

GIBSON DUNN

CA MCLE Blitz

January 7 – 9, 2025

Hosted by Gibson, Dunn & Crutcher



January 7, 2025

The Constitution, Homelessness, and The Supreme Court: Post Grants Pass Victory

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The Homelessness Crisis

- More than 650,000 homeless people in the United States (over 180,000 in California alone)
- Up to 75% of unsheltered homeless suffer from mental-health condition or drug addiction
- Overdose is leading cause of death among homeless in Los Angeles, San Francisco, and Sacramento
- Crimes like assault over 3 times more likely within one city block of encampment
- More than 50% of shelter offers rejected in San Francisco, Portland, and Seattle



Martin v. Boise (2018): Used the 8th Amendment to Tie Cities' Hands



- 8th Amendment: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
- Ninth Circuit prohibited enforcement of camping ordinances if a city has fewer shelter beds than unsheltered persons
- 8th Amendment protection for sleeping on public property because it is “biologically compelled” and “an unavoidable consequence of being homeless”
- Ninth Circuit denied rehearing en banc (with several dissents), and Supreme Court declined review

Consequences of *Martin*

- Homelessness has soared in every state in the Ninth Circuit since 2018 (51% in Alaska, 46% in Idaho and Oregon)
- At least 35 *Martin*-based lawsuits (Chico, San Rafael, San Clemente, etc.)
- Cities enjoined from enforcing their camping laws (including San Francisco, Portland, Phoenix, and Grants Pass)
- West Coast diverges from rest of the country

Johnson v. Grants Pass (2022): Doubled Down on *Martin*

- Sweeping class action enjoining civil regulation of camping
- 8th Amendment right to “[r]udimentary forms of protection from the elements”
- Ninth Circuit denied rehearing en banc by slimmest margin (14-13)



