

U.S. Supreme Court Will Not Hear Public Camping Ordinance Case

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The United States Supreme Court denied on Monday a request for review of the Ninth Circuit Court of Appeal's decision in *Martin v. City of Boise*. The Ninth Circuit had ruled that the Constitution's ban on cruel and unusual punishment precludes Boise from enforcing its public camping ordinances against persons who are homeless and sleeping outdoors if they lack alternative shelter. The Supreme Court's action, issued without comment, leaves the decision intact.

The Ninth Circuit's decision raises questions about what it means for shelter space to be "practically available" at the time a public camping ordinance is enforced. A coalition of cities and counties in California filed an amicus brief urging the Supreme Court to hear the case and establish how such ordinances may be enforced consistent with constitutional constraints.

Some direction was provided in the Ninth Circuit's **denial of rehearing**, from April of this year. Judge Berzon, who authored the Martin opinion, clarified that it "holds only that municipal ordinances that criminalize sleeping, sitting, or lying in all public spaces, when no alternative sleeping space is available, violate the Eighth Amendment.... Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter." Further, Judge Berzon wrote that the decision does not prohibit ordinances barring the obstruction of rights of way or erection of certain structures; does not mandate that cities provide sufficient shelter; and does not entitle anyone to sit, lie, or sleep on the street at any time or place.

In the absence of review by the Supreme Court, any additional guidance will be provided by the lower courts as they begin to construe and apply the Martin decision on a case-by-case basis.

If you have questions or would like more information on this case, please contact **Casey Strong** in our Public Law Department.