



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103
(801) 521-9862 PHONE • (801) 532-2850 FAX
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

For immediate release:

April 3, 2017

Contact:

Anna Brower, Strategic Communications Manager
(720) 275-1557, annabrower@acluutah.org

ACLU of Utah Statement on Salt Lake County Sheriff's "Operational Recommendations for Rio Grande District"

Over the past year, as rhetoric around the Rio Grande neighborhood has become increasingly heated and hyperbolic, our organization has been prevailed upon by service providers, law enforcement leaders, elected officials, community activists and others to offer informal observations about the potential constitutional issues with both proposed policies and initiated actions.

Most recently, the ACLU of Utah has been asked to respond to the "Operational Recommendations for Rio Grande District," distributed by the Pioneer Park Coalition on March 21 and attributed to Salt Lake County Sheriff James Winder.

While we are not aware of any specific plans to put these recommendations into effect, we feel that it is important to inform elected officials and the public at this early stage that several aspects of the proposal are constitutionally suspect and could attract expensive litigation.

For example, Eighth Amendment challenges to ordinances related to "camping" have been successful in multiple jurisdictions throughout the United States in recent years. Various courts have held that laws aimed at preventing individuals from living outdoors in public spaces, when a lack of available shelter beds and affordable housing preclude any other reasonable option, constitute cruel and unusual punishment under the Eighth Amendment.

Restrictive policies and bed limits imposed upon emergency shelters like The Road Home will only exacerbate the lack of available sheltered spaces for people in need. Reducing substantive access to emergency shelter beds will likely strengthen Eighth Amendment claims against anti-camping ordinances and other laws aimed at people experiencing homelessness. Such policies may also cause shelters to fall out of compliance with federal grant requirements that they, as homeless services providers, actively participate in towards helping to end the criminalization of homelessness.

Strict enforcement of "camping ordinances," especially when enforcement involves the seizure of property, has attracted successful lawsuits with constitutional claims under the Fourth and Fourteenth Amendments, as well. The government cannot seize and destroy "essential belongings"

such as tents, blankets, medications, items of sentimental value, and personal documents without proper notice and adequate opportunities for recoupment by property owners. Successful litigation by homeless community members has forced local governments in several jurisdictions to significantly alter encampment enforcement practices (such as improving property storage procedures and making critical belongings available within 24 hours after seizure).

In fact, according to the National Law Center for Homelessness & Poverty, “75% of cases challenging evictions of homeless encampments and/or the seizure and destruction of homeless persons’ belongings” achieved results that were favorable to the civil rights and civil liberties of people experiencing homelessness.

Any proposal that increases the chances that local ordinances (such as bicycle registration requirements or allowable access to public power outlets) will be selectively enforced, especially when accompanied by the seizure of property, should raise red flags for public officials, given the likely Fourth and Fourteenth Amendment implications. Recurring patterns of selective enforcement, carried out in a particular geographic area and targeted at specific groups of people, can lead to successful civil rights litigation by impacted plaintiffs.

Overreaching government interference in an individual’s ability to engage in panhandling or begging creates serious constitutional issues for municipalities. Panhandling has long been recognized as political speech and protected, as such, by the First Amendment. The vast majority of lawsuits challenging ordinances that restrict begging or solicitation have produced results favorable to the plaintiff. It is also suspect for governmental entities to endorse as “legitimate” some political messages over others, and to allow officials to subjectively limit access to public spaces such as sidewalks.

Policy proposals that seek to force individuals to live only in certain places, or restrict their travel between cities and states, may infringe upon those individuals’ constitutionally protected right to travel and right to freedom of movement. Additionally, the United States participates in treaties and other agreements with international human rights entities that recognize the right to movement and the freedom to choose one’s own residence.

Those who bear the responsibility of managing public resources, while protecting the rights of *all* community members, must resist the political pressure to engage in constitutionally suspect responses to common metropolitan issues. We urge our elected officials to place in proper context the issues faced by *all* members of the Rio Grande community, without rushing for overzealous “fixes” that trample on some members’ constitutional rights and do nothing to resolve underlying causes of homelessness and addiction.

Low wages, lack of affordable housing, persistent racial discrimination and an insufficient social safety net are among the complex issues that combine to force people to engage in their struggle for survival in public places. Because people are not engaged in this struggle by choice, but because they lack other more desirable options, increased criminal and civil punishment accomplishes no constructive purpose.