

Executive Order on Homelessness: Implications & Advocacy for People Sleeping Rough



Involuntary Commitment:

What Street Medicine Providers Need to Know

November 6, 2025

Emily M. Hills, Senior Staff Attorney



The ACLU of Hawai'i

I. What is it?

- Non-profit
- Non-partisan
- Civil rights / civil liberties watchdog

II. What does it do?

- Litigation
- Policy advocacy & lobbying
- Organizing
- Public education & press

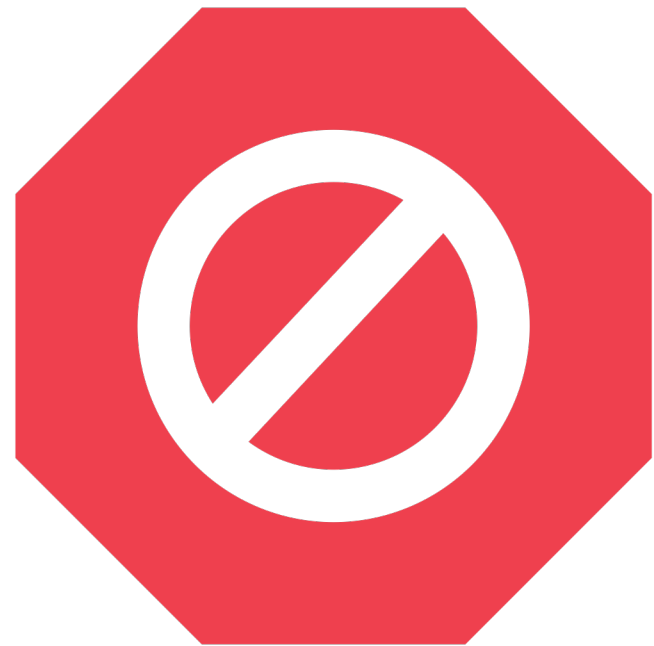


Goals for Today

1. Understand the constitutional rights that protect people in involuntary commitment (IVC) proceedings
2. Discuss the (relatively) new Executive Order (EO) about houselessness and mental health
3. Brainstorm options for houseless patients ensnared by the legal system

Disclaimer

- I. This presentation is for information purposes, it is not legal advice
- II. Consult with a lawyer if you have specific questions about your (or someone else's) circumstances
- III. In this administration, policies and practices are changing quickly



Involuntary Commitment



A finding of 'mental illness' alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement... there is still **no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.**

O'Connor v. Donaldson, 422 U.S. 563, 575 (1975).

Travel

Safety

Personal Liberty

Freedom from
Discrimination

We all have the right to...

Notice

Chance to be Heard

Due Process
(Fair Procedures)

Psychiatric Expert*

Counsel*

High Burden of Proof

Executive Order 14321: *Ending Crime and Disorder on America's Streets*

July 24, 2025



“Shifting homeless individuals into long-term institutional settings for humane treatment through the appropriate use of civil commitment will restore public order.”



“Endemic vagrancy, disorderly behavior, sudden confrontations, and violent attacks have made our cities unsafe.”

“...large share of homeless individuals reported suffering from mental health conditions.”

What is an Executive Order???

Let's go back to Government 101...



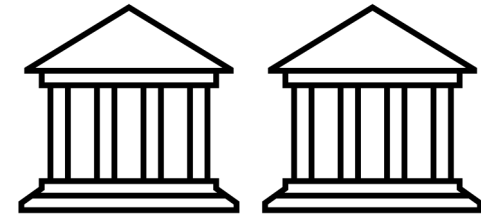
Three co-equal Branches of Government



Courts



Executive
(a.k.a. President)



