

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**MONIQUE ACOFF, RECOVERY ALL WAYS, &
NEW YORK RECOVERY ALLIANCE,**

Plaintiffs,

vs.

**Civil Action No.
COMPLAINT**

**THE CITY OF ROCHESTER, a municipal entity,
MONROE COUNTY, a municipal entity, MALIK EVANS,
in his capacity as Mayor of the City of Rochester,
LINDA KINGSLEY, in her capacity as Corporation Counsel,
and CORINDA CROSSDALE, in her capacity as Monroe
County DHS Commissioner,**

Defendants.

I. PRELIMINARY STATEMENT

1. Plaintiff Monique Acoff, a resident at the Loomis Street encampment, and Plaintiffs Recovery All Ways and New York Recovery Alliance, agencies who provide services to residents of the encampment, bring this action to vindicate the residents' rights to substantive due process and to be free from violations of their rights under the Fourth and Fourteenth Amendments to the U.S. Constitution. Plaintiffs further assert that the Defendants' actions violate the New York State Constitution and the New York State Social Services law.

2. The Loomis Street encampment is located on a vacant lot in the City of Rochester. It is home to a group of homeless people, most of whom are experiencing active addiction to narcotics, as well as various physical and mental disabilities. The gathering of the residents at the encampment is essential to helping meet the residents' safety needs. The residents look out for each other by helping someone who is overdosing on narcotics by

administering Narcan to reverse the overdose. The residents also keep an eye on each other's belongings when someone is away from the encampment. The organizational plaintiffs provide harm reduction services to the residents by providing them with sterile use supplies, NARCAN, training in NARCAN, hygiene products, wound care supplies, and by helping residents monitor health conditions such as hepatitis and assisting in their readiness and providing transportation for detox and rehabilitation. The residents live at the encampment because of a lack of appropriate housing options for people who are actively using drugs or with other barriers to emergency housing.

3. Defendants have recently and in the past taken actions to harass and intimidate the residents of the encampment in an apparent attempt to cow the residents into leaving the encampment.

4. Over a year ago, on August 26, 2021, the first sweep at the Loomis encampment occurred, by the City and the Rochester Police Department. All residents were forced to leave the encampment, and many lost belongings and tents. The belongings that were saved were saved only because Plaintiff Recovery All Ways bagged and stored them. Over time, homeless residents returned to the Loomis encampment.

5. In early September 2022, the City Corporation Counsel and the Mayor broadcast to homeless service providers that they again intended to clear out the residents and fence off the encampment.

6. On September 30, 2022, members of the Rochester Police Department, and staff members of various county and city agencies - nearly 50 people in total - descended on the encampment in a show of force, which terrified the residents, and drove some residents, including Plaintiff Monique Acoff, to temporarily relocate.

7. Defendants said they were there to offer “services” to the residents. However, the services offered included a referral to a homeless shelter that is not currently open and even when opened would not be a suitable alternative for the residents, and to an agency that does not build, manage or provide housing of any kind. In short, the services offered were largely illusory.

8. Rochester Police Department officers also came to the encampment on or about September 28, 2022 and put up multiple “No Trespassing” signs around the lot the encampment sits on. During that interaction, RPD officers also took some of the possessions of at least one resident and threw them in a dumpster.

9. Defendants' sweep will deny the Plaintiff's their right to travel and to free association, which is indispensable to the Plaintiff's survival. Breaking up the encampment and casting Plaintiff Acoff off to some unknown place without a support network puts her at great risk of harm. Plaintiff's NYRA and RAW too will have their significant private interest in being able to travel and associate freely in all areas of the City irreparably harmed by Defendant's sweep.

10. In taking preliminary steps to clear the encampment without providing safe and suitable alternatives for the residents, Defendants are destroying the harm reduction benefits that the encampment currently provides, creating imminent and substantial danger for the residents that would otherwise be mitigated by their continued residency at the site, and diverting resources and frustrating the purpose of homeless advocacy and outreach organizations including the Plaintiffs.