We Pursued a **Three-Prong Strategy**



LAW

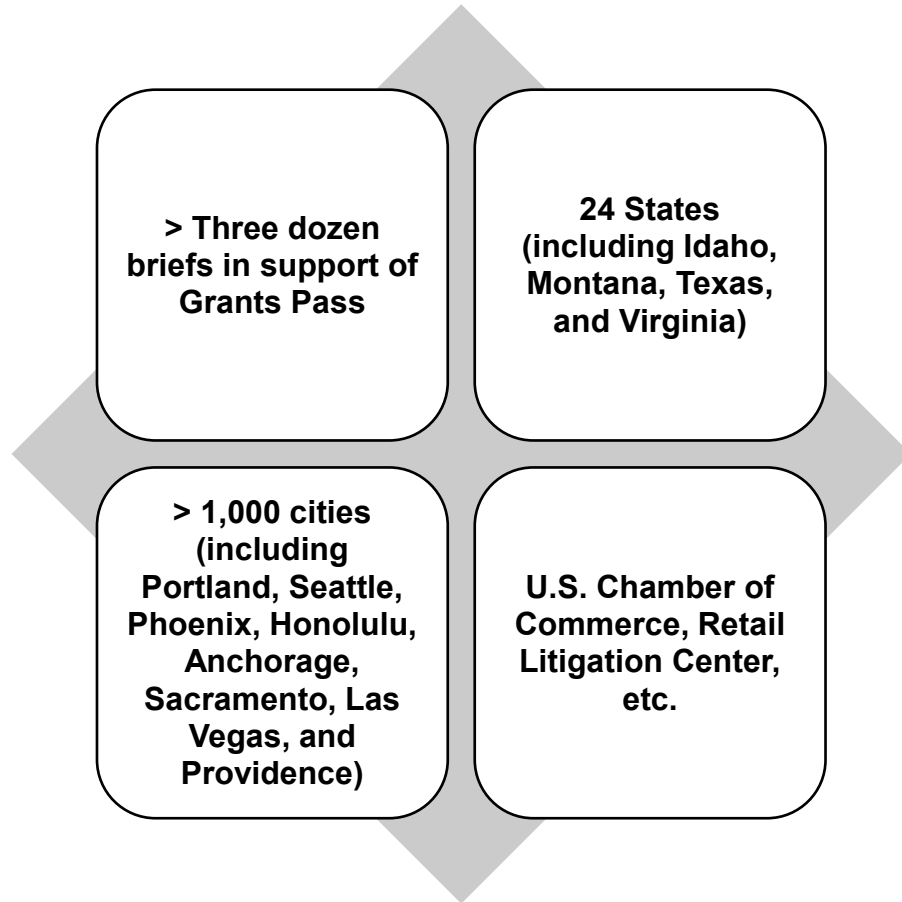


POLICY



MEDIA

Assembling a Broad Coalition of Amici Before the Supreme Court



A Broad Coalition: California & Governor Newsom



“[T]here is no compassion in stepping over people in the streets, and there is no dignity in allowing people to die in dangerous, fire-prone encampments. Hindering cities’ efforts to help their unhoused populations is as inhumane as it is unworkable.”

A Broad Coalition: San Francisco & Mayor Breed

“San Francisco’s inability to provide shelter to all unhoused individuals does not warrant judicial restrictions on the City’s ability to maintain the safety and accessibility of its public spaces. But that is what the Ninth Circuit and its lower courts have done.”



National Headlines

The New York Times

CALIFORNIA TODAY

Why an Oregon Case Before the Supreme Court Matters So Much to California

A challenge to a small Oregon city's law that imposes fines on homeless people for sleeping outdoors could have big implications for the Golden State.

THE WALL STREET JOURNAL.

OPINION REVIEW & OUTLOOK [Follow](#)

The Supreme Court Considers a Judge-Made Right to Vagrancy


The Justices hear an appeal of a Ninth Circuit ruling that makes it hard for cities to enforce public order or get treatment for addicts and the mentally ill.

