlando defined a large group feeding as amounting to twenty-five people, including "distributors and servers," and it created a two-mile radius downtown park district, centered on city hall, within which any person or organization seeking to share food in public must obtain a permit, with such person or organization unable to obtain more than two such permits in any twelve consecutive months for any particular park.[134] From Santa Monica, California, in 2002, to Dallas, Texas, in 2005, to Orlando, Florida, in 2006, we thus see how cities cognized public food sharing in terms of food distribution, food establishment and homeless feeding, and large group feeding, respectively. Such terms are far from the emic meanings expressed by food-sharing activists motivated by religious belief (charity, ministry, and works of faith) or political principle (solidarity and mutual aid), and the municipal terms are striking for their facial neutrality. (Only Dallas's ordinance expressly regulated homeless people in an affirmative defense to its food

127. González, *supra* note *, at 263–70.

128. ORLANDO, FLA. CODE OF ORDINANCES tit. II, § 18A.01(24) (2016), https://www.municode.com/library/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH18APAOUPUAS_S18A.01DE [https://perma.cc/6TH4-6RMX].

129. *Id.* § 18A.01(25).

130. *First Vagabonds Church of God I*, 2008 WL 899029, at *1.

131. ORLANDO, FLA., CODE OF ORDINANCES tit. II § 18A.09-2(a) (1999).

132. *Id.* § 18A.09-2(c).

133. *Id.* §§ 1.08(3), 18A.24(4) ("Any person violating the provisions of any section of this chapter shall be subject to arrest and punishment as provided in Section 1.08 of this Code.").

134. *Id.* §§ 18A.01(24)–(25), 18A.09-2(c).

establishment ordinance.)[135] Beyond the advice of counsel, however, the municipal terms also evidence how particular city councils understood the socio-legal activity that they sought to regulate. Indeed, reflecting on the municipal terms raises questions regarding the implicit meanings of "distributing" (or serving) food,[136] versus "feeding" people who are homeless or otherwise hungry.

As above explained, I have adopted the phrase food sharing and believe that it accurately labels the various emic meanings that food-sharing activists ascribe to themselves. Cities that enacted anti-food-sharing laws, however, seem relatively unconcerned with activists' emic meanings and instead focus on governmental interests that are facially neutral and perhaps putatively objective. Distributing, feeding, sharing, and serving are different, yet related, ways to describe the patterned phenomena that I call public food sharing. These labels matter because they tend to play out differently under different First Amendment doctrines (e.g., protected expression versus unprotected conduct, content based discrimination versus content neutral regulation, exercise of religion or not, and substantial burden versus mere inconvenience).[137] Before turning to Part II, however, I briefly discuss the municipal term "social services facility," which is at issue in the latest anti-food-sharing law to be litigated in federal court.

3. Social Service Facilities and Outdoor Food Distribution Centers

On October 22, 2014, the City of Fort Lauderdale enacted an ordinance to regulate "social service facilities."[138] Ordinance No. C-14-42 substantially amended "Section 47-18.31, Social service facility (SSF), of the Unified Land Development Regulations (hereinafter referred to as 'ULDR')."[139] From being a single brief paragraph, the ordinance expanded section 47-18.31 to fifteen pages of new purpose, definitions, development standards, table of allowable uses by zoning district, level of review, and lists of permitted and conditional uses.[140] The ordinance redefined "social services" to mean "[a]ny service provided to the public to address

135. DALL., TEX. CODE OF ORDINANCES vol. 1, § 17-1.6 (2015).

136. *Cf. Chosen 300 Ministries, Inc.*, 2012 WL 3235317, at *27 n.11 (discussing Philadelphia's anti-food-sharing law, which provided, "No person, group, or organization shall engage in Outdoor Public Serving of Food . . . [which] means the distribution of food free of charge to members of the public, in groups of three or more people, on any public highway, on any public sidewalk, or in any outdoor public place.").

137. *See infra* Part II.B.2 (discussing exercise of religion and substantial burden versus mere inconvenience).

138. FORT LAUDERDALE, FLA., ORDINANCE AMENDING THE UNIFIED LAND DEVELOPMENT REGULATIONS, No. C-14-42, at 1, 15 (adopted Oct. 22, 2014), http://www.fortlauderdale.gov/home/showdocument?id=6404 [https://perma.cc/P2LC-CRHN]; *see also* Larry Barszewski, *Fort Lauderdale Commissioners Pull All-Nighter and Approve Homeless Feeding Restrictions*, SUNSENTINEL (Oct. 22, 2014), http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-lauderdale-homeless-feeding-sites-20141021-story.html [https://perma.cc/FXX4-5D6H].

139. FORT LAUDERDALE, FLA, ORDINANCE No. C-14-42, at 2.

140. *Id.* at *passim*.

public welfare and health such as, but not limited to, the provision of food."[141] The ordinance defined what it termed "Outdoor Food Distribution Centers" as:

> Any location or site temporarily used to furnish meals to members of the public without cost or at a very low cost as a social service as defined herein . . . and is generally providing food distribution services exterior to a building or structure without permanent facilities on a property.[142]

The ordinance mandated thirteen specific development standards for Outdoor Food Distribution Centers, which included, *inter alia*, meeting all state, county, and city requirements for food service establishments; not being closer than 500 feet from another food distribution center or any residential property; providing restroom facilities and equipment for hand washing and the lawful disposal of waste and wastewater; having written consent from the owner of the property on which the outdoor food distribution occurs; ensuring that one onsite person has received state food manager certification; requiring adequate food storage at prescribed temperatures and clean food transportation; mandating food service within four hours of its preparation; etc.[143] Further, the ordinance categorized Outdoor Food Distribution Centers as a "permitted use" in only one kind of zoning district, Heavy Commercial/Light Industrial.[144] In Community Facility (including House of Worship) and Regional Activity Center zoning districts, Outdoor Food Distribution Centers became a "conditional use," which therefore required "site plan level III approval" with newly created review criteria that included "compatibility with the character of the area."[145] In Park, Residential, and myriad other zoning districts, Outdoor Food Distribution Centers became a "prohibited use."[146] Additionally, the Fort Lauderdale Parks and Recreation rules and regulations expressly prohibited using parks for "business or social service purposes unless authorized pursuant to a written agreement with [the] City."[147]

In other words, Fort Lauderdale's 2014 ordinance deployed the police power delegated to it by the State of Florida to define the practice of publicly sharing food as a "social service," and to require this ostensible social service to comport with

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141. *Id.* at 3 (amending Fort Lauderdale, Fla., Unified Land Dev. Code § 47-18.31(B)(6)).

142. *Id.* (amending Fort Lauderdale, Fla. Unified Land Dev. Code § 47-18.31(B)(4)).

143. *Id.* at 6–7 (amending Fort Lauderdale, Fla. Unified Land Dev. Code § 47-18.31(C)(2)(c)).

144. *Id.* at 7–9, 11 (amending Fort Lauderdale, Fla. Unified Land Dev. Code §§ 47-6.13, 47-18.31(D)).

145. *Id.* at 8–14 (amending Fort Lauderdale, Fla. Unified Land Dev. Code §§ 47-8.10–47-8.13, 47-13.10, 47-18.31(D)). Site plan level III approval requires approval from the Planning and Zoning Board after an opportunity for public participation, City of Fort Lauderdale, Fla., *Development Review Committee*, FORTLAUDERDALE.GOV, http://www.fortlauderdale.gov/departments/sustainable-development/urban-design-and-planning/development-applications-boards-and-committees/development-review-committee [https://perma.cc/B3FN-YEXQ] (last visited July 15, 2016).

146. FORT LAUDERDALE, FLA, ORDINANCE No. C-14-42, at 8–9 (amending Fort Lauderdale, Fla. Unified Land Dev. Code § 47-18.31(D)).

147. City of Fort Lauderdale, Fla., *Parks and Recreation—Rules and Regulations* (Rule 2.2. Social Services), FORTLAUDERDALE.GOV [hereinafter *Fort Lauderdale Parks and Recreation—Rules and Regulations*], http://www.fortlauderdale.gov/home/showdocument?id=2908 [https://perma.cc/QJV5-47PF] (last visited Sept. 12, 2016).

the city's zoning laws and park rules. Under the former, an "Outdoor Food Distribution Center" was a permitted use only in Heavy Commercial/Light Industrial districts located no closer than 500 feet from any other food distribution center or residential property; a conditional use (requiring approval from the planning and zoning board) in community facility, house of worship, and regional activity center districts; and a prohibited use in city parks. Consequently, under the terms of its new ordinance, public food sharing or an "Outdoor Food Distribution Center" would henceforth be relegated to a small number of locations within the city of Fort Lauderdale, not including any city parks and only possibly including a house of worship if it obtained permission for such a conditional use.

Instantiating Mark Twain's aphorism that "[t]ruth is stranger than fiction,"[148] one of the first four people whom Fort Lauderdale police arrested under the ordinance was a ninety-year-old World War II veteran.[149] Arnold Abbot had just served the fourth plate of food when police ordered him to "Drop that plate right now," and then cited and released him and three other food-sharing volunteers.[150] Abbott had been publicly sharing food in Fort Lauderdale, often at its beachside parks, since 1991 through the nonprofit Love Thy Neighbor Fund, Inc., which he established to commemorate his deceased wife.[151] A few days later, police again arrested, cited, and released Abbott, along with several other food-sharing volunteers.[152] Adding to the strangeness, Abbott was arrested thirteen years after he successfully sued the City of Fort Lauderdale for violating his rights under the

148. MARK TWAIN, FOLLOWING THE EQUATOR: A JOURNEY AROUND THE WORLD 155 (Olivia L. Clemens ed., Harper & Bros. Publishers 1899) ("Truth is stranger than fiction, but it is because Fiction is obliged to stick to possibilities; Truth isn't.").

149. Mike Clary, *Police Shut Down Stranahan Park Homeless Feeding Site, Cite Activists for Breaking New Law*, SUNSENTINEL (Nov. 2, 2014, 4:50 PM), http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-homeless-feeding-citations-20141102-story.html [https://web.archive.org/web/20171026185759/http://www.sun-sentinel.com/g00/local/broward/fort-lauderdale/fl-homeless-feeding-citations-20141102-story.html]; Jeff Weinberger, *Video: A 90-Year-Old and Two Clergymen Cited, Face Possible Jail Time, for Feeding the Homeless in Fort Lauderdale*, NEW TIMES BROWARD-PALM BEACH (Nov. 3, 2014, 9:30 AM), http://www.browardpalmbeach.com/news/video-a-90-year-old-and-two-clergymen-cited-face-possible-jail-time-for-feeding-the-homeless-in-fort-lauderdale-updated-6471412 [https://perma.cc/QUJ9-Z4B5].