11. By ousting Plaintiffs with no viable plan to address their needs, Defendants will cause them to disperse to hidden locations throughout the City. The result will make the work

of homeless outreach advocates exponentially harder, destroy the harm reduction path of the residents, and exacerbate the threats to the residents' physical safety and personal belongings, in violation of their constitutional rights.

12. By failing to provide individual assessments and individualized services responsive to Plaintiff Acoff's needs, Defendants violate the guarantees mandated by the New York State Constitution to aid the needy and the New York Social Services Law and regulations requiring that a needy person's specific individualized needs be met.

13. Accordingly, Plaintiffs seek an order declaring the actions of the Defendants to clear the Loomis Encampment unconstitutional, preventing further unlawful activity by the Defendants to clear the encampment until safe, accessible, community-centered solutions are found, and ordering the Defendants to meet their obligations under the New York State Social Services law.

II. JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, in conjunction with 42 U.S.C. § 1983 (The Civil Rights Act of 1871) because Plaintiff's claims constitute violations of the Constitution of the United States.

15. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to reach Plaintiff's pendent state law claims as these claims arise out of a common nucleus of operative facts.

16. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(b) and (c) because all the events or omissions giving rise to the plaintiff's claims occurred in this judicial district.

17. Court has the authority to grant monetary and injunctive relief pursuant to 42 U.S.C. § 1983; fees and costs pursuant to 42 U.S.C. §1988, and declaratory relief pursuant to 28 U.S.C. § 2201.

III. PARTIES

Plaintiff Recovery All Ways

18. Plaintiff Recovery All Ways (RAW) is a 501(c)(3) non-profit with the mission to support anyone and everyone affected by substance use disorder, mental illness, and homelessness. RAW is based in Rochester, New York. A dedicated team of RAW outreach volunteers assist anyone facing substance use disorder, mental illness, and/or are homeless in the community. In addition to health and recovery resources, basic needs, and nourishment, RAW deploys a cleanup team to safely dispose of used syringes in “hot zones,” (public spaces such as parks, parking lots, and playgrounds) and make wellness checks on unhoused neighbors who have sought refuge in vacant lots or abandoned properties. RAW also has a specialized team that provides certified Narcan training and community education. RAW offers these resources to the residents of the Loomis Encampment.

19. RAW brings this action on its own behalf. By scattering the residents of the Loomis Encampment and interfering with RAW’s harm reduction measures, the Defendants’ actions directly conflict with, impair, and frustrate RAW’s mission. The Defendants’ actions force RAW to divert resources to locate and provide services to homeless individuals displaced from the encampment, and to use its resources to oppose an imminent encampment sweep. These injuries will be redressed if Plaintiffs prevail in this action and the Defendants are prohibited from clearing the encampment in violation of the residents’ constitutional rights.

Plaintiff New York Recovery Alliance

20. Plaintiff New York Recovery Alliance (NYRA) is a 501(c)(3) nonprofit organization dedicated to providing high-quality recovery harm reduction services and advocating for resources such as housing for a traditionally underserved population dealing with substance use and other co-occurring challenges. NYRA has set up outreach and provides weekly resources at the Loomis encampment, including compassionate engagement, sterile safe use supplies, gloves, training in safe use, and educational materials for the residents and others in the neighborhood in support of harm reduction and resources for people with substance use disorder. NYRA is based in Rochester, NY.

21. NYRA brings this action on its own behalf. The Defendants' actions directly conflict with, impair, and frustrate NYRA's mission, including by making the provision of services more difficult, and forcing NYRA to divert additional resources to locate and provide services to homeless individuals. NYRA's mission will no longer be frustrated and this diversion of resources will no longer be necessary if the Defendants are enjoined from clearing out the camp. NYRA's injuries will be redressed if Plaintiffs prevail in this action.

Plaintiff Monique Acoff

22. Plaintiff Monique Acoff is a 34 year old resident of the Loomis Encampment. She has lived there for about one month. Monique relies on the encampment community for safety and support. She has nowhere else to go if the Loomis Encampment is closed, and has not been offered any alternatives by City or County officials.

Defendants City of Rochester, Malik Evans and Linda Kingsley

23. Defendant City of Rochester (“City”) is a municipal entity created and authorized under the laws of the State of New York.

