

More Than a Tent: Using the Uniform Unincorporated Nonprofit Association Act to Protect Encampment Residents' Rights

Michelle Y. Ewert*

ABSTRACT

Homeless encampments have become increasingly vulnerable to criminalization, eviction, and forced displacement in the wake of City of Grants Pass v. Johnson and renewed federal and local hostility toward unsheltered people. Courts often treat encampments as temporary locations rather than as communities, leaving residents without effective legal protection when individual plaintiffs lose standing due to displacement, death, or relocation. This article challenges that narrow conception by arguing that many encampments function as collective entities that provide safety, stability, shared resources, and political voice for people without housing. Drawing on constitutional theory, property scholarship, and case studies of organized encampments, the article demonstrates how encampments can constitute “home” with community equity deserving of legal recognition and procedural protection.

The article then proposes a novel and pragmatic solution to persistent standing and enforcement problems: treating qualifying encampments as unincorporated nonprofit associations under the Uniform Unincorporated Nonprofit Association Act (UUNAA) and analogous state statutes. Unlike corporations or formal nonprofits, the UUNAA offers a flexible legal structure well suited to loosely organized, noncommercial groups. Recognition as an unincorporated nonprofit association would allow encampments to sue in their own name, preserve claims despite changes in membership, and assert collective rights alongside those of individual residents. The article concludes by offering guidance for lawyers and organizers working with encampments to pursue resident-led legal recognition without undermining autonomy or dignity, and argues that recognizing encampments as collective legal actors can meaningfully enhance due process,

* Michelle Ewert is Professor of Law at Washburn University School of Law and Director of the Washburn Law Clinic. J.D., University of Wisconsin. M.P.P., University of Minnesota. Thank you to Nis Wilbur for outstanding research assistance; Rory Bahadur, John Francis, and Alex Glashauser for many encouraging Writing Circle conversations; my colleagues at the Clinical Law Review Writers' Workshop, Washburn University School of Law Faculty Development Workshop, and Mid-Atlantic Clinicians Writing Workshop for thoughtful feedback on early drafts; Michael Haber, Ron Hochbaum, Veryl Pow, and my parents, Priscilla and Merrill Ewert, for graciously reading multiple drafts; the students of the HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW FORUM for their excellent edits; and the National Homelessness Law Center for hosting my sabbatical and advocating fiercely for unsheltered members of our community.

stability, and political power for some of society's most marginalized communities.

INTRODUCTION

Camp Nenookaasi was special. Ojibwe for “hummingbird,” Nenookaasi was established in 2023 and became the largest homeless encampment in Minneapolis, Minnesota.¹ The camp maintained a prayer fire and communal kitchen for its roughly 150 residents,² most of whom were Indigenous.³ Nenookaasi was not without challenges, though, and neighbors complained of criminal activity at the encampment.⁴ In response, and reminiscent of the forced relocation of tribes by the United States government in the 1800s,⁵ the City evicted the community multiple times⁶ before a fire on February 29, 2024 forced yet another move.⁷

On January 2, 2024, prior to the fire, four Nenookaasi residents sought injunctive relief in federal court to prevent the City's mayor from executing a fourth eviction.⁸ The Plaintiffs' motion identified Camp Nenookaasi as “the encampment of unhoused individuals located between 11th and 12th Avenues on 28th Street, Minneapolis, Minnesota.”⁹ The four plaintiffs alleged that the forced relocation would violate their rights under the Fourth, Eighth, and Fourteenth Amendments to

¹ Susan Du, *Nenookaasi, Minneapolis' largest homeless camp, marked for closure to make way for development*, MINNESOTA STAR TRIBUNE (Dec. 17, 2023), <https://www.startribune.com/nenookaasi-minneapolis-largest-homeless-camp-marked-for-closure-to-make-way-for-development/600328900/> [https://perma.cc/6QFL-E53S].

² Natasha Delion & Grace Aigner, *Activists seek change for Camp Nenookaasi unhoused after second eviction*, MINNESOTA DAILY (Jan. 26, 2024), <https://mndaily.com/281218/news/activists-seek-change-for-camp-nenookaasi-unhoused-after-second-eviction/> [https://perma.cc/Y76G-AXD7].

³ Melissa Olson, *Minneapolis clears Camp Nenookaasi, an encampment of unhoused, mostly Native people*, MPR NEWS (Jan. 4, 2024), <https://www.mprnews.org/story/2024/01/04/as-minneapolis-officials-prepare-to-clear-camp-nenookaasi-residents-pack-up> [https://perma.cc/4WW4-8269].

⁴ *Id.*

⁵ The Indian Removal Act was enacted in 1830. Indian Removal Act, Pub. L. No. 21-148, 4 Stat. 411-12 (1830). A recent study calculated that Indigenous people lost 98.9% of the land on which they historically lived through land dispossession and forced migration. Justin Farrell, Paul Berne Burow, Kathryn McConnell, Jude Bayham, Kyle Whyte, & Gal Koss, *Effects of land dispossession and forced migration on Indigenous peoples in North America*, SCIENCE (Oct. 29, 2021).

⁶ *City crews start clearing fourth Camp Nenookaasi site in Minneapolis*, MPR NEWS (Feb. 1, 2024), <https://www.mprnews.org/story/2024/02/01/city-crews-start-clearing-camp-nenookaasi-in-minneapolis> [https://perma.cc/3PYB-7BL4].

⁷ Anthony Bettin, *Cause of February fire at Minneapolis' Camp Nenookaasi undetermined, investigators say*, CBS NEWS (Mar. 13, 2024), <https://www.cbsnews.com/minnesota/news/cause-of-february-fire-at-camp-nenookaasi-undetermined-investigators-say/> [https://perma.cc/S4ES-U9WW].

⁸ *Sagataw v. Frey*, No. 24-cv-001 (ECT/TNL), 2024 WL 1154677, at *1 (D. Minn. Mar. 18, 2024).

⁹ *Id.* at *2.

the United States Constitution.¹⁰

In its March 18, 2024, decision, the court found the request for injunctive relief moot because Nenookaasi had moved from the site identified in the motion.¹¹ The court noted that, “[o]wing to the fire, neither the camp nor Plaintiffs remain at that site. The motion reasonably could be denied as moot on just this basis.”¹²

While Plaintiffs’ counsel had described the encampment as “not a place,” but “a community of people,”¹³ the court took a narrower view, focusing on the physical location rather than the residents themselves and finding that “Plaintiffs’ motion was specific to the fourth location.”¹⁴ Because the “encampment of unhoused individuals” had moved from the location at 11th and 12th Avenues due to fire, it was as if the encampment no longer existed, although many Nenookaasi residents still lived together in a new location. The court’s focus on the encampment’s location reflects a fundamental misunderstanding of many encampments and the important role they can play in bringing some small amount of stability and safety to people without housing. If the court and city had recognized the encampment as an ongoing legal entity, perhaps the city could have coordinated better services and the court would have granted the request for the temporary restraining order, even after the individual named plaintiffs disappeared.

Legal recognition of encampments could have wide-ranging impact, as the number of people experiencing unsheltered homelessness in the United States is staggering. In 2024, the Department of Housing and Urban Development’s (HUD) Point-in-Time estimates, which count the number of people experiencing homelessness on a single night in January, estimated that there were 274,224 people who were “unsheltered homeless” throughout the country.¹⁵ This estimate includes people sleeping in vehicles, parks, mass transit stations, abandoned buildings, and other locations outside of a housing structure.¹⁶ It also includes people in encampments. It does not include people in emergency shelters, transitional housing, and safe havens, whom HUD classifies as “sheltered homeless.”¹⁷

In the absence of sufficient affordable housing that meets a range of needs, many people are forced to sleep outside. Encampments provide community, allow people to share resources, and offer a degree of safety.¹⁸ They are not stable

¹⁰ *Id.* at *1.

¹¹ *Id.* at *2.

¹² *Id.*

¹³ *Id.* at *3.

¹⁴ *Id.* at *2.

¹⁵ U.S. DEPT. OF HOUS. & URB. DEV., The 2024 Annual Homelessness Assessment Report (AHAR) to Congress, 2 (Dec. 2024), <https://www.huduser.gov/portal/sites/default/files/pdf/2024-AHAR-Part-1.pdf> [<https://perma.cc/FL98-T27B>].

¹⁶ *Id.* at x.

¹⁷ *Id.* at ix.

¹⁸ U.S. Interagency Council on Homelessness, *19 Strategies for Communities to Address Encampments Humanely and Effectively*, 3 (Apr. 2024),

housing, though, and are not an acceptable solution to the affordable housing crisis. As the National League of Cities wrote in its 2022 overview of homeless encampments, “[h]omelessness is first and foremost the result of a severe shortage of affordable housing, poverty, and insufficient resources. Encampments are a visual representation of the lack of those resources and of policy failures.”¹⁹

Because of the prevalence of encampments, the U.S. Interagency Council on Homelessness (USICH)²⁰ issued a series of recommendations in 2024 entitled “19 Strategies for Communities to Address Encampments Humanely and Effectively.”²¹ Within the larger goal of promoting equity, the USICH identified incorporating encampment residents in the search for solutions as a main priority. USICH also recommended that the community “[i]dentify, based on the encampment residents’ selection, a resident to serve as spokesperson for the encampment to communicate information between people living in and people involved in the public response to the encampment.”²²

This recommendation is significant because it not only recognizes the importance of incorporating the perspectives and needs of unhoused individuals into decision-making but suggests that encampments are communities capable of selecting representatives to speak on the residents’ behalf. This proposal bears resemblance to tenant councils or other associations where members of a group identify representatives to advocate for their shared goals. In its 2026 *Advocates’ Guide*, the National Low Income Housing Coalition laid out general guidelines for organizing a tenant council,²³ which could also be utilized by encampments. Notably, many tenant councils are entities that negotiate with landlords and public

https://www.usich.gov/sites/default/files/document/19%20Strategies%20for%20Communities%20to%20Address%20Encampments%20Humanely%20and%20Effectively_1.pdf

[<https://perma.cc/MQA2-US7N>]; Rebecca Cohen, Will Yetvin, & Jill Khadduri, *Understanding Encampments of People Experiencing Homelessness and Community Responses: Emerging Evidence as of Late 2018*, U.S. DEPT. OF HOUS. & URB. DEV. 5 (Jan. 7, 2019), <https://www.huduser.gov/portal/sites/default/files/pdf/Understanding-Encampments.pdf> [<https://perma.cc/NRY3-W695>].

¹⁹ National League of Cities, *An Overview of Homeless Encampments for City Leaders* 2 (2022), <https://www.nlc.org/wp-content/uploads/2022/01/Overview-of-Homeless-Encampments-Brief.pdf> [<https://perma.cc/8YFJ-WCQ5>].

²⁰ The United States Interagency Council on Homelessness (USICH) was created in 1987 as an independent federal agency within the executive branch tasked with coordinating federal efforts to end homelessness. Jennifer Ludden, *Trump Administration Has Gutted an Agency That Coordinates Homelessness Policy*, NPR (Apr. 16, 2025), <https://www.npr.org/2025/04/16/nx-s1-5366865/trump-doge-homelessness-veterans-interagency-council-on-homelessness-staff-doge> [<https://perma.cc/U3MS-EDL3>]. In a March 14, 2025 executive order, President Trump called for the USICH and six other entities to be “eliminated to the maximum extent consistent with applicable law.” Exec. Order No. 14238, 90 Fed. Reg. 13043 (Mar. 14, 2025).

²¹ U.S. Interagency Council on Homelessness, *supra* note 18, at 1.

²² *Id.* at 5.