150. Weinberger, *supra* note 149.

151. Stefan Kamph, *At the Beach with Arnold Abbott, Fort Lauderdale's Homeless-Feeding Advocate*, NEW TIMES BROWARD-PALM BEACH (Sept. 22, 2011, 9:05 AM), http://www.browardpalmbeach.com/news/at-the-beach-with-arnold-abbott-fort-lauderdales-homeless-feeding-advocate-6472058 [https://perma.cc/HB3Q-GUFA]; *see also* LOVE THY NEIGHBOR, http://lovethyneighbor.org [https://perma.cc/WSF7-58PP] (last visited July 15, 2016) ("Love Thy Neighbor is an all volunteer organization embracing the vision and passion of one woman, Maureen Abbott, who devoted her life to caring for as many poor, hungry, and homeless as she could reach.").

152. Mike Clary, *Activist, 90, Cited Again for Feeding Fort Lauderdale Homeless*, SUNSENTINEL (Nov. 6, 2014, 5:12 AM), http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-homeless-feeding-citations-folo-20141105-story.html [https://web.archive.org/save/http://www.sun-sentinel.com/g00/local/broward/fort-lauderdale/fl-homeless-feeding-citations-folo-20141105-story.html].

Florida Religious Freedom Restoration Act.[153] His state court lawsuit, upheld on appeal, won an injunction against enforcement of the city park rules unless the city provided a suitable alternative site, which it repeatedly failed to do.[154] In a final absurdity, which Kafka might have appreciated, when asked about the new ordinance, Fort Lauderdale City Manager Lee Feldman was quoted as saying, "the new rules will 'bring the city into full compliance' with a 2000 court order in a case brought by Abbott."[155]

II. PUBLICLY SHARING FOOD AS A FREE EXERCISE OF RELIGION

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.[156]

Courts have adjudicated most of the food-sharing cases under the First Amendment. Therefore, this Part discusses how different courts have applied the Free Exercise Clause and related statutes, including the federal Religious Freedom Restoration Act of 1993 (RFRA),[157] various state religious freedom restoration acts ("state RFRAs"),[158] and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA").[159] While a detailed history of the Supreme Court jurisprudence that led Congress to enact RFRA and RLUIPA is beyond the scope of this Article, such history is relevant to the food-sharing cases because several of the earliest food-sharing cases were litigated after Congress enacted RFRA but

153. *Abbott II*, 783 So. 2d at 1214–15 (affirming the trial court's injunction and remanding for its determination of whether the city's proposed alternate location complied with the trial court's order and the plaintiff's rights under the Florida Religious Freedom Restoration Act, FLA. STAT. ANN. § 761.03 (West 2016)).

154. *Abbott II*, 783 So. 2d at 1215; Order on Plaintiff's Renewed Motion for Contempt and/or to Enforce Injunction, Abbott v. City of Fort Lauderdale (*Abbott I*), No. CACE 99-003583(05) (Fla. Cir. Ct. June 14, 2000), *rev'd & remanded*, *Abbott II*, 783 So. 2d 1213 (finding the city's proposed alternate location not minimally suitable and including the trial court's June 14, 2000 Final Judgment and Order).

155. Larry Barszewski, *Feed the Poor—Only Where Permitted, Fort Lauderdale Says*, SUNSENTINEL (Oct. 6, 2014, 3:55 PM), http://www.sun-sentinel.com/local/broward/fl-lauderdale-homeless-feeding-rules-20141006-story.html [https://web.archive.org/save/http://www.sun-sentinel.com/g00/local/broward/fl-lauderdale-homeless-feeding-rules-20141006-story.html]; *accord* CITY OF FORT LAUDERDALE, FLA., CITY COMM'N, REGULAR MEETING AGENDA MEMO, #14-0889, at 1 (2014) ("The revisions also bring the City into full compliance with the Court's Final Judgment of June 14th, 2000 in the case of Abbott v. City of Fort Lauderdale, 783 So. 2d 1213 (Fla. Dist. Ct. App. 2001), and thereby permitting the resumption of the enforcement of Park Rule 2.2.") (footnote omitted).

156. U.S. CONST. amend. I.

157. Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (Nov. 16, 1993), *codified at* 42 U.S.C. § 2000bb *et seq.*

158. *E.g.*, Pennsylvania Religious Freedom Protection Act, 71 PA. STAT. AND CONS. STAT. ANN. §§ 2401 *et seq.* (West 2012); Texas Religious Freedom Restoration Act, TEX. CIV. PRAC. & REM. CODE ANN. § 110.003 (West 2017); Florida Religious Freedom Restoration Act, FLA. STAT. ANN. § 761.01 *et seq.* (West 2016).

159. Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106-274, 114 Stat. 803 (Sept. 22, 2000), *codified at* 42 U.S.C. § 2000cc *et seq.*

before the Court held that it could not constitutionally apply to state and local governments.[160] Also, in the wake of *City of Boerne*, numerous states adopted their own religious freedom restoration acts, and these state RFRAs have featured in several recent religious food-sharing cases.[161] Finally, RLUIPA, which by its terms applies to the states,[162] and which the Court has upheld against an establishment clause challenge,[163] has featured in at least one food-sharing case.[164] The religious food-sharing cases thus provide a window into the Court's changing constitutional and statutory jurisprudence on the free exercise of religion. Below I briefly trace that doctrinal history and discuss its application in several of the food sharing cases.

A. The Free Exercise Clause

In 1940, the Supreme Court first applied the Free Exercise Clause of the First Amendment to state and local governments through the Due Process Clause of the Fourteenth Amendment.[165] From 1963 to 1990, the Court's protection of the free exercise of religion nominally followed the strict scrutiny test that was established in *Sherbert v. Verner*.[166] Under that view, government laws that substantially burdened a person's free exercise of religion required a compelling state interest and narrow tailoring to advance that interest.[167] In 1990, however, in *Employment Division v. Smith*, the Court held "that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability.'"[168] Thereafter, neutral laws of general applicability that only incidentally infringed on a person's religion were merely subject to rational basis review.[169] In contrast, strict scrutiny would apply if the objective of a law was to infringe upon or restrict a religious practice (i.e., if it was not a neutral law of general applicability).[170]

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160. City of Boerne v. Flores, 521 U.S. 507 (1997).

161. *See infra* Part II.B.

162. *See* 42 U.S.C. § 2000cc–5(4)(A) (defining "government" broadly).

163. *See* Cutter v. Wilkinson, 544 U.S. 709 (2005).

164. *See infra* Part II.C.

165. Cantwell v. Conn., 310 U.S. 296 (1940), *discussed in* ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 1248, 1319–20 (5th ed. 2015).

166. Sherbert v. Verner, 374 U.S. 398, 399, 403 (1963) (applying strict scrutiny to reverse the denial of unemployment benefits to a Seventh-day Adventist who quit her job rather than work on her Saturday Sabbath); *see also* Wisconsin v. Yoder, 406 U.S. 205 (1972) (applying free exercise strict scrutiny to exempt fourteen- and fifteen-year-old students of Amish parents from a state compulsory education law). Erwin Chemerinsky notes that although *Sherbert* established strict scrutiny, in this period the Court only applied strict scrutiny to cases involving denials of unemployment benefits and compulsory education laws. CHEMERINSKY, *supra* note 165, at 1321–26.

167. *Sherbert*, 374 U.S. at 406.

168. Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 879 (1990) (citations omitted).

169. CHEMERINSKY, *supra* note 165, at 1328.

170. *See* Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531, 533 (1993) ("[I]f the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral . . . and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.") (citation omitted).

Daytona Rescue Mission, Inc. v. City of Daytona Beach is an early food-sharing case that featured analysis of the Free Exercise Clause.[171] The defendant city denied the plaintiffs' application for a permit to operate a food bank and homeless shelter, and the plaintiffs sought declaratory and injunctive relief from the city's zoning code, alleging that it violated their constitutional free exercise and statutory RFRA rights.[172] In April 1992, the plaintiff pastor contacted city officials to discuss his intent to establish a rescue mission, and over the course of a year he pursued numerous possible sites and made offers on two of them.[173] In May 1993, however, the city adopted a Land Development Code, which permitted churches in the relevant zoning district but "provided that homeless shelters and food bank programs are not accessory uses."[174] In June 1993, the plaintiff pastor obtained a contract for sale for one site and immediately applied for a "semi-public use" permit for his intended "Church-Mission."[175] His application specified his intent to use the "site as a facility for worship services, daily housing of a limited number of homeless men, and daily feeding of homeless men, including those who would not be sheltered at the facility."[176] The City Planning Board heard the request the following month and denied it in August 1993, and in October 1993, the City Commission voted unanimously to deny the permit.[177] In such a posture, the plaintiffs sued in federal court, and the court, District Judge G. Kendall Sharp, granted the municipal defendants' motion for summary judgment in May 1995.[178]

Curiously, although the court noted that RFRA had been held to be retroactive, its analysis did not stop with the statutory interpretation and application but also reached the constitutional question.[179] It then applied two analyses of the Free Exercise Clause—"both the Supreme Court analysis and the *Grosz* three-part tests in [the Eleventh Circuit's] opinion in *First Assembly*."[180] Focusing on the Supreme Court analysis, Judge Sharp found "that the City code is neutral and of general applicability."[181] Although he acknowledged that the city's land development code changed the definition of a church or religious institution after the plaintiff had applied for the permit, Judge Sharp concluded that the law was neutral and of general applicability because competent evidence showed that the definitional change reduced an established policy into writing, and because the

171. 885 F. Supp. 1554 (M.D. Fla. 1994).
172. *Id.* at 1554–55.
173. *Id.* at 1556.
174. *Id.*
175. *Id.*
176. *Id.*
177. *See id.*
178. *Id.* at 1555.
179. *Id.* at 1558 (citing Lawson v. Dugger, 844 F. Supp. 1538 (S.D. Fla. 1994)).
180. *Daytona Rescue Mission, Inc.*, 885 F. Supp. at 1557–58 (citing First Assembly of God of Naples, Fla., Inc. v. Collier Cty., Fla. (*First Assembly of God of Naples I*), 20 F.3d 419 (11th Cir. 1994), *opinion modified on denial of reh'g*, 27 F.3d 526 (11th Cir. 1994); Grosz v. City of Miami Beach, Fla., 721 F.2d 729 (11th Cir. 1983)).
181. *Daytona Rescue Mission, Inc.*, 885 F. Supp. at 1558.

initial city official with whom the plaintiff met in 1992 said that the homeless shelter and food bank would be treated as a special use.[182] Therefore, the court found no violation of the Free Exercise Clause.[183] (I discuss the court's application of RFRA in Part II.B, *infra*.)

