

AMERICA'S HOMELESS TRAGEDY

Current Approaches Have Not Worked

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INTRODUCTION

The homeless are an exploding population in America, especially on the West Coast[1] Homelessness is both a humanitarian crisis and a public health and safety crisis. “Justice, justice, you shall pursue,” admonishes the Torah.[2] Homelessness is a justice issue, but balancing justice for the homeless with the public health and safety risks to the homeless and the general public is a troublesome issue for society today.

Gunnar Myrdal published in 1944 *An American Dilemma, The Negro Problem and Modern Democracy*. His famous book chronicles the history of the horrific treatment of African Americans in the United States. Clearly, not all issues have been resolved, but at least slavery and Jim Crow are gone. An African American was elected President of the United States, while others have served as Governors, Senators, Representatives, and business executives. They are now well represented in higher education and Hollywood.

A modern problem is

the surge in homelessness[3], especially on the West Coast in Seattle, Portland, Sacramento, San Francisco,[4] Los Angeles, Orange County, and San Diego. However, with all the attention on the West Coast homeless, New York City has the most homeless in the United States. The number of homeless in America is uncertain although estimates and surveys exist.[5] The number for California is 129,972.[6] Homelessness is a national problem.

The Los Angeles Homeless Point-in-Time count showed a growing homeless problem in both the county and city of Los Angeles.[7] The County's homeless numbers rose 12% to 58,936 in 2019 from 52,765 in 2018. The City of Los Angeles number rose 16% to 36,300 from 31,285.

The homeless problem is not new to America. People talked decades ago in the “Dark Ages” about the “bums” and “alkies” hanging out on Skid Row, the Tenderloin, and the Bowery. The police would periodically roll up the homeless, put them in the

police van,[8] and then let them dry out overnight in the “drunk” tank. An alternative approach was for local officers to transport, i.e. drop the transients off in a neighboring community. Law enforcement would often confiscate the possessions of the homeless as well as arresting them. Policies may have prohibited sleeping in cars or trailers on public streets. The police objective was to keep the homeless contained and harmless to society.

Some of these historical approaches ignored the constitutional and property rights of the individuals, and would often resort in substantial liability today.[9]

Society tolerated the homeless as long as they stayed in Skid Row,[10] Tenderloin and the Bowery with occasional panhandling. The public attitude was one of benign neglect. Today's exploding homeless population has moved into residential areas, commercial areas, vacant lots and parking lots, along riverbeds and railroad tracks, suburbs and the hills, and increasingly in transit stations, and riding busses and trains,[11] sometimes to stay warm. The growing

homeless encampments/tent cities spreading through urban areas tell us the problem is growing. The homeless are not all living on the street. Many are in shelters while others live in cars, motor homes and RV's parked on streets or lots, lacking sanitation hookups.

The dilemma for society is balancing compassion and treatment with public health and safety. H.L. Mencken, the American satirist, once wrote: “For every complex problem there is an answer that is clear, simple, and wrong,” which is a way of saying no easy solution exists to America's growing homeless problem.

The homeless are not numbers. They are humans. Each is an individual. They are American citizens who should be treated with compassion, decency, dignity, empathy, sympathy, and respect. They equally need meaningful assistance and help. Many have bravely served the country.

Homelessness does not discriminate by race, gender, ethnicity, religion, age, disability, or education, young and old, men, women and children, healthy and disabled, and college students. All are

homeless on the streets, inside shelters, camps or tent cities, or living in vehicles. Some in California's Central Valley live on the levees.[12]

The homeless can be very creative and ingenious. Denver tested containers for the homeless to store their possessions. The homeless quickly converted them to shelters to live in, and spread the word.

The Homeless problems has to be looked at from the different perspectives of cause, effect, and solutions. Any systemic approach to solving the homeless problem needs to start with the causes. If society does not understand and address the causes, then the homeless population will continue to grow. The problem cannot be solved without addressing the root causes; it will otherwise continue to grow. Society has been slow to address the root causes, resulting in ever expanding homelessness.

I

THE CAUSES OF HOMELESSNESS

Today's homelessness is not a unitary phenomenon. Several, often unrelated, causes, the exact percent of each is uncertain, are responsible.

