

**ALESSANDRA SOLER  
EXECUTIVE DIRECTOR  
ALE BAICH  
PRESIDENT**



VIA U.S. MAIL & EMAIL

April 27, 2017

Mayor Jeff Serdy  
City of Apache Junction  
300 E Superstition Boulevard  
Apache Junction, AZ 85119  
jserdy@ajcity.net

Dear Mayor Serdy and City Council Members:

The American Civil Liberties Union of Arizona (ACLU) writes to urge the Apache Junction city council to repeal and immediately stop enforcement of municipal code § 10-5-7, Apache Junction's "anti-camping ordinance." Because § 10-5-7 is vague and overbroad, and functions to punish an individual's status instead of conduct, it violates the U.S. Constitution. More specifically, the overbroad language of § 10-5-7, and the defining language in § 10-5-1, do not provide individuals sufficient notice regarding what conduct constitutes illegal activity, in violation of the Due Process Clause of the Fourteenth Amendment. The vagueness of the anti-camping ordinance creates the strong likelihood of arbitrary and prejudicial enforcement. In addition, Apache Junction's anti-camping ordinance criminalizes an involuntary and innocent status in violation of the Eighth Amendment. Section 10-5-7 makes illegal the basic human activity of sleeping when it occurs in public. Homeless people, who have no choice but to sleep in public, cannot perform this normal human activity without danger of violating the ordinance. Because § 10-5-7 punishes homeless people for their status, not conduct, it violates the U.S. Constitution.

Municipal code § 10-5-7 makes it illegal for anyone to "camp in or upon any city sidewalk, street, alley, lane, park, public right-of-way or other place to which the general public has access." Municipal code § 10-5-1 defines camping as "[t]o set up or to remain in or at a campsite," which is defined as "[a]ny place where any bedding, sleeping bag or other sleeping matter is placed, established or maintained, whether or not such place incorporates the use any tent, lean-to, shack or other structure, or any vehicle or part thereof." In short, Apache Junction's anti-camping ordinance prohibits a person from setting up or remaining at any public place, including sidewalks, streets, and parks, where materials that could be used as bedding, including tents, blankets, sleeping bags, clothing, or vehicles, are also placed. A person found guilty of violating § 10-5-7 faces a fine of \$2,500 and imprisonment for up to six months. Apache Municipal Code § 1-1-11(A).

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Apache Junction's anti-camping ordinance is unconstitutionally vague. "The prohibition of vagueness in criminal statutes is a well-recognized requirement, . . . and a statute that flouts it violates the first essential of due process." *Johnson v. United States*, 135 S.Ct. 2551, 2556-57 (2015) (citations and internal quotation marks omitted). "Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement." *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1155 (9th Cir. 2014) (citation omitted). Apache Junction's anti-camping ordinance fails for both reasons.

The scope of Apache Junction's anti-camping ordinance covers such a broad array of innocent public activities that an ordinary person could not possibly ascertain what conduct the ordinance prohibits. Indeed, a couple placing a picnic blanket on the ground in a park, a person sitting in their vehicle eating lunch, or a family in an RV parked on a street could all be cited and potentially fined and imprisoned under the plain language of Apache Junction's anti-camping ordinance. The government violates the Due Process Clause when it takes away "someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes." *Johnson*, 135 S.Ct. at 2556 (citations omitted). Apache Junction's anti-camping ordinance fails to clearly differentiate innocent from unlawful activity, giving the public no clear guidance on how to conform their conduct to the law.

Ordinance § 10-5-7 is also unconstitutionally vague because it encourages arbitrary and discriminatory enforcement. *Desertrain*, 754 F.3d at 1156. The broad scope of Apache Junction's anti-camping ordinance does not provide law enforcement personnel adequate standards governing when to exercise police authority. When "a statute provides no standards governing the exercise of . . . discretion, it becomes a convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure." *Id.* (citations and internal quotation marks omitted). Although the language of the anti-camping ordinance covers a breadth of activities commonly engaged in by members of the general public, to our knowledge, the ordinance has been enforced only against homeless people. The discriminatory application of an ordinance to a select group of individuals violates the Fourteenth Amendment. *See id.* (holding that a Los Angeles ordinance banning sleeping overnight in vehicles was unconstitutional because it was vague and was applied only against homeless people).

Apache Junction's anti-camping ordinance also violates the Eighth Amendment because it punishes status instead of conduct. Homeless people, who have no option but to be in public, are subject to arrest, fines, and jail simply for conducting ordinary human activity like sleeping, sitting, or placing things on the ground in public. Apache Junction's anti-camping ordinance makes being homeless criminal.

The Eighth Amendment “imposes substantive limits on what can be deemed criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667 (1977). The Supreme Court has held that when a status can be “contracted innocently and involuntarily,” a criminal penalty based on such status “inflicts a cruel and unusual punishment.” *Robinson v. California*, 370 U.S. 660, 667 (1962). Government officials lack any legitimate purpose to punish innocent, unavoidable conduct inextricably connected to status. *Id.* (finding unconstitutional a California law that made being addicted to drugs illegal).

In *Jones v. City of Los Angeles*, the Ninth Circuit concluded that a similar anti-camping ordinance violated the constitution. 444 F.3d 1118 (9th Cir. 2006), vacated after settlement, 505 F.3d 1006 (9th Cir. 2007). The Los Angeles ordinance prohibited sitting, lying, or sleeping in public. The Ninth Circuit held that, “[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.” *Id.* at 1136. Because these activities were unavoidable, the court said, criminalizing them because they were done in public by persons with “no access to private spaces” violated the Eighth Amendment. *Id.* Accordingly, where shelter space is inadequate or nonexistent, anti-camping ordinances that punish unavoidable human activity such as sleeping or sitting illegitimately operate to criminalize status, and not conduct, in violation of the Eighth Amendment. *Id.* Consistent with the holding in *Jones*, the United States Department of Justice has taken the position that “criminalizing sleeping in public when no shelter is available violates the Eighth Amendment by criminalizing status.” *See* Statement of Interest of the United States, *Bell v. City of Boise*, Civil Action No. 1:09-cv-540-REB, at 9-10 (D. Idaho Aug. 6, 2015).

Apache Junction’s anti-camping ordinance relegates homeless people to a permanent criminal status, simply by their presence in public. Apache Junction does not have any homeless shelters. The city cannot criminalize normal human activities simply because the homeless are forced to conduct those activities in public.

We urge Apache Junction to repeal and immediately stop enforcement of its anti-camping ordinance as it violates the Eighth and Fourteenth Amendments to the United States Constitution. If you have any questions or concerns, I may be reached via email at [dhill@acluaz.org](mailto:dhill@acluaz.org) or by phone at 602-773-6008.

Sincerely,



Darrell Hill  
Staff Attorney

Cc: Vice Mayor Chip Wilson  
Dave Waldron, Councilmember  
Christa Rizzi, Councilmember

Robin Baker, Councilmember  
Gail Evans, Councilmember  
Jeff Struble, Councilmember

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