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	No. 3AN-25-_____ CI

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction

INTRODUCTION

Plaintiffs Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough are Anchorage residents experiencing homelessness. Because there is no indoor housing or shelter available to them anywhere within the Municipality of Anchorage, they shelter themselves in tents and similar ad hoc structures on a Municipal right-of-way, in close community with several other people. The Municipality deems such self-sheltering a public nuisance—

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

specifically, the nuisance of "prohibited camping"—even while it provides no place where those who have no access to housing or indoor shelter can legally go. Instead, here, the Municipality seeks to "abate" the alleged nuisance. That is, it seeks to summarily determine that Plaintiffs are a public nuisance, disperse Plaintiffs under threat of arrest, and dispossess them of and destroy their property. Abatement actions such as this make it significantly harder for Plaintiffs to protect themselves from unforgiving elements by depriving them of the very property they need to survive—including tents, tarps, sleeping bags, and other survival necessities during Anchorage's harsh winter conditions.

Because harm to Plaintiffs would be irreparable and, on balance, far greater than any harm the Municipality would suffer by allowing them to remain, and because Plaintiffs are likely to prevail on the merits, they are entitled to a TRO and a preliminary injunction enjoining the Municipality from abating them from their homes.

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

STATEMENT OF FACTS

Plaintiffs are homeless, indigent residents of Anchorage.[1] Because they do not have access to housing or indoor shelter, Plaintiffs are sheltering themselves on the Municipal right-of-way along the east side of Arctic Boulevard, north of West Fireweed Lane ("the Arctic-Fireweed encampment").[2] Where they are sheltering, Plaintiffs endeavor to maintain possession of belongings that help them stay alive. Their necessary belongings include tents, tarps, and other ad hoc protection from the elements; clothing; food and water; means to clean themselves and their possessions; and make-do means to stay warm. They also endeavor to maintain possession of essential documents, including government identification and other personal records. Loss of any of this property can be devastating even when it isn't life-threatening.

---

1 *See* Exhibits 1-2 (Plaintiffs' Affidavits).

2 *See* Exhibits 1-2 (Plaintiffs' Affidavits).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

The Municipality is aware that homelessness contributes to adverse health outcomes, including higher rates of mortality.[3] The State of Alaska is clear that such outcomes can be a product of Anchorage's cold climate.[4] As the Municipality itself has stated, living without shelter "requires a person to enter survival mode, [which] dramatically restricts a person's ability to meet their physical and mental needs."[5] As the Mayor's Office recently

---

[3] *See, e.g.*, Municipality of Anchorage, *Complex Behavioral Health Needs Community Task Force Recommendations Final Report*, submitted to the Anchorage Assembly, Sep. 5, 2023; accepted, Sep. 12, 2023; p.9 ("[R]esearch has shown that individuals who are homeless have a risk of mortality that is 1.5 to 11.5 times greater than the general population.").

[4] *See, e.g.,* 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) ("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 (PWH) are particularly vulnerable to cold exposure injuries and associated complications.").

[5] Anchorage Assembly Resolution (AR) No. 2023-188(S-1) (June 6, 2023).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

remarked, "Winter shelter is a matter of life and death in a cold-weather city like Anchorage."[6] The experience of Anchorage's unhoused, unsheltered population backs this up: the Municipality has been reporting record numbers of outdoor deaths for the last several years.[7]

Forced removal from any given location to another inherently leads to loss of some essential property, because unhoused people fleeing under threat of arrest typically lack the means to transport and relocate all their items.[8] Forced removal

---

[6] Memorandum from Farina Brown & Thea Agnew, Mayor's Office, and Kim Rash, Anchorage Health Department Director, to the Anchorage Assembly, regarding Work Session on Winter Homelessness Strategy and Shelter (October 4, 2024).

[7] 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/.

[8] *See* Exhibit 2 (Plaintiff's Affidavit) ("If the Municipality abates

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

from a given location also disrupts community, which is also necessary for security and protection.[9]

Plaintiffs are unaware of any alternative location where they would be welcome to shelter themselves.[10] According to the Municipality's own records, all municipal and private shelters located within the Municipality are currently full.[11] Nor has the Municipality informed Plaintiffs of any location where their presence would burden the Municipality's interests less than it claims Plaintiffs' current location does.[12] There is nowhere for the Plaintiffs to go, other than relocate to another public space in the

---

my location, I am worried I will lose the following items . . . everything that [I] can't carry away at the time.").