One cause beginning in the 1950's was initiating the deinstitutionalization policy whereby those with mental problems would only be institutionalized under exigent circumstances. The assumption was that their psychological problems could be controlled through medication. The goal was to release them under controlled circumstances, such as half way houses, to accommodate them among the population. The deinstitutionalization occurred,[13] but not the proper accommodations, often due to local opposition. The "inmates" were effectively thrown on the streets or never institutionalized. Many of the homeless today suffer from severe mental disabilities.

A change in criminal approaches to low level "quality of life" crimes plays a role. Drug crimes, such as possession or use, would no longer be treated as a misdemeanor calling for arrests, but as a call for treatment. Seattle, for example, stopped arresting for assaults, thefts, and drug possession. Police stopped arresting in other cities because prosecutors will not prosecute for these crimes. "Treatment Rather than

Arrest" became the mantra.

Unfortunately, large scale treatment programs were not established. Neither were large numbers of group homes. To the contrary, a large number of homeless have drug and alcohol addiction problems.

Handing out free needles to the homeless seems compassionate, but it is not a solution to homelessness or drug addiction. On the contrary, it fuels the addicts and encourages the homeless, as well as leading to used, contaminated needles scattered around the community on streets and sidewalks, in playgrounds, along beaches, and in foyers, endangering public health.

Veterans suffering from PTSD are also found on the streets. The military has only recently addressed the PTSD problem, with the number of suffering veterans from the Afghanistan and Iraqi wars adding to the tolls.

California's Props 47[14] and 57[15] resulted in an early release of prisoners and reducing the degree of criminality for many offenses, resulting in many of them on the street rather than in jail. Police in cities, such as Los Angeles and San Francisco, have stopped arresting for "quality of life" offenses, which were commonly used to get the homeless off the street. Prosecutors often had the ability to force treatment on arrestees by giving them a choice: treatment or jail. They no longer have that option because the threat of imprisonment is gone.

Economics is a major factor. We have the economic victims who have lost their jobs or cannot afford housing. The middle class is shrinking; inequality is rising. Cities, such as San Francisco and Seattle, are experiencing an economic boom, driving up housing prices. San Francisco has 75 billionaires, the highest per capita number in the United States (1/11,600). Housing prices are escalating with a corresponding decline in affordable housing.

Gentrification is expanding to the lower income neighborhoods. Low income tenants are evicted or ejected with nowhere to go except the streets. Gentrified and redeveloped cities have witnessed the demise of the very low rent traditional flop houses and SRO's where otherwise homeless could abide.[16]

Two other factors play a role.

Natural disasters can destroy housing, throwing victims into the streets. A unique factor for the growing West Coast homeless population is the favorable weather compared to the Frost Belt. Thus, many of the West coast homeless have moved there.

An additional problem is that homelessness is usually accompanied by transportation and health problems.

II

THE PUBLIC HEALTH AND SAFETY CRISIS

One of the primary obligations of government is safeguarding the public health and safety, especially public sanitation. Los Angeles, San Francisco, and Seattle currently fail that basic test, both to the homeless and the general public.

The public health and sanitation risks with the homeless were relatively small as long as their numbers were small and relatively self-contained. The exploding populations have given rise to widespread public health and sanitation crises. The population boom leads to rodent infestations and then diseases, many of which, typhoid, typhus and hepatitis A, should be rare in a modern urban city. Trash accumulates or scattered where ever. Sanitation and sanitary facilities are often lacking. Many homeless use water resources as a toilet, reminiscent of third world countries.

Action is necessary because of public health and safety problems. The LA City hall is teeming with garbage fed rats carrying fleas and typhus. Homeless have caused fires in the hills in their encampments by igniting cooking fires. For example, the December 2017 Skirball Fire was sparked by a cooking fire at a homeless encampment. The fire destroyed six homes and destroyed a dozen more in Bel Air, California.[17]

Steve Lopez, a columnist for the Los Angeles Times, wrote about downtown Los Angeles: "A mountain of rotting, oozing, stinking trash – stretching a good 20 yards along a skid road alley. Rats popped their heads out of the debris like they were in a game of Whack-a-Mole, then scampered for cover as a tractor with a scoop lurched towards them"

Many homeless use the city's streets and sidewalks as toilets while others

avail themselves bodies of water which may be part of a community's water supply. San Francisco has a daily poop patrol cleaning off the streets of San Francisco. An interactive poop map shows San Francisco almost totally covered with brown pins representing feces droppings throughout the city.

