Public Liability for Private Violence:

Under what circumstances can a City's decision to reduce police presence create a Substantive Due Process claim?

Goal: Answer Three Questions

1. After the protests of 2020, how have plaintiffs tried to hold Seattle liable for private crime/violence?
2. What is holding of *DeShaney v. Winneago County Dep't of Soc. Servs.*?
3. How do courts apply the State-Created Danger exception to *DeShaney*?

Capitol Hill Organized Protest “CHOP”



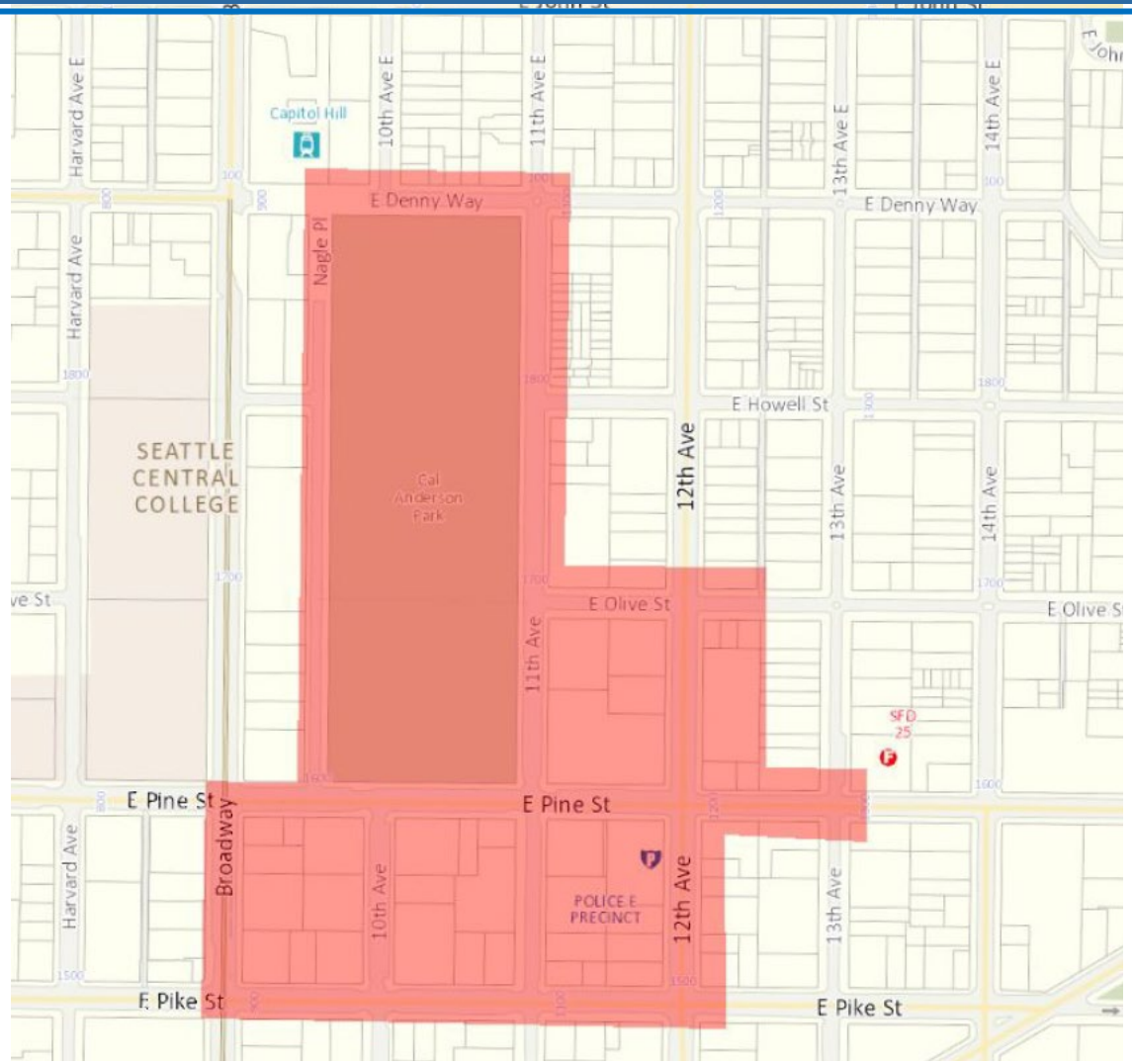
Capitol Hill Organized Protest “CHOP”





Pictures: Complaint, *Hunters Capital v. City of Seattle*, 499 F. Supp. 3d 888 (W.D. Wash. 2020)

Capitol Hill Organized Protest “CHOP”



Lawsuits/Claims

- Lost income, property damage, harassment/intimidation in the CHOP
  - **Hunters Capital v. City of Seattle (W.D. Wash.)**
- Two fatal shootings in the CHOP
  - **Sinclair v. City of Seattle (W.D. Wash.)**
  - Father and Estate of Anderson Jr. v. City of Seattle (King Cnty. Sup. Ct.)
  - Family and Estate of Mays Jr. (still at claim stage)
- Vehicle collision when protestors marched onto the interstate
  - Estate of Taylor v. City of Seattle and State of Washington (King Cnty. Sup. Ct.)
  - Love v. City of Seattle and State of Washington (King Cnty. Sup. Ct.)

DeShaney

"[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. . . . . The Framers were content to leave the extent of governmental obligation in the latter area to the democratic political processes."