Legislature

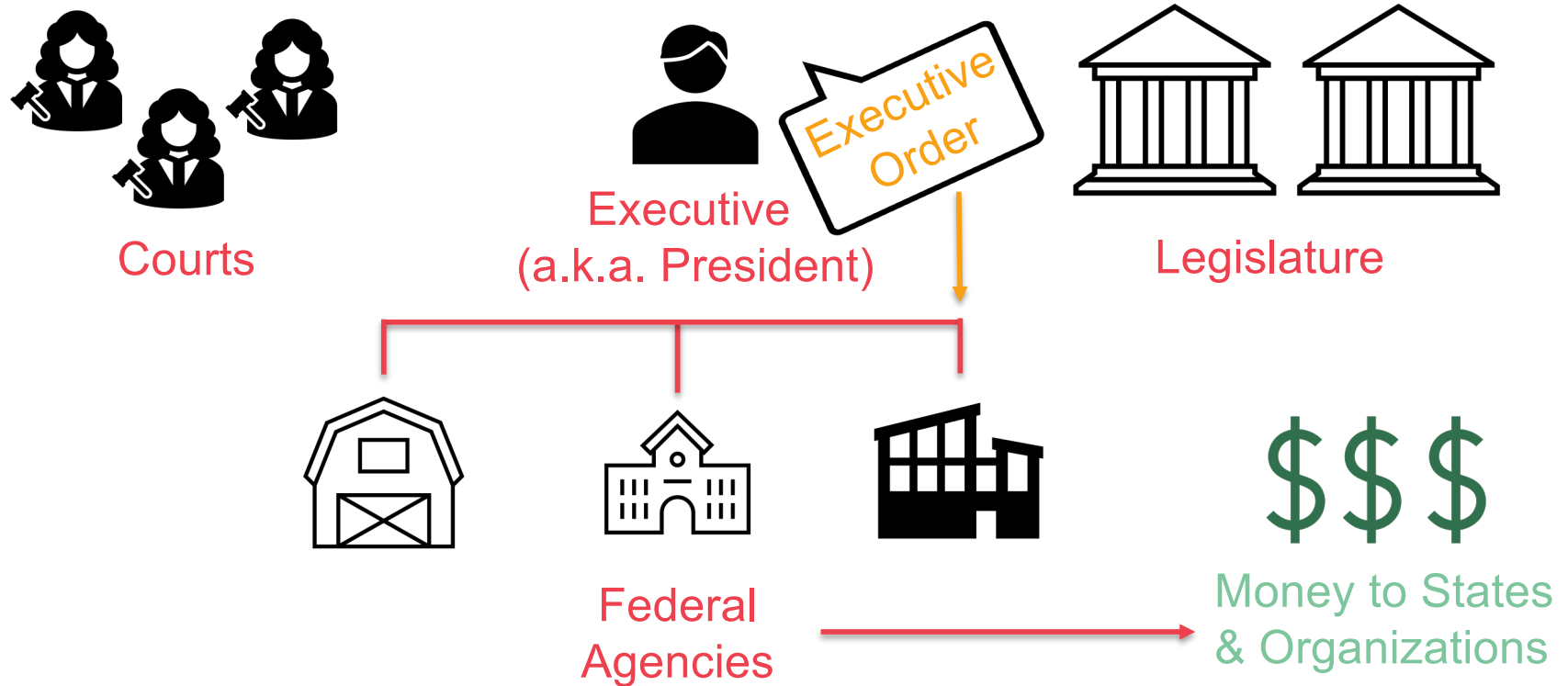


Federal
Agencies

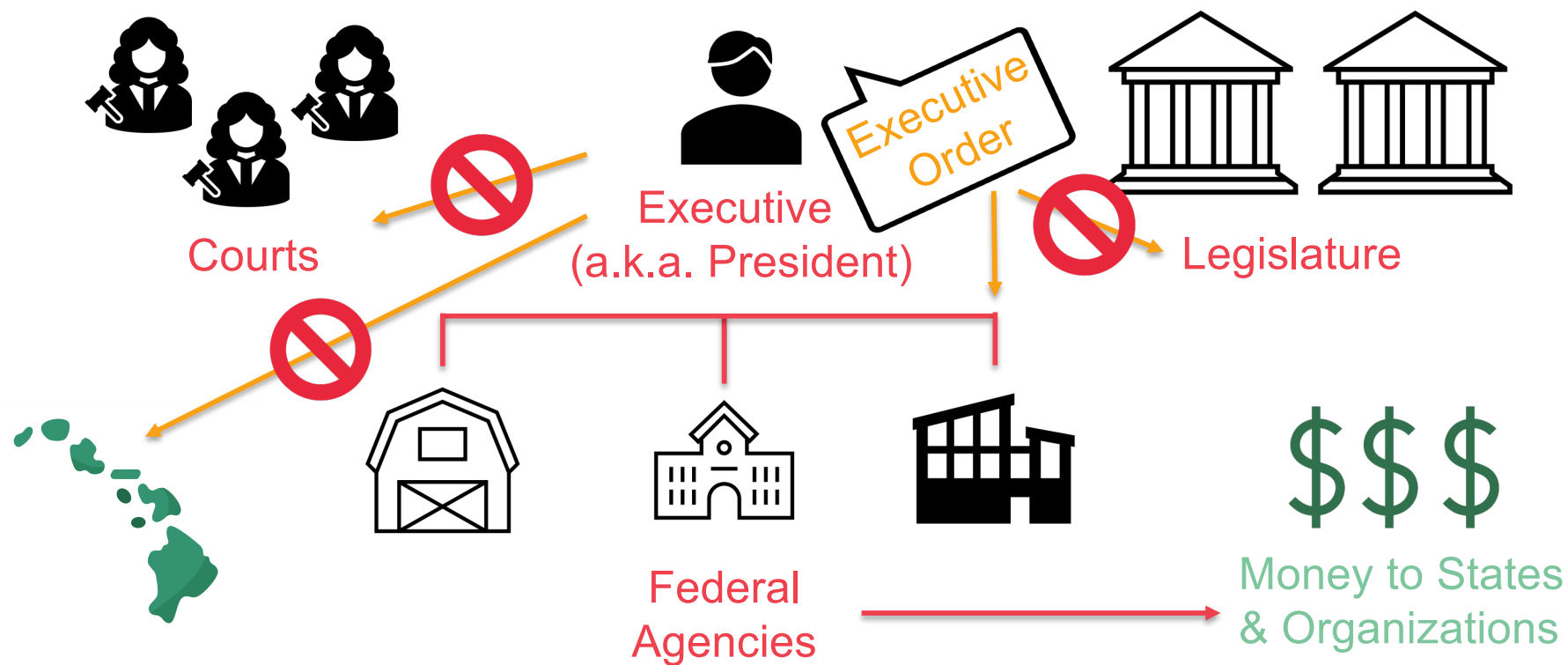


Money to States
& Organizations

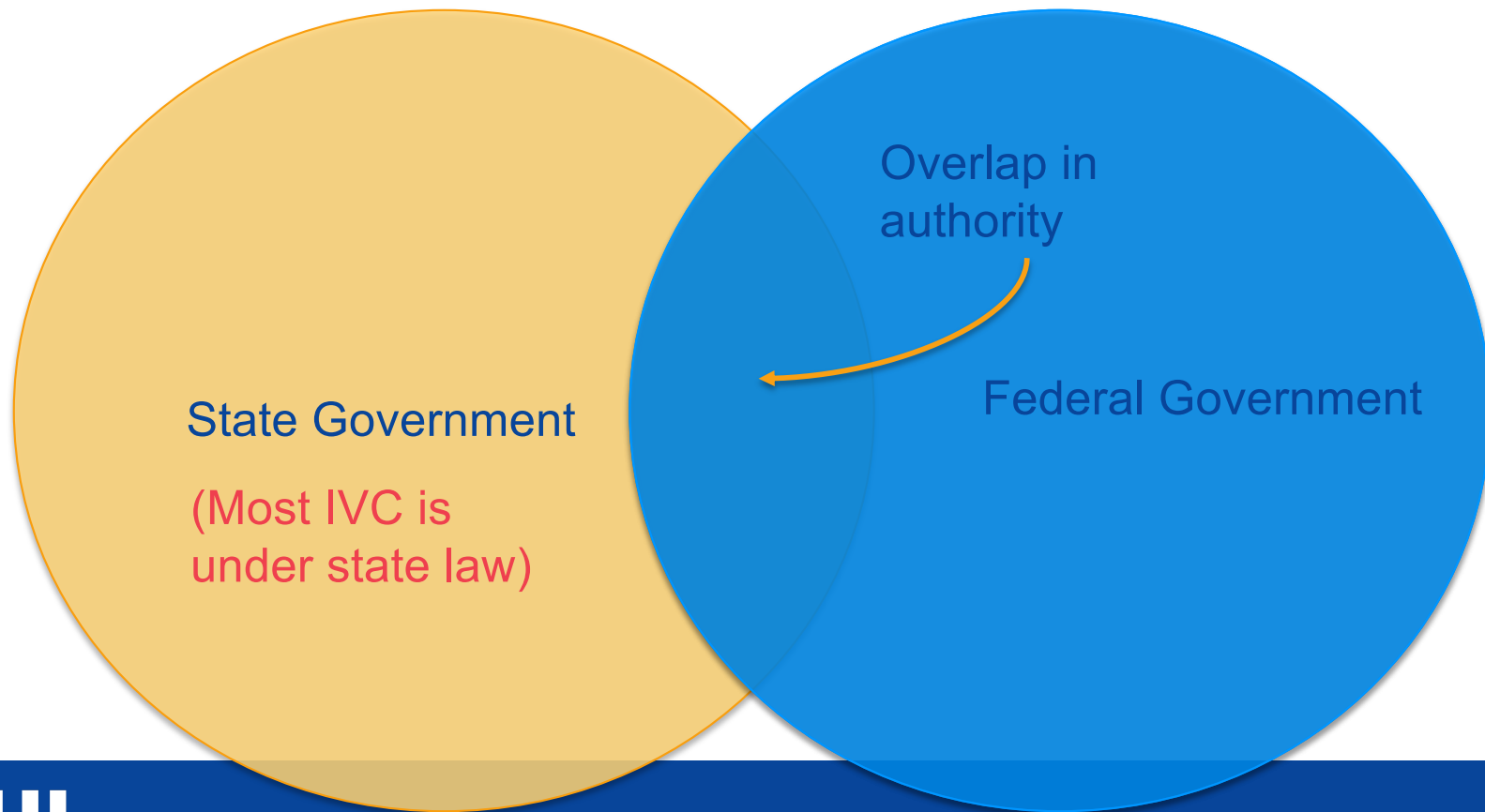
Three co-equal Branches of Government



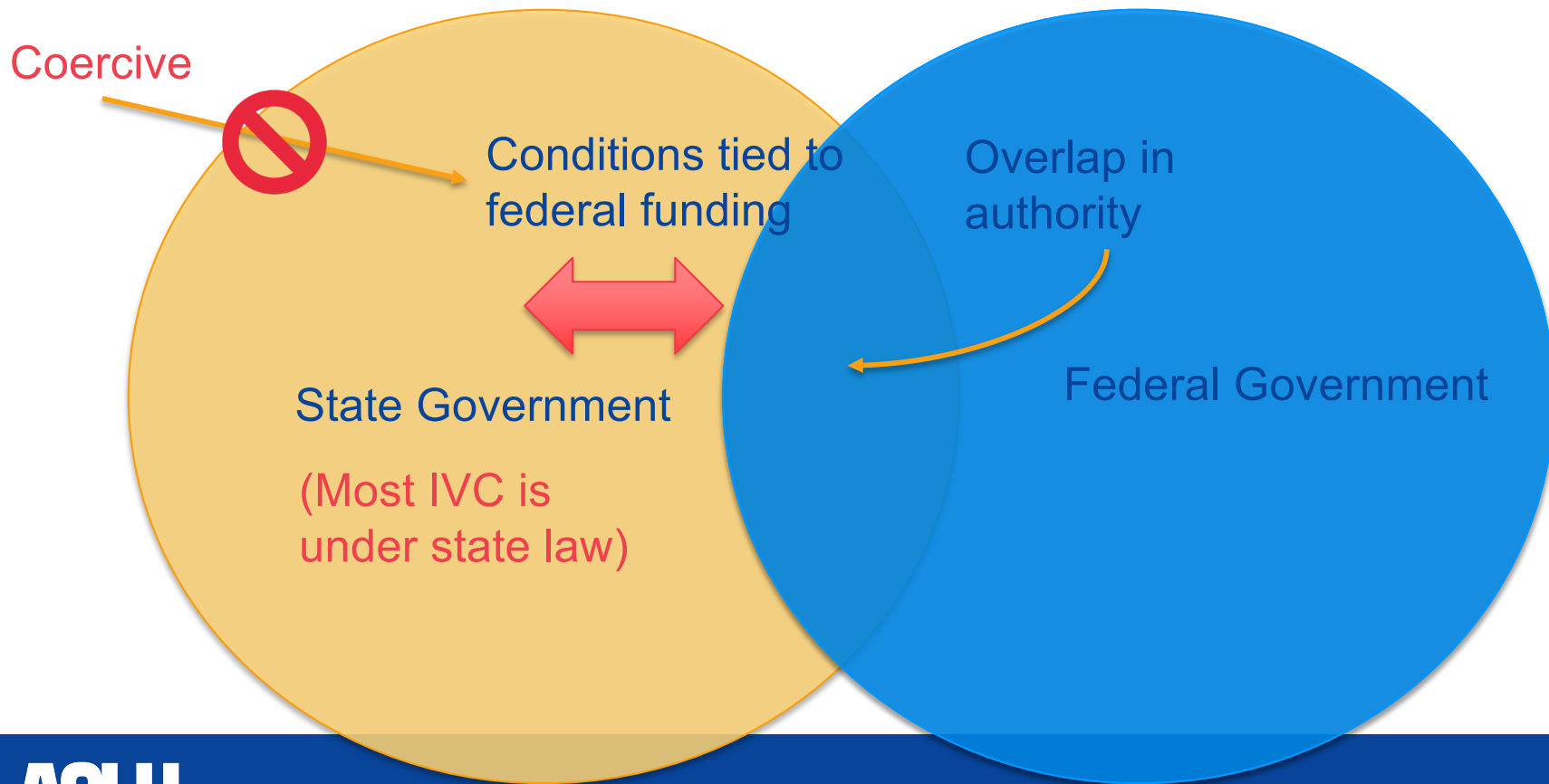
Three co-equal Branches of Government



Federalism (a.k.a. State's Rights)



Federalism (a.k.a. State's Rights)



Executive Order 14321:
*Ending Crime and Disorder
America's Streets*

What does it do? / do?

NOTHING IMMEDIATELY





Attorney
General

- Try to reverse court precedent
- Use \$\$ to help states further policy goals

Try to make
IVC easier;
use law to
further IVC
goals

HHS

- Prioritize certain grant conditions
- Stop support of safe consumption

Try to
influence
states and
