

# How High Court Ruling Is Shaping Homelessness Policies

By **Kathryn Kafka and Alex Merritt** (August 13, 2024)

On June 28, the U.S. Supreme Court in a 6-3 decision in *City of Grants Pass, Oregon v. Johnson* reversed controversial precedent from the U.S. Court of Appeals for the Ninth Circuit that prevented local governments from enforcing ordinances that restrict or prohibit overnight camping, parking, or sleeping on public property.[1]

In response to this decision, state and local policymakers have already started to announce new enforcement efforts and other approaches to managing homelessness. However, the court's ruling does not grant unfettered power to state or local jurisdictions.

## Reversing Ninth Circuit Precedent and Upholding Local Public Camping Ordinance

Until the Supreme Court's recent decision, local policies on homelessness were guided by two controversial rulings from the Ninth Circuit: *Martin v. Boise* and *Johnson v. City of Grants Pass*.

In *Martin*, the Ninth Circuit held in 2019 that the Eighth Amendment's restriction against cruel and unusual punishment barred cities from imposing criminal penalties for violations of public camping ordinances whenever the number of homeless individuals exceeded the number of "practically available" shelter beds in a jurisdiction.

In *Johnson*, the Ninth Circuit expanded on *Martin* and held in 2022 that a city cannot enforce its camping ban or impose fines or civil penalties unless the city has enough shelter beds for its entire population.

Affected cities and states had widely criticized these rulings, which effectively blocked the enforcement of local ordinances prohibiting or regulating camping and sleeping outdoors on public property.

However, this is no longer the case. In *Johnson*, the Supreme Court rejected these Ninth Circuit decisions as a failed "experiment" and held that ordinances prohibiting camping, overnight parking or sleeping outdoors do not violate the Eighth Amendment's protections against cruel and unusual punishment because these ordinances regulate conduct and actions, rather than mere status.

The Supreme Court focused on the practical implications of *Martin* and *Johnson*, finding that the Ninth Circuit created an unworkable and confusing test to evaluate public camping ordinances, based on subjective and vague determinations of who is "involuntarily homeless." The court also criticized judicial injunctions prohibiting the enforcement of public camping ordinances, finding that these determinations are "public policy responses" best handled by local governments and the legislature, not courts.

The court agreed with local jurisdictions that complained that the Ninth Circuit inappropriately limited available policymaking tools and undermined local efforts to address homelessness. The court emphasized that local governments have "broad power" over the



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substance and enforcement of their laws, and must be afforded "wide latitude" and "flexibility" to address homelessness.

### **Implications on Local Policy Approaches to Homelessness**

This decision has already started to transform the landscape of policy approaches to homelessness.

For instance, in reliance on the court's decision, California Gov. Gavin Newsom recently issued Executive Order N-1-24 directing state agencies and departments to adopt policies to address and remove encampments located on state property, and encouraging local governments to do the same. The order states:

In June 2024 the Supreme Court overturned Ninth Circuit Court of Appeals precedent that restricted the government's authority to enforce laws regulating encampments, recognizing that jurisdictions may tailor their enforcement practices to reflect policy-driven approaches to addressing homelessness ... with the threat of these types of injunctions removed, there is no longer any barrier to local governments utilizing the substantial resources provided by the State, in tandem with federal and local resources, to address encampments with both urgency and humanity, or excuse for not doing so.

California cities are responding to the decision and the executive order in a variety of ways. Some have started enforcing existing ordinances to clear encampments. Others are developing new legislation on public camping to be considered in the upcoming months. And still others have asserted that their policies and regulations will not change in response to this decision.

### **Limitations on Supreme Court's Decision**

Although the court's ruling authorizes the enforcement of public camping ordinances, it does not grant unfettered power to state or local jurisdictions.

The court acknowledged that public camping ordinances could still implicate other constitutional concerns, including potential violations of the due process clause. The court further noted that local governments are not required to adopt public camping ordinances and may choose to narrow such laws by imposing relevant time, place and manner restrictions.

Accordingly, local governments will likely enact and enforce public camping ordinances that include relevant time, place and manner restrictions — e.g., regulating when, where and how people sleep in public. This type of tailoring is more likely to be insulated from constitutional challenges.

In reaching its decision, the court also emphasized that the city imposes only "limited" fines and jail terms for offenders of its public camping ordinance, which applies to conduct and therefore does not criminalize the "status" of homelessness.

The court also referenced the city of Grants Pass' "multifaceted" approach to homelessness, which included "various policies aimed at 'protecting the rights, dignity, and private property of the homeless,'" such as a liaison officer charged with coordinating outreach efforts and providing information about assistance programs and resources.

So while the court's decision expands the scope of policy tools available to address homelessness, it does not authorize local jurisdictions to broadly criminalize the mere status of homelessness and otherwise ignore the issue.

Local governments seeking to enact or enforce similar public camping ordinances should continue to prioritize investing in outreach services and making alternative shelter available to those who need it, in addition to addressing critical public health and safety issues related to encampments or sleeping outdoors.

Local governments should also consider implementing a limited penalty structure for violations, similar to the public camping ordinance in Grant Pass, which imposed "only limited fines for first-time offenders, an order temporarily barring an individual from camping in a public park for repeat offenders, and a maximum sentence of 30 days in jail for those who later violate an order."

Even with these limitations, the court's decision significantly alters state and local policy approaches on homelessness, especially throughout California.

Although debates over effective strategies to address homelessness will continue to evolve, local governments are now authorized to take more aggressive actions to enforce existing ordinances — or enact new ones — prohibiting or otherwise regulating overnight camping and sleeping on public property.

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[1] City of Grants Pass v. Johnson (2024) 603 U.S. \_\_.

[2] Martin v. Boise (9th Cir. 2019) 920 F.3d 584.

[3] Johnson v. City of Grants Pass (9th Cir. 2022) 50 F.4th 787.