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Homelessness Issues in the Law

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Homelessness as legal category

- ▶ Homelessness is not a protected or suspect class; not subject to heightened scrutiny.
- ▶ Laws and regulations that address homelessness are reviewed for a rational basis: must be rationally related to some legitimate government interest.
- ▶ Legitimate government interests can include public health, safety, sanitation, and aesthetics.



No legal obligation to provide services

- ▶ States and municipalities are not required to provide housing, food, or sleeping materials.
- ▶ **Sacramento Homeless Union v. County of Sacramento**, 617 F. Supp 3d 1179 (USD CA, 2022): Federal district court dismissed a complaint that the state created a dangerous situation by failing to establish cooling centers for homeless population during a heat wave. The state did not have an affirmative obligation to shelter homeless persons.



New York City’s “right to shelter”

- ▶ **Callahan v. Carey:** New York City consent decree from 1981 established city’s obligation to provide shelter to all homeless people who needed it “by reason of physical, mental, or social dysfunction.”
- ▶ “Right to shelter” is based on a lower state court’s reading of New York’s Constitution, Article XVII: “the aid, care, and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions.”
 - ▶ **Right to shelter has not been applied to New York State—only NYC.**
 - ▶ **Kansas does not have any constitutional provision or state law that establishes a right to shelter.**



Homelessness as a status

- ▶ The status of being homeless cannot be criminalized.
 - ▶ **Robinson v. California**, 370 US 660 (1962): Supreme Court overturned California law that made it illegal to be addicted to narcotics.
 - ▶ **Powell v. Texas**, 392 US 514 (1968): Supreme Court split over whether an alcoholic could be punished for public intoxication.
- ▶ Eighth Amendment to the U.S. Constitution, which bans “cruel and unusual punishment,” prohibits criminal punishment for involuntary conduct, or a person’s status.



Ninth Circuit cases

- ▶ **Martin v. Boise**, 920 F.3d 584 (9th Circuit 2019):
 - Involuntarily homeless persons cannot be punished for sleeping or camping outside when there is insufficient shelter available in the area. Punishing homeless for sleeping in public spaces violates 8th Amendment.

- ▶ **Grants Pass v. Johnson**, 72 F.4th 868 (9th Circuit 2023):
 - Extends *Martin* by prohibiting cities from banning camping and sleeping materials. Involuntarily homeless persons have a right to take, at least, “the most rudimentary precautions” against the elements.



Property and encampments

- ▶ Fourth Amendment protects “persons, houses, papers, and effects” against unreasonable searches and seizures. **U.S. v. Jacobsen**, 466 U.S. 109 (1984).
- ▶ Fourteenth Amendment prohibits seizing property without due process: notice and a right to be heard. **Mathews v. Eldridge**, 242 U.S. 319 (1976).
 - ▶ **Lyall v. City of Denver**, 319 F.R.D. 558 (USD Colorado 2017):
 - U.S. district court certified a class action lawsuit based on Denver’s “sweeps” of homeless encampments, which destroyed property and lacked notice and other due process requirements. Denver agreed to a settlement that required seven day notice prior to sweeps and a system for reclaiming seized property.



Zoning and nuisance law

- ▶ Local zoning may prohibit facilities from being used as shelters, such as when they are not zoned for residential use.
 - ▶ **Herkert v. State**, 2023 WL 633645 (NY Sup. Ct.).
- ▶ Encampments and shelters may, depending on the nature of the activities conducted, also constitute public and private nuisances, which can be enjoined in state court.
 - ▶ Public nuisance: “knowingly causing or permitting a condition to exist which injures or endangers the public health, safety or welfare.” K.S.A. 21-6204.
 - ▶ Common nuisance: “unlawful activities and the use of real or personal property in maintaining and carrying on such activities.” K.S.A. 22-390.
 - ▶ **Brown v. City of Phoenix**, CV 2022-010439, 2023 Ariz. Super. LEXIS 24:
 - ▶ Phoenix’s failure to enforce criminal and quality of life laws at sprawling homeless encampment constituted a public nuisance.



First Amendment considerations

- ▶ Ordinances that restrict soliciting donations or which deny access to sidewalks and roadways where donations are solicited may be considered restrictions on protected speech.
 - ▶ Reasonable restrictions on time, place, and manner must:
 - ▶ Be content-neutral
 - ▶ Be narrowly tailored to achieve a legitimate government purpose
 - ▶ Leave open ample alternative channels for communication.

Ward v. Rock Against Racism, 491 U.S. 781 (1989).

- ▶ **Evans v. Sandy City, 944 F.3d 847 (10th Cir. 2019):**
 - ▶ 10th Circuit upheld ordinance which prohibited sitting and standing in unpaved or narrow medians.

