

Grants Pass v. Johnson: **A New Legal Landscape for Cities**

Presented by:

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Burke, Williams & Sorensen, LLP

- For nearly 100 years, Burke, Williams & Sorensen, LLP attorneys have advised and represented public agency clients throughout California, earning stellar reputations for providing ethical, knowledgeable, and practical legal solutions across the full scope of municipal law.
- Burke clients encompass all types of public entities including: the State agencies, counties, cities, school districts, special districts, and joint powers authorities.
- Burke has 10 full-service offices across California with 170 attorney members in 10 practice groups.
- 85 Public Law Practice Group attorney members.

Deirdre Joan Cox

- Burke partner and member of the firm's Public Law, Construction Law, and Litigation practice groups.
- Co-chair of Construction Law practice group.
- Over 20 years experience in advising on public agency construction projects and procurement contracting law, including sheltering projects for the homeless.
- Frequent lecturer and advisor on homeless issues and related municipal code administration.
- Since 2008, has served the City of Sausalito as Planning Commissioner, Councilmember, and Mayor.

Tamar M. Burke

- Burke associate and member of the firm's Public Law, Litigation, and Eminent Domain & Inverse Condemnation practice groups.
- Advises public agencies on all municipal law matters.
- Practice focus includes Public Records Act and Brown Act compliance, AB 1234 ethics issues, eminent domain, election law, homelessness issues and municipal governance.
- Reviewer and editor of the CEB Municipal Law Handbook.

Agenda

- Part I: Anti-Camping Ordinances before *Grants Pass*
- Part II: Legal landscape in California
- Part III: *Grants Pass v. Johnson*
- Part IV: Enforcement of Anti-Camping Ordinances after *Grants Pass*
- Part V: Recommendations for Anti-Camping Ordinances after *Grants Pass*

Part I: *Martin v. City of Boise*

- The 9th Circuit Court of Appeal issued a unanimous decision September 2018 in *Martin v. City of Boise*, finding that the City's prohibition against sleeping in public violates the Eighth Amendment's prohibition on cruel and unusual punishment when the homeless individuals have no access to alternative shelter.
- The Court held that the Eighth Amendment prohibits ordinance enforcement if such ordinances criminalize homeless individuals for sleeping outside when they have no access to alternative shelter.

Martin v. City of Boise

- The *Martin* decision confirmed that cities cannot enforce camping/lodging prohibitions if their local homeless population faces inadequate shelter space.
- Based on *Martin*, a city enforcing an anti-camping ordinance must have shelter space available within its own jurisdiction.
 - This was a high bar to meet for cities whose homeless populations far outnumber their available shelter space.

Martin v. City of Boise

- The Court also makes clear that its opinion does not apply to “individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.”
- Nor does the decision completely prohibit cities from banning sitting, lying, or sleeping outside at particular times or in particular locations.
- The Court further indicated that prohibitions on the obstruction of public rights-of-way or the erection of structures likely will remain permissible.

Part II: Legal Landscape in California

- State Assemblymember Tom Ammiano introduced a Homeless Person's Bill of Rights to the California Assembly in December 2012. The bill was suspended largely because of the costs of setting up new infrastructure and enforcing the new rules
- California's Homeless Bill of Rights was introduced by Senator Carol Liu in February 2015. The "Right to Rest Act," would, among other things, protect the rights of homeless people to move freely, rest, eat, perform religious observations in public space as well as protect their right to occupy a legally parked motor vehicle." No vote was ultimately rendered on the proposed legislation.
- Governor Newsom signed SB 567, the Homelessness Prevention Act, on September 30, 2023, that strengthens the 2019 Tenant Protection Act bill capping rent hikes at 10 percent and preventing landlords from evicting tenants with no legal reason.
- Existing laws provide that someone who "willfully and maliciously obstructs the free movement of any person on any street, sidewalk or other public place is guilty of a misdemeanor."

Legal Landscape in California

- Bipartisan proposed legislation – Senate Bill 1011 – would make it illegal for homeless people to form encampments near most public spaces while also creating incentives for unhoused people to use homeless shelters.
- SB 1011 would prohibit homeless encampments "within 500 feet of a public or private school, open space or major transit stop, as specified."
- In addition, SB 1011 would prohibit homeless people from "sitting, lying, sleeping or storing, using, maintaining or placing personal property upon a street or sidewalk" if there is an available homeless shelter they can go to instead.
- Violating the law could result in a misdemeanor criminal charge, but this would come "at the discretion of the prosecutor."
- The outcome of SB 1011 has been thought to depend somewhat on the outcome of the Supreme Court decision in the *Johnson v. Grants Pass* matter.

Legal Landscape in California

- SB 1011 Co-sponsor State Sen. Catherine Blakespear: Public spaces are not living spaces. People deserve to live inside, and the public deserves to use their parks, sidewalks and streets as they were designed. This bill is a step toward creating that reality."
- State Sen. Marie Alvarado-Gil: Addressing homelessness is a "shared responsibility to ensure our most vulnerable populations receive the proper care, resources and shelter to begin rebuilding their lives."