providers

HUD

- End support for "housing first"
- Rq tx for Section 8 housing

Try to
influence
states and
providers

To the Attorney General:

- Try to reverse legal precedents that limit IVC (*i.e.*, due process)
- Help States make IVC law less strict
- Evaluate homeless prisoners who are “sexually dangerous persons”
- Use federal \$\$ to help states do sweeps

Court still makes decision whether IVC appropriate



State has to apply due to “emergency”

To the Attorney General (cont'd):

- Try to use federal \$\$ so detainees not released due to lack of state hospital beds
- Strengthen requirement that prisons getting \$\$ require housing release plans
- Prioritize \$\$ to expand drug courts and mental health courts



To Dep't Health & Human Services (HHS):



- Consider prioritizing grants to states that enforce:
 - No open drug use
 - No urban camping/loitering
 - No squatting
 - Have IVC procedures
 - Have Sex Offender Registry

To Health & Human Services (cont'd):



- Fund evidence-based programs (no “safe consumption/harm reduction”)
- Help outpatient programs get people into private housing/support
- \$\$ to FQHC and CBHC for comprehensive care and crisis intervention

To Dep't of Housing & Urban Development (HUD):

- “Increase accountability” of grants
 - End support of “housing first”
 - Increase competition by broadening applicant pool
 - Hold grantees to higher standard of effectiveness
- Require Section 8 recipients to do drug or MH tx if necessary



To Dep't of Housing & Urban Development (HUD):

