

City of Boise Formally Asks U.S. Supreme Court to Hear Martin Case

August 22, 2019

The City of Boise today filed a petition for a writ of certiorari in the U.S. Supreme Court, seeking review of the U.S. 9th Circuit Court of Appeals' controversial decision in *Martin v. City of Boise* – formally asking the court to consider the case.

The 9th Circuit's decision effectively creates a constitutional right to camp, holding that cities cannot prevent anyone from camping until they first provide enough shelter beds for everyone, thus exempting public encampments from a host of public health and safety laws.

“Cities, like Boise, who are already providing forward-thinking services to those experiencing homelessness, must have all the tools available to respond to the public health and safety dilemmas created by public encampments,” said Mayor Dave Bieter. “If the 9th Circuit's ruling is allowed to stand then cities will not have the tools they need to prevent a humanitarian crisis on their own streets. We hope the Supreme Court takes this case to restore the power of local communities to regulate the use of their streets, parks, and other public areas.”

In *Martin*, the 9th Circuit held, over the dissent of six judges, that enforcement of laws barring public camping and sleeping violates the 8th Amendment's prohibition on cruel and unusual punishments if “there is a greater number of homeless individuals in [the jurisdiction] than the number of available beds [in shelters].”

But as one of the judges who dissented from the 9th Circuit's denial of rehearing en banc correctly predicted, the expansive rationale of the court's decision “has begun wreaking havoc on local governments and businesses” and, if not reversed, “will soon prevent local governments from enforcing a host of public health and safety laws.”

“This important case is about ensuring that cities have all the tools they need to protect public health and safety,” said Theane Evangelis of Gibson, Dunn & Crutcher LLP, counsel for Boise. “The tragedy is that the 9th Circuit's decision harms the very people it purports to protect. It takes away an important tool cities have to stop the proliferation of permanent encampments, which undermine cities' efforts to provide shelter and services to the most vulnerable.”

“The decision is unworkable in practice and is already sowing confusion across the 9th Circuit and tying the hands of cities that are being forced to suspend enforcement of their public-camping laws. The Supreme Court should grant review to reverse the Ninth Circuit's decision,” added Evangelis.

Boise's petition argues that the 9th Circuit's unprecedented decision conflicts with multiple decisions of the U.S. Supreme Court, as well as decisions of the California Supreme Court and of the 1st, 4th, 7th, and 11th circuits. More than that, however, by creating a *de facto* constitutional right to live on public sidewalks and in public parks, the court's decision cripples the ability of the more than 1,600 municipalities in the 9th Circuit to protect the health and safety of their communities. Likewise, it impedes efforts by Boise and other cities to connect those living anonymously and transiently in sprawling encampments with resources available to help them.

Since 2014, the City of Boise's policy has been to suspend ticketing for camping in the city when there is no room in local homeless shelters. In 2018, a total of 30 citations for camping were written in Boise. In all of 2017, only six citations were written.

In the meantime, the City of Boise continues to work with a wide variety of community partners to create badly needed resources for the 120-140 chronically homeless in our community. New Path Community Housing, Idaho’s first Housing First project, opened in the fall with room for 40 chronically homeless families and individuals. A similar project for the benefit of veterans experiencing homelessness veterans will also be a reality in the coming months.

Martin v. City of Boise Case History

The case began in 2009, when six individuals who were cited and/or convicted camping and sleeping filed a Complaint against the city under 42 U.S.C. § 1983 violated the 8th Amendment’s Cruel and Unusual Punishment Clause.

After an initial round of litigation in both the district court and the 9th Circuit over unresolvable issues, the district court granted Boise’s motion for summary judgment, holding that the plaintiffs could not collaterally attack their convictions through a 1983 lawsuit and that they lacked standing to seek declaratory relief.

On appeal, the 9th Circuit reversed the district court’s dismissal and held that enforcement of Boise’s ordinances constituted cruel and unusual punishment in violation of the 8th Amendment. The 9th Circuit denied rehearing en banc on April 1, 2019 over the vigorous dissent of six judges, thus setting the stage for Boise’s certiorari petition to the U.S. Supreme Court.

The City of Boise’s petition for a writ of certiorari is attached with this press release.

The City of Boise is represented by Theane D. Evangelis and Theodore B. Olson of Gibson, Dunn & Crutcher LLP.

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