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## Op-Ed: How an Idaho court decision will increase homeless encampments on L.A. streets

BY THEANE EVANGELIS

The most basic duty of every city is to protect public health and safety. But last September, the 9th Circuit Court of Appeals issued an alarming decision that strips cities of a critical tool in meeting this responsibility. In *Martin vs. City of Boise*, the 9th Circuit became the only appellate court in America to rule that a city's ordinance against living on city streets violated the U.S. Constitution's prohibition on "cruel and unusual" punishment for those who have no other options.

Six judges of the 9th Circuit, who opposed the decision, have warned that the ruling would have "dire practical consequences" for hundreds of cities and their residents. Unfortunately, they are being proven right.

The court's position is unworkable and wrong on what the Constitution requires. That's why as lawyers for Boise, we're asking the U.S. Supreme Court to weigh in.

From Boise to Los Angeles and across the country, cities are facing a crisis of growing encampments — semipermanent tent cities that threaten the health and safety of those living in them as well as the broader community. It's an issue that is bringing public health, environmental and community safety advocates and homeless service providers together to compassionately help the homeless acquire shelter, food, counseling, work and healthcare.

We know there is no one-size-fits-all solution to the homelessness issue, but the court's decision to strike down



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**A 9th Circuit court decision allows more homeless encampments to spread in cities throughout the West.**

a tool that cities need is exacerbating the current crisis. Communities need to have the ability to regulate, and even ban, encampments to protect everyone, especially those who are most vulnerable and in need.

From the most populous cities to small towns, communities are struggling to control the increased crime and violence, spreading diseases and environmental hazards that threaten the lives and well-being of those living on the streets and the general public. Every week, it seems, we hear from another city facing similar problems, concerned that its hands are now tied.

The 9th Circuit ruling says that it is not meant to cover individuals who do have access to adequate temporary shelter, either because they have the means to pay for it or because it is available to them for free, but who choose not to use it.

But this seeming limitation is inadequate and impractical. For instance, a police officer on the beat can-

not actually ascertain someone's ability to pay for lodging (sometimes subsidized by government) or to stay with a friend or family member.

The court's decision also misreads the 8th Amendment. The 8th Amendment cannot be read to exempt individuals from obeying a generally applicable law because the conduct at issue is purportedly "involuntary." For instance, sleeping is not the only "involuntary" act that those living outdoors perform. If public sleeping can't be punished, how can public urination and defecation? The court's decision will cause havoc in how cities control all sorts of conduct in public spaces.

Taking away a local government's ability to regulate or ban public encampments as one option for addressing the broader issues of homelessness certainly won't reduce homelessness.

The reality is, cities must have the authority to tell people where they can and can't sleep or camp on public property. Most cities have done so for

years. But even cities with large homeless populations rarely issue tickets to people merely for sleeping. Many use anti-camping laws largely as a tool to stop the spread of encampments.

Without such laws, the threats to health and safety from growing encampments will surely increase. The tragedy is that striking down these ordinances will harm the very people the 9th Circuit Court purports to protect.

In the Los Angeles area, we've seen diseases such as hepatitis A, typhoid fever, typhus and tuberculosis re-emerge, particularly in encampments. Serious crimes against homeless persons in Los Angeles rose dramatically between 2017 and 2018. And hazards to public health from human waste and thousands of discarded hypodermic needles have spiked.

In Boise, lawless encampments since 2018 have resulted in a rise in crime and violence, including drug and alcohol offenses, physical assaults and even homicide. Other cities within the 9th Circuit's jurisdiction have frustratingly similar stories to tell.

We rely on state and local government to prohibit harmful behavior that puts public health and safety at risk. The 9th Circuit's decision virtually guarantees that dangerous encampments will continue to proliferate—and that would truly be cruel.

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