



December 20, 2019

Dear Denver City Council,

This letter is to demand the City of Denver follow the lead of the Supreme Court which let stand the 9<sup>th</sup> Circuit ruling find Camping Bans unconstitutional.

Monday December 16th 2019, the Supreme Court of the United States ruled that they will not review the Ninth Circuit case, *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), thus upholding their ruling that it is cruel and unconstitutional to punish unhoused people for resting in public when they are involuntarily in public space.

In finding Boise's ordinances unconstitutional as applied to Robert Martin and the other plaintiffs, the Ninth Circuit reasoned that people who are involuntarily in public space cannot be punished for universal and unavoidable human conduct, such as sitting, lying down, and sleeping. As was first held in *Jones v. City of Los Angeles*, punishing conduct that is involuntary and inseparable from homeless status is akin to punishing a person simply because he or she is homeless – a cruel result that cannot be tolerated under the Eighth Amendment.

The ruling makes clear that to determine involuntary presence in public space, courts must not look merely to whether housing or temporary shelter beds are empty, but to whether they are accessible. Access to adequate shelter means that a person has actual access to shelter that meets the person's needs, taking into consideration disability, religious belief, and other individual factors.

Denver's "Unauthorized Camping Ban" 38-86.2, just like the Boise ban, makes it illegal to "use any form of protection from the elements other than one's clothing." Just as in the Boise case, Denver's shelter beds are not accessible for countless people who are unhoused and forced to sleep outside due to a wide array of factors including but not limited to: work hours, pet policies, being ban from the shelter, more belongings than fit in the space, lottery waits, and countless more reasons. Furthermore, a shelter can only reasonably be considered accessible if the unhoused person can *safely access and be in* the shelter. If an individual is more safe outside than in the shelter, they cannot be forced into a shelter as a jail.

Here in Denver CO right now a municipal judge is already hearing a motion to dismiss a Camping Ban ticket issued to Jerry Burton as unconstitutional. This motion names numerous constitutional rights that are being violated by the law in addition to those named in the Boise case, including discrimination and state created danger by putting homeless people at greater risk under this law. This case will likely be appealed to higher courts and cost the City of Denver millions of dollar (that could be spent on housing) and years to defend unless you, Denver City Council, end all of this immediately by voting to repeal the camping ban.

Denver City Attorney's Office is quoted saying, "We believe Denver's ordinance is carefully crafted and thoughtfully enforced." Denver's ordinance criminalizes the same acts as the Boise ordinance and all other similar ordinances which were found unconstitutional – so it seems Denver's ordinance was carefully written to be unconstitutional as was the case in cities across the country. If the Denver Camping Ban is "thoughtfully enforced" it appears the thought is how police can be used most effectively to harass and terrorize suffering people, keep the homeless community trapped in homelessness, and in greater danger. Police have "thoughtfully" forced 23,674 unhoused people to "move along" for violating the Camping Ban. In *Unhealthy By Design: Public Health Consequences of Denver's Criminalization of Homelessness*, the survey of almost 500 homeless people in Denver found that after Camping Ban enforcement, "Women who have found more hidden sleeping locations report a 50% higher rate of robbery, a 60% higher rate of sexual assault, and more than 3 times the rate of physical assault." The survey also found that, "Among all those who have been instructed by police to quit using shelter from the elements, there is a 71% higher rate of frostbite, a 39% higher rate of dehydration, and twice the rate of heat stroke."

Denver City Attorney's Office is also quoted saying, "Our primary focus, first and foremost, is on connecting people with services, including overnight shelter, of which there are typically a couple hundred vacant beds or mats each night." As has already been noted, Denver shelters do not stand up to the "accessibility" test on which the 9<sup>th</sup> Circuit ruled Camping Bans unconstitutional and shelters cannot be treated as jails where unhoused people are forced. Furthermore, the claim that the camping ban connects people with services is an absolute lie. Rather the opposite, Camping Ban enforcement pushes people away from services, disconnects outreach workers from clients, and makes it harder for them to exit homelessness. In *The Denver Camping Ban: A Report from the Streets*, the survey of over 500 homeless people in Denver found that when contacted for the Camping Ban, "Only 12% of respondents were advised by police of available social services; 4% of respondents said the police contacted an outreach worker to help them." Rather than being connected with services, "66% of respondents who used to sleep downtown say they now usually sleep in more hidden and unsafe locations. 20% say they more often sleep in outlying neighborhoods or in surrounding cities, and travel long distances to get there. And 73% report being turned away from shelters with some frequency."

By not intervening in the Boise case, the Supreme Court keeps the ruling in place that these laws against public survival are unconstitutional. In order to uphold the constitution all cities, not just those in the 9<sup>th</sup> circuit, must overturn their Camping Bans.

We demand you, Denver City Council, make the righteous choice NOW and end the Camping Ban before we have to spend millions more dollars and years in courts. Follow the action from the Supreme Court (yes even this Supreme court!) and end this unconstitutional law NOW.

Read More <https://www.theguardian.com/law/2019/dec/16/supreme-court-wont-revive-homeless-camping-ban>

