

IN THE SUPREME COURT OF UTAH

No. 2024-0346-SC

DANIELLE BARRANI, et al.,
Plaintiffs/Appellants,

v.

SALT LAKE CITY, a Utah municipal corporation,
Defendant/Appellee.

Review of the Ruling and Order Granting Defendant's Motion to Dismiss, on
March 27, 2024, at No. 230907360, in the Third Judicial District Court for
Salt Lake County

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION OF UTAH, NATIONAL
HOMELESSNESS LAW CENTER, and CROSSROADS URBAN
CENTER IN SUPPORT OF RESPONDENTS**

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INTRODUCTION AND SUMMARY OF ARGUMENT

Hundreds if not thousands of Salt Lake City residents have no access to safe indoor shelter and must live and sleep in public. This number is rising every year, as housing prices skyrocket and wages remain stagnant. Instead of working constructively to ameliorate Salt Lake City’s homelessness crisis through proven solutions, including affordable housing, safe emergency shelters, voluntary services, and eviction protections, Plaintiffs—nine city residents and business owners—ask the courts to label the city’s unhoused residents as “nuisances” to be abated. This approach is callous, ineffective, and risks violating the constitutional rights of Salt Lake’s unhoused residents.

In September 2023, Plaintiffs 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* R.21, R.33. Violations of these local ordinances carry potential misdemeanor or infraction penalties.

Plaintiffs sought sweeping relief in the district 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. R.26–27, R.48. While they have been continuously vague about exactly what they would have the City ordered to do to “immediately abate” the “nuisances,” they recognize that the relief would likely involve clearing and dismantling existing campsites, relocating people—perhaps forcibly—living there, and enforcing criminal ordinances against City residents who are not named or otherwise represented in this litigation. *See, e.g.*, R.26–27, R.41.

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 help the

Court understand the stakes of this case for those most directly affected: people experiencing homelessness in Utah and Salt Lake City. Plaintiffs' requested relief, in addition to being improperly vague as found by the trial court, would very likely result in the City violating both the federal and state constitutional rights of unhoused Utahns. Plaintiffs' requested relief requiring the immediate "abatement" of the alleged nuisances would likely 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 could also lead to further litigation against the City by unhoused residents who have had no voice in this litigation.

Additionally, the very premise of Plaintiffs' lawsuit is that people experiencing unsheltered homelessness in Utah are a "nuisance" that need to be "abated." This framing both ignores and trivializes the severity of the housing crisis in Utah and the reasons people become homeless in the first place. And Plaintiffs' requested relief would force

Utah courts to order the City to make the problem of homelessness worse, not better. Citing, fining, and jailing 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. This Court should reject Plaintiffs' attempts to enlist the judicial system to exacerbate the crisis of homelessness in Utah and Salt Lake City.

INTEREST OF AMICI CURIAE¹

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 litigation and advocacy to protect the rights of unhoused people across the country. Its litigation challenges laws and practices that criminalize or

¹ Counsel for all parties received timely notice of the filing of this brief and consented thereto pursuant to Rule 25(a) and 25(b)(2). No party or counsel authored the brief in whole or in part, and neither they nor anyone else contributed any money intended to fund its preparation or submission.

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.²

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

² 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; ACLU Utah & Smart Justice Utah, *Operation Rio Grande* (2019), 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/1t0dd089delympb87zxz4lzre8i33o0zxp8> (hereinafter, "*Displaced & Dispersed*").

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.³

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

³ 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 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.

passes, or other forms of assistance from the food pantries are unhoused.

ARGUMENT

Plaintiffs' lawsuit seeks a court order requiring Salt Lake City "immediately to take all steps necessary to abate" any nuisances (i.e., unhoused people) on any and all City property. R.26–27. As recognized by the district court, Plaintiffs have been continuously "coy" about exactly *how* they expect the City to do this. R.763. Despite Plaintiffs' attempts to skirt the issue, the lawsuit has consistently focused on two things: the existence of unhoused people on public streets and property and the alleged violation of City ordinances and state laws. *See* R.2–3, R.21–23; R.757, R.762–63. And Plaintiffs seek a court order to compel the City to clear all encampments on all City property and ramp up enforcement of ordinances and laws against unsheltered people with no choice but to live, sleep, and exist in public.