²³ Nat’l Low Income Hous. Coal., *2026 ADVOCATES’ GUIDE*, 2-50–2-53 (2026), https://nlihc.org/sites/default/files/AG-2026/NLIHC_Advocates_Guide_26.pdf [<https://perma.cc/TF87-R93W>].

entities and bring claims on behalf of the group.²⁴

In the case brought by Camp Nenookaasi residents on behalf of themselves and similarly situated individuals, the court denied the preliminary injunction in part because two plaintiffs could not be found (or at least were no longer living in the camp).²⁵ The court said “it is difficult to understand . . . how a Plaintiff who does not reside in the camp today would have standing to seek prospective relief.”²⁶ The court specifically noted that “Camp Nenookaasi [was] not the Plaintiff in this case.”²⁷ This approach meant that the interests of the remaining encampment residents were no longer protected in the effort to obtain injunctive relief.²⁸

This article attempts to resolve this dilemma by considering the following—what if the encampment had been treated as an association with the standing to file a request for a preliminary injunction? Would that have better protected the camp residents? What type of organizational structure would best accomplish that purpose?

This article begins by discussing the diversity across encampment structures. *First*, I focus on several highly organized encampments with more formal structure and then examine some challenges that make representing individual encampment residents difficult. *Second*, I analyze encampments as homes deserving of protection, applying a community equity framework and discussing due process protections and limitations. *Third*, I propose using the Uniform Unincorporated Nonprofit Association Act to confer legal recognition on highly organized encampments so they can more easily take collective action. This section concludes with a practical guide so organizers and lawyers working with encampments that desire legal recognition can help them meet the requirements for unincorporated nonprofit associations.

In a hearing on an anti-camping bill in the Tennessee legislature during the Occupy movement of the 2010s, Representative Barrett Rich said, “[y]our tent has absolutely no First Amendment rights.”²⁹ Encampments are more than tents, though, and the people who live there—individually and collectively—do have a range of rights. Recognizing the voice of the collective will help protect some of

²⁴ For a discussion of different forms of tenant organizations and their powers, see Greg Baltz, *Tenant Union Law*, 43 YALE L. & POL’Y REV. 1 (2024).

²⁵ *Sagataw v. Frey*, No. 24-cv-001 (ECT/TNL), 2024 WL 1154677, at *2 (D. Minn. Mar. 18, 2024).

²⁶ *Id.*

²⁷ *Id.* at *3.

²⁸ After the court dismissed the plaintiffs’ request for a preliminary injunction as moot, the plaintiffs sought to certify a class for injunctive relief to prevent future eviction. *Sagataw v. Frey*, No. 24-CV-001 (ECT/ECW), 2025 WL 1993536, at *1 (D. Minn. July 17, 2025). However, the court denied certification because the record did not establish that any individual plaintiff had standing to seek injunctive relief against eviction from the encampment’s current location. *Id.* at *2–3.

²⁹ Joe White, *House Passes “Anti-Camping” Bill to Clear Away Occupy Nashville*, WPLN NEWS (Feb. 16, 2012), <https://wpln.org/post/house-passes-anti-camping-bill-to-clear-away-occupy-nashville/> [<https://perma.cc/LYE8-K74J>].

society's most vulnerable people.

I. ENCAMPMENT STRUCTURE AND CHALLENGES REPRESENTING INDIVIDUAL ENCAMPMENT RESIDENTS

Homeless encampments³⁰ take a variety of forms. They vary in size, physical structure, and social organization. Some encampments are quite impermanent, with residents using tents that can be easily erected and moved or living out of groups of vehicles.³¹ Other encampments are composed of lean-tos made from scavenged materials to create more stable physical structures.³² Encampments can use infrastructure like overpasses to provide shelter or storm drains to offer additional protection from the elements.³³ For example, the underground tunnel system in Las Vegas has at times sheltered over a thousand people.³⁴

Encampments vary as much in social structure as they do in physical structure. They can range in size from one to two people to more than a hundred.³⁵ They can be composed of a core group of people with strong ties or a changing group of people who stay together for brief periods.³⁶ Some encampments have around-the-clock security patrols, while others do not.³⁷ Many have mutually enforced norms and standards for behavior, while others have little social cohesion.³⁸

There are many reasons why someone without housing might live in an encampment. For example, not all communities have full-time shelters, and many congregate shelters limit the number of bags a person can bring, prohibit pets, and

³⁰ Although there are many types of encampments that exist around the world, including refugee camps, camps for internally displaced people, and political encampments, this article uses the term “encampment” to refer to homeless encampments in which one or more people experiencing homelessness have created temporary living accommodations for themselves and their belongings. It does not refer to high-density homeless “campuses” like the one planned for the outskirts of Salt Lake City, Utah, which is anticipated to have 1,300 beds on a 15.85-acre property. See Katie McKellar, *Utah officials unveil site for 1,300-bed homeless campus after long, secretive search*, UTAH NEWS DISPATCH (Sep. 3, 2025), <https://utahnewsdispatch.com/2025/09/03/utah-homeless-campus-site-unveiled-after-secretive-search/> [<https://perma.cc/LD26-AZ6J>].

³¹ Cohen, Yetvin, & Khadduri, *supra* note 18, at 1.

³² *Id.*

³³ *Id.* at 8.

³⁴ Gary Dymski, *‘I wanted to turn to dust.’ Las Vegas homeless tell of primal life underground, in 600 miles of city’s tunnels*, CBS (Aug. 25, 2022), <https://www.8newsnow.com/news/local-news/primal-life-escape-from-las-vegas-tunnels-starts-with-volunteer-visits/> [<https://perma.cc/2CWS-P2KY>].

³⁵ U.S. DEPT. OF HOUS. & URB. DEV., EXPLORING HOMELESSNESS AMONG PEOPLE LIVING IN ENCAMPMENTS AND ASSOCIATED COSTS, 10 (2021), <https://www.huduser.gov/portal/sites/default/files/pdf/Exploring-Homelessness-Among-People.pdf> [<https://perma.cc/D5YL-2J34>].

³⁶ Cohen, Yetvin, & Khadduri, *supra* note 18, at 1.

³⁷ *Id.* at 5.

³⁸ *Id.* at 5–6.

separate teenage boys from their mothers and siblings.³⁹ Shelters often feel unsafe, especially for people who have experienced violence or other trauma.⁴⁰ And disease and pests like bedbugs or lice can spread quickly in congregate shelters.⁴¹ Given these challenges, encampments offer an alternative that can help address some of unhoused people's needs.

A. Examples of Highly Structured Encampments

Camp Nenookaasi in Minneapolis, Camp Resolution in Sacramento, and Tent City 3 in Seattle are examples of highly organized encampments with strong community identities, norms, and rules. They serve as models for how to structure an encampment if residents want legal recognition for their community.

Despite the obstacles it faced in court, Camp Nenookaasi offers an example of an encampment that successfully coordinated donations and services and fostered community. On its Facebook page, Nenookaasi described itself as a “community based healing camp rooted in native practices & inclusive of all unsheltered relatives.”⁴² It provided safe space, especially for women and Two-Spirit⁴³ members, as well as meals, traditional teachings and medicine, support groups, and connection to community resources.⁴⁴ Unable to successfully challenge eviction when the injunction was denied in early 2024, the camp has since decentralized. After decentralizing, Camp Nenookaasi explained on its Instagram page:

For the last ten months, many housed and unhoused community members have come together for a consistent, daily presence at Camp Nenookaasi. While Camp Nenookaasi has always had autonomous actions supporting residents at camp, many other actions like daily breakfast, water deliveries,

³⁹ NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL, IMPACT OF ENCAMPMENT SWEEPS ON PEOPLE EXPERIENCING HOMELESSNESS 1–2 (Dec. 2022), <https://nhchc.org/wp-content/uploads/2022/12/NHCHC-encampment-sweeps-issue-brief-12-22.pdf> [<https://perma.cc/ADA5-9UJ3>]; Cohen, Yetvin, & Khadduri, *supra* note 18, at 5.

⁴⁰ NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL, IMPACT OF ENCAMPMENT SWEEPS ON PEOPLE EXPERIENCING HOMELESSNESS 2 (Dec. 2022), <https://nhchc.org/wp-content/uploads/2022/12/NHCHC-encampment-sweeps-issue-brief-12-22.pdf>; Cohen, Yetvin, & Khadduri, *supra* note 18, at 5.

⁴¹ NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL, IMPACT OF ENCAMPMENT SWEEPS ON PEOPLE EXPERIENCING HOMELESSNESS 2 (Dec. 2022), <https://nhchc.org/wp-content/uploads/2022/12/NHCHC-encampment-sweeps-issue-brief-12-22.pdf>; Cohen, Yetvin, & Khadduri, *supra* note 18, at 5.

⁴² Camp Nenookaasi, FACEBOOK, <https://www.facebook.com/p/Camp-Nenookaasi-61551908157100/> [<https://perma.cc/D75X-JFNP>].

⁴³ “Two-Spirit” is the contemporary term used in some Indigenous communities to describe people who have both masculine and feminine qualities or spirits. For a detailed discussion of Two-Spirit people in North American Indigenous culture, see GREGORY D. SMITHERS, RECLAIMING TWO-SPIRITS: SEXUALITY, SPIRITUAL RENEWAL & SOVEREIGNTY IN NATIVE AMERICA (2022).

⁴⁴ Olson, *supra* note 3.

medical transportation, etc. have been coordinated by a small number of people and mutual aid...We hope decentralizing will encourage more community members to step in to provide more ongoing direct tangible support while we continue to work together to create new possibilities and make strides towards housing and healing for all.⁴⁵

Although no longer in existence, Camp Nenookaasi can serve as a model for collaboration with public and private resources.

Camp Resolution offers an example of an encampment with a clear governance structure that benefited from a contract with the City in which it was located. It was a self-governing encampment in which about fifty people, most with chronic physical disabilities, lived on a public lot the City of Sacramento had paved and fenced in 2021.⁴⁶ The City signed a lease with a local non-profit to allow unhoused people to live there in City-provided trailers,⁴⁷ and the Sacramento Homeless Union (SHU) represented the encampment in interactions with the City.⁴⁸ Local community members and organizations provided supplies while encampment residents formed a resident council and made rules and collective decisions for the encampment community.⁴⁹ Such decisions included who could be on the property, since the fenced lot had gates that locked.⁵⁰ Unfortunately, the relationship between SHU, the City, and the local non-profit with the lease eventually fractured, and the Camp Resolution residents were caught in the middle.⁵¹

When the non-profit organization decided to terminate the lease in 2024, the encampment residents lost the legal protection of the agreement and the City

⁴⁵ Camp Nenookaasi (@campnenookaasi), INSTAGRAM (May 29, 2024), https://www.instagram.com/campnenookaasi/p/C7kLRg7J9iH/?img_index=1 [https://perma.cc/CW4F-EMDQ].

⁴⁶ Ryan Fonseca, *Sacramento Closed Its Sanctioned Homeless Camp, Evicting Dozens Who Were Promised Housing*, LOS ANGELES TIMES (Sep. 3, 2024), <https://www.latimes.com/california/newsletter/2024-09-03/sacramento-camp-resolution-shut-down-essential-california> [https://perma.cc/8N2C-ZFL3]; Theresa Clift, *What is Camp Resolution, the Sacramento Homeless Camp the City Plans to Shut Down on Monday?*, SACRAMENTO BEE (Aug. 25, 2024), <https://www.sacbee.com/news/local/article291316130.html> [https://perma.cc/R9XB-KRZ6].

⁴⁷ Fonseca, *supra* note 46; Clift *supra* note 46.

⁴⁸ The SHU describes itself as a “grassroots, community-funded, humanitarian group committed to providing equipment, clothing, and supplies to folks living on the streets.” SACRAMENTO HOMELESS UNION, <https://sacramentohomelessunion.org/#about> [https://perma.cc/XYL2-EFQP].

⁴⁹ Fonseca, *supra* note 46; Clift, *supra* note 46; Kristin Lam, *Sacramento County Judge Denies Request to Prevent Closure of Camp Resolution*, CAPITAL PUBLIC RADIO (Aug. 9, 2024), <https://www.caprado.org/articles/2024/08/09/camp-resolution-residents-plan-to-stay-despite-upcoming-lease-expiration/> [https://perma.cc/L5DK-QN2D].

⁵⁰ Camp leaders stopped allowing the City’s Department of Community Response staff to enter the property when the City began discussions of closing the camp. Clift, *supra* note 46.