Daytona Rescue Mission thus shows one approach to claims brought under the Free Exercise Clause and is relevant for states without a state RFRA in situations where RLUIPA does not apply. Unless a plaintiff in such a situation can persuade the court that the law is not neutral and of general applicability but instead has the objective to infringe upon or restrict a religious practice, the court will apply rational basis review, and given the government's significant interest in regulating zoning, it is likely that no constitutional violation will be found.[184]

B. The Religious Freedom Restoration Act (RFRA)

In contrast, under the Religious Freedom Restoration Action of 1993, even neutral laws of general applicability are subject to strict scrutiny so long as they substantially burden the free exercise of religion.[185] Before the Court held in 1997 that RFRA was not a proper exercise of Congress's Fourteenth Amendment, Section Five enforcement power over the states,[186] several courts applied RFRA to state laws. Thereafter, RFRA was applicable only to the federal government, but several states quickly adopted their own RFRAs, and they have featured in several recent food-sharing cases. Below, I discuss both sorts of cases.

1. Federal RFRA

Reviewing how courts have applied RFRA to religious food-sharing cases is warranted for at least two reasons. First, courts adjudicated several of the early religious food-sharing cases before the Court held that RFRA could not constitutionally apply to state and local law.[187] Second, one of those cases arose in the Federal District of Columbia,[188] and RFRA remains applicable to federal law.[189] Thus, elucidating courts' past applications of RFRA in several past food-sharing cases can still inform strategies for future litigation.

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182. *Id.*

183. *Id.* at 1561.

184. *See, e.g.*, *id.* at 1558 (citing First Assembly of God of Naples, Fla. v. Collier Cty., Fla. (*First Assembly of God of Naples II*), 775 F. Supp. at 386 (M.D. Fla. 1991)).

185. Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (1993) (codified at 42 U.S.C. § 2000bb *et seq.* (2012)).

186. *Boerne*, 521 U.S. 507.

187. *Compare Boerne*, 521 U.S. 507, *with Stuart Circle Par.*, 946 F. Supp. 1225; *Daytona Rescue Mission, Inc.*, 885 F. Supp. 1554 (applying RFRA but finding that the city zoning laws did not substantially burden the petitioners' free exercise of religion); *W. Presbyterian Church II*, 862 F. Supp. 538 (D.D.C. 1994).

188. *W. Presbyterian Church II*, 862 F. Supp. 538.

189. Burwell v. Hobby Lobby, 134 S. Ct. 2751 (2014); Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U.S. 418 (2006).

In Part I.A., *supra*, I discussed the first religious food-sharing case, *Western Presbyterian Church v. Board of Zoning Adjustment of the District of Columbia*. In that case, District Judge Sporkin granted the plaintiffs' motion for summary judgment and permanently enjoined the District of Columbia from preventing the plaintiffs from ministering to the needy by charitably providing food to homeless people at the site of their new church, "so long as the feeding program is conducted in an orderly manner and does not constitute a nuisance."[190] As he concluded, "The Church may use its building for prayer and other religious services as a matter of right and should be able, as a matter of right, to use the building to minister to the needy."[191] He explained, "To regulate religious conduct through zoning laws, as done in this case, is a substantial burden on the free exercise of religion . . . in violation of the First Amendment and the Religious Freedom Restoration Act of 1993."[192]

According to RFRA, "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except" if the government "demonstrates that application of the burden to the person" furthers "a compelling government interest; and is the least restrictive means of furthering that compelling governmental interest."[193] In *Western Presbyterian Church*, the defendants conceded that they had no compelling governmental interest in prohibiting the plaintiffs from conducting their "feeding program . . . 'so long as appropriate controls are in place'"[194] Therefore, the defendants disputed whether the District of Columbia zoning regulations, as applied, substantially burdened the plaintiffs' free exercise of religion.[195] As discussed in Part I.A., *supra*, the court took seriously the emic views ascribed by the plaintiffs to their practice of providing food to hungry people.[196] The plaintiffs justified their practice in terms of religious charity, ministry, spiritual redemption, and works of faith, and Judge Sporkin found ample textual support in the Bible, the constitution of the Presbyterian Church (USA), and the church's bylaws.[197] He therefore found that "the Church's feeding program in every respect is a religious activity and a form of worship."[198] He noted, "It also happens to provide, at no cost to the city, a sorely needed social service."[199] As Judge Sporkin explained, "The secular benefits inure to the needy persons who partake of the free breakfasts; the members of the Church benefit spiritually by providing the service."[200] Consequently, he found that the defendants' application of the District of Columbia

190. *W. Presbyterian Church II*, 862 F. Supp. at 547.
191. *Id.*
192. *Id.*
193. 42 U.S.C. § 2000bb-1, *discussed in W. Presbyterian Church II*, 862 F. Supp. at 545–46.
194. *W. Presbyterian Church II*, 862 F. Supp. at 545 (citation omitted).
195. *Id.*
196. *See supra* notes 47–62 and accompanying text.
197. *W. Presbyterian Church II*, 862 F. Supp. at 544.
198. *Id.* at 546.
199. *Id.*
200. *Id.*

zoning laws substantially burdened the plaintiffs' free exercise of religion in violation of RFRA.[201]

The court in *Daytona Rescue Mission, Inc. v. City of Daytona Beach*, District Judge G. Kendall Sharp, took the opposite view.[202] As discussed in Part II.A., *supra*, Judge Sharp analyzed the case under the Free Exercise Clause and RFRA. As to the former, he found that the city zoning law was neutral and of general applicability.[203] As to the latter, he found that it did not substantially burden the plaintiffs' free exercise of religion.[204] Judge Sharp acknowledged the contrary finding in *Western Presbyterian Church*, but he found that the *Daytona Rescue Mission* plaintiffs had failed to show that the City code prevented them from running a homeless shelter and food program "anywhere in Daytona Beach."[205] Although he acknowledged that the defendants' denial of the plaintiffs' application for "semi-public use" prevented them "from engaging in such conduct," Judge Sharp credited the defendants for presenting evidence that other homeless shelters existed in the city and faulted the plaintiffs for "pursu[ing] only two sites and applying for semi-public use at only one site."[206] Moreover, perhaps to reduce the risk of an appellate court reversal, he found that if the defendants had substantially burdened the plaintiffs' free exercise of religion, then the defendants' "interest in regulating homeless shelters and food banks is a compelling interest and that the code furthers that interest in the least restrictive means."[207]

On one view, *Daytona Rescue Mission* simply stands in contrast to *Western Presbyterian Church*. Different district courts found different facts and concluded differently on the law. In my view, however, Judge Sharp was wrong to rule at summary judgment that Daytona Beach's zoning laws did not substantially burden the plaintiffs' free exercise of religion. Because in that pre-1997 era courts understood that RFRA applied to state and local law, strict scrutiny applied.[208] That the zoning laws were "generally applicable" was irrelevant. While the plaintiffs bore the evidentiary burden to show that the zoning laws substantially burdened their free exercise of religion,[209] I believe that they clearly met their burden.

Judge Sharp obtained the standard for "substantial burden" from a recent Ninth Circuit case.[210] Under that standard, plaintiffs had to show that the governmental action pressured them either "to commit an act forbidden by the

201. *Id.* at 547.
202. *See Daytona Rescue Mission, Inc.*, 885 F. Supp. at 1560.
203. *Id.* at 1558.
204. *Id.* at 1560.
205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.* at 1559 ("As stated in the statute, the purpose of RFRA is to restore the compelling interest test, as set forth in *Sherbert v. Verner* . . . and *Wisconsin v. Yoder* . . . in cases where the free exercise of religion is substantially burdened.") (citations omitted).
209. *See Daytona Rescue Mission, Inc.*, 885 F. Supp. at 1559.
210. *Id.* at 1560 (citing Vernon v. City of Los Angeles, 27 F.3d 1385, 1393 (9th Cir. 1994) (citations omitted)).

religion or" prevented them "from engaging in conduct or having a religious experience which the faith mandates."[211] Further, "[t]his interference must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to religious doctrine."[212] Under the facts of the case, Daytona Beach's zoning laws prevented the plaintiffs from "engaging in conduct or having a religious experience which the faith mandates," and this interference was more than an inconvenience but rather went to tenets or beliefs that were central to their religious doctrine. Consider first that Judge Sharp noted that the pastor plaintiff diligently "looked at numerous sites" before making offers to purchase on two of them.[213] One of the offers was refused but the pastor timely applied for the "semi-public use" of "Church-Mission" for the property that he ultimately purchased, which was "zoned M-1 (Local Industry)," a zoning district in which churches were permitted uses.[214] Also, consider that the plaintiff who pursued this endeavor had been "the pastor of the Milwaukee Rescue Mission from 1978 to 1992."[215] Upon moving to the city of Daytona Beach, he immediately consulted with the City Director of Planning and Redevelopment (in April 1992) and then spent over a year looking at numerous potential sites for the rescue mission before ultimately obtaining a purchase agreement in June 1993.[216] He then timely applied for a permit for "semi-public use," but during the process encountered city officials who "were concerned about the issue of safety and security."[217]

Comparing Judge Sharp's opinion in *Daytona Rescue Mission* with Judge Sporkin's opinion in *Western Presbyterian Church*, the judges' different treatment of the emic meanings ascribed to the ministry of providing food (and shelter) looms large. Where Judge Sporkin accepted the plaintiffs' explanations of providing food to hungry people in terms of religious charity, ministry, spiritual redemption, and works of faith, which their foundational religious texts amply supported, Judge Sharp glossed over the *Daytona Rescue Mission* plaintiffs' substantial efforts to purchase and permit a place for their rescue mission. Had the plaintiffs purchased without attempting to comply with the zoning laws, and then challenged those laws as violating their free exercise of religion rights, then it would have been proper to disregard their claim for want of a substantial burden because a mere inconvenience (i.e., not wanting to apply for a zoning permit). Here, however, the plaintiffs conducted their due diligence and complied with the zoning laws.[218] Their attempt to create a rescue mission was frustrated when local officials denied their application, citing "safety and security" concerns, but such concerns are only relevant to whether the law furthered a compelling governmental interest, not to