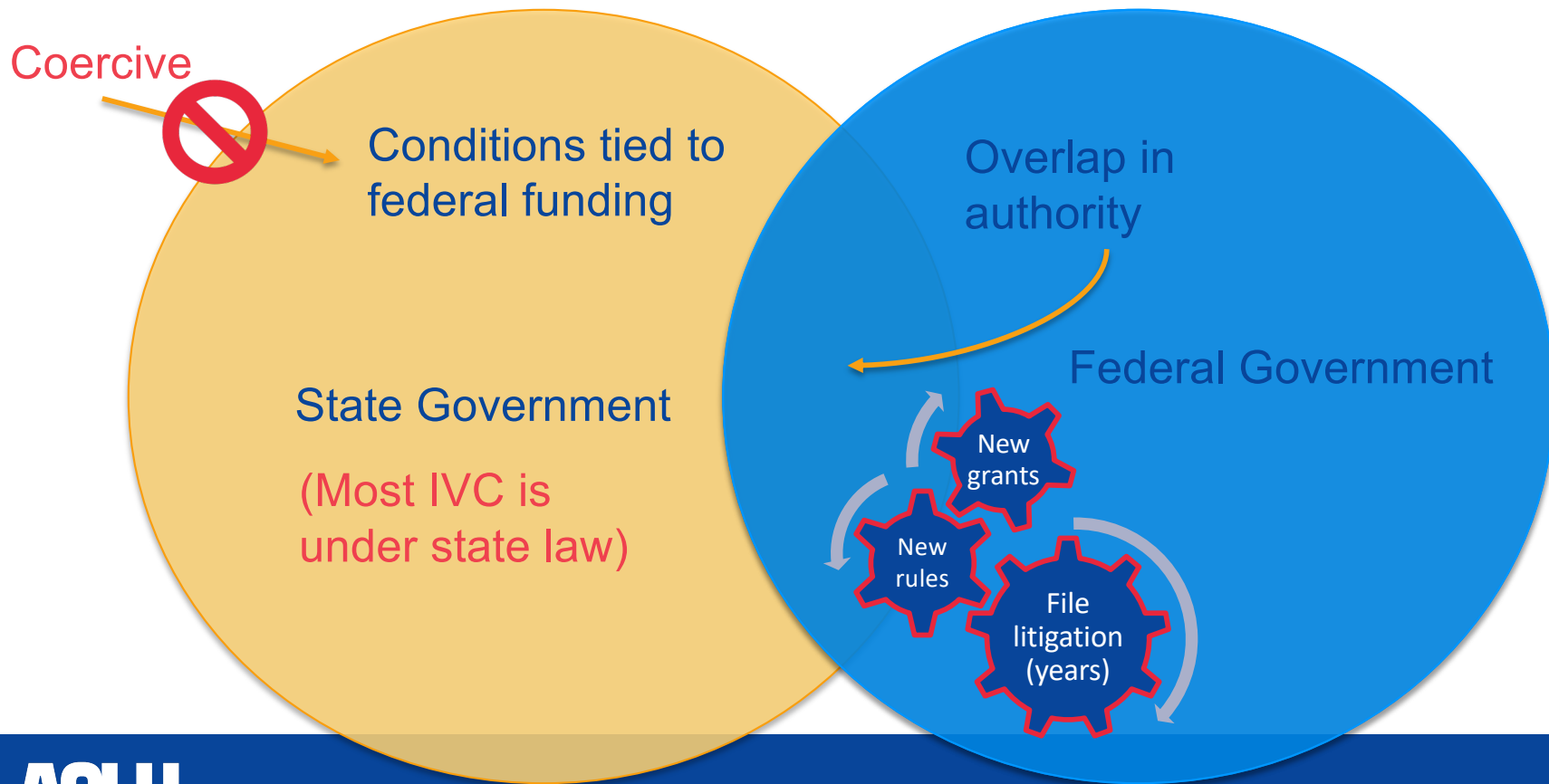
- End funding (or freeze funding) for providers operating “safe consumption sites”
- Revise regulations to allow programs to exclusively house women and children and exclude sex offenders
- Allow or require \$\$ recipients to collect health data and share with law enforcement



So, what now?



Federalism (a.k.a. State's Rights)



Post-EO Legal Theories



Administrative Law Challenges

How is the Trump administration doing in court litigation? (from 2019 data)

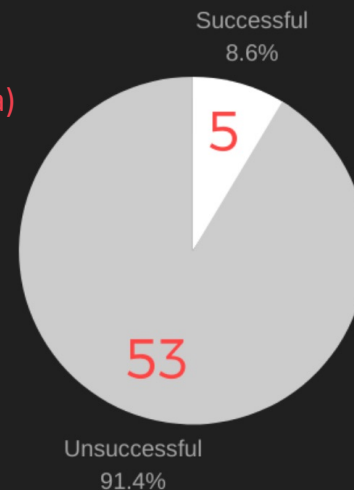


An outcome is considered unsuccessful for the Trump administration if (1) a court ruled against the agency or (2) the relevant agency withdrew the action after being sued.



An outcome is considered successful for the Trump administration if the agency won the lawsuit without having to withdraw the challenged action.