By The Editorial Board [Follow](#)
April 21, 2024 12:45 pm ET

The Washington Post

Democracy Dies in Darkness

Opinion | There is no constitutional right to pitch your tent on the sidewalk

 By the Editorial Board [+ Follow](#)
April 19, 2024 at 5:58 p.m. EDT

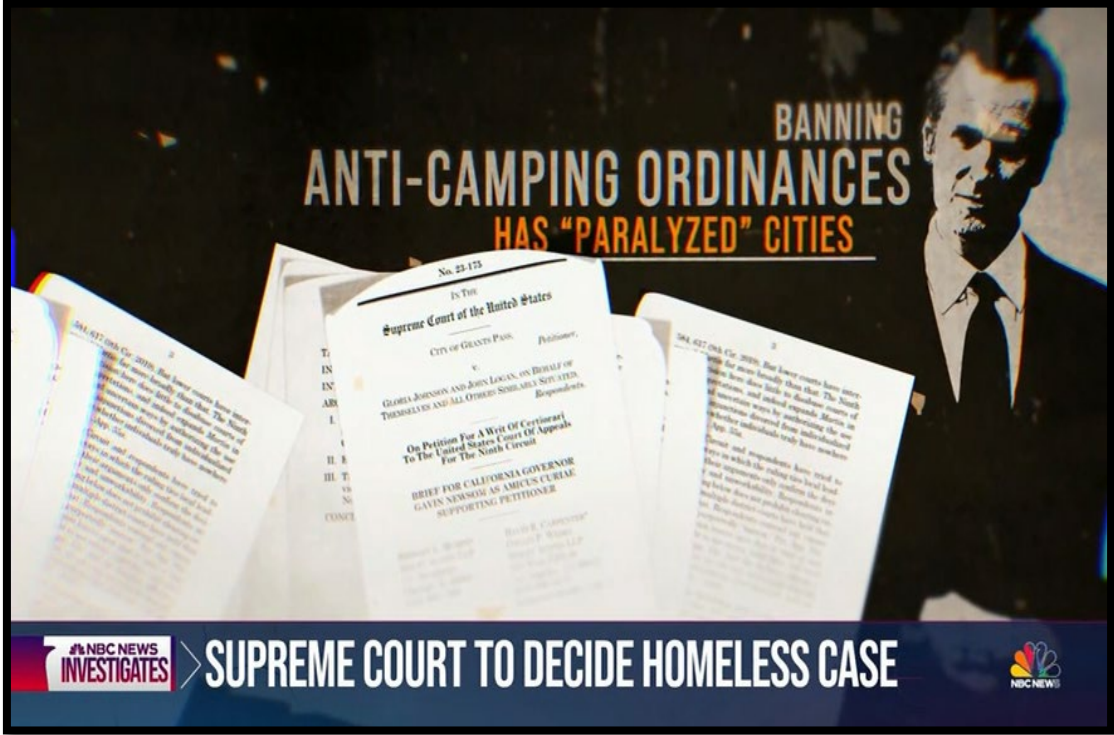
Opinions

The homeless right-to-camp issue comes to the Supreme Court

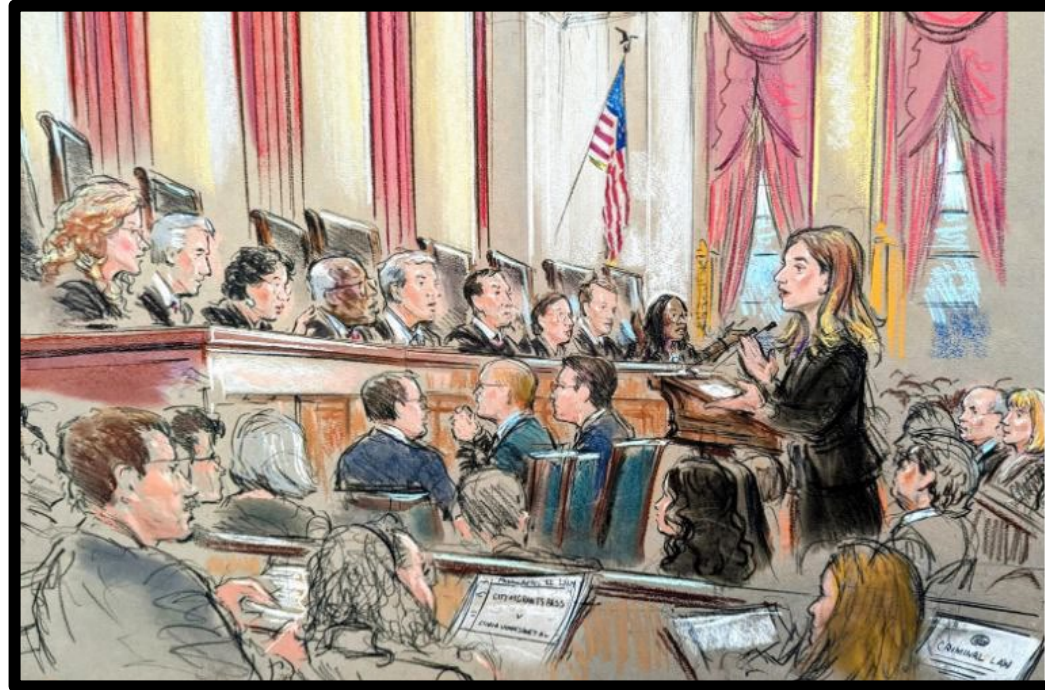
A much-reversed federal appeals court appears likely to run into trouble again over its upholding of a town's law intended to aid public health and safety.

