

The Aftermath of *Grants* Pass: How Permitting the Criminalization of Homelessness Will Impact Phoenix, Arizona

Sarah Kerr*



* J.D., 2026, Sandra Day O'Connor College of Law at Arizona State University. Thank you to Professor Jonathan Green for his guidance throughout the writing process, my family and friends for their endless support, and the members of *Arizona State Law Journal* for their help writing and editing this Comment.

INTRODUCTION

Homelessness is a growing national and regional problem.¹ On a single night in 2024, around 771,480 people were experiencing homelessness in the United States according to the Point-in-Time (“PIT”) count conducted by the U.S. Department of Housing and Urban Development (“HUD”).² Of those individuals, 274,224 were experiencing unsheltered homelessness,³ meaning they were primarily staying in “place[s] not designed for, or ordinarily used as, a regular sleeping accommodation for people” like bus stations or sidewalks.⁴ This PIT count reported the highest number of unhoused people since PIT counts began in 2007.⁵ Homelessness is a problem of particular importance in Arizona,⁶ and more specifically in Phoenix.⁷ The Maricopa County 2024 PIT Homelessness Count reported that 6,798 people were experiencing homelessness in the Central subregion (Phoenix).⁸ Phoenix, and cities across the United States, have struggled to find a way to respond to the growing populations of unhoused individuals.⁹

One way many cities, including Phoenix, have tried to address homelessness is by implementing and enforcing ordinances against sleeping or camping on public property.¹⁰ In *Martin v. City of Boise*, the Ninth Circuit held that a camping ordinance “impos[ing] criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them” violates the Eighth Amendment.¹¹ In *Johnson v. City of Grants Pass*, the Ninth Circuit clarified the *Martin* ruling,

1. See Editorial, *Homelessness Remains a Growing Problem in the US*, MORNING J. (Jan. 3, 2025), <https://www.morningjournalnews.com/opinion/editorials/2025/01/homelessness-remains-a-growing-problem-in-the-us> [https://perma.cc/9E7C-F2CW].

2. U.S. DEP’T OF HOUS. & URB. DEV., THE 2024 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 2 (2024), <https://www.huduser.gov/portal/sites/default/files/pdf/2024-AHAR-Part-1.pdf> [https://perma.cc/47U9-7CCC].

3. *Id.*

4. *Id.* at x.

5. *Id.* at 2.

6. See U.S. DEP’T OF HOUS. & URB. DEV., THE 2023 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 17 (2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf> [https://perma.cc/27TT-W5TB] (reporting that Arizona has the fourth-highest percentage of homeless individuals who are unsheltered in the United States).

7. See discussion *infra* Section I.C.1.

8. See MARICOPA ASS’N OF GOV’TS, 2024 POINT-IN-TIME (PIT) COUNT REPORT 4–5 (2024), <https://azmag.gov/Portals/0/Homelessness/PIT-Count/2024/2024-PIT-Count-Report.pdf?ver=djMlOCF-KPo72ljiQxWHeg%3D%3D> [https://perma.cc/BQ64-E8PF].

9. See U.S. DEP’T OF HOUS. & URB. DEV., *supra* note 2, at v.

10. See, e.g., *Johnson v. City of Grants Pass (Johnson)*, 74 F.4th 868, 876 (9th Cir. 2023); *Martin v. City of Boise*, 920 F.3d 584, 604 (9th Cir. 2019).

11. *Martin*, 920 F.3d at 604.

explaining that *Martin* “applies to the act of ‘sleeping’ in public, including the articles necessary to facilitate sleep” and that imposing civil citations before criminal prosecution does not make anti-camping ordinances constitutional.¹² The Ninth Circuit held that *Martin* applies to civil citations when “the civil and criminal punishments are closely intertwined.”¹³

However, on June 28, 2024, the Supreme Court of the United States reversed the judgment in *Johnson* and stripped away the protections afforded to the unhoused population by *Johnson* and *Martin*.¹⁴ In *City of Grants Pass v. Johnson*, the Supreme Court held that the anti-camping and sleeping ordinances at issue were constitutional and did not violate the Eighth Amendment’s Cruel and Unusual Punishment Clause.¹⁵ In this historic opinion, the Court reasoned that the Cruel and Unusual Punishment Clause had been interpreted as being directed at *how* a government can punish people convicted of violating criminal statutes, not at *what* activities a state can criminalize.¹⁶ The Court also held the punishments for violating the Grants Pass ordinances did not meet the historical meanings of “cruel” and “unusual.”¹⁷ Further, the Court distinguished the case from *Robinson v. California*, which found criminalizing mere status unconstitutional,¹⁸ since the ordinances criminalized behavior.¹⁹

