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*Leaders Have the Courage and Compassion to Make a Difference*

**BY WEBFORM AND ONLINE**

September 18, 2018

Governor Edmund G. Brown  
c/o State Capitol, Suite 1173  
Sacramento, CA 95814

**Re: Urgent plea that you veto Assembly Bill 2178 (Limón)**

Dear Governor Brown:

I hope my letter finds you well. As explained below, I urge you to veto Assembly Bill 2178 (Limón). Despite its good intentions, if enacted into law, AB 2178 will predictably harm the hungry people who currently benefit when religious and political activists peaceably assemble to share food in public. Moreover, when activists charged with a misdemeanor for violating the new law challenge its constitutionality, the federal courts will likely find that it violates the First Amendment as interpreted by controlling Ninth Circuit precedent. Finally, the law does nothing to help hungry people in California.

As you know, California's great abundance is unequally distributed. While the majority of the populace eats their fill, those at society's margins hunger for justice and bare subsistence. Recall the early 1980s when groups like Sacramento's Loaves and Fishes, and myriad others, formed to extend the ministry of the Catholic Worker Movement to charitably provide free meals to those who hunger. By the end of the 1980s, similar though secular groups formed, including the international Food Not Bombs movement, which publicly shared food to demonstrate social solidarity and mutual aid and which recently won an important legal victory when the U.S. Court of Appeals for the Eleventh Circuit held that the weekly food-sharing demonstrations of Fort Lauderdale Food Not Bombs in a downtown park constituted expressive conduct protected by the Free Speech Clause. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, No. 16-16808, 2018 WL 4000057 (11th Cir. Aug. 22, 2018), available at <http://media.ca11.uscourts.gov/opinions/pub/files/201616808.pdf>.

As a law professor who has studied the food-sharing cases for several years and published two law review articles analyzing their implications for First Amendment jurisprudence, critical sociolegal theory, and municipal law and policy, I believe that the Eleventh Circuit's recent opinion aligns with the Ninth Circuit's opinion in *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022 (9th Cir. 2006). In that case, the Ninth Circuit ruled that the implementation of a municipal community events ordinance was not narrowly tailored where its mandatory administrative instruction required

groups smaller than 150 people to obtain a permit prior to holding an event within Santa Monica if those groups advertised their event. In so ruling, the Ninth Circuit cited approvingly to a Sixth Circuit opinion, *American-Arab Anti-Discrimination Committee v. City of Dearborn*, 418 F.3d 600 (6th Cir. 2005), which questioned whether the city has a constitutionally legitimate governmental interest to regulate small groups of people who peaceably assemble to demonstrate on city-owned public property. *Santa Monica Food Not Bombs*, 450 F.3d at 1040 (citing *Am.-Arab Anti-Discrimination Comm.*, 418 F.3d at 608).

Despite its nominally reasonable attempt to regulate “Limited Service Charitable Feeding Operations,” AB 2718 will predictably deter groups that currently publicly share food in California cities because its requirement that they preregister and otherwise comply with a local enforcement agency is onerous and likely to result in arbitrary enforcement: as you know, the Supreme Court’s First Amendment jurisprudence has long-aborred prior restraints on speech activities. *E.g.*, *Near v. Minnesota*, 283 U.S. 697 (1931); *Hague v. Comm. for Indus. Org.*, 307 U.S. 496 (1939); *Schneider v. State*, 308 U.S. 147 (1939); *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Jamison v. Texas*, 318 U.S. 413 (1943); *Thomas v. Collins*, 323 U.S. 516 (1945); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Cox v. Louisiana*, 379 U.S. 536 (1965); *Brown v. Louisiana*, 383 U.S. 131 (1966); *Gregory v. City of Chicago*, 394 U.S. 111 (1969); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969); *New York Times Co. v. United States*, 403 U.S. 713 (1971).

The Court disfavors prior restraints on speech because prior permit policies have too often strayed away from the legitimate purpose of reasonably regulating potentially competing uses of city-owned public spaces. In mandating registration with a local enforcement agency, AB 2718 makes it all too likely that rather than resulting in the reasonable requirement to reserve in advance a picnic table and barbecue pit in order to host a birthday party at a public park, local authorities will misuse the law to arbitrarily deny peaceable assembly rights to disfavored groups. In the 1930s, these were industrial unionists. In the 1950s and 1960s they were Black civil rights organizers. In the 1970s they were journalists seeking to publicize the Pentagon Papers, and in a series of lower-court cases beginning in the 1980s, they have been the religious and political activists charged with misdemeanor crimes for publicly sharing food without a permit.

My research has found that all too often anti-food-sharing laws bear traces of unconstitutional animus against homeless and otherwise visibly poor people in neighborhoods that are undergoing the gentrification processes of displacement and revitalization. In case after case, discovery has demonstrated that city legislators first considered enacting such laws after receiving a handful of complaints about homeless people in the environs, which typically featured never-verified allegations about their unsanitary presence that quickly assumed the semblance of settled fact. While allegations and beliefs that homeless people constitute a public nuisance may accord with popular negative stereotypes, the Supreme Court has repeatedly held that invidious animus cannot constitute a legitimate governmental interest. *E.g.*, *Dep’t. of Agric. v. Moreno*, 413 U.S. 528 (1973); *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Romer v. Evans*, 517 U.S. 620 (1996). *See also* Susannah W. Pollvogt, *Unconstitutional Animus*, 81 FORDHAM L. REV. 887 (2012).

Not knowing Assemblymember Limón personally, I do not question her good faith intentions when the bill’s supporters—the California Association of Environmental Health Administrators and the County of Santa Clara—persuaded her to author the bill, but in light of my research, AB 2178

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appears like a savvy end run around the constitutional protections that federal courts have extended to food-sharing activists who defended themselves against prosecution under similar local laws.

To conclude, if AB 2178 becomes law, it will predictably deter some food-sharing activists from attempting to mitigate hunger in California (for fear of being charged with a misdemeanor crime), waste California's precious resources when other food-sharing activists challenge its constitutionality in federal court (with controlling Ninth Circuit precedent and persuasive Sixth and Eleventh Circuit case law in their favor), and, most lamentably, do nothing to address the underlying causes of hunger in California.

Please veto AB 2178.

If you desire, I would be happy to discuss this matter with you or a member of your staff. The best way to schedule a teleconference is to email me at [mtgonzalez@stu.edu](mailto:mtgonzalez@stu.edu).

Very truly yours,

Marc-Tizoc González  
Professor of Law

Cc: California legislators and national homeless rights advocates.

**N.B.** For detailed analysis of the food-sharing cases beyond the aforementioned judicial opinions and articles, see 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); Marc-Tizoc González, *Criminalizing Charity: Can First Amendment Free Exercise of Religion, RFRAs, and RLUIPA Protect People who Share Food in Public?*, 7 U.C. IRVINE L. REV. 291 (2017); Brief of *Amici Curiae* Marc-Tizoc González, Florida Legal Services, Inc., Latina and Latino Critical Legal Theory, Inc., and Society of American Law Teachers, Inc. Supporting Plaintiffs-Appellants Urging Reversal, *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, No. 16-16808, 2017 WL 835127 (11th Cir. 2017) (Appellate Brief). Along with a copy of this letter, these texts are available online at FoodSharingLaw.Net, <http://foodsharinglaw.net>.

c/s