

Anti-Camping Ordinance Found to Be Unconstitutional

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The government may not criminalize the use of bedding materials in public by individuals experiencing homelessness when shelter beds are unavailable.

In *Johnson v. City of Grants Pass*, the Ninth Circuit Court of Appeals held that the City of Grants Pass' anti-camping ordinance, which prohibited the use of items necessary to facilitate sleeping, such as pillows and blankets outside on public property, violated the Eighth Amendment's Cruel and Unusual Punishment Clause. *Johnson* relied primarily on the constitutional limitations on anti-sleeping ordinances established in *Martin v. City of Boise*.

In *Martin*, the Ninth Circuit invalidated an anti-sleeping ordinance which imposed criminal penalties for sitting, sleeping, or lying outside on public property in a **decision the U.S. Supreme Court let stand**. The Ninth Circuit held that municipalities could not criminally punish individuals for sleeping outside, when they had no indoor sleeping options, or their use of rudimentary precautions to protect themselves from the elements.

The *Johnson* court went further, and concluded that, in addition to a right to sleep outdoors, individuals experiencing homelessness have a limited constitutional right to possess items essential to sleeping. Given that sleeping outdoors is one aspect of experiencing homelessness, the court held, banning the use of items like pillows or blankets that allow the person to survive constitutes the criminalization of homelessness. In essence, allowing a person with no other sleeping arrangement to sleep outside **without** these materials is a constitutionally unsound, empty gesture.

These constitutional protections are not boundless. Public entities are only required to allow sleeping outside with bedding if they do not provide sufficient shelter space. The permitted items must serve sleeping purposes and as **rudimentary** cautions against the elements, which, as the court noted, necessarily excludes fires, stoves, and other structures like tents. The amount of bedding materials per individual may likewise be restricted.

In light of the *Johnson* decision, anti-sleeping or anti-camping ordinances remain vulnerable to constitutional challenges, whether on Eighth Amendment or other constitutional grounds. Cities should carefully review their enforcement

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schemes since the court cautioned that civil penalties, too, can be transformed into unconstitutional criminal penalties. Civil or administrative penalties that are later “intertwined” with criminal prosecution, as was the case in *Johnson*, constitute criminalization and should therefore not be imposed.

For more information about this case or issues related to homelessness, please contact **Natalie Kalbakian** or your RWG attorney.