24. The City of Rochester is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible.

25. Defendant City maintains the City of Rochester Police Department, a duly authorized police department, authorized to perform all functions of a police department. RPD acts as Defendant City’s agent and Defendant City assumes the risks incidental to the maintenance of a police department and the employment of police officers.

26. Upon information and belief, Mayor Malik Evans and Corporation Counsel Linda Kingsley have the authority to make final binding decisions on behalf of the City of Rochester. They are sued in their official capacities.

Defendants County of Monroe and Corinda Crossdale

27. Defendant the County of Monroe (“County”), is a duly formed governmental unit, located in New York and organized under the laws of New York. Monroe County is the governmental provider of social services, including emergency housing, to residents of Rochester. It is bound by the statutory requirements of the New York State Social Services Law.

28. The Monroe County Department of Human Services (DHS) has responsibility to comply with New York’s Social Services Laws and Regulations.

29. Corinda Crossdale is Monroe County’s DHS Commissioner, and is sued in her official capacity.

IV. LEGAL FRAMEWORK

The Civil Rights Act of 1871, 42 USC § 1983

30. Under 42 U.S. Code § 1983, “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

31. Local governments, such as the City of Rochester and Monroe County, can be sued directly under 42 U.S. Code § 1983 for deprivation of constitutional rights where such action represents official policy or custom. *See Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658 (1978).

Fourth Amendment to the U.S. Constitution

32. Under the Fourth Amendment to the United States Constitution, a person has the “right . . . to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” A “seizure” of property within the meaning of the Fourth Amendment occurs when “there is some meaningful interference with an individual’s possessory interests in that property.” *Soldal v. Cook County*, 506 U.S. 56, 61 (1992).

33. Fourth Amendment protection from unlawful seizure applies within the civil context. *Soldal*, 506 U.S. at 66-69 (collecting cases and, in *dicta*, describing hypothetical seizure of a house in order to verify compliance with a housing regulation as a “transgression” falling within the parameters of the Fourth Amendment). It has been held to apply specifically to police

“sweeps” of encampments which involve seizing and destroying the possessions of homeless residents of an encampment. *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D.Fla. 1992).

Fourteenth Amendment to the U.S. Constitution

34. Under the state-created danger doctrine, a substantive due-process violation occurs when the state affirmatively places the plaintiff in danger by acting with deliberate indifference to a known or obvious danger. *U.S. Const. Amend. 14; DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989); *Pena v. Deprisco*, 432 F.3d 98, 109 (2d Cir. 2005).

Constitutional Right to Travel and Freedom of Association

35. Freedom of association is a necessary attendant to the Bill of Rights' protection of individual liberty interests. *Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002), citing *Roberts v. United States Jaycees*, 468 U.S. 609, 617-618 (1984). Likewise, the right of interstate travel is a fundamental right. *United States v. Guest*, 383 U.S. 745 (1966).

36. Plaintiff's freedom of movement and association are fundamental rights necessary to maintain an individual's health and welfare. “[C]entral to our constitutional scheme” is the right “to enter into and maintain certain intimate human relationships [that] must be secured against undue intrusion by the State.” *Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002)(citing *Roberts v. United States Jaycees*, 468 U.S. 609 (1984)).

New York State Constitution

37. Section 1 of Article XVII of the State Constitution imposes a duty on the State and its subdivisions to aid, care for, and support the needy. *Doe v. Dinkins*, 192 A.D.2d 270, 276 (1st Dep't 1993). This constitutional mandate cannot be ignored in either its letter or its spirit.

Wilkins v. Perales, 1985, 128 Misc.2d 265, 487 N.Y.S.2d 961, *affirmed* 119 A.D.2d 1018, *appeal denied* 68 N.Y.2d 612.

38. The lack of availability and poor quality of shelter facilities, and the failure to provide required services to the homeless is justiciable through the courts. *Callahan v Carey*, (Sup Ct. New York County, index No. 42582/79). New York's Constitution was intended to confer rights to those who must look to society for the bare necessities of life. *Id.*, *see also Wilkins v Perales*, 128 Misc 2d 265, 267 (Sup Ct. New York County 1985), *affd*, 119 A.D.2d 1018 (1st Dep't 1986).

