

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND SAGER, ANTOINE)
RANDLOPH, GARY WEST and)
WILLIAM DUERR, individually)
and on behalf of a class of) Civil Action No.: _____
similarly-situated)
individuals,)
)
Plaintiffs,)
)
v.)
)
CITY OF PITTSBURGH,)
)
Defendant.)
_____)

**PLAINTIFFS' LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Plaintiffs in this action, unsheltered homeless people living on public property, seek preliminary injunctive relief to prevent City of Pittsburgh employees from seizing and destroying their personal property, without due process or just compensation, in what is the latest in a series of "sweeps" that the Mayor's office has announced for the upcoming week. The City has the authority to clean its public spaces. It simply may not do so in a way that violates people's constitutional rights.

As discussed in greater detail below, plaintiffs are likely to prevail on the merits of their claims that the City's sweeps are unconstitutional. The destruction of personal property constitutes a Fourth Amendment seizure. In the absence of a warrant, probable cause or exigent circumstances, courts addressing the situation have deemed similar sweeps to violate

the Fourth Amendment. In the United States Supreme Court's words, "an officer who happens to come across an individual's property in a public area could seize it only if Fourth Amendment standards are satisfied - for example, if the items are evidence of a crime or contraband."

Additionally, the destruction of personal property pursuant to an official municipal policy, without pre-deprivation notice and an opportunity to contest the seizure, violates procedural due process protections required by the Fourteenth Amendment. Given that the City of Pittsburgh could easily employ procedural protections similar to those used in other major cities, the deprivations that will occur during this sweep will be unconstitutional.

Using recent sweeps as a guide, the City is likely to seize and destroy plaintiffs' personal property that constitutes life necessities (clothing, blankets, food and medications) and irreplaceable possessions like personal papers, books, jewelry and pictures. Plaintiffs request not that the City refrain from cleaning public property, but that they do so in a way that respects homeless people's basic constitutional rights. Respecting homeless people's constitutional rights by providing meaningful and effective pre-deprivation notice, inventorying and safeguarding the property for a reasonable time, and making it available for retrieval by the owner before destroying it would

not adversely affect the City's ability to satisfy essential health, safety and welfare concerns. Given that many other cities already employ the requested procedures, plaintiffs' request is eminently reasonable.

Plaintiffs incorporate by reference the factual allegations contained in the Verified Class Action Complaint.

ARGUMENT

Under Fed. R. Civ. P. 65, this Court must weigh four factors when deciding whether to grant a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably harmed by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the non-moving party; and (4) whether granting preliminary relief will be in the public interest.¹ Balancing the factors in this case, whereby the potentially significant harm caused to the plaintiffs by the City's unreasonable property seizure and destruction could be alleviated by straightforward due-process protections and a policy of storing seized property for a reasonable time, clearly weighs in favor of granting the requested injunction until such time as the City adopts a policy that will safeguard plaintiffs' Fourth, Fifth and

¹ American Civil Liberties Union v. Reno, 217 F.3d 162, 172 (3d Cir. 2000) (citations omitted).

Fourteenth Amendment rights.

1. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR FOURTH AND FOURTEENTH AMENDMENT CLAIMS.²

a. Fourth Amendment

A Fourth Amendment "'seizure' occurs where there is some meaningful interference with an individual's possessory interests in that property."³ "Destroying property meaningfully interferes with an individual's possessory interest in that property."⁴

The protection against seizures extends to "persons, houses, papers and effects."⁵ "The people's 'effects' include their personal property."⁶

Fourth Amendment protection against seizures applies in both the criminal and civil contexts.⁷ The motivation for the seizure is irrelevant.⁸ Consequently, it is immaterial whether City Public

² Plaintiffs have pled Fifth Amendment Takings Clause claims, but do not advance them in this preliminary injunction request.

³ Soldal, 506 U.S. at 61, 63; Brown v. Muhlenberg Twnshp., 269 F.3d 205, 209 (3d Cir. 2001), citing United States v. Jacobsen, 466 U.S. 109, 113 (1984).

⁴ Brown, 269 F.3d at 209, citing, Jacobsen, supra ("[T]he destruction of property by state officials poses as much of a threat, if not more, to people's right to be 'secure ... in their effects' as does the physical taking of them") (other citation omitted).

⁵ U. S. Const. Amend. IV.

⁶ Brown, 269 F.3d at 209 (citation omitted).

⁷ Soldal, 506 U.S. at 66-67.

⁸ Id. at 69.

Works employees confiscate the property in order to beautify the parks or City police officers are investigating a crime. Either way, the seizure triggers Fourth Amendment scrutiny.

Significantly for this case, the United States Supreme Court has indicated that, "an officer who happens to come across an individual's property in a public area could seize it only if Fourth Amendment standards are satisfied - for example, if the items are evidence of a crime or contraband."⁹

Generally, the Supreme Court "has viewed a seizure of personal property as *per se* unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized."¹⁰ The Court has, however, found reasonable some warrantless seizures. In cases scrutinizing warrantless seizures, the court "must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion."¹¹ Even a minimally intrusive seizure may be unreasonable if it is disproportionately intrusive.¹² As discussed above, destroying someone's personal property is the ultimate seizure, and thus

⁹ Id. at 68 (citation omitted).

