

Homeless Sweeps – Important Case Law and Frequently Asked Questions

I. Important Cases

Opinion, *Lavan v. City of Los Angeles*, No. 11-56253 (Ninth Circuit Court of Appeals 2012)

This case challenged the City of Los Angeles’ policy of seizing and destroying personal property left temporarily unattended on public sidewalks. On appeal, the Ninth Circuit held that destruction of a homeless individual’s personal property, even when temporarily unattended, was an unreasonable seizure and a Fourth Amendment violation. Simply because the property is left unattended while an individual performed necessary business such as using the restroom or attending court does not render the property “abandoned.” As such, homeless individuals retain full rights to their unattended property and its immediate destruction violates the Fourth Amendment. The Court further ruled that failure to provide reasonable notice prior to seizing and destroying the property violates the Fourteenth Amendment right to due process.

Order, *Ellis v. Clark County Department of Corrections*, No. 3:15-cv-05449, Dkt. No. 57 (Western District of Washington 2016)

This federal lawsuit challenged sweeps of homeless property conducted by work crews for Clark County, Washington. The suit described how Plaintiffs’ private property was confiscated and destroyed, sometimes in their presence and always without their consent. While their property was at times left unattended it was never considered abandoned by its owners. The court found that there was no “good faith belief” that the property was abandoned before it was destroyed. The judge ruled that the immediate destruction of property during a sweep is unreasonable unless there is *no* less intrusive or destructive alternative and therefore violates the Fourth Amendment. It also held, citing *Lavan*, that violation of a camping ordinance does not remove a homeless person’s constitutional right to their property. Finally, the court ruled that failing to provide any process for returning seized property or notice that it had been taken violates the Fourteenth Amendment.

II. Frequently Asked Questions

What is a homeless sweep? A homeless sweep or “clean-up” is the forced disbanding of homeless encampments on public property and the removal of both homeless individuals and their property from that area. Practices may vary between cities as to how much advance notice encampments are given before a sweep and what the city does with property collected during a sweep. Homeless sweeps are costly and ineffective and make homelessness worse, not better. More importantly, courts have held that failing to give sufficient notice before a sweep, so people can act to keep their property safe, or destroying property during a sweep violates the rights of homeless individuals.

Can the government seize property belonging to homeless people? Courts have held that homeless individuals have property rights to their personal possessions, meaning this property is protected from unreasonable seizures. The Court in *Lavan* held that the immediate destruction of unabandoned personal property found on sidewalks was unreasonable and therefore a violation of the Fourth Amendment protection against unreasonable seizures; and in *Ellis*, the Court ruled that the destruction of property renders a seizure unreasonable when a “less intrusive, or less destructive, alternative[] exists” even when the property is unattended. However, both courts noted that if homeless property is not destroyed, but held by the city for individuals to reclaim it, the seizure *may* be legal.

What about notice? Courts have held that sweeps violate the Fourteenth Amendment due process rights of the homeless unless reasonable notice is given. Courts have not given specific timeframes for what makes notice reasonable. However, destruction of property without any notice is unconstitutional, and in *Ellis*, the court held that ten minutes of notice given to one homeless individual prior to a sweep was unreasonable. Because cities may not immediately destroy unabandoned property, they must store it and provide means for owners to reclaim it. Therefore, cities are also required to give notice of where individuals can reclaim their property once it has been collected. There may also be a problem with adequacy of the notice if it is unclear or not easy for people to see or understand.

What if property is left unattended? Temporarily leaving property unattended does not nullify an individual’s constitutional protection against unreasonable seizures or the notice requirement. Courts have held that there is a continuing property interest in possessions left unattended. Simply leaving your possessions at an encampment does not mean you have abandoned that property, or waived your constitutional rights against having it seized.

How do courts distinguish between unattended and unabandoned property? While the courts in *Lavan* and *Ellis* do not provide a precise definition of unattended versus abandoned property, both provide some guidance about how to properly distinguish between these two types of property. In *Lavan*, the plaintiffs temporarily left their property behind to “perform necessary tasks such as showering, eating, using restrooms, or attending court.” In *Ellis*, Plaintiffs left their belongings at encampments in order to do things like eat a meal, or go to work. In all of these instances, the courts have held that the property was not abandoned even though it was unattended, and so the individuals were entitled to the full constitutional protection of their personal property.

Can a city claim that homeless property is garbage to avoid these protections? They may try, but we believe courts may look upon this approach unfavorably. For instance, the judge in *Ellis* partially based his ruling on the clean-up crews’ failure to distinguish between trash and belongings.

What if an encampment violates other municipal ordinances? The fact that a homeless encampment may violate ordinances against, for instance, trespassing or camping on public property does not nullify an individual's rights to notice and preservation of their property. As the *Lavan* Court explained, "[v]iolation 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 care or unlawfully unattended dog without implicating the Fourth Amendment."