

**Bay Area MCLE Conference**  
**Tuesday, November 19, 2024**  
**9:00 AM to 10:00 AM**

**Grants Pass Litigation: What next for the Unhoused Population?**

*City of Grants Pass v. Johnson*  
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**BACKGROUND ON THE ENCAMPMENTS CRISIS**

- **Facts and Figures**
  - There are more than 650,000 homeless people in the United States and over 180,000 *in California alone*.
  - Up to 75% of unsheltered homeless people suffer from a mental-health condition, drug addiction, or both.
  - Overdose is the leading cause of death among homeless people in Los Angeles, San Francisco, and Sacramento.
  - Crimes like assault are *over three times more likely* within one city block of an encampment.
  - More than 50% of shelter offers are rejected in San Francisco, Portland, and Seattle.
- ***Martin v. City of Boise* (9th Cir. 2018)**
  - In 2018, the Ninth Circuit held that the Eighth Amendment’s Cruel and Unusual Punishments Clause prohibits cities from enforcing camping ordinances if they have fewer shelter beds than unsheltered persons within their borders.
  - The Ninth Circuit reasoned that the Eighth Amendment protects sleeping on public property because it is “biologically compelled” and “an unavoidable consequence of being homeless.”
  - The Ninth Circuit denied rehearing en banc (over several dissents), and the Supreme Court declined to review.
- **Consequences of *Martin***
  - Various plaintiffs subsequently filed at least 35 *Martin*-based lawsuits (e.g., against the cities of Chico, San Rafael, and San Clemente, among many others).
  - Federal courts enjoined cities from enforcing their camping laws (including San Francisco, Portland, Phoenix, and Grants Pass).
  - The encampments crisis exploded on the West Coast. Homelessness soared in every state in the Ninth Circuit from 2018 to the present (e.g., 51% in Alaska and 46% in Idaho and Oregon).

## CITY OF GRANTS PASS V. JOHNSON

**Background:** In September 2022, in *Johnson v. City of Grants Pass*, the Ninth Circuit doubled down on *Martin* by endorsing a sweeping class action and enjoining civil regulations of camping on public property. The Ninth Circuit denied rehearing en banc by the slimmest of margins (14-13), but the U.S. Supreme Court granted review.

**Question Presented:** Does the enforcement of generally applicable laws regulating camping on public property constitute “cruel and unusual punishment” prohibited by the Eighth Amendment?

**Held:** The Eighth Amendment does not prevent the enforcement of camping regulations on public property.

**Key Excerpts:**

- “Homelessness is complex. Its causes are many. So may be the public policy responses required to address it. At bottom, the question this case presents is whether the Eighth Amendment grants federal judges primary responsibility for assessing those causes and devising those responses. It does not.” Op. at 34.
- “What does it mean to be ‘involuntarily’ homeless with ‘no place to go’? What kind of ‘adequate’ shelter must a city provide to avoid being forced to allow people to camp in its parks and on its sidewalks? And what are people entitled to do and use in public spaces to ‘keep warm’ and fulfill other ‘biological necessities’? Those unavoidable questions have plunged courts and cities across the Ninth Circuit into waves of litigation. And without anything in the Eighth Amendment to guide them, any answers federal judges can offer (and have offered) come, as Justice Marshall foresaw, only by way of ‘fiat.’” Op. at 32–33.
- “Yes, people will disagree over which policy responses are best; they may experiment with one set of approaches only to find later another set works better; they may find certain responses more appropriate for some communities than others. But in our democracy, that is their right. Nor can a handful of federal judges begin to ‘match’ the collective wisdom the American people possess in deciding ‘how best to handle’ a pressing social question like homelessness.” Op. at 34.

