

John Mejia (#13965)  
ACLU OF UTAH FOUNDATION, INC.  
311 South State Street, Suite 310  
Salt Lake City, UT 84111  
(801) 521-9862  
jmejia@acluutah.org

Bridget Lavender\*  
Scout Katovich\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
(212) 549-2500  
blavender@aclu.org  
skatovich@aclu.org

Julie A. Murray\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
915 15th Street NW  
Washington, DC 20005  
(202) 675-2326  
jmurray@aclu.org

Jason M. Groth (#16683)  
Richard P. Mauro (#5402)  
SALT LAKE LEGAL DEFENDER  
ASSOCIATION  
275 East 200 South  
Salt Lake City, Utah 84111  
(801) 532-5444  
jgroth@sllda.org  
rmauro@sllda.com

*\*Pro hac vice motions forthcoming*

**IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH**

---

DANIELLE BARRANI, et al.,

*Plaintiffs,*

*vs.*

SALT LAKE CITY, a Utah  
municipal corporation,

*Defendant.*

**BRIEF OF AMICI CURIAE  
AMERICAN CIVIL LIBERTIES  
UNION OF UTAH,  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION,  
NATIONAL HOMELESSNESS LAW  
CENTER,  
CROSSROADS URBAN CENTER,  
AND SALT LAKE LEGAL DEFENDER  
ASSOCIATION  
IN OPPOSITION TO PLAINTIFFS'  
APPLICATION FOR A  
PRELIMINARY INJUNCTION**

Case No. 230907360

Judge Andrew H. Stone

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... i

INTRODUCTION AND SUMMARY OF ARGUMENT ..... 1

INTEREST OF AMICI CURIAE..... 3

STATEMENT OF THE ISSUES ..... 5

ARGUMENT ..... 6

    I. THE INJUNCTION WOULD ALMOST CERTAINLY COMPEL  
        THE CITY TO VIOLATE THE STATE AND FEDERAL  
        CONSTITUTIONAL RIGHTS OF UNHOUSED UTAHNS ..... 6

        A. Plaintiffs’ requested relief would put unhoused people’s  
            property and procedural due process rights at risk. .... 7

        B. Plaintiffs seek enforcement of laws that would impose  
            impermissible punishments on unhoused people. .... 9

        C. Plaintiffs’ request would require application of vague and  
            overbroad laws in violation of Utahns’ due process rights..... 13

        D. Clearing encampments may constitute a state-created  
            danger, in violation of due process. .... 16

    II. THE PROPOSED INJUNCTION IS ANTITHETICAL TO THE  
        PUBLIC INTEREST BECAUSE IT WOULD EXACERBATE  
        HOMELESSNESS..... 18

CONCLUSION..... 22

## TABLE OF AUTHORITIES

### Cases

<i>Armijo By &amp; Through Chavez v. Wagon Mound Public School</i> , 159 F.3d 1253 (10th Cir. 1998) .....	16
<i>Board of Commissioners of Utah State Bar v. Petersen</i> , 937 P.2d 1263 (Utah 1997) .....	14
<i>City of Chicago v. Morales</i> , 527 U.S. 41 (1999) .....	13
<i>Coal. on Homelessness v. City &amp; Cnty. of San Francisco</i> , 647 F. Supp. 3d 806 (N.D. Cal. 2022).....	8
<i>Coates v. Cincinnati</i> , 402 U.S. 611 (1971) .....	13
<i>Decker v. Fillis</i> , 306 F. Supp. 613 (D. Utah 1969).....	15
<i>Dexter v. Bosko</i> , 2008 UT 29, 184 P.3d 592.....	12
<i>Free the Nipple—Fort Collins v. City of Fort Collins</i> , 916 F.3d 792 (10th Cir. 2019) .....	6, 7
<i>Fund for Empowerment v. City of Phoenix</i> , 646 F. Supp. 3d 1117 (D. Ariz. 2022) .....	8
<i>Garcia v. City of Los Angeles</i> , 11 F.4th 1113, (9th Cir. 2021).....	7
<i>Jeremiah v. Sutter Cnty.</i> , No. 2:18-CV-00522, 2018 WL 1367541 (E.D. Cal. Mar. 16, 2018).....	16
<i>Johnson v. City of Grants Pass</i> , 72 F.4th 868 (9th Cir. 2023) .....	10, 11
<i>Jones v. City of Los Angeles</i> , 444 F.3d 1118 (9th Cir. 2006) .....	10
<i>Jordan v. Pugh</i> , 425 F.3d 820 (10th Cir. 2005) .....	13

<i>Kolender v. Lawson</i> , 461 U.S. 352 (1983) .....	14
<i>Langley v. City of San Luis Obispo</i> , No. CV 21-07479-CJC, 2022 WL 18585987 (C.D. Cal. Feb. 7, 2022) .....	16
<i>Lavan v. City of Los Angeles</i> , 693 F.3d 1022 (9th Cir. 2012) .....	7
<i>Martin v. Boise</i> , 920 F.3d 584 (9th Cir. 2019) .....	10, 11
<i>Mary’s Kitchen v. City of Orange</i> , No. 8:21-CV-01483, 2021 WL 6103368 (C.D. Cal. Nov. 2, 2021).....	16
<i>Natalie R. v. State of Utah</i> , No. 20230022-SC (Utah filed Oct. 3, 2023).....	2
<i>Papachristou v. City of Jacksonville</i> , 405 U.S. 156 (1972) .....	13
<i>Parks v. Watson</i> , 716 F.2d 646 (9th Cir. 1983) .....	12
<i>Reed v. Gardner</i> , 986 F.2d 1122 (7th Cir. 1993) .....	16
<i>Robinson v. California</i> , 370 U.S. 660 (1962) .....	9, 10
<i>Shuttlesworth v. City of Birmingham</i> , 382 U.S. 87 (1965) .....	15
<i>Spackman ex rel. Spackman v. Board of Education Of Box Elder County School District</i> , 2000 UT 87, 16 P.3d 533, .....	18
<i>State v. Angilau</i> , 2011 UT 3, 245 P.3d 745 .....	9
<i>State v. DeBooy</i> , 2000 UT 32, 996 P.2d 546 .....	9
<i>State v. Houston</i> , 2015 UT 40, 353 P.3d 55 .....	12