⁵¹ Fonseca, *supra* note 46.

evicted them.⁵² The resident council itself was not a party to the lease agreement or subsequent litigation and was reliant on the other entities to represent the encampment residents' interests. Had Camp Resolution had legal recognition, it could have been party to the lease instead of relying on the third-party non-profit, which unilaterally terminated the lease. Perhaps, then, the lease would have continued and the City would not have evicted the residents.

Tent City 3 offers another example of an encampment with a clear high-functioning governance structure. Unlike Camp Nenookaasi and Camp Resolution, Seattle's Tent City 3 continues operations as a stable community. Tent City 3 is a long-standing encampment that shelters up to one-hundred regular residents a night.⁵³ It grew from a housing advocacy movement engaged in protests during the 1990 Goodwill Games in Seattle. The community moves locations every three months through an agreement with the City⁵⁴ and is organized through the Seattle Housing and Resource Effort (SHARE) and Women's Housing, Equality and Enhancement League (WHEEL).⁵⁵

SHARE/WHEEL self-identify as "self-organized, democratic, grassroots organizations" of homeless individuals.⁵⁶ They manage indoor shelters and tent cities and engage in a range of advocacy activities.⁵⁷ The SHARE/WHEEL website describes organizational membership and the decision-making process.⁵⁸ Membership is open to all homeless adults.⁵⁹ There are no dues.⁶⁰ Members participate in weekly community meetings at which all members have equal votes⁶¹ and the group follows Robert's Rules of Order.⁶² Members in Tent City 3 elect a five-member council called the Executive Committee, which oversees day-to-day administrative matters for the camp.⁶³

Reflecting the structure that can exist within encampments, rules govern life as a community member of Tent City 3. The community has a code of conduct.⁶⁴ For example, Tent City 3 is a drug- and alcohol-free zone, and weapons are not

⁵² Fonseca, *supra* note 46; Clift, *supra* note 46.

⁵³ *Tent City 3*, SHARE/WHEEL, <https://www.sharewheel.org/tent-city-3> [https://perma.cc/EG8Q-MLAM].

⁵⁴ Tony Sparks, *Citizens without property: Informality and political agency in a Seattle, Washington homeless encampment*, ENVIRONMENT AND PLANNING, 89–90; see also *About Us*, SHARE/WHEEL, <https://www.sharewheel.org/about-us> [https://perma.cc/D58B-ZDPC].

⁵⁵ *About Us*, SHARE/WHEEL, <https://www.sharewheel.org/about-us> [https://perma.cc/D58B-ZDPC].

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Sparks, *supra* note 54, at 91.

⁶³ *Id.* at 97.

⁶⁴ *Id.*

allowed.⁶⁵ Rule violations can lead to punishment, including short-term or permanent bans.⁶⁶ All residents participate in security detail.⁶⁷ They take turns monitoring the camp for suspicious activity and rule violations, check supplies, empty trash, and alert residents of visitors.⁶⁸

Tent City 3 residents vote on who will perform other duties like tent maintenance and kitchen operations.⁶⁹ Further, residents take community members' vulnerabilities and strengths into account when voting on assignments. People with amphetamine habits are often tasked with detailed or repetitive activities like sweeping or scrubbing dishes, and people with bipolar disorder who are experiencing manic episodes are often used as public speakers because of their high energy and enthusiasm during those episodes.⁷⁰ A researcher embedded in the Tent City 3 encampment said the residents "embody a political agency that reclaims and reworks notions of autonomy and rationality in ways that are responsive to the needs of both the individual and the group."⁷¹ Tent City 3 shows how an encampment community can organize governance to function smoothly over a long period of time.

Camp Nenookaasi, Camp Resolution, and Tent City 3 show that it is possible for encampments to have a strong sense of identity, common purpose, and structure for collective decision-making. This model presents opportunities for collective legal action, in addition to legal action by individual encampment residents.

B. Challenges of Representing Individuals in Encampments

Individuals living in homeless encampments have a range of legal needs, but it can be difficult for attorneys to represent them effectively. First, the composition of many encampments is not static. Even if someone lives in an encampment, they might leave periodically, including overnight. They might go to a family member's house to shower and do laundry.⁷² In times of extreme weather, they might stay at

⁶⁵ *Id.*

⁶⁶ *Id.* at 98.

⁶⁷ *Id.* at 94.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 96.

⁷¹ *Id.*

⁷² Cohen, Yetvin, & Khadduri, *supra* note 18, at 8.

temporary warming centers⁷³ or cooling centers⁷⁴ to prevent weather-related illness or death. They might be arrested and temporarily incarcerated for homelessness-

⁷³ The Centers for Disease Control and Prevention reported an average of 1,301 deaths per year from exposure to excessive natural cold from 1999 to 2011. See *QuickStats: Number of Hypothermia-Related Deaths, by Sex – National Vital Statistics System, United States, 1999-2011* (Jan. 4, 2013), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6151a6.htm> [<https://perma.cc/J8HP-JUGK>]. This statistic shows the impact of hypothermia and does not account for other cold-related deaths like accidents caused by ice or heart attacks from shoveling snow. In response to the threat of hypothermia, many communities set up warming centers during times of extreme cold. Examples of communities with temporary overnight warming shelters include Kansas City, Kansas, see Wyandotte County, *Warming Centers Available This Winter 2024* (Jan. 5, 2024), <https://www.wyockck.org/Engage-With-Us/News-articles/Warming-Centers-Winter-2024> [<https://perma.cc/YJT9-H98N>], and Baltimore, Maryland, see Mayor's Office of Homeless Services, *FY 2026 Winter Shelter & Code Purple Plan*, <https://www.baltimorecity.gov/homeless/winter-shelter> [<https://perma.cc/6QEY-E4QN>]. Even though intended to be low barrier, warming centers sometimes impose restrictions that can make it difficult for people to access needed shelter. For example, the cold weather protocols in Topeka, Kansas, include a breathalyzer test, and people who are actively under the influence of alcohol can only be in the warming center for ten minutes every hour. *Cold Weather Protocols*, Topeka Rescue Mission, <https://www.trmonline.org/coldweatherprotocols> [<https://perma.cc/ZP8C-RTUA>].

⁷⁴ In the last twenty-five years, there have been more than 21,518 heat-related deaths in the United States, with over 2,000 in 2023 alone. Austyn Gaffney, *Heat Deaths Have Doubled in the U.S. in Recent Decades, Study Finds*, N.Y. TIMES (Aug. 27, 2024), <https://www.nytimes.com/2024/08/27/climate/heat-deaths.html> [<https://perma.cc/XWB4-CEZJ>]. The National Health Care for the Homeless Council warns that “[u]nsheltered persons experiencing homelessness are at higher risk for the devastating and often life-threatening effects of extreme heat.” National Health Care for the Homeless Council, *Cooling Centers for Persons Experiencing Homelessness: Making the case for climate justice* (May 16, 2024), <https://nhchc.org/resource/cooling-centers-for-persons-experiencing-homelessness-making-the-case-for-climate-justice/> [<https://perma.cc/4GSA-4TR7>]. In response, communities across the country have opened cooling centers to protect unsheltered residents or people without sufficient cooling at home during periods of extreme heat. Examples of communities with cooling shelters include: Topeka, Kansas, *Shawnee County opens cooling centers*, KSNT (July 30, 2024), <https://www.ksnt.com/news/local-news/shawnee-county-opens-cooling-centers/> [<https://perma.cc/TWQ5-KLNK>]; Phoenix, Arizona, *Where can you find cooling centers in the Valley?*, 12NEWS (June 11, 2024), <https://www.12news.com/article/news/local/heatbeat/valley-cooling-centers-phoenix-maricopa-county/75-05dea08a-f01b-428b-bae7-0b676a8758c1> [<https://perma.cc/NG8R-E4MN>]; and Alexandria, Virginia, *Beat the heat: Here's a list of cooling centers across the DMV*, 7NEWS (July 5, 2024), <https://wjla.com/news/local/cooling-centers-beat-the-heat-advisory-dc-virginia-maryland-health-safety-tips-summer-july-105-degrees-hot-humid-temperatures-forecast-dmv-weather> [<https://perma.cc/T8K4-4AEN>]. Unfortunately, like warming centers, cooling centers can impose restrictions that make them inaccessible to people who are unsheltered. For example, some limit how many bags people can bring with them, so people have to choose between abandoning their belongings or seeking relief from the heat. See Franziska Wild, Samantha Monteiro, & Fiona Riley, *As D.C. suffers record-high temperatures, cooling options are still limited for people experiencing homelessness*, STREET SENSE MEDIA (July 3, 2024), <https://streetsensemedia.org/article/as-d-c-suffers-record-high-temperatures-cooling-options-are-still-limited-for-people-experiencing-homelessness/> [<https://perma.cc/U62R-KRZV>].

related offenses.⁷⁵ There are many reasons someone might leave an encampment, only to return later.

Other people leave encampments because they have obtained permanent housing. Some public housing authorities (PHAs) prioritize unsheltered people when administering subsidized housing programs. HUD has published a guide for how to establish waiting list preferences for people experiencing homelessness.⁷⁶ The preferences could be general (e.g., prioritizing people experiencing homelessness by placing them at or near the top of waiting lists) or limited (e.g., providing a set number of slots to particular people, such as those referred from homeless services providers).⁷⁷ For example, the Housing Authority of the City of Austin designates twenty-five percent of its Housing Choice Voucher Program vouchers (formerly known as “Section 8 vouchers”) for people experiencing homelessness.⁷⁸ Similarly, the Housing Authority of the City of Los Angeles created a set number of vouchers for people experiencing homelessness.⁷⁹ Some lawyers and other advocates working with encampments believe that municipalities sometimes use subsidized housing preferences favoring unsheltered people to give permanent housing to the most vocal encampment residents so they will stop advocating for the rights of the encampment community.⁸⁰

The changing composition of encampments, whether due to temporary absence or permanent exit, can make it difficult to keep track of clients who are or were encampment members. Lawyers, case workers, and other social service providers might not know where a particular person is staying at any given point in time.

Additionally, traditional methods of communicating with clients are more challenging when someone lives in a homeless encampment. Limited electricity

⁷⁵ CalMatters analyzed municipal data from cities around California and uncovered a significant increase in the number of homelessness-related arrests around the state following the Supreme Court’s decision in *City of Grants Pass v. Johnson*. See Marisa Kendall, *Homeless-related arrests, citations soared in these California Cities after Supreme Court case*, CALMATTERS (Jun. 27, 2025), <https://calmatters.org/housing/homelessness/2025/06/homelessness-enforcement-data/> [<https://perma.cc/DGT3-9VMQ>].

⁷⁶ U.S. DEPT. OF HOUS. & URB. DEV., *How PHAs Can Assist People Experiencing Homelessness: Establishing Waiting List Preferences and Programs Specifically for People Experiencing Homelessness* (Sep. 2021), <https://files.hudexchange.info/resources/documents/PHA-Establishing-Waiting-List-Preferences-and-Programs-Specifically-for-People-Experiencing-Homelessness.pdf> [<https://perma.cc/X24L-34RV>].

⁷⁷ *Id.* at 2.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.* at 6.

⁸⁰ This assertion is based on my prior experience representing encampment residents and former encampment residents in Baltimore, as well as conversations with other lawyers and advocates about their experiences working with encampment residents or other people seeking subsidized housing, such as people displaced by Hurricane Katrina. Jennifer Gordon has noted that employers sometimes use similar tactics to stunt labor organizing, making deals with the most vocal workers who have complaints about workplace conditions. See Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 439 (1995).

access in most encampments⁸¹ makes it hard to keep electronic devices charged, especially overnight when most public establishments are closed. This means people might not be able to consistently make or receive phone calls and send or receive emails and text messages, even if they have a phone. Further, encampments do not receive mail service. Lags in communication can lead to some unhoused people losing touch with legal services and social services providers entirely.