The cleanup from January 22-March 3, 2018 of the Santa Ana Riverbed encampment adjoining Angels Stadium relocated 718 homeless, temporarily with vouchers to motel. The cleanup collected over 400 tons of trash, 13,950 needles, and 5,279 pounds of fecal matter.[18]

San Diego needed two years to end a hepatitis A epidemic among the city's homeless with 20 deaths and almost 600 sickened during the disease.[19] San Diego City and County officials promoted vaccinations, street cleaning, portable toilets, hand washing machines and temporary shelters housing up to 700 at a time at a cost of \$12 million.[20]

III

ECONOMIC COSTS OF HOMELESSNESS

The direct costs state and local governments are spending on homeless are easy to ascertain. Much more difficult are business losses on streets where homeless are lying on the sidewalks, crowding entranceways, and using the streets as toilets. Property values can also drop. The aesthetics of homeless squalor can deter shopping and hence negatively affect commerce.

Criminal Problems

Many criminal problems arise with the current homeless population in addition to the "quality of life" issues. The extent of the problem is unknown, but we have documented instances of homeless on homeless, homeless on non-homeless, and non-homeless on homeless. Crimes include assaults, batteries, sexual assaults, arson, thefts, homicides, and drug possession and trafficking. The theoretical approach to quality of life crimes is treatment rather than arrests. Treatment trails the need.

Public Expenditures

Public funding for the homeless comes from the federal, state and local governments. Congress enacted the McKinney-Vento Homeless Assistance Act of 1987[21] whereby Congress annually appropriates homeless

assistance funds to communities. The funding for FY19 is \$2.64 billion. One of the funding conditions is that HUD conducts an annual homeless count, the Point in Time (PIT) count, which the states and communities are required to conduct. The PIT is one day during the last ten days of January. It counts both sheltered and unsheltered homeless. It's best to view the PIT count as a rough estimate of communities

States and cities are beginning to spend large sums on money on the homeless problem. So far their efforts are directly at the effects, i.e. the homeless on the street, rather than also addressing the causes. Much of the money has little to show for its expenditure.

Money alone cannot solve the problem. For example, San Francisco is spending over \$300 million annually on the homeless problem, which is growing. Seattle is reportedly spending \$100,000 for each homeless person in King County.

Los Angeles' approach has failed on many fronts. First, they've blown hundreds of millions of dollars annually between an increased bureaucracy with little additions to the shelter base. City of Los Angeles voters passed in 2016 Proposition HHH, a \$1.2 billion bond, for homeless shelters, with a goal of 10,000 new units in a decade. By April 2019 2/3 of the funds had been committed for 1/2 of the units not yet under construction.

The Los Angeles Controller issued a devastating report on August 29, 2019.[22] The 2019 PIT count showed an increase of 13,500 homeless to 56,000 from 2017 with 42,500 unsheltered.[23] The city of Los Angeles and Los Angeles County have joined together to form the Los Angeles Homeless Services Authority (LAHSA), which manages about \$300 million in grants to provide shelter, permanent housing, and services for the homeless.[24]

The report recommends LAHSA's first priority should be short term solutions until permanent housing is available.[25] According to the Report San Francisco, San Jose, San Diego, Seattle and Los Angeles all have more unsheltered homeless than sheltered. For example, the figures for Los Angeles are 42,500 versus 13,800 sheltered.[26] Conversely, New York

City has made a concerted effort to provide shelter to its homeless. NYC has 75,000 sheltered homeless versus only 3,700 unsheltered.[27] Los Angeles has been concentrating on permanent housing instead of seeking to convert existing, often abandoned, buildings to shelters, fitting them with sanitary facilities and providing support.

LASHA's 2019 figures show 918 homeless died in 2018, up 76% from 2014. In addition, 8,785 of the homeless over 18 self-reported a serious mental illness while 4,888 identified a substance abuse disorder.[28]

The Comptroller's report shows none of the HHH funds had not resulted in any permanent housing facilities for the homeless, although projects are under construction or in the conceptualization and planning phases.[29]

Los Angeles County voters approved on March 7, 2017 a 1/4 cent increase in the sales tax for the homeless. The tax is expected to generate \$355 million annually for 10 years. 2 1/2 years after the vote, no shelter had been completed.

