2024 IMLA ANNUAL MEETING— Regulating Homeless Encampments-A Bicoastal Perspective

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First part of Presentation—— Overview of *Grants Pass* decision- West Coast Perspective

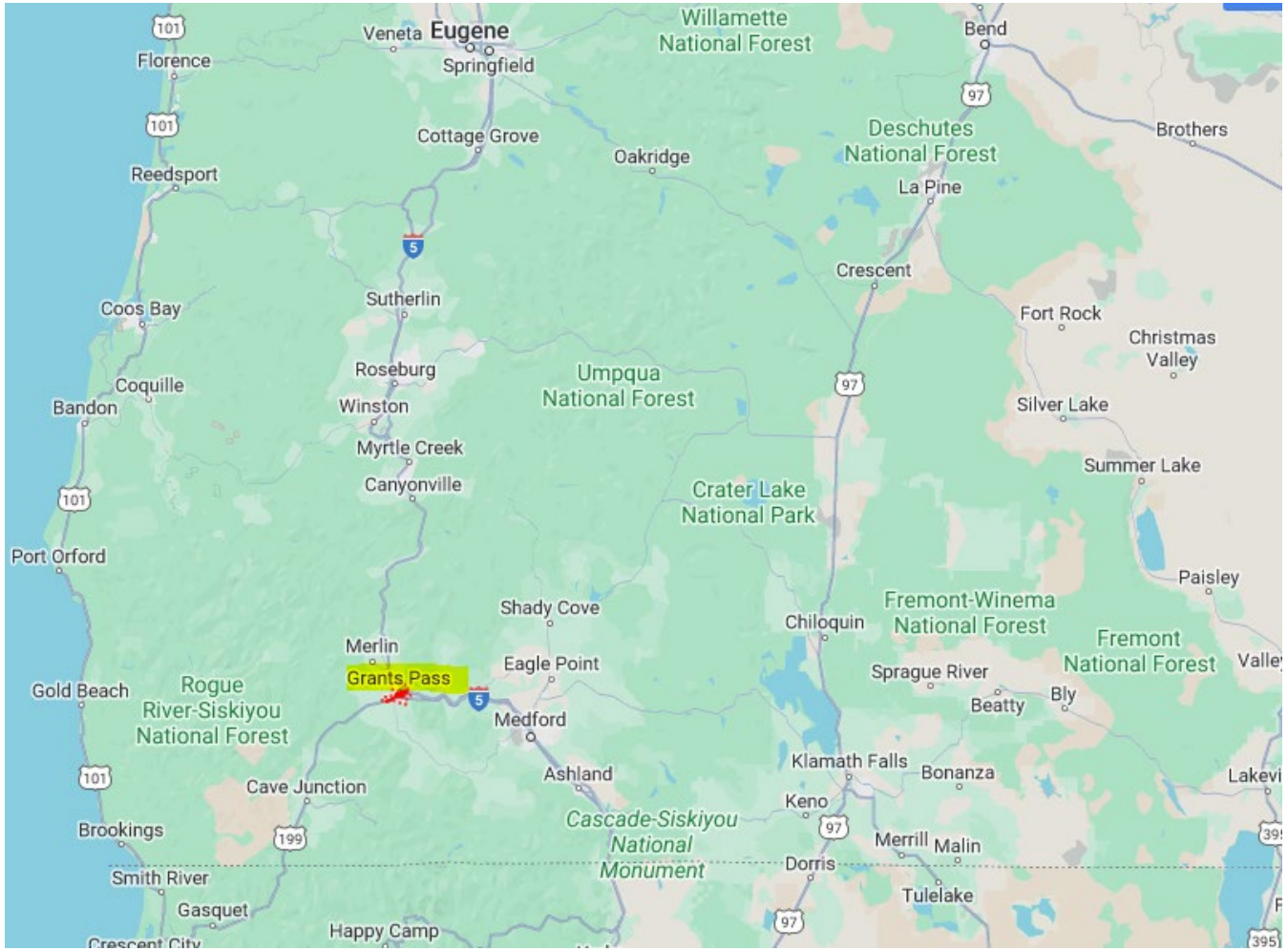
Overview of the problem

- "Many cities across the American West face a homelessness crisis." (Majority opinion in *City of Grants Pass).*
- The problem is *Not* just confined to the American West, and is increasing.
- [https://www.npr.org/homelessness-affordable-housing-crisis-rent-assistance]

National efforts do NOT appear to work, leaving Cities to face the problem.



Grants Pass-a bucolic small town in Oregon with a homeless problem of 600 out of 38,000 total.



Simply building more shelters does not work.

- "As many cities see it, even as they have expanded shelter capacity. . . ,their unsheltered populations have continued to grow.. . . Other cities tell us that 'the vast majority of their homeless populations are not actively seeking shelter and refuse all services."
- (Majority Opinion, citing Brief for Thirteen California Cities as *Amici Curiae* at 3).
- [INSERT]

Municipal Regulatory Efforts—the Example of Grants Pass

- From Grants Pass Municipal Code—
- **5.61.020 Sleeping on Sidewalks, Streets, Alleys, or Within Doorways Prohibited**
  - A. No person may sleep on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety.
  - B. No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk.
  - C. In addition to any other remedy provided by law, any person found in violation of this section may be immediately removed from the premises.

