

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FIFTH AVENUE PRESBYTERIAN
CHURCH, :
GLADYS ESCALERA, NICHOLAS NESRON,
WILLIAM P. RASMUSSEN, DONALD :
J. ROBISON, VERONICA A. LESTER,
ALFRED MCKENZIE, ALFRED :
BROWN, DENNIS PAIGE, PEABODY
DENNIS, STEFAN PARY, and MARGARET :
SHAFFER,

Plaintiffs, :

- versus - :

THE CITY OF NEW YORK, BERNARD :
KERIK, and RUDOLPH GIULIANI,

Defendants. :

VERIFIED
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF
December 14, 2001

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PLAINTIFFS, by their attorney, JONATHAN ROBERT NELSON, hereby
complain of the DEFENDANTS, THE CITY OF NEW YORK, BERNARD KERIK,
and RUDOLPH GIULIANI, seeking injunctive and declaratory relief,
and in support of their complaint Plaintiffs allege as follows:

NATURE OF ACTION

1. This action arises out of the Defendants' new policy of
interference with the Church's long-standing practice of
permitting homeless persons to sleep outdoors at night, on
the Church's private property, and within restrictions set
forth within clearly defined church regulations. Plaintiffs
seek an injunction prohibiting the Defendants from
trespassing on the Church's property, from interfering with
the Church's quiet enjoyment of its property rights, with
the individual Homeless Plaintiffs' enjoyment of their civil
rights, and all Plaintiffs' religious exercise and

associational rights. Plaintiffs also request a declaratory judgment declaring Defendants' trespasses and interference to be a violation of Plaintiffs' rights.

PRELIMINARY STATEMENT

2. The plaintiffs bring this action to vindicate their civil rights under the United States Constitution, under federal statutory law, under the New York State Constitution, and under the common law of the State of New York. As part of its religious mission, the plaintiff Fifth Avenue Presbyterian Church for over two years has sponsored a program by which it permits homeless persons to sleep on church property that is part of the church building or immediately adjacent to the church, and that abuts upon a public sidewalk in front of the church. Ten of the individual plaintiffs are homeless persons who participate in this program and thus have been sleeping on the church's property without in any way obstructing the public sidewalk adjacent to this property. The remaining individual plaintiff, Margaret Shafer, is employed as Associate for Outreach for the Church, and is a member of the Church who is personally and professionally engaged in the Church's program toward the homeless population.
3. The New York City Police Department has been fully aware of the church's activities in this regard since 1999 and has permitted it to take place. In early December, however, police officers started coming to the Church late at night

and ordering homeless people sleeping on Church property to leave the premises or face arrest. Despite repeated and good-faith efforts by the Church to resolve the situation with the City, the NYPD's efforts have intensified in the last week, making it impossible for the church to continue its program and threatening the participating homeless persons with arrest.

4. In attempting to disperse the homeless sleeping at the Fifth Avenue Presbyterian Church, the defendants are trespassing on the Church's property. Moreover, the Defendants' actions violate the Church's and Plaintiff Shafer's right to free exercise of its religious beliefs and freedom of association under the First Amendment to the United States Constitution and under Article 1, Section 3 of the New York State Constitution. Finally, the threat of arrest of the homeless persons who are not in any way obstructing a public sidewalk violates their rights not to be deprived of liberty without due process of law. The plaintiffs therefore seek a temporary restraining order, preliminary injunction, and permanent injunction enjoining the Defendants from entering upon Church property and seeking to disperse homeless persons who are sleeping on that property with the consent of the Church, and a declaration that said conduct is unlawful and violates Plaintiffs' rights. The plaintiffs also seek attorneys' fees and costs.