Plaintiffs do not contend with, or even acknowledge, the Utahns at the very core of this lawsuit—the hundreds (if not thousands) of Salt Lake City residents who are experiencing unsheltered homelessness and would be direly affected by Plaintiffs' requested relief. Amici submit

this brief to make clear to the Court the gravity of the situation. This lawsuit not only threatens the federal and state constitutional rights of unsheltered Utahns, who are not named in the complaint and are not represented by either party, but also would compel the City to engage in actions that would make the problem worse. This Court should reject Plaintiffs' attempt to co-opt nuisance law to compel the City to respond to the homelessness crisis in such a cruel and counterproductive manner.

I. This lawsuit threatens the constitutional rights of unsheltered Utahns, who were not part of the lawsuit and are not represented or considered by either party.

A. Property and procedural due process rights.

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.

Federal courts have found these guarantees to apply with equal force to 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. *See Pottinger v. City of Miami*, 810 F. Supp. 1551, 1559 (S.D. Fla. 1992). Given the stakes, federal courts regularly find violations of unhoused people’s Fourth and Fourteenth Amendment rights occur when cities clear encampments from public areas, 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) *aff’d in part, vacated in part*,

remanded, No. 23-15087, 2024 WL 3325655 (9th Cir. July 8, 2024); *Fund for Empowerment v. City of Phoenix*, 646 F. Supp. 3d 1117, 1125 (D. Ariz. 2022) *abrogated on other grounds by City of Grants Pass v. Johnson*, 144 S.Ct. 2202 (2024).

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. Taken together, these state constitutional provisions likely provide more protection for Utah’s unhoused residents. *Cf. Davis v. Bissen*, 545 P.3d 557 (Haw. 2024) (finding violations of unhoused plaintiffs’ procedural due process and property rights under the state constitution resulting from City sweeps and destruction of property).

Amici's concern is not purely hypothetical; there is good reason to believe that the relief sought by Plaintiffs in this case would pose significant risks of federal and state constitutional violations. For example, as the City conceded below, its current policy provides unhoused individuals only five minutes to collect and remove their property before it is seized by law enforcement. R.66, R.79; *see also* SLC Code § 11.12.080. Such short notice is constitutionally insufficient. *See Sturgeon v. City Manager Robert Herron*, No. 5:20-CV-192, 2020 WL 11191761, at *4 (N.D. W. Va. Sept. 16, 2020) (finding 72 hours notice before clearing encampments “woefully insufficient”); *Mitchell v. City of Los Angeles*, No. 16-CV-1750, 2016 WL 11519288, at *7 (C.D. Cal. Apr. 13, 2016) (ordering city to “provide 24 hours advance notice advising homeless people of the cleanup and possible seizure of property”); *Murray v. City of Philadelphia*, 481 F. Supp. 3d 461, 476 (E.D. Pa. 2020) (requiring “those occupying the encampments be provided with at least 72 hours’ notice to vacate the encampments”). Past sweeps of encampments in Salt Lake 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);⁴ Emily Means, *How camp abatements affect Salt Lake City's unsheltered people*, KUER (Dec. 21, 2021).⁵ Accordingly, Plaintiffs' requested injunctive relief would almost certainly compel the City to continually and categorically violate unhoused people's constitutional rights and could lead to litigation comparable to that occurring in other jurisdictions.

B. Protection against cruel and unusual punishment.

The Utah Constitution prohibits the imposition of any "cruel and unusual punishment[]" or "excessive fine[]." Utah Const. art. I, § 9. 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.

⁴ <https://economichardship.org/2022/07/taxpayers-spent-over-half-a-million-dollars-to-clean-homeless-encampments-in-salt-lake-county-in-2021/>.

⁵ <https://www.kuer.org/race-religion-social-justice/2021-12-21/how-camp-abatements-affect-salt-lake-citys-unsheltered-people>.

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 of 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”).

Imposing civil or criminal penalties on people for sitting, sleeping, or lying outside on public property who have nowhere else to go likely violates article I, section 9 of the Utah Constitution. 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 are detailed in Part II below.