April 19, 2024

Presenting Case to the Media



Oral Argument (April 22, 2024)



Drawing by William Hennessey

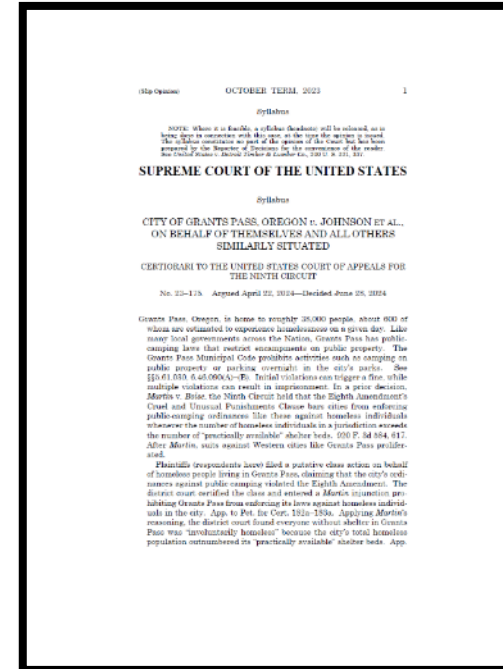
“While California has been tackling the root causes of our homelessness crisis, it’s critical that states & cities also have tools to keep our communities safe and to get people the services they need to get out of tent encampments & into safer places to live.”

- California Lieutenant Governor
Eleni Kounalakis



The Supreme Court Rules in Our Favor

- 6-3 opinion written by Justice Gorsuch
- The opinion embraced virtually all our legal and policy arguments
- 64 citations to amicus briefs we had mobilized



The Majority Notes the City's “Multifaceted Approach” to Addressing Homelessness

- Adopting “various policies aimed at ‘protecting the rights, dignity[,] and private property of the homeless’”
- Appointing a “‘homeless community liaison’ officer charged with ensuring the homeless receive information about ‘assistance programs and other resources’”
- Enacting “certain restrictions against encampments on public property”



Homeless Services of Grants Pass
AVAILABLE JUNE - AUGUST 2017



We're here when you need us.

RESIDENTIAL
GOSPEL RESCUE MISSION
Service to Residents only
Men's Residence (541) 476-0082
540 SW Foundry, Grants Pass
Women & Children (541) 474-7774
530 SW Foundry, Grants Pass

FOOD
EMERGENCY FOOD BOX SITES
Food when you need it
FISH-United Methodist Church (541) 476-0082
Corner of 7th & 'B' Streets, Grants Pass
Open Wednesday & Friday; 3:00 p.m. to 4:00 p.m.
Dorcas
1360 NE 9th Street, Grants Pass
Open Tuesday; 9:00 a.m. to 1:45 p.m.
Salvation Army
1377 Redwood Avenue, Grants Pass
Open Monday & Friday; 8:00 a.m. to 11:00 a.m.

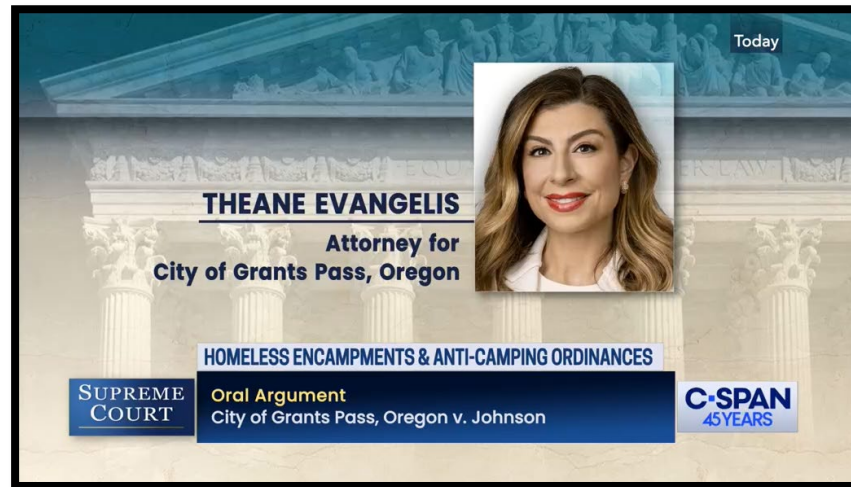
More services on back.