PARTIES

5. Plaintiff, The Fifth Avenue Presbyterian Church (the "Church"), is a religious corporation existing and in good standing under the laws of the State of New York.
6. Plaintiffs Gladys Escalera, Nicholas Nesron, William P. Rasmussen, Donald J. Robison, Veronica A. Lester, Alfred Mckenzie, Alfred Brown, Dennis Paidge, Peabody Dennis and Stefan Pary (the "Homeless Plaintiffs", are homeless individuals who reside in the City and State of New York.
7. Plaintiff Margaret Shafer ("Shafer") is an employee and member of the Church who directs the Church's homeless outreach program.
8. Defendant, the government of the City of New York (the "City"), is a municipal corporation existing under the laws of the State of New York.
9. Defendant, Bernard Kerik ("Kerik"), is the Commissioner of the New York City Police Department.
10. Defendant, Rudolph Giuliani ("Giuliani"), is the Mayor of the City of New York.

JURISDICTION AND VENUE

11. Jurisdiction exists under 28 U.S.C. sections 1331 (federal question), 1343 (civil rights), 1367 (supplemental jurisdiction), and 2201 (declaratory judgments).
12. Venue exists under 28 U.S.C. section 1391(b), because the events giving rise to the claim occurred, and the property

that is the subject of the action is located, in this judicial district.

FACTS COMMON TO ALL COUNTS

The Church

13. The Church is a Christian religious institution. Since the 1870's it has been located at the corner of Fifth Avenue and 55th Street in New York City.
14. The doctrine and teachings of the Christian religion direct Christians to care for the well-being of the poor.
15. Among the poorest of the people of New York City are the homeless people. New York City has experienced a crisis of homelessness for many of its poor people for much of the past twenty years.
16. The Church has operated a homeless shelter within the walls of its church house, located at 7 West 55th Street, for approximately fifteen years. The Church's formal homeless shelter houses ten homeless men a night, every night of the year. The Church's homeless shelter is part of a network of such shelters coordinated by the Partnership of the Homeless, a private organization contracted by the Department of Homeless Services, which provides services for homeless men and women.

The Church's Hospitality Program

17. Apart from the formal internal shelter at the Church, homeless people who have no shelter have for years chosen to sleep at night on the stairs, and on the ground next to the

exterior walls, of the Church. These people (the "Homeless Neighbors") either cannot or choose not to stay in formal shelters operated by the City. Up until the present time approximately 35 to 40 Homeless Neighbors have been sleeping on exterior Church property each night.

18. After years of informal toleration, the Church adopted a formal policy of hospitality and welcome toward the Homeless Neighbors in February, 1999. Pursuant to that policy, and in furtherance of the Church's religious beliefs, the Church has developed a set of programs (the "Hospitality Program" intended to develop relationship with the Homeless Neighbors and to help to guide them off the streets and to reintegrate them into society in ways that serve their needs.
19. Inter alia, the Church's Hospitality Program:
 - a. Delimits two areas on Church property where Homeless Neighbors may sleep.
 - i. The first of these areas includes the landings at the top of the stairs leading into the Church's main sanctuary on Fifth Avenue and at the corner of 55th Street. These landings are contained within arched entryways, are recessed approximately five to ten feet from the sidewalk, and are raised approximately six feet above the level of the sidewalk, up flights of stairs that recede progressively inward into the Church sanctuary building as they rise.

ii. The second of these areas is a strip of Church property on the 55th Street side of the building, approximately six-feet and seven inches in width, on the ground immediately adjacent to the Church's walls. The 55th Street sleeping area is marked by a line placed on the sidewalk with tape, is well within the Church's property line, and leaves ample room on the sidewalk for foot traffic to pass unimpeded. The area is within the bay created by buttresses which jut out from the walls at the 55th Street entrances. The stair steps on the westerly entry buttress extend six feet and seven inches from the southern wall of the Church's sanctuary. The corner of the easterly entry buttress extends approximately ten feet and ten inches from the same wall. In addition, the Church wall adjacent to the sleeping area has five buttresses, each of which extends approximately 43 inches from the wall in the direction of the curb. Up until a few months ago, the Church placed round concrete planters on its property next to the buttresses. Each planter was approximately four feet in horizontal diameter. The planters were removed because they did not drain properly. The 55th Street curb is approximately eighteen feet and two inches from the southerly wall of the

Church sanctuary. That leaves approximately eleven feet and seven inches of free passage for pedestrians between the north curb of 55th Street and the sleeping area, when the Homeless Neighbors are bedded down for the night.

