



citycounty insurance services  
cisoregon.org

# Is Citing the Homeless for Illegal Camping “Cruel and Unusual”?

# Cities' Questions

- Can the homeless camp anywhere?
- Can the homeless litter and urinate in public?
- Can they be forced to move to a safer location?
- What does “involuntarily” homeless mean?
- What does “adequate shelter” mean?
- What are “time, place, and manner” regulations?
- Can we “clear out” homeless camps?



# The Supreme Court Reversed the Ninth Circuit

Oregon is left with a less restrictive statute that requires “reasonable” time place and manner restrictions. ORS 195.530(2)

The Ninth Circuit ruling prohibited all enforcement of “**anti-camping ordinances** against homeless persons... when there is no other place in the City for them to go.” *Grants Pass*, 72 F.4th at 896.

# Problems with Camps

- Spread disease
- Hard drug use
- Trash/needles
- Loss of parks for kids
- Safety
  - Fires
  - Traffic & Blocked Sidewalks
- Isolated from services





# 9<sup>th</sup> Circuit's Rulings on Homeless Camping

***Martin v. City of Boise,***  
902 F.3d 1031 (9<sup>th</sup> Cir. 2018)

***Johnson v. City of Grants Pass,***  
72 F.4th 868 (9<sup>th</sup> Cir. 2023)





## ***Martin* uses the Eighth Amendment to limit cities' authority over public property.**

“ [T]he **Eighth Amendment prohibits the imposition of criminal penalties** for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Martin*, 902 F.3d at 1048.

# Johnson v. Grants Pass



- The Ninth Circuit held that the city cannot “**enforce its anti-camping ordinances** against homeless persons . . . when there is no other place in the City for them to go.” *Grants Pass*, 72 F.4th at 896.
- Gospel Mission Shelter never more than 60% full

# Grants Pass Expanded Martin

- Class Certification
- Right to protection from the elements
- “*Martin* applies to civil citations where... the civil and criminal punishments are closely intertwined.”





Ninth Circuit's  
rulings paralyzed  
local officials

- Unworkable focus on “voluntariness” and daily shelter space
- Sweeping injunctions
- Litigation risk chills new actions and programs
- Result is inaction – the problem grows worse for everyone

# *Johnson v. Grants Pass*

- Ninth Circuit denies rehearing by one vote
- Many judges highly critical of the Court's precedent



Judge Smith

**“[Martin and Johnson] use a misreading of Supreme Court precedent to require unelected federal judges—often on the basis of sloppy, mixed preliminary-injunction records—to act more like homelessness policy czars than as Article III judges applying a discernible rule of law.”**

72 F.4th at 943.

**April 22, 2024**

**Supreme Court:  
Oral Arguments  
on *Grants Pass***

- Conflict over interpretation of 8<sup>th</sup> Amendment
- Importance of allowing local policy makers to be the ones making homelessness policies

# *Johnson v. Grants Pass*

What did they decide?

- Homelessness is “acute, multifaceted, and not given to any single policy solution”
- Ninth Circuit inappropriately “limited the tools available to local governments for tackling what is a complex and difficult human issue.”







The Eighth Amendment is about **methods of punishment**—not substantive limits on what can be punished.

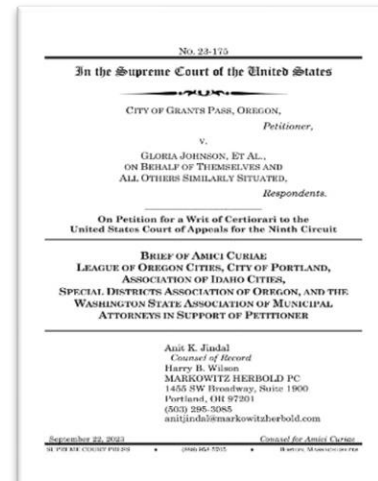
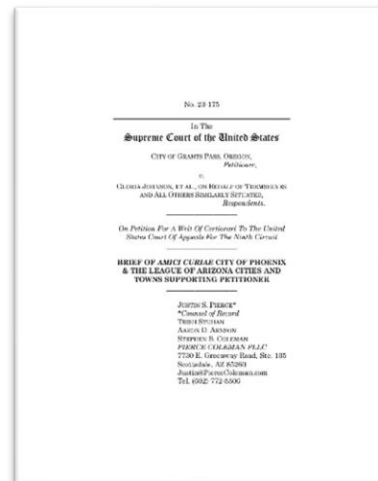
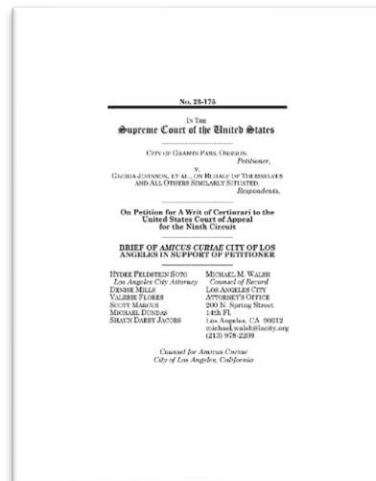
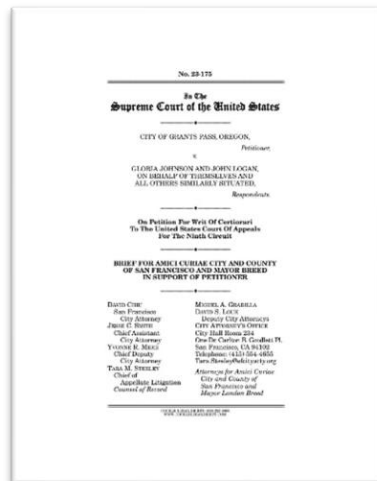
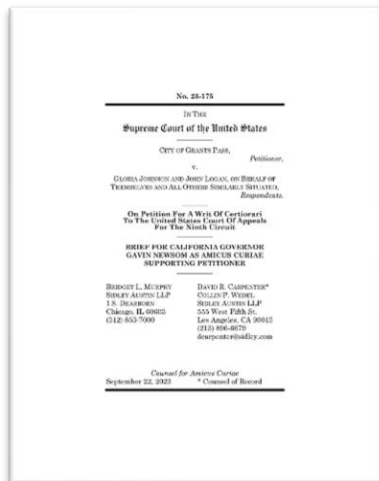
**Modest fines** and **short jail terms** are not cruel and unusual methods of punishment. Actually, rather common.



