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# Implementing *Grants Pass v. Johnson*

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When the Supreme Court ruled in favor of the City of Grants Pass, Oregon in *Grants Pass, Oregon v. Johnson* on June 28, 2024, the justices handed down one of the most influential court decisions on homelessness in recent decades. The Court, split 6-3, ruled that civil and criminal penalties for the violation of public camping ordinances did not constitute cruel or unusual punishment under the Eighth Amendment to the U.S. Constitution. The decision overturns the Court of Appeals for the Ninth Circuit's ruling in *Martin v. Boise* in 2018 that city officials could not enforce anti-camping ordinances when the number of homeless individuals exceeds the number of shelter beds available.

As the cities across the nation struggle to address homelessness in their streets, the Court's decision in *Grants Pass v. Johnson* will inevitably influence homeless policy for years to come. The importance of this decision was amplified by the executive order that California Governor Gavin Newsom issued on July 25, 2024, in which he ordered state agencies and departments to adopt policies that immediately address the state's many homeless encampments: "This executive order directs state agencies to move urgently to address dangerous encampments

while supporting and assisting the individuals living in them – and provides guidance for cities and counties to do the same. The state has been hard at work in addressing this crisis on our streets. There are simply no more excuses," said Governor Newsom. In the last several years, Governor Newsom has directed over \$24 billion to address the housing crisis, including funding to provide support and services to those living in encampments. In Fiscal Year 2022-2023, these investments helped to lift over 165,000 out of homelessness and into interim or permanent housing, according to Newsom. Still, CalMatters reports that there are approximately 186,000 homeless individuals in California, which represents the largest homeless population of any state in the nation. The issue of homelessness requires far more attention, and will likely take a number of years to address.

*Grants Pass v. Johnson* was brought to the Supreme Court after a group of homeless individuals sued the city over its public camping ordinances, which prohibited sleeping outside with bedding or shelter. The plaintiffs argued that the ordinances were unconstitutional under the Eighth Amendment's Cruel and Unusual Punishment Clause. The suit was brought following the Ninth Circuit's

ruling in *Martin v. Boise* in 2018, which prohibited the enforcement of anti-camping ordinances when a city's homeless population exceeded its available shelter beds. While Grants Pass has four temporary shelters, the plaintiffs argued that these were inadequate to house their population of nearly 600 homeless individuals. The plaintiffs declined to include a Christian shelter located in the city in its count of available beds. The plaintiffs argued because there was inadequate shelter in the city, imposing civil and criminal penalties – including fines of up to several hundred dollars and banishment from all public spaces for repeat offenders – criminalized the status of homelessness and were unconstitutional.

While the Eighth Amendment has largely been interpreted as a limitation on how punishment is administered, rather than on the types of behaviors that can be penalized, there is some precedent for the latter interpretation. In 1910, the Court ruled in *Weems v. United States* that a punishment could be unconstitutionally cruel if it was excessive in severity, and thus disproportional, to the crime committed. The Court cited a statement from Justice Stephen Field in *O'Neil v. Vermont*, which declared that the Eighth Amendment “was directed not only against punishments which inflict torture, but against all punishments which, by their excessive length or severity, are greatly disproportioned to the offenses charged.” This interpretation of the Eighth Amendment remained largely untouched until 1962, when the Court ruled in *Robinson v. California* that the Eighth Amendment prohibits the criminalization of being a drug addict. The case concerned a California law that made it a misdemeanor “to be addicted to the use of narcotics.” The petitioner, Robinson, was tried and convicted under this law when he was stopped by a police officer who found tracks on his arm from heroin use. Though Robinson denied being an addict, he was sentenced to 90 days in jail by the Municipal Court of Los Angeles, and his conviction was upheld by the LA County Superior Court. The U. S. Supreme Court, however, overturned Robinson's conviction by building on the “proportionality” principle established in *Weems*: the court recognized that addiction was a disease, and found it unconstitutional to punish someone for having a disease. As Justice Potter Stewart wrote, even “one day in prison for the ‘crime’ of having a common cold” would be cruel and unusual. Further, Justice John Harlan and Justice Stewart argued that it is unconstitutional to criminalize behavior in the absence of a guilty act.