This Comment argues that the Supreme Court’s recent decision in *Grants Pass* gives Phoenix the “green light” to enforce its recently expanded anti-camping ban, furthering the effective criminalization of homelessness and police officers’ inhumane treatment of the unhoused. Criminalization is costly and does not address the root of the homelessness problem. Therefore, this Comment proposes that Phoenix follow Houston, Texas’s approach and implement the “Housing First” model. Part I of this Comment discusses homelessness generally, how courts have addressed status crimes and anti-camping ordinances, homelessness in Arizona, and different approaches cities have taken to combat homelessness. Part II analyzes how the *Grants Pass* decision will impact Phoenix’s unhoused population and proposes that

12. *Johnson*, 74 F.4th at 890–91.

13. *Id.* at 896. In 2022, an Arizona federal district court judge ordered Phoenix to comply with these holdings in *Fund for Empowerment v. City of Phoenix*. See generally *Fund for Empowerment v. City of Phoenix*, 646 F. Supp. 3d 1117 (D. Ariz. 2022) (enjoining Phoenix from enforcing anti-camping ordinances if people could not practically obtain shelter and there were more unsheltered people than available beds).

14. See *City of Grants Pass v. Johnson* (*Grants Pass*), 603 U.S. 520, 560–61 (2024).

15. See *id.* at 543, 546–47, 549–550, 560–61.

16. See *id.* at 542–43.

17. See *id.* at 543.

18. See *Robinson v. California*, 370 U.S. 660, 666–67 (1962).

19. *Grants Pass*, 603 U.S. at 543–47.

Phoenix fully adopt the Housing First approach to homelessness. Part III concludes and reiterates that the Housing First approach is the best solution for Phoenix.

I. BACKGROUND

The increasing rate of homelessness over the years has caused an uptick in state legislation attempting to address the issue.²⁰ What legislation states are constitutionally permitted to pass, and what the best approach to homelessness is, continues to be a divisive issue.²¹ Many states, including Arizona, have passed ordinances prohibiting camping or sleeping in public spaces.²² This Part discusses these anti-camping and sleeping ordinances, their constitutionality, and the criminalization of status. This Part also overviews the homelessness crisis nationally and in Arizona, the leading causes of homelessness, and how Phoenix, Arizona has attempted to address homelessness. Finally, this Part presents approaches to combatting homelessness with an emphasis on the Housing First model.

A. The Homelessness Crisis

With “more than half of Americans liv[ing] paycheck to paycheck,” most people are only “one crisis away from homelessness.”²³ This Section provides data demonstrating the severity of the homelessness crisis at a national level and discusses some of the leading causes of homelessness.

1. Homelessness at a National Level

San Diego resident, Craig Curry, found himself living on the streets after his landlord sold the apartment building he was living in, his roommates

20. See Robbie Sequeira, *More Cities and States Crack Down on Homeless Individuals*, GOVERNING (Jan. 4, 2024), <https://www.governing.com/urban/more-cities-and-states-crack-down-on-homeless-individuals> [https://perma.cc/UJS8-JTUB].

21. See *id.*; see also Bridget Lavender, *States Can Protect Unhoused People When the U.S. Supreme Court Won't*, STATE CT. REP. (Oct. 17, 2024), <https://statecourtreport.org/our-work/analysis-opinion/states-can-protect-unhoused-people-when-us-supreme-court-wont> [https://perma.cc/C78K-JJPG].

22. See Robbie Sequeira, *Many More Cities Ban Sleeping Outside Despite a Lack of Shelter Space*, SPOKESMAN-REV. (Feb. 1, 2025), <https://www.spokesman.com/stories/2025/jan/31/many-more-cities-ban-sleeping-outside-despite-a-la/> [https://perma.cc/KJ2A-4X73].