211. *Id.* at 1559–60 (citing *Vernon*, 27 F.3d at 1393 (citations omitted)).
212. *Id.*
213. *Id.* at 1556.
214. *Id.*
215. *Id.*
216. *Id.*
217. *Id.* at 1556, 1559.
218. *Id.* at 1556.

whether the law substantially burdened the plaintiffs' free exercise of religion. Similarly, to require the plaintiffs to apply for a permit for "semi-public use" prior to owning an interest in the subject property seems unreasonable and itself a substantial burden on the free exercise of religion. While a sophisticated purchaser could make the purchase agreement contingent on obtaining city approval of the "semi-public use," such a contingency would likely make the buyer less attractive because of the additional time and uncertainty that the contingency would insert into the transaction. Moreover, the religious use sought for the particular location was permissible under the zoning laws of the zoning districts at issue. City officials, however, had recently amended those laws to redefine churches and religious institutions as "buildings used for the sole purpose of worship and customarily related activities" and expressly excluded homeless shelters and food banks from being "customarily related activities."[219]

Notwithstanding those facts, Judge Sharp found the application of the zoning laws not to impose a substantial burden and thus neatly disposed of the plaintiffs' claim, leaving them the owners of real property that they were entitled to use as a church "for the sole purpose of worship and customarily related activities" so long as those activities did not include the food and shelter ministries that were essential to the rescue mission. Perhaps the problem was evidentiary? If the plaintiffs had made a stronger showing of the centrality of food and shelter ministries to their religion, perhaps the court would have denied the defendants' motion for summary judgment and allowed the case to proceed to a trial? Other courts in this era, when RFRA applied to state and local law, had found that, "Plaintiffs have made a strong showing that feeding the poor constitutes a central tenet of [their] religion."[220] In the alternative, perhaps the Ninth Circuit standard that Judge Sharp adopted was too narrow? The standard for "substantial burden" in this era was in dispute: some circuits of the U.S. Courts of Appeals defined it narrowly, as requiring state compulsion to do religiously forbidden activity or state coercion to refrain from religiously mandated activity, and other circuits defined it more broadly to include state laws that compel, constrain, or inhibit religious conduct or expression.[221] Ultimately, however, even under a narrow interpretation of "substantial burden," I believe that Judge Sharp misunderstood, or rejected, the emic meanings that the plaintiffs ascribed to their particular exercise of religion. Under his ruling, the City of Daytona Beach's decision to redefine the food and shelter ministries that

219. *Id.*

220. *Stuart Circle Par.*, 946 F. Supp. at 1236.

221. *Id.* at 1237–38 (discussing, *inter alia*, Mack v. O'Leary, 80 F.3d 1175, 1178–79 (7th Cir. 1996) (discussing the inter-circuit split and interpreting the term broadly); Goodall by Goodall v. Stafford Cty. Sch. Bd., 60 F.3d 168, 171 (4th Cir. 1995), *cert. denied*, 516 U.S. 1046 (1996) (defining the term more narrowly)); *see also* Jonathan Knapp, *Making Snow in the Desert: Defining Substantial Burden under RFRA*, 36 ECOLOGY L.Q. 259, 281–82, 285–87 (2009) (distinguishing between two tests of substantial burden, "coercion" and "substantial impact," and discussing the inter-circuit split over the meaning of substantial burden).

constituted the essential purpose of the plaintiffs' rescue mission was constitutional and survived strict scrutiny.

In my view, *Daytona Rescue Mission* was wrongly decided, and it contrasts markedly with its contemporaries, *Western Presbyterian Church* and *Stuart Circle Parish*. Nevertheless, it remains instructive for how a court could find no violation of RFRA, or a state RFRA, in a claim brought by people who publicly share food as an exercise of their religion.

2. State RFRAs

In the second modern wave of the food-sharing cases, state RFRAs have provided the most consistent way by which courts have disposed of anti-food-sharing laws.[222] Despite the differences between particular state RFRAs, where a food-sharing case features such a law, only one court has not found a violation of state statutory rights to the free exercise of religion.[223] This Section thus reviews two food-sharing cases that featured state RFRA claims, drawing out the differences in treatment between cases arising from Fort Lauderdale and Orlando, Florida.[224]

a. Florida RFRA

Florida enacted its Religious Freedom Restoration Act in 1998 (Florida RFRA).[225] It mandates that:

> The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:
> (a) Is in furtherance of a compelling governmental interest; and
> (b) Is the least restrictive means of furthering that compelling governmental interest.[226]

Also, the Florida RFRA defines "exercise of religion" as "an act or refusal to act that is substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief."[227]

As earlier discussed,[228] in 2001, Arnold Abbott, and his nonprofit Love Thy Neighbor Fund, successfully sued the City of Fort Lauderdale for violating their

222. *See, e.g.*, *Abbott II*, 783 So. 2d 1213; *Chosen 300 Ministries, Inc.*, 2012 WL 3235317; Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44.

223. *See First Vagabonds Church of God I*, 2008 WL 899029.

224. For the sake of brevity, I forego discussing two recent food-sharing cases that featured state RFRAs in Pennsylvania and Texas. *See Chosen 300 Ministries, Inc.*, 2012 WL 3235317; Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44.

225. FLA. STAT. ANN. § 761.03 *et seq.* (West 2016).

226. *Id.* § 761.03(1).

227. *Id.* § 761.02(3).

228. *See supra* notes 151–55 and accompanying text.

rights under Florida RFRA.[229] His state court lawsuit, upheld on appeal by Florida District Court of Appeal Judge W. Matthew Stevenson, won an injunction against enforcement of city park rules unless the city provided a suitable alternative site, which it repeatedly failed to do.[230] According to the trial court, Circuit Judge Estella May Moriarty noted that Abbott founded Love Thy Neighbor in 1991 as "a memorial to his late wife and to provide a vehicle to follow his religious conviction that God is served by feeding the poor and homeless."[231] From then until November 1997, Abbott and the other Love Thy Neighbor volunteers conducted their public food sharing without censure at several locations within the city, including public parks and beaches during a period in which Fort Lauderdale experimented with several "safe zones" for homeless people in the wake of *Pottinger v. City of Miami*.[232] In 1996, however, Fort Lauderdale enacted Park Rule 2.2, which declared that:

> Parks shall be used for recreation and relaxation, ornament, light and air for the general public. Parks shall not be used for business or social service purposes unless authorized pursuant to a written agreement with City.
>
> As used herein, social services shall include, but not be limited to, the provision of food, clothing, shelter or medical care to persons in order to meet their physical needs.[233]

The following year, in November 1997, the city manager, police commander, and head of the local "Hotel-Motel Association" met with Abbott to discuss their concerns regarding the food sharing that he conducted at the beach and their perceptions of its effect on tourism.[234] Shortly thereafter, in January 1998, "a notice was posted that social services were prohibited at the beach but were approved at the downtown 'safe zone.'"[235] Although the city had no procedure for requesting a permit, the city told Abbott that he had to apply for a permit to continue sharing food at the beach.[236] He filed an "Outdoor Event Application" in March 1998, but the city did not respond until February 1999. In its response, the city manager

229. *See Abbott II*, 783 So. 2d at 1214–15 (affirming the trial court's injunction and remanding for its determination of whether the city's proposed alternate location complied with the trial court's order and the plaintiff's rights under FLA. STAT. ANN. § 761.03 (West 2016)).

230. *See id.* at 1215; *see also* Order on Plaintiff's Renewed Motion for Contempt and/or to Enforce Injunction at 15, *Abbott I*, No. 99-003583(05) (Fla. Cir. Ct. June 14, 2000) (finding the city's proposed alternate location not minimally suitable and including the trial court's June 14, 2000 Final Judgment and Order) (on file with author).

231. Final Judgment at 8, *Abbott I*, No. 99-003583(05) (June 14, 2000) [hereinafter Final Judgment, *Abbott I*]; *accord* Kamph, *supra* note 151; LOVE THY NEIGHBOR, *supra* note 151.

232. *See id.*; *see also* Pottinger v. City of Miami, 720 F. Supp. 955 (S.D. Fla. 1992), *aff'd*, 40 F.3d 1155 (11th Cir. 1994) (establishing "safe zones" where the city's police could not arrest homeless people performing harmless life sustaining acts).

233. Final Judgment, *Abbott I*, *supra* note 231, at 8; *accord* Complaint For Declaratory and Injunctive Relief and Damages at 9–10, *Fort Lauderdale Food Not Bombs I*, 2016 WL 5942528 (citing *Fort Lauderdale Parks and Recreation—Rules and Regulations*, *supra* note 147, at Rule 2.2. Social Services.

234. Final Judgment, *Abbott I*, *supra* note 231, at 8.

235. *Id.*

236. *Id.* at 2–3.

denied the request, writing that the application had been deferred because of an emergency lack of shelter beds, which the city had just remedied by opening a new shelter, and that "the Zoning code permitted the regular provision of feeding only in a building and only as a conditional use in designated zoning districts."[237] The city manager's notice concluded that city staff would start enforcing violations the following month. Abbott and the other plaintiffs subsequently filed suit.[238]

While the *Abbott* plaintiffs argued that Park Rule 2.2 violated Florida RFRA, the Civil Rights Act of 1964, and the First and Fifth Amendments of the U.S. Constitution, the trial court only found a violation of Florida RFRA.[239] Judge Moriarty found, and the appellate court affirmed, that the plaintiffs were "substantially motivated by a religious belief" and that "the zoning code prevents the plaintiffs from engaging in feeding operations anywhere in the city except as a conditional use granted after as many as five public hearings."[240] In other words, the court found the park rule was a substantial burden on the exercise of religion. The court concluded, however, that "the Rule serves a significant government interest in providing recreation and promoting tourism."[241] It then considered whether the city had complied with the "least restrictive means" requirement of Florida RFRA.[242]

Judge Moriarty noted that the city had closed the "safe zone" that it once provided for such services, that many code sections permitted restaurants but disapproved "feeding of the homeless except as a conditional use," and that churches "also must apply for a conditional use permit to operate a feeding program."[243] Thus, the plaintiffs had no place where "they could practice their faith as a matter of right."[244] Citing *Western Presbyterian Church* and *Stuart Circle Parish* (but not *Daytona Rescue Mission*), Judge Moriarty concluded that the defendant city had failed to use the least restrictive means to further its governmental interest in "providing recreation and promoting tourism," and she enjoined the city from enforcing its park rule.[245] In her order, she enjoined the city of Fort Lauderdale from prohibiting:

> Plaintiffs' feeding of the homeless at the picnic area of the public beach until such time as the city either designates an alternative site on public property or amends its zoning code to provide locations where Plaintiffs [sic] activities are permitted as of right rather than as a conditional use, or

237. *Id.* at 3.
238. *Id.*
239. *Id.* at 1, 4–5.
240. *Id.* at 5.
241. *Id.* at 4 (citations omitted).
242. *Id.* (citation omitted).
243. *Id.*
244. *Id.*
245. *Id.* at 4–5.