The porousness of some encampment communities and general challenges with communication can make legal representation of individual encampment members difficult. Indeed, this was part of the problem with the case filed by residents at Camp Nenookaasi—some of the named plaintiffs could not be found or were no longer part of the encampment at the time of the injunction hearing.⁸² The result was disastrous for the case.

C. Standing Issues for Encampment Residents

Courts have grappled with how to handle standing and claims brought by individuals in an encampment if the individual is no longer in the encampment or cannot be found. In *Martin v. City of Boise*,⁸³ a case involving challenges to the City's camping and disorderly conduct ordinances, the Ninth Circuit reiterated the standing rule, saying that standing requires an injury to be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling."⁸⁴ What, then, if a plaintiff whose suit would protect other

⁸¹ Solar power presents an opportunity to provide electricity in encampments. Camp Resolution in Sacramento, California partnered with the Sacramento Environmental Justice Coalition to use a solar trailer to provide electricity to the encampment before it was dissolved. Roshan Abraham, *A Sacramento Homeless Encampment Won a Historic Lease from the City. Then It Fell Apart.*, NEXT CITY (Feb. 3, 2025), <https://nextcity.org/features/camp-resolution-sacramento-encampment-historic-lease-sweep> [<https://perma.cc/T9CF-2PJH>].

⁸² *Sagataw v. Frey*, No. 24-cv-001 (ECT/TNL), 2024 WL 1154677, at *2 (D. Minn. Mar. 18, 2024).

⁸³ Six current or former residents of the City of Boise who either were homeless or had been homeless claimed the City's camping ordinance and disorderly conduct ordinance violated their constitutional rights by punishing them for sleeping outside, even though they had no place to go. The Plaintiffs requested both retrospective relief from past citations and prospective relief from future enforcement. In a decision on a motion for summary judgment, the Ninth Circuit concluded: "the Eighth Amendment's prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to." *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019). The Ninth Circuit remanded the case to the district court, the case ultimately settled, and the City implemented changes to its ordinances and dedicated additional money to create more shelter space. *See City of Boise, Settlement Reached in Groundbreaking Martin v. Boise Case* (Feb. 8, 2021), <https://www.cityofboise.org/news/mayor/2021/february/settlement-reached-in-groundbreaking-martin-v-boise-case/> [<https://perma.cc/3KK2-VSDT>].

⁸⁴ *Martin v. City of Boise*, 902 F.3d 1031, 1040 (9th Cir. 2018) (quoting *Clapper v. Amnesty*

encampment residents can no longer participate, whether due to death, disappearance, displacement, or having obtained permanent housing?

In the example of Camp Nenookaasi, four encampment residents, Cheryl Sagataw, DeAnthony Barnes, Roberta Strong, and Travis Neloms, filed suit against the City of Minneapolis on behalf of themselves and a class of similarly situated individuals.⁸⁵ At the time of the final injunction hearing discussed above, counsel reported that they believed Ms. Strong and Mr. Neloms were still at the camp but were not sure about Ms. Sagataw and Mr. Barnes.⁸⁶ However, no evidence on the record proved that any plaintiffs still lived at the camp.⁸⁷

In its opinion and order denying the request for a temporary restraining order, the district court said “it is difficult to understand—and Plaintiffs have not explained—how a Plaintiff who does not reside in the camp today would have standing to seek prospective relief.”⁸⁸ Because the court denied the restraining order request, no encampment resident was protected.

The litigation that led to *City of Grants Pass v. Johnson*⁸⁹ is another example of the challenges that can arise when relying on an individual who is unhoused and vulnerable to enforce the rights of a larger group. In October 2018, Debra Blake filed a class action lawsuit against the City of Grants Pass, Oregon, claiming that state criminal trespass laws and municipal ordinances prohibiting sleeping or camping on sidewalks, streets, alleys, and in parks violated her Eighth and Fourteenth Amendment rights.⁹⁰ Ms. Blake had been homeless for seven years and there was no available bed for her at an emergency shelter in the city so she was

Int'l USA, 568 U.S. 398 (2013)), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019). The Ninth Circuit did not decide whether the plaintiffs had standing; rather, it determined that the trial court had erred in granting summary judgment for the City because there was a genuine issue of material fact. *Id.*

⁸⁵ *Sagataw*, *supra* note 8, at 1.

⁸⁶ *Id.* at *2.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 603 U.S. 520 (2024). In the decision, the Supreme Court overturned the Ninth Circuit's decision in *Martin v. City of Boise*, stating that “[t]he Constitution's Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation's homelessness policy.” *Id.* at 560.

The Court's decision allows communities to fine, ticket, and arrest people for sleeping outside, even if they have no other place to go. Justice Sotomayor began her forceful dissent in *Grants Pass* by writing:

Sleep is a biological necessity, not a crime. For some people, sleeping outside is their only option. The City of Grants Pass jails and fines those people for sleeping anywhere in public at any time, including in their cars, if they use as little as a blanket to keep warm or a rolled-up shirt as a pillow. For people with no access to shelter, that punishes them for being homeless. That is unconscionable and unconstitutional. Punishing people for their status is “cruel and unusual” under the Eighth Amendment.

Id. at 563–64 (Sotomayor, J., dissenting).

⁹⁰ Class Action Complaint for Injunctive and Declaratory Relief at 12–15, *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL (D. Or. Oct. 15, 2018).

forced to sleep outside.⁹¹ As a result, she was ticketed, fined, and convicted for multiple violations of city ordinances and state law, despite having nowhere else to go.⁹² In the lawsuit, Ms. Blake sought to represent all involuntarily homeless people living in Grants Pass.⁹³

The complaint was amended multiple times and two additional plaintiffs, Gloria Johnson and John Logan, were subsequently added.⁹⁴ Ms. Johnson lived out of her van and Mr. Logan lived out of his truck, and both were at risk for citation and prosecution under the city ordinances or state statutes.⁹⁵ On August 26, 2020, the District Court granted the plaintiffs' motion for summary judgment in part, enjoining the City from enforcing the park exclusion ordinance, camping ordinances, and ordinance related to criminal trespass on city parks without advance warning and time of day restrictions.⁹⁶ The City appealed to the Ninth Circuit.⁹⁷

While the case was on appeal, Ms. Blake died.⁹⁸ In its opinion, the Ninth Circuit raised the issue of what impact, if any, her death would have on its jurisdiction since she was the only class representative who had standing to challenge the anti-sleeping ordinance.⁹⁹ She had been sleeping outside, whereas Ms. Johnson and Mr. Logan were sleeping in their vehicles.¹⁰⁰ The court held that the claims relating to park exclusion, criminal trespass, and the anti-camping ordinances could be continued by the remaining class representatives, since they had standing on those issues.¹⁰¹ However, the court held that they likely did not have standing on the anti-sleeping ordinance.¹⁰² The court noted that there was no precedent about whether a claim could continue after a class representative's death if she was the only class representative with that particular claim.¹⁰³

The Ninth Circuit then vacated the district court's summary judgment ruling regarding the anti-sleeping ordinance and remanded the case to the district court to

⁹¹ *Id.* at 5–6.

⁹² *Id.* at 6–7.

⁹³ *Id.* at 6–7.

⁹⁴ Third Amended Class Action Complaint for Injunctive and Declaratory Relief, *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL (D. Or. Nov. 13, 2019).

⁹⁵ *Id.* at 8–10.

⁹⁶ Judgment at 2–3, *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL (D. Or. Aug. 26, 2020); Opinion and Order, *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL (D. Or. July 22, 2020).

⁹⁷ Notice of Appeal, *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL (D. Or. Aug. 26, 2020).

⁹⁸ *Johnson v. City of Grants Pass*, 50 F.4th 787, 800 (9th Cir. 2022).

⁹⁹ *Id.* at 800–01.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 802. In the Nenookaasi litigation, which occurred after the Ninth Circuit's decision in *Grants Pass*, Plaintiff Deven Caston died before the district court issued the final decision in the case. *Sagataw v. Frey*, No. 24-cv-001 (ECT/ECW), 2025 WL 3443512, at *6 (D. Minn. Dec. 1, 2025). The court dismissed his claim with prejudice since counsel did not file a motion for substitute plaintiff on his behalf, likely because nine individual plaintiffs remained. *Id.* at 13.

find a substitute class representative.¹⁰⁴ The court speculated that remand would not cause delays in this case because the case was being remanded on another issue, as well.¹⁰⁵ However, courts might not always remand. For instance, the Camp Nenookaasi preliminary injunction request was denied without time to find substitute plaintiffs. And in some instances, plaintiff substitution might be difficult, given the challenges described above in representing individual encampment residents. A delay caused by remanding to find substitute plaintiffs or dismissal if no substitute individual plaintiffs were found could be avoided if the encampment were itself an additional plaintiff.

Because of the standing issues that can arise, relying solely on individual encampment members to bring claims makes it more likely that encampment communities will not be able to enforce their rights. This is especially troubling given how vulnerable many encampment members are and the significance of impacted rights.

II. ENCAMPMENTS AS “HOMES” DESERVING OF PROTECTION

Home has long occupied a privileged position in American law. Although the Fourth Amendment protects individuals, not places, from unreasonable searches and seizures by the government,¹⁰⁶ the protections it provides are heightened inside the home.¹⁰⁷ Fourth Amendment privacy protections are much weaker, or even nonexistent, in other places.¹⁰⁸ This emphasis on the home confers unequal constitutional protection to individuals based on their class and housing status.

Numerous scholars have noted that low-income families and families of color enjoy much less privacy than wealthier families and white families.¹⁰⁹ Indeed, David Sklansky has noted that “[g]ranting homes more privacy than other places . . . tilts Fourth Amendment protection in favor of the rich and against the poor, who are forced to conduct much of their lives outside of their residences.”¹¹⁰ For

¹⁰⁴ *Johnson v. City of Grants Pass*, 50 F.4th 787, 802 (9th Cir. 2022).

¹⁰⁵ *Id.*

¹⁰⁶ *Katz v. United States*, 389 U.S. 347, 351 (1967).

¹⁰⁷ See Clare Ryan, *The Public/Private Home*, 110 CORNELL L. REV. 1487; David Sklansky, *Back to the Future: Kyllo, Katz, and Common Law*, 72 MISS. L. J. 143, 159, 181 (2022) (“Heightened Fourth Amendment protection in the home is a staple of search-and-seizure law.”).

¹⁰⁸ Sklansky, *supra* note 107, at 181.

¹⁰⁹ For a discussion of constitutional law protections granted to the wealthy but not people who are poor, see generally KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017); DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY*, 294–312 (2d ed. 2017); KAARYN S. GUSTAFSON, *CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY*, 160 (2011); Wendy A. Bach, *Flourishing Rights*, 113 MICH. L. REV. 1061, 1071 (2015); Kimberly C. Bailey, *Watching Me: The War on Crime, Privacy, and the State*, 47 U.C. DAVIS L. REV. 1539, 1556–57 (2014); Michele Estrin Gilman, *The Class Differential in Privacy Law*, 77 BROOK. L. REV. 1389, 1399 (2012); Michelle Estrin Gilman, *Welfare, Privacy, and Feminism*, 39 U. BALT. L.F. 1, 9–10 (2008).

¹¹⁰ Sklansky, *supra* note 107, at 192.

unhoused people with no residences who often live in congregate shelters, abandoned buildings, vehicles, or encampments, the Fourth Amendment provides even less protection.¹¹¹ Laura Riley has noted that “[b]ecause an unhoused individual’s temporary shelter is not considered a ‘home’ in the traditional sense, and because unhoused people are forced to store their belongings in public, courts have grappled with how and to what extent Fourth Amendment protections apply to the property and shelter of unhoused people.”¹¹²

Homeless encampments are home for those who live there. They serve the same function for residents that apartments and houses do for renters and homeowners. Even though encampments do not have the same level of constitutional protection as houses or apartments, some due process rights exist.¹¹³ Further, the value of home is not just the constitutional protection it affords relating to privacy. There are other benefits, as well.

A. Evolving Understanding of Home and the Value of Community

An increasing number of scholars are examining the dignity, identity, and community value in the home. The same qualities are present in many encampments.

