SUPREME COURT

Finally, glimmer of hope for cities struggling with tents

Homeless people continue to clean up around their tents pitched on the sidewalk along Mercantile Avenue near the intersection of Katella Avenue in Stanton in June 2020. MARK RIGHTMIRE — STAFF PHOTOGRAPHER

There was hopeful news on Friday for Los Angeles and every other city in the western states that are part of the Ninth Circuit in the federal judicial system.

The U.S. Supreme Court agreed to hear the case known as Grants Pass, Oregon, v. Johnson.

This case could lead to the Supreme Court overturning the Ninth Circuit's 2018 ruling in Martin v. Boise, in which the appeals court held that cities may not enforce an ordinance prohibiting encampments on streets, sidewalks and other places unless they could provide enough shelter beds for everyone.

The Boise decision has led to endless litigation against cities that try to enforce anti-camping ordinances, and that has led cities to settle lawsuits brought by groups that contend they're standing up for the civil rights of the homeless.

Grants Pass tried to enforce an anti-camping ordinance and was stopped by a federal district court and then by a (divided) three-judge panel of the Ninth Circuit. The city asked the full Ninth Circuit to hear the case, but the answer was a (divided) "no."

So Grants Pass petitioned the Supreme Court to hear the case, citing the "judicial roadblock preventing a comprehensive response to the growth of public encampments in the west."

It was the American Civil Liberties Union's 2003 lawsuit against the city of Los Angeles that led to semi-permanent tent encampments becoming a routine sight. The ACLU sued L.A. on behalf of six homeless individuals who had been cited for sleeping on the sidewalk. The specific ordinance they violated was L.A.M.C. Section 41.18, which broadly prohibited sitting, lying or sleeping on the sidewalk, unless watching a parade. That case went to the Ninth Circuit and the judges there ruled for the ACLU.

Los Angeles could have appealed to the Supreme Court, but didn't. Instead, the city settled the case, agreeing in 2007 to allow people to sleep on the sidewalks anywhere in Los Angeles during the overnight hours until 1,250 units of housing were constructed for the chronically homeless, with half to be built in the Skid Row area.

In June 2018, L.A. Mayor Eric Garcetti admitted that the city had met its obligations under the settlement, but enforcement never resumed. The case that L.A. lost at the Ninth Circuit before settling, Jones v. City of Los Angeles, was vacated as part of the settlement. But in September 2018, the Ninth Circuit issued a nearly identical decision in a case out of Idaho: Martin v. Boise.

So the city of Los Angeles got nothing out of the Jones settlement with the ACLU except more lawsuits that pushed the envelope even further toward a "civil liberty" to die on the sidewalk. A 2019 settlement in Mitchell v. Los Angeles allowed homeless individuals in the Skid Row area to store an unlimited amount of property on the sidewalk, tossing aside a city ordinance that had tried to limit belongings on the sidewalks to what would fit in one 60-gallon container.

Other cities in the western states have been suffering with the same cycle of attempted enforcement and costly litigation. Many friend-of-the-court briefs were filed in the Grants Pass case, asking the U.S. Supreme Court to hear the city's challenge to Martin v. Boise. The west L.A. community of Brentwood cited one of my columns on the Jones settlement in its brief.

The Supreme Court will hear arguments, probably this spring, to decide this question: "Does the enforcement of generally applicable laws regulating camping on public property

constitute ‘cruel and unusual punishment’ prohibited by the Eighth Amendment?”

Up until 1962, the Eighth Amendment’s prohibition on “cruel and unusual punishment” didn’t even apply to the states. The Supreme Court decided in Robinson v. California that it should, and ever since, it has. But there are balancing tests that the justices have applied. The court has allowed cities to infringe “fundamental” rights if they can show a “compelling” reason.

Grants Pass cited “crime, fires, the reemergence of medieval diseases, environmental harm, and record levels of drug overdoses and deaths on public streets.”

That’s very compelling. Perhaps in June, the Supreme Court will restore the ability of cities to enforce basic health and safety laws.

Let’s hope.

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