

Supreme Court Weighs Whether to Clarify Camping Bans and Homelessness Policies

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Local ordinances prohibiting camping or sleeping outdoors have created widespread controversy. Affected cities and states contend that the two Ninth Circuit rulings on the issue are confusing and preclude them from implementing effective strategies to address homelessness, while homeless advocates argue that these decisions are necessary to prevent criminalization of involuntary homelessness. However, there is potential clarity on the horizon as the Supreme Court is poised to decide whether to hear the case next term.

Local policies on homelessness are currently guided by two rulings from the Ninth Circuit Court of Appeals: [*Martin v. City of Boise*](#) (9th Cir. 2019) 920 F.3d 584 (“*Martin*”) and [*Johnson v. City of Grants Pass*](#) (9th Cir. 2022) 50 F.4th 787 (“*Johnson*”).

In *Martin*, the Ninth Circuit held that the City of Boise’s camping ban violated the Eighth Amendment’s restriction against cruel and unusual punishment. Under this decision, the local government was prohibited from imposing “*criminal* penalties for sitting, sleeping, or lying outside on public property” for homeless individuals who are

unable to access “adequate temporary shelter” indoors. Notably, although *Martin* also established that the government cannot criminally penalize homeless individuals for sleeping in public if there is a “greater number of homeless individuals... than the number of available shelter spaces”, the decision did not require cities to “provide shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets, at any time and at any place.” This left open a question of *when, in what context, or against whom* the local government can enforce its laws or impose penalties for sleeping or camping in public.

Last year, in *Johnson*, the Ninth Circuit expanded on *Martin*, holding that a city cannot enforce its camping ban or impose fines or *civil* penalties on people sleeping on public property, unless the city has enough shelter beds for its entire population. The Ninth Circuit determined that although *Martin* only involved criminal prosecution, administrative enforcement that ultimately could result in criminal enforcement likewise violates the Eighth Amendment. *Johnson* further expanded the scope of the term “sleeping” to include rudimentary forms of protection from the elements, such as a blanket, pillow or sleeping bag, and overnight sleeping in vehicles.

Martin and *Johnson* have subsequently resulted in various lawsuits in both state and federal court, often filed by homeless plaintiffs and advocacy groups to challenge attempts by cities and counties to enforce local camping bans (often successfully). As a result, these two decisions have been widely criticized as “confusing” and creating an “unworkable” standard for local governments.

However, the Supreme Court may be poised to rule on the issue next term. In August 2023, the City of Grants Pass filed a [petition](#) to the United States Supreme Court for review of the *Johnson*

decision. Since then, nearly 30 amicus briefs have been filed in the case ([Docket No. 23-175](#)), including briefs filed on behalf of a bipartisan coalition of cities and states.

For example, in an amicus brief recently filed by the California State Association of Counties (“CSAC”) and the League of California Cities (“Cal Cities”), these organizations contend that *Martin* and *Johnson* have created an “unworkable” standard that has rendered local governments “‘without a clue’ in understanding constitutionally viable options for addressing homelessness.” CSAC and Cal Cities further argue that local governments in California are tackling the homelessness crises through use of creative and proactive approaches, including anti-camping ordinances, which are essential but “just one tool among many.”

On the other hand, despite the confusion and difficulties alleged by local officials, homeless advocates contend that *Martin* and *Johnson* were both correctly decided and are “narrow” decisions that clearly prohibit civil and criminal penalties as unconstitutional punishment for homelessness.

Respondents have until December 6, 2023 to file a response, and the Supreme Court has yet to indicate if it will hear the case. If it does, the Court’s decision has the potential to drastically alter the future of local policies on homelessness, especially throughout California. Regardless of the outcome, Supreme Court guidance on this issue could provide much-needed clarity on the allowable scope of local governments’ ability to enact and enforce legislation related to homelessness and prohibiting individuals from camping or sleeping outside. In the meantime, however, litigation in state and federal court will likely persist as advocates and homeless plaintiffs continue to challenge attempts by local jurisdictions to do

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We will continue to monitor this case and provide updates as they become available.

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