In studying the housing crisis of the late 2000s, Nestor Davidson wrote that “[i]n popular culture and in legal imagination, ‘home’ occupies a unique role as property, invoking personal comfort and shelter, privacy, ontological security, and other positive associations.”¹¹⁴ Progressive property theory, which leading property scholars developed as an alternative to the law and economics school of thought,¹¹⁵ recognizes that property promotes “life and human flourishing, the protection of physical security, the ability to acquire knowledge and make choices, and the freedom to live one’s life on one’s own terms . . . [as well as] wealth, happiness,

¹¹¹ For an extensive discussion of the Fourth Amendment rights of unhoused people, see LAURA RILEY, *HOMELESS ADVOCACY*, 148–61 (2023).

¹¹² *Id.* at 151.

¹¹³ See *infra* section II(B).

¹¹⁴ Nestor Davidson, *Property and Identity: Vulnerability and Insecurity in the Housing Crisis*, 47 HARV. C.R.-C.L. L. REV. 119, 125 (2012).

¹¹⁵ A law and economics approach focuses on the rights of property owners to exclude others and dictate the use of property, whereas a progressive property approach considers the values served by property and the responsibilities of property owners to society. See Brandon M. Weiss, *Progressive Property Theory and Housing Justice Campaigns*, UC IRVINE L. REV. 251, 253 (2019). Gregory Alexander, one of the authors of *A Statement of Progressive Property*, *infra* note 116, wrote: “Although law-and-economics theory certainly provides important insights into a remarkably wide range of property issues, its vision is limited and at times flawed. Perhaps the greatest flaw in law-and-economics theory is the poverty of its analysis of moral values and moral issues.” Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745, 750 (2009).

and other aspects of individual and social well-being.”¹¹⁶ More recently, Allyson Gold and Joseph Singleton applied a progressive property theory to the eviction process, explaining that “[p]roperty is not merely land or a structure on that land, it is a home with the power to shape communities, social relationships, and human values.”¹¹⁷ These aspects of home are important for many encampment residents, in spite of the limited privacy protections they enjoy due to being unhoused.

Deborah Archer and Joseph Schottenfeld looked at the value of home through a community equity framework, arguing that community is an asset deserving of respect and legal protection.¹¹⁸ They said:

Home is not just your house—the physical structure where you shelter. It can also be the broader community that shelters you from the outside world—the place where you gather with family, friends, and neighbors and, hopefully, draw a sense of peace, joy, and safety.¹¹⁹

Archer and Schottenfeld then went on to define community equity as the “relationships, physical investments, community norms, and traditions” that community members have developed.¹²⁰ They argued that community equity is especially important in low-income communities and communities of color, which government has historically ignored (at best) or actively acted against (at worst).¹²¹ They explained that community equity allows “communities to act together when staring down government-driven disruptions.”¹²²

The link between community equity and homeless encampments is clear. The examples of Camp Nenookaasi, Camp Resolution, and Tent City 3 show that the community benefits many encampment residents receive include safety, shared resources, companionship, and collective advocacy.

Jessie Speer’s work studying homeless encampments in Fresno, California, a city in the Central Valley with one of the highest rates of homelessness in the country, further illustrates the community equity in encampments.¹²³ Although they did not use the phrase “community equity,” the people Speer interviewed touched on the key aspects of community equity that Archer and Schottenfeld described. They used words like “home” and “neighborhood” to describe their encampments,

¹¹⁶ Gregory S. Alexander, Eduardo M. Peñalver, Joseph William Singer, & Laura S. Underkuffler, *A Statement of Progressive Property*, 94 CORNELL L. REV. 743, 743 (2009).

¹¹⁷ Allyson E. Gold & Joseph A. Singleton, *Proportional Possession*, 110 CORNELL L. REV. 1081, 1081 (2025).

¹¹⁸ See Deborah N. Archer & Joseph R. Schottenfeld, *Defending Home: Toward a Theory of Community Equity*, 92 U. CHI. L. REV. 2199 (2025).

¹¹⁹ *Id.* at 2201.

¹²⁰ *Id.* at 2208.

¹²¹ *Id.* at 2236–37.

¹²² *Id.* at 2238.

¹²³ See Jessie Speer, “It’s Not Like Your Home:” *Homeless Encampments, Housing Projects, and the Struggle Over Domestic Space*, ANTIPODE (2017).

reflecting the importance of relationships and having a gathering place. They explained that encampments provide mutual support and promote collective action. The encampment residents described sharing resources like blankets, tents, and food, promoting safety and physical investments in each other.¹²⁴ This form of community equity enabled the residents to file a class-action lawsuit against the city, organize a march to protest an attempted eviction, and hold a press conference at City Hall.¹²⁵ Speer said that, “[i]n fighting the evictions and demanding autonomy, tent city residents were not only defending their homes, but asserting their ability to define for themselves what constitutes a home.”¹²⁶

This freedom to make choices and live life on one’s own terms has value, as explained by the progressive property theory and community equity scholars; encampments can provide that value to unsheltered people. Yet community equity is not the only protection afforded people in encampments.

B. Due Process in Encampments: Rights and Limitations

The Fourth Amendment protects against unreasonable searches and seizures, while the Fourteenth Amendment guarantees due process.¹²⁷ As the Ninth Circuit has clearly stated, “[b]ecause homeless persons’ unabandoned possessions are ‘property’ within the meaning of the Fourteenth Amendment, the government must comport with the requirements of the Fourteenth Amendment’s due process clause if it wishes to take and destroy them.”¹²⁸ The court went on to explain that the government must provide notice and an opportunity to be heard before it can deprive someone of their property.¹²⁹ Individuals living in encampments can bring legal actions to enforce their due process rights in an attempt to respond to harm that has already occurred and to prevent future harm. To comply with due process, municipalities have developed protocols for clearing encampments.

First, many jurisdictions require giving notice to encampment residents before an encampment can be cleaned up or cleared. Such notice generally requires posting of signs on tents or around the encampment, while the length of time required for it varies. Some jurisdictions have short notice periods: for example, California requires only 48 hours’ notice for the clearing of encampments on state property¹³⁰ and the City of San Diego requires only 24 hours’ written notice.¹³¹ Other jurisdictions require slightly longer notice periods. Baltimore City requires 10 to 14

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ U.S. CONST. amend. XIV, § 1.

¹²⁸ *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012).

¹²⁹ *Id.* (quoting *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993)).

¹³⁰ Ca. Exec. Order No. N-1-24 (July 25, 2024).

¹³¹ San Diego, Ca., Municipal Code § 63.0406(a)(1) (2023).

days' notice depending on which agency is doing the cleanup.¹³² Similarly, Washington, D.C. has historically required 14 days' notice.¹³³

In addition to notice, due process may require jurisdictions to store certain items of personal property when clearing an encampment. For example, San Diego's ordinance requires storage if the item appears to belong to someone, has utility, and can be retrieved safely from the encampment.¹³⁴ This ordinance lists identification documents, medication, art and music supplies, and items of sentimental value as examples of items potentially eligible for storage.¹³⁵ To be eligible for storage in Washington, D.C., personal property must fit inside two 40-gallon containers unless it is a functional tent or functional bicycle.¹³⁶ Examples of allowed personal property include identification cards; medication and mobility devices; photographs; financial, legal, and medical documents; and other property of value that can be safely stored.¹³⁷

Once eligible items are collected and stored, due process allows the encampment residents time to recover their items.¹³⁸ In San Diego, encampment residents have 90 days to claim their belongings, after which the City can dispose of them.¹³⁹ Washington, D.C. has historically stored items for 60 days,¹⁴⁰ while Baltimore City residents have only 30 days to claim their belongings.¹⁴¹

Despite these procedures, jurisdictions do not always follow their own rules. In March 2024, Baltimore City threw away residents' belongings two days before the

¹³² Baltimore City's Department of Transportation and Department of Recreation & Parks must provide at least 10 days notice, and Department of Public Works must provide at least 14 days notice for "trash only" cleanups. See *Understanding Encampments in Baltimore*, BALTIMORE CITY, <https://homeless.baltimorecity.gov/sites/default/files/Understanding%20Encampments%20in%20Baltimore.pdf> [<https://perma.cc/5TLJ-3WGP>].

¹³³ See *Encampment Protocol Engagement FAQ*, OFFICE OF THE DEPUTY MAYOR FOR HEALTH AND HUMAN SERVICES, https://dmhhs.dc.gov/sites/default/files/dc/sites/dmhhs/page_content/attachments/Encampment%20Protocol%20Engagement%20FAQ.pdf [<https://perma.cc/3R7X-E532>].

¹³⁴ San Diego, Ca., Municipal Code § 63.0406(d) (2023).

¹³⁵ *Id.*

¹³⁶ See *Protocol for the Disposition of Property Found on Public Space and Outreach to Displaced Persons*, OFFICE OF THE DEPUTY MAYOR FOR HEALTH AND HUMAN SERVICES, https://dmhhs.dc.gov/sites/default/files/dc/sites/dmhhs/page_content/attachments/Encampments%20Protocol_12.13.19.pdf [<https://perma.cc/TU3Y-8CL8>].

¹³⁷ *Id.*

¹³⁸ The Ninth Circuit has held that in encampment sweeps, "due process requires law enforcement 'to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return.'" *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012) (quoting *City of W. Covina v. Perkins*, 525 U.S. 234, 240 (1999)).

¹³⁹ San Diego, Ca., Municipal Code § 63.0406(f) (2023).

¹⁴⁰ See *Protocol for the Disposition of Property*, *supra* note 136.

¹⁴¹ Baltimore City Encampment Resolution Protocol, https://s3.amazonaws.com/baltimorecity.gov/if-us-east-1/s3fs-public/2024-05/mohs_encampment_resolution_protocol_3.2024.pdf [<https://perma.cc/MBW6-4RKT>].

date posted on an encampment notice.¹⁴² One encampment resident, a woman with disabilities, observed that the removal “feels like your heart’s being ripped out. It hurts. We could have saved that stuff.”¹⁴³ A lawyer working with the encampment residents described the early clearing as “an expensive, ineffective and cruel way to address homelessness” and a violation of due process.¹⁴⁴

Further, sweeps may inflict violence and unnecessary harm. Helen Cruz, an encampment resident in Grants Pass, Oregon, described law enforcement dumping an ice chest over her important papers and sentimental photographs and intentionally breaking her tent poles when they cleared her encampment. She said: “Everything was just destroyed. It took my self esteem . . . and just stomped on it basically.”¹⁴⁵ When the City of Topeka cleared an encampment using heavy machinery, one of the encampment residents sustained injuries and had to be taken to the hospital when the tent they were inside was cleared.¹⁴⁶

A 2024 ProPublica report documents the magnitude and breadth of harm that encampment sweeps can cause. ProPublica reviewed storage records from fourteen cities with large homeless populations, interviewed 135 people who had experienced sweeps, and received messages from more than 200 other people who had either experienced sweeps or worked with unhoused people.¹⁴⁷ The items lost or destroyed in sweeps included survival gear like snow boots and tents; work items like a work shirt, ID card, and tools; medical supplies like medication, contact lenses, a motorized wheelchair, and an oxygen tank; and countless other items of practical, monetary and personal value, such as photos and loved ones’ ashes.¹⁴⁸

The loss or destruction of property can make it even harder to get back on one’s feet. Elijah Harris, who worked for DoorDash in Los Angeles, lost his electric bike,

¹⁴² Fern Shen, *Baltimore Razes an Encampment Two Days Before the City Said It Would*, BALTIMORE BREW (Mar. 5, 2024), <https://www.baltimorebrew.com/2024/03/05/baltimore-razes-an-encampment-two-days-before-city-said-it-would/> [<https://perma.cc/4DD2-7XVQ>].

