

The Role of Public Law in Housing Insecurity

BY TATIANA R. SMITH

In Nevada, the tensions between homelessness and public law are at a critical point. Housing insecurity and affordability are serious issues—rising housing costs, rapid population growth, and an ever-increasing tourism industry have left thousands without access to shelter.¹ New approaches are essential in addressing housing insecurity and affordability, with the increased reliance on public law to address homelessness through anti-camping ordinances missing the mark. Unified and compassionate approaches are necessary to foster improvement and healing within our communities.

Affordability is at the core of housing insecurity. There is a shortage of available and affordable homes for low-income Nevadans, and rising costs have far outpaced wage growth, forcing low-income families with access to available homes to spend disproportionate amounts of their income on rent.² Nevada is already the fifth-worst state in terms of providing shelter for the unhoused population.³ For example, in Clark County's 2024 annual point-in-time count, where officials search for people experiencing homelessness on a certain night to establish an accurate estimation of the unsheltered population, they found an overall 20 percent increase

from the 2023 count, with Clark County experiencing a 13-year high in the number of people counted.⁴ Many Nevadans are one health emergency or economic downturn away from losing their homes, even with stable employment.

The inclusion of punitive measures in local ordinances has been increasing in popularity. In the last two years, the cities of Henderson, Las Vegas, Reno, and Sparks along with the counties of Clark, Nye, and Washoe passed restrictions on sleeping or camping in public spaces.⁵ Justifications for the anti-camping ordinances include maintaining public order, protecting public safety and health,

and preserving economic interests. Keep in mind that these ordinances are generally applicable, applying to everyone with or without shelter. However, unsurprisingly, people experiencing homelessness are disproportionately impacted. These ordinances criminalize sleeping outside without addressing the underlying issues or providing alternatives for those with no shelter of their own. The closest shelter may be 17 miles away with little likelihood of having an available bed.⁶ Instead, people experiencing homelessness are fined, arrested, or even forcibly removed from public areas, leading to criminal records that create even more barriers to finding stable housing and employment. These ordinances do not solve homelessness; they simply push the problem out of sight.

Last year, the U.S. Supreme Court ensured local governments have the authority to enact restrictions on public spaces without providing alternatives. In the case of *Grants Pass v. Johnson*,⁷ decided on June 28, 2024, the court considered anti-camping ordinances in Grants Pass, Oregon.⁷ The plaintiffs in





Grants Pass, who were unsheltered, argued that the ordinances violated the Eighth Amendment's prohibition on cruel and unusual punishment. The Ninth Circuit Court of Appeals sided with the plaintiffs by relying on *Martin v. Boise*, a Ninth Circuit case that found the Eighth Amendment's prohibition on cruel and unusual punishment prohibits cities from enforcing anti-camping ordinances when there is no available shelter space.⁸ *Martin* in turn relied on *Robinson v. California*, a 1962 U.S. Supreme Court case holding that laws criminalizing a person's status are unconstitutional.⁹ However, the Supreme Court reversed both the Ninth Circuit's decisions in *Grants Pass* and *Martin*, ruling that the Eighth Amendment does not prohibit laws that regulate public behavior, even if the behavior is tied to a person's status. The majority opinion emphasized that the ordinances did not criminalize the status of being unsheltered but rather specific actions, such as setting up campsites in public areas. After the Supreme Court's ruling, Las Vegas and Clark County immediately amended their anti-camping laws, with other Nevada jurisdictions following suit.¹⁰ As local governments now believe they have more

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freedom to regulate public spaces, they will lose sight of their responsibility to offer real, long-term solutions.

Prioritizing the balance between public order and safety with individual rights and freedoms is vital. Public order and safety are considered legitimate government interests, but anti-camping measures should not infringe upon a person's rights and dignity. The increase in punitive local ordinances creates a conflict between government interests and the right to exist in a public space. Despite being generally applicable, these ordinances are most often selectively enforced against people experiencing homelessness.¹¹ The legitimacy of public order and safety interests is undermined by the discriminatory enforcement of these ordinances, instead fostering an environment of distrust and perceptions of inequity. Importantly, punitive ordinances do not address the underlying causes of homelessness and poverty but worsens

these issues by displacing people without alternatives and funneling more people in the criminal justice system for engaging in life-sustaining activities. Ultimately, this system culminates into a cycle of criminalization and poverty where people are continuously punished for circumstances beyond their control.

Another challenge is fragmented local ordinances across jurisdictions. Nevada has a patchwork of laws that govern housing and homelessness in different cities and counties. This fragmentation makes it incredibly difficult for people to understand their rights or access consistent services. For instance, in one county, a person might find

themselves supported by social services that address their needs, while in another they could be put in jail for merely falling asleep in a public space. This inconsistency only creates confusion, inefficiencies, and inequities across Nevada. Statewide or regional frameworks for best practices can provide a unified framework that sets

minimum standards for the treatment of people experiencing homelessness as well as affordable housing efforts, ensuring problems are not simply shifted from jurisdiction to jurisdiction but adequately addressed in all places Nevadans live. Cities and counties can be encouraged to collaborate on issues by trading resources, aligning policies, and creating task forces to focus on establishing the most effective path forward.

Housing insecurity and affordability requires a comprehensive policy and legal response within public law. State laws and local ordinances regulate matters, such as tenant protections, eviction proceedings, zoning regulations, and anti-camping measures, that play a central role in shaping the government's response to housing and homelessness issues. Policymakers should prioritize housing-first programs focused on providing stable housing to people

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experiencing homelessness without strict preconditions such as immediate employment or sobriety including legal substances. Considering Nevada is facing a severe shortage of available and affordable housing options, policies could provide tax credits, partnerships, and funding for the development of low-income housing. Additionally, wraparound services can be critical for escaping homelessness and poverty. People experiencing homelessness can require additional support, such as job training, mental and physical health care, and addiction treatment, to finally reach stability. Integrating these services into affordable housing measures will be more effective for breaking the cycle than fines and jail time. Investing in social services will provide our communities with the tools needed to be successful. The Nevada

State Legislature could also provide incentives for local governments to adhere to a statewide best practice by leveraging public funding.

The solution lies not in policing poverty but in addressing its underlying causes. Public law has the potential to shape Nevada into a more inclusive and equitable society that provides for and supports all Nevadans. Nevada has the opportunity to create policies that reduce homelessness and poverty while promoting affordable and stable housing solutions through public law. A Nevada where every resident has access to affordable and stable housing, where local governments work together to create compassionate policies, and where fairness and support is prioritized over punishment is achievable—and essential. Public law must be seen as a tool for

systemic change, breaking cycles and empowering vulnerable communities. By engaging with these principles, Nevada can demonstrate how public law can uplift all people, leaving no one behind.



TATIANA R. SMITH grew up in Iowa City, Iowa and is a double graduate of the University of Iowa. After exploring various career paths, she committed to her passion for civil rights and policy, earning her law degree from the University of Iowa College of Law. Smith joined the ACLU of Nevada after graduation, dedicating herself to driving meaningful change and advancing civil rights for all Nevadans. Views are her own.

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ENDNOTES:

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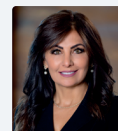
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