¹⁰ Brown, 269 F.3d at ___ (209 or 210?) (citation omitted).

¹¹ Id.

¹² Id.

requires maximal justification.

Balancing the interests in this case, it is clear that the City's interest in the aesthetic appearance of parks and other public places does not justify destroying plaintiffs' property. This is especially true if steps can be taken readily and relatively simply to avoid the property destruction. As discussed in the next section on procedural due process, other cities have managed to safeguard homeless people's constitutional rights while beautifying the City, which is virtually irrefutable evidence that Pittsburgh could do the same.

Plaintiffs have found only two published cases addressing this precise issue. In Pottinger v. City of Miami, a pre-Soldal lawsuit that challenged many different policies and procedures applied to Miami's homeless, the court held unconstitutional property sweeps virtually identical to those recently practiced in Pittsburgh.¹³ The court held that, "The City's interest in having clean parks is outweighed by the more immediate interests of the plaintiffs in not having their personal belongings destroyed."¹⁴

Another federal court ruling on similar homeless-property sweeps in San Francisco, Joyce v. City and County of San Francisco, indicated that the practice violated the Fourth Amendment.¹⁵ The

¹³ Pottinger v. City of Miami, 810 F. Supp. 1551, 1570-73 (S.D. Fla. 1992).

¹⁴ Id. at 1573.

¹⁵ 846 F. Supp. 843, 863-64 (N.D. Cal. 1994).

court denied plaintiffs' requested injunction because the City had, immediately before the suit was filed, instituted a new policy, "the constitutionality of which was not challenged by plaintiffs."¹⁶ The new San Francisco policy contains safeguards that plaintiffs argue are mandated by the Constitution and must, therefore, be adopted in Pittsburgh. The policy includes meaningful pre-deprivation notice and requires that "property of value found in encampment [sic] or other public places is to be bagged, tagged and held at a dispatch office for its owner [to claim] within ninety days."¹⁷

Although plaintiffs have thus far identified only two *published* federal cases addressing the constitutionality of homeless-property sweeps, clearly others have been filed.¹⁸ Plaintiffs are aware of two federal cases that have settled on terms that mirror those sought by plaintiffs in this case. These include suits brought by homeless persons against Chicago¹⁹ and Los Angeles.²⁰

¹⁶ Id. at 864.

¹⁷ Id.

¹⁸ See, e.g. National Coalition for the Homeless and the National Law Center on Homelessness and Poverty, Illegal to Be Homeless: The Criminalization of Homelessness in the United States, January 2002. A copy can be downloaded from the Internet at <http://www.nlchp.org/content/pubs/CrimMaster.doc>.

¹⁹ See, Love v. City of Chicago, 1996 U.S. Dist. LEXIS 16041 (N.D. Ill. 1996).

²⁰ See, Settlement Agreement in Justin v. City of Los Angeles, No. CV-00-12352 LGB (C.D. Cal. 2001).

In sum, plaintiffs are likely to prevail on the merits of their Fourth Amendment claim.

b. Fourteenth Amendment Procedural Due Process

Pittsburgh's current practice of simply taking homeless people's property and throwing it away violates plaintiffs' Fourteenth Amendment's procedural due process rights.

Under the Fourteenth Amendment, a state may not deprive a citizen of his property without affording him due process of law.²¹ Clearly, plaintiffs have a constitutionally-protected property interest in their own possessions. The City's seizure and "destruction" of plaintiffs' property constitutes a "deprivation" subject to procedural due process protections.²²

While only post-deprivation process is required when the challenged conduct is "'random and unauthorized' (so that state authorities cannot predict when such unsanctioned deprivations will occur)," the City in this case must accord plaintiffs' pre-deprivation process because the sweeps reflect an official practice

²¹ U.S. Const. amend. XIV, §§ 1. See also, Pa. Const. Article I, § 1. Inherent rights of mankind (All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness") (emphasis added); and Pa. Const. Article I, § 8. Security from searches and seizures ("The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant") (emphasis added).

²² Brown, 269 F.3d at 213 (citation omitted).

or policy.²³ "The controlling inquiry is solely whether the state is in a position to provide for predeprivation process."²⁴ Since the City plans sweeps in advance, pre-deprivation process is clearly practicable and constitutionally mandated.

The process due in a particular situation involves balancing "the private interest, the governmental interest, and the value of the available procedure in safeguarding against an erroneous deprivation."²⁵

As discussed below in the section on irreparable harm, the private interest is significant. The affected property may be essential to plaintiffs' health or may involve irreplaceable personal items. On the other hand, the City cannot have any interest in simply seizing and destroying people's possessions. Providing pre-deprivation notice of the sweep, inventorying seized property, and then safeguarding it for a reasonable time period are not significantly burdensome. Indeed, adequate pre-deprivation notice will reduce the property that must be seized. And finally, the suggested procedures will be highly effective in protecting plaintiffs' property rights and preventing unnecessary seizures.

