



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

(913) 490-4100
aclukansas.org

Susan Estes
President

Nadine Johnson
Executive Director

Lon Lewis
Treasurer

Leslie Bissell
Secretary

James Bell
Sandy Brown
Micheline Burger
Amii Castle
Roberta Eveslage
Robert Eye
Mark Johnson
Raymond Rico
Brad Stuewe, M.D.
Annie Tietze
Board of Directors

December 20, 2019

By First Class Mail and Email to:

Toni R. Wheeler
City Attorney of Lawrence
6 East 6th Street, 4th Fl.
Lawrence, KS 66044
twheeler@lawrenceks.org

Robin Crabtree
Douglas County Commission
1100 Massachusetts Street, 2nd Fl.
Lawrence, KS 66044
rcrabtree@douglascountyks.org

Re: Lawrence's Anti-Camping Ordinance.

Dear Ms. Wheeler and Ms. Crabtree:

We are writing on behalf of Byran Griffin and Seth Yancy, two homeless individuals residing in the City of Lawrence who have recently been subjected to unconstitutional arrest, prosecution, and destruction of personal property pursuant to the City of Lawrence's anti-camping ordinance. *See* Municipal Code § 14-417 ("Illegal Camping"). We urge you to immediately cease all enforcement of the city's camping ordinance against houseless individuals, including the automatic seizure and destruction of personal property without due process of law.

Background Regarding the Anti-Camping Ordinance.

Lawrence's anti-camping ordinance makes it a criminal offense to fall asleep or store any personal belongings on public property.¹ The crime of illegal camping is punishable by \$1000 or up to six months in jail.² The ordinance specifically targets homeless individuals for criminal prosecution.³ Lawrence's illegal camping ordinance is also one of the most aggressive in Kansas. Unlike other cities, Lawrence can prosecute homeless people for sleeping in public even when there is no adequate shelter space available to them.⁴

¹ LAWRENCE, KAN., CITY CODE ch. XIV, art. IV, §§ 14-417(A)(2)(a)-(b) (listing prohibited activities including "sleeping or making preparations to sleep" and "storing personal belongings" on public property).

² *Id.* § 14-417(D).

³ *Id.* § 14-417(A)(1) (limiting prosecution under the ordinance solely to those who are "using the area as a living accommodation").

⁴ *Compare* LAWRENCE CITY CODE § 14-417(A) (containing no exception for homeless individuals whatsoever), *with* WICHITA, KAN., CITY CODE § 5.20.020 ("It is unlawful and a public nuisance for any person or persons to camp in or upon any public property or public right of way, unless such person or persons have been granted a temporary permit allowing such activity as set forth in Section 5.20.040 of this chapter, *or the individual or individuals are deemed homeless and there are no appropriate shelters available for them*") (emphasis added).

Recent Enforcement Actions Against Mr. Griffin and Mr. Yancy.

Lawrence's anti-camping ordinance continues to be vigorously enforced. On August 12, 2019, Mr. Bryan Griffin sat down to rest briefly at the corner of Massachusetts Street and Ninth Street in Downtown Lawrence. Shortly thereafter, Lawrence Police Officer Charles Stewart accused Mr. Griffin of sleeping in public and issued him a citation for illegal camping pursuant to Municipal Code § 14-417. On October 8, 2019, Mr. Griffin pled guilty and accepted a \$200 fine and underlying 30-day jail sentence.⁵ At the time Mr. Griffin was cited for sleeping in public, the Lawrence Community Shelter had already started turning residents away, ultimately reducing its shelter capacity by 50% (125 to 65 beds) at the end of August 2019.⁶ Nonetheless, Mr. Griffin is one of at least ten individuals who have been prosecuted under the anti-camping ordinance this year.⁷ Mr. Griffin fears that he will be prosecuted for violating the ordinance in the future due to his inability to find permanent shelter. Additionally, he does not have the means to pay his \$200 fine and related court costs.

On October 28, 2019, the City of Lawrence and Douglas County coordinated a "clean-up" of homeless property underneath an I-70 overpass by the Kansas River where approximately 5-6 homeless individuals had been taking shelter from the cold. Mr. Seth Yancy was one of the homeless individuals living on-site. Law enforcement officers approached the area after dark and without prior notice to the inhabitants. They confronted Mr. Yancy and informed him that "this is an illegal campsite and we are confiscating everything." At the time, Mr. Yancy had all of his belongings with him: a tent, a sleeping bag, his only sets of clothes, and a backpack full of survival gear. Mr. Yancy was offered no opportunity to take any of this property with him. Instead, officers cut open his tent and proceeded to dump his belongings into the back of their vehicle. To date, Mr. Yancy has not recovered his property—which has likely been destroyed.⁸

Legal Analysis

The Eighth Amendment's prohibition against cruel and unusual punishment protects people from being criminalized merely because of some societally

⁵ See *City of Lawrence v. Bryan Phillip Griffin*, Case # 2019-CR-0000905-MC.

⁶ Rochelle Valverde, *Reduction in homeless shelter capacity raises question: Where can people legally sleep?*, LAWRENCE JOURNAL-WORLD (Sept. 15, 2019), available at <https://www2.ljworld.com/news/city-government/2019/sep/15/reduction-in-homeless-shelter-capacity-raises-question-where-can-people-legally-sleep/>.

