

## **Boise Summary**

### **District Court Case (*Martin v. City of Boise*)**

in 2009, a complaint was filed in federal district court alleging that the City of Boise's issuance of citations against 6 homeless people for violating the City's anti-camping ordinance in turn violated the 8<sup>th</sup> Amendment to the U.S. Constitution. The district court ruled in favor of the City. The plaintiffs appealed the district court's decision to the 9<sup>th</sup> Circuit Court of Appeals.

### **Ninth Circuit Decision**

In September 2018, a 3-judge panel of the 9<sup>th</sup> Circuit overruled the district court's decision, finding that the City's enforcement of its anti-camping ordinance violated the 8<sup>th</sup> Amendment's prohibition against cruel and unusual punishment, "so long as there is a greater number of homeless individuals in [the jurisdiction] than the number of available beds [in shelters]," and that a governmental body "may not criminalize conduct that is an unavoidable consequence of being homeless."<sup>1</sup> The City of Boise appealed the 3-judge panel's decision to the larger *en banc* panel of the Ninth Circuit.

### **Ninth Circuit *En Banc* Appeal**

In April 2019, the Ninth Circuit *en banc* panel refused to hear the case. Six judges dissented, citing several bases for disagreement with the decision, including: the ruling conflicts with U.S. Supreme Court precedent and rulings in other federal appellate courts and state supreme courts; the holding that criminalization of involuntary conduct violates the 8<sup>th</sup> Amendment will inevitably lead to striking of other laws, including those prohibiting public urination and defecation; the ruling leaves the City with a Hobson's choice: it must undertake an overwhelming financial responsibility to provide housing or account for the homeless every night, or it must abandon the enforcement of a host of laws regulating public health and safety.

### **City of Boise Appeal to the U.S. Supreme Court (*City of Boise v. Martin*)**

In August 2019, the City of Boise filed a Petition for Writ of Certiorari, requesting that the U.S. Supreme Court hear the case.<sup>2</sup>

Boise argues that the Ninth Circuit's decision conflicts with U.S. Supreme Court precedent (rulings that the 8<sup>th</sup> Amendment prohibition against cruel & unusual punishment must be applied "sparingly") and with other rulings of federal appellate and state supreme courts (which have rejected the principle that the 8<sup>th</sup> Amendment exempts from regulation involuntary conduct); that application of the Ninth Circuit's decision is impractical and fails to provide adequate guidance for compliance; and

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<sup>1</sup> Observations by Brentwood CC: The 3-judge panel also stated that its decision was narrow because it does not dictate that the City must provide adequate shelter for the homeless, nor does its holding extend to individuals who have adequate shelter and choose not to use it. Questions unanswered by the decision: What is adequate shelter? What is sufficient shelter? What are the unavoidable consequences of being homeless?

<sup>2</sup> See the Petition at: <http://pacpalicc.org/wp-content/uploads/2019/09/Martin-Boise-Petition-TO-FILE.pdf>. For a good summary, visit: <https://www.idahostatesman.com/news/local/community/boise/article234271652.html>.

that due to the conflicts, without clarity from the Supreme Court local governments must guess at what is constitutionally permissible and run the risk of endless lawsuits and financial exposure in efforts to manage an unprecedented humanitarian crisis.

### **The Amicus Brief**

Brentwood Community Council (BCC) voted unanimously at a special board meeting on September 15, 2019 to file an amicus curiae (“friend of the court”) brief with the U.S. Supreme Court in connection with the City of Boise’s appeal.<sup>3</sup>

All amicus briefs in the case must be filed by September 25, 2019. BCC has prepared a draft amicus brief, which must be submitted for final formatting/processing by early morning on September 17 to the printing house used for Supreme Court filings (the deadline was imposed by the printing house due to the unprecedented number of amicus briefs being submitted in this case).

PPCC was asked by BCC to support the BCC amicus brief. Because of the September 17 submission deadline, it was necessary for the Executive Committee to make a decision on behalf of the Board (under PPCC Bylaws Art. V.3(B)). The Executive Committee, having read the Petition for Writ of Certiorari and BCC’s amicus brief (draft to be submitted for final formatting/processing), determined unanimously to support the BCC brief.<sup>4</sup>

Both the PPCC letter and the BCC amicus brief request that the Court take up the City of Boise’s appeal in order **to provide clarity** as to what is constitutionally permissible in terms of local government enforcement of anti-camping ordinances. PPCC takes no position on the merits of the appeal; we instead note, among other things, our serious concern with public safety & security in the event of a possible future determination that the anti-camping laws currently being applied in our bluffs & parks areas (public property within the High Fire Hazard Severity Zone) are unenforceable under the Ninth Circuit decision in *Martin v. City of Boise*. To eliminate uncertainty and confusion, we have urged the Supreme Court to grant review of the decision.

The BCC amicus brief will be available to the public once it is filed with the Supreme Court; when available, PPCC will attempt to distribute and/or post the final brief on its website.

*Prepared by Chris Spitz  
PPCC Secretary  
September 16, 2019*

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<sup>3</sup> It is believed that many other individuals, groups and local governments within the Ninth Circuit’s jurisdiction are filing or have expressed an interest in filing amicus briefs in this matter, including (in California) the City & County of Sacramento, the Cities of Fresno and San Clemente, the CBRE, the downtown LA Garment District BID, Venice residents and City Attorney Mike Feuer (on his own behalf; the City of Los Angeles has not yet taken a position). The LA County Board of Supervisors will consider a motion on 9/17 to file an amicus brief; we are advised that as of this writing three of the five Supervisors support the County’s filing of a brief and may also file individual briefs (Sup. Kuehl is opposed).

<sup>4</sup> See PPCC’s letter of support dated September 16, 2019: <http://pacpalicc.org/wp-content/uploads/2019/09/PPCC-Amicus-Support-Letter-9.15.19.pdf>. The letter will be included in the BCC amicus brief.