Source: The Institute for Policy Integrity, NYU School of Law



- Administrative Procedure Act (APA) = federal law about how agencies must act
- Notice & Comment rule-making
- No “arbitrary and capricious” decisions

ADA Disability Discrimination

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999)

- ADA prohibits discrimination because of disability
- “Undue institutionalization” is discrimination
- Assessment of professionals controls qualification for community-based program



Right to Treatment: Statutes and Due Process



“...to deprive a person of liberty on the basis that he is in need of treatment, without supplying the needed treatment, is tantamount to a denial of due process.”

Rouse v. Cameron, 373 F.2d 451, 455 (D.C. Cir. 1966)

Right to Liberty (State and Fed Const.)

“May the State fence in the harmless mentally ill solely to save its citizens from exposure to those whose ways are different? One might as well ask if the State, to avoid public unease, could incarcerate all who are physically unattractive or socially eccentric. **Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person’s physical liberty.**”

O’Connor v. Donaldson, 422 U.S. 563, 575 (1975).

14th Amendment Due Process: Notice & Opportunity to Be Heard

- Notice
- Meaningful hearing to challenge IVC
 - Right to counsel
 - Right to independent psychiatric expert
 - *States differ on rights



“The right of an indigent patient to have counsel appointed has already been established, ... but the presence of a lawyer at the commitment hearing is not a sufficient safeguard for the patient’s rights. **No matter how brilliant the lawyer may be, he is in no position to effectively contest the commitment proceedings because he has no way to rebut the testimony of the psychiatrist from the institution who has already certified to the patient’s insanity[.]”**

In re Gannon, 123 N.J. Super. 104, 105, 301 A.2d 493, 494 (Co. 1973)

14th Amendment Due Process: *Davis v. County of Maui (2021)*

- Challenged the illegal seizure and destruction of people's personal belongings in **sweeps**
- Lost to the sweep were 54 vehicles and 58 tons of personal property that had been seized, discarded, or otherwise impounded
- HI Supreme Court held County violated due process when it refused to hold an administrative hearing before destroying property.

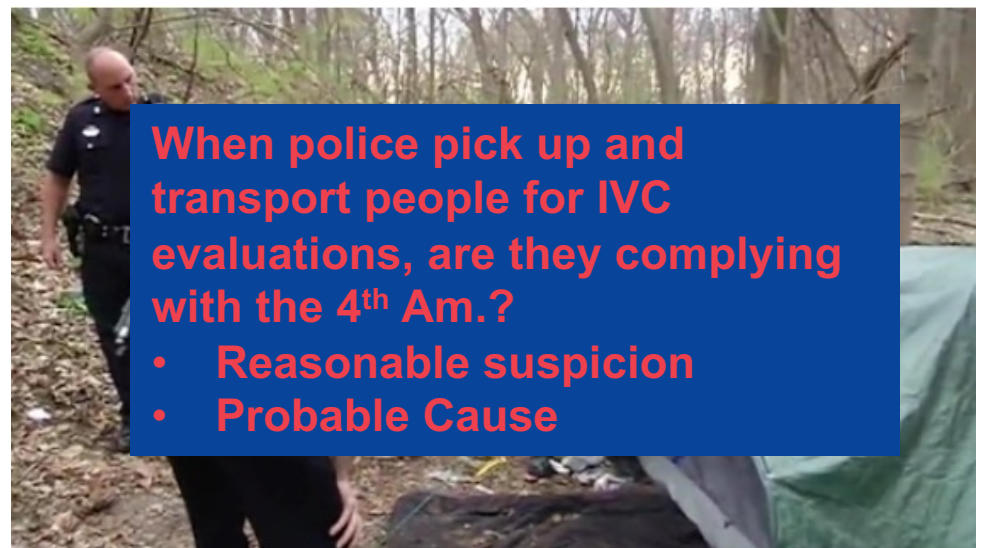
14th Amendment – Equal Protection



- All people have the right to be treated equally by the gov't
- “Selective enforcement” of laws against houseless people
 - Different treatment from others “similarly situated”
 - No rational basis
- Heightened scrutiny for enforcement based on race, nationality, or sex

4th Amendment – Unreasonable Searches & Seizures

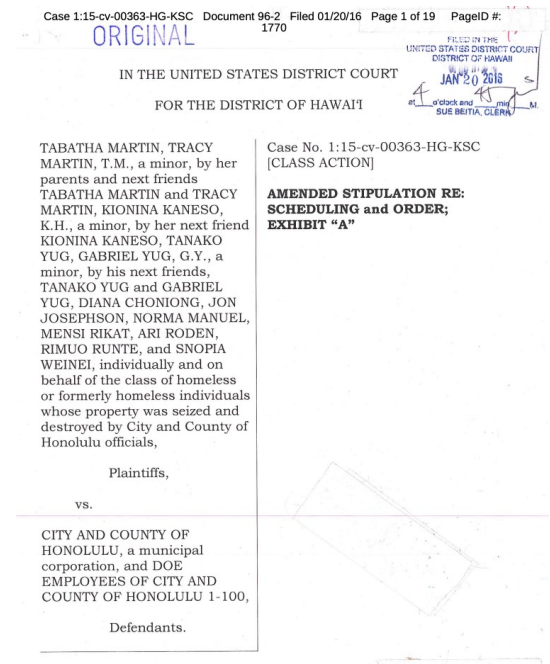
- The Constitution limits the way in which people's "persons, houses, papers, and effects" are searched and seized
- Protects against unreasonable seizures of people or property during sweeps
- Requires warrants or clear exceptions