Los Angeles voters expressed their compassion and empathy in approving these bonds and tax increases. The expectation in exchange for passage is that the government would address the homeless problem. Political leaders have failed as the homeless have exponentially increased.

The current estimate is that LA will build 6,000 units pursuant to the HHH funds. Simple math says that comes out to \$200,000/unit. That is expensive shelter for the homeless, and but a drop in the bucket for a city with roughly 60,000 homeless.

LA's leaders have been caught between the perils of Scylla and Charybdis. Those opposed to proposed sites litigate, often under California's Environmental Quality Act (CEQA). Environmental impact statements, especially under California's CEQA statute, are used as a weapon to block homeless housing, a critical problem in California.[30]

On the other hand the advocates for the homeless want more than the standard shelter accommodations for the homeless. Thus the cost rises. The result is a paralysis of government with a lack of leadership by the Mayor of Los

Angeles and the Governor of California. California politicians are now pushing for changes in CEQA to facilitate siting shelters.

They are also seeking other forms of financing to resolve the homeless problem, figuring out which additional accounts they can tap. The Los Angeles Mayor is leading a campaign of mayors in impacted communities for federal funding.

IV

THE JUDICIAL SOLUTIONS

Reflecting our litigious society, lawsuits have been filed to help the homeless and also to block their placement in areas that don't want them.

The Ninth Circuit upheld a preliminary injunction in *Lavan v. City of Los Angeles*[31] against the city's confiscation and destruction of the personal property of the homeless as a violation of the 4th and 14th Amendments.[32]

The court in the 2018 case of *Martin v. City of Boise*[33] held under the 8th Amendment that a community cannot impose criminal penalties on homeless for sleeping, sitting, or lying outside public property when no alternative sleeping space is available. The Ninth Circuit opinion is contra to decisions of the 4th[34] and 11th Circuits.[35] The eleventh Circuit upheld an Orlando ordinance banning the sleeping on public property.

Orange County Federal District Court David Carter held the local communities could not remove the homeless encampments until they provided alternative shelters. Communities then provided vouchers for three months of motels. Several, Anaheim, Costa Mesa, Orange, Tustin, and Orange County have settled the litigation by providing shelters. Others are working on complying with Judge Carter's order.[36]

Conversely the California Supreme Court in *Tobe v. City of Santa Ana*[37] rejected a challenge to a city ban on public camping. It recognized though the problem:

Many of these issues are the result of legislative policy decisions. The arguments of many amici curie regarding the apparently intractable problem of homelessness and the impact of the Santa Ana ordinance on

various groups of homeless persons (e.g. teenagers, families with children, and the mentally ill) should be addressed to the Legislature and the Orange County Board of Supervisors, not the judiciary. Neither the criminal justice system nor the judiciary is equipped to resolve chronic social problems, but criminalizing conduct that is a product of those problems is not for that reason constitutionally impermissible.[38]

A different problem is that communities sometimes address their homeless problems by attempting to ban providing food to them, presumably to starve the homeless out of the community. For example, Philadelphia enacted an ordinance in 2012 that forbade serving food outdoors to homeless. A federal judge enjoined it on August 9, 2012.[39]

The Fort Lauderdale Food Not Bombs (FLFNB) has weekly events in which they share vegetarian and vegan food for free with passersby, including homeless, in Stranahan Park. The "feast" involves the host entertaining and the guests interacting. Fort Lauderdale enacted an ordinance in 2014 restricting such activities. The organization conveys a message of diverting military funding to food. Its set up includes a banner "Food Not Bombs." The 11th Circuit in 2018 held the ordinance violated the First Amendment Freedom of Speech and Expression rights of FLFNB.

An outbreak of hepatitis A among the homeless of the San Diego area a few years ago resulted in the city of El Cajon banning the feeding of the homeless. 12 people were arrested in January 2018 on misdemeanor charges of feeding the homeless. They had offered apples and bags of chips in El Cajon Park. Neighboring San Diego focused on sanitation and vaccination.[40]

The New Transportation: One Way Bus Tickets

Several communities are trying to export their homeless by buying then one-way bus tickets presumably to families and friends elsewhere that can take care of them. Portland, for example, has sent homeless to Las Vegas, Phoenix, and Seattle, which hardly needs more homeless.[41]

Shelters and Lots

Shelters are a proven means of providing both short term and long

term homeless housing, as long as sanitation, sustenance, showers, health services, and security are provided while drugs are excluded. Los Angeles unfortunately focused the HHH funds on permanent structures rather than shelters.