> specifies with particularity the objective criteria that must be met to allow a conditional use.[246]

Abbott v. City of Fort Lauderdale is thus the first of the food-sharing cases in which a court adjudicated the plaintiffs' claim under a state RFRA, and in this first case, the plaintiffs prevailed. A decade later, different plaintiffs would achieve similar success in Pennsylvania and Texas,[247] but curiously a subsequent case in Florida would dispose of the Florida RFRA claim and resolve the constitutional matters in the municipal defendant's favor.[248] Before turning to the second Florida RFRA case, however, I highlight that *Abbott* cuts against my argument regarding the importance of emic and etic meanings: where cases like *Western Presbyterian Church* and *Stuart Circle Parish* seem to show a positive correlation between courts that adopt plaintiffs' emic terms and favorable plaintiff results, and cases like the *McHenry* cases, *Daytona Rescue Mission*, and *First Vagabonds Church of God* seem to show a positive correlation between courts that disregard or reject plaintiffs' emic terms and results that favor the defendants, *Abbott* provides a counterpoint.

In *Abbott*, neither trial judge Moriarty nor appellate judge Stevenson adopted the plaintiffs' emic religious terms. Instead, they uniformly utilized etic phrases like "feeding the poor and homeless," "feeding of the homeless," "feeding operations," and "feeding program." To me, these terms seem far from those evoked by the name of Abbott's nonprofit, Love Thy Neighbor, which derives from the New Testament of the Bible.[249] Nevertheless, the *Abbott* courts resolved the case in the plaintiffs' favor. Whether commentators should regard this as an exception that proves the rule, evidence that disproves the emic/etic null hypothesis, evidence that suggests multivariate causality, or something else, I leave to future discourse on the matter, in particular after I study the attitudinal model of judging and its critiques.[250]

Returning to the Florida RFRA narrative, seven years after Florida courts decided *Abbott*, the Middle District of Florida, District Judge Gregory A. Presnell, found that religious food-sharing plaintiffs in Orlando failed to prove that the defendant city's Large Group Feeding Ordinance violated Florida RFRA.[251] After the bench trial in *First Vagabonds Church of God v. City of Orlando*, during which the defendant orally moved for a judgment on partial findings, Judge Presnell concluded that, "Clearly the ordinance places a *significant* burden on FVCG's

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246. *Id.* at 5–6.

247. *Chosen 300 Ministries, Inc.*, 2012 WL 3235317; Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44.

248. *First Vagabonds Church of God II*, 2008 WL 2646603.

249. *See, e.g.*, *Mark* 12:31 (New Am.) ("The second [greatest commandment] is this: 'You shall love your neighbor as yourself.' There is no other commandment greater than these.").

250. *See, e.g.*, Helen Hershkoff & Stephen Loffredo, *State Courts and Constitutional Socio-Economic Rights: Exploring the Underutilization Thesis*, 115 PENN ST. L. REV. 923, 963–68 (2011) (discussing the literature regarding strategic decision making, the attitudinal model, and agency costs as to state courts). *See generally* JEFFREY A. SEGAL & HAROLD J. SPAETH, THE SUPREME COURT AND THE ATTITUDINAL MODEL (1993). I thank Francisco Valdes for encouraging me to consider the attitudinal model.

251. *First Vagabonds Church of God II*, 2008 WL 2646603, at *2.

services. However, it does not rise to the level of a *substantial* burden as defined by FRFRA."[252] What explains this odd distinction between a "significant" and "substantial" burden? Between *Abbott* and Judge Presnell's ruling and order in *First Vagabonds Church of God*, the Supreme Court of Florida, Justice Peggy A. Quince, determined *Warner v. City of Boca Raton*, a case that considered squarely the requirements of Florida RFRA, including its definition of "substantial burden."[253]

In *Warner*, the Eleventh Circuit certified two questions to the Florida Supreme Court. Answering the first one, Justice Quince explained the following about the Florida RFRA:

> [T]he RFRA expands the scope of religious protection beyond the conduct considered protected by cases from the United States Supreme Court. We also hold under the Act, any law, even a neutral law of general applicability, is subject to the strict scrutiny standard where the law substantially burdens the free exercise of religion.[254]

As to the meaning of Florida RFRA's "substantial burden" phrase, Justice Quince specifically considered and rejected "the middle and broad definitions of 'substantial burden'" adopted by the Sixth (middle), and Eighth and Tenth (broad), Circuits of the U.S. Courts of Appeals.[255] Instead, she explained:

> Accordingly, we conclude that the narrow definition of substantial burden adopted by the Fourth, Ninth, and Eleventh Circuits is most consistent with the language and intent of the FRFRA. Thus, we hold that a substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires.[256]

Addressing the second question certified to it, the court rephrased it into, "Whether the City of Boca Raton Ordinance at issue in this case violates the Florida [RFRA]?"[257] The court answered in the negative and agreed with the underlying federal district court's finding that the city's "regulation did not substantially burden appellants' free exercise of religion."[258] The municipal law in question was a 1982 "regulation prohibiting vertical grave markers, memorials, monuments, and structures on cemetery plots" in the city-owned cemetery.[259] The regulation instead allowed for stone or bronze markers that were level with the ground.[260] Despite the regulation, however, people, including the appellants, continued to decorate their familial graves with vertical decorations, and the city did not attempt enforce the regulation until 1991, when it sent notices to plot owners that noncomplying

252. *Id.* (emphasis added).
253. Warner v. City of Boca Raton, 887 So. 2d 1023, 1031–33 (Fla. 2004).
254. *Id.* at 1035–36.
255. *Id.* at 1033.
256. *Id.* (citation omitted).
257. *Id.* at 1034.
258. *Id.* at 1035 (citation omitted).
259. *Id.* at 1025.
260. *Id.*

structures would be removed, followed by a second notice in 1992.[261] When some plot owners continued to defy the regulation, the city agreed to postpone removal pending further study.[262] It then amended the regulations in 1996 to permit vertical grave decorations for up to sixty days from the date of burial and on certain holidays.[263] The following year, after its survey determined that most plot owners approved of the amended regulations, the city council announced that it would begin enforcing them in January 1998, and litigation ensued.[264]

This was the context in which the Florida Supreme Court agreed with the district court finding that the regulation did not substantially burden the plaintiffs' exercise of religion. As the district court explained, the regulations did "not prohibit the plaintiffs from marking graves and decorating them with religious symbols. Rather, the regulations permit only horizontal grave markers."[265] Further, the amended regulations permitted vertical grave decorations for limited times.[266] Thus, the district court found that the amended regulations "merely inconvenience the plaintiffs' practice of marking graves and decorating them with religious symbols."[267] As a mere inconvenience, the regulations were not a substantial burden on the plaintiffs' exercise of religion.

Warner narrowly defined the Florida RFRA's definition of substantial burden. In my view, however, *Warner* does not warrant Judge Presnell's conclusion in *First Vagabonds Church of God*. Rather, I believe that he wrongly concluded that the "significant burden," which he found Orlando's "Large Group Feeding" ordinance had imposed on the plaintiffs' exercise of religion, did "not rise to the level of a substantial burden as defined by FRFRA."[268] Judge Presnell's conclusion was wrong for at least three reasons. First, he impermissibly created the notion of a "significant burden," which has no place in Florida RFRA's statutory scheme.[269] Under Florida RFRA, Judge Presnell could either find a substantial burden (using *Warner*'s narrow definition), or he could find no substantial burden (and possibly characterize it as a mere inconvenience). Instead, he found a significant burden, which by its terms is

261. *Id.*
262. *Id.*
263. *Id.* at 1035.
264. *Id.*
265. *Id.* (citation and internal quotation marks omitted).
266. *See id.*
267. *Id.* (citation omitted and internal quotation marks omitted).
268. *First Vagabonds Church of God II*, 2008 WL 2646603, at *2 (emphasis added). Judge Presnell's conclusion is particularly perplexing because earlier in the litigation, he had denied the defendant's motion for summary judgment and specifically noted that the religious plaintiffs had argued that the ordinance would preclude them from conducting their religious services and that their evidence had shown, "that, given the limited means of communication and transportation available to them, there is at least a possibility that these limitations would prevent a substantial portion of the FVCG congregation from learning of and traveling to these services, making the ordinance more than a mere inconvenience." *First Vagabonds Church of God I*, 2008 WL 899029 at *3 (granting in part and denying in part defendant's motion for summary judgment). Nevertheless, Judge Presnell ultimately concluded that these were not substantial burdens. *First Vagabonds Church of God II*, 2008 WL 2646603, at *2.
269. FLA. STAT. ANN. § 761.01 *et seq.* (West 2016).

more burdensome than a mere inconvenience or other *de minimis* infringement, but declared, without a persuasive explanation, that it did not amount to a substantial burden.[270] Second, beyond Judge Presnell's self-contradictory terms, I believe that he misapplied *Warner* because Justice Quince's opinion specifically approved the Florida District Court of Appeal's opinion in *Abbott v. City of Fort Lauderdale* and specifically disapproved the approach of a different Florida appellate court.[271]

Third, and perhaps most importantly, I believe that the facts of *Warner* are distinguishable from the facts of *First Vagabonds Church of God*. As earlier discussed,[272] Orlando's Large Group Feeding ordinance created a two mile radius around city hall in which any person who sought to share food in a public park, including those who did so to exercise religion, was required to obtain a permit and was limited to obtaining only two such permits in any consecutive twelve months for any particular park. In *Warner*, the regulation, as amended, allowed cemetery plot owners to memorialize the interred with horizontal grave markers and to use vertical grave decorations for two months after burial and during specified holidays. No evidence reached the Supreme Court of Florida that any plot owner had installed a permanent vertical grave marker prior to the city cemetery regulations; thus, both the district court's and the Florida Supreme Court's conclusions that the regulations' burden on the plaintiffs' exercise of religion amounted to a mere inconvenience seem warranted. In contrast, for reasons explained at length in Part I.A, *supra*, the public sharing of food for religious reasons is an active practice of charity, ministry, and worship. This was true for the plaintiffs in *Abbott* and no less so for the religious plaintiffs in *First Vagabonds Church of God*.[273]

Circuit Judge Moriarty found that Fort Lauderdale's park rule imposed a substantial burden on the *Abbott* plaintiffs, in part because it prevented them "from engaging in feeding operations anywhere in the city except as a conditional use

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270. After finding no substantial burden on the religious plaintiffs' exercise of religion, which was necessary for their claim under Florida RFRA, in a subsequent opinion, Judge Presnell reached the First Amendment Free Exercise Clause claim and found the ordinance violated the plaintiffs' constitutional rights because it lacked a rational basis. *See First Vagabonds Church of God III*, 578 F. Supp. 2d at 1361–62. This too seems a clearly reversible error, for how could a law pass the strict scrutiny required by Florida RFRA yet fail the rational basis review required of a neutral law of general applicability under the Free Exercise Clause after *Smith*?

