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

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**MARTIN AND GRANT PASS AND THE "GHOST OF TOM JOAD"** B. Springsteen, W. Guthrie

### **DEFINING HOMELESSNESS:**

- Is poverty a crime?
- Is being disabled a crime?
- Is not having a sufficient income to pay rent a crime?
- Is sleeping a crime?
- If you are homeless the answer to all of these questions is: YES.

### **HOMELESSNESS IN AMERICA**

- On a typical night, more than 580,000 Americans are homeless.
- Nearly 2.5 million American children (one in every 30) experience homelessness each year.
- People experiencing homelessness often lack reasonable alternatives to sleeping in public places.
- Yet cities have enacted laws that criminalize unhoused people.

### **WHAT DOES IT MEAN TO CRIMINALIZE HOMELESSNESS?**

- "Criminalization" refers to laws that prohibit or severely restrict one's ability to engage in necessary life-sustaining activities in public, even when that person has no reasonable alternative.
- These laws are intended to purge unhoused people from public spaces.
- Homeless persons have no alternative but to participate in unavoidable human activities in public spaces.
- Criminalization only serves to perpetuate homelessness because persons with criminal records have difficulties finding housing or employment to pay for housing.

## **THERE ARE MANY CAUSES AND MYTHS ABOUT THE HOMELESS POPULATION**

- Criminalization is fueled by FEAR, STEREOTYPES, AND DISCRIMINATION.
- The causes of homelessness have nothing to do with a voluntary choice.
- A person who is homeless is no more likely to be a criminal than a housed person, with one legal exception: sleeping ordinances.
- Criminalization disproportionately harms already marginalized populations, including African and Native Americans, persons with disabilities, and domestic violence survivors.
- Veterans often suffer homelessness due to the trauma suffered in military service.
- A 2021 study from the University of Chicago estimated that 53% of people living in homeless shelters and 40% of unsheltered people were employed, either full or part-time
- It is harder to obtain or maintain employment without a permanent address to sleep, prepare meals, shower and transportation.
- According to a 2022 U.S. Housing and Urban Development (HUD) report, 21% of the homeless population reported having a serious mental illness.

## **THE CONNECTION BETWEEN HOMELESSNESS AND THE LACK OF AFFORDABLE HOUSING**

- Recent research found that a shortage of affordable housing is the greatest single predictor of higher rates of homelessness in a community.
- Low income and disabled persons cannot afford to pay fair market rent.
- For persons who live on disability payments, market rate housing is out of reach.
- A person living on Supplemental Security Income (SSI) income of \$914/month
- There are many barriers to accessing housing including:
  - credit and background checks,
  - security deposits and application fees,
  - source of income discrimination such as people with housing vouchers
- Studies have shown that Permanent Supportive Housing with services is an effective and cost-effective solution for addressing homelessness.

## **THE EVENTS THAT LED TO THE MARTIN v. CITY OF BOISE**

The event that led me to file the Martin case was the City's takeover of the shelter and the eviction of all the men, women and children so the City could lease the building to a religious organization

The City pass an Ordinance with a discriminatory "men only" shelter provision

The religious organization had a "pray to stay" policy and subjected residents to religious indoctrination in their religious faith.

When the organization took over the previous residents had no alternative but to sleep outside.

This led to homeless “sweeps” by police officers and the issuance of camping citation and the jailing and fining of persons who had no alternative shelter.

In 2009 the Complaint was filed under the 8<sup>th</sup> Amendment.

The district court dismissed the complaint as moot because the City had amended the Camping Ordinance and under the Rooker-Feldman doctrine.

The Ninth Circuit reversed and remanded.

The district court dismissed it a second time on standing and under the *Heck v. Humphrey* doctrine requiring a person appeal the criminal conviction.

The Ninth Circuit reversed and indicated the City ‘s criminalization of the status of homelessness violated the 8<sup>th</sup> Amendment

The Supreme Court denied cert. in 2019

The City settled and agreed to amend the Ordinances to comply with the *Martin* principles.

#### **BOISE’S POPULATION IS 240,00 AND A COUNTY POPULATION OF 525,000**

- The vacancy rate for all residential rental properties in Boise is 2.73%.
- The City’s Housing Needs Analysis 2021 estimated that 2,145 affordable units were needed to be built each year through 2030 to meet the current and projected growth.
- Point in Time (“PIT”) Count on a single day counted 687 unhoused persons.
- There is one low barrier shelter
- There is one religious’ provider with two shelters that separates even married women with children from men.
- It had length of stay limitation and religious requirements.
- In 2006 City cited hundreds of homeless persons under “Camping” and “Disorderly Conduct” Ordinances for sleeping in public places when there was no alternative shelter.
- In 2009 the Complaint was filed challenging Boise’s criminalization of their status as homeless under the 8th Amendment.

