

# HOMELESS PEOPLE WHO SLEEP ON THE SIDEWALK PROTECTED BY RECENT SUPREME COURT DECISION

*Hodgson Russ Municipal Alert*  
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Local governments cannot ban the homeless from sleeping outdoors on public property if they have nowhere else to go, according to a Circuit Court of Appeals decision that the Supreme Court has now declined to review.

When homeless people on the streets of Boise, Idaho were given tickets or fines ranging between \$25 and \$75 for camping on the sidewalk, they joined a lawsuit charging those fines as unconstitutional. As the case wound its way through the appellate courts, the City enacted a non-enforcement policy regarding its misdemeanor offenses against sleeping or camping on public property when no shelter is available.

The city believed that this action rendered the appeal moot; however, the 9<sup>th</sup> Circuit Court of Appeals nonetheless issued a decision where it considered “...whether the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to.” And, it does, according to the Court’s decision. Such bans, enforced by fines, are unconstitutional, according to the decision.

Ten years after the case originated, the U.S. Supreme Court last week declined to hear the appeal in *City of Boise v. Martin, et al.* (Docket No. 19-247, December 16, 2019). By declining to hear the case, it let stand the lower court ruling that homeless people have a right to sleep on the sidewalks if no shelter is available.

The Supreme Court’s decision to decline the case will have lasting implications. It means that local municipalities within the Ninth Circuit (Arizona, Nevada, California, Oregon, Washington, Idaho, and Montana) are bound by this precedent, which the Supreme Court has decided not to overturn. And other circuits, including the Second Circuit (New York, Connecticut, and Vermont), are now free to follow this precedent, which could be persuasive in the absence of other contrary rulings within those circuits.

## Attorneys

John Alessi  
Luisa Bostick  
Christopher Canada  
George Cregg  
Joshua Feinstein  
Peter Godfrey  
Ryan Lucinski  
Charles Malcomb  
Elizabeth McPhail  
Adam Perry  
Aaron Saykin  
A. Joseph Scott III  
Daniel Spitzer  
Jeffrey Stone  
Jeffrey Swiatek  
Marla Waiss  
Nadene Zeigler

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Municipal

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Unless a contrary ruling is issued, municipalities in other circuits may be more inclined to take a conservative approach, and draft local laws and ordinances consistent with the ruling, or repeal any laws or ordinances that are inconsistent with it. Under the Ninth Circuit's view, mere non-enforcement will not save the statute.

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