

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Damen Aguila, Mario Lanza
Dyer, and Jamie Scarborough,
Plaintiffs,

v.

Municipality of Anchorage,
Defendant.

Case No. 3AN-25-04570CI

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Dated: February 6, 2025

/s/ Helen Malley

Helen Malley, Alaska Bar No. 2411126

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Introduction

1. The Alaska Constitution applies to all Alaskans regardless of where they call home. Plaintiffs Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough bring this suit to enjoin the Municipality of Anchorage effectively banishing them from public land and destroying their personal belongings in violation of their constitutional rights.

2. As written, the Anchorage Municipal Code makes it illegal for Plaintiffs to exist and survive anywhere in the city by virtue of their indigency. Specifically, the Code prohibits “camping”—or “the use of space for the purpose of sleeping or establishing a temporary place to live”¹—on public land.² The Municipality has relied on this provision to forcibly displace or “abate” encampments³ of people experiencing homelessness.

¹ AMC 15.20.010.

² AMC 15.20.020.B.15.

³ Anchorage uses the term “camping” to describe people sheltering themselves outside and the term “encampments” to describe locations where people shelter themselves.

3. These abatements are occurring at a rapidly increasing rate. From May to December of 2024, the Municipality appears to have abated at least 262 structures from multiple encampments.⁴

4. The Municipality is abating encampments regardless of whether there is anywhere else for the inhabitants to go. Anchorage's shelters⁵ and warming center are consistently at capacity this winter.⁶ As a result, at least 475 Anchorage

⁴ See "Camp Abatement and Clean-Up Dashboards and Maps: Overview Graphs," *Municipality of Anchorage: Addressing Homelessness*, available at <https://addressing-homelessness-muniorg.hub.arcgis.com/pages/camp-abatement> by navigating to "Overview Graphs" tab (last accessed February 6, 2025).

⁵ See "Camp Abatement and Clean-Up Dashboards and Maps: Shelters," *Municipality of Anchorage: Addressing Homelessness*, available at <https://addressing-homelessness-muniorg.hub.arcgis.com/pages/camp-abatement> by navigating to "Shelters" tab (last accessed February 6, 2025).

⁶ Restorative and Reentry Services, LLC, "Weekly Report #10 For the Period 1/6/2025-1/12/2025 Under 3rd Party Oversight Contract" (January 14, 2025), available at <https://www.muni.org/Departments/Assembly/Pages/FOCUS-Homelessness.aspx>; Restorative and Reentry Services, LLC, "Weekly Report #11 For the Period 1/13/2024-1/19/2025 Under 3rd Party Oversight Contract" (January 21, 2025), available at <https://www.muni.org/Departments/Assembly/Pages/FOCUS-Homelessness.aspx>.

residents have no choice but to self-shelter outdoors each night.⁷
Despite this reality, the Municipality has continued to abate.

5. During an abatement, the people living in an encampment are forced under threat of arrest to leave the site with whatever property they can carry. Any property that is left at the site will either be destroyed or placed in Municipal storage.⁸

6. The present action challenges the Municipality of Anchorage's efforts to effectively banish people experiencing homelessness from the city by relentlessly abating their encampments. Plaintiffs contend that this practice violates the Alaska Constitution's provisions on due process (Article I, Section 7) and cruel and unusual punishment (Article I, Section 12).

7. The Municipality's abatement practices also results in the confiscation and destruction of Plaintiffs' personal property,

⁷ Anchorage Coalition to End Homelessness, "Current System Overview" (January 30, 2025), available at https://static1.squarespace.com/static/64de5e82411ca838b015a0ef/t/67a29ef6772c0d3a8189036b/1738710775423/Current+State+of+Homelessness_20250116.pdf.

⁸ AMC 15.20.020.B.15.c.

including property that contains their sensitive personal information and that is essential to their survival. Plaintiffs contend that this practice violates the Alaska Constitution's provisions on due process (Article I, Section 7) and unreasonable search and seizure (Article I, Section 14). Plaintiffs further contend that this practice violates their constitutional rights to privacy (Article I, Section 22) and to public health and welfare (Article VII, Sections 4 and 5).

Jurisdiction & Venue

8. This is a complaint for declaratory and injunctive relief brought under AS 22.10.020(a), (c), and (g). This court has jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015(a)(1) and AS 22.10.020(a).