## **BOISE'S CAMPING AND DISORDERLY CONDUCT ORDINANCES**

- **"Camping Ordinance"** makes it a misdemeanor to use "any of the streets, sidewalks, parks, or public places as a camping place at any time."
- The Camping Ordinance defines "camping" as "the use of public property as a temporary or permanent place of dwelling, lodging, or residence."
- The **"Disorderly Conduct Ordinance"** bans "[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private . . . without the permission of the owner or person entitled to possession or in control thereof."

## **JOHNSON V. CITY OF GRANTS PASS, OREGON filed in 2018**

- The City had an estimated population of 38,000.
- An estimated rental housing vacancy rate of 1%.
- Wait list for Housing Choice Vouchers that subsidized rent was 2,500 applicants
- Point in Time ("PIT") Count counted 602 unhoused persons.
- The number of unhoused persons outnumbered the available beds.
- The only shelter was a Rescue Mission like Boise separated women with children and from men
- Required unpaid work and Christian Church attendance

Grants Pass's three Ordinances prohibiting camping and sleeping in public areas including:

- Sleeping "on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety." (**Anti-sleeping Ordinance**)
- "Camping" on "any sidewalk, street, alley, lane, public right of way, park, bench, or any other publicly owned bridge or viaduct." (**Anti-camping Ordinance**)
- Camping in any of the City's parks. (**Park Exclusion Ordinance**)
- The Ordinances resulted in homeless persons incurring hundreds of dollars in fines, being barred from City property, and an "exclusion order" which is subject to criminal prosecution.

## **8TH AMENDMENT AND THE STATUS OF BEING HOMELESS**

The 9th Circuit in the *Martin* and *Grant Pass* held it was a violation of the 8th Amendment to prosecute and impose criminal penalties on involuntarily homeless persons on public property when there is greater number of homeless individuals than the number of available beds.

The Court relied upon the Supreme Court's 1962 decision in *Robinson v. California* to find it was unconstitutional to make it a criminal offense for the status of being addicted to narcotics. 370 U.S. 660 (1962).

The 9th Circuit held the conduct being criminalized was involuntary and inseparable from the status of being homeless because “humans are biologically compelled to rest, whether by sitting, lying, or sleeping.”

City was not required to provide housing or shelters for the homeless or allow anyone to sit, lie, or sleep on the streets at any time or at any place and an unhoused person could be charge with other criminal offenses.

**IN GRANT PASS THE SUPREME COURT HELD:**

Public camping ordinances do not criminalize the status of being homeless so *Robinson* was not implicated.

A person does not violate the Grant Pass Ordinances simply by being homeless only by engaging in the “act” of illegally camping in public places with a blanket.

The Court observed that questions such as what constitutes “involuntary” homelessness or when shelter is unavailable cannot be found in the Cruel and Unusual Punishments Clause.

The Court found the 8<sup>th</sup> Amendment does not grant federal judges the power to dictate policy solutions to the complex problem of homelessness and take away this responsibility from the people and their elected officials.

The Court found *Martin’s* involuntary homeless test, where the number of unhoused persons exceed the number of beds was “unworkable” and impossible to administer in practice.

*Martin* “paralyzed” communities and prevented the implementation of policies to address homelessness within the limits of their resources and other needs.

States and cities are free to adopt both protections and limitations on public camping. (dissent references the Oregon statute).

Oregon has statutorily adopted *Martin’s* principles and the criminal “necessity” defense.

- A law that regulates the acts of sitting, lying, sleeping, or keeping warm outdoors on public property that is open to the public must be *objectively reasonable* as to time, place and manner to persons experiencing homelessness.
- It is an *affirmative defense* if the law is not objectively reasonable.
- Reasonableness is determined based upon the totality of circumstances including the impact on persons experiencing homelessness.
- A political subdivision *may allow overnight camping in vehicles and may impose reasonable conditions such as the maximum number of vehicles allowed.*
- Must provide access to sanitary and trash facilities

## **THE SUPREME COURT IN GRANT PASS DID NOT CONSIDER:**

Sleep is a biological necessity, not a crime.

The Grant Pass Ordinances' purpose, text, and enforcement target status of homelessness, not conduct and the definition of "campsite" is a "proxy" targeting the status of homeless.

The only way a homeless person can comply with Ordinances is to leave their home town or be criminally punished and excluded.