- b. Set strict hours for sleeping on Church property.
Currently, Homeless Neighbors may not arrive to set up their sleeping places until 9:00 p.m. at night, and are required to leave no later than 7:00 a.m. each morning.
- c. Sets rules and regulations that the Homeless Neighbors are expected to observe. These regulations include restrictions on noise, behavior, appearance and cleanliness, and provide that any materials used to provide overnight shelter are to be taken with them or deposited in a defined location for pickup by trash haulers each morning.
- d. Provides bathroom facilities in the Church building for use of the Homeless Neighbors within specified hours.
- e. Employs a liaison person to meet each of the Homeless Neighbors, learn about the person's history and needs, and assist members of the Church to come to know the Homeless Neighbors and provide them with the encouragement and assistance they need to get on with their lives.
- f. Organizes a steering committee of Church members who come to know the Homeless Neighbors, to recommend

policy to the Church's governing boards concerning homelessness, and to develop Church programs to assist them.

- g. Conducts luncheons, dinners, parties, and other opportunities for Church members and Homeless Neighbors to interact (the Church's "befriending ministry").
 - h. Assists Homeless Neighbors to take steps, make contacts, and to complete papers that make it possible for them to move off the streets, obtain necessary financial, medical and psychiatric assistance, and resume their productive lives.
 - i. Invites Homeless Neighbors to participate in worship services and classes at the Church if they are so inclined.
20. Since January, 2001, the Church has assisted at least 77 persons who have been, at one time or another, its Homeless Neighbors, to move off the streets and into more permanent housing or other situations where their individual problems and needs receive professional attention.

The Church's Consultations With The City

21. The Church has formulated its program of assisting the Homeless Neighbors in consultation and close cooperation with the City, and in particular, with the City's Department of Homeless Services. Church employees, including Plaintiff Shafer, have spent many hours engaged in consultation with,

and instruction by, City employees engaged in helping the homeless population.

22. The City has been kept well informed about the nature of the Church's Hospitality Program. Inter alia, Reverend Thomas K. Tewell, Senior Pastor of the Church, sent a letter to then-Police Commissioner Howard Safir on November 22, 1999, informing Commissioner Safir that "The Fifth Avenue Presbyterian Church has taken a policy action of allowing homeless people to sleep on our steps on 5th Avenue and in our bays on 55th Street as long as they are not blocking passage. We want you to know that our sense of sanctuary extends to our property line." That letter went on to express concern about the City's threats to arrest homeless people wholesale, and promised to continue to cooperate with the police. Copies of the letter were sent to responsible police commanders and representatives of the City's Department of Homeless Services.
23. The City has repeatedly acknowledged the lawfulness of the Church's program of hospitality toward the Homeless Neighbors. For example, on November 24, 1999, then-Commissioner Howard Safir of the City's Police Department stated: "I know there are a number of churches on both the East and the West Side that do encourage homeless to sleep on their steps. That's private property. They are entitled to encourage anybody they want to be there, and we certainly are not going to interfere with that."

The City's New Policy of Forced Removal of the Homeless

24. Recently the City has apparently adopted a policy of forbidding the Church from permitting the Homeless Neighbors to sleep on exterior Church property (the "New Policy"). This New Policy was communicated informally to the Church shortly before December 1, 2001.
25. In response to the New Policy, Reverend Tewell sent a second letter, this time addressed to Defendant Kerik. In that letter, Reverend Tewell reiterated his statement from 1999 about the Church's policy of permitting homeless people to sleep outside on Church property. He asked for Defendant Kerik's cooperation, and offered to meet with him to discuss the matter.

The December 4, 2001 Forced Removal

26. Pursuant to the New Policy, the City's police appeared at the Church at 2:00 a.m., December 4, 2001, and removed all of the Homeless Neighbors who were sleeping around the Church.
27. On December 5, 2001, Reverend Tewell sent a third letter to Defendant Kerik. In that letter, he expressed his extreme disappointment that the police had removed the homeless from Church property the night before, and reminded Defendant Kerik that "Working with this under-served population is a vital part of our ministry." Reverend Tewell again stated that "We are trying to work in partnership with you . . .,"

and asked Defendant to call him or Plaintiff Shafer if he had any questions.