23. *Homelessness Data & Trends*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/guidance-reports-data/data-trends> [https://perma.cc/QQG5-ZNWD].

moved out, and his Social Security payments were not enough to afford an apartment in the city.²⁴ Craig said, “I found myself in a position that I never thought that . . . [I] personally would be in.”²⁵ Unfortunately, with eviction rates rising and a lack of affordable housing,²⁶ many Americans have stories similar to Craig’s. Despite the federal government investing billions of dollars yearly to help end homelessness,²⁷ the 2024 PIT count reported the largest number of unhoused people yet, with 771,480 people experiencing homelessness “[o]n a single night in January.”²⁸ To solve the rampant homelessness crisis, one must first look at the numerous causes of homelessness.

a. Causes of Homelessness

There are many stigmas and misconceptions about the causes of homelessness.²⁹ One prevalent belief is that homelessness is a consequence of one’s own poor life choices, laziness, or substance abuse issues.³⁰ Many also believe unhoused people “are merely criminals in waiting.”³¹ However, statistics don’t support these notions.³² In fact, “the top five causes of homelessness are lack of affordable housing, lack of a living wage, domestic violence, medical bankruptcy, and untreated mental illness.”³³ Nowhere in the country can a “full-time minimum-wage worker . . . afford a modest apartment,” because wages have not increased proportionally with rising

24. Audrey Jensen et al., *Two Cities Tried to Fix Homelessness, Only One Succeeded*, CRONKITE NEWS: CARING FOR COVID’S INVISIBLE VICTIMS (Dec. 14, 2020), <https://cronkitenews.azpbs.org/howardcenter/caring-for-covid-homeless/stories/homeless-funding-housing-first.html> [https://perma.cc/QTF5-P42N].

25. *Id.*

26. *Homelessness Surged 18% to a New Record in 2024 Amid a Lack of Affordable Housing Across the U.S.*, CBS NEWS (Dec. 27, 2024), <https://www.cbsnews.com/news/homelessness-record-level-2024-up-18-percent-housing-costs-migrants/> [https://perma.cc/YU93-ZN3X].

27. See *Targeted Federal Homelessness Funding: How the President’s 2025 Budget Compares*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Mar. 12, 2024), <https://usich.gov/guidance-reports-data/federal-guidance-resources/targeted-federal-homelessness-funding-how-0> [https://perma.cc/G3SS-ZYLU]; see also Steve Berg, *What Do We Know (So Far) About Homelessness Funding in the FY 2024 Budget?*, NAT’L ALL. TO END HOMELESSNESS (Mar. 13, 2024), <https://endhomelessness.org/blog/what-do-we-know-so-far-about-homelessness-funding-in-the-fy-2024-budget/> [https://perma.cc/2PYX-7Y4L].

28. U.S. DEP’T OF HOUS. & URB. DEV., *supra* note 2, at 2.

29. See Ben A. McJunkin, *The Negative Right to Shelter*, 111 CALIF. L. REV. 127, 140 (2023).

30. See *id.* at 136, 140.

31. *Id.*

32. See Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 123 (2019).

33. *Id.*

rents.³⁴ And even if a minimum-wage worker could afford a modest apartment, there are only thirty-seven affordable homes available for “every 100 extremely low-income renters.”³⁵ Unpaid utility bills that lead to eviction also frequently cause homelessness.³⁶ These leading causes of homelessness are indiscriminate and often unrelated to personal choice.³⁷ Harmful misconceptions about homelessness frequently villainize homeless individuals, leading to the increased use of criminalization to “solve” the problem.³⁸

B. The Constitutionality of Status Crimes and Anti-Camping Ordinances

One way homelessness has been indirectly criminalized is by enforcing and expanding the scope of anti-camping ordinances.³⁹ Anti-camping ordinances are enacted by municipalities and are “broadly defined as ‘laws that criminalize the act of sleeping or pitching tents or other structures on publicly owned property.’”⁴⁰ Many ordinances, including one recently passed in Phoenix,⁴¹ directly target unhoused people by requiring them to remain a specific distance away from schools, businesses, or parks.⁴²

In response, many unhoused people have legally challenged the constitutionality of these ordinances.⁴³ These challenges have had varying success in courts,⁴⁴ and understanding how past decisions impacted police behavior is important for predicting how homelessness may be addressed in the future. The Eighth Amendment, and its prohibition of “cruel and unusual

34. *Homelessness Data & Trends*, *supra* note 23.

35. *Id.*

36. Mason Carroll, *NAU Professors Work to Find Solutions for Rising Homeless Population*, ARIZ.’S FAM. (Sept. 23, 2024), <https://www.azfamily.com/2024/09/24/nau-professors-work-find-solutions-rising-homeless-population/> [https://perma.cc/JUG8-KXR3].

