



August 29, 2023

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Sent via email

Dear Mayor Vaughan, Chief Thompson, Mr. Jaiyeoba, Mr. Wilson, and Mr. Watts:

We are attorneys with the ACLU of North Carolina Legal Foundation — a non-profit, non-partisan organization dedicated to protecting the civil rights of all North Carolinians. It has come to our attention that Greensboro police intend to seize the private property of unhoused people living near the Interactive Resource Center in downtown Greensboro. We further understand that the property will then be destroyed. For the reasons outlined in this letter, this action would likely violate the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. We strongly urge you to cease issuing these notices and refrain from seizing and destroying the property of unhoused people.

I. Seizing the property of unhoused people, even when police believe that the owner is violating a local ordinance, is an unreasonable seizure prohibited by the Fourth Amendment.

The Fourth Amendment prohibits “unreasonable searches and seizures.” “A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). A seizure must be “reasonable” even when possessing the property in question is unlawful. *See id.* (testing of illegal cocaine was a seizure subject to reasonableness requirement).

Here, Greensboro police have threatened to seize personal property. It is unclear what law they believe is being violated. But even if police believe that the property owners are violating a local ordinance, that does not make the seizures reasonable, especially if the

owners cannot get their property back. “Violation of a City ordinance does not vitiate the Fourth Amendment’s protection of one’s property. Were it otherwise, the government could seize and destroy any illegally parked car or unlawfully unattended dog without implicating the Fourth Amendment.” *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1029 (9th Cir. 2012).

II. Seizing and destroying the property of unhoused people without first giving them an opportunity to be heard by a neutral decision-maker would violate due process.

The Fourteenth Amendment prohibits the government from “depriv[ing] any person of life, liberty, or property, without due process of law.” “Any significant taking of property by the State is within the purview of the Due Process Clause.” *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972). To establish a procedural due process violation, a plaintiff must establish three elements: (1) a constitutionally protected property interest, (2) a deprivation of that interest caused by government action, and (3) that the procedures used were constitutionally inadequate. *Sansotta v. Town of Nags Head*, 724 F.3d 533, 540 (4th Cir. 2013).

Unhoused people undoubtedly have a property interest in their personal possessions. *Lavan*, 693 F.3d at 1031 (holding that unhoused people had property interest in temporarily unattended personal property); *see also Todman v. Mayor and City Council of Baltimore*, 631 F. Supp. 3d 314, 327 (D. Md. 2022) (surveying cases). These items almost certainly include medications, government documents, and protection from the environment such as shoes and clothing. The government infringes on that interest by seizing property. *See id.*

As for the process required, the government must give “fair notice of impending state action and an opportunity to be heard.” *Snider Intern. Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014). Here, even if the City’s seven-day notice is adequate, it has not offered any process through which an individual can contest the City’s action before their personal property is seized and destroyed. As the court held in *Lavan*, “the City is required to provide procedural protections before permanently depriving [unhoused people] of their possessions.” 693 F.3d at 1032. For these reasons, carrying out the threatened sweeps would also violate the Due Process Clause of the Fourteenth Amendment.

III. Punishing people for involuntary conduct violates the Eighth Amendment.

The Eighth Amendment does not permit criminal penalties for involuntary acts. More than fifty years ago, the Supreme Court held that a statute criminalizing a person’s addiction to drugs violated the Eighth Amendment. *Robinson v. California*, 370 U.S. 660,

667 (1962). A majority of the Court later agreed that people who are unhoused and addicted to alcohol could not be punished for being drunk in public, as alcoholism is a disease, and such people “have no place else to go and no place else to be when they are drinking.” See *Powell v. State of Tex.*, 392 U.S. 514, 551 (1968) (White, J., concurring). More recently, the Fourth Circuit relied on those decisions to hold that a similar statute would violate the Eighth Amendment because it targeted involuntary conduct. *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 285 (4th Cir. 2019) (en banc).

In *Manning*, the Fourth Circuit relied on *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), which held that an ordinance that prohibited sleeping in public spaces was unconstitutional. There were simply more unhoused individuals in a city than beds that could accommodate them. “[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Id.*

The same principle applies here. Greensboro police intend to seize the property of unhoused people, presumably pursuant to a local ordinance that criminalizes activities associated with homelessness. But people who are unhoused — something that is rarely if ever a choice — may have nowhere else to rest. We understand that there are five shelters in Greensboro, but only two of these accommodate individual adults, and one is closed and the other is full. Therefore, because the threatened sweeps would punish people for involuntary conduct, they would violate the Eighth Amendment as well.

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Any efforts by Greensboro to regulate unhoused people must comport with the Constitution. We encourage you to meet the needs of your community in humane and sustainable ways that will respect the constitutional rights of everyone who lives in Greensboro.

Please feel free to contact us if you would like to discuss this matter further.

Sincerely,



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