28. At a meeting conducted on December 11, 2001 with representatives of the City's police and homeless services departments, the Church agreed to delay the Homeless Neighbors' nightly arrival and set-up time to 9:00 p.m., from the previous arrival time of 8:00 p.m., to increase the services the Church offers to get people off the street, and to contact various independent programs that provide food to homeless people and to ask them to perform their services at other locations. This seemed to satisfy the City's representatives.

The December 11, 2001 Forced Removal

29. However, at approximately midnight on December 11, 2001, a large group of police officers arrived at the Church with five police cars and three police vans. The City's police officers removed all of the Homeless Neighbors from the 55th Street side of the Church building. The police officers woke up the 55th Street Homeless Neighbors, instructed them to go somewhere else, and then followed many of the Neighbors to make sure they did not try to sleep somewhere else in the neighborhood.
30. On the night of December 11, 2001, the City's police did not force the Homeless Neighbors who were sleeping on the Fifth Avenue steps of the Church to leave. However, they did come up the steps, banged with nightsticks on the boxes where the

Homeless Neighbors were sleeping, and woke them up to ask if they were all right and if they wanted to go to a hospital. The police repeated this behavior at least once an hour throughout the night, making it impossible for the remaining Homeless Neighbors to sleep in peace on the Church steps.

The December 12, 2001 Forced Removal

31. On the night of December 12, 2001, the police arrived at the Church before 9:30 p.m. Between 8:00 p.m. and 11 p.m., at least twenty-two uniformed police officers arrived at the Church, bearing nightsticks and large clusters of handcuffs. They were accompanied by at least three police vans, two squad cars, and a paddy wagon. The police contingent included at least two police sergeants, two police captains, and a deputy inspector.
32. On December 12, 2001, the police came onto Church property and told the Church representatives who were present, and the Homeless Neighbors, that the Homeless Neighbors would not be permitted to sleep outside the Church, and that if they lay down on the ground, or remained beyond the time permitted by the police, they would be arrested. The police formed a cordon in front of the Church on Fifth Avenue to block the front steps of the Church. When Plaintiff Veronica A. Lester succeeded in slipping past the police officers and going up the Church steps, the police officers came onto the steps of the Church, demanded that she walk down the steps, and intimidated her with threats of arrest

until she did so. When informed that the Homeless Neighbors (and the police) were on Church property, and that the Homeless Neighbors were there by permission of the Church, the police responded that it did not matter whether it was Church property or not, the Homeless Neighbors would have to leave.

33. All of the Homeless Plaintiffs were present at the Church on the evening of December 12, 2001 and were intimidated by police threats, including threats of arrest, into leaving the Church property that night instead of sleeping there.
34. The police captains who were present offered no explanation as to why the Homeless Neighbors were being forced to leave Church property, except to state that the Homeless Neighbors who wished to sleep on the 55th Street side of the Church property would be arrested under a charge of disorderly conduct for "blocking the sidewalk" if they lay down or remained there. The police offered no explanation as to why the Homeless Neighbors were being removed from the steps of the Church as well as from the sidewalk, or what law they were accused of breaking.
35. Most of the Homeless Neighbors responded to this intimidation by leaving immediately. When the paddy wagon arrived at approximately 11 p.m. and the police officers brought out handcuffs, the remainder of the Homeless Neighbors submitted to police intimidation and left the Church property.