Our Amicus Campaign Pays Off

³Supporters of Grants Pass's petition for certiorari included: The cities of Albuquerque, Anchorage, Chico, Chino, Colorado Springs, Fillmore, Garden Grove, Glendora, Henderson, Honolulu, Huntington Beach, Las Vegas, Los Angeles, Milwaukee, Murrieta, Newport Beach, Orange, Phoenix, Placentia, Portland, Providence, Redondo Beach, Roseville, Saint Paul, San Clemente, San Diego, San Francisco, San Juan Capistrano, Seattle, Spokane, Tacoma, and Westminster; the National League of Cities, representing more than 19,000 American cities and towns; the League of California Cities, representing 477 California cities; the League of Oregon Cities, representing Oregon's 241 cities; the Association of Idaho Cities, representing Idaho's 199 cities; the League of Arizona Cities and Towns, representing all 91 incorporated Arizona municipalities; the North Dakota League of Cities, comprising 355 cities; the Counties of Honolulu, San Bernardino, San Francisco, and Orange; the National Association of Counties, which represents the Nation's 3,069 counties; the California State Association of Counties, representing California's 58 counties; the Special Districts Association of Oregon, representing all of Oregon's special districts; the Washington State Association of Municipal Attorneys, a nonprofit corporation comprising attorneys representing Washington's 281 cities and towns; the International Municipal Lawyers Association, the largest association of attorneys representing municipalities, counties, and special districts across the country; the District Attorneys of Sacramento and San Diego Counties, the California State Sheriffs' Association, the California Police Chiefs Association, and the Washington State Association of Sheriffs and Police Chiefs; California Governor Gavin Newsom and San Francisco Mayor London Breed; and a group of 20 States: Alabama, Alaska, Arkansas, Florida, Idaho, Indiana, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia.

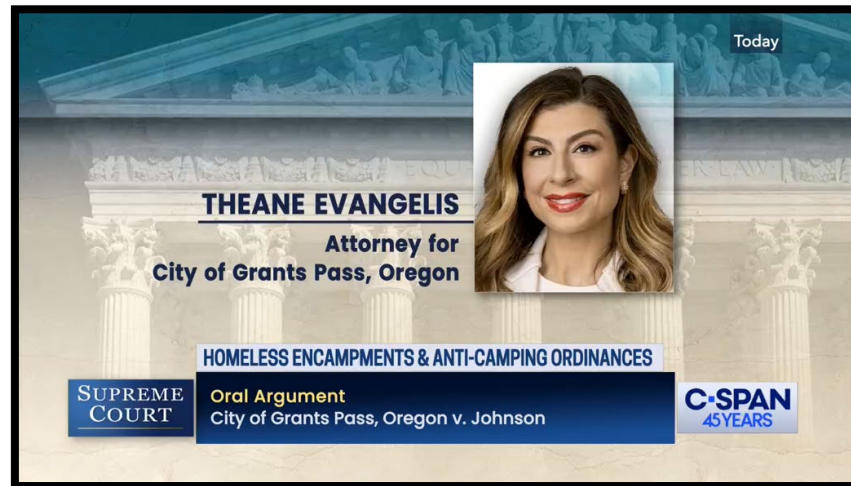


The Court Embraces Our Arguments



“The Cruel and Unusual Punishments Clause focuses on the question what ‘method or kind of punishment’ a government may impose after a criminal conviction, not on the question whether a government may criminalize particular behavior in the first place or how it may go about securing a conviction for that offense.”