9. Venue is proper in this district under AS 22.10.030 and Alaska Rule of Civil Procedure 3(c).

Parties

10. Damen Aguila currently lives on the right-of-way along the east side of Arctic Boulevard, north of West Fireweed Lane ("the Arctic-Fireweed encampment").

11. Mario Lanza Dyer is a 59-year-old man. He currently lives at the Arctic-Fireweed encampment. He has been homeless for approximately 10 years.

12. Jamie Scarborough is a 53-year-old man. He currently lives at the Arctic-Fireweed encampment. He has been homeless on and off for approximately 12 years.

13. Defendant Municipality of Anchorage is a home rule municipality incorporated under the laws of the State of Alaska.

Factual Background

14. Damen, Mario, and Jamie all currently live in the Arctic-Fireweed encampment because they have nowhere else to go. While they have endeavored to access Municipality-provided shelter, the shelters have consistently been full and they have been turned away.

15. Unable to access city-provided shelter or transitional housing, Damen, Mario, and Jamie rely upon the community they've built together to keep themselves alive. Their survival hinges upon not only the covered structure they created, but also their personal relationships with each other and their surrounding community.

16. Plaintiffs' difficulty accessing city-provided shelter is indicative of a broader issue: there is an insufficient amount of shelter in Anchorage. As of December 31, 2024, one data source indicates an estimated 3,070 people actively experiencing homelessness in Anchorage.⁹ The true number may be higher. The Municipality only has shelter capacity for 532 people.¹⁰ These shelters are consistently at capacity.¹¹ As a result, at least 475 people, almost certainly more, are currently living unsheltered, including Plaintiffs.¹²

⁹ Anchorage Coalition to End Homelessness, "Current System Overview" (January 30, 2025), available at https://static1.squarespace.com/static/64de5e82411ca838b015a0ef/t/67a29ef6772c0d3a8189036b/1738710775423/Current+State+of+Homelessness_20250116.pdf.

¹⁰ "Camp Abatement and Clean-Up Dashboards and Maps: Shelters," *Municipality of Anchorage: Addressing Homelessness*, available at <https://addressing-homelessness-muniorg.hub.arcgis.com/pages/camp-abatement> by navigating to "Shelters" tab (last accessed February 6, 2025).

¹¹ *Id.*

¹² *Id.*

17. Anchorage’s warming center, which operates from 6pm to 8am, is similarly at or over capacity.¹³ In a single week in January, a reported 38 people were turned away from the warming center because there was no room.¹⁴

18. As of the date of the filing of this complaint, all municipal shelters are operating at or above capacity.¹⁵ For this reason, Plaintiffs do not have access to any indoor places to sleep.

19. Despite the lack of available shelter, the Municipality has continued to abate encampments of people self-sheltering

¹³ Restorative and Reentry Services, LLC, “Weekly Report #10 For the Period 1/6/2025-1/12/2025 Under 3rd Party Oversight Contract” (January 14, 2025) (noting that warming center “turned clients away” on five days available at <https://www.muni.org/Departments/Assembly/Pages/FOCUS-Homelessness.aspx>).

¹⁴ Restorative and Reentry Services, LLC, “Weekly Report #11 For the Period 1/13/2024-1/19/2025 Under 3rd Party Oversight Contract” (January 21, 2025) (noting that there were a “total of 38 turn-aways for the week”), available at <https://www.muni.org/Departments/Assembly/Pages/FOCUS-Homelessness.aspx>.

¹⁵ See “Camp Abatement and Clean-Up Dashboards and Maps: Shelters,” *Municipality of Anchorage: Addressing Homelessness*, available at <https://addressing-homelessness-muniorg.hub.arcgis.com/pages/camp-abatement> by navigating to “Shelters” tab (last accessed February 6, 2025).

outdoors.¹⁶ Most recently, on January 31, 2025, the Municipality noticed the Arctic-Fireweed encampment for abatement, where all three Plaintiffs reside, among other locations.

A. The Municipal Code unconstitutionally empowers the Municipality to banish people experiencing homelessness from Anchorage.