Several years later in *Powell v. Texas* in 1968, the Supreme Court developed this position by ruling that an alcoholic could be punished for public intoxication because the act of public intoxication is distinct from the status of being an alcoholic. However, the Court also noted that Powell

was convicted because he did not successfully tie his act of public intoxication to his alcoholism. So, Powell did not dislodge the precedent of not punishing a status and its associated acts.

In *Martin v. Boise* in 2018, the Court of Appeals for the Ninth Circuit built upon the precedent established in *Robinson*. The court ruled that city officials in Boise, Idaho could not enforce anti-camping ordinances when the number of homeless individuals exceeded the number of shelter beds available. Doing so would constitute cruel and unusual punishment under the Eighth Amendment and effectively criminalize the status of homelessness. *Martin v. Boise* became precedent when the Supreme Court declined to hear an appeal of the case in 2019, until *Grants Pass* overturned this precedent in 2024. Now, the enforcement of anti-camping ordinances through civil and criminal penalties does not constitute cruel and unusual punishment, even if there are not enough shelter beds available to accommodate a city's homeless population.

### **Action in San Francisco**

San Francisco has taken some preliminary actions following the ruling in *Grants Pass v. Johnson*. Most significantly, the Ninth Circuit Court issued an order that allows for the enforcement of some public camping ordinances, as reported by the City Attorney of San Francisco. The order vacates part of an injunction from *Coalition on Homelessness v. City and County of San Francisco*, a suit launched by the ACLU of Northern California and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area in 2023. In that case, the plaintiffs alleged that the city's “decades-long failure to adequately invest in affordable housing and shelter has left many thousands of its residents unhoused, forcing them to use tents and vehicles as shelter. In the face of this mounting crisis, the City has marshaled significant resources toward unlawful and ineffective punishment rather than affordable housing and shelter.” Following the argument of this case in August 2023, a preliminary injunction was ordered to limit the city's enforcement of certain public camping ordinances. On July 8, 2024, the Ninth Circuit reversed part of this injunction following the *Grants Pass* ruling to bring San Francisco policy in line with the Supreme Court's decision. In other words, city officials are now able to enforce San Francisco's anti-camping ordinances. However, the ACLU has said that the decision in *Grants Pass* will not derail its ongoing lawsuit: only one of the thirteen claims in the lawsuit relied on *Martin v. Boise*, so the overturning of that precedent won't significantly impede the advancement of the case.

According to Mayor London Breed, San Francisco will continue to offer services to homeless individuals.

However, she says that the *Grants Pass* ruling will allow the city more flexibility and a greater degree of proactivity. “The 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. This decision recognizes that cities must have more flexibility to address challenges on our streets.”

Some critics of *Grants Pass* argue that San Francisco’s policy changes have already led to more aggressive enforcement tactics, which have had “predictably disastrous results.” According to the ACLU, the city’s increasing criminalization of homelessness is both inhumane and unproductive. “Even though the city’s shelters are at capacity and the waiting list for a placement is long, police officers and Department of Public Works (DPW) staff swept through neighborhoods rousting unhoused individuals, detaining people, confiscating their belongings, and issuing tickets for illegal lodging. But the tents often returned within days, demonstrating the futility of wasting limited public resources on an endless cycle of displacement rather than investing in stable housing.”

In addition to imposing new civil and criminal penalties for public camping, the city is taking further action to clear homeless individuals from its streets by bussing them out of the city entirely. On August 1, 2024, Mayor Breed issued the Journey Home Executive Order, which required that homeless people being swept off the street be offered a bus ticket out of town before being offered shelter, other services, or being arrested. The Journey Home program is different from the previously offered Homeward Bound program, which required that family members of homeless individuals be called before sending them on a bus to be sure they had a place to stay. Again, critics argue that this tactic won’t solve the problem of homelessness in San Francisco. “Punishing people for sleeping on the street or giving them a one-way ticket out of town won’t end the city’s homelessness crisis. San Francisco leaders must expand affordable housing and do more to prevent people from becoming homeless, like providing rental assistance and passing stronger eviction protection measures,” says a senior attorney in the ACLU’s Racial and Economic Justice Program.

