

# THE RUTHERFORD INSTITUTE

Post Office Box 7482  
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD  
Founder and President

TELEPHONE 434 / 978 - 3888  
FACSIMILE 434/ 978 – 1789  
[www.rutherford.org](http://www.rutherford.org)

November 21, 2018

Via Email ([rex.archer@kcmo.org](mailto:rex.archer@kcmo.org))

Rex Archer, Director of Health  
Kansas City Health Department  
2400 Troost Ave., Suite 400  
Kansas City, MO 64108

## **Re: Free Hot Soup Closures**

Dear Mr. Archer:

The homeless nationwide, by far the most vulnerable in any community during the harsh winter months, have found themselves increasingly displaced and disadvantaged by ordinances—part of a trend in urban and suburban communities<sup>1</sup>—which criminalize homelessness and crack down on those individuals and organizations whose charitable endeavors aim to ease the suffering of the homeless.<sup>2</sup>

What a sad reflection on Kansas City, Missouri, that its government officials have opted to exacerbate the hardship of the poor and destitute rather than encouraging private charitable efforts to care for the “least of these” among us. Indeed, the recent action by inspectors with the Kansas City (KCMO) Health Department to seize and bleach free, hot food being distributed to the homeless by private individuals within the Kansas City metro area,<sup>3</sup> thereby rendering the food inedible and unfit for distribution, is both morally reprehensible, legally indefensible, and in clear violation of the First Amendment.<sup>4</sup>

With good reason, the First Amendment, which protects the right of all Americans to freely express themselves in their word and deed, is a cornerstone of the U.S. Constitution. When

---

<sup>1</sup> A growing number of cities, such as Fort Lauderdale, Fla., have passed ordinances that actively inhibit the ability of private citizens to help those who are less fortunate.

<sup>2</sup> *Food Not Bombs Fort Lauderdale*, 901 F.3d 1238 (11th Cir. 2018)

<sup>3</sup> “KC health inspectors trashed, bleached food for homeless. City officials explain why,” *The Kansas City Star* (November 5, 2018), <https://www.kansascity.com/news/local/article221122480.html>

<sup>4</sup> *Food Not Bombs Fort Lauderdale*, 901 F.3d 1242 (11th Cir. 2018)

this fundamental freedom comes under attack, it falls to concerned citizens and organizations like The Rutherford Institute<sup>5</sup> to stand up for its cherished principles.

### **What happened?**

The facts are as follows: On November 4, 2018, after monitoring social media posts for possible violations, a group of inspectors from the Kansas City Health Department descended onto multiple public parks across the city and simultaneously shut down large picnics organized by a group of concerned private citizens, operating under the name “Free Hot Soup Kansas City,”<sup>6</sup> who were serving free food to homeless and hungry people without a permit. Free Hot Soup Kansas City is neither an establishment nor a non-profit, but a group of private citizens banding together to help the needy.<sup>7</sup>

Citing concerns over violations to city ordinances as well as the risk of keeping food at an unsafe temperature,<sup>8</sup> the health department inspectors seized the food, threw it in a trash bin, and doused it in bleach to prevent recovery and consumption by the homeless citizens of Kansas City.<sup>9</sup> The inspectors also threatened further legal action against the picnic organizers.<sup>10</sup> The free food, prepared by Free Hot Soup Kansas City, consisted of pots of home-cooked chili, stacks of sandwiches wrapped in foil, and vats of soup, among other foods.<sup>11</sup> According to Health Department public statements, the inspectors claimed to be protecting the public health and preventing food-borne illness.

The actions by the food inspectors, clearly intended to discourage the Free Hot Soup picnics, which have been growing in size as the winter months have neared, coincide with a spur of legislation to criminalize aspects of homelessness, for example by prohibiting use of shopping carts on the streets and panhandling, both of which are commonly associated with homelessness.

### **What do the courts say about ministering to the homeless?**

---

<sup>5</sup> The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to individuals whose civil rights are threatened and infringed.

<sup>6</sup> The stated mission of Free Hot Soup Kansas City is to share food with those in need within the Kansas City metro area. See Free Hot Soup (Kansas City), Public Facebook group, “About” section, <https://www.facebook.com/groups/FreeHotSoupKC/about/>.