20. The Municipality’s bundle of laws governing “prohibited campsites” creates a de facto banishment regime, in which people experiencing homelessness are forced to choose between leaving the Municipality entirely or risking criminal punishment. The Code defines “camping” as “the use of space for the purpose of sleeping or establishing a temporary place to live.”¹⁷ This conduct becomes “prohibited camping” when it is done “on public land in violation of section 8.45.010, chapter 25.70, or any other provision of this Code.”¹⁸ As written, this

¹⁶ See “Camp Abatement and Clean-Up Dashboards and Maps: Overview Graphs,” *Municipality of Anchorage: Addressing Homelessness*, available at <https://addressing-homelessness-muniorg.hub.arcgis.com/pages/camp-abatement> by navigating to “Overview Graphs” tab (last accessed February 6, 2025).

¹⁷ AMC 15.20.010.

¹⁸ AMC 15.20.020.B.15.

provision broadly empowers the Municipality to forcibly remove people from where they are living without telling them where they can go.

21. The Code does not provide an opportunity for a hearing *prior* to an abatement.¹⁹ While the Code does provide for a post-abatement appeals process, in a case currently under advisement before the Alaska Supreme Court, *Smith v. Anchorage*, the Municipality took the position that abatement appeals cannot be used to challenge the legality or constitutionality of the abatement other than to review the technical compliance of the language and posting of the abatement notice itself. This case is now waiting for a decision from the Alaska Supreme Court.²⁰

22. The Code only requires the Municipality to give ten-days written notice before conducting a “zone” abatement.²¹ This is

¹⁹ AMC 15.20.020.B.15.e.

²⁰ *Smith v. Anchorage*, Supreme Court No. S-18710 (awaiting decision).

²¹ AMC 15.20.020. B.15.b.iv.

inadequate time for the Plaintiffs to find an alternative place to go.

23. The Code does not require that the Municipality provide the people living within the zone with somewhere to go before abating the encampment. Nor does the Code identify anywhere that people can self-shelter in Anchorage when the shelters are full.

B. The Municipality has failed to adequately provide for the property rights of Alaskans experiencing homelessness.

24. Alaskans experiencing homelessness maintain a protected property interest in their personal possessions. In 2011, the Superior Court of Alaska recognized that “[a] person’s right to ‘life, liberty, and property’ is protected in the first section of the first article of the Alaska Constitution. . . . By definition [unhoused persons’ interest in their personal property] qualifies as an interest of ‘sufficient importance to warrant constitutional protection.’”²²

²² *Engle v. Municipality of Anchorage*, No. 3AN-10-7047 CI at *19 (Alaska Super. Ct. Jan. 4, 2011) (quoting *Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd.*, 524 P.2d 657, 659 (Alaska 1974)).

25. In the years since *Engle*, courts have continued to recognize the significance of this property interest, given both it “may be everything that a homeless individual owns”²³ and that they “may not survive without some of the essential property.”²⁴

26. Despite the significance of this property interest, the Code empowers the Municipality to destroy the property of people experiencing homelessness during an abatement.²⁵ In practice, this appears to be the Municipality’s default approach to the personal belongings of people experiencing homelessness. As explained on the Notice posted at the Arctic-Fireweed site “Property remaining after 10 days shall be removed and disposed of as waste.”

27. The Code makes a limited exception for abatements that have been appealed. If a Plaintiff appeals an abatement within ten days of receiving notice, they may have their property stored. An abated party maintains the right to appeal the

²³ *De-Occupy Honolulu v. City & Cnty. of Honolulu*, No. CIV. 12-00668 JMS, 2013 WL 2285100, at *6 (D. Haw. May 21, 2013).

²⁴ *Mitchell v. City of Los Angeles*, No. CV1601750SJOGJSX, 2016 WL 11519288, at *7 (C.D. Cal. Apr. 13, 2016).

²⁵ AMC 15.20.020.B.15.e.

abatement for another twenty days (thirty days total); however, if they file after the first ten days, their property will have been irreversibly lost.²⁶

28. Storage of personal property (such as tents, tarps, and winter clothing) is an inadequate alternative to allowing Plaintiffs to maintain possession of their belongings. These items are essential to Plaintiffs' survival in Anchorage and even a temporary deprivation of such property can be life-threatening.