4th Amendment:

Martin v. City and County of Honolulu (2015)

- Challenged the illegal seizure and/or destruction of people's **personal belongings** in sweeps
- The first of ACLU-HI's recent cases that raised awareness of the City's "enforcement actions" that targeted unsheltered people
- Resulted in a **settlement agreement** that requires City and County of Honolulu to follow certain procedures when seizing property from public spaces



State law “cruel or unusual” punishment

The federal door is closed under *Grant's Pass v. Johnson*, but the state door remains wide open

- Even in states with identical constitutional text, state supreme courts can choose to interpret the provisions to be more rights-protective
- Many states (including HI, CA, OR, WA) have clauses prohibiting “cruel or unusual” punishment, which are also construed to be more protective

Mahelona v. City and County of Honolulu (2023)

Currie v. City of Spokane (2024)



IN THE SUPERIOR COURT OF WASHINGTON
FOR SPOKANE COUNTY

DONNELL L. CURRIE; CLIFFORD J.
MOORE; and JEWELS HELPING HANDS, a
nonprofit organization.

Plaintiffs,

v.

THE CITY OF SPOKANE; BETSY
WILKERSON, in their official capacity of City
Council President; JONATHAN BINGLE, in
their official capacity of City Council Member;
MICHAEL CATHCART, in their official
capacity of City Council Member; PAUL
DILLON, in their official capacity of City
Council Member; LILI NAVARRETE, in their
official capacity of City Council Member;
ZACK ZAPPONE, in their official capacity of
City Council Member; KITTY KLITZKE, in
their official capacity of City Council Member.

Defendants.

No.

COMPLAINT

I. INTRODUCTION

1. Homelessness is not a crime. While homelessness is not a crime, laws which punish acts that are inextricable from the condition of lacking a home, such as sleeping and living outside, criminalize homelessness.

2. The Spokane laws which criminalize homelessness impose cruel punishment in violation of Article I, section 14 of the Washington Constitution.

14th Amendment – State-Created Danger



Violation of 14th Amendment substantive due process when government official...

- Takes **affirmative act** that places a person in danger...
- with **deliberate indifference** to a known or obvious danger

Examples: sweeps/displacement that exposes people to known health risks (e.g., heat, cold, flooding)

1st Amendment & State Equivalents



- Freedom of speech and expressive activity
- Right to record or document government activity
- Allowed reasonable time/place/matter restrictions
- NOT allowed to ban speech altogether

Guy v. County of Hawai'i (2014)

- Plaintiff was standing by a road on the Big Island
- **Holding a sign** that said “Homeless Please Help”
- Was silenced and criminally cited under “panhandling” ordinance, by police officers
- Complaint alleged violations of Plaintiff’s rights under the First, Fourth, and Fourteenth Amendments of the U.S. Constitution

Homelessness

This Homeless Man Learned His Voice Does Matter

Justin Guy says when he was arrested on the Big Island for holding up a sign asking for help, his right to free speech was violated. He fought back and won.



Justin Guy stands at the intersection in Kailua-Kona where he was cited for panhandling in June 2014.

Necessity Defense

- a.k.a. “Choice of Evils”
- Defense to criminal prosecution
- If conduct is necessary to prevent a greater, more immediate harm