<i>State v. Johnson</i> , 2009 UT App. 382, 224 P3d 720 .....	14
<i>State v. Lafferty</i> , 2001 UT 19, 20 P.3d 342 .....	12
<i>State v. Ogden</i> , 2018 UT 8, 416 P.3d 1132.....	14
<i>State v. Simmons</i> , 947 P.2d 630 (Utah 1997) .....	12
<i>United States v. Apollo Energies, Inc.</i> , 611 F.3d 679 (10th Cir. 2010) .....	10
<i>Utah State Legislature v. League of Women Voters of Utah</i> , No. 20220991-SC (Utah S. Ct.) (argued July 11, 2023) .....	2
<b>Statutes</b>	
42 U.S.C. § 1983.....	18
Salt Lake City Code § 1.12.050.....	20
Salt Lake City Code § 11.12.065 .....	1
Salt Lake City Code § 11.12.080 .....	1, 8
Salt Lake City Code § 14.12.070 .....	1
Salt Lake City Code § 14.20.100 .....	1, 15, 20
Salt Lake City Code § 14.28.050 .....	1
<b>Other Authorities</b>	
ACLU of Utah, <i>Displaced &amp; Dispersed: The Aftermath of Operation Rio Grande</i> (2022) .....	4, 11, 15, 21
ACLU Utah & Smart Justice Utah, <i>Calculating the Real Cost of Operation Rio Grande</i> (2018).....	4
ACLU Utah & Smart Justice Utah, <i>Operation Rio Grande</i> (2019).....	4
Allard K. Lowenstein International Human Rights Clinic, Yale Law School, <i>“Forced Into Breaking the Law”: The Criminalization of Homelessness in Connecticut</i> (2016) .....	20

Ashley Fredde, <i>Utah homeless families with children face limited options going into winter</i> , KSL (Nov. 1, 2023) .....	17
Christie Porter, <i>Housing Affordability: Things Are Weird, Right?</i> , Salt Lake Magazine (July 15, 2021) .....	19
Emily Means, <i>How camp abatements affect Salt Lake City’s unsheltered people</i> , KUER (Dec. 21, 2021) .....	8, 15
Eric S. Peterson, <i>Taxpayers Spent Over Half A Million Dollars To Clean Homeless Encampments In Salt Lake County In 2021</i> , Economic Hardship Reporting Project (July 21, 2022).....	8, 15
James Wood & Dejan Eskic, <i>State of the State’s Housing Market, 2022-2024 (2023)</i> .....	19
James Wood & Dejan Eskic, University of Utah Kem C. Gardner Policy Institute, <i>The State of the State’s Housing Market (2021)</i> .....	19
Katie McKellar, <i>Salt Lake County is facing the tightest rental market in its history</i> , Deseret News (Apr. 1, 2022).....	19
Liesl Nielson, <i>What happens to Utah’s homeless population in the winter?</i> , KSL (Feb. 23, 2019).....	17
Lucius Couloute, <i>Nowhere to Go: Homelessness among formerly incarcerated people</i> , Prison Policy Initiative (Aug. 2018).....	21
Madeline Bailey, Erica Crew, & Madz Reeve, Vera Institute of Justice, <i>No Access to Justice: Breaking the Cycle of Homelessness and Jail (2020)</i> .....	21
National Law Center on Homelessness & Poverty, <i>Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities (2019)</i> ...	5, 15, 21
National Law Center on Homelessness & Poverty, <i>Tent City, USA: The Growth of America’s Homeless Encampments and How Communities are Responding (2017)</i> .....	5
Suzanne Skinner & Sara Rankin, Homeless Rights Advocacy Project, <i>Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter (2016)</i> .....	11
Tim Thomas & Julia Greenberg, <i>Urban Displacement Project’s Salt Lake City Displacement Data Analysis</i> , Urban Displacement Project (July 14, 2022) .....	19
U.S. Government Accountability Office, <i>How COVID-19 Could Aggravate the Homelessness Crisis?</i> (Aug. 25, 2020).....	19

United States Interagency Council on Homelessness, *7 Principles for Addressing Encampments 1* (June 17, 2022)..... 21

Workforce Services, Homeless Services, *2023 Annual Data Report on Homelessness* (2023)..... 18

**Rules**

House Joint Resolution 2, 2023 Leg., Gen. Sess. (2023)..... 6

Utah Rule of Civil Procedure 65A(e) ..... 2, 6

**Constitutional Provisions**

U.S. Constitution Amendment IV..... 7

U.S. Constitution Amendment VIII ..... 9

Utah Constitution Article I, § 9..... 12

Utah Constitution Article I § 7..... 9

Utah Constitution Article I, § 11..... 9

Utah Constitution Article I, § 14..... 9

Utah Constitution Article I, § 24..... 14

## INTRODUCTION AND SUMMARY OF ARGUMENT

Hundreds if not thousands of Salt Lake City residents have nowhere safe to stay and must live and sleep in public. In September 2023, plaintiffs—a group of nine local residents and business owners—brought suit against Salt Lake City (“City”), alleging that the City had created both public and private nuisances by allowing unhoused community members to live and sleep in local streets, sidewalks, and parks. Plaintiffs allege that the City created these nuisances by refusing to enforce a broad range of ordinances against unhoused individuals. Those ordinances include prohibitions on camping in parks or on public grounds, *see* Salt Lake City (“SLC”) Code § 11.12.080; obstruction of sidewalks with encroachments, *id.* § 14.12.070; obstruction of sidewalks by standing, lying, or sitting for more than two minutes, *id.* § 14.20.100; obstruction of highways and streets, *id.* § 14.28.050; and public alcohol possession and use, *id.* § 11.12.065. *See* Compl. ¶ 63; Pls.’ App. for Prelim. Inj. (“PI App.”) 3. Violations of these local ordinances carry potential misdemeanor or infraction penalties.

