



P O Box 3952  
Charleston WV 25339-3952

(304) 345-9246  
[www.acluww.org](http://www.acluww.org)

October 16, 2023

Wheeling City Council  
1500 Chapline Street  
Suite 303  
Wheeling, WV 26003

Re: Wheeling's Proposal to Ban Urban Camping

Dear Council Members,

I am writing on behalf of the American Civil Liberties Union of West Virginia regarding "Amending and Reenacting Article 533" on the City Council agenda for October 17, 2023. The language in this proposed ordinance very clearly targets Wheeling's unhoused population and is likely unconstitutional. We urge you to reject this cruel attempt to criminalize poverty.

The Eighth Amendment's prohibition against cruel and unusual punishment protects people from being prosecuted merely because of an involuntary act or condition if it is the unavoidable consequence of one's status or being.<sup>1</sup> Further, the recent decision in *Martin v. Boise* holds that where unhoused individuals have no available shelter, criminalizing them for simply sleeping in public is synonymous with punishing them because they are unhoused.<sup>2</sup> Although *Martin* is only binding on states within the Ninth Circuit's jurisdiction, courts throughout the country have consistently found that similar ordinances in cities that do not provide adequate shelter space violate the Eighth Amendment.<sup>3</sup> Importantly, the Fourth Circuit has signaled its willingness to rely on *Martin* in assessing whether statutes run afoul of Eighth Amendment protections.<sup>4</sup>

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<sup>1</sup> See, e.g., *Robinson v. California*, 370 U.S. 660, 666 (1962) (prohibiting the criminalization of a person's status because otherwise they would be "continuously guilty of [the] offense" by virtue of who they are in violation of the Eighth Amendment).

<sup>2</sup> *Martin v. City of Boise*, 920 F.3d 584, 616-17 (9th Cir. 2019) ("the [S]tate may not criminalize conduct that is an unavoidable consequence of being homeless—namely sitting, lying, or sleeping on the streets" if shelter options are not available) (internal quotations and citations omitted).

<sup>3</sup> See, e.g., *Martin*, 920 F.3d at 618 (preventing application of Boise's anti-camping ordinance); *Jones v. City of L.A.*, 444 F.3d 1118, 1138 (9th Cir. 2006), vacated on other grounds, 505 F.3d 1006 (9th Cir. 2007) (finding application of Los Angeles anti-camping ordinance violated Eighth Amendment); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1583-84 (S.D. Fla. 1992) (barring arrest of homeless individuals in Miami under a number of local ordinances); see also *Fund for Empowerment v. City of Phoenix*, 646 F.Supp.3d 1117 (D. Ariz. Dec. 16, 2022); *Phillips v. City of Cincinnati*, 479 F.Supp.3d 611 (S.D. Ohio Aug. 13, 2020); *Murphy v. Raoul*, 380 F. Supp. 3d 731, 763 (N.D. Ill. 2019) ("It is not possible for homeless people to avoid sitting, lying, or sleeping in public because of their homeless status, at least where the evidence establishes that there is an absolute lack of available shelter space").

<sup>4</sup> *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264 (4th Cir. 2019).

This proposal is both cruel and counterproductive to the larger goal of ending poverty and homelessness. These sorts of laws damage connections to care; compromise safety and civic trust; undermine paths to independence; and create unnecessary costs for local communities.<sup>5</sup> Council members should also be aware that ordinances criminalizing a person's unsheltered status will disproportionately impact people with disabilities, as well as Black people, indigenous people, and people of color.<sup>6</sup>

If the Wheeling City Council is interested in reducing the amount of people in their community who are forced to sleep on public property, it would be well advised to pursue Constitutional ways to address the root causes of poverty and assist those who have nowhere else to go. Instead of imposing unreasonable fines that will only exacerbate the issue of homelessness, members should consider the perspectives of those who will be directly impacted by this ordinance, as well as the health care and other service providers who work with them. Providing permanent housing, limiting police involvement, and facilitating access to low-barrier services will have greater, more productive results than criminalizing vulnerable people.

The ACLU of West Virginia remains available to work alongside the Wheeling City Council on proposals to help the unhoused while remaining within the boundaries of the Constitution. We will continue to monitor this proposed ordinance and consider all possible avenues in our response should it pass.

If you have any questions or concerns, I can be reached at [nward@acluwv.org](mailto:nward@acluwv.org).

Regards,



Nicholas Ward  
Staff Attorney, ACLU-WV

cc:

[cshalman@wheelingwv.gov](mailto:cshalman@wheelingwv.gov)  
[bseidler@wheelingwv.gov](mailto:bseidler@wheelingwv.gov)  
[rketchum@wheelingwv.gov](mailto:rketchum@wheelingwv.gov)  
[jsklavounakis@wheelingwv.gov](mailto:jsklavounakis@wheelingwv.gov)  
[tthorngate@wheelingwv.gov](mailto:tthorngate@wheelingwv.gov)  
[dpalmer@wheelingwv.gov](mailto:dpalmer@wheelingwv.gov)

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<sup>5</sup> National Health Care for the Homeless, Impact of Encampment Sweeps on People Experiencing Homelessness, December 2022, <https://nhchc.org/wp-content/uploads/2022/12/NHCHC-encampment-sweeps-issue-brief-12-22.pdf>

<sup>6</sup> *Id.*