¹⁴³ *Id.*

¹⁴⁴ Carolyn Johnson, then managing attorney at the Homeless Persons Representation Project, said, “This is the government seizing people’s property! You have to give people due process. How do they know whose things are whose when they come in like this?” *Id.*

¹⁴⁵ Jeremiah Hayden, *Grants Pass v. Johnson: Here’s What Led to Key Homelessness Case Before High Court*, OREGON PUBLIC BROADCASTING (Apr. 4, 2024), <https://www.opb.org/article/2024/04/04/grants-pass-oregon-homeless-parks-josephine-county-public-spaces-camping-shelter/> [<https://perma.cc/4ZTT-WJN7>].

¹⁴⁶ Stacey Saldanha-Olson, *Local unsheltered person was injured as Topeka workers tried to move camp*, TOPEKA CAPITAL-JOURNAL (Mar. 4, 2025), <https://www.cjonline.com/story/news/local/2025/03/04/topeka-reports-injury-of-person-who-is-unhoused-as-city-moved-camp/81431505007/> [<https://perma.cc/XQ8Y-HSFV>].

¹⁴⁷ Ruth Talbot, Asia Fields, Nicole Santa Cruz, & Maya Miller, *Swept Away*, PROPUBLICA (Oct. 29, 2024), <https://projects.propublica.org/homeless-encampment-sweeps-taken-belongings/> [<https://perma.cc/6YXZ-V9D7>].

¹⁴⁸ Multiple people, like Teresa Stratton of Portland, Oregon, reported the ashes of deceased loved ones being lost or destroyed during sweeps. Ms. Stratton wrote that the loss of her husband’s ashes “made me feel alone, scared, empty, now I wonder where he is and if he’s all still in his urn and if he’s ok and I hope he’s not in the dump.” *Id.*

ID, and phone in a sweep.¹⁴⁹ He said, “I was trying to get off the streets, but they set me back. It’s not easy getting services, and trying to find work and trying to save.”¹⁵⁰ Mario Van Rossen, also of Los Angeles, lost his gardening, landscaping, and handyman tools in a sweep. He said, “You guys stripped me of my living. I use those tools to make money to hopefully get off the streets.”¹⁵¹

Case workers and service providers also report challenges serving people after sweeps. A peer support specialist in Los Angeles described the challenges of helping unsheltered people whose identification documents have been lost in a sweep, saying: “It makes it almost impossible to get people help because everything requires documentation.”¹⁵² A street medicine team manager in Atlanta said, “[e]ncampment sweeps disrupt our ability to find our clients during outreach and often create gaps in care It also has harmful effects on both the physical and mental well-being of those experiencing unsheltered homelessness.”¹⁵³

The harm from sweeps can be significant, and enforcement actions are likely to get worse as the rhetoric about unhoused people becomes more hostile.¹⁵⁴ In this environment, it is especially important that encampment residents are able to bring legal action if a jurisdiction commits due process violations in clearing or evicting the encampment. If the encampment community as a whole were recognized as a legal entity, it could bring legal action, as well.

III. RECOGNITION OF LOOSELY HELD GROUPS, INCLUDING ENCAMPMENTS

U.S. law recognizes a variety of entity or business structures. The most common

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL, *supra* note 39, at 7.

¹⁵⁴ Already, communities were empowered to take aggressive enforcement action against homeless encampments following the Supreme Court’s decision in *Grants Pass v. Johnson*. However, six months into his second presidency, Donald Trump issued an executive order demonizing unsheltered individuals. He said: “Endemic vagrancy, disorderly behavior, sudden confrontations, and violent attacks have made our cities unsafe. . . . The overwhelming majority of [unsheltered] individuals are addicted to drugs, have a mental health condition, or both.” Exec. Order No. 14321, Ending Crime and Disorder on America’s Streets (July 24, 2025). Less than a month later, he posted on his Truth Social account: “The Homeless have to move out, IMMEDIATELY.” Donald J. Trump (2realDonaldTrump), Truth Social (Aug. 10, 2025), <https://truthsocial.com/@realDonaldTrump/posts/115005075016157889> [<https://perma.cc/9TR7-KWJW>]. Shortly thereafter, federal authorities began aggressive sweeps of encampments in the capital city. *See, e.g.*, Brian Mann, *Trump’s Purge of Washington’s Homeless Encampments Escalates*, ALL THINGS CONSIDERED (Aug. 14, 2025), <https://www.npr.org/2025/08/14/nx-s1-5502247/trump-purge-homeless-washington> [<https://perma.cc/H46B-XGEL>].

include sole proprietorships,¹⁵⁵ partnerships,¹⁵⁶ corporations,¹⁵⁷ limited liability companies (LLCs),¹⁵⁸ and cooperatives.¹⁵⁹ Each of these structures is a formal entity able to sue and be sued.

However, none of these structures are appropriate for encampments. Sole proprietorships by definition involve only one person and serve a business function;¹⁶⁰ the encampments under consideration in this article involve multiple people and are not business ventures. Similarly, encampments are groups that are different from partnerships, corporations, LLCs, and cooperatives because they are loosely organized and are not business ventures. For example, partnerships are formal businesses which are easy to create but must file annual forms with the Internal Revenue Service (IRS) to report income, gains, losses, deductions and credits.¹⁶¹ Corporations require formal steps for creation, including appointing directors, filing articles of incorporation, and drafting corporate bylaws, and then must file tax returns for taxable income.¹⁶² LLCs require formal steps for creation,

¹⁵⁵ A sole proprietorship is an unincorporated business structure with a single owner whose business is not separate from herself. The owner is personally liable for the business's debts and obligations. According to the U.S. Small Business Administration, a sole proprietorship "can be a good choice for low-risk businesses and owners who want to test their business idea before forming a more formal business." U.S. Small Business Administration, *Choose a business structure*, <https://www.sba.gov/business-guide/launch-your-business/choose-business-structure> [https://perma.cc/Z6HD-MT2R].

¹⁵⁶ Partnerships are businesses in which two or more people own the business together. They can be structured as limited partnerships (LPs), in which one partner has unlimited liability and the others have limited liability, or limited liability partnerships (LLPs), in which all partners have limited liability. The U.S. Small Business Administration says partnerships "can be a good choice for businesses with multiple owners, professional groups (like attorneys), and groups who want to test their business idea before forming a more formal business." *Id.*

¹⁵⁷ Corporations are entities that are legally separate from their owners, who are not personally liable for the corporation's debts and obligations. There are a variety of corporate structures based on tax status. C corps are generally taxed twice—when the company makes a profit and when the dividends are paid to shareholders. S corps are taxed only once since they pass income directly to their shareholders; there is no corporate income tax. Benefit corporations (B corps) are for-profit corporations intended to produce both profits and a public benefit. Nonprofit corporations benefit the public through "charity, education, religious, literary, or scientific work" and do not pay state or federal income taxes on profits. *Id.*

¹⁵⁸ LLCs are businesses with one or more members who are all protected from personal liability for the business's debts and obligations. The U.S. Small Business Administration recommends this structure for "medium- or higher-risk businesses, owners with significant personal assets they want protected, and owners who want to pay a lower tax rate than they would with a corporation." *Id.*

¹⁵⁹ Cooperatives are democratically run entities owned by and operated for the benefit of their members. Members share earnings and have equal voting power. *Id.*

¹⁶⁰ The IRS describes a sole proprietor as "someone who owns an unincorporated business by themselves." INTERNAL REVENUE SERVICE, TAX GUIDE FOR SMALL BUSINESS 3 (Feb. 10, 2026), <https://www.irs.gov/pub/irs-pdf/p334.pdf> [https://perma.cc/2866-FWEG].

¹⁶¹ 26 C.F.R. § 1.6031(a)-1 (2012).

¹⁶² State law governs the formation of corporations, but the requirements for directors, articles of incorporation, and bylaws are common features. See Margaret M. Blair, *Locking in Capital: What*

including articles of organization and an operating agreement, and must report taxable income to the IRS.¹⁶³ Even cooperatives are generally incorporated through formal structures.¹⁶⁴ A more informal structure not created for business purposes is necessary to treat an encampment as a legal entity.

Historically, common law unincorporated nonprofit associations served as a default organizational form for nonprofit entities not organized under statutory law.¹⁶⁵ Common law recognized this entity type out of necessity, when no other entity type was a good fit.¹⁶⁶ The federal government even recognized unincorporated nonprofit associations.¹⁶⁷ However, there was no consistency across states, and the result was a “hodgepodge of common law principles and statutes.”¹⁶⁸

Additionally, there were significant problems with how common law typically approached these entities. The common law nonprofit associations were not considered separate legal entities from their members.¹⁶⁹ As such, these

Corporate Law Achieved for Business Organizers in the Nineteenth Century, 51 UCLA L. REV. 387, 425-27, 433-37 (2003). IRS regulations establish federal tax liability. 26 C.F.R. § 1.11-1 (1976).

¹⁶³ 51 Am. Jur. 2d Limited Liability Companies § 3 (2024) (discussing formation of LLC through articles of incorporation); 51 Am. Jur. 2d Limited Liability Companies § 4 (2024) (explaining the role of the LLC’s operating agreement). How the LLC is taxed varies based on its federal tax classification, and the LLC can elect how it is classified. 26 C.F.R. § 301.7701-3 (2020).

¹⁶⁴ 18 Am. Jur. 2d Cooperative Associations § 1 (2024) (explaining that most cooperative associations are incorporated); *id.* § 5 (2024) (noting that a cooperative association’s articles of incorporation or association or bylaws could define its powers, duties, and liabilities); *id.* § 15 (2024) (discussing a cooperative association’s bylaws and charter).

¹⁶⁵ UNIF. UNINCORPORATED NONPROFIT ASS’N ACT Prefatory Note, 6B U.L.A. 142 (Supp. 2011).

¹⁶⁶ The Supreme Court of Texas summarized the problem, saying “[u]nincorporated associations long have been a problem for the law. They are analogous to partnerships, and yet not partnerships; analogous to corporations, and yet not corporations; analogous to joint tenancies, and yet not joint tenancies; analogous to mutual agencies, and yet not mutual agencies.” *Cox v. Thee Evergreen Church*, 836 S.W.2d 167, 170 (Tex. 1992).

¹⁶⁷ As far back as 1998, the federal regulations governing deposit insurance coverage applied to unincorporated associations, defined as associations of “two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.” 12 C.F.R. § 330.11; Simplification of Deposit Insurance Rules, 63 Fed. Reg. 25750-01 (May 11, 1998).

¹⁶⁸ UNIF. UNINCORPORATED NONPROFIT ASS’N ACT Prefatory Note, 6B U.L.A. 142 (Supp. 2011). An example of variation across states was whether members could sue the unincorporated association if they were injured by tortious conduct of another member or the association. A majority of states, such as North Carolina (*see Williamson v. Wallace*, 29 N.C. App. 370, 372, 224 S.E.2d 253, 254 (1976)), Pennsylvania (*see Zehner v. Wilkinson Mem’l United Methodist Church*, 399 Pa. Super. 165, 167, 581 A.2d 1388, 1389 (1990)), and Wyoming (*see Boehm v. Cody Country Chamber of Com.*, 748 P.2d 704, 708 (Wyo. 1987)), continued the common law non-liability rule. However, some states, such as California (*see White v. Cox*, 17 Cal. App. 3d 824, 828, 95 Cal. Rptr. 259, 261 (Ct. App. 1971)), New Jersey (*see Buteas v. Raritan Lodge No. 61 F. & A.M.*, 248 N.J. Super. 351, 360, 591 A.2d 623, 628 (App. Div. 1991)), and South Carolina (*see Crocker v. Barr*, 305 S.C. 406, 412, 409 S.E.2d 368, 372 (1991)), had abandoned it, either through caselaw or statute.

¹⁶⁹ *See Elizabeth S. Miller, Doctoring the Law of Nonprofit Associations with a Band-aid or a*

organizations could not hold title to property in their own names.¹⁷⁰ This restriction also meant that common law nonprofit associations could not sue or be sued in their own names, limiting their power.¹⁷¹ Further, because these entities did not have identities distinct from their members, a member injured by an entity or its other members could not recover for damages under tort or contract law, since it would be like she was suing herself.¹⁷² A different, more informal structure was necessary for loosely organized nonprofit associations, such as encampments.