Plaintiffs seek sweeping relief from this Court, asking it to enter a declaratory judgment and preliminary and permanent injunctions directing the City to abate “any and all nuisances caused by the unhoused” on any City property, not just the immediate areas where plaintiffs reside. PI App. 18; *see also* Compl. 26–27. They recognize that the relief they seek would involve clearing and dismantling existing encampments, relocating people—perhaps forcibly—who are living there, and



enforcing ordinances against City residents who are not named or otherwise involved in this litigation. *See, e.g.*, PI App. 12; Compl. 26–27.

This Court should decline to enter the injunction. As the City correctly explains, plaintiffs are not likely to succeed on the merits of their private or public nuisance claims; they have not demonstrated that they will suffer harm absent an injunction, much less irreparable harm; and they failed to join indispensable parties whose rights would be affected by the requested injunction. Def.’s Opp’n to App. for Prelim. Inj. (“City Opp’n”) 9–11, 14–23.<sup>1</sup>

Amici, who are nonpartisan, nonprofit groups that engage in litigation and/or advocacy to defend civil rights, including the civil rights of people experiencing homelessness, submit this brief to elaborate on two points supporting denial of a preliminary injunction under Utah Rule of Civil Procedure 65A(e).

First, the proposed injunction is adverse to the public interest because it would likely—if not certainly—result in the City violating not only federal constitutional rights of unhoused Utahns, as the City explains, but also state constitutional rights

---

<sup>1</sup> Amici disagree with the City’s assertion that plaintiffs’ claims are non-justiciable under the political question doctrine. The Utah Supreme Court is currently considering two cases that involve whether and to what extent Utah courts even follow the political question doctrine, as that doctrine has developed under federal law. *See Natalie R. v. State of Utah*, No. 20230022-SC (Utah S. Ct.) (briefing underway); *Utah State Legislature v. League of Women Voters of Utah*, No. 20220991-SC (Utah S. Ct.) (argued July 11, 2023). Some of the proposed amici in this case have urged the Utah Supreme Court to reject the political question doctrine for purposes of Utah law. Br. of Amici Curiae American Civil Liberties Union of Utah et al. in Supp. of Appellants, *Natalie R. v. State of Utah*, No. 20230022-SC (Utah filed Oct. 3, 2023); Br. of Amici Curiae American Civil Liberties Union in Supp. of Resp’ts, *Utah State Legislature, v. League of Women Voters of Utah*, No. 20220991-SC, 2023 WL 5621686 (Utah filed May 19, 2023).

that are at least as broad as, if not broader than, federal protections. The injunction would necessarily require dismantling campsites that unhoused people rely on to survive, forcibly relocating people experiencing homelessness to unknown and undetermined locations, and ramping up the enforcement of overbroad laws that have already been used by the City and other government officials to violate unhoused people's rights. These Court-compelled actions would likely lead to further litigation against the City by unhoused residents who have had no voice in this litigation.

Second, plaintiffs' requested relief would make the problem of homelessness worse, not better. Citing, fining, and imprisoning people experiencing homelessness entrenches poverty and makes it harder for people to find employment or housing in the future. Encampment sweeps move people away from much-needed services, and often result in lost or destroyed property, including medications and important documents. Plaintiffs' approach to the homelessness crisis would exacerbate the problem and is decidedly against the public interest.

#### **INTEREST OF AMICI CURIAE**

The American Civil Liberties Union (ACLU) is a nationwide, non-profit, non-partisan organization with approximately 1.6 million members. The ACLU is dedicated to defending and preserving the individual rights and liberties guaranteed by the national and state Constitutions. Consistent with that mission, the ACLU uses impact litigation and advocacy to protect the rights of unhoused people across the country. Its litigation challenges laws and practices that criminalize or otherwise penalize homelessness, including the enforcement of sleeping and camping bans

against unhoused people who have nowhere else to go, encampment evictions, and the seizure and destruction of unhoused people's property.

The ACLU of Utah is a statewide affiliate of the national ACLU and is dedicated to these same principles. The ACLU of Utah has undertaken considerable efforts to advocate for the rights of unsheltered people in Utah, including by conducting extensive factual and legal research and analysis to release a series of reports that analyze a law-enforcement-focused approach to issues of homelessness and provide legal guidance and policy recommendations.<sup>2</sup>

Founded in 1989, The National Homelessness Law Center (the "Law Center") is a national nonprofit legal organization based in Washington, D.C., with the mission to use the power of the law to end and prevent homelessness. In connection with this objective, the Law Center gathers information about state and local laws that impact homeless people nationwide, identifies best practices to address the root causes of homelessness, and litigates to safeguard the civil and human rights of homeless persons. In the course of this work, the Law Center has published numerous reports analyzing issues related to homelessness in the United States.<sup>3</sup>

---

<sup>2</sup> See ACLU Utah & Smart Justice Utah, *Calculating the Real Cost of Operation Rio Grande* (2018), [https://live-aclu-utah.pantheonsite.io/sites/default/files/aclu\\_ut-calccostorg-public.pdf](https://live-aclu-utah.pantheonsite.io/sites/default/files/aclu_ut-calccostorg-public.pdf); ACLU Utah & Smart Justice Utah, *Operation Rio Grande* (2019), [https://www.acluutah.org/sites/default/files/aclu\\_ut\\_org\\_endgame-final-public.pdf](https://www.acluutah.org/sites/default/files/aclu_ut_org_endgame-final-public.pdf); ACLU of Utah, *Displaced & Dispersed: The Aftermath of Operation Rio Grande* (2022), <https://infogram.com/1t0dd089delympb87zxx4lhzre8i33o0zxp8> (hereinafter, "*Displaced & Dispersed*").