29. This week, Anchorage's temperatures are steadily holding below 30 degrees and dropping as low as 8 degrees.²⁷ This winter, temperatures have dropped below zero. Without their tents, tarps, and winter clothing, Plaintiffs will be left exposed to the harsh elements of an Alaskan winter.

30. The Municipality's abatement practices also open the door to the disclosure of Plaintiffs' personal private information.

²⁶ AMC 15.20.020.B.15.e.

²⁷ National Weather Service, "Forecast: Anchorage, AK," available at <https://forecast.weather.gov/MapClick.php?lon=-149.89775275764984&lat=61.1991227926805> (last accessed February 6, 2025).

Mr. Dyer, for example, has previously lost essential documents during an abatement. If the Municipality abates their encampment, Plaintiffs fear that these documents would be summarily confiscated, resulting in the disclosure of their private information.

C. The Municipality has failed to adequately provide for the health and welfare of Alaskans experiencing homelessness.

31. Abatement directly jeopardizes the health and welfare of plaintiffs. During an abatement, people experiencing homelessness are temporarily and/or permanently deprived of property that is essential to their survival outdoors in Anchorage.

32. The loss of this property can cause detrimental health consequences, and even death, among people experiencing homelessness.

33. The State of Alaska Department of Health recognizes that homelessness contributes to adverse health outcomes, including higher rates of mortality. In a recent study, the Department of Health explicitly noted that “Alaska’s climate poses considerable risk for cold-induced injuries. Hypothermia,

resulting from prolonged cold exposure, can lead to systemic dysfunction and death. . . . People without housing [] are particularly vulnerable to cold exposure injuries and associated complications.”²⁸

34. These dangers are acute in Anchorage. In the past two years, over one-hundred people died while living outside in Anchorage.²⁹

35. These dangers have also been directly felt by the plaintiffs in this suit. Mr. Dyer, for example, has experienced pneumonia and hypothermia while living outdoors, and Mr.

²⁸ The State of Alaska Department of Health, Division of Public Health, State of Alaska Epidemiology Bulletin no. 12, “Cold Exposure Injuries among People without Housing — Alaska, 2012–2021” (Oct. 14, 2024), https://epi.alaska.gov/bulletins/docs/b2024_12.pdf.

²⁹ Michelle Theriault Boots, *After winter lull, homeless outdoor deaths are again mounting in Anchorage*, ANCHORAGE DAILY NEWS (May 13, 2024), <https://www.adn.com/alaska-news/anchorage/2024/05/13/after-winter-lull-homeless-outdoor-deaths-are-again-mounting-in-anchorage/>; Olivia Nordyke, *Anchorage Police release number of outdoor deaths in 2024*, ALASKA NEWS SOURCE (Jan. 3, 2025), <https://www.alaskasnewssource.com/2025/01/04/anchorage-police-release-number-outdoor-deaths-2024/>.

Scarborough has endured frostbite, pneumonia, and fire-related injuries.

Claims for Relief

COUNT 1

Alaska Const. Art. I § 7

Unconstitutional Denial of Due Process

36. The allegations above are incorporated by reference in this Count.

37. Article I, Section 7 of the Alaska Constitution states that “[n]o person shall be deprived of life, liberty, or property, without due process of law.”

38. Alaska courts “have consistently held that before the state may deprive a person of protected property interest there must be a hearing.”³⁰

39. By taking, discarding, and/or destroying people’s property without adequate notice and without individual predeprivation hearings, the Municipality’s abatement policy violates the due process rights of its unhoused residents.

³⁰ *Brandner v. Providence Health & Servs.-Washington*, 394 P.3d 581, 589 (Alaska 2017).

40. Moreover, by enacting a sweeping ban against sleeping on any public land in Anchorage at any time and for any reason, the Municipality has effectively reestablished an anti-vagrancy law. Courts have consistently held such laws void for vagueness in violation of people’s right to due process.³¹

COUNT 2
Alaska Const. Art I, § 12
Cruel & Unusual Punishment

41. The allegations above are incorporated by reference in this Count.

42. Article I, Section 12 of the Alaska Constitution states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

43. Alaska’s Constitution provides greater protection against cruel and unusual punishment than its federal analog.³²

³¹ *E.g.*, *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Marks v. City of Anchorage*, 500 P.2d 644, 651 (Alaska 1972).