<sup>7</sup> “KC health inspectors trashed, bleached food for homeless. City officials explain why,” *The Kansas City Star* (November 5, 2018), <https://www.kansascity.com/news/local/article221122480.html>

<sup>8</sup> KCMO Health Department, Tweet, 5 Nov 2017 9:06 AM, <https://twitter.com/KCMOHealthDept/status/1059492107809906688>

<sup>9</sup> “Health department pours bleach on soup meant for homeless, cites lack of permits, food safety concerns,” *Fox News* (Nov. 14, 2018), <https://www.foxnews.com/health/health-department-pours-bleach-on-soup-meant-for-homeless-cites-lack-of-permits-food-safety-concerns>.

<sup>10</sup> “After pouring bleach on food made for the homeless, Kansas City health officials change course,” *The Washington Post* (November 12, 2018), [https://www.washingtonpost.com/nation/2018/11/13/kansas-city-health-officials-pour-bleach-food-made-homeless-warning-volunteers-stop/?utm\\_term=.436baac8dc3c](https://www.washingtonpost.com/nation/2018/11/13/kansas-city-health-officials-pour-bleach-food-made-homeless-warning-volunteers-stop/?utm_term=.436baac8dc3c)

<sup>11</sup> “KC health inspectors trashed, bleached food for homeless. City officials explain why,” *The Kansas City Star* (November 5, 2018), <https://www.kansascity.com/news/local/article221122480.html>

Earlier this year, the Eleventh Circuit Court of Appeals ruled in *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale* that a food sharing initiative carried out by private citizens without a permit and not for profit is explicitly protected by the First Amendment.<sup>12</sup> The Eleventh Circuit reasoned that sharing food in a public park, which is a traditional public forum, combined with the pressing concern about caring for the homeless in a community point to a clear background and context which establish a basis of expression of values and ideas, meaning such action is protected by the First Amendment.<sup>13</sup>

The Eleventh Circuit's ruling continued a line of precedence first laid out in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, where the U.S. Supreme Court held that a Massachusetts public accommodation law could not force a private entity to include a group in a St. Patrick's Day parade, as doing so would forcibly alter the expressive content, thus violating the First Amendment.<sup>14</sup>

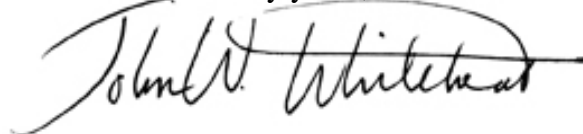
### **What should the Health Department do?**

Even assuming the Health Department's crackdown on the Free Hot Soup picnics was genuinely motivated by concerns over foodborne illness, manifesting those concerns in such a harsh and forceful manner and threatening further legal action constitutes an unwarranted escalation on the part of the city.<sup>15</sup> The Health Department had less harsh avenues available by which to convey its concerns and ensure food safety, namely by checking the food, or issuing a guide to help private citizens maintain food heat without requiring excessive and onerous food prep classes and training, which place an undue hardship on citizens merely attempting to alleviate hunger by feeding the homeless.

The Health Department owes both Free Hot Soup Kansas City and the area homeless an apology for its actions on November 4. Better yet, the Health Department should work with Free Hot Soup Kansas to facilitate the work of those, including Free Hot Soup Kansas City, providing aid to the homeless. In fact, Kansas City's municipal government should reexamine and reform any ordinances that criminalize homelessness and establish more just, humane and compassionate laws.

The Rutherford Institute stands ready to assist.

Sincerely yours,



---

<sup>12</sup> *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235 (11th Cir. 2018)

<sup>13</sup> *Food Not Bombs Fort Lauderdale*, 901 F.3d 1242 (11th Cir. 2018)

<sup>14</sup> *Hurley v. Iris—American Gay, Lesbian and Bisexual Group of Boston*, 115 S.Ct. 2338 (1995)

<sup>15</sup> "After pouring bleach on food made for the homeless, Kansas City health officials change course", *The Washington Post* (November 12, 2018), [https://www.washingtonpost.com/nation/2018/11/13/kansas-city-health-officials-pour-bleach-food-made-homeless-warning-volunteers-stop/?utm\\_term=.436baac8dc3c](https://www.washingtonpost.com/nation/2018/11/13/kansas-city-health-officials-pour-bleach-food-made-homeless-warning-volunteers-stop/?utm_term=.436baac8dc3c)

Rex Archer, Director of Health  
November 21, 2018  
Page 4

John W. Whitehead  
President

cc: Sly James, Mayor  
Kansas City, Missouri City Council