5.61.030 Camping Prohibited No person may occupy a campsite in or upon any sidewalk, street, alley, lane, public right of way, park, bench, or any other publicly-owned property or under any bridge or viaduct, unless

- (i) otherwise specifically authorized by this Code,
- (ii) by a formal declaration of the City Manager in emergency circumstances, or
- (iii) upon Council resolution, the Council may exempt a special event from the prohibitions of this section, if the Council finds such exemption to be in the public interest and consistent with Council goals and notices and in accordance with conditions imposed by the Community Services Director. Any conditions imposed will include a condition requiring that the applicant provide evidence of adequate insurance coverage and agree to indemnify the City for any liability, damage or expense incurred by the City as a result of activities of the applicant. Any findings by the Council shall specify the exact dates and location covered by the exemption.

6.46.090 Camping in Parks

- A. It is unlawful for any person to camp, as defined in GPMC Title 5 within the boundaries of the City parks.
- B. Overnight parking of vehicles shall be unlawful. For the purposes of this section, anyone who parks or leaves a vehicle parked for two consecutive hours or who remains within one of the parks as herein defined for purposes of camping as defined in this section for two consecutive hours, without permission from the City Council, between the hours of midnight and 6:00 a.m. shall be considered in violation of this Chapter.

The Ninth Circuit, relying on its own prior precedent, strikes the Mun. Code provision on public camping

- The plaintiffs, two homeless individuals, Gloria Johnson and John Logan, filed suit challenging the city's public-camping laws. They claimed . . .that the city's ordinances violated the Eighth Amendment's Cruel and Unusual Punishments Clause. And they sought to pursue their claim on behalf of a class. . .
- The [Ninth Circuit] majority agreed that "the homeless there cannot be punished for camping without 'rudimentary forms of protection from the elements.'"

The Supreme Court grants review of the Ninth Circuit Decision

- SCOTUS-QUESTION PRESENTED:
- In *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit held that the Cruel and Unusual Punishments Clause prevents cities from enforcing criminal restrictions on public camping unless the person has "access to adequate temporary shelter." *Id.* at 617 & n.8. In this case, the Ninth Circuit extended *Martin* to a classwide injunction prohibiting the City of Grants Pass from enforcing its public-camping ordinance even though civil citations. That decision cemented a conflict with the California Supreme Court and the Eleventh Circuit, which have upheld similar ordinances, and entrenched a broader split on the application of the Eighth Amendment to purportedly involuntary conduct. The Ninth Circuit nevertheless denied rehearing en banc by a 14-to-13 vote.
- The question presented is:
  - **Does the enforcement of generally applicable laws regulating camping on public property constitute "cruel and unusual punishment" prohibited by the Eighth Amendment?**

IMLA and many other Cities Filed amicus briefs

Insert screenshot of page showing amicus briefs from US Supreme Court?--It is available at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-175.html.

Key Question at Oral Argument- What if you don't prevail?

CHIEF JUSTICE ROBERTS: Counsel, what will the City do if you don't prevail here?

MS. EVANGELIS: The City's hands will be tied. It will be forced to surrender its public spaces, as it has been. Unfortunately, beds are going unused at the Gospel Rescue Mission. People are not getting the help that

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they need.

The City is under an injunction here, and it's unable to rely on these basic ordinances. And the Ninth Circuit's decisions give cities like Grants Pass no guidance about how they can navigate this very challenging area. The Ninth Circuit has effectively imposed

The Supreme Court reverses the Ninth Circuit and rejects the *Martin* line of cases.

- "Rather than criminalize mere status, Grants Pass forbids *actions* like 'occupy[ing] a campsite' on public property. . . . [I]t makes no difference whether the charged defendant is homeless, a backpacker on vacation through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building." [Maj. Opin-emphasis added]
- "At bottom, the question . . . is where the Eighth Amendment grants federal judges primary responsibility for assessing those causes [of homelessness] and devising those responses. It does not."

Key quotes

- "If the multitude of *amicus* briefs before us proves one thing, it is that the American people are still at it. Through their voluntary associates and charities, their elected representatives and appointed officials. . . they display that same energy and skill today in their efforts to address the complexities of the homelessness challenge facing the most vulnerable among us."
- [Majority opinion, slip op. at 34]

The Ninth Circuit Orders on Remand from the Supreme Court—July 8, 2024—Memo on Grants Pass & Coalition On Homelessness v. City & County of SF

NOT FOR PUBLICATION

FILED

JUL 8 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COALITION ON HOMELESSNESS; et al., Plaintiffs-Appellees, v. CITY AND COUNTY OF SAN FRANCISCO; et al., Defendants-Appellants.	No. 23-15087 D.C. No. 4:22-cv-05502-DMR MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Donna M. Ryu, Magistrate Judge, Presiding

Argued and Submitted August 23, 2023
San Francisco, California
Opinion and Memorandum Filed January 11, 2024
Opinion and Memorandum Withdrawn July 8, 2024

Before: BUMATAY, KOH, and DESAI, Circuit Judges.

Appellant City and County of San Francisco ("the City") appeals the grant of a preliminary injunction in this action brought by the Coalition on Homelessness and seven current or formerly homeless residents of San Francisco ("Plaintiffs").

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Second part of Presentation—City Attorney Tips for Creating Reasonable Regulations

The End

Any Questions?

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[INSERT ADDRESSES]

Rose _____