³² *See Fletcher v. State*, 532 P.3d 286, 308 (Alaska App. 2023) (addressing whether Alaska’s Cruel and Unusual Punishment provision “requires greater procedural protections” than its federal analog and concluding that it does).

44. The Municipality’s practice of abating encampments of people experiencing homelessness without telling them where they may lawfully exist constitutes a banishment regime.

45. Banishment is a form of cruel and unusual punishment.

COUNT 3
Alaska Const. Art. I § 14
Unreasonable Seizure

46. The allegations above are incorporated by reference in this Count.

47. Article I, Section 14 of the Alaska Constitution states that “[t]he right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

48. This protection is broader than the protection against unreasonable search and seizures under the Fourth Amendment of the U.S. Constitution.³³

49. By permitting the routine seizure and destruction of plaintiffs’ unabandoned personal property without a warrant,

³³ *Anchorage Police Dep’t Emps. Ass’n v. Municipality of Anchorage*, 24 P.3d 547, 575 (Alaska 2001).

the Municipality's abatement policy violates plaintiffs' right to be free from unreasonable seizures.

COUNT 4
Alaska Const. Art. I, § 22
Right to Privacy

50. The allegations above are incorporated by reference in this Count.

51. Article I, Section 22 of the Alaska Constitution states that "[t]he right of the people to privacy is recognized and shall not be infringed."

52. This protection has been interpreted by Alaska courts to encompass an individual's interest in "protecting sensitive personal information from public disclosure."³⁴

53. By failing to adopt procedures to protect against the inadvertent disclosure or destruction of personal information during an abatement, the Municipality's abatement policy violates Plaintiffs' constitutional right to privacy. Unhoused persons' personal property often includes documents with

³⁴ *K.L. v. State, Dep't of Admin., Div. of Motor Vehicles*, No. 3AN-11-05431-CI, 2012 WL 2685183, at *4 (Alaska Super. Ct. Mar. 12, 2012).

sensitive personal information such as social security cards and birth certificates. The summary confiscation of this property is not carefully tailored to meet any legitimate governmental goal.

COUNT 5

Alaska Const. Art. VII, §§ 4-5 Right to Public Health and Welfare

54. The allegations above are incorporated by reference in this Count.

55. Article 7, Sections 4 and 5 of the Alaska Constitution requires the legislature to provide for the public health and welfare.

56. People experiencing homelessness are a part of the public who must be considered when evaluating what constitutes the public health.³⁵

57. By depriving people experiencing homelessness of the property they need to survive living outdoors in Alaska without

³⁵ *Cf. Tyson v. City of San Bernadino*, Case No. 5:23-cv-01539 (W. Dist. Cal., Jan. 12, 2024) (“[T]he Court is, and should be, cognizant of the fact that people experiencing homelessness are members of the community, and their interests, too, must be included in assessing the public interest.”).

providing them with shelter or an alternate place to go, the Municipality is directly endangering their health and welfare.

Prayer for Relief

1. Grant a temporary restraining order, a preliminary injunction, and permanent injunctive relief barring the Municipality from abating Plaintiffs' campsites or otherwise forcing them to relocate until such a time that the court has ruled on merits of Plaintiffs' claims.
2. Grant permanent injunctive relief barring the Municipality from abating Plaintiffs' "prohibited campsites" or otherwise forcing them to relocate or relinquish possession of their lawful belongings until there is enough suitable housing in Anchorage such that no one is unhoused; or, barring that, until there is enough suitable temporary indoor shelter space to meet the diversity of Plaintiffs' needs; or, barring that, until the Municipality provides suitable, non-carceral locations where it shall not be criminal trespass for Plaintiffs to shelter themselves and where their basic human needs can be met.

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3. Grant a declaratory judgment declaring that the
Municipal Code's "prohibited camping" regime violates the
Alaska Constitution.
4. Award full reasonable attorney's fees and costs to
plaintiffs as constitutional litigants under AS 09.60.010(c).
5. Such other and further relief as the Court deems just and
proper.

DATED February 6, 2025

Respectfully submitted,

**American Civil Liberties Union of
Alaska Foundation**

/s/ Helen Malley

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CERTIFICATE OF SERVICE

On February 6, 2025, a true and correct copy of the foregoing Complaint was served on:

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