A. *Uniform Unincorporated Nonprofit Association Act*

The Uniform Law Commission (ULC) has created model legislation to address this need. The ULC, also known as the National Conference of Commissioners on Uniform State Laws, drafts proposed statutes in areas of law in which uniformity across states would be helpful.¹⁷³ One area in which the ULC has prepared uniform acts is business organizations. In 1992, the ULC unveiled the Uniform Unincorporated Nonprofit Association Act (UUNAA), which it revised slightly in 1996, revised substantially in 2008, and most recently amended in 2011.¹⁷⁴ The 2008 version strengthened the UUNAA by explicitly stating that nonprofit associations are separate legal entities from their members with the ability to own property, sue and be sued, and be held liable under contract and tort law.¹⁷⁵ The 2011 version made technical, non-substantive edits so the UUNAA language would be consistent with other uniform unincorporated entity acts.¹⁷⁶ With the UUNAA and its revisions, the ULC intended to address the “hodgepodge” governing nonprofit associations.¹⁷⁷

The UUNAA defines an unincorporated nonprofit association (UNA) as “an unincorporated organization consisting of [two] or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes.”¹⁷⁸ The UUNAA lays out the process for formation, operation, and termination of UNAs. There is structure, but it is more flexible than with other types of organizations and helps fill gaps in traditional business

Body Cast: A Look at the 1996 and 2008 Uniform Unincorporated Nonprofit Association Acts, 38 WM. MITCHELL L. REV. 852, 856 (2012); UNIF. UNINCORPORATED NONPROFIT ASS’N ACT Prefatory Note, 6B U.L.A. 142 (Supp. 2011).

¹⁷⁰ Miller, *supra* note 169, at 856.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ UNIF. L. COMM’N CONST., art. I (“It is the purpose of the Conference to promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable.”).

¹⁷⁴ For a detailed discussion of the different versions of the UUNAA, see Miller, *supra* note 169.

¹⁷⁵ UNIF. UNINCORPORATED NONPROFIT ASS’N ACT Prefatory Note, 6B U.L.A. 142 (Supp. 2011).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ UNIF. UNINCORPORATED NONPROFIT ASS’N ACT, § 2(11) (Unif. L. Comm’n 2008).

organizations law.

An unincorporated nonprofit association can form in a variety of ways. Notably, no formation documents are required. An oral agreement or implied agreement based on conduct is sufficient.¹⁷⁹ Similarly, the governing principles, which determine the purpose and operation of the unincorporated nonprofit association, can be written, oral, or implied based on established practice.¹⁸⁰ The governing principles identify the rights and obligations of people affiliated with the UNA.¹⁸¹

UNAs are composed of members and managers. A manager is someone who either individually or with others is responsible for managing the UNA.¹⁸² A manager owes the association and its members duties of loyalty and care and must manage the association in good faith.¹⁸³ A manager can be, but does not have to be, a member of the UNA she manages.¹⁸⁴ If there are multiple managers, they have equal management rights.¹⁸⁵ If no manager is designated, all members are managers.¹⁸⁶

Members are responsible for the selection of managers and the development of the association's policies and activities.¹⁸⁷ A person must consent to being a member, and she becomes a member in accordance with the governing principles or a vote of the other members.¹⁸⁸ Suspension, dismissal, or expulsion from the UNAs occur in the same way.¹⁸⁹ A member can also resign from the association at any time.¹⁹⁰

UNA members generally determine membership, leadership, the governing principles, and other such matters¹⁹¹ by majority vote, with each member having an equal say.¹⁹² Under the UUNAA, an association's governing principles can determine requirements for member meetings, such as quorum, frequency, and how the meetings are conducted.¹⁹³ Alternatively, if there is no relevant governing principle regarding meeting process, parliamentary rules and procedure govern the UNA's conduct.¹⁹⁴

Under the UUNAA, a UNA is a legal entity with the same powers as an

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at § 2(2).

¹⁸¹ *Id.*

¹⁸² *Id.* at § 2(3).

¹⁸³ *Id.* at § 22(a, b).

¹⁸⁴ *Id.* at § 21(2).

¹⁸⁵ *Id.* at § 21(4).

¹⁸⁶ *Id.* at § 21(3).

¹⁸⁷ *Id.* at § 2(4).

¹⁸⁸ *Id.* at § 18(a).

¹⁸⁹ *Id.* at § 18(a).

¹⁹⁰ *Id.* at § 19(a).

¹⁹¹ *Id.* at § 15(a).

¹⁹² *Id.* at § 16(a).

¹⁹³ *Id.* at § 16(b).

¹⁹⁴ *Id.* at § 16(c).

individual.¹⁹⁵ It is distinct from its members and managers and can sue or be sued.¹⁹⁶ The members and managers are not personally liable for the association's debts, obligations, or liabilities simply because they are members or managers,¹⁹⁷ and a judgment or order issued against the UNA is not on its own a judgment or order against them.¹⁹⁸ Further, an action against the UNA does not terminate because of a change in membership.¹⁹⁹ The entity continues to exist even if managers or members leave, so the claim survives.

Under the UUNAA, a UNA can terminate in a variety of ways. It can merge with another entity and be subsumed into that existing entity or become part of a new entity created through the merger.²⁰⁰ In those instances, the members must approve the merger plan.²⁰¹ Alternatively, the UNA can dissolve.²⁰² Dissolution occurs if the governing principles designate a particular time for dissolution, the members vote to dissolve, no members can be found and operations have discontinued for at least three years, or a court orders the dissolution.²⁰³

B. State Adoption of UUNAA Principles

Seventeen states plus the District of Columbia have adopted some or all of the UUNAA by statute, whether the original version or a revised version.²⁰⁴ A review of these statutes shows variation in how much the states adopted from the ULC's model law. This variation is noteworthy because some state laws might offer more guidance to groups about what is needed to receive recognition as a UNA. Additionally, some state laws might be more favorable to groups like homeless encampments.

Colorado is an example of a state that adopted the original UUNAA. Its version allows UNAs to have flexible membership, confers property rights, authorizes suit by and against the association, and holds the entity liable in contract and tort.²⁰⁵ Specifically, Colorado UNAs “may acquire, hold, encumber, or transfer an estate or interest in real or personal property” and “be a legatee, devisee, or beneficiary of

¹⁹⁵ *Id.* at § 5(a, c).

¹⁹⁶ *Id.* at § 5(a), 9(a).

¹⁹⁷ *Id.* at § 8(a).

¹⁹⁸ *Id.* at § 10.

¹⁹⁹ *Id.* at § 12.

²⁰⁰ *Id.* at § 31(b).

²⁰¹ *Id.* at § 31(c)(3).

²⁰² *Id.* at § 27.

²⁰³ *Id.* at § 27(a).

²⁰⁴ States that have enacted some version of the UUNAA include Alabama, Arkansas, Colorado, Delaware, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Nevada, North Carolina, Pennsylvania, Texas, West Virginia, Wisconsin, and Wyoming. *Unif. L. Comm'n, Enactment History*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=40227d3a-8b5d-47c2-8cd0-b0ec12da97f9> [https://perma.cc/HTR9-6B4J].

²⁰⁵ COLO. REV. STAT. § 7-30.

a trust or contract.”²⁰⁶ They have the right to stand in their own name in “judicial, administrative, or other governmental proceeding[s]”²⁰⁷ In doing so, they can assert claims on behalf of their members so long as the interest being protected is germane to the association and the claim asserted and relief requested don’t require the participation of individual members.²⁰⁸ Notably, claims against the UNA survive changes in membership composition.²⁰⁹ Thus, the Colorado UUNAA empowers unincorporated nonprofit associations by allowing continuity and standing, even amid changing membership.

Iowa’s adoption of the 2008 Revised UUNAA includes much more detail than the original UUNAA adopted by Colorado. The statute endows UNAs with a legal status distinct from its members that exists into perpetuity²¹⁰ unless the UNA properly dissolves²¹¹ and winds up (i.e., pays debts and returns or distributes property)²¹² or merges with another organization.²¹³ To claim UNA status, the group must hold meetings whereby it approves actions (e.g., admitting or expelling a member, adopting or repealing governing principles, and managing property)²¹⁴ by a majority vote of the members only after notice and quorum requirements are met.²¹⁵

To become a member of a UNA in Iowa, an individual must be voted in by current members and consent to her admission.²¹⁶ To remain a member, the individual must act in good faith in discharging her duties as a member.²¹⁷ Members can be suspended or expelled from the UNA according to the governing principles.²¹⁸ Iowa’s UUNAA framework provides significant structure to the rights and responsibilities of the associations and their members.

Like Iowa, Pennsylvania’s Uniform Unincorporated Nonprofit Association Law²¹⁹ is a near adoption of the Revised UUNAA and is very comprehensive. As with other Revised UUNAA states, Pennsylvania allows UNAs to sue and be sued in their own name,²²⁰ protects members from liability for the unincorporated nonprofit association’s debts,²²¹ and ensures that members have reasonable access

²⁰⁶ *Id.* at § 7-30-104.

²⁰⁷ *Id.* at § 7-30-107.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at § 7-30-111.

²¹⁰ IOWA CODE § 501B.5.

²¹¹ *Id.* at § 501B.28.

²¹² *Id.* at § 501B.29.

²¹³ *Id.* at § 501B.30.

²¹⁴ *Id.* at § 501B.16.

²¹⁵ *Id.* at § 501B.17.

²¹⁶ *Id.* at § 501B.19.

²¹⁷ *Id.* at § 501B.18.

²¹⁸ *Id.* at § 501B.19.

²¹⁹ 15 PA. C.S.A. § 9111.

²²⁰ *Id.* at § 9118(a).

²²¹ *Id.* at § 9117(a)(2).

to UNA records.²²² Governing principles control membership, and people cannot become members without their consent.²²³ Similarly, the governing principles control procedural matters like timing of member meetings, conduct of meetings, and voting procedures.²²⁴ A comprehensive statutory scheme like Iowa's or Pennsylvania's is helpful because it provides detailed guidelines for what an association must do to have legal recognition and what rights and responsibilities go along with that status.²²⁵

States not explicitly adopting either the original or revised UUNAA often include unincorporated associations in the definition of another term. For example, unincorporated nonprofit associations or unincorporated associations may be under the umbrella of "entity,"²²⁶ "unincorporated entity,"²²⁷ or "person."²²⁸ Further complicating the mix are the various titles and chapters encompassing the umbrella term. States utilize a combination of business or corporation acts²²⁹ and nonprofit corporation acts²³⁰ to envelop unincorporated associations. In California, the Corporation Codes apply "the general law of agency" to unincorporated associations.²³¹

Regardless of the statutory pathway, the result in most states is that UNAs may sue and be sued in their own name. For example, Vermont,²³² Virginia,²³³ and Maryland²³⁴ statutes explicitly allow action by and against an unincorporated association. Alaska's rules of civil procedure simply state that "a partnership or other unincorporated association may sue or be sued in its common name."²³⁵ Courts have repeatedly found that unincorporated associations can be parties to

²²² *Id.* at § 9131(a).

²²³ *Id.* at § 9126(a).

²²⁴ *Id.* at § 9124(b).

²²⁵ There are some differences between the Iowa and Pennsylvania schemes. For example, Iowa's law references the relationship to the federal Electronic Signatures in Global and National Commerce Act, IOWA CODE § 501B.32, and has a separate section authorizing mergers with other organizations, IOWA CODE § 501B.30. Pennsylvania's law states that it is generally subordinate to canon law for nonprofit associations organized for religious purposes, if that canon law relates to the governing of the nonprofit association. 15 PA. C.S.A. § 9136. However, the two states' laws are largely similar in terms of protections and structure of unincorporated nonprofit associations.

²²⁶ *E.g.*, S.C. CODE ANN. § 33-31-140(15); UTAH CODE ANN. § 16-6a-102(25); N.D. CENT. CODE § 10-01.1-02(33).

²²⁷ *E.g.*, MISS. CODE ANN. § 79-4-1.40(44); ME. STAT. tit. 13-C, § 102(39); NEB. REV. STAT. § 21-214(52).