36. Some of the Homeless Neighbors have not returned to Church property since the events of December 4, 11 and 12.
37. In order to avoid confrontation with the police, the Church encouraged the Homeless Neighbors to stay away for the evening of December 13, 2001. From December 14 to December 16, 2001, the parties agreed to a weekend "stand-still" agreement allowing the Homeless Neighbors to stay on Church property without being removed, until this action could be filed on December 17. That "stand-still" agreement has expired and the City has indicated that it intends to resume its forced removal of Homeless Neighbors from Church property unless it is restrained from doing so.
38. On December 4, 11, and 12, 2001, none of the Homeless Neighbors were blocking the sidewalk or otherwise engaging in disorderly conduct. Traffic was not impeded on the sidewalks of 55th Street or 5th Avenue next to the Church, but was able to flow freely in all directions with any hindrance from the Homeless Neighbors.
39. The Police have recently informed the Church that it will no longer be allowed to permit the Homeless Neighbors or anyone else to sleep outside the walls of the Church, neither on the Fifth Avenue steps nor on the 55th Street sidewalk, and that anyone who attempts to do so, and who refuses police orders to leave, will be arrested for disorderly conduct.
40. The City's application of its New Policy has already injured the Church's Hospitality Program. The Hospitality Program

attempts to create a sanctuary of safety, quiet and friendliness on Church property where Homeless Neighbors may develop the trust necessary to enable them to make the move off the streets and out of homelessness. By forcing the Homeless Neighbors off Church property the City has disrupted the relationship between the Homeless Neighbors and the Church.

41. If the New Policy is allowed to continue for even another week substantial harm will occur to the Church's Hospitality Program. If the Homeless Neighbors are forced to stay away from Church property for that length of time, it is likely that many of the fragile relationships of trust and neighborliness that the Church has been able to establish with the Homeless Neighbors will be destroyed, since those relationships depend upon the nightly contact that the Homeless Neighbors have with Church personnel. It is likely that many of the Homeless Neighbors will be forced by police activity out of the neighborhood of the Church and will be prevented by the police from returning.
42. The New Policy has been formed, on information and belief, by Defendants Giuliani and Kerik. On information and belief, the police officers and supervisors who conducted the aforementioned acts were acting under orders that originated with Defendants Giuliani and Kerik. On information and belief, the aforementioned acts of the police have been carried out in response to the directions,

and in furtherance of policy devised by, Defendants Giuliani and Kerik.

43. The Defendants' actions described in this Complaint have been taken under the color of law.

FIRST CLAIM FOR RELIEF

(Liability Under 42 U.S.C. sec. 1983 against all Defendants)

44. Plaintiffs reallege and incorporate by reference the allegations recited in paragraphs 1-43 of this Complaint as if fully set forth herein.
45. The New York City Police acted under the color of state law, and at the direction of Defendants, when they prevented the Homeless Neighbors from sleeping on Church property and when they threatened to arrest anyone who should try to sleep outside on Church property in the future.
46. The Homeless Plaintiffs have been, and are being, deprived of their right to remain on the Church's property and enjoy quiet enjoyment and sleep thereon by the activities of the Defendants, and to participate in the Church's Hospitality Program. Their right to participate in the Church's programs of worship and instruction, and to associate with the members and staff of the Church and with the Homeless Neighbors, including each other, is being substantially and unfairly burdened.
47. Plaintiff Shafer and the Church have been, and are being, deprived of their rights to promote the Church's Hospitality Program, and to associate freely with the Homeless

Neighbors, including the Homeless Plaintiffs. Their right to free expression of their religious beliefs by serving the Homeless Neighbors has been substantially and unfairly burdened.

48. The police's forced removal of the Homeless Plaintiffs was effected through coercion. That coercive behavior took the form of threats of arrest for "disorderly conduct" if they did not leave the Church property on their own. The police claimed that the Homeless Plaintiffs were violating New York Penal Law section 240.20(5), which states that "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: * * * [h]e obstructs vehicular or pedestrian traffic." The police also coerced the Homeless Plaintiffs into leaving the Church property by appearing at the Church property in intimidating numbers, with vans, squad cars, paddy wagons and handcuffs conspicuously displayed, by banging loudly with their nightsticks on the Homeless Plaintiffs' cardboard shelters to wake them up, and by repeating their questioning and awakening of the Homeless Plaintiffs in an aggressive and harassing manner.
49. The behavior of the Homeless Plaintiffs did not at any point on December 4, 11 or 12 qualify as "disorderly conduct" under N.Y.P.L. sec. 240.20(5). They never obstructed pedestrian traffic; indeed, pedestrians would have had to walk up flights of stairs and attempt to walk across the

Church's recessed entry landings in order to have had their passage "obstructed" by the Homeless Plaintiffs who were attempting to sleep on the Church's steps. Nor did the Homeless Plaintiffs possess the bad intent necessary to violate Section 240.20. It is simply not "disorderly conduct" under New York law to fall asleep, no matter what the location.