- “The Constitution’s Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation’s homelessness policy.” Op. at 35.
- “Almost 200 years ago, a visitor to this country remarked upon the ‘extreme skill with which the inhabitants of the United States succeed in proposing a common object to the exertions of a great many men, and in getting them voluntarily to pursue it.’ 2 A. de Tocqueville, *Democracy in America* 129 (H. Reeve transl. 1961). If the multitude of *amicus* briefs before us proves one thing, it is that the American people are still at it. Through their voluntary associations and charities, their elected representatives and appointed officials, their police officers and mental health professionals, they display that same energy and skill today in their efforts to address the complexities of the homelessness challenge facing the most vulnerable among us.” Op. at 34.
- “*Martin* attempted to head off these complexities through some back-of-the-envelope arithmetic. The Ninth Circuit said a city needs to consider individuals ‘involuntarily’ homeless (and thus entitled to camp on public property) only when the overall homeless population exceeds the total number of ‘adequate’ and ‘practically available’ shelter beds. *See* 920 F. 3d at 617–618 & n. 8. But as sometimes happens with abstract rules created by those far from the front lines, that test has proven all but impossible to administer in practice.” Op. at 27.
- “Doubtless, the Ninth Circuit’s intervention in *Martin* was well-intended. But since the trial court entered its injunction against Grants Pass, the city shelter reports that utilization of its resources has fallen by roughly 40 percent.” Op. at 30.
- “Different governments may use these laws in different ways and to varying degrees. *See* Cities Brief 11. But many broadly agree that ‘policymakers need access to the full panoply of tools in the policy toolbox’ to ‘tackle the complicated issues of housing and homelessness.’” Op. at 7.
- “Public camping ordinances like those before us are nothing like the law at issue in *Robinson*. Rather than criminalize mere status, Grants Pass forbids actions like ‘occupy[ing] a campsite’ on public property ‘for the purpose of maintaining a temporary place to live.’ Grants Pass Municipal Code §§5.61.030, 5.61.010; App. to Pet. for Cert. 221a–222a. Under the city’s laws, it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building.” Op. at 21.

- “Cities routinely confront individuals who decline offers of shelter for any number of reasons, ranging from safety concerns to individual preferences. How are cities and their law enforcement officers on the ground to know which of these reasons are sufficiently weighty to qualify a person as ‘involuntarily’ homeless?” Op. at 26.
- “Because the contours of this judicial right are so ‘uncertain[ly],’ cities across the West have been left to guess whether *Martin* forbids their officers from removing everything from tents to ‘portable heaters’ on city sidewalks. Brief for City of Phoenix et al. on Pet. for Cert. 19,29 (Phoenix Cert. Brief). There is uncertainty, as well, over whether *Martin* requires cities to tolerate other acts no less ‘attendant [to] survival’ than sleeping, such as starting fires to cook food and ‘public urination [and] defecation.’” Op. at 29.
- “Even when ‘policymakers would prefer to invest in more permanent’ programs and policies designed to benefit homeless and other citizens, *Martin* has forced these ‘overwhelmed jurisdictions to concentrate public resources on temporary shelter beds.’ Cities Brief 25; see Oregon Cities Brief 17–20; States Brief 16–17. As a result, cities report, *Martin* has undermined their efforts to balance conflicting public needs and mired them in litigation at a time when the homelessness crisis calls for action.” Op. at 30.
- “Many private organizations, city officials, and States have worked, as well, to increase the availability of affordable housing in order to provide more permanent shelter for those in need. But many, too, have come to the conclusion that, as they put it, ‘[j]ust building more shelter beds and public housing options is almost certainly not the answer by itself.’ As many cities see it, even as they have expanded shelter capacity and other public services, their unsheltered populations have continued to grow.” Op. at 4–5.

Argument: April 22, 2024

Relevant Opinions: *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), *amended on denial of reh’g*, 72 F.4th 868 (9th Cir. 2023)  
*Blake v. City of Grants Pass*, 2020 WL 4209227 (D. Or. July 22, 2020)  
*Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), *amended on denial of reh’g*, 920 F.3d 584 (9th Cir. 2019)

## IMMEDIATE IMPACT OF THE GRANTS PASS DECISION

- **State of California**

- California Governor Gavin Newsom's statement following the decision: "Today's ruling by the U.S. Supreme Court provides state and local officials the definitive authority to implement and enforce policies to clear unsafe encampments from our streets. This decision removes the legal ambiguities that have tied the hands of local officials for years and limited their ability to deliver on common-sense measure to protect the safety and well-being of our communities."
- California Governor Gavin Newsom's subsequent executive order: "Building on California's ongoing work and unprecedented investments to address the decades-long issue of homelessness, Governor Gavin Newsom issued an executive order today ordering state agencies and departments to adopt clear policies that urgently address homeless encampments while respecting the dignity and well-being of all Californians."

- **City of San Francisco**

- San Francisco Mayor London Breed's statement following the decision: "This decision by the Supreme Court will help cities like San Francisco manage our public spaces more effectively and efficiently. San Francisco has made significant investments in shelter and housing, and we will continue to lead with offers of services from our hard-working City employees. But too often these offers are rejected, and we need to be able to enforce our laws, especially to prevent long-term encampments."
- *New York Times* article on the effect of the decision on San Francisco: "Empowered by a recent Supreme Court decision and encouraged by Gov. Gavin Newsom," San Francisco Mayor London Breed 'vowed [that] . . . 'San Francisco will always lead with compassion, but we cannot allow our compassion to be taken advantage of. . . . We will not be a city with a reputation for [not] being able to solve the housing and behavioral health needs of people across our country.'"