The United States Supreme Court’s decision in *City of Grants Pass v. Johnson* is not contrary to this argument. In *Grants Pass*, the Court held that the cruel and unusual punishments clause of the Eighth Amendment of the federal constitution does not prohibit “[t]he enforcement of generally applicable laws regulating camping on public property.” 144 S.Ct. 2202, 2204 (2024). But the ruling in *Grants Pass* governs only the *federal* constitution. Utah’s article 9 is “broader than” the Eighth Amendment due to the inclusion of the unnecessary rigor clause. *State v. Lafferty*, 2001 UT 19, ¶ 73, 20 P.3d 342. And as for the cruel and unusual language, this Court has explicitly “rejected a presumption that ‘federal construction of similar language is correct.’” *State v. Poole*, 2010 UT 25, ¶ 12, 232 P.3d 519; *see State v. Briggs*, 2008 UT 83, ¶ 24, 199 P.3d 935. Instead, this Court has “not hesitated to interpret the provisions of the Utah Constitution to provide more

expansive protections than similar federal provisions where appropriate.” *Briggs*, 2008 UT 83, ¶ 24. In short, the United States Supreme Court’s decision in *Grants Pass* “does not directly speak to Utahns’ understanding of the Utah Constitution,” does not “consider the unique circumstances of Utah’s founding,” *Planned Parenthood Ass’n of Utah v. State*, 2024 UT 28, ¶¶ 154–55, and does not diminish the state constitutional concerns of punishing unhoused people for engaging in life-sustaining activities when they have no other choice. *See League of Women Voters of Utah v. Utah State Legis.*, 2024 UT 21, ¶ 185 (the Utah Supreme Court is “the ultimate and final arbiter of the meaning of the provisions in the Utah Declaration of Rights” (citation omitted)).

C. Due process protections against vague and overbroad laws.

As the district court noted, Plaintiffs’ suit is primarily focused on the alleged “inadequacy of police protection and enforcement” of state laws and local ordinances. R.757. Specifically, Plaintiffs’ request that the City immediately “abate” all “nuisances” (unhoused people) on City property would almost certainly require categorical enforcement of laws, including loitering and camping bans, that would violate

unhoused people’s 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. City of 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”).⁶

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).

⁶ 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).

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 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,⁷ found it unconstitutional because it allowed people to stand on public sidewalks “only at the whim of any

⁷ The relevant language of the ordinance in question made it an offense to “so stand, loiter, or walk upon any street or sidewalk as to obstruct free passage over, on or along said street or sidewalk” and made it “unlawful for any person to stand or loiter upon any street or sidewalk after having been requested by any police officer to move on.” *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965) (internal quotation marks and alterations omitted).

police officer of that city.” *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965). There, 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 “loitering on sidewalks” law is overbroad, as it can be read to prohibit someone from standing with luggage on a sidewalk waiting for an Uber, sitting for a moment to catch their breath on a hot day, or sleeping 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 in violation of people’s rights. *See Displaced & Dispersed*, *supra* note 2; Peterson, *supra* note 4; Means, *supra* note 5; R.66–68 (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 not be allowed by this Court.

D. Due process protections against state-created dangers.

The relief 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, 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 recently, 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).⁸ 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).⁹ 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 relief Plaintiffs seek in this lawsuit 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 Utahns who have had no opportunity to participate in this litigation and defend their interests. The relief could expose the City to additional lawsuits from unhoused residents seeking declaratory and injunctive relief, in addition to damages sufficient to address those constitutional

⁸ <https://www.ksl.com/article/50765127/homeless-families-face-limited-options-going-into-winter>.

⁹ <https://www.ksl.com/article/46496957/what-happens-to-utahs-homeless-population-in-the-winter>.

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); *League of Women Voters*, 2024 UT 21, ¶¶ 176, 183–86.

II. Treating people experiencing unsheltered homelessness as a “nuisance” to be “abated” ignores the gravity of the problem.

Plaintiffs’ lawsuit is premised on the idea that people experiencing homelessness are a mere “nuisance” to housed Utahns and should thus be removed, perhaps forcibly, from all public property. This contention is not only offensive to those experiencing homelessness, but also severely undermines and ignores the gravity of the problem.

