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The question of how people experiencing homelessness occupy public spaces has become a seasonal argument these days. As with years past, the question is again thrust into the public spotlight with Portland Mayor Ted Wheeler's call for an expansion of a "pedestrian use zone" in downtown Portland, which restricts people from sitting or lying on a sidewalk.

The announcement has been met with a feisty backlash, including an early December protest outside Columbia Sportswear's downtown store over the pedestrian use zone. Columbia Sportswear's CEO, Tim Boyle, had written an op-ed in The Oregonian threatening to move the headquarters of Sorel, one of Columbia Sportswear's brands, if steps to reduce crime were not taken. Soon thereafter, the signs appeared.

For years, homeless advocates and civil rights lawyers have argued that laws that ban public camping, loitering and panhandling essentially criminalize homeless people and violate a homeless person's civil liberties, including free speech protections and protections against cruel and unusual punishment.

"All these laws criminalizing homelessness, we would be delighted to get rid of all of them," said Kimberly McCullough, policy director for the American Civil Liberties Union of Oregon.

The ACLU of Oregon has identified laws that disproportionately affect homeless people as one of its main priorities for litigation in the coming year. That decision to focus on laws that affect homeless people, such as bans on camping and panhandling, could have a dramatic impact on homeless legal rights, given the organization's ability to strategically choose its legal cases and rally the proper resources to litigate them.

A spokesperson for Wheeler did not respond to a request for comment for this article. But in a Dec. 10 op-ed in The Oregonian, Wheeler argued that public safety and livability issues can be addressed without criminalizing homeless people.

He called the pedestrian use zone a "common sense" strategy, one that is "more limited and nuanced" than a "sit-lie" ordinance that bans sitting and lying on a sidewalk.

"But it gives authorities the flexibility they need to address specific public safety or public health threats in congested areas, by keeping our sidewalks accessible and walkable," Wheeler wrote.

Mat dos Santos, the ACLU of Oregon's legal director, said it's too early to say whether the civil rights organization will



ACLU of Oregon targets laws that criminalize homelessness, survival

Portland's pedestrian use zones 'deeply troubling'

PHOTO BY JOANNE ZUHL

Portland's pedestrian use zones are intended to "ensure unimpeded movement for pedestrians" by prohibiting "immobile activities such as sitting or lying."

challenge the pedestrian use zone in court. But "I don't think anybody would be shocked to know that we are looking into it," he said.

"This is something we find deeply troubling," he said. "This is de facto discrimination based on economic status."

The ACLU of Oregon undergoes strategic planning each year and identifies priorities for litigation based on what staff "see as emerging issues." One reason the civil liberties organization decided to focus on homeless legal issues is the continued failure of the Right to Rest Act to become state law.

The Right to Rest Act would make it legal for homeless people to camp in public spaces, as well as park their car to sleep at night, thus overriding many local laws that prohibit camping.

The legislation would also make homeless people a protected class of people, making illegal any form of discrimination based on a person's housing status. And the legislation would have instructed the state's Bureau of Labor and Industries and private attorneys to enforce the protections.

The bill has been introduced during multiple Oregon legislative sessions, but it has always died in committee, most recently earlier this year, "in a state that is completely controlled by Democrats," dos Santos said.

"When policy options run out, it's time to try litigation," he said.

Tristia Bauman, senior attorney for the National Law Center on Homelessness and Poverty, a national nonprofit that advocates for the legal rights of homeless people, said it's exciting any time an ACLU chapter decides to litigate laws affecting homeless people.

"This is squarely a civil liberties issue, one that the ACLU is expert at litigating," Bauman said. "It's their core mission."

The ACLU, at both the national and state levels, is well known for its strategy of choosing lawsuits that can set legal precedent and change national, state or local laws.

Legal Aid Services' offices - which often help people of low income, racial and ethnic minorities, and undocumented immigrants - are barred from litigating class-action lawsuits, legal cases in which a plaintiff represents an entire group of people, because of restrictions related to the federal funding those offices receive.

Those restrictions do not apply to state ACLU chapters, Bauman said.

A homeless person's entire life is displayed in public: where they camp, what possessions they have, what they wear,

whether they have a pet, and so on. The complete lack of privacy exposes actions people take every day, such as sleeping.

Sleeping, resting, sitting and panhandling to make money are what civil rights lawyers and homeless advocates would call "acts of survival" - actions a homeless person must take to literally survive.

Yet in the case of camping ordinances, the very act of sleeping is criminalized.

"A person has to do certain things in order to survive," McCullough said - sleeping at night, sitting down to rest or eat, urinating and defecating. "And (this is) saying that act of survival is criminal."

McCullough and others argue that there is an inherent double standard in how these laws are enforced.

They reference volunteers of the Salvation Army who stand on sidewalk corners and in front of stores during the holiday season, ringing bells and asking for donations. And political canvassers, who stand on the corner of sidewalks introducing themselves and asking the names of passersby, or asking if a passerby wants to protect the whales, the forest or women's reproductive rights.

And people often camp outside of R.E.I.'s store on Northwest Johnson Street before a sale or outside a movie theater before the first screening of a Star Wars movie.

Yet in each of these instances there are exceptions that influence the response. The Salvation Army volunteer asking for money is requesting a donation, not panhandling. Political canvassers are not obstructing the sidewalk, and people camping outside of a movie theater are not necessarily cited for violating a camping ordinance.

"There's a variety of ways that people are treated differently," McCullough said. "If a homeless person does something that a housed person does, they could be treated differently. There is a discrimination aspect."

The ACLU of Oregon's decision to tackle laws that impact homeless people come at a time when homelessness has dramatically increased in Oregon because of an extreme shortage of affordable housing.

Laws that directly affect homeless people are also on the rise.

Earlier this year, the ACLU of Oregon released the report "Decriminalizing Homelessness: Why Right to Rest Legislation is the High Road for Oregon."

The report analyzes 224 local laws in 69 cities throughout Oregon (see "By the Numbers"), including camping bans, sitting and loitering laws and laws regulating panhandling, that "create clear barriers to performing life sustaining activities and legalize the unfair and harmful treatment of unhoused communities," according to the report.

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