[9] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

[10] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

[11] *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).

[12] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Municipality—with no protection from the city's again declaring them to be illegal nuisances and forcing them to move once again.

Nevertheless, on January 31, 2025, the Municipality noticed the location where Plaintiffs are residing for abatement.[13] The notice claims Plaintiffs' presence constitutes a public nuisance that is subject to abatement, specifically the nuisance of "prohibited camping."[14] The notice describes a "zone" from which Plaintiffs and others living near them must remove themselves and their belongings within ten days—i.e., by Monday, February 10. The notice states that property remaining within the zone after the tenth day "shall be removed and disposed of as waste."[15]

---

[13] *See* Exhibit 3 (Notice of Abatement – Arctic-Fireweed Encampment).

[14] *See* Exhibit 3 (Notice of Abatement – Arctic-Fireweed Encampment).

[15] *See* Exhibit 3 (Notice of Abatement – Arctic-Fireweed Encampment).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Plaintiffs have been "abated" by the Municipality from other locations in the past.[16] During past abatements, Plaintiffs have experienced lost important personal belongings, including essential documents.[17] Plaintiffs fear the loss of similarly essential belongings if the Municipality abates their encampment on Monday.

Plaintiffs are not alone in being unhoused without access to indoor shelter. One widely-relied upon data source reported 2,804 people experiencing homelessness as of December 31, 2024.[18] Relying on the same data source, the Anchorage Coalition to End Homelessness ("the Coalition") reported on January 30—*the day before the Municipality noticed Plaintiffs' location for*

---

[16] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

[17] *See* Exhibit 1 (Plaintiff's Affidavit) (noting that documents with his personal information "were gone a long time ago").

[18] *See* Institute for Community Alliances, Anchorage Coalition to End Homelessness, "Alaska Communities Dashboard - Demographics from the Alaska Homeless Management Information System," https://icalliances.org/alaska-communities-dashboard (last visited Feb. 4, 2025).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

abatement—that there were 3,070 people experiencing homelessness on December 31, of whom hundreds were unsheltered.[19] The Coalition also reported that "housing program capacity is full," and that "[s]helters see increased demand and remain full."[20] The Coalition also reported that homelessness is up by hundreds more people compared to December 2023.[21] As recently as January 15, 2025, both the Mayor's office and the Anchorage Health Department testified on the record that "all of our shelter services are running at capacity" and the city's only mass low-barrier shelter are "at capacity," respectively.[22] Even

---

[19] *See* Exhibit 5 (Anchorage Coalition to End Homelessness, January Snapshot Data).

[20] *See* Exhibit 5 (Anchorage Coalition to End Homelessness, January Snapshot Data).

[21] *See* Exhibit 5 (Anchorage Coalition to End Homelessness, January Snapshot Data).

[22] Meeting of the Housing and Homelessness Committee, Municipality of Anchorage Assembly (Jan. 15, 2025), https://youtu.be/oCd7hUlMZ9g?t=1201, and https://youtu.be/oCd7hUlMZ9g?t=1515 (last viewed Feb. 5, 2025).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

the Municipality's "warming center" is full and turning away residents.[23]

LEGAL STANDARD

Plaintiffs may obtain preliminary relief under one of two standards: the "balance of hardship" standard or the "probable success on the merits" standard.[24] The standard to be applied "depends on the nature of the threatened injury" and the risk of harm to the defendant.[25] As explained further below, Plaintiffs easily satisfy either test.

---

[23] 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.

[24] *State v. Galvin*, 491 P.3d 325, 332-33 (Alaska 2021).