<sup>3</sup> The reports that the Law Center has produced in recent years are available at <https://homelesslaw.org/publications/> (last visited Nov. 3, 2023). See Nat'l Law Center on Homelessness & Poverty, *Housing Not Handcuffs 2019: Ending the*

Crossroads Urban Center is a nonprofit organization that assists and organizes Utahns with low incomes, those with disabilities, and people of color to meet basic survival needs and to address essential issues affecting quality of life. Crossroads operates two emergency food pantries and a thrift store in Salt Lake City. Over one-third of households that receive free clothing from the thrift store or food, bus passes, or other forms of assistance from the food pantries are unhoused.

Established in 1965, the Salt Lake Legal Defender Association (“LDA”) is a nonprofit law firm that provides the highest quality representation to indigent individuals accused of crimes in Salt Lake County. LDA protects clients’ rights through a team of dedicated lawyers, social service professionals, mitigation specialists, legal assistants, and investigators. LDA advocacy often navigates and addresses the unique issues unsheltered individuals face in the criminal legal system.

### **STATEMENT OF THE ISSUES**

1. Is the proposed preliminary injunction—which would require the City to dismantle and clear encampments, to relocate people living in those encampments, and to categorically enforce city ordinances against unhoused people—adverse to the public interest?

---

*Criminalization of Homelessness in U.S. Cities* (2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> (hereinafter, “*Housing Not Handcuffs*”); see also Nat’l Law Center on Homelessness & Poverty, *Tent City, USA: The Growth of America’s Homeless Encampments and How Communities are Responding* (2017), [https://homelesslaw.org/wp-content/uploads/2018/10/Tent\\_City\\_USA\\_2017.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf).

## ARGUMENT

A preliminary injunction request must be denied unless plaintiffs first demonstrate that: (1) “there is a substantial likelihood that [they] will prevail on the merits” of their underlying claims; (2) they “will suffer irreparable harm unless the . . . injunction issues”; (3) the threatened injury to plaintiffs “outweighs whatever damage the proposed . . . injunction may cause the party restrained or enjoined”; and (4) the injunction, “if issued, would not be adverse to the public interest.” Utah R. Civ. P. 65(A)(e).<sup>4</sup> Plaintiffs’ request for a preliminary injunction must be denied because it is adverse to the public interest.

### **I. THE INJUNCTION WOULD ALMOST CERTAINLY COMPEL THE CITY TO VIOLATE THE STATE AND FEDERAL CONSTITUTIONAL RIGHTS OF UNHOUSED UTAHNS**

Plaintiffs devote barely a paragraph to asserting that the proposed injunction would serve the public interest, and in doing so, they do not mention the impact of the requested relief on the rights of unhoused city residents. *See* PI App. 10–11. But that impact cannot be ignored. It would irreparably upend the lives of hundreds of people and their families and is alone a sufficient basis to require denial of the preliminary injunction. *See* Utah R. Civ. P. Rule 65A(e); *cf. Free the Nipple—Fort Collins v. City of Fort Collins*, 916 F.3d 792, 806 (10th Cir. 2019) (stating that

---

<sup>4</sup> Plaintiffs claim that Rule 65A(e)’s showing as to the merits requires either a substantial likelihood of success *or* the presentation of “serious issues . . . which should be the subject of further litigation.” PI App. 8, 11. However, in 2023, the Utah legislature amended Rule 65A(e) by requiring future applicants for preliminary injunctions to show a likelihood of success on the merits. House Joint Resolution 2, 2023 Leg., Gen. Sess. (2023).

preventing the violation of constitutional rights is “always in the public interest” in the preliminary-injunction context).

**A. Plaintiffs’ requested relief would put unhoused people’s property and procedural due process rights at risk.**

Under the U.S. Constitution’s Fourth Amendment, individuals have a right to be free from “unreasonable searches and seizures,” not only in their persons and homes, but also in their papers and effects. U.S. Const. amend. IV. The Fourth Amendment’s protections can apply to possessions stored on public property, *see Garcia v. City of Los Angeles*, 11 F.4th 1113, 1118 (9th Cir. 2021), and to possessions involved in a “[v]iolation of a City ordinance.” *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1029 (9th Cir. 2012). “Indeed, the [U.S.] Supreme Court has recognized protected possessory interests even in contraband.” *Id.* at 1030. Similarly, the Fourteenth Amendment protects against the deprivation of a person’s “property[] without due process of law.” U.S. Const. amend. XIV.

These guarantees apply with equal force to protect the rights of housed *and* unhoused individuals and their property. *See, e.g., Lavan*, 693 F.3d at 1030. Indeed, the importance of these rights is especially acute for unhoused individuals, whose belongings may be essential for daily survival in the elements. *Pottinger v. Miami*, 810 F. Supp. 1551, 1559 (S.D. Fla. 1992). Given the stakes, courts regularly find violations of unhoused people’s Fourth and Fourteenth Amendment rights occur when cities clear encampments from public areas, just as plaintiffs would have the City “immediately” do here. *See, e.g., Lavan*, 693 F.3d at 1024; *Kincaid v. City of Fresno*, No. 106-CV-1445, 2006 WL 3542732, at \*37 (E.D. Cal. Dec. 8, 2006);

*Pottinger*, 810 F. Supp. at 1573; *Garcia*, 11 F.4th at 1118; *Proctor v. District of Columbia*, No. 18-CV-00701, 2018 WL 6181739, at \*3 (D.D.C. Nov. 27, 2018); *Coal. on Homelessness v. City & Cnty. of San Francisco*, 647 F. Supp. 3d 806, 838 (N.D. Cal. 2022); *Fund for Empowerment v. City of Phoenix*, 646 F. Supp. 3d 1117, 1125 (D. Ariz. 2022).