271. *Warner*, 887 So. 2d at 1036 n.11 (approving *Abbott II*, 783 So. 3d 1213, and disapproving First Baptist Church of Perrine v. Miami-Dade Cty., 768 So. 2d 1114 (Fla. Dist. Ct. App. 2000)).

272. *Cf. supra* notes 126–34 (discussing *First Vagabonds Church of God IV*, 610 F.3d 756, and the Greater Orlando Park District (GDPD)).

273. *Compare supra* notes 228–49 and accompanying text (discussing the Final Judgment and Order in *Abbott I*, No. 99-003583(05)), *with First Vagabonds Church of God II*, 2008 WL 2646603, at *1 ("Pastor Brian Nichols . . . was ordained as a Christian minister in 2004 . . . . In 2005 he formed his congregation, the First Vagabonds Church of God . . . in Orlando. Nichols, having been homeless himself for a time, sought to minister to homeless Christians in downtown Orlando . . . . Currently, his congregation has approximately forty members and holds services every Sunday . . . in Langford Park, which is located within the GDPD. The services consist of songs, prayer, Bible readings and food sharing. The breaking of bread amongst the members of his congregation is a Christian tradition and an integral part of Nichols' ministry.")

granted after as many as five public hearings."[274] Similarly, Orlando's Large Group Feeding ordinance required the religious plaintiffs in *First Vagabonds Church of God* to limit their religious food sharing to no more than twice within a consecutive twelve month period at the park where they had practiced their ministry prior to the city's enactment of its anti-food-sharing law. To exercise their religion under the anti-food-sharing law, the religious plaintiffs would have to shift from park to park within the GDPD, using any particular park, after obtaining a permit, no more than twice within twelve consecutive months, or they would have to relocate outside of the GDPD. In other words, Orlando's Large Group Feeding ordinance promised to make the First Vagabonds Church of God, and the other religious plaintiffs, vagabond from park to park within the GDPD, or to exercise their religion away from the city center, wherein their impoverished and homeless congregants tended to be.[275] Even under the narrow interpretation of Florida RFRA's definition of substantial burden, Judge Presnell should have found a substantial burden on the plaintiffs' exercise of religion because the ordinance forbid them from engaging in conduct that their religion required. Under Florida RFRA, he should have determined whether the city defendant had a compelling governmental interest and whether the Large Group Feeding ordinance was the least restrictive means of furthering it.

Reflecting on these applications of Florida RFRA to two different food-sharing cases provides insights into the threshold question of when a state or local law may constitute a substantial burden on the exercise of religion. I believe that the courts correctly decided *Abbott* but incorrectly found no substantial, but only a significant, burden on religion in *First Vagabonds Church of God*. Since *First Vagabonds Church of God*, two other courts have found violations of two different state RFRAs.[276] In the interests of brevity, however, I now turn to discuss another statute that has proven important in protecting people who publicly share food in the exercise of their religion.

C. The Religious Land Use and Institutionalized Persons Act (RLUIPA)

In 1997, the Court held that RFRA could not constitutionally apply to state and local governments.[277] In 2000, Congress responded by enacting the Religious Land Use and Institutionalized Persons Act (RLUIPA).[278] Grounded in

274. Final Judgment and Order at 5, *Abbott I*, No. 99-003583(05) (June 14, 2000).

275. *See First Vagabonds Church of God III*, 578 F. Supp. 2d at 1358; *First Vagabonds Church of God II*, 2008 WL 2646603, at *1–2.

276. *Chosen 300 Ministries, Inc.*, 2012 WL 3235317; Findings of Fact and Conclusions of Law, *Big Hart Ministries Ass'n*, *supra* note 44.

277. *Boerne*, 521 U.S. 507.

278. Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), Pub. L. No. 106-274, 114 Stat. 803 (Sept. 22, 2000), *codified at* 42 U.S.C. § 2000cc *et seq*; *see also* Holt v. Hobbs, 135 S. Ct. 853, 860 (2015) (discussing the origins of RLUIPA). I thank Audrey McFarlane and Sarah Schindler for encouraging me to discuss the impact of RLUIPA on the food sharing cases.

Congressional authority derived from the Spending and Commerce clauses,[279] the Court upheld RLUIPA as constitutional against an Establishment Clause challenge in 2005.[280] As its title indicates, RLUIPA provides rights in "two areas of government activity. Section 2 governs land-use regulation,"[281] and is the relevant section for the food-sharing cases. In language that substantially follows RFRA, Section 2 provides:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.[282]

In other words, RLUIPA requires strict scrutiny of any land use regulation, such as a zoning law, and it expansively defines "land use regulation" to include "formal or informal procedures or practices that permit the government to make individualized assessments of the proposed uses for the property involved."[283] Also, RLUIPA changed RFRA's definition of "exercise of religion."[284] Where RFRA's original definition of the exercise of religion expressly referred to "the exercise of religion under the First Amendment," RLUIPA redefined it to mean "any exercise of religion, whether or not compelled by, or central to, a system of religious belief."[285]

At a glance, it would seem that RLUIPA offers a powerful protection to people who would publicly share food as an exercise of their religion, provided that they sought to do so at a real property in which they owned an interest. To date, however, the food-sharing cases have not seen much action under RLUIPA. While the National Law Center on Homelessness and Poverty counts three food-sharing cases that feature RLUIPA,[286] a close reading of them shows that only one pertains to food sharing.[287] The other two cases instead feature socio-legal conflict over churches that sought to provide "a homeless ministry (including a shelter) in its

279. *Holt*, 135 S. Ct. at 860 (citing 42 U.S.C. § 2000cc–1(b)).

280. *Cutter*, 544 U.S. at 719–20 ("In accord with the majority of Courts of Appeals that have ruled on the question . . . we hold that § 3 of RLUIPA fits within the corridor between the Religion Clauses: On its face, the Act qualifies as a permissible legislative accommodation of religion that is not barred by the Establishment Clause.").

281. *Holt*, 135 S. Ct. at 860 (citing 42 U.S.C. § 2000cc).

282. 42 U.S.C. § 2000cc(a)(1).

283. *Id.* § 2000cc(a)(2)(C).

284. *Burwell*, 134 S. Ct. at 2761–62 (citing 42 U.S.C. §§ 2000bb–2(4), 2000cc–5(7)(A)).

285. *Id.* (citing 42 U.S.C. § 2000cc–5(7)(A)) (internal quotations omitted); *accord Holt*, 135 S. Ct. at 860.

286. *See* CRIMINALIZING CRISIS, *supra* note 5, at 134, 136–38 (discussing Family Life Church v. City of Elgin, 561 F. Supp. 2d 978 (N.D. Ill. 2008); *Layman Lessons*, 636 F. Supp. 2d; Order of Dismissal, *Pac. Beach United Methodist Church*, 2008 WL 7257244 (on file with author)).

287. Order of Dismissal, *Pac. Beach United Methodist Church*, 2008 WL 7257244.

church building,"[288] or "a storage and distribution center for donated clothing and personal items pending distribution to the needy as well as a retail store selling donated items."[289]

As to the one case that did feature RLUIPA and food sharing, *Pacific Beach United Methodist Church v. City of San Diego*, the parties jointly filed a motion to dismiss, "captioned Stipulation of Settlement and Dismissal."[290] Because the order contains no substantive discussion of RLUIPA, we only have the parties' arguments, which offer one important insight: in the Defendants' Joint Opposition to Plaintiffs' Motion for Preliminary Injunction, they argue that the plaintiffs failed to show that the City of San Diego had imposed a substantial burden when the city inspected the plaintiffs' church without prior notice, and a city official later repeatedly stated that a written notice of violation regarding several municipal zoning codes was being prepared.[291] As with the RFRA cases discussed above, if plaintiffs fail to show a substantial burden on their exercise of religion, RLUIPA provides no protection.[292] In the food-sharing cases, this is a familiar point from *First Vagabonds Church of God* and *Daytona Rescue Mission*; in that context, *Pacific Beach United Methodist Church* makes clear that in litigation featuring RFRA or RLUIPA, cities will almost certainly attack the sufficiency of the plaintiffs' showing of a substantial burden on their exercise of religion. The *Pacific Beach United Methodist Church* parties settled and thereby enabled the plaintiffs to maintain their religious practice of "sharing a meal and [other] religious services with the poor, the hungry and the homeless, and others, on Wednesday nights."[293] To learn how RLUIPA will feature in a more fully litigated food-sharing case, we shall have to wait.

CONCLUSION

I conclude by recapitulating the Article and arguing for U.S. cities to stop criminalizing people who share food in public. In Part I, I urged readers to attend carefully to the emic and etic meanings ascribed to the practices that constitute

288. *Family Life Church*, 561 F. Supp. 2d at 982.

289. *Layman Lessons*, 636 F. Supp. 2d at 626. The *Layman Lessons* plaintiff was a nonprofit religious institution that sought "to provide food, clothing, shelter, transportation and Christian training to those in need." *Id.* The property subject to the litigated dispute however, was not intended to house and feed the homeless although the city codes administrator "had initially been confused about the type of business activity that Layman Lessons planned to conduct . . . specifically, she thought Layman Lessons intended to house and feed the homeless there." *Id.* at 627. The plaintiff clarified this point, however, so neither food, nor shelter further featured in the litigation. *See id.* at 627–28.