The Court Embraces Our Arguments



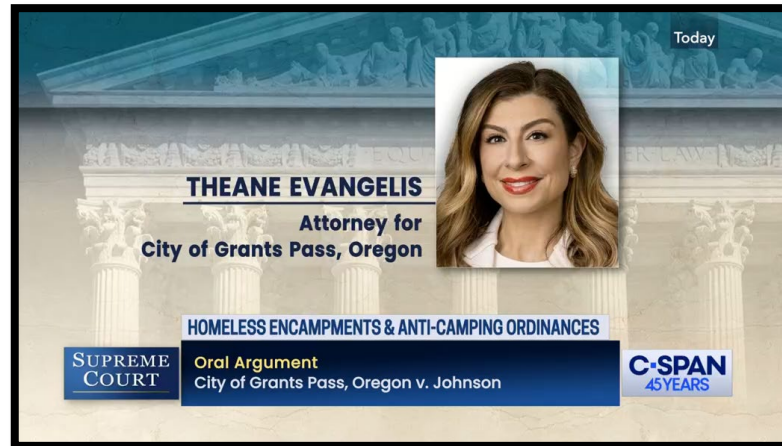
“What does it mean to be ‘involuntarily’ homeless with ‘no place to go’? What kind of ‘adequate’ shelter must a city provide to avoid being forced to allow people to camp in its parks and on its sidewalks? And what are people entitled to do and use in public spaces to ‘keep warm’ and fulfill other ‘biological necessities’? Those unavoidable questions have plunged courts and cities across the Ninth Circuit into waves of litigation.”

The Court Embraces Our Arguments

“Doubtless, the Ninth Circuit’s intervention in *Martin* was well-intended. But since the trial court entered its injunction against Grants Pass, the city shelter reports that utilization of its resources has fallen by roughly 40 percent.”

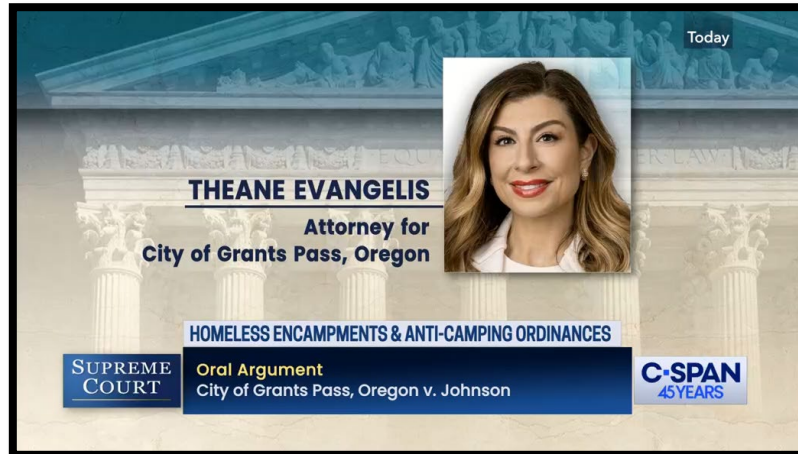


The Court Embraces Our Arguments



“Consider an example. The city of Chico, California, thought it was complying with *Martin* when it constructed an outdoor shelter facility at its municipal airport to accommodate its homeless population. . . . Still, a district court enjoined the city from enforcing its public-camping ordinance. Why? Because, in that court’s view, ‘appropriate’ shelter requires ‘indoo[r],’ not outdoor, spaces.”

The Court Embraces Our Arguments



“Homelessness is complex. Its causes are many. So may be the public policy responses required to address it. At bottom, the question this case presents is whether the Eighth Amendment grants federal judges primary responsibility for assessing those causes and devising those responses. It does not.”

Policymakers **Welcome the Decision**

“Today’s ruling by the U.S. Supreme Court provides state and local officials the definitive authority to implement and enforce policies to clear unsafe encampments from our streets. This decision removes the legal ambiguities that have tied the hands of local officials for years and limited their ability to deliver on common-sense measure to protect the safety and well-being of our communities.”



Policymakers **Welcome the Decision**



“This decision by the Supreme Court will help cities like San Francisco manage our public spaces more effectively and efficiently. San Francisco has made significant investments in shelter and housing, and we will continue to lead with offers of services from our hard-working City employees. But too often these offers are rejected, and we need to be able to enforce our laws, especially to prevent long-term encampments.”