*The Ordinances were adopted after a special City Council meeting called to address the homeless population.*

*While the Court indicated the Ordinance could be applied to anyone, the Deputy Chief of Police testified he was not aware of any non-homeless person being cited under the Ordinances.*

The Ordinances do not apply unless bedding is placed to maintain a temporary place to live.

Grant Pass has no public shelters.

*Martin* was a narrow holding because even if shelter is unavailable cities can regulate the particular time, location and manner of public sleeping.

## **THE COURT LEFT OPEN DEFENSES: IT AIN'T OVER TILL IT'S OVER (YOGI BERRA)**

State Constitutional Protections

Necessity Defense under state law

8th Amendment and the Due Process Clause: whether a fine serves no remedial purpose and was excessively disproportionate to the offense.

## **BOISE HAS NOT BEEN "PARALYZED" AND IS ADDRESSING HOMELESSNESS**

The City Council unanimously approved \$5.5 million for a new 95-unit addition to the existing Supportive Housing facility which opened in 2018 with 40 apartments.

This development is specifically for residents who have been living on the streets for years.

These units come with supportive services, like mental health counseling, addiction support services and case managers to keep residents off the streets permanently.

The City is also seeking other solutions because rents have risen to be unaffordable for low come residents.

The City has entered a public-private homelessness partnership to construct a minimum of five affordable housing projects on City owned land in the coming years.

The City's is constructing new housing units as part of the:

- reconstruction of a downtown Fire Station
- the redevelopment of the city's current affordable housing units, and
- the relocation of the city's maintenance facilities to allow for housing development.

The City has committed \$8 million to acquire 48 new permanent homes to address family homelessness

The City has assisted 841 families with children to prevent homelessness with an eviction prevention program

#### **MISSOULA, MONTANA RECENTLY PASSED NEW CAMPING ORDINANCES**

- Missoula has an estimated population of 80,000.
- It has identified 659 unhoused persons registered in HMIS (Homeless Management Information System)
- There are 315 available shelter beds.
- Vacancy rate for all residential rental properties is 4.4%.
- A Temporary Safe Outdoor Space (TSOS) served 101 people in 2023
- Over 400 units of supportive housing and non-market rental units were added in 2023

The new Camping Ordinance was adopted in June 2024 to addresses homelessness

- An unhoused person can camp in a vehicle on a public street for up to 90 days under a permit system without moving to a different street with some specific location exceptions
- The City plans to develop 30 clean, safe, and sanitary camping and safe parking sites on City property
  - Camping limited to 8 PM and 8 AM daily
  - Must remove all structures and property until 8 PM
    - ***THIS IS A PROBLEM:*** 8 PM is too late already dark, no storage, conflicts with work schedule, winter weather, where will people go during the day
  - Has a site monitoring and enforcement process to minimize adverse impacts

#### **LOCALITIES HAVE ADDRESSED HOMELESSNES WITHOUT CRIMINALIZING SLEEPING**

Voters, in communities of all sizes and political leanings, have approved ballot measures to dedicate resources to affordable housing, strengthen tenant protections, and invest in solutions to homelessness.

Voters defeated harmful measures that would have undermined tenant protections or curbed the development of affordable homes.

### HOUSING BOND MEASURES

- Voters in Rhode Island passed a [statewide bond measure](#), Question 3, that will dedicate \$120 million to housing and community revitalization, including \$80 million towards affordable housing. Housing Network of Rhode Island, an NLIHC state partner and *Our Homes, Our Votes* pilot community partner, and the Homes RI Coalition played a key role in the campaign. The measure passed with 65.6 percent of voters' support.
- Local bond measures in Asheville, Charlotte, and Chapel Hill, NC, will collectively invest \$135 million in affordable housing. Asheville passed a \$20 million affordable housing bond with [70.9 percent](#) of voters' support; Charlotte passed a \$100 million affordable housing bond with [63.6 percent](#) of voters' support; and Chapel Hill passed a \$15 million affordable housing bond with [72.9 percent](#) of voters' support.
- Baltimore, MD, approved a \$20 million affordable housing bond with [83.4 percent](#) of voters' support.
- Bernalillo County, NM, approved a [\\$1.7 million bond](#) to remodel and improve public housing. [69.3 percent of voters](#) supported the measure.
- **San Francisco, CA**, passed a \$390 million bond to finance community health and medical facilities, including temporary shelters. Monterey Peninsula, CA, and San Jose, CA, each passed comprehensive school district bonds that will cover a variety of education-related projects, including affordable housing for teachers and staff.