Shelters can be temporary or permanent; they can include tents and prefab trailers. Existing buildings, such as abandoned warehouse, commercial and industrial buildings can be converted to shelters rather than designing gold plated shelters designed from scratch. Shelters do not solve all problems. Addiction remains an issue. Many homeless, especially with addiction problems want the freedom to live outside rather than in supervised drug free shelters. Their preference is to shoot up at their convenience in their tents or even openly on the street.

Moving the homeless into shelters is only part of the solution. Thousands of homeless may be moved off the street, satisfying the public's concerns over their physical presence, squalor, sanitation and health risks, but it does not necessarily address the drug and alcohol addiction problems.

A different approach can be taken to the problem of street parking vehicles. A city such as Los Angeles has ample facilities with open space as well as vacant lots. The key is providing sanitary facilities on these locations.

V

CONCLUSION

Compassion and justice are a challenge with the explosion of the homeless population. The public's patience is exhausted in the West Coast cities that have lost control of the homeless problem. Compassion has left the scene while the booming economy has left the homeless behind.

Much of the increasingly large public expenditures have become expensive band-aids rather than addressing the causes or sheltering the homeless. Los Angeles shows us that money alone does not solve the homeless problem. LA has used bonds, grants, and taxes to fund its growing homeless problem. The billions spent so far tells us a solution is not in sight. They fail to address the causes.

The problem is clear once we look at the statistics for sheltered versus

unsheltered homeless populations. The West Coast cities have done an abominable job providing shelters for the exploding homeless populations. They failed to react and respond by leaving the homeless in place, an expanding place. Shelters will not solve the causes of homelessness, but they will greatly reduce the homeless health, safety, squalor, and aesthetics problems.

Public attitudes are shifting from compassion to doing something by peaceful self-help if necessary.[42] The spreading squalor stench, and pestilence is changing the balance. Denver voters in May 2019 rejected 83%-17% "The Right to Survive Initiative 300," which would have allowed the homeless to camp on in public outdoor places.[43] Politicians are beginning to take notice of the growing public outrage.

The cities and states need to reassess their approaches to the homeless problem. Let us start with the premise that the homeless problem is much more than a housing problem. It is a broad societal problem that needs an holistic approach, encompassing addiction, counseling, housing, law enforcement, medical needs, monitoring, sanitation, treatment.

Judge Carter forced Orange County and its cities to find alternative shelter if they wish to remove the homeless from public spaces. It is a good start by addressing the immediate problem, but it does not address the root causes of the growing homeless population.



[1] New York City actually has a larger homeless population than any of the West Coast cities, where the numbers are greatest in Seattle, Portland, San Francisco, and Los Angeles.

[2] Deuteronomy:16-20.

[3] Also international, even excluding the plight of the refugees, but this essay is only dealing with the homeless in the United States.

[4] A January 2019 survey found over 8,011 homeless in San Francisco, an increase of roughly 500 in two years from 7,539 in 2017. Santa Clara County was up 31% to 9,706 and Alameda County 43% to 8,022.

[5] A survey of Orange County, California found nearly 6,860 homeless in January 2019. 2899 were in shelters and 3,961 lacked shelters.

[6] About ¾ of LA's homeless live outdoors.

[7] The city of Los Angeles is both the largest city in the United States, and also part of the larger Los Angeles County. San Diego is also both a city and county.

[8] Often called a Paddy Wagon

[9] See notes , and accompanying text, *infra*.

[10] LA's Skid Row has grown to 50 blocks.

[11] Winnie Ho, As Subways Attract More Homeless City Tries a New Program, N. Y. Times, June 27, 2019 at p. A23, col.1.

[12] A fear is that the homeless digging into the levees may fatally weaken them, Emily Dooley, Homeless Digging into Levees Put California's Capital at Risk, Bloomberg

Environment, July 30, 2019, <https://news.bloombergenvironment.com/environment-and-energy/homeless-digging-into-levees-put-californias-capital-at-risk>

[13] Often for state budgetary reasons

[14] Approved by the voters on November 6, 2014.