37. See Rankin, *supra* note 32, at 123.

38. See McJunkin, *supra* note 29, at 140.

39. See *id.* at 139–41.

40. Peer Marie Oppenheimer, Comment, *The Illusion of Public Space: Enforcement of Anti-Camping Ordinances Against Individuals Experiencing Homelessness*, 2023 U. CHI. LEGAL F. 463, 464–65 (2023) (quoting *Anti-Camping Ordinances – Important Case Law and Frequently Asked Questions*, ACLU OF WASH., https://www.aclu-wa.org/sites/default/files/media/documents/legal_primer_-camping.pdf [https://perma.cc/WKE3-C6F6]).

41. See PHX., ARIZ., PHX. CITY CODE § 23-30 (2024).

42. See Sequeira, *supra* note 22. These ordinances create “buffer zones.” *Id.*

43. See *infra* Section I.C.3.

44. See McJunkin, *supra* note 29, at 144.

punishment,”⁴⁵ has been one of the more recent doctrines used in these legal challenges.⁴⁶ The Supreme Court has interpreted the Eighth Amendment as “limit[ing] the kinds of punishments that can be imposed[,] . . . proscrib[ing] punishment grossly disproportionate to the severity of the crime, . . . [and] impos[ing] substantive limits on what can be made criminal.”⁴⁷

In *Robinson v. California*, the Supreme Court held that the criminalization of “status,” as opposed to conduct,⁴⁸ is unconstitutional.⁴⁹ In *Robinson*, the Court considered the constitutionality of a California statute that made it a crime for someone to “be addicted to the use of narcotics.”⁵⁰ Although the Court acknowledged a state’s broad power to regulate “narcotic drugs traffic within its borders,”⁵¹ it reasoned that the statute criminalized the “status” of being addicted to narcotics rather than the use, purchase, sale, or possession of narcotics.⁵² The Court noted that narcotic addiction, like a common cold, is an illness that can be contracted involuntarily or innocently.⁵³ Therefore, while the punishment under the statute was not objectively cruel and unusual, “[e]ven one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”⁵⁴ For the above reasons, the Court found the statute punishing the ‘crime’ of being a narcotic addict unconstitutional

45. U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.”).

46. McJunkin, *supra* note 29, at 144.

47. *Ingraham v. Wright*, 430 U.S. 651, 667 (1977).

48. *Compare Robinson v. California*, 370 U.S. 660, 666–67 (1962) (holding that a statute criminalizing the “status” of being addicted to narcotics violated the Fourteenth Amendment), *with Powell v. Texas*, 392 U.S. 514, 535–37 (1968) (finding a statute criminalizing public drunkenness, rather than alcoholism, did not violate the Eighth Amendment and Fourteenth Amendment because it punished conduct).

49. *See Robinson*, 370 U.S. at 666–67.

50. *Id.* at 660 (quoting CAL. HEALTH & SAFETY CODE § 11721 (repealed 1972)).

51. *Id.* at 664.

52. *Id.* at 666.

53. *Id.* at 667. Despite some debate, many people consider homelessness, like narcotic addiction, an innocent/involuntary status. *See* Todd Schoepflin, *Ascribed Status v. Achieved Status: The Case of Homelessness*, EVERYDAY SOCIO. BLOG (May 27, 2010), <https://www.everydaysociologyblog.com/2010/05/ascribed-status-vs-achieved-status-the-case-of-homelessness.html> [https://perma.cc/R55N-ZBXF]; *see also* Erica L. Jansson, Comment, *Testing the Scope of Status*, 50 SW. L. REV. 151, 163–65 (2020).

54. *Robinson*, 370 U.S. at 667. The Court stated that the constitutionality of a punishment cannot be viewed in the abstract. *Id.* The Court then reasoned that even one day in prison for an involuntary condition, like being addicted to narcotics or having a cold, is cruel and unusual punishment. *See id.*

because it inflicted cruel and unusual punishment in violation of the Eighth Amendment.⁵⁵

