



Homeless Enforcement in Light of *Boise, Grants Pass,* and Supreme Court Review!

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Curtis Wright, Managing Partner, Serviam by Wright LLP

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Prepared by

Curtis Wright, *Managing Partner*

SERVIAM BY WRIGHT LLP

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Curtis R. Wright, Esq.

Wright@Serviam.Law

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I. Introduction

The enforcement of laws concerning homelessness has come under intense legal scrutiny, particularly following the pivotal decisions from the Ninth Circuit in the *Martin v. City of Boise* (“*Boise*”)¹ and *Johnson v. City of Grants Pass* (“*Johnson*”)² cases. Those cases redefined the landscape for municipalities attempting to address the complex issue of homelessness while balancing constitutional rights. Unequivocally, homeless encampments have created serious health, safety, and welfare hazards for communities throughout the nation, but nowhere as much as in California.

The legal framework shifted again this year, with the United States Supreme Court (“USSC”) reversing the Ninth Circuit’s precedent in the *Grants Pass*³ case. That ruling reopened the discussion on how municipalities can manage homelessness-related enforcement actions without violating the Constitution. The issue has been further complicated in California with the Governor’s issuing of his Executive Order⁴ regarding homeless encampments.

This whitepaper explores the evolving legal framework (including the USSC’s *Grants Pass* ruling), analyzes the central constitutional arguments, and discusses practical methods for municipalities to manage homelessness enforcement. It also highlights recent developments that could influence how cities and counties address homelessness in light of these legal changes.

II. Legal Background

1. ***Boise* (2018).** In *Boise*, the Ninth Circuit ruled that municipalities cannot criminalize individuals for sleeping or camping on public property if no alternative shelter bed is available. The court held that enforcement of anti-camping ordinances in such circumstances violated the Eighth Amendment’s prohibition on cruel and unusual punishment. This ruling significantly limited local governments’ ability to remove homeless individuals from public spaces without providing adequate shelter bed options. Those shelter beds often came at extreme cost due to peripheral costs for robust equipment and furnishings, personal storage, animal control, personal safety protection, vandalism, drug use, security, disease control, medical treatment, drug treatment, mental health treatment, food, water, trash, social services, legal services, environmental controls, power, etcetera.

¹ *Martin v. City of Boise* [“*Boise*”] (9th Cir. 2018) 920 F.3d 584 [rev’d *City of Grants Pass, Oregon v. Johnson* [“*Grants Pass*”] (2024) 144 S.Ct. 2202].

² *Johnson v. City of Grants Pass* [“*Johnson*”] (9th Cir. 2022) 72 F.4th 868 [rev’d *City of Grants Pass, Oregon v. Johnson* [“*Grants Pass*”] (2024) 144 S.Ct. 2202].

³ *City of Grants Pass, Oregon v. Johnson* [“*Grants Pass*”] (2024) 144 S.Ct. 2202.

⁴ Cal. Governor’s Exec. Order No. N-1-24 (July 25, 2024).

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2. ***Johnson* (2022).** Building on the *Boise* decision, the *Johnson* case further solidified the Ninth Circuit’s position, affirming that even civil penalties, such as administrative fines, imposed on homeless individuals for sleeping outdoors are unconstitutional if the municipality does not offer sufficient shelter bed alternatives. The *Johnson* case also expanded the scope of the “right to exist” reasoning in *Boise* to rudimentary protections from the elements. The *Johnson* case expanded potential liability for cities, as it applied not only to criminal sanctions but also to civil penalties targeting homelessness, and to the right of the homeless to retain and use rudimentary protections from the elements on public property.
3. ***Grants Pass* (2024).** In a landmark decision, the USSC reversed the Ninth Circuit’s rulings in *Boise* and *Johnson* in early 2024. The USSC held that municipalities have the authority to enforce public camping bans and related ordinances, even when no alternative shelter bed is available. However, the ruling was based upon the inapplicability of the Eighth Amendment’s Cruel and Unusual Punishment clause to homeless anti-public camping enforcement. The USSC held that typical homeless anti-public camping enforcement is neither cruel nor unusual. The Court’s ruling leaves open, and arguably even invites, potential scrutiny of the same issues under the Fourteenth (Due Process) and Fourth (Seizure) Amendments.
4. **Governor’s Executive Order (2024).** Following the USSC’s *Grants Pass* decision, Governor Newsom ordered State agencies to begin humane enforcement against homeless encampments. The Executive Order only applies to State agencies, but the Governor encourages California cities and counties to follow a similar model. The Governor’s model requires 48-hour pre-removal notices, the offering of housing and supportive services, and a 60-day hold on personal property. The Executive Order is an attempt to balance the important health and safety concerns posed by homeless encampments to both the general public and the homeless alike, requiring strict enforcement, but humanely balancing it with basic notices, services, and property protections as well.