And there is good reason to be concerned that the injunction sought by plaintiffs would pose equal if not greater risks of federal constitutional violations. For example, as the City concedes, its current policy provides unhoused individuals only five minutes to collect and remove their property before it is seized by law enforcement. City Opp'n at 6, 16; *see also* SLC Code § 11.12.080. Past sweeps of encampments have resulted in unhoused people losing pets, medications, important documents, blankets, bicycles, and sentimental belongings. *See* Eric S. Peterson, *Taxpayers Spent Over Half A Million Dollars To Clean Homeless Encampments In Salt Lake County In 2021*, Economic Hardship Reporting Project (July 21, 2022);<sup>5</sup> Emily Means, *How camp abatements affect Salt Lake City's unsheltered people*, KUER (Dec. 21, 2021).<sup>6</sup> Accordingly, the requested relief would almost certainly compel the City to continually and categorically violate unhoused people's federal constitutional rights and lead to litigation comparable to that occurring in other jurisdictions.

---

<sup>5</sup> <https://economichardship.org/2022/07/taxpayers-spent-over-half-a-million-dollars-to-clean-homeless-encampments-in-salt-lake-county-in-2021/>.

<sup>6</sup> <https://www.kuer.org/race-religion-social-justice/2021-12-21/how-camp-abatements-affect-salt-lake-citys-unsheltered-people>.

The requested injunction would also likely require the violation of unhoused people's *state* constitutional rights. Like the federal constitution, the Utah Constitution protects the rights to be free from unreasonable searches and seizures, Utah Const. art. I, § 14, and due process violations, *id.* § 7. These state protections are at least as broad as, and perhaps more expansive than, those provided under federal law. *See State v. DeBooy*, 2000 UT 32, ¶ 12, 996 P.2d 546 (search and seizure); *State v. Angilau*, 2011 UT 3, ¶ 13, 245 P.3d 745 (due process). Moreover, in language for which there is no federal analog, the Utah Constitution's article I, § 11, provides a "remedy by due course of law" to any person who experiences harm to their property.

Plaintiffs do not even acknowledge these state and federal constitutional protections for unhoused people's property, much less explain how their requested relief could possibly be achieved with due regard for these rights.

**B. Plaintiffs seek enforcement of laws that would impose impermissible punishments on unhoused people.**

The requested preliminary injunction is adverse to the public interest for the additional reason that it would require increased and categorical enforcement of laws whose application would impose an impermissible punishment on Utahns who are unhoused.

The Eighth Amendment to the U.S. Constitution prohibits the imposition of any "cruel and unusual punishment[]" or "excessive fine[]." U.S. Const. amend. VIII. Courts have interpreted that prohibition to extend to any punishment for involuntary acts or conditions that are unavoidable. *See Robinson v. California*, 370 U.S. 660, 665 (1962) (holding "status" crimes unconstitutional); *United States v. Apollo Energies*,



*Inc.*, 611 F.3d 679, 688 (10th Cir. 2010) (“[C]riminalizing acts which the defendant does not cause is unconstitutional, as is criminalizing acts based on the defendant’s status.”).

In particular, the “Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter,” *Martin v. Boise*, 920 F.3d 584, 616 (9th Cir. 2019), that is “practically” or “realistically available to them,” *Johnson v. City of Grants Pass*, 72 F.4th 868, 896 (9th Cir. 2023), *cert. pet. pending*, *City of Grants Pass v. Johnson*, No. 23-175 (U.S. filed Aug. 22, 2023); *see also Jones v. City of Los Angeles*, 444 F.3d 1118, 1137 (9th Cir. 2006) (“[B]y criminalizing sitting, lying, and sleeping, the City is in fact criminalizing Appellants’ status as homeless individuals.”), *vacated as moot*, 505 F.3d 1006 (9th Cir. 2007). This is because sitting, lying, and sleeping “are universal and unavoidable consequences of being human.” *Martin*, 920 F.3d at 617 (citation omitted); *see also Grants Pass*, 72 F.4th at 896 (recognizing that sleeping requires those “rudimentary forms of protection” necessary to secure an unhoused individual “from the elements”).<sup>7</sup>

The preliminary injunction sought by plaintiffs—which would require the City to categorically enforce ordinances against camping, sleeping, and other activities on public property, regardless of one’s circumstances and the real-time availability of shelter—is not remotely consistent with federal Eighth Amendment standards. Those

---

<sup>7</sup> For the same reason, enforcement of laws prohibiting urinating and defecating in public, *see* SLC Code § 11.16.100, where a person has nowhere else to perform these unavoidable bodily functions may be cruel and unusual.

standards require an individualized consideration of a person’s circumstances and are not susceptible to blanket policies like the one advocated by plaintiffs. *See Johnson*, 72 F.4th at 877.

For example, even if a shelter bed is technically open, it may not be “adequate” or “practically” available to a person because of their individual circumstances, including their familial status, disability status, or religion. *See Johnson*, 72 F.4th at 877, 879; City Opp’n 6 (recognizing that not all unhoused people are eligible for available bedspace in the City); *Displaced & Dispersed*, *supra* note 2, at 9 (discussing Salt Lake City’s shelter system and unhoused people’s negative experiences with shelters); Suzanne Skinner & Sara Rankin, Homeless Rights Advocacy Project, *Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter* (2016), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1004&context=hrap>.

And although plaintiffs point to shelter availability at a single point in time to justify enforcement of laws criminalizing homelessness, Compl. ¶ 75, PI App. 2, that snapshot cannot possibly justify enforcement during periods in which obtaining shelter is not just practically, but *actually*, impossible. *See* City Opp’n 6 (stating that City shelters are generally 99 to 100 percent occupied).

At bottom, enforcement of camping bans and similar ordinances against unhoused persons may only occur consistent with the Eighth Amendment where an unhoused person has a real “choice in the matter.” *Martin*, 920 F.3d at 617. And that

choice cannot be between criminal penalties and a shelter that would require them to give up their rights. *See Parks v. Watson*, 716 F.2d 646, 650 (9th Cir. 1983).