[25] *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (citing *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1272–73 (Alaska 1992) and A. J. Indus., Inc. v. Alaska Pub. Serv. Comm'n, 470 P.2d 537, 540 (Alaska 1970),

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Where the moving party "faces the danger of irreparable harm and if the opposing party is adequately protected," the court applies a "balance of hardships" standard. Under this standard, the movant "must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit."[26] Conversely, when the threatened harm to the party seeking an injunction "is less than irreparable or if the opposing party cannot be adequately protected," the court applies a "probable success on the merits" standard.[27] This test does not balance harms, but instead requires plaintiff to make "a clear showing of probable success on the merits" of the dispute before the court.

---

modified, 483 P.2d 198 (Alaska 1971)).

[26] *Metcalfe*, 110 P.3d at 978 (quoting *Kluti Kaah Native Village*, 831 P.2d at1273) (internal quotation marks omitted).

[27] *Metcalfe*, 110 P.3d at 978 (quoting *Kluti Kaah Native Village*, 831 P.2d at1273) (internal quotation marks omitted).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Irreparable harm includes an "injury, whether great or small, which ought not to be submitted to . . . or inflicted" and which "because it is so large or so small, or is of such constant and frequent occurrence" that it "cannot receive reasonable redress in a court of law."[28] To be adequately protected, the opposing party "can be indemnified by a bond when financial harm is at stake; can be otherwise protected by some action; or, at a minimum, is facing only relatively slight harm compared to the potential harm facing the party seeking relief."[29]

Here, plaintiffs face irreparable harm and can make a clear showing of probable success on the merits. Therefore, they are entitled, under either standard, to a temporary restraining order and a preliminary injunction prohibiting the Municipality from abating their "campsites" until their constitutional claims are fully adjudicated.

---

[28] *Kluti Kaah Native Village*, 831 P.2d at 1273 n.5 (Alaska 1992) (quoting Black's Law Dictionary, 786 (6th Ed. 1990)).

[29] *State v. Galvin*, 491 P.3d 325, 332–33 (Alaska 2021).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

ARGUMENTS

The Court should grant Plaintiffs' motion because they meet the requirements for preliminary relief under either standard. First, Plaintiffs would prevail under the "balance of hardship" standard because they will face irreparable harm if the Municipality proceeds to abate their location. Abatement will result in the destruction and/or loss of vital property that Plaintiffs' rely upon in order to survive, including property they rely on to stay warm (tents, tarps, and blankets) and property they rely on for their sustenance (food, water, and medication).[30] Any deprivation of this property will be severely detrimental to Plaintiffs, as they need this property to protect themselves from the unforgiving elements of Alaskan winter. Conversely, the Municipality will only face negligible harm if abatement is postponed.

---

[30] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Plaintiffs would also prevail under a "probable success on the merits" standard. The Municipality's notices provide insufficient ground for it to take action against Plaintiffs. And Plaintiffs can establish multiple constitutional infirmities in the Municipality's "prohibited camping" law, including through facial challenge, any one of which would be sufficient to succeed on the merits.

I. Plaintiffs prevail under the balance of hardship standard because they face irreparable harm, while the Municipality is adequately protected.

Given the existential interests at stake in this litigation, Plaintiffs prevail under the "balance of hardship" standard in this motion for preliminary relief.

Here, the proposed abatement of the Arctic-Fireweed encampment would result in irreparable harm to Plaintiffs. As Plaintiffs know through prior experience, abatements inherently include loss of essential property and disruption of essential

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

social connections.[31] The harms Plaintiffs face include the loss and destruction of tents, tarps, and other items used to protect themselves from the elements.[32] They face loss of clothing, food, water, and medicine.[33] They face loss of sources of heat. Without this property, Plaintiffs risk exposure-related injuries, including frostbite and pneumonia.[34] It is not hyperbole to say that life and death it at issue here, as witnessed by the unprecedented death rates of Anchorage's unhoused population over the last 2 years.

Even if Plaintiffs were to voluntarily leave their current site, any location they remove themselves to would be equally subject to abatement by the Municipality. Indeed, the Municipality has been aggressively noticing locations for

---

[31] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

[32] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

[33] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

[34] 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.

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

abatement all winter, and nearby locations were noticed on the same day as Plaintiffs' location.[35] And because Plaintiffs are not able to transport all their property to new areas and recreate their communities after the city breaks them apart, each abatement leaves them with less – less protection from the elements, less ability to stay warm, less community, less stability, and less safety.

