

Welcome



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The Unsheltered Residing in our Communities:
Navigating Constitutional and Practical Concerns

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Where to begin . . . topics to cover

1. California's Affordable Housing Shortage
2. Helping the Unhoused and Public Property
3. Constitutional Protections Guide Strategy
4. Fourth Amendment Search & Seizure
5. Fourteenth Amendment Property & State-Created Danger Issues
6. Eighth Amendment Enforcement & Excessive Fine Issues
7. First Amendment Expressive Conduct
8. Solutions Moving Forward

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Affordable Housing

- The National Low Income Housing Coalition reports that a minimum wage worker earning \$15/hour in California would need to work 83 hours per week to afford the fair market cost of a 1-bedroom apartment at \$1,621/month.
- To help low-income earners, Governor Newsom has set a goal of creating 2.5 million new housing units by 2030, 1 million of which would be affordable.
- The State has recently sued Huntington Beach for its ban on certain new housing developments, and Elk Grove for failing to approve an apartment project for the homeless.
- Legal wrangling aside, low-income earners simply currently cannot and will not be able to afford housing in California without either an increase in supply or decrease in demand.

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Our Growing Unsheltered Population

- From 2019 to 2022, California's unhoused population increased from approximately 151,000 to 171,000.
- Of the 171,000 unhoused individuals, 67%, or 115,000 persons, were unsheltered, living in places not intended for human habitation.
- When unhoused individuals reside in encampments, other residents commonly demand that their local politicians do something to address negative impacts perceived to be caused by encampments.

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Impacts to the Unsheltered and Public Property

- Perceived impacts to the unsheltered:
 - Loss of social support ties due to lack of access to transportation and communications.
 - Inability to maintain physical and mental health when maintaining basic shelter consumes an ongoing effort.
 - Increased contacts with law enforcement due to public demand.
- Perceived impacts to public property:
 - Loss of space at public parks previously open to others.
 - Obstruction of entryways and exits, potentially impacting ADA facilities.
 - Environmental deterioration and increased threats to safety due to lack of waste disposal and sewage systems.

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Fourth Amendment Search & Seizure

- The government may not seize property unless the property is (1) abandoned, (2) presents an immediate threat to public health or safety, or (3) is evidence of a crime, or contraband:
- *Lavan v. City of Los Angeles*:
 - The city seized and destroyed unattended property, which the city claimed appeared to be abandoned. Plaintiffs alleged there were indications the items were not abandoned (e.g., the orderly manner of storage), and the court agreed, concluding the city destroyed property it knew was not abandoned.
- *Garcia v. City of Los Angeles*:
 - Immediate destruction of “bulky” items determined to be a violation of the Fourth Amendment even though it could be difficult to ascertain whether such items are abandoned.
- *Smith v. Reiskin*:
 - San Francisco MTA unable to tow and hold an unsheltered person’s vehicle because although the tow was authorized under the “community caretaking doctrine,” holding onto a vehicle until fines are paid does not serve that interest.

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Fourteenth Amendment Property Issues

- *Lavan v. City of Los Angeles*:
 - In addition to examining the reasonableness of a seizure, the court held that the Fourteenth Amendment generally prohibits the immediate destruction of property.
 - Instead, owners must be given notice and an opportunity to be heard prior to their property being destroyed.
 - Post-deprivation notice should also be provided: “[D]ue process requires law enforcement ‘to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return.’”
 - Creating a procedure for documenting the seizure, storage and destruction of all property will help avoid later misunderstandings and litigation.

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Fourteenth Amendment State-Created Danger Issues

- *Sacramento Homeless Union v. County of Sacramento*:
 - Plaintiffs alleged violation of the state-created danger doctrine for clearing of encampments during extreme heat without providing the means to cool down. Preliminary injunction issued.
 - During the height of the pandemic, this doctrine was used to stop multiple enforcements on the basis that moving people around was unsafe as it could increase the risk of contracting COVID-19.
- *Fitzpatrick v. Little*:
 - State-created danger doctrine claim dismissed for failure to identify actual injuries associated with clearing Boise's Capitol Complex.
 - Proof is required that: "(1) the state officers' affirmative actions created or exposed the plaintiff to an actual, particularized danger that he or she would not otherwise have faced; (2) the plaintiff suffered an injury that was foreseeable; and (3) the officers were deliberately indifferent to the known danger."