[15] Approved by the voters on November 8, 2016.

[16] In general, see Alan Durning, Bring Back Flophouses, Rooming Houses, and Microapartments: Dumb urban policies wiped out the best kinds of housing for the poor, young, and single. But they're finally making a comeback in smart cities, excerpted from Alan Durning, Unlocking Home: Three Keys in Affordable Communities

[17] See NBC Los Angeles, LA Approves a Plan Making it Easier to Clear Homeless Encampments in Fire Zones, Sept. 4, 2019, [https://www.nbclosangeles.com/news/local/Fires-Los-Angeles-Brush-Fire-Homeless-Encampments-Wildfires-](https://www.nbclosangeles.com/news/local/Fires-Los-Angeles-Brush-Fire-Homeless-Encampments-Wildfires-559359261.html)

559359261.html. See also, Benjamin Orestes, City plan to prevent fires would target encampments, Los Angeles Times, Aug. 26, 2017 at p.B1, col. 5;

[18] <https://losangeles.cbslocal.com/2018/03/09/homeless-river-cleanup/>.

[19] <https://californiahealthline.org/morning-breakout/san-diego-health-officials-say-hepatitis-a-outbreak-among-homeless-is-over/>

[20] <https://www.apnews.com/cc40b8c476ef469ebdc2228772176b03>

[21] 42 U.S.C. §11301 et seq.

[22] Ron Galperin, LA Controller, Strategy on the Street: Improving Los Angeles Homeless Service Authority's Outreach Program

[23] *Id.* at 1.

[24] *Id.*

[25] *Id.* at 3.

[26] *Id.* at 7.

[27] *Id.*

[28] *Id.* at 33. An overlap may exist between the two categories.

[29] *Id.* at 9.

[30] Liam Dillon & Benjamin Oreskes, Homeless shelter opponents are using this environmental law to block new housing, Los Angeles Times, May 15, 2019, <https://www.latimes.com/politics/la-pol-ca-ceqa-homeless-shelter-20190515-story.html>

[31] 693 F. 3d 1022 (9th Cir. 2012).

[32] See also *Lehr v. City of Sacramento*, 624 F. Supp. 2d

1218 (E.D. Cal. 2009).

[33] 930 F. 3d 264 (4th Cir. 2019). The City of Los Angeles joined other cities in support of a motion for the grant of certiorari in the case. Christopher Weber, Los Angeles joins court fight on where homeless can sleep, <https://www.apnews.com/0c94cf4a78824cfc9eb7f230752e8d38>.

[34] Manning v. Caldwell, 930 F. 3d 264 (4th Cir. 2018). The criminalization of the possession of alcohol did not violate the 8th Amendment because it punished the act of possessing alcohol rather than the status of being an alcoholic.

[35] Joel v. City of Orlando, 232 F. 3d 1353 (11th Cir. 2000).

[36]

https://laist.com/2018/09/11/the_court_case_that_forced_oc_to_stop_ignoring_its_homeless.php

[37] 892 P.2d 1145 (Ca. 1995). This statement is effective as of September 29, 2019.

[38] Id. at 1157, n. 12.

[39] Chosen 300 Ministries, Inc. v. City of Chicago, 2012 WL 3235317 (E.D. Pa. 2012). Mayor Kenney formally lifted the four year food ban in 2016. Hayden Mitman, Mayor Kenney lifts dormant ban on feeding homeless in public parks, Philly Voice, July 5, 2016, <https://www.phillyvoice.com/mayor-kenney-lifts-ban-feeding-homeless-public-parks/>.

[40] Bianca Bruno, A Dozen People Arrested for Feeding the Homeless, <https://www.courthousenews.com/a-dozen-people-arrested-for-feeding-the-homeless/>

[41] Mike Baker, A Bus Ticket Gets Them Home, But Not Off the Street, N.Y. Times. Sept. 15, 1987, <http://iht.newspaperdirect.com/epaper/viewer.aspx>.

[42] One San Francisco block has placed large boulders on the sidewalk to prevent homeless from camping on the street. A block in Los Angeles has moved large, potted trees on the sidewalk for the same purpose.

[43]

<https://denver.cbslocal.com/2019/05/07/initiative-300-rejected-denver-urban-camping-ban-election-homeless/>

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