In contrast to the severe and irreparable harm faced by Plaintiffs, any harm the Municipality might suffer by delaying this abatement is "relatively slight."[36] Plaintiffs have lived at the present location for at least eight months without incident.[37] None of the reasons the Municipality cites in its abatement notice

---

[35] *See* Exhibit 6 (Attorney Affidavit); Exhibit 6A (Screenshot of Abatement Map); Ex. 4 (Notice of Abatement – Valley of the Moon)

[36] *State v. Galvin*, 491 P.3d 325, 332–33 (Alaska 2021).

[37] *See* Exhibits 1-2 (Plaintiffs' Affidavits).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

suggest any change or exigent circumstances that require an abatement next Monday.

Furthermore, the Municipality's purported interests in abatement can be adequately advanced through alternate means. For just one example, to the extent the Municipality has an interest in removing "garbage, debris, and waste" from the area, nothing in granting a TRO and injunction would prevent the Municipality from working with Plaintiffs to collect and remove such trash, as it did as recently as last summer.[38] Similarly, to the extent the Municipality suspects criminal activity, a TRO and injunction would not prevent the ordinary investigation or prosecution of such conduct.

Because the irreparable harm faced by the Plaintiffs outweighs any harm the Municipality might face in delaying abatement, Plaintiffs only need to "raise 'serious' and substantial

---

[38] *See* Exhibits 1-3 (Plaintiffs' Affidavits).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

questions going to the merits of the case."[39] There are multiple such questions here.

First, by deeming Plaintiffs criminal trespassers wherever they might relocate themselves, the Municipal Code's "prohibited camping" law effectively constitutes an unconstitutional banishment regime, as explained further below. This serious and substantial question goes to the merits of the case and is immediately germane if Plaintiffs are forcibly removed from the current location.

Second, the Municipal Code's nuisance determination, notice, abatement, and appeal procedures violate Plaintiffs' due process rights. Significantly, the Code does not provide a hearing prior to depriving plaintiffs of their property, despite such a hearing being required by Alaska Constitutional law.[40] Moreover,

---

[39] *Galvin*, 491 P.3d at 333 (quoting *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975) (quoting *A. J. Indus.*, 470 P.2d at 541).

[40] *Brandner v. Providence Health & Servs.-Washington*, 394 P.3d

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

ten days is an inadequate notice period because it does not provide sufficient time for plaintiffs to find an alternative place to live—especially when there is no available municipal shelter.[41] Again, this question is immediately germane to the present motion and speak to the merits of the case.

Third, by permitting the routine seizure and destruction of Plaintiffs' unabandoned personal property without a warrant, the Municipal Code's "prohibited camping" law violates Plaintiffs' right to be free from unreasonable seizures. All three of the foregoing challenges "raise 'serious' and substantial questions going to the merits of the case."[42] Far from being frivolous, each

---

581, 589 (Alaska 2017) ("[B]efore the state may deprive a person of protected property interest there must be a hearing.").

[41] *Cf. Engle v. Municipality of Anchorage*, No. 3AN-10-7047 Cl at *19-20 (Alaska Super. Ct. Jan. 4, 2011) (holding that five days was an inadequate notice period for abatements of homeless encampments and reasoning that a longer notice period would reduce the risk of erroneous deprivation by giving Plaintiffs time to find an alternative place to live).

[42] *Galvin*, 491 P.3d 325, 333 (Alaska 2021) (quoting *Alaska Pub. Utils. Comm'n*, 534 P.2d 549, 554 (Alaska 1975) (quoting A. J.

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

claim implicates the constitutionality of the Municipality's ongoing policy and practice of forcibly displacing—and ultimately attempting to banish—people experiencing unsheltered homelessness in Anchorage.

In light of both the irreparable harm Plaintiffs face and the serious and substantial nature of their claims, Plaintiffs are entitled to preliminary relief enjoining the Municipality from abating the Arctic-Fireweed encampment on Monday, February 10, 2025.

