



C. Ray Drew, Executive Director • Mark Silverstein, Legal Director

June 28, 2010

Boulder City Council
SENT VIA EMAIL

Re: Boulder's prohibition on "camping," B.R.M.C. Sec. 5-6-10

Dear Honorable Members of the Boulder City Council:

Today, the American Civil Liberties Union Foundation of Colorado filed papers in court appealing the conviction of David Madison, who was found guilty of violating the City's "no-camping" ordinance, Boulder Revised Municipal Code ("B.R.M.C.") Section 5-6-10. On the November night when Mr. Madison was ticketed, he was homeless and had sought refuge at the Boulder County Shelter. The shelter was at capacity, however, and had to turn him away. Mr. Madison was forced to sleep outdoors. Although sleeping on public land in Boulder at night is not, by itself, a violation of Boulder's "no camping" ordinance, Boulder's prosecutors argued that Mr. Madison took one additional step that crossed the legal line: he protected himself with a sleeping bag on a night when the temperature dropped to a mere 11 degrees.

Boulder's anti-camping ordinance prohibits sleeping outside with "shelter," which the code defines as "any cover or protection from the elements other than clothing." B.R.M.C. Sec. 5-6-10. Thus, Boulder's prosecutors argued that the sleeping bag Mr. Madison used to protect himself was "shelter" under Boulder law, and that Mr. Madison's common sense act of using the sleeping bag to shield his body from 11-degree temperatures was a crime.

In Mr. Madison's appeal, the ACLU will argue that it is unfair and unconstitutional to convict Mr. Madison of a crime for using a sleeping bag to protect himself in subfreezing temperatures. This letter is not intended, however, to persuade you that Mr. Madison will prevail in his appeal. Instead, this letter is intended to convince you that the City of Boulder has no legitimate interest in continuing to ticket, prosecute and punish its homeless residents solely because a person covered himself or herself from the elements when shelter was unavailable and there was a risk of frostbite and hypothermia. On those grounds, we ask that the Boulder City Council make a simple, necessary, and humane change to its existing law.

On the night he was ticketed, Mr. Madison did not pitch a tent or start a campfire. He simply used a sleeping bag to insulate himself and to trap his body heat, in order to avoid painful cold, frostbite, and hypothermia. Because Mr. Madison

protected himself from the subfreezing temperatures with a sleeping bag, a Boulder police officer ticketed him, and Boulder devoted its criminal justice resources to prosecuting him.

Statistics provided to the City Council on February 2, 2010, show that Boulder's police officers have issued more than 1,650 tickets over the past four years for violations of the "no-camping" ordinance.¹ The ACLU has spoken with Boulder's homeless residents and their advocates, and learned that Mr. Madison is far from alone in being ticketed only for using a sleeping bag or blankets. As the Council is aware, the sleeping bags and blankets used by the homeless—the instrument of the "crime"—often have been provided by Boulder's own shelter to the hundreds of people it turns away each winter because it is full.² It is a sad irony that in instances when the City is able to secure a conviction, its homeless residents—those members of Boulder's community who are most in need of Boulder's aid and assistance—are often themselves ordered to "volunteer" for local service organizations.

In January of this year, the Boulder County Chapter of the ACLU wrote the Council in support of a request that Boulder "stop arresting people for sleeping outside when they have no place to sleep inside because they are homeless." Boulder could make a simple change that would end the most egregious and unjustifiable of these types of arrests—it could amend its existing ordinance to make clear that using a sleeping bag or a blanket, by itself, is *not* "shelter" as defined under B.M.R.C. Sec. 5-6-10. Such an amendment would ensure that the City stops the inhumane and wasteful prosecution of its most vulnerable residents, while in no way limiting Boulder's ability to ticket and prosecute any individual who pitches a tent, makes a campsite, spreads litter, starts a fire, urinates in public, or violates any other Boulder ordinance.

The City of Boulder has no legitimate interest in criminalizing its residents who are without a home, forced to sleep outdoors in the cold, and merely want to cover themselves in order to survive. While we continue to believe that the arrest and prosecution of Boulder's homeless residents under these circumstances violates the Eighth Amendment's prohibition on cruel and unusual punishment, it is not necessary to wait for a court ruling in order to conclude that these arrests and prosecutions are senseless, and bad public policy. We would be happy to suggest language to amend the ordinance, if so requested. Thank you in advance for your time and your consideration of the ACLU's concerns.

¹ See *City of Boulder City Council Agenda Item #5A*, p. 7 (Boulder City Council Meeting of Feb. 2, 2010) (Available at <http://www.bouldercolorado.gov/files/Clerk/Agendas/2010/5A.pdf>) (Accessed June 17, 2010).

² See *id.* ("Recent data from the Boulder Shelter indicates from the period of October 15 through December 31, 2009, 333 individuals were turned away over 35 nights due to insufficient capacity...").

Sincerely,

A handwritten signature in black ink, appearing to read 'Judd Golden', with a stylized, looping flourish at the end.

Judd Golden
Chair, Boulder County Chapter

A handwritten signature in black ink, appearing to read 'Taylor Pendergrass', with a long, horizontal flourish extending to the right.

Taylor Pendergrass
Staff Attorney