What advocates can do to help

Identify enforcement-related issues

Document, document, document

Advocate in real-time with gov't officials

Educate patients

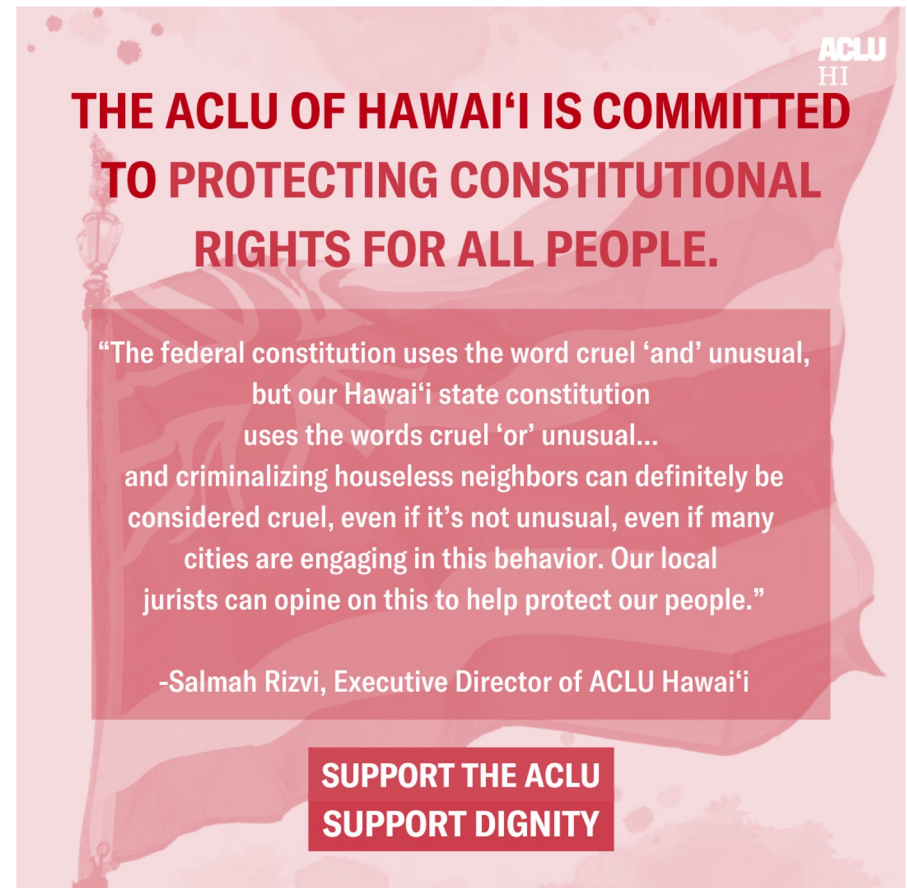
Questions?

Contact Us

Emily Hills - ehills@acluhawaii.org

Contact ACLU of Hawai'i:

<https://intake.acluhawaii.org>



ACLU

Hawai'i

WE THE PEOPLE

Perspective of a Street Psychiatrist

Liz Frye, MD, MPH

Chair, Board of Directors, Street Medicine Institute

Historical Context

- 1400s: Asylums first established in Spain – used for isolation of people with severe symptoms; abysmal conditions
- 1800s: Institutional reform for more humane treatment
- 1900 - 1940s: State-run public psychiatric hospitals, accounted for half of hospital beds in the US; patients never discharged; abysmal conditions
- 1950s: Shift to community care due to exposes, conscientious objectors (“deinstitutionalization”)
- 1960s - today: Reforms of involuntary commitment laws from “need for treatment” to “dangerousness model”; decline of public hospitals, poor and declining funding for community mental health

Involuntary Commitment

- Mental illness + dangerousness

- All states and territories have their own laws
- Much variation related to length of time and frequency of judicial review
- Forced treatment (meds) vary by facility and/or state

- SUD + dangerousness:

- 37 states and DC have laws
- Only frequently applied in California & Florida
- Alabama, Arizona, Idaho, Illinois, Maryland, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Utah, Wyoming do not have SUD commitment

- Native American reservations

- Complex jurisdictional issues between tribal, state, and federal authorities
- Some rely on state laws (California, Oregon)
- Most have tribal laws & tribal court processes

Evidence for Involuntary Commitment

- Mental Illness

- Mixed outcomes for inpatient & outpatient commitment
- Benefits: preventing imminent harm, severe psychosis reduction; potentially life-altering
- Harms: mistrust and avoidance of care, increased suicide risk post-hospitalization, overdose risk post-hospitalization; potentially life-altering

- SUD

- Limited data for SUD; unfavorable results
- Benefit: brief overdose prevention
- Harms: increases post-hospitalization and longer-term overdose risk
- Need for well-considered, data-informed guidelines

Nuanced & Balanced Decisions

- Alternative outpatient options
- Safety risk
- Likelihood of involuntary commitment be upheld
- Harm vs benefit
- Ethics of beneficence vs autonomy
 - Is the illness reducing autonomy and will commitment will restore autonomy?



Reality of the Executive Order

- Public sentiment has been headed in this direction
 - Increased public and political interest in involuntary settings for mental illness and SUD
 - Majority of the public believes that most homeless individuals meet criteria for involuntary commitment
- Reality of deinstitutionalization - never really happened, just transferred to carceral setting
- Increased variability between states
 - States control law on civil commitments and will pay for costs
 - Lack of mental health workforce

Concern for the Executive Order

- Weakening of civil rights protections for people with psychiatric and substance use disorders
 - Indiscriminate involuntary commitment, not individually based
 - Minimal experience of legislators in medicine/psychiatry, minimal understanding of homelessness
- Poor psychiatric care due to limited workforce, moral injury, disregard for evidence-based practice
 - Defunding of outpatient alternatives
 - Continued disinvestment in primary and secondary prevention
- Defunding of current supportive housing
 - Defunding harm reduction
- Return to (continuation of?) inhumane treatment
 - Increased morbidity & mortality
- Requirements for sharing Protected Health Information (PHI) with federal agencies and law enforcement

Options for Advocacy & Action

- Educate patients and support enforcement of laws for civil rights
 - Connect with attorneys locally
 - Street medicine clinicians as expert witnesses for the defense in involuntary commitment hearings
- Creation of expert guidelines
 - Offer expert guidance to legislators, decision-makers
- Street medicine is bipartisan
 - Push for SAMHSA recognition of street medicine as a best practice
 - Act as an expert witness for local, state, and federal cases