Legal Landscape in California

- Governor Newsom submitted an amicus brief in an attempt to sway the Supreme Court to allow for action against homeless encampments:
 - “While I agree with the basic principle that a city shouldn't criminalize homeless individuals for sleeping outside when they have nowhere else to go within that city's boundaries, courts continue to reach well beyond that narrow limit to block any number of reasonable efforts to protect homeless individuals and the broader public from the harms of uncontrolled encampments.”

Part III: *Grants Pass v. Johnson*

- Supreme Court overruled *Martin* with its 6-3 decision in *Grants Pass*
- Holding: criminal enforcement of anti-camping ordinances does not violate the Eighth Amendment's prohibition on Cruel and Unusual Punishment

Grants Pass – Facts

- Challenged Grants Pass, Oregon Ordinances include prohibitions on:
 - Sleeping on public sidewalks, streets, or alleyways
 - Camping in public places
 - ✓ Camping defined as setting up or remaining in or at any place with bedding/bedding material or where any stove or fire is placed for the purpose of maintaining a temporary place to live
 - Camping and overnight parking in City parks

Grants Pass – Facts

- Three anti-camping ordinances are enforced as follows:
 - First offense: \$295 fine, increasing to \$537 if unpaid
 - Second offense within 1 year: exclusion order barring the violator from the public space for 30 days
 - Violation of exclusion order: 30 days in jail + \$1,250 fine

Grants Pass – Analysis

- Overruling *Martin*, the Court reasoned that the Eighth Amendment allows the government to criminalize conduct that flows from a condition that a defendant might be powerless to change.
- The punishments for violation of the Grants Pass ordinances were neither cruel nor unusual under an historical analysis of the 8th Amendment.

Grants Pass – Analysis

- The 8th Amendment is directed at the method or kind of punishment not whether the government can criminalize a particular behavior or how the government can secure a conviction for that offense.
- The Court also criticized the Ninth Circuit's *Martin* ruling as going beyond the power of the judiciary and creating unworkable standards for cities.

The Specter of Further Challenges – Due Process Clause

- The Majority and Dissent seem to agree that a challenge the anti-camping ordinances under the Due Process Clause might find success.
 - Historically, crimes require some act undertaken with some measure of volition.
 - Anti-camping laws require proof of neither because the involuntarily homeless have no alternative.

The Specter of Further Challenges

- The Dissent lists several possible bases for future legal challenges to anti-camping ordinances
 - Vagueness challenge under the Due Process Clause
 - Excessive Fines Clause of the 8th Amendment – amount of the fine must be related to the gravity of the offense that it is designed to punish
 - Right to travel - enforcement of laws that prevent the involuntarily homeless from sleeping might also unconstitutionally burden the right to travel

Part IV: Anti-Camping Enforcement after *Grants Pass*

- *Martin* requirement that there be sufficient shelter beds for the unhoused prior to enforcement no longer applicable
- Opinion does not obviate legal risk to cities in criminally enforcing anti-camping ordinances
- Both Majority and Dissent favorably discuss Oregon's statute imposing "objective reasonableness" standard on all anti-camping ordinances

Enforcement

- Examples of objectively reasonable regulations:
 - Time based restrictions
 - E.g., no camping between sunset and sunrise
 - Location based restrictions
 - E.g., no camping high-traffic areas or no camping near public transit (due to pedestrian traffic)

Part V: Recommendations for Future Anti-Camping Ordinances

- To ensure sufficient process to unhoused populations, notice prior to relocation encouraged.
- Give as much notice as feasible that:
 - (1) the homeless individual's property needs to be removed from public property and
 - (2) the City will remove and store the property itself if the homeless individual does not comply.
- The amount of notice should be based on the circumstances of the situation.
 - 24 hours is likely sufficient notice to remove the items from public property where there is no threat to public health or safety.

Recommendations for Future Anti-Camping Ordinances

- Fines for violation of anti-camping ordinances should be reasonable to avoid challenge under the Excessive Fines Clause of the 8th Amendment.
 - The lower court in *Grants Pass* concluded that the Grants Pass fines were excessive. The Supreme Court did not opine on that issue. The Court invited the Ninth Circuit to consider the issue on remand.
- Consider comparing anti-camping fines to fines for violating other quality of life.

Recommendations for Future Anti-Camping Ordinances

- Framing anti-camping laws as tools to encourage homeless individuals to accept services and maintain safe public spaces may be one way to disarm future arguments that such laws are punitive.
- Where camping bans allow for the impoundment of tents, blankets, or other personal effects, cities should have procedures in place regarding notice, collection, and storage, as the impoundment of an unhoused individual's personal belongings is subject to the Fourth Amendment's prohibition against unreasonable search and seizure.

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QUESTIONS?



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