DeShaney v. Winnebago County Dept. of Soc. Svcs., 489 U.S. 189 (1989)

Exceptions to *DeShaney*

1. Special Relationship: the state "restrains an individual's liberty [such] that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs. *DeShaney*, 489 U.S. at 200
2. State Created Danger: the state affirmatively places an individual in danger by acting with "deliberate indifference" to a "known or obvious danger."

State-Created Danger Doctrine

In the Ninth Circuit, three elements are required:

1. The defendant's affirmative action placed the individual in "actual, particularized danger that he would not have otherwise faced";
2. The resulting harm was foreseeable; and
3. The defendant acted with "deliberate indifference" to "the known or obvious danger."

Martinez v. City of Clovis, 943 F.3d 1260, 1271 (9th Cir. 2019)

State-Created Danger Doctrine

Facts do establish a state-created danger:

- *Hernandez v. City of San Jose*, 897 F.3d 1125 (9th Cir. 2018)
- *L.W. v. Grubbs*, 974 F.2d 119 (9th Cir. 1992)
- *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082 (9th Cir. 2000)
- *Penilla v. City of Huntington Park*, 115 F.3d 707 (9th Cir. 1997)

Facts do not establish a state-created danger:

- *Johnson v. City of Seattle*, 474 F.3d 634 (9th Cir. 2007)
- *Patel v. Kent Sch. Dist.*, 648 F.3d 965 (9th Cir. 2011)

Hunters Capital v. City of Seattle (W.D. Wash.)

- CHOP residents and business owners asserted economic losses due to protesters' threats of violence, vandalism (e.g., graffiti, arson, break-ins), lost income, suspension of garbage service, and blocked vehicle / foot access to their residences and businesses.
- Court denied City's motion to dismiss.

Hunters Cap. LLC v. City of Seattle, 499 F. Supp. 3d 888 (W.D. Wash. 2020); *but see White v. City of Minneapolis*, No. 21-cv-0371, 2021 WL 5964554 (D. Minn. 2021)

Sinclair v. City of Seattle (W.D. Wash.)

- Tragically, Ms. Sinclair's son was shot and killed while visiting the CHOP. A man who had a pre-existing conflict with Mr. Anderson has been charged with his murder.
- Because of difficulty entering the CHOP, no SPD/SFD response for approx. 20 min.
- The court granted City's motion to dismiss.

Sinclair v. City of Seattle, No. C21-0571-JCC, 2021 WL 5049838 (W.D. Wash. Nov. 1, 2021)

	Sinclair MTD Order	Hunters Capital MTD Order
Affirmative action exposed individual to particularized danger?	*No*	*Yes*
Foreseeable harm?	*City did not contest on 12(b)(6)*	*Yes*
Deliberate indifference to known or obvious danger?	*No*	*Yes*

Circuit Split: Parental rights re adult children

Is there a Fourteenth Amendment substantive due process right to the companionship of one's adult child?

Tenth Circuit and Ninth Circuit recognize this right.

- *Curnow v. Ridgecrest Police*, 952 F.2d 321 (9th Cir. 1991)
- *Trujillo v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 768 F.2d 1186 (10th Cir. 1985)

The First, Third, Seventh, Eleventh, and D.C. Circuits do not.

- *Valdivieso Ortiz v. Burgos*, 807 F.2d 6, 8 (1st Cir. 1986)
- *McCurdy v. Dodd,* 352 F.3d 820 (3rd Cir. 2003)
- *Russ v. Watts,* 414 F.3d 783, 784 (7th Cir. 2005)
- *Robertson v. Hecksel,* 420 F.3d 1254 (11th Cir. 2005)
- *Butera v. D.C.*, 235 F.3d 637 (D.C. Cir. 2001)

Sinclair v. City of Seattle (Ninth Circuit)



Sinclair: Ninth Circuit Opinion

- The City's conduct was "**unprecedented**" and "**egregious**."
- "It is self-evident that the SPD's wholesale abandonment of its East Precinct, combined with Mayor Durkan's promotion of CHOP's supposedly festival-like atmosphere, would create a **toxic brew of criminality** that would endanger City residents."
- "Those dangers on this record clearly reflect the City's **shocking contempt** towards its promise to citizens that '[t]here shall be maintained adequate police protection in each district of the City.' Likewise, individual **city officials openly flouted their oath** to 'support . . . the Charter and ordinances of The City of Seattle.'" (quoting Seattle City Charter)

Sinclair v. City of Seattle, 61 F.4th 674 (9th Cir. 2023)

Sinclair: Ninth Circuit Opinion

- "A 'particular' danger is a danger 'of, relating to, or being a single person or thing.' . . . A danger is 'particularized if it is directed at a specific victim. . . . The dangers alleged are neither specific, nor immediate, nor of limited range or duration."
- The danger here was not "differentiated from the generalized dangers posed by crime."
- "It is at the ballot box, then, that Sinclair and other Seattleites must hold the City accountable . . . ."

Hunters Capital v. City of Seattle (W.D. Wash.)

- Motion for summary judgment
- Court granted City's motion for summary judgment on substantive due process claim, but allowed right-of-access takings claim to survive.
- Case settled.

Hunters Cap., LLC v. City of Seattle, No. C20-0983 TSZ, 2023 WL 184209 (W.D. Wash. Jan. 13, 2023)

Take-aways

- Don’t make a federal case out of it
- Bad facts don’t always make bad law
- Argue policy considerations

Questions?

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