²²⁸ *E.g.*, WASH. REV. CODE ANN. § 23.95.105(27); ARIZ. REV. STAT. § 29-3102(19); MASS. GEN. LAWS ch. 224, § 1.

²²⁹ *E.g.*, ME. STAT. tit. 13-C, § 102; N.D. CENT. CODE § 10-01.1-02.

²³⁰ *E.g.*, S.C. CODE ANN. § 33-31-140; UTAH CODE ANN. § 16-6a-102.

²³¹ Cal. Corp. Code § 18065.

²³² VT. STAT. ANN. tit. 12, § 814.

²³³ VA. CODE ANN. § 8.01-15.

²³⁴ MD. CODE ANN., CTS. & JUD. PRO. § 6-406(a).

²³⁵ ALASKA R. CIV. P. 17(b).

cases based on state statute.²³⁶

C. Application of the UUNAA to Encampments

There are multiple benefits a highly organized encampment could experience if it were recognized as its own legal entity. Recognition could empower residents by legally acknowledging the importance of their community. It might make it easier for government agencies or non-profit organizations to coordinate services to residents. Recognition would allow the encampment to sign agreements in its own name rather than relying on individual members or third-party organizations. And, as discussed above, it could allow the encampment to bring legal action to enforce the rights of its residents. Although this article focuses primarily on litigation, the potential benefits are much broader.

A wide variety of groups might operate effectively as unincorporated nonprofit associations,²³⁷ and an increasing number of online legal software programs offer information and assistance about this entity structure.²³⁸ However, given the unique vulnerabilities of people living in encampments, any groups wanting to gain legal recognition as a UNA should consult with a lawyer licensed in their jurisdiction to understand the particularities of their state's laws and possible benefits and risks. Certainly, not all encampments meet the requirements of a UNA under the UUNAA, and there is substantial variation in how states have implemented the UUNAA. However, for those encampments where residents desire such status, or where attorneys or organizers are working with encampment residents to formalize an existing encampment structure, the following considerations serve as a practical guide.

1. Framing the work: organizing with, instead of for, the encampment

²³⁶ See, e.g., *Protect Our Glendale v. City of Glendale*, No. B329274, 2024 WL 1905297, at *1 (Cal. Ct. App. May 1, 2024), *reh'g denied* (May 23, 2024), *review denied* (Aug. 14, 2024) (unincorporated nonprofit association filed for injunctive relief and failed on the merits); *Blue Canyon Well Ass'n v. Jevne*, 2018-NMCA-004, 410 P.3d 251 (N.M. Ct. App. 2017) (unincorporated association lacked standing for failure to follow statutory requirements, although unincorporated associations who properly complied with statute could sue).

²³⁷ For example, the Federal Deposit Insurance Commission identifies neighborhood associations and scout troops as unincorporated nonprofit associations that might benefit from deposit accounts held in the unincorporated association's name. FEDERAL DEPOSIT INSURANCE COMMISSION, *Corporation, Partnership and Unincorporated Association Accounts*, <https://www.fdic.gov/resources/deposit-insurance/diguidebankers/documents/corporation-partnership-unincorporated.pdf> [<https://perma.cc/JG4Y-3DJ2>].

²³⁸ See, e.g., *Incorporated vs. Unincorporated Nonprofit: What's the Difference and Why Does it Matter?*, LEGALZOOM, <https://www.legalzoom.com/articles/unincorporated-nonprofit-association-vs-nonprofit-corporation#:~:text=An%20unincorporated%20nonprofit%20association%20is,complexity%20of%20formal%20nonprofit%20status> [<https://perma.cc/2F6F-QAU3>].

Organizing an encampment into an unincorporated nonprofit association begins with collective self-definition. Under the UUNAA, an unincorporated nonprofit association exists when two or more people voluntarily associate for a nonprofit purpose.²³⁹ This low threshold is significant for encampments since some already function as associations in practice, even if no one has named them as such. Community organizers and lawyers can play a facilitative role, helping residents articulate what they are already doing collectively and supporting them in giving that activity a structure the law can recognize.

a. Shared nonprofit purpose

The cornerstone of recognition under the UUNAA is a nonprofit purpose. Organizers and lawyers can help residents hold inclusive discussions to identify and document shared goals. Examples of possible goals include mutual aid and survival, such as food sharing, security, and sanitation; collective self-governance; advocacy for housing, services, or non-displacement; stewardship of shared space and property; and health, safety, and harm reduction.

The purpose does not need to be charitable in the IRS tax status sense,²⁴⁰ nor does it need to benefit the general public. It must simply be nonprofit, meaning that it is not organized to distribute profits to members. Organizers and lawyers should avoid imposing language and instead help residents express their purpose in their own words, later translating it into a simple written document.

b. Membership and voluntary association

Under the UUNAA, membership can be informal. Organizers and lawyers should help the encampment define who is considered a member (e.g., current residents, long-term residents, or residents plus allies), when someone becomes a member, and whether and how membership ends. It is important that membership reflects actual participation and not outside sponsorship. The law emphasizes voluntary association, so organizers and lawyers must ensure residents are choosing to associate and govern together, not being organized or forced together by external actors.

c. Association name

Choosing a name is not legally required but is important practically. A name makes the association more easily identifiable to outsiders (city officials, donors, and courts), helps distinguish collective actions from individual actions, and supports group dignity and self-determination. Indeed, the names Camp

²³⁹ UNIF. UNINCORPORATED NONPROFIT ASS'N ACT, § 2(11) (Unif. L. Comm'n 2008).

²⁴⁰ The Internal Revenue Code identifies which organizations are exempt from federal taxes, including charitable organizations. 26 U.S.C. § 501(c).

Nenookaasi and Camp Resolution reflected important values of the people living there, and the name Tent City 3 helped distinguish the encampment from other tent city encampments in the area. Organizers and lawyers should support residents in selecting a name that reflects their identity and goals and encourage them to use it consistently in meetings, communications, and documents.

2. Building internal structure that meets legal and practical needs

Once an encampment has clarified its shared purpose and membership, organizers and lawyers can assist in developing basic governance structures. The UUNAA does not require formal bylaws, officers, or hierarchies, but if an organization wants to open a financial account, enter into contracts, or sue in the group's name, it will likely need some sort of bylaws and officers or designees.²⁴¹ Lawyers are well positioned to help encampments navigate the tension between having enough formality to accomplish these purposes and not becoming too rigid to adapt to changes in the encampment.

a. Simple governing rules

Organizers can help residents draft a short, accessible document that covers the association's purpose; membership criteria; how decisions are made (for example, by consensus, majority vote, or delegated committees); how leaders or coordinators, if any, are selected; how conflicts are addressed; how funds or property are handled; and how the association can amend its rules. The document need not be long, and the rules should be written in plain language and reflect actual practices. The key is that the rules demonstrate collective decision-making and continuity beyond any one individual.

b. Leadership that does not replicate harmful power structures

Many encampment residents are wary of formal leadership due to past experiences with coercion or exclusion. The UUNAA allows flexibility. Leadership can be rotating. Committees can handle specific functions, such as sanitation, outreach, or security. An encampment can designate spokespeople for external communications without them controlling internal decisions. Organizers and lawyers should help residents design structures that are accountable, transparent, and survivable, while respecting the trauma and survival realities that residents might experience.

²⁴¹ Banks would likely not do business with an encampment that did not designate a signatory, even if that person was not called a "treasurer," and a third party would likely not enter into a contract with an encampment unless there was some way to be sure that the person signing on behalf of the encampment was authorized to bind it. 31 C.F.R. § 1020.220(a)(2)(ii).

c. Documentation of decisions and activities

While the UUNAA does not require record-keeping, documentation strengthens the association's legal standing. Organizers and lawyers can support residents in keeping simple meeting notes, recording major decisions, and retaining copies of agreements or correspondence. This documentation can later help demonstrate that the encampment functions as a genuine association if challenged by authorities or if it seeks funding or legal recognition.

3. Managing legal capacities, property, and external relationships

One of the most powerful aspects of the UUNAA is that it allows UNAs to hold property, enter contracts, and sue in their own name. Organizers and lawyers can help residents responsibly use these capacities.

a. Property and shared resources

Encampments often manage shared resources such as tents, generators, sanitation facilities, and mutual aid funds. Under the UUNAA, property can belong to the association, not individuals. This protection can reduce internal conflict and clarify stewardship. It can also protect individuals from personal liability in some cases. Organizers and lawyers should encourage clear agreements about how shared resources are acquired, used, and transferred.

b. Banking, funds, and fiscal practices

A UNA can obtain an employer identification number (EIN), open a bank account in the association's name, and receive grants or donations. If residents are ready and able to manage funds directly, organizers can help them develop basic financial controls. Possible controls include requiring two signatories, regular reporting to members, and clear rules against personal use of funds.

c. Liability and risk awareness

The UUNAA generally limits members' personal liability for association obligations, but it does not eliminate all risk. Organizers and lawyers should help residents understand the differences between collective and individual actions, when members might still face personal liability under state law (e.g., personal negligence), and the importance of acting in the association's name when appropriate. This counseling is critical to avoid harm through unintended

liability.²⁴² It is important that this education is empowering and not fear-based.

4. Considering ethical, political, and strategic implications

Organizing an encampment into a legally recognizable association is not just a technical exercise. Rather, it is an intervention with ethical and political implications.

a. Avoidance of co-option and harm

Organizers and lawyers must be vigilant that formalization does not undermine resident autonomy. Similarly, formalization should not enable surveillance or repression or create “leaders” who are targeted by authorities. Further, formalization should not exclude the most marginalized residents. Legal recognition should be a tool chosen by residents, not a prerequisite imposed by outsiders.

b. Strategic use of the association

Once organized, an encampment-based unincorporated nonprofit association can negotiate collectively with municipalities and partner with service providers on more equal footing. It can assert rights to notice, due process, or relocation. It can also bring legal actions in its own name. Organizers and lawyers can help members decide when and how to use these tools as an entity, and when to act informally or individually.

CONCLUSION

Proliferation of homeless encampments is not an acceptable solution to the affordable housing crisis in the United States. Each person deserves safe, affordable housing. Public policy should not rely on encampments to meet people’s shelter, safety, and community support needs. However, in the absence of adequate

²⁴² In recent years, residents and businesses in Phoenix, Arizona; Berkeley, California; and Salt Lake City, Utah have sued the cities for failure to evict neighboring encampments, alleging the encampments interfered with their use and enjoyment of their properties. The results have been mixed. On August 27, 2024, the Court of Appeals of Arizona affirmed a permanent injunction against the City. *Brown v. City of Phoenix*, 258 Ariz. 302, 313, 557 P.3d 321, 332 (Ct. App. 2024). On July 31, 2025, the Supreme Court of Utah found that the public duty doctrine precluded the residents’ and businesses’ claims. *Barrani v. Salt Lake City*, 574 P.3d 72, 79 (2025). The Berkeley litigation has not yet reached the appellate courts. *See Complaint for Enjoinder of Public Nuisance and Joinder of Private Nuisance, Acme Scenery Company, Inc. v. City of Berkeley*, No. 24CV091288 (Sep. 12, 2024). The litigation against these cities has not named any encampment residents but is something that advocates should discuss with encampments thinking about organizing under the UUNAA.

affordable housing, encampments offer critical support for some of the most vulnerable people in our communities.

Under the UUNAA, a homeless encampment does not need to become a traditional nonprofit corporation to be legally recognized as a collective entity. With careful, resident-led organizing, some encampments can meet the elements of an unincorporated nonprofit association. For those encampments, the role of community organizers and lawyers is to help identify, support, and protect the encampment's existing social organization, translating it into forms that the law can see without stripping it of its dignity, flexibility, and autonomy. If done well, this leveraging of community equity could increase stability, reduce harm, and expand the political and legal capacity of people who are too often denied both voice and recognition. Legal recognition is a form of power, and for encampment residents it can mean the difference between being displaced at the will of others and shaping their own futures.

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