Plaintiffs' proposed relief also threatens to result in violations of unhoused people's *state* constitutional rights as well. The Utah Constitution's analog to the Eighth Amendment, article I, section 9, similarly prohibits cruel and unusual punishment. However, unlike the federal constitution, this state provision also bars treating anyone who is arrested or convicted with "unnecessary rigor," a requirement that renders article I, section 9 in fact "broader than its federal counterpart." *State v. Lafferty*, 2001 UT 19, ¶ 73, 20 P.3d 342. The Utah Supreme Court has instructed that punishment "is cruel and unusual" under the state Constitution if it is not proportional "to both the offender and the offense." *State v. Houston*, 2015 UT 40, ¶ 64, 353 P.3d 55, *as amended* (Mar. 13, 2015); *see also State v. Simmons*, 947 P.2d 630, 633 (Utah 1997); *Lafferty*, 2001 UT 19, ¶ 73. And the question whether a punishment violates article I, section 9, must be assessed on a "case-by-case basis." *Lafferty*, 2001 UT 19, ¶ 72; *see also Dexter v. Bosko*, 2008 UT 29, ¶¶ 17–18, 184 P.3d 592 (recognizing that Utah's unnecessary rigor clause "focuse[s] on the circumstances and nature of the process" of arrest or imprisonment, and that resulting claims must be analyzed with an eye toward "the particular event or act in question, and the context in which it arose").

Any punishment—be it a fine for public camping or six months imprisonment for obstructing a sidewalk for two or more minutes—is disproportionate when the person cannot avoid such behavior and has no other option. Citing, arresting, and

incarcerating vulnerable community members for behaviors they cannot practically avoid “shocks the moral sense” and is clearly not “right” or “proper under the circumstances.” *Houston*, 2015 UT 40, ¶ 64. This is especially true when considering the long-term negative impacts such sanctions have on people experiencing homelessness, which is detailed in Part II below.

**C. Plaintiffs’ request would require application of vague and overbroad laws in violation of Utahns’ due process rights.**

Plaintiffs’ requested relief would require categorical enforcement of laws, including loitering and camping bans, that would violate unhoused people’s federal rights to be free from the application of vague and overbroad prohibitions. Vague laws are those that “fail[] to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests” under the Fourteenth Amendment. *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999) (holding that an ordinance prohibiting gang members from loitering with one another in public was impermissibly vague in violation of the Fourteenth Amendment); *see also Jordan v. Pugh*, 425 F.3d 820, 828 (10th Cir. 2005) (recognizing that a law may be “unconstitutionally vague because it subjects the exercise of [a] right . . . to an unascertainable standard” (citing *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971)); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (finding a vagrancy ordinance void for vagueness because it failed to give fair notice of the forbidden conduct and encouraged arbitrary arrests).

A law is impermissibly overbroad under the Fourteenth Amendment, and therefore invalid, where “a substantial number of its applications are

unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010); accord *Jordan*, 425 F.3d at 828; see also *Pottinger*, 810 F. Supp. at 1577 (finding “the challenged ordinances as applied to [unhoused people] are overbroad to the extent that they result in class members being arrested for harmless, inoffensive conduct that they are forced to perform in public places”).<sup>8</sup> The Utah Constitution also prohibits the enforcement of vague and overbroad laws to at least the same extent as the federal constitution, recognizing, for example, that a law is vague if it does not “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *State v. Johnson*, 2009 UT App. 382, ¶ 40, 224 P.3d 720, *overruled on other grounds by State v. Ogden*, 2018 UT 8, 416 P.3d 1132. The overbreadth doctrine in Utah is supported not only by the due process clause, but also the uniform operation of laws clause in article I, section 24, a provision with no textual analog under federal law. See *Board of Com’rs of Utah State Bar v. Petersen*, 937 P.2d 1263, 1268 (Utah 1997).

Many of the laws whose enforcement is sought by plaintiffs are overbroad and vague, creating a significant risk of arbitrarily suppressing protected liberties. For example, Salt Lake City’s “loitering on sidewalks” provision prohibits “any person” from

standing, lying, or sitting on any sidewalk for a longer period than two (2) minutes, in such manner as to obstruct the free passage of pedestrians thereon, or wilfully to remain standing, lying or

---

<sup>8</sup> While overbreadth is typically analyzed in the context of First Amendment protected speech, the U.S. Supreme Court has suggested that this doctrine may apply to other constitutionally protected activity, including “the constitutional right to freedom of movement.” *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

sitting thereon in said manner for more than one minute after being requested to move by any police officer.

SLC Code § 14.20.100.

Laws like this one are “vague enough to allow for selective enforcement and authorize citations and arrests of homeless people who are occupying, but not actually obstructing, pedestrian traffic.” *Housing Not Handcuffs*, *supra* note 3, at 42. The United States Supreme Court, analyzing a similar provision, found it unconstitutional because it allowed people to stand on public sidewalks “only at the whim of any police officer of that city.” *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965). The fact that the law was enforced by “the moment-to-moment opinions of a policeman” rendered it unconstitutional, *id.*, and the same is likely to be the case in Salt Lake City. Additionally, Salt Lake City’s law is overbroad, as it can be read to prohibit someone from standing with luggage on a sidewalk waiting for an Uber, someone who sits for a moment to catch their breath on a hot day, or someone who sleeps in the only spot available to them. *See Decker v. Fillis*, 306 F. Supp. 613, 617 (D. Utah 1969) (finding city ordinance overbroad where it could “literally cover almost any person loitering or even window shopping on the streets, particularly in the nighttime,” and where the ordinance would leave enforcement “almost entirely” to the discretion of police).

The City is already enforcing many of these ordinances against unhoused individuals and violating people’s rights. *See Displaced & Dispersed*, *supra* note 2; Peterson, *supra* note 5; Means, *supra* note 6; City Opp’n 3–5 (highlighting the City’s “increased . . . law enforcement and code compliance response”). Plaintiffs’ request

that the City be compelled to double down on this approach and ramp up the enforcement of vague and broad ordinances should be rejected.

