

MOTION BY SUPERVISORS KATHRYN BARGER
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**FILE OR JOIN AMICUS BRIEFING REGARDING JOHNSON V. CITY OF GRANTS
PASS**

In June 2023, the Los Angeles Homeless Services Authority released the results of the 2023 Greater Los Angeles Point-In-Time Homeless Count. It found that, on a given night, there were 75,518 people experiencing homelessness (PEH) in the County, with 70 percent of the PEH experiencing unsheltered homelessness. In response to the continued homelessness crisis, the County and its governmental and non-governmental partners have taken critical steps toward combating and preventing homelessness. On January 10, 2023, the County proclaimed a local emergency for homelessness in LA County, which provided additional tools such as expedited and streamlined processes for contracting and procurement, hiring, housing, services, spending, communication and outreach, and public outreach and education to combat homelessness. In addition to the existing tools, the County and local governments need to have the ability to regulate public camping to protect everyone, especially those most vulnerable and in need. Unregulated encampments can create a public health crisis and raise safety concerns to those inside and outside those encampments.

Last year, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") held in Johnson v. City of Grants Pass, 72 F.4th 868 (9th Cir. 2023) that anti-camping ordinances which provided for civil fines, an exclusion order, and eventual criminal prosecution for trespass were inconsistent with the Cruel and Unusual Punishment Clause of the Eighth Amendment when enforced against individuals with no other option but to sleep outside or in their vehicles. The Ninth Circuit also held that the city could not enforce anti-camping ordinances to the extent they prohibit "the most rudimentary precautions a homeless person might take against the elements," such as bedding materials in public spaces.

The Ninth Circuit’s previous decision in Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018), served as a backdrop for the Johnson ruling. Martin held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” Pursuant to Martin, it is an Eighth Amendment violation to criminally punish involuntarily homeless persons for sleeping in public if there is no option of sleeping indoors. In the Johnson case, the Ninth Circuit concluded that Martin also applied to civil citations, not just criminal citations, when the civil and criminal punishments are closely intertwined.

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The Johnson and Martin cases limit the range of homeless policy tools available to the County as well as other local jurisdictions as it pertains to homeless encampments and public spaces, and unless the United States Supreme Court overturns the Johnson decision, it remains law. In 2019, the County and numerous cities and counties filed an amici curiae brief to challenge the Martin ruling. However, the United States Supreme Court denied hearing the matter. Last year, the City of Grants Pass filed a petition for certiorari with the United States Supreme Court, arguing that both Martin and Johnson were wrongly decided. On September 22, 2023 the State of California, under the office of Governor Gavin Newsom, submitted an amicus brief in support of the City of Grant's Pass. Other cities and counties have filed amicus briefs in support of the petition. The Court granted the City of Grants Pass' petition on January 12, 2024. This provides Los Angeles County another opportunity to have its voice heard.

WE, THEREFORE MOVE that the Board of Supervisors instruct County Counsel to file and/or join in an amicus brief supporting the City of Grants Pass in the case of Johnson v. City of Grants Pass, seeking to reverse the lower court's ruling that ordinances regulating camping on public property constitute "cruel and unusual punishment" prohibited by the Eighth Amendment when enforced against involuntarily homeless individuals.

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