II. Applying the probable success on the merits standard also favors Plaintiffs.

Plaintiffs also meet the standard of being likely to prevail on the merits. First, the Municipality's notice contains insufficient justification for abating the targeted location. Second, the "prohibited camping" regime the Municipality has constructed for itself is constitutionally infirm in multiple

---

Indus., 470 P.2d at 541).

respects. Facial analysis of either (a) the cited reasons for abatement and (b) the constitutional challenges Plaintiffs are bringing forward is sufficient to establish their likelihood of prevailing.

A. The posted notices fail to include sufficient reason to abate the targeted location.

The Municipality's notices provide as the basis for abatement: (1) "proximity of prohibited campsites within 100' of a protected land use," specifically "paved greenbelt and major trail systems, schools, playgrounds, athletic fields;" (2) "criminal activity;" and (3) "quantities of garbage, debris, and waste in the area." These are each either false or inappropriate grounds.

First, Plaintiffs are unaware of any "paved greenbelt and major trail systems, schools, playgrounds, [or] athletic fields" within 100 feet of the location where they reside.[43] This language

[43] *See* Exhibit 6 (Attorney Affidavit); Exhibit 6B (Screenshot of Google Maps – Estimated Distance between Arctic-Fireweed Encampment and Valley of the Moon); Exhibit 6C (Screenshot of Google Maps – Estimated Distance between Arctic-Fireweed

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

appears to be taken from the Code's provision allowing 72-hours' notice before an abatement, a provision that also states that property removed at time of abatement from is to be stored, not disposed of.[44] It is both inapplicable to the present notice and, regardless, not an accurate description of the conditions where Plaintiffs reside.

Second, the government would need to meet a high burden of proof to establish the existence of "criminal activity." Naked assertions—unsupported by facts describing any specific suspected criminal code violation or any bad actor—cannot be reason to punish an entire group of people. Even under a "preponderance of the evidence" standard that would authorize the government in a civil forfeiture action to dispossess people of

---

Encampment and North Star Elementary School); Exhibit 6D (Screenshot of Google Maps – Estimated Distance between Arctic-Fireweed Encampment and Northern Lights Preschool & Child Care).

[44] AMC 15.20.020.B.15.b.ii.

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

their property, the government would need to make a much greater showing than has even been attempted here.

Third, the Municipality is full control of means by which "garbage, debris, and waste" would not accumulate in the first place. In fact, the Municipality ensures that means exist for this inevitable byproduct of human existence to be picked up and disposed of for all its housed residents.[45] And, in fact, as recently as last summer, the Municipality worked consistently with Plaintiffs to ensure that trash was sorted, collected, and disposed of. Because Plaintiffs are at the Municipality's mercy in this regard, however, they have little control over this aspect of the conditions where they reside. For the Municipality to withdraw its assistance and then wait for entirely foreseeable results to arise, and to then cite those foreseeable results as grounds to abate, demonstrates the power the Municipality has granted

---

[45] *See, e.g.*, AMC 26.70, *et seq.*, ("Solid Waste Collection").

itself to decide when it will or won't tolerate the very existence of persons like Plaintiffs in its borders.

B. Plaintiffs will likely prevail in their constitutional challenges to the Municipality's "prohibited camping" regime.

The constitutional infirmities in the Municipality's "prohibited camping" laws are many.[46] Most are evident through facial analysis. For the purposes of this expedited motion,

[46] In fact, Plaintiffs' counsel has recently briefed elsewhere many of the same structural infirmities in the Municipality's "prohibited camping" regime that Plaintiffs here assert. *Banks, et al., v. Anchorage*, Case No. 3AN-23-06779-CI (administrative appeal; Appellants' Opening Brief filed Dec. 9, 2024). Unlike here, *Banks, et al., v. Anchorage* was brought as an administrative appeal, an aspect that is currently presenting procedural issues. Indeed, counsel was recently informed of the Municipality's intent to move to stay proceedings in that case pending resolution of a question as to subject matter jurisdiction. No such jurisdiction question exists here. On the contrary, among the Municipality's arguments in *Banks* is that constitutional questions such as these are properly considered when they are presented to the Superior Court in an original action, as Plaintiffs do here. Thus, this court is well positioned to reach the merits of the challenge without delay.