III. Key Findings in the USSC’s *Grants Pass* Decision

The USSC’s *Grants Pass* ruling outlined several key points that now govern how municipalities can approach homelessness enforcement:

1. **Narrowing of the Eighth Amendment.** The USSC clarified that the Eighth Amendment’s prohibition against cruel and unusual punishment should not be interpreted as a blanket ban on enforcing public camping ordinances. The majority opinion emphasized that the Eighth Amendment applies only in cases where enforcement involves punitive measures or inhumane treatment, and not to the general regulation of public spaces. However, the

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USSC left open whether the same right to sleep, right to rudimentary protections from the elements, and right to exist protections may exist under the Fifth, Fourteenth, and Fourth Amendments.

2. **Public Safety & Order.** The USSC recognized the legitimate interest of municipalities in maintaining public safety, order, and sanitation. It affirmed that local governments could enact and enforce anti-camping ordinances that regulate where individuals can sleep or camp, as long as those regulations are reasonable and applied fairly. Importantly, the *Grants Pass* decision gives cities and counties the authority to resume enforcement actions aimed at addressing the public health and safety concerns posed by homeless encampments.
3. **Shelter Bed Availability Not a Prerequisite for Enforcement.** Unlike the Ninth Circuit's rulings, the USSC found that enforcement of anti-camping ordinances does not require municipalities to offer alternative shelter beds. The USSC ruled that, while offering shelter is encouraged, the absence of available shelter beds does not automatically trigger constitutional violations under the Eighth Amendment.
4. **Focus on Humane Treatment.** The USSC did leave room for future challenges if enforcement actions are carried out in a manner that constitutes inhumane treatment or unnecessarily harsh conditions for those affected. Cities and counties must still ensure that their enforcement methods are not unduly punitive and that they respect the basic dignity of individuals experiencing homelessness.

IV. Recent Developments Post-Ruling

Since the USSC's reversal of *Boise* and *Johnson*, municipalities and states have begun adjusting their policies and enforcement strategies. Some of the most significant recent developments include:

1. **Restoration of Public Anti-Camping Ordinances.** Several cities in the Ninth Circuit, including Los Angeles, Seattle, and Portland, have already begun reinstating and expanding public camping ordinances that were previously unenforceable under the *Boise* precedent. These cities are now focusing on managing public encampments, with a renewed emphasis on protecting public safety and sensitive sites where camping may be prohibited outright.
2. **Revisions of State Laws.** In Oregon, lawmakers have responded by reviewing the implications of the USSC's ruling on state-level laws. While Oregon had mandated that enforcement actions be "objectively reasonable" following *Boise*, the USSC's decision provides states with the opportunity to revisit and potentially revise those types of regulations. States are undergoing reviews to adjust their legal frameworks.

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3. **New Challenges for Advocacy Groups.** Homeless advocacy organizations have expressed concern over the ruling, arguing that it may lead to an increase in the displacement of homeless individuals and exacerbate homelessness without addressing its root causes. Several groups are preparing new legal challenges, particularly focused on ensuring that enforcement actions do not lead to inhumane treatment or disproportionately affect vulnerable populations. The USSC’s ruling in *Grants Pass* expressly reserved the issue of whether these challenges may be brought under the Fifth, Fourteenth, and Fourth Amendments based on Due Process and Seizure protections.
4. **Increased Use of Alternative Enforcement Strategies.** While the USSC ruling allows for more flexibility, some cities are taking a cautious approach by developing non-punitive enforcement strategies. Programs that emphasize providing services, safe parking areas, and designated camping zones are gaining traction, as they balance enforcement with humanitarian considerations. For example, San Francisco and Denver have both expanded “safe camping” sites, which allow homeless individuals to set up temporary shelter in designated areas without the fear of immediate enforcement actions.
5. **Governor’s Homeless Encampment Enforcement Executive Order.** As mentioned above, Governor Newsom has already issued an Executive Order following the USSC’s *Grants Pass* ruling. The Executive Order only addresses homeless “encampments” (not all homeless public camping), and it only applies to State agencies. However, the Governor encourages cities and counties to follow the same model. The Governor’s Order emphasizes effective but humane enforcement, with a tight 48-hour or less timeline combined with the offering of housing and support services as well as storage of personal property for up to 60-days. Of course, that approach would have worked under the previous *Boise* and *Johnson* rulings as well, and the Order does not address how to overcome the extreme costs associated with providing the recommended housing and supportive services.