Later, courts applied *Robinson* to ordinances prohibiting sleeping and camping in public.⁵⁶ In *Martin v. City of Boise*, the Ninth Circuit addressed two City of Boise ordinances.⁵⁷ The first was a camping ordinance that made it a crime to camp on “any of the streets, sidewalks, parks, or public places.”⁵⁸ The second was a disorderly conduct ordinance that banned sleeping, occupying, or lodging in any public or private place without permission.⁵⁹ In determining the constitutionality of these ordinances, the court found that although the ordinances criminalized sitting, lying, and sleeping, such “conduct” is “involuntary and inseparable from status.”⁶⁰ Since all humans are “biologically compelled to rest” the criminalized conduct is an “unavoidable consequence of being homeless.”⁶¹ Accordingly, the Ninth Circuit held that homeless individuals could not be criminally prosecuted for “involuntarily sitting, lying, and sleeping in public” if there were more homeless individuals than available shelter beds.⁶²

Seventeen years later, the Ninth Circuit clarified the *Martin* ruling regarding the constitutionality of anti-camping and sleeping ordinances in *Johnson v. City of Grants Pass*.⁶³ In *Johnson*, a class of people deemed “involuntarily homeless” challenged five provisions of the Grants Pass

55. *Id.* at 666–67. The Court also held the statute violated the Fourteenth Amendment because the Fourteenth Amendment’s Due Process Clause has been interpreted to impose many of the Bill of Rights’ limitations on the states. *See id.*; *see also Amdt14.S1.4.1 Overview of Incorporation of the Bill of Rights*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt14-S1-4-1/ALDE_00013744/ [https://perma.cc/6HDS-FT7S]. The Eighth Amendment is a part of the Bill of Rights. *See The Bill of Rights: What Does It Say?*, NAT’L ARCHIVES (Apr. 27, 2023), <https://www.archives.gov/founding-docs/bill-of-rights/what-does-it-say> [https://perma.cc/Y457-WTEV].

56. *See Martin v. City of Boise*, 920 F.3d 584, 615–16 (9th Cir. 2019), *abrogated by* *City of Grants Pass v. Johnson*, 603 U.S. 520–21 (2024).

57. *Id.* at 603.

58. *Id.*

59. *See id.* at 604.

60. *Id.* at 616–17 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136 (9th Cir. 2006)).

61. *Id.* at 617.

62. *Id.* “[A]n ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.” *Id.* at 604.

63. *See Johnson v. City of Grants Pass (Johnson)*, 72 F.4th 868, 890–91, 896 (9th Cir. 2023) (finding that *Martin* applies to “[civil citations] when the civil and criminal punishments are closely intertwined” and “the act of ‘sleeping’ in public, including the articles necessary to facilitate sleep”), *rev’d*, 603 U.S. 520 (2024).

Municipal Code.⁶⁴ One of the provisions was an amended “anti-camping” ordinance that prohibited using basic bedding materials like a sleeping bag or blanket “while sleeping within the City limits.”⁶⁵ An initial violation of this provision resulted in a civil fine; two violations could lead to a park exclusion order; and a violation after an exclusion order would result in a criminal trespass citation.⁶⁶ A violation of these ordinances, unlike the ones in *Martin*,⁶⁷ resulted in a civil citation that could later become a criminal offense.⁶⁸ Despite this difference, the court reasoned that *Martin* could not be avoided by “[i]mposing a few extra steps” before eventually criminalizing unavoidable behavior.⁶⁹ The court held that *Martin* applies to civil citations when “the civil and criminal punishments are closely intertwined.”⁷⁰ The court also held that *Martin* applies to ordinances that only permit sleeping in public without “articles necessary to facilitate sleep.”⁷¹ Therefore, Grants Pass could not enforce its anti-camping and sleeping ordinances, “to the extent they prohibit[ed] ‘the most rudimentary precautions’ . . . against the elements,” when “no alternative forms of shelter [were] available.”⁷²

However, on June 28, 2024, the Supreme Court reversed the Ninth Circuit’s judgment in *Johnson*, taking away the protection it provided against the criminalization of homelessness.⁷³ In *City of Grants Pass v. Johnson*, the Court first recognized that the Eighth Amendment’s Cruel and Unusual Punishment Clause has been interpreted as being directed at *how* a government can punish people convicted of violating criminal statutes, not at *what* activities a state can criminalize.⁷⁴ The Court turned to the historical meaning of the terms “cruel” and “unusual” and held that the criminal punishments imposed by the Grants Pass ordinances were not cruel and unusual since they were not intended to “‘superad[d]’ ‘terror, pain, or

64. *Id.* at 875.

65. *Id.* at 874–75, 889.

66. *See id.* at 875–76.