The Decision Will Impact Americans' **Daily Lives**



**Former New York Lieutenant Governor
Betsy McCaughey in the *New York Post*.**

“Of all the 61 rulings issued by the US
Supreme Court [this] term . . . , the one most
likely to impact Americans’ daily lives . . . is . . .
Grants Pass v. Johnson”

Immediate **Impact**

The New York Times

Newsom Orders California Officials to Remove Homeless Encampments

The directive from Gov. Gavin Newsom is the nation's most sweeping response to a Supreme Court decision last month that gave local leaders greater authority to remove homeless campers.

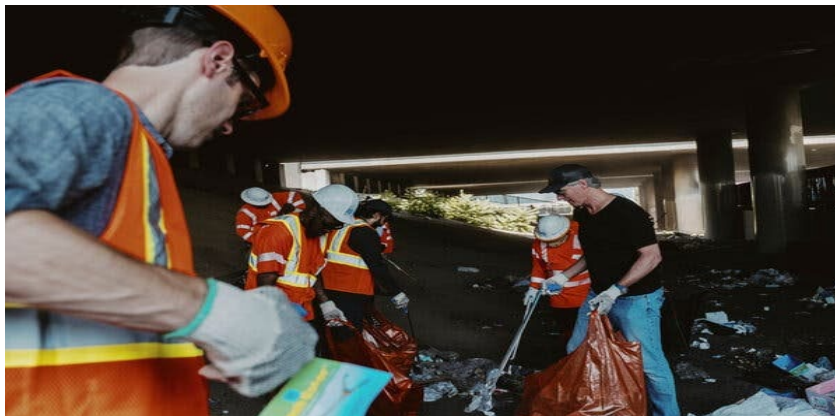


Governor Newsom: “Building on California’s ongoing work and unprecedented investments to address the decades-long issue of homelessness, Governor Gavin Newsom issued an executive order today ordering state agencies and departments to adopt clear policies that urgently address homeless encampments while respecting the dignity and well-being of all Californians.”

Immediate **Impact**

The New York Times

Newsom Clears Homeless Camps in L.A. County, Where He Wants More 'Urgency'



Immediate Impact

The New York Times



“Empowered by a recent Supreme Court decision and encouraged by Gov. Gavin Newsom,” San Francisco Mayor London Breed “vowed [that] . . . ‘San Francisco will always lead with compassion, but we cannot allow our compassion to be taken advantage of. . . . We will not be a city with a reputation for [not] being able to solve the housing and behavioral health needs of people across our country.’”

Immediate **Impact**

Expert Analysis

How High Court Ruling Is Shaping
Homelessness Policies



“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.”

Immediate Impact

Berkeley takes tougher stance on homeless encampments after Supreme Court ruling



“The City of Berkeley is making major changes to the way it handles homeless encampments by giving the City Manager’s office authority to clear out two major areas of unhoused residents that the mayor says have been problematic for years.”

As one local resident described the situation:
“Basically now, you mostly got to walk down the middle of the street because, you know, the sidewalks are blocked. I have a son in a wheelchair. If I had to bring him down here, where would his access be?”

Immediate Impact

Redondo Beach first city to sign “Good Neighbor Pledge”



“In light of the ruling, and the Court’s language, we commit to an approach that offers services and shelter as a cornerstone of our strategy. . . . [W]e pledge not to engage in practices that simply move individuals from one member city street to another. . . . [S]uch actions do not solve but only relocate the issue. . . . [W]e affirm our dedication to practices that prioritize coordination, offer services, and achieve sustainable, long-term solutions.

Immediate Impact: **Federalism in Action**

Washington state Democrat pushes to give homeless special civil rights



In Washington State, a Democratic state representative has introduced a bill that would grant the homeless “the right to survive in a nonobstructive manner” on public property and to live there when “that person has no reasonable alternative but to survive in public space and existing shelter facilities within the local government’s jurisdiction are inadequate in number or are functionally inaccessible.”

GIBSON DUNN