**D. Clearing encampments may constitute a state-created danger, in violation of due process.**

The injunction sought by plaintiffs also risks placing unhoused people at serious risk of danger in a manner that violates their constitutional rights. Under the federal Fourteenth Amendment’s state-created danger doctrine, the government acts unconstitutionally where it “creates, or substantially contributes to the creation of, a danger or renders citizens more vulnerable to a danger than they otherwise would have been.” *Armijo By & Through Chavez v. Wagon Mound Pub. Sch.*, 159 F.3d 1253, 1263 (10th Cir. 1998) (citing *Reed v. Gardner*, 986 F.2d 1122, 1126 (7th Cir. 1993)). As relevant here, this doctrine can apply where a city’s actions “plac[e] homeless people in danger from the elements or lack of adequate services.” *Mary’s Kitchen v. City of Orange*, No. 8:21-CV-01483, 2021 WL 6103368, at \*11 (C.D. Cal. Nov. 2, 2021) (city’s proposal to evict service provider without transition plan would have left “hundreds without the services needed to survive,” putting unhoused people in a situation that was more dangerous than the one in which [the city] found” them); *see also Jeremiah v. Sutter Cnty.*, No. 2:18-CV-00522, 2018 WL 1367541, at \*5 (E.D. Cal. Mar. 16, 2018) (finding the state’s encampment clearings created an “increased risk of harm” based on declarations detailing “fear for safety” without shelter, “recent wind, rain, and cold weather,” and past efforts by county “to remove essential needs”); *Langley v. City of San Luis Obispo*, No. CV 21-07479-CJC, 2022 WL 18585987, at \*5 (C.D. Cal. Feb. 7, 2022) (plaintiffs plausibly alleged state-created danger claim where

“the City’s sweeps and property seizures force[d] homeless people to live exposed to the elements, without protection from cold, wind, and rain, jeopardizing their physical and mental health”).

Plaintiffs’ request that the City be ordered to clear unhoused individuals from the relative safety of their shelter and communities would similarly increase safety and health risks. As temperatures drop, these risks become more severe. Just last year, children in Salt Lake City were sleeping outside during snowstorms because they and their families had nowhere else to go. Ashley Fredde, *Utah homeless families with children face limited options going into winter*, KSL (Nov. 1, 2023).<sup>9</sup> One Salt Lake City resident experiencing homelessness during the winter months developed such severe frostbite that it caused him to lose his fingers. Liesl Nielson, *What happens to Utah’s homeless population in the winter?*, KSL (Feb. 23, 2019).<sup>10</sup> Plaintiffs’ requested relief, which will almost certainly result in the destruction of property that unhoused people rely on to keep them safe from the elements, would further heighten these risks.

\* \* \*

For all these reasons, the injunction plaintiffs seek would put unhoused people in Salt Lake City at risk of experiencing myriad constitutional deprivations under both the U.S. and Utah Constitutions, to the detriment of an untold number of

---

<sup>9</sup> <https://www.ksl.com/article/50765127/homeless-families-face-limited-options-going-into-winter>.

<sup>10</sup> <https://www.ksl.com/article/46496957/what-happens-to-utahs-homeless-population-in-the-winter>.



Utahns who have had no opportunity to participate in this litigation and defend their interests. The injunction would expose the City to additional lawsuits from unhoused residents seeking declaratory and injunctive relief, in addition to damages sufficient to address those constitutional violations. *See, e.g.*, 42 U.S.C. § 1983; *Spackman ex rel. Spackman v. Bd. of Educ. Of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, ¶¶ 22–25 16 P.3d 533 (discussing when plaintiffs may seek damages for violations of the Utah Constitution). This dramatic change to the status quo—and the constitutional harms it would engender—underscore that the requested preliminary injunction is adverse to the public interest and must be denied.

## **II. THE PROPOSED INJUNCTION IS ANTITHETICAL TO THE PUBLIC INTEREST BECAUSE IT WOULD EXACERBATE HOMELESSNESS**

States and cities across the country are facing unprecedented levels of homelessness, and Utah and Salt Lake City are no exception. According to the State’s 2023 Point-in-Time (PIT) count, there are more than 3,600 individuals experiencing homelessness in Utah, over 2,000 of whom are located in Salt Lake County. Workforce Services, Homeless Services, *2023 Annual Data Report on Homelessness* 25, 38 (2023), <https://jobs.utah.gov/homelessness/homelessnessreport.pdf> (“2023 Report”). Additionally, people in Salt Lake County are experiencing homelessness for longer than in the past: 97 days on average compared to 68 days in 2019. *Id.* at 28. There has also been “a concerning increase in the number of individuals experiencing chronic homelessness” in the state—1,004 individuals, a 96% increase from 2019. *Id.* at 16.

These staggering numbers are the result of structural policy failures, not individual failings. While housing costs in Utah have skyrocketed,<sup>11</sup> wages have not kept pace,<sup>12</sup> and the link between homelessness and unaffordable housing could not be clearer. For every \$100 increase in median rent, there is an associated nine percent increase in the homelessness rate. U.S. Government Accountability Office, *How COVID-19 Could Aggravate the Homelessness Crisis?* (Aug. 25, 2020), <https://www.gao.gov/blog/how-covid-19-could-aggravate-homelessness-crisis>; see also Tim Thomas & Julia Greenberg, *Urban Displacement Project's Salt Lake City Displacement Data Analysis*, Urban Displacement Project (July 14, 2022), [https://urban-displacement.github.io/edr-ut/slc\\_edr\\_report](https://urban-displacement.github.io/edr-ut/slc_edr_report) (discussing the lack of affordable housing in Salt Lake City).