### TAXES AND FEES

- [Measure A](#), a half-cent sales tax that would raise \$1 billion annually for homelessness prevention, housing, and mental health services, passed in **Los Angeles County**, with 55.8 percent of voters' support. The Southern California Association of Nonprofit Housing (SCANPH), an NLIHC state partner and *Our Homes, Our Votes* pilot community partner, and the Residents United Network–Los Angeles were leaders in the organizing effort to pass Measure A.
- Voters in St. Louis, MO, approved [Proposition S](#), which establishes a 3 percent hotel tax that will dedicate at least half of its proceeds to the Affordable Housing Trust Fund and other affordable housing initiatives. The measure passed with 69 percent of voters' approval.



- Ingham County, MI, passed a four-year property tax increase to support its Housing Trust Fund, which will replace federal ARPA dollars used to establish the fund. The revenues will be used for affordable housing development, downpayment assistance, and programs for unhoused residents. The measure passed with [61.8 percent](#) of voters' support.
- Voters in Lawrence, KS approved a half-cent sales tax increase, with the revenues to be divided between affordable housing projects and emergency shelter/homelessness services. The tax is anticipated to raise about \$2.5 million annually. [53.3 percent](#) of voters approved the measure.
- Avon, CO, approved a 4 percent use tax on construction materials, which will raise an estimated \$4 million for community housing projects. [53 percent](#) of voters supported the measure.
- Montrose, CO, voted to raise its hotel room tax rate from 0.9 percent to 6 percent. The new revenues will fund affordable housing, childcare, and other projects to mitigate the impact of tourism. [51.6 percent](#) of voters approved the measure.
- Mt. Crusted Butte, CO, voted to raise its lodging tax from 2.9 percent to 4.9 percent, with revenues to be invested in community housing projects. [69.5 percent](#) of voters approved the measure.
- Pitkin County, CO, passed a property tax increase that will generate an estimated \$8.5 million annually for affordable housing (including acquisition, construction, and conversion of units into deed-restricted affordable housing), mental health care, and senior services. [59.5 percent](#) of voters approved the measure.
- Townsend, Swampscott, Sheffield, and Winchester, MA, each voted to adopt the Community Preservation Act (CPA), which provides state matching funds for municipalities that enact a property tax surcharge to raise local resources. Community preservation funds can be spent on accessible housing, open space protection, and historic preservation. The measure passed with [55.1 percent](#) of voters' support in Townsend, [55.6 percent](#) in Swampscott, and [53.5 percent](#) in Winchester.
- **Berkeley, CA**, approved [Measure W](#), which amends the city's existing property transfer tax to create a four-tier structure that will raise an additional \$2 to \$4 million annually for homeless services. Measure W also makes the property transfer tax permanent. The measure passed with 58.2 percent of voters' support.
- **Santa Barbara, CA**, passed Measure I, a half-cent sales tax increase to fund a range of government services. City council staff named contributions to the city's local Housing Trust Fund, improving housing affordability, and addressing homelessness as [priority uses](#) for the new revenues. The measure passed with [63 percent](#) of voters' support.

- Voters in Aspen, CO, supported two separate measures to extend its 1% real estate transfer tax and 0.45% sales tax, both of which provide revenues for affordable housing programs. The twenty-year extension of the real estate transfer tax (Issue 2A) passed with [68.1 percent](#) of voters' support. The ten-year extension of the sales tax (Issue 2B) passed with [72.3 percent](#) of voters' support.
- **Mountain View, CA**, approved Measure G, which raises the property transfer tax on residential and commercial real estate valued above \$6 million. The revenues will be dedicated to affordable housing, 911 emergency response, and street repairs. [71.8 of voters](#) supported the measure.

#### **REALLOCATION AND PRESERVATION OF EXISTING RESOURCES**

- **New Orleans** voters approved a [home rule charter amendment](#) that will establish a local Housing Trust Fund. The charter amendment allocates 2 percent of the city's General Fund to the Housing Trust Fund, providing an estimated \$15 to \$20 million annually for affordable housing programs. The measure passed with 75.5 percent of voters' support.
- Voters in **San Francisco, CA**, approved [Proposition G](#), which will dedicate at least \$8.25 million annually to rental subsidies for extremely low-income seniors, families, and people with disabilities. The measure passed with 56.5 percent of voters' support.
- Voters in **East Palo Alto, CA**, overwhelmingly supported [Measure JJ](#), which will allocate funds from the city's existing 2.5% tax on gross receipts on residential units to rental assistance and other housing support. The tax raises about \$1.45 million annually. At least 30 percent of funds will be used for rental assistance for tenants, and a maximum of 20 percent of funds can be used for administration. The remaining funds may be used to support affordable homeownership, preserve affordable housing, provide rental assistance, or protect residents from displacement or homelessness. Measure JJ passed with [76.4 percent](#) of voters' support.
- **San Miguel County, CO**, voted to reallocate a portion of revenues from its Parks and Open Space Mill Levy to affordable housing development, with an estimated \$636,000 to be dedicated to affordable housing in 2025. [65 percent of voters](#) supported the measure.
- **Orange County, FL**, passed a [charter amendment](#) that enshrines the existence of the county's Affordable Housing Trust Fund, which creates and preserves affordable housing. [74 percent](#) of voters supported the measure.