# Johnson v. Grants Pass

## Highly Diverse Set of Groups Supported USSC Petition

*Amici* include California Governor Gavin Newsom, San Francisco, Los Angeles, Phoenix, the League of Oregon Cities, and more.



# The Supreme Court Reversed the Ninth Circuit

Oregon is left with a less restrictive statute that requires “reasonable” time place and manner restrictions. ORS 195.530(2)

The Ninth Circuit ruling prohibits all enforcement of “**anti-camping ordinances** against homeless persons... when there is no other place in the City for them to go.” *Grants Pass*, 72 F.4th at 896.

# *Johnson v. Grants Pass*

**It's actually NOT over**

- Sotomayor's Dissent Laid out Road Map for Further Litigation Against Cities
  - Excessive Fines Clause
  - 14<sup>th</sup> Amendment Due Process
  - 5<sup>th</sup> Amendment Due Process

# Johnson v. Grants Pass

## It's actually NOT over

- **The next wave has already started to crash....**
- ORS 195.530 Actions to challenge the “reasonableness” of your overall policy scheme. Uncovered Motions for Declaratory Judgment
- Sec 1983 State-created danger claims
  - Can't leave them in a worse situation than you find them.
  - State-law negligence theories
- 14<sup>th</sup> Amendment Due Process
- ADA



### THIRD CLAIM FOR RELIEF

#### Violation of Americans with Disabilities Act and § 504 of the Rehabilitation Act

#### (Against Defendant Curry County)

91. Plaintiff re-alleges all previous paragraphs.

92. Defendant Curry County is subject to § 504 of the Rehabilitation Act's mandate, requiring recipients of federal funds to reasonably accommodate persons with disabilities in providing services and programs, and reasonably modify such services and programs to accomplish this purpose.

93. Defendant Curry County is subject to Title II of the ADA because it is a public entity within the meaning of Title II as a local government. Title II of the ADA and § 504 of the Rehabilitation Act have essentially the same mandate. Curry County is a public entity for § 504 and Title II purposes.

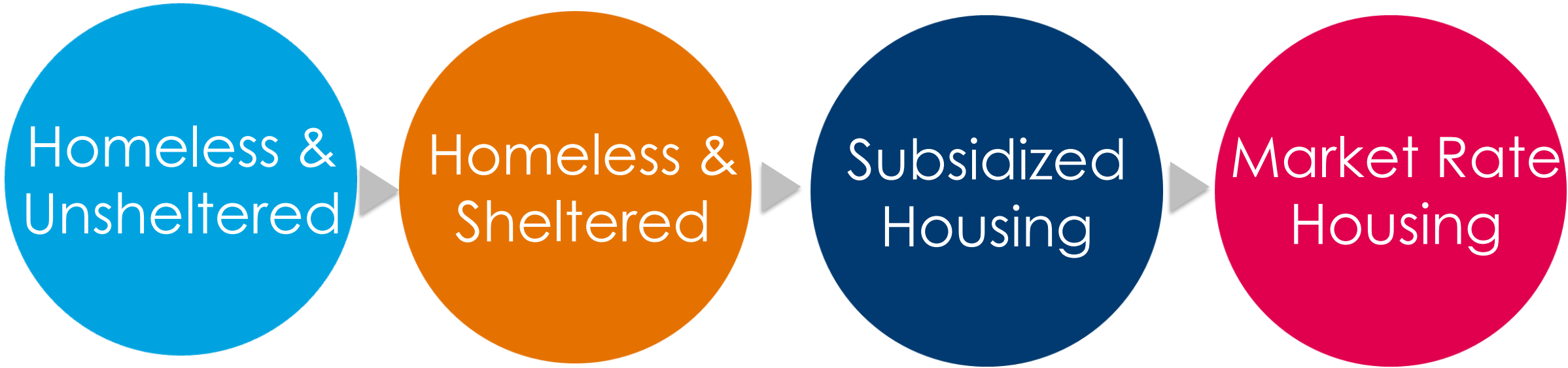
94. At all times relevant to this action, Mr. Malaer was a qualified individual with a disability within the meaning of Title II of the ADA.

95. Specifically, Mr. Malaer is permanently paralyzed, paraplegic, partially deaf, and suffers from a neurogenic bladder condition and PTSD symptoms which substantially limit one or more major life activities including but not limited to major bodily functions.

# ***RECOMMENDATIONS***

---

- Consistent enforcement of *other* conduct unrelated to sleeping/camping type activities (the 3-D's)
  - Drugs, Defecation, Dogs off Leash,
  - Littering, prostitution, etc.
- Putting opportunities for individuals to avoid the consequences of an enforcement action if they meaningfully engage with services that may aid in them getting off the street.
- Train your folks not to say insensitive stuff in public meetings, or on your email system.
- Stay involved with lobbying efforts – keep your legislature out of it





Kirk Mylander

CIS General Counsel  
kmylander@cisoregon.org



citycounty insurance services  
cisoregon.org