50. On information and belief, Defendants Giuliani and Kerik formulated the New Policy that the New York City police were following in depriving Plaintiffs of their rights, and they ordered the police to get the Homeless Neighbors (including the Homeless Plaintiffs) off the Church's exterior property.

SECOND CLAIM FOR RELIEF

(Infringement of First Amendment Rights against all Defendants)

51. Plaintiffs reallege and incorporate by reference the allegations recited in paragraphs 1-__ of this Complaint as if fully set forth herein.
52. The Plaintiffs have been deprived of their rights under the First Amendment to the United States Constitution, including the freedoms of association, of religious expression, and the freedom to be left alone, by the actions of the Defendants.
53. The Defendants' actions are not justified by any application of existing law. The only justification offered by the police officers, that the Homeless Neighbors' actions constitute disorderly conduct, is invalid on its face under

New York law as no sidewalk was being obstructed and no other conduct qualifying as disorderly conduct under the law was occurring at the time of the police officers' intrusions on December 4, 11 and 12, 2001.

THIRD CLAIM FOR RELIEF

(Trespass against all Defendants)

54. Plaintiffs reallege and incorporate by reference the allegations recited in paragraphs 1-__ of this Complaint as if fully set forth herein.
55. The police officers who directly deprived the Plaintiffs of their rights were trespassing upon Church property when they removed the Homeless Neighbors therefrom. They came onto Church property knowing that they were doing so in express defiance of the will of the Church's representatives, and they continued to threaten and harass the Homeless Neighbors even after being told by Church representatives that they had no authority to do so on Church property. In so doing they were acting under the authority and at the direction of the Defendants, who are liable for their trespass under the principle of respondeat superior.

FOURTH CLAIM FOR RELIEF

(Violation of RLUIPA against all Defendants)

56. Plaintiffs reallege and incorporate by reference the allegations recited in paragraphs 1-__ of this Complaint as if fully set forth herein.

57. The Defendants' actions constitute a violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. sec 2000cc et seq. ("RLUIPA"). On information and belief, the Defendants' actions were caused in part by the location of the Church in a district of expensive hotels, restaurants and shops. On information and belief, the New Policy was created primarily for the purpose of eliminating a visible presence of homeless persons in the zoning district where the Church is situated, and out of a belief that the presence of homeless persons in said zoning district detracts from the beauty, attractiveness, financial well-being and tourist appeal of said zoning district. Accordingly, the Defendants' invalid application of the disorderly conduct law in pursuit of the New Policy constitutes a "land use regulation" under the terms of Section 8(5) of RLUIPA.
58. The Defendants' enforcement of the New Policy through the misuse of the disorderly conduct law imposes a substantial burden on the religious exercise of the Church, and of Plaintiff Shafer.
59. The substantial burden is imposed upon Plaintiffs in a program or activity that receives Federal financial assistance, since the City receives Federal financial assistance with the funding of the police force and other functions.

60. The substantial burden affects commerce among the several States, as the Church employs persons to conduct its homeless programs, and because one of the aims of the New Policy appears to be to cause homeless persons to leave New York and go elsewhere, thereby shifting any municipal burdens upon other shoulders.
61. The substantial burden is also imposed in the implementation of a land use regulation under which a government makes, or has in place formal or informal procedures or practices which make, individualized assessments of the proposed uses for the property involved, since the police presumably make, and are required to make, an individualized assessment of each situation before threatening persons with arrest for disorderly conduct on private property.
62. The New Policy, and the Defendants' misuse of the disorderly conduct law in furtherance thereof, is not imposed in furtherance of a compelling government interest, nor is it the most restrictive means of fulfilling any such interest.