## TENANT PROTECTIONS

- In **Hoboken, NJ**, voters overwhelmingly defeated a measure that would have dismantled the city's rent control protections. The measure would have allowed landlords to increase rent to market price without limitations when a current tenant moves out, in exchange for a \$2,500 per-unit contribution to the Hoboken Affordable Housing Trust Fund. [73 percent of voters](#) rejected the measure.
- In **Berkeley, CA**, [52.7 percent of voters](#) supported Measure BB, a tenant-led measure that will strengthen the city's rent stabilization ordinance and codify tenants' right to organize. [Measure BB will](#) reduce the maximum annual rent increase from 7 percent to 5 percent, remove certain exemptions from rent stabilization, strengthen just cause eviction protections, and establish tenants' right to organize with a simple majority in properties with 10 or more units and at smaller buildings with property management companies.
- Meanwhile, [62.4 percent](#) of **Berkeley** voters rejected [Measure CC](#), an alternative initiative backed by the Berkeley Property Owners Association. Measure CC would have directed 20 percent of business taxes on rental properties into a "Berkeley Housing and Homeless Protection Account" that would have paid back-rent to landlords. Measure CC also would have expanded rent control exemptions, stripped the rent board of certain powers, and raised the maximum allowable rent increase from 7 percent to 7.1 percent. While the measure would have also established tenants' right to organize, it would have required a two-thirds majority of tenants to form an association, and would not authorize the rent board to determine whether owners are conferring in good faith.
- **Old Orchard Beach, ME**, approved a rent stabilization ordinance to protect mobile homeowners from displacement. The ordinance caps annual lot rent increases at 5 percent in mobile home parks. [71.4 percent](#) of voters approved the measure.
- **Santa Ana, CA**, is on track to adopt Measure CC, which will enshrine its rent stabilization and just cause eviction protections in the city charter so that they can only be changed by voter approval, not the city council. [55.4 percent](#) of voters supported the measure.

## ZONING AND LAND USE

- In **Oroville, CA**, [58.8 percent of voters](#) supported a measure that allows the Butte County Housing Authority to develop 18 deeply affordable homes.
- Voters in **Cypress, CA**, passed Measure S, which authorizes the development of 676 additional homes in the town center, amounting to two-thirds of the units required to meet the town's Housing Element obligations under state law. The measure passed with [57.5 percent](#) of voters' approval.

- In **San Mateo, CA**, [58.7 percent](#) of voters supported Measure T, an update to the city's General Plan that will increase height and density limits in 10 areas, including neighborhoods near Caltrain stations. The increased density will enable the city to meet the targets in its Housing Element, which is required under state housing law.
- **Yorba Linda, CA**, overwhelmingly passed Measure JJ, which will zone the city to accommodate at least an additional 1,900 homes. The passage of Measure JJ will enable Yorba Linda to obtain state certification of its Housing Element. [90.4 percent](#) of voters supported the measure.
- In **Eureka, CA**, voters rejected Measure F, which would have required that new affordable housing developments on downtown city-owned parking lots include enough parking spots to replace those lost to construction. The measure also would have zoned a former middle school site to allow for potential housing development. Opponents of Measure F [noted](#) that the parking requirement would amount to a housing development ban, as the parking mandate would make housing development too expensive to be feasible. 68.3 percent of voters [rejected](#) Measure F.
- In **Snowmass, CO**, voters authorized a 79-unit workforce housing project. [55.9 percent](#) of voters supported the measure.
- In **Chaffee County, CO**, voters authorized the Chaffee Housing Authority to maintain revenues that will allow it to proceed with construction on Jane's Place, a mixed-use development that includes transitional housing. [59 percent](#) of voters supported the measure.
- In **Camden, ME**, voters approved a zoning change that will allow for the conversion of a schoolhouse into an apartment building with residences on the ground floor, paving the way for new affordable homes for teachers. [77 percent](#) of voters supported the measure.