Plaintiffs' proposed approach to this problem is adverse to the public interest because it would further entrench the problem of homelessness. A 2016 report

---

<sup>11</sup> See, e.g., James Wood & Dejan Eskic, University of Utah Kem C. Gardner Policy Institute, *The State of the State's Housing Market* 3 (2021), <https://gardner.utah.edu/wp-content/uploads/StateOfState-Oct2021.pdf?x71849&x71849> (“Almost all Utah counties have experienced substantial increases in housing prices in the past year.”); *id.* at 14 (“the availability of affordable/entry-priced housing has decreased over the last five years.”); Katie McKellar, *Salt Lake County is facing the tightest rental market in its history*, *Deseret News* (Apr. 1, 2022), <https://www.deseret.com/utah/2022/4/1/23006413/housing-market-rental-prices-utah-salt-lake-county-facing-tightest-rental-market-in-history>; see also James Wood & Dejan Eskic, *State of the State's Housing Market, 2022-2024*, at 9, 14-15 (2023), <https://gardner.utah.edu/wp-content/uploads/State-Of-Housing-Sep2023.pdf>.

<sup>12</sup> See, e.g., Christie Porter, *Housing Affordability: Things Are Weird, Right?*, *Salt Lake Magazine* (July 15, 2021), <https://www.saltlakemagazine.com/housing-affordability-utah>.

describes the “devastating cycle” created by the enforcement of laws penalizing unavoidable and life-sustaining behaviors:

A simple citation for violating a city ordinance easily traps people in the criminal justice system. For people living in homelessness, citation fines are typically out of reach. Their only option is to contest citations in court. But without an address or reliable transportation, they often fail to receive notice and do not appear in court. Failure to appear in court can result in a warrant for arrest. For that individual, the next act of sleeping on a bench . . . could lead to jail. Even if the charges are ultimately dismissed, an arrest carries devastating consequences. Spending even a night or two in jail can mean missing work or losing a spot at a shelter. Criminal records make securing housing, employment, and social services more difficult and, in some cases, impossible. These dynamics further entrench homelessness and poverty, leading people back to the park bench or the city plaza, where they likely will be fined or arrested yet again.

Allard K. Lowenstein International Human Rights Clinic, Yale Law School, *“Forced Into Breaking the Law”: The Criminalization of Homelessness in Connecticut 2* (2016).<sup>13</sup>

Because plaintiffs’ requested relief would effectively require the City to enforce the specified ordinances against people experiencing homelessness, it would result in these residents being subject to fines they cannot afford, incarceration, and criminal records. For example, the City’s loitering ordinance, SLC Code § 14.20.100, is punishable by up to six months imprisonment and a fine of up to \$1,000, *id.* § 1.12.050. And a 2022 ACLU of Utah report found that the average cost of court-

---

<sup>13</sup> [https://law.yale.edu/sites/default/files/documents/pdf/news/criminalization\\_of\\_homelessness\\_report\\_for\\_web\\_full\\_report.pdf](https://law.yale.edu/sites/default/files/documents/pdf/news/criminalization_of_homelessness_report_for_web_full_report.pdf).

issued anti-camping fines in Salt Lake City was \$655, a sum that people experiencing homelessness cannot afford. *Displaced & Dispersed*, *supra* note 2, at 2.

Far from solving the problem of homelessness, fining and imprisoning unhoused City residents would make the problem much worse. Someone who has nowhere safe to stay does not suddenly find housing after being fined hundreds of dollars. Moreover, the cycle of individuals moving from homelessness to jail and prison—and then back to homelessness again—is well documented.<sup>14</sup>

The proposed injunction would also likely exacerbate the problem of homelessness by resulting in the seizure and destruction of unhoused people’s property. The property at issue includes camping materials, like tents, but also incredibly important documents and medications that are difficult to replace if lost. As the U.S. Interagency Council on Homelessness has recognized, law enforcement approaches to homelessness “result in adverse health outcomes, exacerbate racial disparities, and create stress, loss of identification and belongings, and disconnection from much-needed services.” United States Interagency Council on Homelessness, 7 *Principles for Addressing Encampments* 1 (June 17, 2022) [https://www.usich.gov/sites/default/files/document/Principles\\_for\\_Addresssing\\_Encampments\\_1.pdf](https://www.usich.gov/sites/default/files/document/Principles_for_Addresssing_Encampments_1.pdf). “While these efforts may have the short-term effect of clearing an encampment from public

---

<sup>14</sup> See, e.g., Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, Prison Policy Initiative (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> (finding that “formerly incarcerated people are almost 10 times more likely to be homeless than the general public”); Madeline Bailey, Erica Crew, & Madz Reeve, Vera Institute of Justice, *No Access to Justice: Breaking the Cycle of Homelessness and Jail* (2020), <https://www.vera.org/downloads/publications/no-access-to-justice.pdf>; *Housing Not Handcuffs*, *supra* note 3.

view,” *id.*, which is plaintiffs’ desired outcome, they are decidedly against the public interest.

At minimum, the City must, within the confines of the U.S. and Utah Constitutions, have substantial leeway in deciding when and whether to enforce local ordinances against people experiencing homelessness who have nowhere else to go, consistent with traditional enforcement powers. Plaintiffs’ proposed injunction would usurp that discretion and allows nine people to direct the City’s resources towards enforcement of laws that will make the crisis they complain of worse.

### **CONCLUSION**

For the foregoing reasons, amici urge the Court to deny the request for a preliminary injunction.

RESPECTFULLY SUBMITTED this 7th day of November, 2023.

*/s/ John Mejia*  
ACLU OF UTAH FOUNDATION, INC.  
John Mejia

AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
Bridget Lavender  
Scout Katovich  
Julie A. Murray

SALT LAKE LEGAL DEFENDER ASSOCIATION  
Jason M. Groth  
Richard P. Mauro

*Attorneys for Amici Curiae American Civil Liberties Union of Utah, American Civil Liberties Union Foundation, National Homelessness Law Center, Crossroads Urban Center, and Salt Lake Legal Defender Association*

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that, on the 7th day of November, 2023, I electronically filed the foregoing **BRIEF OF AMICI CURIAE IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION**, which served all counsel of record.

*/s/ John Mejia*