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 2024 Point-in-Time (PIT) count, there were more than 3,800 individuals experiencing homelessness on a single night in Utah, an almost 9% increase from 2022.¹⁰ Approximately 2,000

¹⁰ Workforce Services, Homeless Services, Homelessness Annual Report Dashboard, <https://jobs.utah.gov/homelessness/hard.html> (“PIT” tab) (last visited Sept. 16, 2024) (“2024 Homelessness Annual Report”).

of these individuals are in Salt Lake County.¹¹ The number of Utahns who experienced homelessness for the first time has skyrocketed to almost 10,000 Utahns in 2023, compared to just under 8,000 in 2021.

See 2024 Homelessness Annual Report, supra note 10. Of these almost 10,000 in 2023, more than 4,700 of the individuals, or 48%, were in Salt Lake County. *Id.*

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. 2023 Report, *supra* note 11, at 28. There has also been “a concerning increase in the number of individuals experiencing chronic homelessness”¹² in the state—1,004 individuals, a 96% increase from 2019. *Id.* at 16.

¹¹ Workforce Services, Homeless Services, *2023 Annual Data Report on Homelessness* 25, 38 (2023), <https://jobs.utah.gov/homelessness/homelessnessreport.pdf> (“2023 Report”).

¹² “Chronic homelessness refers to individuals who have experienced literal homelessness for at least a year, either continuously or in four or more separate instances within the past three years, while also experiencing a disabling condition such as physical disability, severe mental illness, or substance use disorder.” 2023 Report, *supra* note 11, at 16.

These staggering numbers are the result of structural policy failures, not individual failings. While housing costs in Utah have skyrocketed,¹³ wages have not kept pace,¹⁴ 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);¹⁵ see also Tim Thomas & Julia Greenberg, *Urban Displacement Project's Salt Lake City Displacement Data Analysis*,

¹³ 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>.

¹⁴ See, e.g., Christie Porter, *Housing Affordability: Things Are Weird, Right?*, Salt Lake Magazine (July 15, 2021), <https://www.saltlakemagazine.com/housing-affordability-utah>.

¹⁵ <https://www.gao.gov/blog/how-covid-19-could-aggravate-homelessness-crisis>.

Urban Displacement Project (July 14, 2022) (discussing the lack of affordable housing in Salt Lake City).¹⁶

Rather than contending with these structural and policy failings, Plaintiffs' lawsuit presumes that the answer to homelessness is to forcibly remove unhoused people from City property and to categorically enforce various ordinances and laws against them. But this would further entrench the problem of homelessness. A 2016 report 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

¹⁶ https://urban-displacement.github.io/edr-ut/slc_edr_report

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).¹⁷

Because Plaintiffs’ request is that the City ramp up enforcement of certain 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-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 jailing unhoused City residents would make the problem much worse. Someone who has nowhere safe to stay does not suddenly find housing

¹⁷ https://law.yale.edu/sites/default/files/documents/pdf/news/criminalization_of_homelessness_report_for_web_full_report.pdf.

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.¹⁸

Plaintiffs' requested relief 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

¹⁸ 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.

Council on Homelessness, *7 Principles for Addressing Encampments 1* (June 17, 2022).¹⁹

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, consistent with traditional enforcement powers. Plaintiffs' lawsuit would usurp that discretion and allow nine people to direct the City's resources towards enforcement of laws that will make the crisis they complain of worse.

CONCLUSION

The Plaintiffs' proposed response to the homelessness crisis—labeling unhoused people as “nuisances” and seeking a court order to penalize them for living in public when they have nowhere else to go—is callous, ineffective, and risks violating the constitutional rights of Salt Lake City's unhoused residents. This Court should reject this attempt to co-opt nuisance law and affirm the dismissal of the lawsuit.

¹⁹ https://www.usich.gov/sites/default/files/document/Principles_for_Addressing_Encampments_1.pdf

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rule 25(f) because it contains 5,677 words as calculated by Microsoft Word. I further certify that it complies with Rule 21 as it contains no non-public information.

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CERTIFICATE OF SERVICE

I certify that on September 23, 2024, a copy of Brief of Amicus Curiae the American Civil Liberties Union, the American Civil Liberties Union of Utah, the National Homelessness Law Center, and Crossroads Urban Center was filed by using the Court's electronic filing system and that the following were served via email:

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