V. Constitutional & Public Policy Arguments Post-Ruling

The USSC’s *Grants Pass* decision reignites the constitutional debate surrounding homelessness enforcement, particularly as it pertains to the balance between public safety and individual rights. Key arguments on both sides include:

1. **Support for the *Grants Pass* Ruling:**
 - **Municipal Authority Restored.** Proponents of the ruling argue that it appropriately restores the power of municipalities to manage public spaces and address the negative externalities of homelessness, such as public health hazards, economic impacts on local businesses, and the safety of the unhoused.

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- **Flexibility in Enforcement.** The decision provides local governments with the legal clarity they need to enforce ordinances without being constrained by the availability of shelter beds. This flexibility is seen as crucial in managing growing homelessness populations and reclaiming public spaces for broader community use.
- **Democratic Experiment.** The ruling will allow different jurisdictions to test various approaches that will allow the political process to resolve what solutions work best by region. Through differentiated experimentation, diverse jurisdictions will find and test new and creative solutions to address an unsolved systemic problem.

2. Criticism of the Ruling:

- **Risk of Inhumane Treatment.** Opponents of the ruling argue that it risks criminalizing poverty and disproportionately affects vulnerable populations. Advocacy groups fear that cities and counties may resort to aggressive enforcement tactics without addressing the systemic causes of homelessness, such as a lack of affordable housing, mental health services, and employment opportunities.
- **Potential for Increased Litigation.** The ruling expressly leaves open the ability for advocacy groups to challenge the exact same issues under the Due Process and Seizure clauses of the Fifth, Fourteenth, and Fourth Amendments. Further, advocacy groups may still challenge specific enforcement actions on the grounds of inhumane treatment or violations of local and state regulations. The ruling leaves open the possibility of lawsuits based on the manner in which ordinances are enforced, particularly if they are seen as targeting homeless individuals unfairly.

VI. Practical Impacts of the USSC's Decision

The USSC's *Grants Pass* ruling has created a more favorable environment for municipalities to resume enforcing public anti-camping ordinances. Key practical impacts include:

- **Reinstatement of Ordinances.** Many cities and counties are already reintroducing and strengthening their anti-public camping regulations, particularly in sensitive areas where public safety concerns are high. These ordinances are likely to focus on regulating specific sensitive areas, such as government service sites, schools, parks, and business districts.
- **Increased Focus on Zoning & Public Health.** Cities and counties may implement more nuanced zoning policies to determine where camping can and cannot occur, with a focus

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on maintaining public health and safety. These policies may also be accompanied by increased sanitation measures in areas with high homeless populations.

- **Collaborative Service-Based Approaches.** While enforcement flexibility has been restored, some cities and counties are continuing to focus on outreach programs and collaborations with non-profits and service providers to offer housing, mental health services, and job training to homeless individuals. These programs are increasingly seen as essential to reducing the long-term strain on public services and addressing the root causes of homelessness.

VII. Conclusion

The USSC's reversal of the Ninth Circuit's *Boise* and *Johnson* rulings in the *Grants Pass* case marks a significant shift in how municipalities can address homelessness enforcement. By granting cities and counties more flexibility to regulate public spaces and enforce ordinances, the ruling offers municipalities a broader range of tools to address the challenges posed by homelessness. However, the ruling also raises new questions about how enforcement can be balanced with compassion and respect for the rights of homeless individuals. As emphasized by Governor Newsom's Executive Order on homeless encampment enforcement, cities and counties must now navigate these complex issues by implementing enforcement strategies that protect public health and safety while ensuring that individuals experiencing homelessness are treated humanely.

As the legal landscape continues to evolve, municipalities will need to remain mindful of both the constitutional and public policy dimensions of this critical issue. While the USSC's ruling was immediately favorable for local anti-public camping enforcement, the USSC left room for the Ninth Circuit and the State Legislature to reinstate homeless public camping protections through legislation and through potential application of the Due Process and Seizure clauses of the Fourteenth and Fourth Amendments.