⁷ *Id.* (noting that "police department has issued 10 citations for illegal camping downtown and five citations for violation of park hours" this year).

⁸ Mr. Yancy's experience is just one of several reported to the ACLU of Kansas in recent months regarding the summary destruction of homeless individuals' personal property under the anti-camping ordinance, including at least one instance in May 2019 where homeless individuals received no notice before their property was bulldozed and buried by law enforcement near the Amtrak station in Downtown Lawrence.

undesirable status they possess—such as being homeless.⁹ Where homeless individuals have no available shelter, prosecuting them for sleeping in public is synonymous with punishing them because they are homeless.¹⁰ As a result, courts across the country have blocked the enforcement of anti-camping ordinances under the Eighth Amendment in cities that do not provide adequate shelter space to their homeless population.¹¹ Given the well-documented lack of available shelter space in the community, Lawrence continues to violate Mr. Griffin's constitutional rights and the rights of other homeless individuals by maintaining a practice of prosecuting them for sleeping on public land when they have no other alternative.

The Fourteenth Amendment also protects homeless individuals from having their property seized and destroyed by law enforcement without due process.¹² Specifically, due process requires affording homeless individuals both adequate advance notice of a property clean-up and an opportunity to reclaim confiscated property at a designated location.¹³ Mr. Yancy was afforded neither of these

⁹ See, e.g., *Robinson v. California*, 370 U.S. 660, 666 (1962) (prohibiting the criminalization of a person's status because otherwise they would be "continuously guilty of [the] offense" by virtue of who they are in violation of the Eighth Amendment).

¹⁰ *Martin v. City of Boise*, 920 F.3d 584, 616-17 (9th Cir. 2019) ("the [S]tate may not criminalize conduct that is an unavoidable consequence of being homeless— namely sitting, lying, or sleeping on the streets" if shelter options are not available) (internal quotations and citations omitted).

¹¹ See, e.g., *Martin*, 920 F.3d at 618 (preventing application of Boise's anti-camping ordinance); *Jones, v. City of L.A.*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated on other grounds*, 505 F.3d 1006 (9th Cir. 2007) (finding application of Los Angeles anti-camping ordinance violated Eighth Amendment); *Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994), *rev'd on other grounds*, 61 F.3d 442 (5th Cir. 1995) (Dallas anti-camping ordinance unenforceable against homeless people under Eighth Amendment); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1583-84 (S.D. Fla. 1992) (barring arrest of homeless individuals in Miami under a number of local ordinances); see also *Murphy v. Raoul*, 380 F. Supp. 3d 731, 763 (N.D. Ill. 2019) ("It is not possible for homeless people to avoid sitting, lying, or sleeping in public because of their homeless status, at least where the evidence establishes that there is an absolute lack of available shelter space").

¹² See, e.g., *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1012 (C.D. Cal. 2011) (declaring that Fourteenth Amendment due process "protect[s] homeless persons from government seizure and summary destruction of their unabandoned, but momentarily unattended, personal property"); see also *See v. City of Fort Wayne*, Case No. 1:16-cv-00105-JVB-SLC, 2016 U.S. Dist. LEXIS 185598, at *22 (N.D. Ind. June 16, 2016) (noting that "[l]itigants have succeeded in challenging a practice of seizing and destroying homeless individuals' non-abandoned possessions without any notice or an opportunity to be heard either before or after the seizure of property").

¹³ See, e.g., *O'Callaghan v. City of Portland*, No. 3:12-CV-00201-BR, 2013 U.S. Dist. LEXIS 154864, at *4 (D. Or. Oct. 29, 2013) (finding that sufficient due process was provided where plaintiff was given notice 24 hours prior to the removal of his personal property from the public land on which he was illegally camping, the city stored the property for 30 days, and a process existed for plaintiff to reclaim his removed property); *Love v. City of Chi.*, Case No. 96 C 0396, 1998 U.S. Dist. LEXIS 1386, at *9 (N.D. Ill. Feb. 6, 1998) (finding the city's cleaning practice to be constitutional where it incorporated three types of advance notice—one day prior, 12 hours prior, and 20 minutes prior—and a designated 'safe

Re: Lawrence's Anti-Camping Ordinance

December 19, 2019

Page 4

constitutional protections when law enforcement seized, damaged, and ultimately failed to return his property. Lawrence violates the Fourteenth Amendment rights of homeless individuals when it conducts property sweeps in this fashion.

Resolution

Please contact us about this matter by **Tuesday, January 9, 2020**, so that we can discuss the facts, the city's response to this situation, and possible remedies. This letter is an attempt to resolve this issue amiably.

Sincerely,



Zal Shroff

Staff Attorney

zshroff@aclukansas.org

Direct Dial: (913) 303-3641



Lauren Bonds

Legal Director

lbonds@aclukansas.org

Direct Dial: (913) 490-4114

CC: Jennifer Ananda,
Mayor of Lawrence

Gregory Burns Jr.,
Lawrence Chief of Police

Ken McGovern,
Douglas County Sheriff

area' to which homeless persons could temporarily move their personal property during a cleaning).