### **Action in Los Angeles**

The response to the decision in *Grants Pass v. Johnson* has been less notable in Los Angeles. Following the decision, the LA City Attorney released the following statement:

“Today’s decision will significantly impact Los Angeles residents. The primary responsibility of any city is to protect public health and safety and to develop and implement policies and plans that improve conditions for residents, whether housed or unhoused. Today’s decision confirms that the City’s current actions in response to the homelessness emergency are lawful and that the City can continue its focus on balancing the use of public spaces by bringing people indoors while keeping neighborhoods safe. Nothing in this decision changes our City’s commitment to the principle that until every single person experiencing homelessness has a safe place to sleep, housing and supportive services will continue to be the top priority of the City of Los Angeles and should be the top priority for all elected leaders across our state.”

Los Angeles has made some efforts in the last few decades to increase the availability of shelter space in the city. In 2007, the Ninth Circuit ruled in *Jones v. City of Los Angeles* that an LA anti-camping ordinance was unconstitutional, as the city did not have adequate shelter space. The city was required to build an additional 1,250 units of supportive housing before it could enforce its anti-camping ordinances. In the following years, city officials and local advocates have made strong efforts to increase the availability of affordable housing in the city. In September 2023, a federal court approved Los Angeles County’s settlement with the LA Alliance for Human Rights, which granted an additional \$1.24 billion in funding to provide 3,000 shelter beds for people with mental health and substance use disorders. Still, the City Controller’s office estimates that the city can only adequately shelter about one-third of LA’s homeless population.