For the foregoing reasons, plaintiffs are likely to prevail on the merits of their Fourteenth Amendment procedural due process claims.

²³ Id. at 213-14, citing Zinermon v. Burch, 494 U.S. 113, 127 (1990) and Hudson v. Palmer, 468 U.S. 517, 534 (1984).

²⁴ Brown, 269 F.3d at 214 (quoting Palmer, supra.).

²⁵ Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976). See also, Tillman v. Lebanon County Corr. Fac., 221 F.3d 410 (3d Cir. 2000).

2. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE COURT DECLINES TO ISSUE THIS INJUNCTION.

Unless this Court grants the requested temporary restraining order and/or preliminary injunction to enjoin the property "sweeps" announced by the City for some time this week, plaintiffs will suffer irreparable harm. "When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."²⁶ As discussed above, the sweeps, as currently designed, are likely to violate plaintiffs' Fourth and Fourteenth Amendment rights.

In this case, the destruction of the few meager items plaintiffs possess would be irreparable. In the case of clothing, blankets, food and medication, it could affect their health, safety and very lives. As noted by one court addressing a challenge in Miami by homeless people to similar property sweeps, "the loss of such items such as clothes and medicine threatens the already precarious existence of homeless individuals by posing health and safety hazards; additionally, the prospect of such losses may discourage them from leaving the parks and other areas to seek work, food or medical attention."²⁷

While losing a few items may cause an inconvenience for most of us, it can be devastating to the homeless, who have so little

²⁶ See, 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed.1995). See also, Elrod v. Burns, 427 U.S. 347, 373-374 (1976).

²⁷ Pottinger v. City of Miami, 810 F.Supp. 1551,1573 (S.D. Fla. 1992).

and need practically all of it just to survive.²⁸

3. DEFENDANTS WILL NOT BE IRREPARABLY HARMED IF THEY ARE ENJOINED FROM CONDUCTING SWEEPS UNTIL THEY ADOPT A POLICY THAT PROTECTS HOMELESS PEOPLE'S CONSTITUTIONAL RIGHTS.

Plaintiffs do not contend that the City can never clean its public property. Rather, they argue that the City must do so in a way that respects plaintiffs' constitutional rights.

In order to prevent erroneous deprivations of property, the constitutional norm has been to require that the owner be given advance notice and an opportunity to prevent the taking prior to the action. Requiring pre-confiscation notice in this case would prevent an unreasonable seizure and a violation of due process by allowing people to remove or otherwise safeguard their property before the sweeps occur. Requiring the City to inventory and safeguard confiscated property for a reasonable period of time to allow plaintiffs who do not receive or understand the notice to retrieve their possessions would prevent irreparable harm to plaintiffs and reduce the City's liability for damage claims under the Fourth and Fifth (Takings Clause) Amendments. Neither of these requirements would be unduly burdensome for the City. And, as one court has already recognized, "the City's interest in having clean parks is outweighed by the more immediate interest of the [homeless

²⁸ Pottinger, 810 F.Supp. at 1559 ("the seriousness of the loss of such property cannot be overemphasized ... For many of us, the loss of our personal effects may pose a minor inconvenience. However, as [the] testimony illustrates, the loss can be devastating for the homeless.").

people] in not having their personal belongings destroyed.”²⁹

4. GRANTING THE INJUNCTION WILL SERVE THE PUBLIC INTEREST.

It is in the public interest to ensure that the government does not unfairly, arbitrarily or unnecessarily deprive people of their personal property. Enforcing the constitutional standards discussed above will promote that result.

CONCLUSION

WHEREFORE, since Plaintiffs have satisfied the four Fed. R. Civ. P. 65 pre-requisites for issuance of a temporary restraining order and/or preliminary injunction, this Court should issue a TRO/preliminary injunction that enjoin defendant, and its officials, employees, agents, assigns and all those working in concert with the City, from:

a. conducting property sweeps that confiscate plaintiffs’ and other homeless people’s property until and unless the City adopts a policy that provides adequate pre-deprivation notice reasonably calculated to inform homeless people about i) the time, date and location of the sweeps; ii) how to retrieve any confiscated property; and iii) requires that seized property having any value (either monetary or sentimental) be inventoried and stored in a safe place for thirty days so that the owner will have a reasonable

²⁹ Pottinger, 810 F. Supp. at 1573.

opportunity to claim it; and

b. destroying any property belonging, or reasonably appearing to belong, to plaintiffs and other homeless people.

c.

Respectfully submitted,

Witold J. Walczak
PA ID No. 62976
American Civil Liberties Foundation
of PA
313 Atwood Street
Pittsburgh, PA 15213
(412) 681-7864

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