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Plaintiffs here describe two of the most relevant, most self-evident infirmities.[47]

1. Because the Municipal Code deems it criminal trespass for Plaintiffs to shelter themselves anywhere in the city, they can only comply with the law by leaving Anchorage altogether.

As written, the Anchorage Municipal Code leaves no land available for people who have no indoor housing or shelter.[48] To remain in Anchorage, therefore, Plaintiffs must violate the criminal code and forever subject themselves to adverse action by the Municipality. This, in effect, creates a banishment regime.

---

[47] For more detailed analysis of many of the constitutional infirmities to the Municipality's "prohibited camping" regime, Plaintiffs attach at Exhibit 8 Appellants' Opening Brief in *Banks, et al., v. Anchorage*.

[48] The Code defines "camping" as "the use of space for the purpose of sleeping or establishing a temporary place to live." AMC 15.20.010. 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." AMC 15.20.020.B.15. As written, this provision broadly empowers the Municipality to forcibly remove people from where they are living without telling them where they can go.

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Plaintiffs challenge the constitutionality of this banishment regime on three grounds: (1) it seeks to reestablish twentieth-century vagrancy laws, which have already been voided for vagueness[49] and which were historically used to "banish[] unwanted persons from the community;"[50] (2) it amounts to cruel and unusual punishment, as banishment is neither an accepted nor a proportionate form of punishment,[51] and (3) it infringes upon Plaintiffs' fundamental liberty interests without furthering a compelling government interest using the least restrictive means.[52]

---

[49] *E.g., Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972).

[50] *Marks v. City of Anchorage*, 500 P.2d 644, 651 (Alaska 1972).

[51] *E.g.*, *Edison v. State*, 709 P.2d 510, 512 (Alaska App. 1985) (rejecting banishment from a town as a legitimate probation condition).

[52] *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 264-65 (Alaska 2004) ("There is no question that . . . the right[] to move about . . . [is] fundamental. . . . [A]n individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is a part

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

2. The Municipality's abatement policy deprives people of their property without due process.

The most glaring of several due process violations codified in the Municipality's "prohibited camping" regime is the lack of a pre-deprivation hearing before dispossessing people of their property. In the present case, the Municipality is threatening a permanent deprivation. That is, it has stated on its abatement notices that it intends to "dispose[] of as waste" any and all of Plaintiffs' property remaining in the targeted location next Monday.

Such summary property deprivations violate the Alaska Constitution. Alaska's due-process protections require a hearing before a property deprivation, absent a showing of an "emergency

---

of our heritage. Like the federal courts, we have also recognized a right both to interstate and intrastate travel. Accordingly, we assume that the right to intrastate travel is fundamental.") (citations and quotations omitted).

situation".[53] However, the Municipal Code and abatement procedures do not currently provide such a hearing to plaintiffs as a matter of right. Moreover, ten days is an inadequate amount of time for plaintiffs to find an alternative place to live—especially given there is no available municipal shelter and no place they can legally shelter themselves. As such, it does not constitute a sufficient notice period.[54]

A TRO is the only means available to Plaintiffs to ensure that a court can hear their challenge before the Municipality permanently deprives them of their belongings—belongings they rely on for their health, safety, and protection, among other essential purposes.

---

[53] *Brandner v. Providence Health & Servs.-Washington*, 394 P.3d 581, 589 (Alaska 2017) ("[B]efore the state may deprive a person of protected property interest there must be a hearing.").

[54] *Cf. Engle v. Municipality of Anchorage*, No. 3AN-10-7047 Cl at *19-20 (Alaska Super. Ct. Jan. 4, 2011) (holding that five days was an inadequate notice period for abatements of homeless encampments and reasoning that a longer notice period would reduce the risk of erroneous deprivation by giving Plaintiffs time to find an alternative place to live).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

3. The Municipality intends to unconstitutionally seize Appellants' property without a warrant.

The Alaska Constitution protects people from the unreasonable seizure of their "houses and other property, papers, and effects" without a warrant.[55] A constitutionally protected seizure of a person's property occurs "where there is some meaningful interference with an individual's possessory interest in that property."[56]

This applies specifically to the seizure of homeless persons' personal property.[57] In *Lavan v. Los Angeles*, the Ninth Circuit Court of Appeals found that Los Angeles could not seize, without

---

[55] ALASKA CONST. Art. I, §14.