FIFTH CLAIM FOR RELIEF

(Denial of Due Process against all Defendants)

63. Plaintiffs reallege and incorporate by reference the allegations recited in paragraphs 1-__ of this Complaint as if fully set forth herein.
64. The Plaintiffs have been deprived of liberty, including the freedoms of association, of religious expression, and the freedom to be left alone, without due process of law.

65. The harassment and removal of the Homeless Plaintiffs from Church property also substantially burdened Plaintiff Shafer's and the Church's right to freely exercise their religious beliefs on Church property, their right to associate freely on Church property with the Homeless Neighbors, and the Homeless Neighbors' right to continue to associate freely with Church members and staff on church property. Those practices caused some Homeless Neighbors not to return to the Church, and has caused most of the others Homeless Neighbors to question whether or not there is any future in continuing to develop a trusting relationship with Church members and staff.

SIXTH CLAIM FOR RELIEF

(Infringement of Article 1, Section 3 of the New York State Constitution (Religious Liberty) against all Defendants)

66. Plaintiffs reallege and incorporate by reference the allegations recited in paragraphs 1-__ of this Complaint as if fully set forth herein.

67. The actions of the Church and Plaintiff Shafer in pursuing the Hospitality Program are expressions in action of their religious faith. The Church and Plaintiff Shafer are pursuing a religious-based policy of intentional association with the Homeless Neighbors who choose to sleep on Church property. Likewise, the Homeless Plaintiffs have chosen intentionally to associate with the Church by sleeping on Church property and developing relationships with Church staff and members.

68. Plaintiffs' religious liberties, as expressed above, are protected by Article 1, Section 3 of the New York State Constitution, which states:

"The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state."

69. The actions of the Defendants serve no compelling state interest, while they substantially burden Plaintiffs' exercise of their rights of religious liberty, including their right of religious expression, their right of religious association, and their right of humanitarian action in the name of faith. Indeed, the only justification offered by the officers who threatened to arrest the Homeless Plaintiffs was that they would be committing "disorderly conduct" if they were to lie down on Church property, which is a wholly invalid application of New York State penal law. Nor are Defendants' actions narrowly tailored to minimize the extent of any infringement of Plaintiffs' religious liberties. They therefore violate Article 1, Section 3 of the New York State Constitution.

SUMMARY OF RELIEF REQUESTED

Wherefore, Plaintiffs pray that the Court:

- a. Enter a temporary restraining order restraining the Defendants from enforcing the New Policy and removing the Homeless Neighbors from the Church's property or interfering with the right of the Homeless Neighbors to sleep on Church property or with the right of the Church to promote its Hospitality Program, until such time as this Court may consider and decide whether to issue a preliminary injunction.
- b. Enter a preliminary injunction restraining the Defendants from enforcing the New Policy and removing the Homeless Neighbors from the Church's property or interfering with the right of the Homeless Neighbors to sleep on Church property or with the right of the Church to promote its Hospitality Program, until such time as this Court may be able to determine the merits of this complaint.
- c. Enter a permanent injunction prohibiting the Defendants from enforcing the New Policy and removing the Homeless Neighbors from the Church's property or interfering with the right of the Homeless Neighbors to sleep on Church property or with the right of the Church to promote its Hospitality Program.
- d. Declare that the City's activities violate the rights of the Plaintiffs.

- e. Award costs and attorneys' fees under RLUIPA Section 4(d), 42 USC sec. 2000cc-2(d), under 42 U.S.C. sec. 1988, and under the Equal Access to Justice Act, 28 U.S.C. sec. 2412.
- f. Award costs of the case under the general costs statutes applicable to actions in federal court.

New York, New York
December 17, 2001

THE LAW OFFICES OF
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VERIFICATION

MARGARET SHAFER makes the following statement under penalty of perjury:

I hereby declare that I have read the foregoing Complaint, that I have personal knowledge of the facts of the case, and that the facts stated in the Complaint are true to my knowledge, except where they are stated to be on information and belief, and as to those, I verily believe them. I declare that the foregoing statement is true and correct under penalty of perjury under 28 U.S.C. sec. 1746.

Executed on December 17, 2001.

Margaret Shafer