New York State Social Services Law

39. Under New York Social Services Law § 41, New York State communities must each do their share to assist people who lack shelter.

40. New York Social Services Law (NYSSL § 131-v) and implementing regulations 18 NYCRR § 352.35 require that “[e]ach social services district shall provide homeless services and engage in outreach in accordance with its approved homeless services plan.” Lack of shelter and homelessness are considered to be an emergency situation under the regulations. *See* 18 NYCRR §§ 351.8(c)(3) and 351.8(c)(4). The district is obligated to meet immediate needs as stated in 18 NYCRR § 351.8(c)(4).

V. FACTS

41. The individual plaintiffs are residents of the Loomis Street Encampment and the organizational plaintiffs are agencies which provide services to the residents at the encampment and to the homeless population in the community generally.

42. The Loomis Street encampment is located on a vacant lot in the City of Rochester. It is home to a group of homeless people, most of whom are experiencing active addiction to

narcotics, as well as various physical and mental disabilities. The Loomis Street encampment has existed for many years.

43. The residents of the encampment live there because there are no other options for them. Just as in many communities across the country, it is often the case in Monroe County that there are no beds in any of our homeless shelters because demand for the beds outstrips the available resources in the community.

44. Even when a bed is available most, if not all, of the residents of the encampment would not be able to take advantage of it due to being sanctioned by the Department of Human Services, lack of personal identification, or because the trauma experienced by residents of the encampment makes it impossible for them to stay in a crowded, chaotic shelter environment where there is little to no privacy, and especially because none of the shelters allow residents to use drugs.

45. Defendants have periodically performed “sweeps” of the encampment and otherwise harassed the residents in an effort to force the residents out of the encampment. Most recently, on September 28, 2022, Rochester Police Department (RPD) officers went to the encampment and posted a number of “No Trespassing” signs on the lot. The signs state that violators will be prosecuted to the full extent of the law.

46. On September 30, 2022, a large contingent of RPD officers, as well as other city and county officials and staff descended upon the encampment to, according to them, offer services to the residents. They also brought dump trucks and a Bobcat, strongly suggesting that they were ready to bulldoze the camp and dispose of the residents’ belongings.

47. The “services” offered to the residents on this occasion were illusory. Residents were referred to the House of Mercy, which is currently closed. They were referred to the Open

Door Mission, which has no available beds. RPD officers said they could go to other agencies which do not provide housing, Helio Healthcare and Delphi Rise.

48. The officials on the scene did not engage in conversation with the residents. They simply stood near them and described to outreach advocates the above-described illusory services.

49. After these two events, some of the residents left the encampment as they believed it was clear that the defendants intended to “clear” the encampment.

50. If the encampment closed, its residents would lose the benefits of living in the encampment—which include the ability of the residents to monitor each other during drug use, and to administer Narcan in the event of an overdose. The residents also watch over each other's belongings and make sure they are not taken or disposed of. The residents are able to receive clean needles and supplies of Narcan and other basic street medicine from the case workers who support them. They also enjoy the socialization and stability the encampment provides them.

51. The closure of the encampment would thus force residents into unsafe living environments such as abandoned buildings. The residents would be at a higher risk of being the victim of assault, and other crimes, and the stress would exacerbate the residents many health issues, including their substance abuse disorder. They would very likely be cut off from the case workers who visit the encampment and provide them with needed services. The chances of a fatal overdose occurring to one of the displaced residents would increase as more people would be using drugs alone.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: VIOLATION OF THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION

52. All preceding and subsequent paragraphs are incorporated by reference.

53. Defendants, acting in concert and under color of law, violated Plaintiffs' right to be free from unreasonable search and seizure of their property under the Fourth Amendment to the United States Constitution as made actionable by the Civil Rights Act of 1871, 42 U.S.C. §1983, by their actions in seizing residents belongings and throwing them in the garbage.

54. Upon information and belief, the government defendants knowingly and deliberately maintain an official pattern, practice or custom under which agents or employees of the City and/or County seize residents' belongings and throw them in the trash.