### **Action in the Inland Empire**

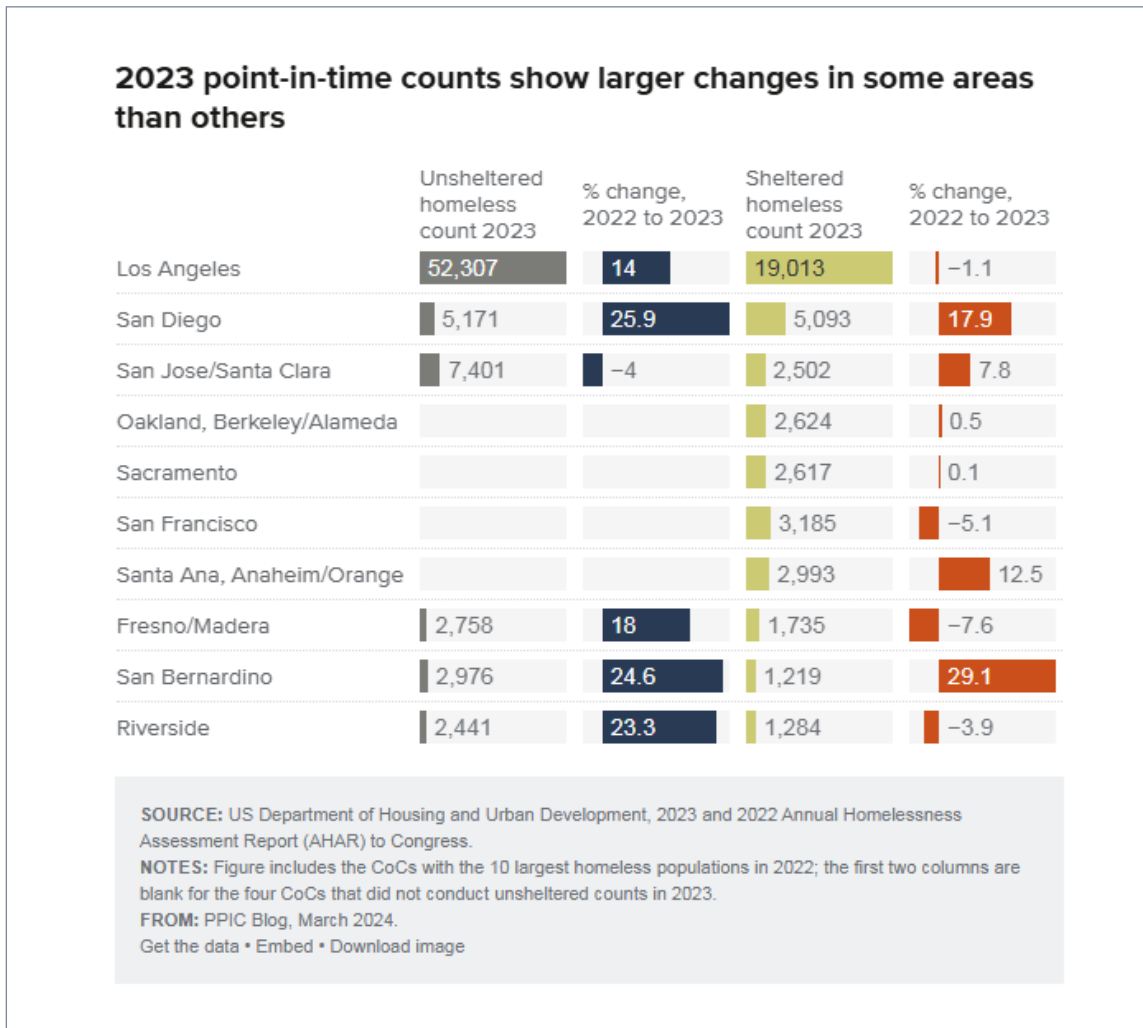
Cities in the Inland Empire have not yet taken much action since the decision in *Grants Pass v. Johnson*. Several cities have reported that they are in the process of evaluating potential policy changes following the decision and Governor Newsom’s executive order. Earlier this month, the city of Hemet reimposed its unqualified prohibition on camping and the storage of personal property on public property. The newly amended ordinance allows law enforcement officers to enforce the prohibition without first having to verify that there is a shelter bed available and that the individual is choosing not to go. Similarly, the cities of Eastvale, Beaumont, Indio, and Jurupa Valley have adopted anti-camping ordinances in the past few months in response to the *Grants Pass* ruling. Palm Springs has also adopted an anti-camping ordinance, but has modeled its approach after San Diego by creating two separate categories of public property: one in which public camping and sleeping is always prohibited, and another in which

camping and sleeping is prohibited only when there is adequate shelter available.

The U.S. Department of Housing and Urban Development has estimated the homeless populations in each of California’s Continuums of Care. *Figure 1* shows the ten CoCs with the largest homeless populations in California. The number of homeless individuals in California was over 180,000 in 2023, a figure about 7.5% higher than it was in 2022. Populations of unsheltered homeless individuals rose in most CoCs between 2022 and 2023, and estimates indicate that over two-thirds of homeless individuals in California are unsheltered. This represents the highest

share in the country. Notably, LA had about 71,320 homeless individuals in 2023, which represents about 11% of the homeless population in the United States. California CoCs have adopted a variety of measures in an attempt to mitigate the growing number of homeless individuals in the state. For example, San Jose/Santa Clara and San Diego have made efforts to increase the capacity of temporary housing, and Los Angeles has taken similar measures through its Inside Safe and Pathway home programs. However, many cities, including San Diego, are still experiencing a shortage of shelter beds; other areas, such as San Bernardino, continue to be confronted with rising rents.

**Figure 1: 10 Largest Homeless Populations in California, by Continuums of Care (2023)**



Source: Marisol Cuellar Mejia and Cesar Alesi Perez, “An Update on Homelessness in California.” Public Policy Institute of California (March 21, 2024).

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