290. Order of Dismissal at 1, *Pac. Beach United Methodist Church*, 2008 WL 7257244 (S.D. Cal. Feb. 11, 2008).

291. Trial Motion, Memorandum and Affidavit at 11–13, *Pac. Beach United Methodist Church*, 2008 WL 7257244 (S.D. Cal. Feb. 11, 2008).

292. *Accord Holt*, 135 S. Ct. at 862–63.

293. Complaint for Declaratory and Injunctive Relief and Damages at 1, *Pac. Beach United Methodist Church*, 2008 WL 7257244 (on file with author); *see also* Ronald W. Powell, *City to Allow Food-for-Needy Program*, SAN DIEGO UNION TRIB. (Apr. 22, 2008), http://legacy.sandiegouniontribune.com/news/metro/20080422-9999-1m22nohome.html [https://perma.cc/K7QC-WJAB] (reporting on the settlement).

public food sharing. Drawing on these concepts from the discipline of anthropology, I elucidated how religiously and politically motivated people who share food in public describe their practice and explained how the former prefer terms of charity, ministry, works of faith, or worship, while the latter tend to prefer solidarity and mutual aid. In highlighting these emic terms, I presented a partial history of public food sharing in the United States during the first and second modern waves of anti-food-sharing laws. I then turned to the terms preferred by the cities that criminalize, or otherwise regulate, people who share food in public. Discussing ordinances that use terms like food distribution, homeless feeding, large group feeding, social services, social service facilities, and outdoor food distribution centers, I argued that the relative distance between emic and etic terms correlates with how courts adjudicate food-sharing cases, showing that in most cases, where a court adopts the plaintiffs' emic terms, the resolution is in their favor. In contrast, where a court disregards or rejects the plaintiffs' emic terms and instead prefers the etic terms of a municipality or of First Amendment jurisprudence, the adjudication often favors the defendants. Finally, I argued that attending carefully to the emic and etic meanings is important not only for legal adjudication but also to legislate public food sharing in pragmatic ways that obtain cities' legitimate governmental interests while accounting for the powerful motivations of people who share food in public.

In Part II, I discussed critically how courts have applied First Amendment jurisprudence, in particular the Free Exercise Clause, and related statutes, and argued when I believe that judges applied that jurisprudence incorrectly. Elaborating my partial history of the food-sharing cases, I showed how federal courts applied RFRA in the early years before the Supreme Court repudiated its application to state and local governments and apparently disproved my "null hypothesis" (i.e., that the emic meanings ascribed to public food sharing by the religious activists who do it as an expression of charity, ministry, works of faith, and/or worship do not matter to the resolution of such cases) and proved my alternate hypothesis (i.e., that the emic meanings do matter to the judicial resolution of food-sharing cases). The food-sharing cases that implicated RFRA also showed the importance of the jurisprudential notion of a substantial burden on the free exercise of religion. Courts that adopt the emic meanings ascribed to public food sharing always ruled in the plaintiffs' favor, and courts that disregarded or rejected those terms almost always ruled in the defendants' favor. I further supported this argument by attending to different approaches that courts took to the state RFRA of Florida, arguing why the latter case's finding of a significant, but not substantial, burden on the plaintiffs' exercise of religion was wrong for being internally self-contradictory, a misapplication of the narrow definition of Florida RFRA, and distinguishable from the case in which the Florida Supreme Court interpreted Florida RFRA's narrow definition of substantial burden. I then discussed RLUIPA and the food-sharing cases briefly and concluded that food-sharing litigation involving RLUIPA will

similarly predictably feature contests over the threshold issue of what constitutes a substantial burden on the exercise of religion.

I now argue for U.S. cities to stop criminalizing people who share food in public and to instead cultivate charitable practices like public food sharing and similar efforts at "collective action in the urban commons."[294] Cultivating public food sharing with city laws will not only respect, rather than substantially burden, people who publicly share food as an exercise of religion, but it will also promote class relations of "organic solidarity." The eminent sociologist Émile Durkheim theorized organic solidarity by analogy with the human body, with each organ highly specialized to provide a specific function while working as part of a whole that was intertwined for common yet distinct goals.[295] Durkheim's theorization of organic solidarity is particularly resonant for public food sharing because early commentators noted that, "Durkheim conceives of the growth of organic solidarity as a process of liberation of the individual from the social repression of mechanical solidarity."[296] In addition to facilitating people's liberation from social repression, cities that cultivate public food sharing will more likely than not reduce the material deprivation amongst the homeless, hungry, and otherwise impoverished people who often congregate downtown. In contrast, to criminalize public food sharing exacerbates these people's material deprivation while failing to address the underlying conditions that make homelessness, and other forms of being visibly poor, objectionable to some city legislators.[297]

294. *Cf.* Foster, *supra* note 30, at 58 (defining the urban commons as "local tangible and intangible resources in which [urban residents] have a common stake," ranging from "local streets and parks to public spaces to a variety of shared neighborhood amenities").

295. *See* ÉMILE DURKHEIM, THE DIVISION OF LABOUR IN SOCIETY 181 (1893, George Simpson trans., 1933); *see also* Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799, 803, 817 (2003) ("Class-based solidarity, in contrast, creates a basis for identity that may diminish white working class attachment to race privilege or at least create openings for change . . . . In concepts of class interest that are based on group relations of economic power, antiracist solidarity is an actual or potential interest of white workers, and class awareness and activism are vital to the transformation of white attachment to privilege."); Martha R. Mahoney, *What's Left of Solidarity: Reflections on Law, Race, and Labor History*, 57 BUFF. L. REV. 1515, 1516–17 (2009) ("The term 'class' includes more than identification of the position in society of an individual or group. Class involves the work people do; the understandings they form about themselves, their lives, and the people with whom they live and work; economic and social relations between groups; and the actions they take to pursue their interests.") (citation omitted).

296. Julius Stone, Book Review, *On the Division of Labour in Society*, 47 HARV. L. REV. 1448, 1450 (1934) ("Durkheim conceives of the growth of organic solidarity as a process of liberation of the individual from the social repression of mechanical solidarity.") (citation omitted).

297. On being "visibly poor," see Rankin, *supra* note 28, at 6 ("[T]he term 'visibly poor' and related iterations encompass individuals currently experiencing homelessness, but also include individuals experiencing poverty in combination with housing instability, mental illness, or other psychological or socioeconomic challenges that deprive them of reasonable alternatives to spending all or the majority of their time in public.") (citation omitted).

In the wake of the longest recession on record since 1948,[298] almost forty-seven million people in the United States live below the poverty threshold,[299] and over forty-eight million people suffer "food insecurity" (i.e., hunger).[300] Faced with this situation, city leaders should eschew the revanchist criminalization of people who are homeless, hungry, or otherwise impoverished, as well as the criminalization of the religiously or politically motivated social activists who seek to publicly share food with them.[301] City leaders should instead incentivize urban residents to act collectively across their social classes in order to improve all residents' health and nutrition. Indeed, in the current era of austerity,[302] and in light of the national endemic of obesity and overweight,[303] U.S. cities have much to gain by cultivating cross-class relations of organic solidarity: persevering through a historical period

298. DENAVAS-WALT & PROCTOR, *supra* note 17, at 21.

299. *Id.* at 12 ("In 2014, the official poverty rate was 14.8 percent. There were 46.7 million people in poverty.").

300. COLEMAN-JENSEN ET AL., *supra* note 4, at i, v, 6, 10.

301. On revanchism, or the politics of revenge, see NEIL SMITH, THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY, at 44–47, 211–18 (1996) (theorizing the revanchist city from the historic revanchists of late nineteenth century France and applying the concept to explain the gentrification process in New York City at the end of the twentieth century); González, *supra* note *, at 234–36, 257–59, 279–81 (evaluating Smith's discussion of historical French revanchism and his theorization of the emergence of the revanchist city in the late twentieth century United States and explaining the emergence of anti-food-sharing laws under Smith's theory of the revanchist city).

302. *See* THOMAS BYRNE EDSALL, THE AGE OF AUSTERITY: HOW SCARCITY WILL REMAKE AMERICAN POLITICS (2012); Zachary A. Goldfarb, *Have We Been Living in an Age of Austerity?*, WASH. POST (Feb. 21, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/02/21/have-we-been-living-in-an-age-of-austerity/ [https://perma.cc/56ZR-VFPJ].

303. *See* Ashleigh L. May et al., *Obesity—United States, 1999–2010*, *in* CENTERS FOR DISEASE CONTROL AND PREVENTION [CDC], CDC HEALTH DISPARITIES AND INEQUALITIES REPORT—UNITED STATES, 2013, MMWR 120, 120 (Nov. 22, 2013) [hereinafter May et al., CDC], http://www.cdc.gov/mmwr/pdf/other/su6203.pdf [https://perma.cc/5FQ4-YCJW] ("Since 1960, the prevalence of adult obesity in the United States has nearly tripled, from 13% in 1960–1962 to 36% during 2009–2010 . . . . Although the prevalence of obesity is high among all U.S. population groups, substantial disparities exist among racial/ethnic minorities and vary on the basis of age, sex, and socioeconomic status.") (citations omitted); Manel Kappagoda, Samantha Graff & Shale Wong, *Public Health Crisis: Medical-Legal Approaches to Obesity Prevention*, *in* POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP 601 (Elizabeth Tobin Tyler, Ellen Lawton, Kathleen Conroy, Megan Sandel & Barry Zuckerman, eds., 2012) ("Skyrocketing obesity rates in the United States over the past three decades have prompted call to action . . . . Currently two-thirds of adults and one third of children are overweight or obese . . . . As of 2008, 33.8 percent of adults and 16.9 percent of children ages 2–19 in the United States were considered obese."); *see also* Lauren Berlant, *Slow Death (Sovereignty, Obesity, Lateral Agency)*, 33 CRITICAL INQUIRY 754, 756 (2007) (arguing that poverty, hunger, and obesity are better understood as "endemic," facts of ordinary life for various vulnerable populations in the United States and other societies, rather than as exceptional or "epidemic"). For Berlant, "slow death" refers to "the physical wearing out of a targeted population" in a scene, episode, or other temporal environment that is "nearly a defining condition of their everyday experience and historical existence." *Id.* at 754. Under this approach, while the disproportionate poverty, hunger, and obesity of children, the elderly, immigrants, racialized ethnic minorities, and women may provoke feelings of outrage (that might be channeled into activism), these upsetting scenes serve vested interests with a long genealogy, namely, capitalism, or the historically particular class relations of the United States' political economy. *See id.* at 766.

marked by substantial assaults on governance and the public fisc may well require the kind of compassionate cooperation that food sharing exemplifies.