SECOND CLAIM FOR RELIEF:
VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

55. All preceding and subsequent paragraphs are incorporated by reference.

56. Defendants, acting in concert and under color of law, violated Plaintiffs' right to be free from state-created dangers under the Fourteenth Amendment to the United States Constitution as made actionable by the Civil Rights Act of 1871, 42 U.S.C. §1983, by their actions to force the residents of the camp to leave even though there is nowhere else for them to go, thus creating an unsafe situation for the residents that will result in damage to the residents that is completely foreseeable, and which evidences a deliberate indifference to the welfare of the residents.

57. Upon information and belief based upon the experiences of community outreach advocates, it is an official policy of the governmental defendants to "clear out" and conduct "sweeps" of homeless encampments. Moreover, upon information and belief, Defendants Malik Evans and Linda Kingsley made a final determination to clear out the Loomis Encampment.

THIRD CLAIM FOR RELIEF:
VIOLATIONS OF THE PLAINTIFFS' RIGHTS TO FREELY ASSOCIATE AND FREELY
TRAVEL

58. All preceding and subsequent paragraphs are incorporated by reference.

59. By posting "No Trespassing" signs that bar them from the Encampment, defendants, acting in concert and under color of law, violate Plaintiffs' right to associate with Loomis Encampment residents and service providers RAW and NYRA whom they rely on for support and essential health-related services.

FOURTH CLAIM FOR RELIEF:
VIOLATION OF NYS CONSTITUTION

60. All preceding and subsequent paragraphs are incorporated by reference.

61. The Defendants, acting in concert and under color of law, by their actions to force the residents of the camp to leave even though there is no place else for them to go to receive needed services, violate state constitutional protections. Article XVII, Section 1 of the New York State Constitution imposes a duty on the State and its subdivisions to aid, care for, and support the needy. *Doe v. Dinkins*, 192 A.D.2d 270, 276 (1st Dep't 1993).

62. The Defendants, acting in concert and under color of law, by their actions to force the residents of the camp to leave have forced organizational Plaintiffs to expend their limited resources in response, to the detriment of their mission as providers of substance abuse treatment services to people experiencing homelessness.

FIFTH CLAIM FOR RELIEF:
VIOLATIONS OF THE NEW YORK SOCIAL SERVICES LAW

63. All preceding and subsequent paragraphs are incorporated by reference.

64. Defendant Monroe County has failed to provide Social Services as required in Social Services Law, including but not limited to the requirement to provide temporary housing to those experiencing homelessness in New York State. *See* New York Social Services Law (NYSSL § 131-v) and implementing regulations 18 NYCRR § 352.35. Regulations also require that “[e]ach social services district shall provide homeless services and engage in outreach in accordance with its approved homeless services plan.”

WHEREFORE, Plaintiffs respectfully request that the Court enter a judgment against the Defendants as follows:

- a. Assuming jurisdiction over this case; and
- b. Declaring the actions of Defendants, as set forth above, to be an unlawful denial of Plaintiffs’ rights under the Fourth and Fourteenth Amendments made actionable by the Civil Rights Act of 1871, and an unlawful denial of Plaintiffs’ constitutional rights to free association and free travel, and an unlawful denial of Plaintiffs’ rights under the New York State Constitution Article XVII, and an unlawful denial of Plaintiff’s rights under the New York State Social Services Law, and
- c. Enjoining Defendants from taking further action to force the residents of the encampment to leave and from seizing and disposing of residents’ belongings, and
- d. Awarding Plaintiffs compensatory damages in an amount to be proved at trial; and
- e. Awarding such other damages as are necessary to fully compensate Plaintiffs; and
- f. Awarding costs, disbursements and attorney's fees to Plaintiffs under 42 U.S.C. §1988; and

- g. Awarding such additional and further relief as the interests of justice require.

Jeffrey P. Nieznanski, Esq.
Legal Assistance of Western New York, Inc.
Attorneys for Plaintiffs
1 W. Main St., Suite 400
Rochester, New York 14614
(585) 532-6896