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Eighth Amendment Enforcement Problems

- *Martin v. City of Boise*:
 - Found the City's prohibition against sleeping in public violated the Eighth Amendment's prohibition on cruel and unusual punishment when the homeless individuals have no access to alternative shelter.
 - Anti-camping provisions may be constitutional if limited with respect to time and place, which was permitted in *Gomes v. County of Kauai* and *Fitzpatrick v. Little*.
 - Additionally, cities may enforce against persons if shelter is available for them, but they simply refuse to go.
- *Johnson v. City of Grants Pass*:
 - The Ninth Circuit ruled that an ordinance precluding the use of bedding supplies, such as a blanket, pillow, or sleeping bag, when sleeping in public violated the Eighth Amendment.

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Eighth Amendment Excessive Fines

- *Fitzpatrick v. Little*:
 - Plaintiffs claimed their \$72 in fines (\$15.50 for each camping violation) were in violation of the Excessive Fines Clause.
 - The District Court recited that such a claim requires one to establish that the amount of the fine is “grossly disproportional to the gravity of the defendant’s offense.”
 - The factors to be reviewed are: “(1) The nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of harm caused by the offense.”
 - Moreover, reviewing courts “should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes.”
 - Claim dismissed.

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First Amendment Expressive Conduct Claims

- *Phillips v. City of Cincinnati*:
 - Plaintiffs alleged that by living in encampments located in open and obvious areas, including the City’s central business district, they were calling attention to the city’s affordable housing crisis.
 - The court agreed, noting the “nature and location” of the encampments made it plausible that onlookers would understand the residents were “communicating a message about the City’s inability to provide sufficient affordable housing.”
- *Fitzpatrick v. Little*:
 - Plaintiffs made the same claim as in *Phillips* with respect to their encampment set up in Boise’s Capitol Complex.
 - Finding the property to be a traditional public forum, the court’s inquiry was focused on whether the ordinance at issue was content-neutral.
 - Because the ordinance did not require any officer to examine the content of any message, the court held no First Amendment violation occurred.

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Potential Solutions

- ❑ Act sooner than later: Cities required to address issues regarding the unsheltered due to litigation generally spend more time and money than others.
- ❑ Notice: Provide ample notice prior to any abatement actions to avoid Fourteenth Amendment claims.
- ❑ Coordination: Working with shelters, outreach personnel, mental health providers and other service providers will facilitate a smoother transition into shelter.
- ❑ Relocation: If unable to provide shelter, assist with relocation from sensitive areas (e.g., hospitals and government offices).
- ❑ Manage Personal Property: Establish a personal property management system that will provide guidance to those working with unhoused residents to sort property that can be stored for later retrieval, and that which can be discarded.
- ❑ Hygiene and Trash Service: for larger encampments, providing hygiene and trash services so long as the encampment is not in a sensitive area while further enlisting those agencies that can provide needed services.

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Strategies Throughout the State

- ❑ Los Angeles:
 - ❑ Unsheltered population exceeded available shelter long before *Martin*.
 - ❑ Encampments have proliferated and local leaders are racing to secure funding for additional shelter space.
 - ❑ Post-*Martin* litigation has made it exceedingly difficult for local leaders to take action.
- ❑ Buena Park:
 - ❑ Worked with multiple cities prior to and after litigation, aiming to reduce costs and pool resources, ultimately avoiding significant judicial oversight and improving outcomes for all members of the community.
 - ❑ Creation of a 150-bed navigation center that has been funded by the State, County and contributing cities.

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Strategies Throughout the State

- Chico:
 - Significant growth of homeless population led to many businesses and residents calling for enforcement of anti-camping ordinances.
 - Enforcement operations resulted in a restraining order and settlement with five years of judicial oversight.
 - 177-unit micro shelter established, and additional options being considered as shelters reach capacity.
- San Jose:
 - Pressure from large businesses and federal agencies in 2020 to clean certain areas impacted by encampments.
 - Current plan is to prioritize the development and operation of easy-to-build micro shelters to quickly meet demand.

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Questions



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