Finally, cities should stop promulgating, or repeal, anti-food-sharing ordinances and other municipal laws that criminalize people who are homeless, hungry, or otherwise impoverished, marginalized, and vulnerable because such laws are socially corrosive. Anti-food-sharing laws extend criminalization beyond their ostensible targets—impoverished, homeless, or otherwise hungry people. While homeless, hungry, or otherwise impoverished people may be subject to arrest and prosecution under an anti-food-sharing law, the typical activity criminalized by such laws is providing food to, or sharing food with, hungry people while on city-owned, ostensibly public, property. In other words, anti-food-sharing laws criminalize the religious and social activists who publicly assemble in order to provide food to hungry people. Not surprisingly, such laws sometimes deter the charity and ministry, or solidarity and mutual aid, that people practice and experience when they act together to satisfy the human need to eat. That these laws threaten organic solidarity in an historical moment when rates of impoverishment and hunger have increased significantly (i.e., before, during, and after the Great Recession) is particularly striking.[304] In my view, anti-food-sharing laws ultimately evidence the spread of a socially corrosive politics, which the late critical geographer Neil Smith, termed "the revanchist city," an ideology that competes with the ebullience of gentrification and which scapegoats disfavored and marginalized social groups in order to consolidate politically reactionary power.[305]

Criminalizing this sort of charity feels particularly disturbing because it appears unprecedented in U.S. history to generally make a crime out of providing food to hungry people.[306] While the color of law sometimes justified police action against sharing food, in U.S. history this typically only occurred during intense moments of social conflict, such as a labor strike, or in an historical moment where entire classes of people were denied fundamental constitutional rights and the equal protection of the law, such as under Jim Crow regimes, the Black Codes, or the peculiar institution of slavery.[307] In contrast, today, in an era that some commentators have dubbed the New Gilded Age,[308] increasing numbers of U.S. cities are promulgating anti-food-sharing laws in apparent disregard of superior statutory rights, constitutional rights, and international human rights.

Indeed, contextualizing the food-sharing cases in Anglo-American legal history raises other provocative comparisons, reaching beyond the poor house of the nineteenth century to the colonial outdoor relief of the eighteenth century, and

304. *Accord* González, *supra* note *, at 232–33 (noting the increase in poverty and food insecurity from 2006 to 2012).

305. *Id.* at 234–36, 257–59, 279–81 (evaluating Smith's discussion of historical French revanchism and his theorization of the emergence of the revanchist city in the late twentieth century United States).

306. *Id.* at 235–36.

307. *See id.* at 235.

308. *See id.* at 236–57 (discussing the notion of a New Gilded Age in the United States).

even further, to the English Poor Laws of the fourteenth century, which expressly forbade charity to the able-bodied poor so that they be compelled to labor in order to live.[309] In this light, the revanchist city of the twenty-first century seems particularly dystopian because the city governments that promulgate anti-food-sharing laws typically act at the behest of a handful of individuals, sometimes affiliated with a local chamber of commerce, often downtown area merchants or new residents to a city center.[310] In other words, U.S. cities are criminalizing charity and deterring organic solidarity at the behest of a relatively small number of citizens who are effectively claiming the right to exclude visibly homeless, impoverished, or otherwise hungry people from their midst, as well as those individuals of ostensibly nonpoor (middle) classes who organize themselves to help hungry people not starve. This brave new reality is redolent of medieval banishment or exile and should have no place in twenty-first century law and society.[311]

309. *See id.* at 236 (discussing the English Statute of Laborers (1349)) (citing to JOEL F. HANDLER, THE POVERTY OF WELFARE REFORM 10 (1995); William P. Quigley, *Backwards into the Future: How Welfare Changes in the Millennium Resemble English Poor Law of the Middle Ages*, 9 STAN. L. & POL'Y REV. 101, 102–03 (1998)); *see also* Stefan A. Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CAL. L. REV. 175, 188–89 (1955).

310. *See, e.g.*, González, *supra* note *, at 269 (discussing Orlando Mayor Buddy Dyer's reference to the Orlando Chamber of Commerce in the process that enacted the city's Large Group Feeding Ordinance); *see also supra* note 234 and accompanying text (discussing how the city manager, police commander, and head of the local Hotel-Motel Association met with Arnold Abbott to discuss their concerns regarding the food sharing that he conducted at the beach and their perceptions of its effect on tourism).

311. *See generally* BECKETT & HERBERT, *supra* note 28; Amster, *supra* note 28; Rankin, *supra* note 28; Riesenfeld, *supra* note 309, at 189; Simon, *supra* note 28.

Appendix 1: The Litigated Food-Sharing Cases (listed chronologically).[312]

	Case Name	Date of Opinion	Jurisdiction	Citation
1.	Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs.	Aug. 29, 1985	Ariz.	712 P.2d 914 (Ariz. 1985)
2.	Wilkinson v. Lafranz	Jan. 11, 1991	La.	574 So. 2d 403 (La. Ct. App. 4 Cir. 1991)
3.	McHenry v. Agnos (*McHenry I*)	Jan. 19, 1993	9th Cir.	983 F.2d 1076 (unpublished table decision)
	McHenry v. Jordan (*McHenry II*)	May 30, 1996	9th Cir.	81 F.3d 169 (unpublished table decision)
4.	W. Presbyterian Church v. Bd. of Zoning Adjustment of D.C. (*W. Presbyterian Church I*)	Apr. 15, 1994	D.D.C.	849 F. Supp. 77
	W. Presbyterian Church II	Sept. 8, 1994	D.D.C.	862 F. Supp. 538
5.	Daytona Rescue Mission, Inc. v. City of Daytona Beach	May 12, 1995	M.D. Fla.	885 F. Supp. 1554
6.	Stuart Circle Par. v. Bd. of Zoning Appeals of Richmond	Nov. 26, 1996	E.D. Va.	946 F. Supp. 1225
7.	Abbott v. City of Fort Lauderdale (*Abbott I*)	June 14, 2000	Fla.	No. CACE99-003583(05) (Fla. Cir. Ct. June 14, 2000)
	Abbott II	May 2, 2001	Fla.	783 So. 2d 1213 (Fla. Dist. Ct. App. 2001)

312. App. 1. The Litigated Food-Sharing Cases (listed chronologically) derives from CRIMINALIZING CRISIS, *supra* note 5, at 62–63, 132–42 (listing twelve federal court cases, including four appellate opinions, and one state (Florida) court case), plus additional research conducted by the author and his research team that identified further proceedings in those cases, additional published and unpublished cases, and emerging controversies that had yet to be litigated. The author plans to update this table online at http://foodsharinglaw.net [https://perma.cc/E6BC-YAA5].

8.	Santa Monica Food Not Bombs v. City of Santa Monica	June 16, 2006	9th Cir.	450 F.3d 1022
9.	Sacco v. City of Las Vegas	Aug. 20, 2007	D. Nev.	2007 WL 2429151
10.	Pac. Beach United Methodist Church v. City of San Diego	Apr. 18, 2008	S.D. Cal.	07-CV-2305-LAB-PCL Order of Dismissal
11.	First Vagabonds Church of God v. City of Orlando (*First Vagabonds Church of God I*)	Mar. 31, 2008	M.D. Fla.	2008 WL 899029
	First Vagabonds Church of God II	June 26, 2008	M.D. Fla.	2008 WL 2646603
	First Vagabonds Church of God III	Sept. 26, 2008	M.D. Fla.	578 F. Supp. 2d 1353
	First Vagabonds Church of God IV	July 6, 2010	11th Cir.	610 F.3d 1274
	First Vagabonds Church of God V	Apr. 12, 2011	11th Cir.	638 F.3d 756
12.	Big Hart Ministries Ass'n, Inc. v. City of Dall. (*Big Hart Ministries Ass'n*)	Nov. 4, 2011	N.D. Tex.	2011 WL 5346109
	Big Hart Ministries Ass'n	Mar. 25, 2013	N.D. Tex.	3:07-CV-0216-P Findings of Fact and Conclusions of Law
	Big Hart Ministries Ass'n	Mar. 28, 2013	N.D. Tex.	3:07-CV-0216-P Final Judgment
13.	Chosen 300 Ministries, Inc. v. City of Phila.	Aug. 9, 2012	E.D. Pa.	2012 WL 3235317 Findings of Fact and Conclusions of Law
14.	Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale (*Fort Lauderdale Food Not Bombs I*)	Sept. 30, 2016	S.D. Fla.	15-60185-CIV-ZLOCH Order on Motions for Summary Judgment
	(*Fort Lauderdale Food Not Bombs II*)	Jan. 18, 2017	11th Cir.	2017 WL 1076817

Appendix 2: U.S. Cities with Anti-Food-Sharing Laws (by state).[313]

Alabama	**Arizona**	**California (10)**	**Colorado**	**Connecticut**
Birmingham	Phoenix	Chico Costa Mesa Hayward Los Angeles Malibu Ocean Beach Pasadena Santa Monica Sacramento Ventura	Denver	Middletown
Florida (11)	**Georgia**	**Indiana**	**Iowa**	**Kentucky**
Daytona Beach Fort Lauderdale Gainesville Jacksonville Lake Worth Melbourne Miami Orlando Palm Bay St. Petersburg Tampa	Atlanta	Indianapolis Lafayette	Cedar Rapids Davenport	Covington
Maryland	**Missouri**	**North Carolina**	**New Hampshire**	**New Mexico**
Baltimore	Kansas City St. Louis Springfield	Charlotte Raleigh Springfield	Manchester	Albuquerque
Nevada	**Ohio**	**Oklahoma**	**Oregon**	**Pennsylvania**
Las Vegas	Dayton	Oklahoma City Shawnee	Medford	Harrisburg Philadelphia
South Carolina	**Tennessee**	**Texas**	**Utah**	**Washington**
Columbia Myrtle Beach	Nashville	Corpus Christi Dallas Houston	Salt Lake City	Olympia Seattle Sultan

313. App. 2. U.S. Cities with Anti-Food-Sharing Laws derives from SHARE MO MORE, *supra* note 5, at 5, which maps the fifty-seven cities across twenty-five states that the National Coalition for the Homeless reports as "U.S. cities that have attempted to restrict, ban, or relocate food-sharing." The author plans to update this table online at http://foodsharinglaw.net [https://perma.cc/E6BC-YAA5].