Anti-Camping Ordinances – Important Case Law and Frequently Asked Questions

I. Important Cases

Statement of Interest of the United States, *Bell v. Boise*, No. 1:09-cv-00540, ECF No. 276 (D. Idaho Aug. 6, 2015)

The United States Department of Justice ("DOJ") filed a statement of their position on the constitutionality of anti-camping ordinances in this federal lawsuit. In the statement, the DOJ argues that laws criminalizing camping or sleeping outdoors are unconstitutional when there is either (1) inadequate shelter space for a city's homeless population or (2) shelter restrictions preventing certain individuals from accessing shelter. This is because sleeping is a necessary, unavoidable function of being alive, and the DOJ argues when people have *nowhere else* to do so, their choice to camp or sleep outside cannot be seen as voluntary. The Eighth Amendment prohibition against cruel and unusual punishment bars criminalizing an individual's status. The DOJ argues that involuntary conduct, such as sleeping outdoors when no reasonable access to shelter space exists, is akin to criminalizing status and therefore cruel and unusual punishment.

Findings of Fact, Conclusions of Law and Order, *City of North Bend v. Joseph Bradshaw*, No. Y123426A (Muni. Court of Issaquah)

This order overturned the North Bend municipal ordinance used to convict Joseph Bradshaw of illegal camping. The ordinance banned camping in all parks, sidewalks, streets, alleys, or other publicly owned property accessible to the public. Camping was defined by the ordinance as making living accommodations or preparations to sleep, sleeping, erecting a tent, or storing belongings, among other activities. The North Bend Municipal Court ruled that, because the ordinance so broadly defined areas where camping was prohibited, the law infringed upon the constitutional right to travel since it "makes it impossible for homeless persons to live within the city." It also ruled that the ordinance was cruel and unusual, since it effectively criminalized sleeping on any public property, despite sleeping being an unavoidable consequence of being human. Although some resources for the homeless were available in North Bend, the Court found that they were limited and that it was unclear if any would have been accessible by the plaintiff the night he was charged with illegal camping. Additionally, the Court held that pitching a tent, or sheltering oneself, was implicit in the right of a homeless individual to sleep. Finally, the court also ruled that the fact that sleeping in parks during the daytime was legal was not sufficient to preserve the important right to sleep, since "human beings are not nocturnal by nature."

Memorandum Decision, *Everett v. Bluhm et al.*, No. CRP 7006 (Muni. Court of Everett Jan. 12, 2016)

The Everett Municipal Court ruled that the City of Everett's anti-camping ordinance was unlawful in this Order. Everett's law effectively prohibited camping on all publicly owned land and defined camping as pitching a tent or other structure or evidence of other "camp paraphernalia." The court ruled, much like the North Bend Court, that the law violated the constitutional right to travel and the Eighth Amendment right to be free from cruel and unusual punishment. The court held that the resources available to Everett's homeless population were

not sufficient to support "a large segment" of that population, and therefore there was no reasonable alternative to sleeping outside.

II. Frequently Asked Questions

What is an anti-camping ordinance? An anti-camping ordinance is a law that criminalizes the act of sleeping or pitching tents or other structures on publicly owned property. Anti-camping laws may also be contained in other city ordinances – for instance, the DOJ's Statement of Interest noted that one of the ordinances in question in that case was a "disorderly conduct" ordinance that also criminalized sleeping in publicly owned areas. Some laws may criminalize sleeping, while others may focus on pitching tents or storing your belongings on public property. Additionally, some trespass ordinances may have the effect of criminalizing camping on public property.

What is the status versus conduct distinction? The status/conduct distinction holds that laws criminalizing a person for their status are cruel and unusual, while laws that make specified conduct or actions a crime are not. Under this distinction, courts have held, for instance, that a law criminalizing *the status of being an addict* is cruel and unusual, but laws that criminalize purchasing or using illegal drugs are not.

Do anti-camping ordinances criminalize status or conduct? Two courts in Washington and the DOJ have decided that bans on camping in public spaces criminalize homeless individuals for actions that are inseparable from their status because the actions are involuntary and unavoidable consequences of being human and homeless when there is inadequate shelter. And as the DOJ argues, "the Eighth Amendment outlaws the punishment of unavoidable conduct we know to be universal."

Why does the DOJ consider camping ordinances to be status rather than conduct offenses? Because all human beings must sleep, individuals have no choice but to sleep *somewhere*. Because of that, in municipalities where there are not enough shelter beds, the homeless population is forced into a catch-22. It is illegal to sleep outside, but individuals cannot sleep anywhere else. Because they have no choice but to violate the law, the DOJ (and multiple Washington courts) have found that anti-camping ordinances criminalize conduct that is "indistinguishable from the status of homelessness."

Do *all* anti-camping ordinances violate the Eighth Amendment? Maybe not, and any answer to this question is likely dependent on the facts in your community. It is possible that a city could have enough shelter resources that the homeless population *truly* has a choice to sleep elsewhere. When reasonable alternatives to outdoor camping exist, enforcement of anti-camping ordinances may not be unconstitutional. However, Washington courts have ruled that the mere existence of some resources for the homeless is not enough to overcome a finding that a law is cruel and unusual. For instance, in *Everett v. Bluhm*, the court held that there were not enough shelter beds to support "a large majority" of the city's homeless and therefore the ban was unconstitutional. The DOJ also argues that restrictions on *who* can access shelter beds may make them inaccessible despite being unoccupied.

What is the right to travel? The right to travel is the right to be free from laws that either "penalize[] migration from state to state, or make[] it impossible to move about a state." As Washington courts in both *Everett* and *North Bend* held, laws written so broadly that they make it impossible for a homeless person to live within a city (i.e. by criminalizing camping or lying down in *all* public places) may violate the right to travel.

Can public health concerns overcome this right? It depends. Washington courts have held that while public health and safety concerns may justify passing *some* ordinances to address public health and safety concerns associated with homeless camping, these ordinances must allow people to sleep and have shelter from the elements somewhere. For example, laws requiring that people not camp where they are blocking traffic are valid. But a city can't eliminate sleeping in all public places if there is inadequate shelter space. As both courts ruled, laws addressing these concerns are only constitutional if they do not do "violence to important rights."