



ACLU West Virginia
P.O. Box 3952
Charleston, West Virginia 3952

January 12, 2024

To the City Council of Wheeling, West Virginia,

I am writing to you concerning the adoption and enforcement of Ordinance 533.18, relating to “Camping on Public Property.” It is the firm belief of the ACLU of West Virginia that your adoption and enforcement of that ordinance is unconstitutional. We are writing to provide you an opportunity to rectify the ordinance prior to litigation.

While the ordinance in Wheeling is quite similar to others which are unconstitutional, yours has the important distinction of contemplating the creation of a managed site which is exempted from the ordinance, though such a site may be subject to regulations established by the City Manager.

While reasonable minds may differ as to the policy implications of a managed site and many experts stress that such an arrangement makes the problems associated with homelessness significantly worse, we do believe that the creation of such a location meets your constitutional obligations and saves your ordinance from being per se unconstitutional. However, the mere possibility of a managed site is insufficient – it is necessary that homeless residents of Wheeling are not in violation of city code as a byproduct of their mere existence. They must have a space to exist – to eat, to sleep – where such actions are not unlawful. Otherwise, the city will have unconstitutionally outlawed the presence of people experiencing homelessness as opposed to any voluntary act.

We are therefore requesting that you stop the enforcement of Ordinance 533.18 until such a time that either (1) there are a sufficient number of accessible beds in Wheeling’s shelters to house the entire homeless population or (2) there is an established alternative location or locations exempted from the ban.

If you do not voluntarily agree to such a pause, then we will file suit against the City of Wheeling to compel you to do so, and to request a Court stay your decision to destroy currently existing camps. We take this opportunity to remind you that pausing the enforcement of 533.18 is free while litigating, and ultimately losing, a lawsuit is not. It is uncommon for us to provide a letter to a municipality pre-suit, but we are doing so here because we genuinely hope that you will be called to meet your constitutional burden through your own reason, rather than as the result of a court order compelling your compliance.

We concede that you are tasked with the difficult job of solving very complicated problems that do not have clear answers. Adding fifty years of constitutional jurisprudence does little to clarify matters, and we understand that the threat of a lawsuit often has the propensity to amplify problems rather than solve them. We believe however, that though the constitution is rarely

convenient its protections are always important, and worth preserving; even when that preservation is more difficult than easier, unconstitutional alternatives.

We expect a response from you no later than January 16^h, 2024, at which point we will pursue litigation to compel the City to comply with its constitutional obligations. If you would like to discuss this matter prior to that point or need additional time, please feel free to contact our legal team at the number below.

Best,

Aubrey Sparks

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