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PERSPECTIVE

Skid Row ruling should be required reading

By Timothy D. Reuben

“Virtually every citizen of Los Angeles has borne the impacts of the City and County’s continued failure to meaningfully confront the crisis of homelessness.”

This powerful indictment of past and current elected officials in Los Angeles is documented in the 109-page opinion and order of District Judge David O. Carter in his April 20 mandatory injunction ruling in *LA Alliance for Human Rights, et al. v. City of Los Angeles, et al.*, 2:20-CV-02291 (C.D. Cal., filed March 10, 2020). The sweeping analysis discusses U.S. history from Abraham Lincoln’s Gettysburg Address through to President Joe Biden’s recent payments to needy taxpayers, details Los Angeles history from the early 1900s through recent pronouncements by Mayor Eric Garcetti and other current officials, and describes the failures, mismanagement, and inaction that has led to the current homeless crisis.

This ruling should be required reading for every city and county employee, every jurist in Los Angeles County, and anyone who cares about the future of Los Angeles. As Judge Carter notes: “Los Angeles has lost its parks, beaches, schools, sidewalks, and highway systems due to the inaction of City and County officials who have left our homeless citizens with no other place to turn. All of the rhetoric, promises, plans, and budgeting cannot obscure the shameful reality of this crisis — that year after year, there are more homeless Angelenos, and year after year, more homeless Angelenos die on the streets.”

Among other things, the ruling requires the city and county to: (1) Segregate \$1 billion and provide to the court a report and audit of all funds that have been used or obtained or can be obtained from multiple sources for various homeless relief (this was subsequently modified to instead give the city 60 days to draft a Binding Commitment and Implementation Plan); (2) provide an audit of “all land potentially available for housing” the homeless; and (3) provide temporary shelter within 90 days to all unaccompanied women and children living in Skid Row, within 120



New York Times News Service

Skid Row in downtown Los Angeles, which has the largest homeless population in the country, on Nov. 16, 2019.

days to all families in Skid Row, and within 180 days to every other person on Skid Row. The defendants have already appealed this ruling to the 9th U.S. Circuit Court of Appeals.

This article offers no opinion regarding that appeal, but only an abbreviated discussion of Judge Carter’s thoroughly researched opinion.

Judge Carter offers four primary theories to support his order: violations of the equal protection clause, violations of the due process clause, violations of the Americans with Disabilities Act, and violations of California Welfare and Institutions Code Section 17000.

As to equal protection, the court found: “Through redlining, containment, eminent domain, exclusionary zoning, and gentrification — designed to segregate and disenfranchise communities of color — the City and County of Los Angeles created a legacy of entrenched structural racism.” Noting that “[w]hile Black people comprise only eight percent of Los Angeles’s population, they make up 42% of its homeless population,” the opinion exhaustively details through both statistical evidence and specific examples how actions by the city and county have forced people of color into financial disadvantage.

The result of this historic conduct: “The fracturing of communities of color in Los Angeles and the subsequent overcrowding of neighborhoods open to Black families meant that city renewal plans impeded Black families from sharing in post-war white intergenerational wealth accumulation flowing from home ownership in neighborhoods with fixed growths in property values.”

Los Angeles dealt with the growing homeless problem by creating Skid Row, where it forced the homeless, mostly people of color, to live on the streets. Skid Row was “a place where the homeless, discharged patients with mental disabilities, and parolees came — or in some instances, were bussed and dropped.” The police controlled the area by not allowing the homeless out of the defined containment zone of Skid Row, and corruption, disease, crime, and death were common. In addition, there has also been a disparate impact on women, as the court found “women experiencing homelessness in the City increased 25% between 2019 and 2020.” The disparate impact caused by the Court’s finding of entrenched structural racism and impact on women supports the Equal Protection theories.

As to substantive due process, the court focused on the deleterious effects on Black families, stating that “the City and County’s discriminatory conduct has threatened the family integrity of the Black unhoused.” Citing numerous cases, the court explained that when the government deprives an individual of life, liberty and/or property in an outrageous fashion, the state commits a due process violation, and much of this jurisprudence involves the impact on families and the separation of children. Judge Carter found: “Los Angeles’s homelessness crisis has created a cyclical pattern in which Black families are disproportionately uprooted from their community and separated upon experiencing homelessness, driving Black children into the Los Angeles foster care system.”

As to the ADA, the court found: “Because of the City and County’s persistent inaction and inertia in creating shelter for the homeless, thousands of homeless individuals have erected tents that obstruct city sidewalks.” Since the ADA requires that sidewalks be maintained free for at least 36 inches in width, this was a clear ADA violation by the city and county.

Finally, under Section 17000, the county is required “to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed.” The court stated that the county was obviously in violation of state law, and also went on to hold that, due to the county and city working for years in concert, this provision also applied to the city, so both were in violation.

The above articulately described and thoroughly researched theories were not the most striking part of the court’s opinion. Rather, the consistent failure of the city and county to actually act expeditiously was the most troubling theme. Judge Carter for example quoted Councilmember Mark

Ridley-Thomas, who stated: “the issue of homelessness is of insufficient importance to the decision makers of this region. Therefore, we have this languishing set of circumstances where we chase our tails day in and day out claiming that we’re doing things.” Special criticism was leveled at Mayor Garcetti: “To this day, Mayor Garcetti has not employed the emergency powers given to him by the City Charter despite overwhelming evidence that the magnitude of the homelessness crisis is ‘beyond the control of the normal services’ of the city government. An emergency declaration under the City Charter would give the Mayor the power to ‘promulgate, issue and enforce rules, regulations, orders and directives which the [Mayor] considers necessary for the protection of life and property.’ These rules would be effective immediately upon their issuance, allowing Mayor Garcetti to bypass the bureaucracy and eliminate the inefficiencies that currently stifle progress on homelessness.”

Part of the court’s order requires the mayor to provide an explanation why he has not utilized this power. Notably, as reported in the April 25 edition of the Los Angeles Times, Garcetti defended himself by stating: “I’m not in charge of the mental health care system. ... I didn’t declare wars that brought people back with PTSD; I haven’t been putting people into prisons for years; I didn’t declare the drug war; I haven’t been in charge of the foster care system.”

The court describes with frustration the inaction of the defendants: “The City and County of Los Angeles have shown themselves to be unable or unwilling to devise effective solutions to L.A.’s homelessness crisis. ... inertia has created a public safety crisis that touches the lives of every citizen of Los Angeles while the government remains indifferent amidst rising chaos.”

The court concluded that it had to act under its equitable powers because of the inaction of LA’s elected officials: “Homeless

individuals continue to die in record numbers; the homeless population continues to grow; and government inertia continues to plague already insufficient relief efforts.”

While this case may raise complex legal questions about the extent to which courts can dictate to local authorities what they are required to do, the opinion powerfully describes that the elected officials of the county and city, while “talking the talk,” simply fail to actually carry out the necessary actions needed to address this massive and profound crisis. Regardless of the legal debate, they must do better — and actually act to address this problem in a meaningful way.

Timothy D. Reuben is the founder and managing principal of Reuben Raucher & Blum, a litigation boutique located in Brentwood. He handles matters in federal and state courts at both the trial and appellate level as well as arbitrations and specializes in complex matters. He can be reached at treuben@rrbattorneys.com.



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REUBEN RAUCHER & BLUM^{PC}
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