

Summary of Legislative Testimony for Amanda Karras on Homeless Cases Law

1. *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019)

- **Issue:** Whether the Eighth Amendment's prohibition on cruel and unusual punishment bars a government from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to.

- **Facts:**
 - Boise City Code § 9-10-02 (the “Camping Ordinance”), made it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.” The Camping Ordinance defined “camping” as “the use of public property as a temporary or permanent place of dwelling, lodging, or residence.” *Id.*
 - Boise City Code § 6-01-05 (the “Disorderly Conduct Ordinance”), banned “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private ... without the permission of the owner or person entitled to possession or in control thereof.”
 - Boise had 3 homeless shelters in the city run by private non-profits. At least one of the shelters had mandatory religious study requirements for those staying there.
 - Six homeless individuals sued the City of Boise under the Eighth Amendment after being cited by Boise police for violating Boise’s anti-camping ordinances.

- **Holding and Reasoning:**
 - The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII.
 - The court held that Boise’s anti-camping ordinances violated the Eighth Amendment’s prohibition on cruel and unusual punishment insofar as they imposed criminal sanctions against homeless individuals for sleeping outdoors, on public property, when they had no alternative shelter available to them.
 - The court reasoned government cannot “criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.” That is because the acts of “sitting, lying, and sleeping” are “universal and unavoidable consequences of being human.”
 - The court noted that its holding does not extend to those that “*do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.” The court also indicated that time, place, and manner restrictions on camping “might well be constitutionally permissible.”

2. *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023).

- **Issues:** (1) Whether *Martin*'s holding extends to anti-camping ordinances that impose fines rather than criminal punishment; (2) Whether *Martin*'s holding extends to anti-camping ordinances that allow individuals to sleep outside when they have no alternative place to go, but prohibit the use of any "camping" material or structure, including rudimentary bedding; (3) Whether *Martin*'s holding can be extended on a class-wide basis to all involuntarily homeless individuals in a jurisdiction.

- **Facts:**

- The City of Grants Pass, Oregon passed several anti-camping ordinances as well as a park exclusion ordinance. The first prohibited people from "sleep[ing] on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety. GPMC 5.61.020. Next, the anti-camping ordinance prohibited persons from occupying a "campsite" on all public property, such as parks, benches, or rights of way. GPMC 5.61.030. The term "campsite" was defined broadly to include any bedding material, a place where a stove or fire is placed, regardless of whether the person is utilizing a tent or structure. GPMC 5.61.010. Overnight parking in a vehicle in public parks was also prohibited. GPMC 6.46.090. And the "park exclusion" ordinance allowed police officers to bar someone from city parks for 30 days if they had two or more citations related to park regulations in one year. If that person was later found in a city park, they would be prosecuted for criminal trespass. GPMC 6.46.350.
- At the time of the lawsuit, there were four locations within the City offering temporary shelter, but it was undisputed that there were fewer beds available in the City than homeless individuals.
- Plaintiffs brought a class action lawsuit challenging the ordinances under the Eighth Amendment. The class was defined as "all involuntarily homeless individuals living in Grants Pass, Oregon."

- **Holding and Reasoning:**

- The Ninth Circuit affirmed the district court's class certification. The court rejected the City's arguments that the Eighth Amendment required an individualized inquiry.
- The Ninth Circuit concluded the City's ordinances violated the Eighth Amendment even though they began as civil fines, only eventually escalating to criminal proceedings.
- The Ninth Circuit also found the City ordinances fell within *Martin* even though they technically did not prohibit sleeping outside. The court concluded that the anti-camping ordinances violated the Cruel and Unusual Punishment Clause to the extent they prohibited homeless persons from "taking necessary minimal

measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available.” The only plausible reading of *Martin* is that it applies to the act of “sleeping” in public, including articles necessary to facilitate sleep.

3. Status of Litigation.

- The City of Grants Pass has petitioned the Supreme Court for certiorari (Docket No. 23-175).
- The question presented in the petition for certiorari is “[w]hether the enforcement of generally applicable laws regulating camping on public property constitutes ‘cruel and unusual punishment’ prohibited by the Eighth Amendment.”
- Over 20 amicus briefs were filed in support of the City’s petition for certiorari.
- The response is due on 12/6/23.
- We can expect the Supreme Court to consider the petition during its conference(s) in January or early February. If the Supreme Court grants certiorari, the case may be heard this term, which would mean we would have a decision by the end of June 2024. Or, it is possible if the Court grants certiorari that the case may not be heard until the fall, in which case we would have a decision by June 2025. But, the Supreme Court may not grant certiorari at all, in which case the Ninth Circuit decisions in *Grants Pass* and *Martin* will stand.

4. Other Litigation and Issues Involving Homelessness

- *Sacramento Homeless Union v. City and County of Sacramento*, No. 2:22-cv-01095. A district court in California issued an injunction prohibiting the City of Sacramento from clearing homeless encampments based on excessive heat forecast. Cause of action was “State Created Danger” brought under the Fourteenth Amendment. Status: on appeal to the Ninth Circuit.
- In *Brown v. Phoenix*, (CV 2022-010439), a superior court in Arizona (state court) issued a permanent injunction directing the City to clear a large homeless encampment in what came to be known as the “Zone.” This lawsuit was brought by business owners and residents claiming that the City violated state public nuisance laws by failing to enforce various quality of life and criminal laws in the Zone (drug use, disorderly conduct, disturbing the peace, etc.) The court found that the City had maintained a public nuisance under Arizona law by refusing to enforce criminal and quality of life laws in the Zone.
- In *Fund for Empowerment v. City of Phoenix* (No. CV-22-02041), the ACLU sued the City to prevent the City from clearing homeless encampments in the Zone under *Martin*/the Eighth Amendment. The District Court originally enjoined the City from enforcing its camping bans. The district court then entered an Order modifying its prior preliminary injunction to allow the City to enforce no camping in the Zone so long as the unsheltered have either a shelter to go to or another “public open space or area.”