[56] *Soldal v. Cook County II.*, 506 U.S. 56, 63 (1992).

[57] *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012) ("[B]y seizing and destroying Appellees' unabandoned legal papers, shelters, and personal effects, the City meaningfully interfered with Appellees' possessory interest in that property. No more is required to trigger the Fourth Amendment's reasonableness requirement.").

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

notice, homeless persons' property, except under certain conditions: "[B]y seizing and destroying Appellees' unabandoned legal papers, shelters, and personal effects, the City meaningfully interfered with Appellees' possessory interests in that property. No more is necessary to trigger the Fourth Amendment's reasonableness requirement."[58] Further, "even if the seizure of the property would have been deemed reasonable had the City held it for return to its owner instead of immediately destroying it, the City's destruction of the property rendered the seizure unreasonable."[59] Although the lack of notice in *Lavan* distinguishes it from noticed zone abatements in Anchorage, the destruction of homeless persons' only remaining earthly possessions is equally egregious and unreasonable here. As the *Lavan* court noted, personal possessions are especially important

---

[58] *Id.* at 1030.

[59] *Id.* at 1030; *see also Schneider v. County of San Diego,* 28 F.3d 89, 93 (9th Cir. 1984), *as amended on denial of reh'g and reh'g en banc* (Oct. 11, 1994).

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

to the unhoused: "For many of us, the loss of our personal effects may pose a minor inconvenience. However, . . . the loss can be devastating for the homeless."[60] Moreover, Alaskans are entitled to greater protections in this context because the Alaska's Search and Seizure provision is more protective than its federal analog.[61]

Under the broad protections of the Alaska Constitution, the Appellants' personal property seizure implicated their constitutionally protected right to judicial warrant protection against government seizure and destruction of their property. It is undisputed that the Municipality did not provide those protections, nor does the record reflect that it has shown any

---

[60] *Id.* at 1032-33. The *Lavan* court also recognized that property defined as a "nuisances" was nevertheless subject to constitutional protection: "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." *Id.* at 1029.

[61] *Anchorage Police Dep't Emps. Ass'n v. Municipality of Anchorage*, 24 P.3d 547, 575 (Alaska 2001).

compelling governmental interest. Thus, Plaintiffs are likely to succeed on the merits of their unconstitutional seizure claim.

CONCLUSION

Enforcement of the Municipality's abatement regime against unhoused and unsheltered Plaintiffs violates their rights under the Alaska Constitution. Under both the "balance of hardships" standard and "probable success on the merits" standard, Plaintiffs are entitled to a TRO and a preliminary injunction. For this reason, Plaintiffs respectfully ask this Court to grant their motion, preserving the status quo and allowing Plaintiffs to remain where they are pending trial.

DATED February 6, 2025

Respectfully submitted,

American Civil Liberties Union of Alaska Foundation

/s/ Helen Malley
Helen Malley, Alaska Bar No. 2411126
Eric Glatt, Alaska Bar No. 1511098 (Emeritus)

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

Ruth Botstein, Alaska Bar No. 9906016
Katherine Wagner, Alaska Bar No. NA21364
ACLU of Alaska Foundation
1057 West Fireweed Lane, Suite 207
Anchorage, AK 99503
(907) 258-0044
Pro Bono Counsel for Plaintiffs

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*

CERTIFICATE OF SERVICE

On February 6, 2025, a true and correct copy of the foregoing Memorandum in Support of the Motion for a Temporary Restraining Order and Preliminary Injunction was served on:

Eva Gardner, Eva.Gardner@anchorageak.gov
Municipal Attorney's Office
632 West 6th Avenue, Ste. 730
Anchorage, Alaska 99501

By: */s/* Helen Malley

Helen Malley, Alaska Bar No. 2411126
ACLU of Alaska Foundation
1057 West Fireweed Lane, Suite 207
Anchorage, AK 99503
Telephone: 907-258-2006
Facsimile: 907-263-2016

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: *courtfilings@acluak.org*