67. *See Martin*, 920 F.3d at 603–04. A violation of the ordinances at issue in *Martin* was a criminal offense. *Id.* at 604.

68. *Johnson*, 72 F.4th at 890.

69. *Id.*

70. *Id.* at 896. Here, “the civil and criminal punishments [were] closely intertwined” because an initial violation of the ordinance resulted in a civil fine, but subsequent violations could result in a criminal citation. *Id.* at 896, 875–76.

71. *Id.* at 891. The City argued that prohibiting the use of bedding materials while sleeping did not qualify as punishing a “status” because unhoused individuals could choose to sleep without bedding materials. *Id.*

72. *Id.* (quoting *Martin*, 920 F.3d at 618).

73. *City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520, 560–61 (2024).

74. *Id.* at 542–43.

disgrace,'" and they were among "the usual mode[s]" of punishment.⁷⁵ The Court also distinguished the case from *Robinson*, since Grants Pass's ordinances criminalized behavior—"occupy[ing] a campsite' on public property" to use as a temporary shelter, as opposed to mere status: being "addicted to the use of narcotics."⁷⁶ The Court limited the applicability of its holding in *Robinson* and declined to extend its prohibition of criminalizing status to "involuntary" acts.⁷⁷ As a result, the Supreme Court reversed the Ninth Circuit's ruling and held that Grants Pass's ordinances did not violate the Eighth Amendment's Cruel and Unusual Punishments Clause.⁷⁸ This ruling is arguably one of the most influential decisions about the homelessness crisis, and recognizing how *Martin* and *Johnson* constrained police behavior indicates how *Grants Pass* may worsen police officers' treatment of the unhoused.⁷⁹

C. Homelessness in Arizona

This Comment focuses on how *Grants Pass* will impact Arizona, where homelessness has been a growing problem for which the state has struggled to find a solution.⁸⁰ This Section first evaluates the number of people affected by homelessness in Arizona, specifically in Phoenix, and some of the state-specific causes of homelessness. It then discusses how Phoenix has previously dealt with the unhoused as an indicator of how Phoenix will likely approach homelessness after *Grants Pass*.

75. *Id.* at 541–43.

76. *Id.* at 544, 546 (citation omitted). The Court also reasoned that the Grants Pass ordinances applied equally to "[the] homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building." *Id.* at 546–47.

77. See *id.* at 547–50. Involuntary acts are ones an unhoused individual "cannot help but do" like sleeping. *See id.* at 547.

78. *Id.* at 560–61.

79. In the wake of the Supreme Court's decision, "roughly 150 cities in 32 states have passed or strengthened [their anti-camping] ordinances," and 40 ordinances are pending approval. Sequeira, *supra* note 22.

80. See Lori Baker, *The Long Way Home: Insights into Arizona's Homelessness Crisis*, ASU NEWS (Jan. 16, 2024), <https://news.asu.edu/20240117-university-news-long-way-home-insights-arizonas-homelessness-crisis> [<https://perma.cc/23TR-E3TA>]; see also discussion *infra* Section I.C.1.

1. Arizona's Homelessness Crisis

The homelessness crisis in the United States has had a large impact on Arizona.⁸¹ According to the HUD 2023 PIT count, on a single night in 2023, 14,237 Arizona residents were experiencing homelessness.⁸² Moreover, in 2023, Arizona had the fourth-highest percentage of homeless people experiencing unsheltered homelessness,⁸³ with 53.5% of the unhoused population living in unsheltered locations.⁸⁴ Unsheltered locations are places “not designated for, or ordinarily used as, a regular sleeping accommodation for people.”⁸⁵ Examples of unsheltered locations include streets, parks, and vehicles.⁸⁶

a. Maricopa County

With over four million residents, Maricopa County is Arizona’s most populous county and the nation’s fourth most populous county.⁸⁷ The 2024 Maricopa County PIT report found that on a single night in 2024, there were 9,435 people experiencing homelessness in the county, and 4,076 people experiencing unsheltered homelessness.⁸⁸ Of those experiencing unsheltered homelessness in Maricopa County, 2,701 resided in Phoenix.⁸⁹ It is important to note, however, that these numbers may underrepresent those experiencing unsheltered homelessness, since on the day of the count there was heavy rain that could have led some people to seek temporary shelter.⁹⁰ The 2024 PIT Count also took place after the clearing of a large homeless encampment in

81. See TJ L’Heureux, *New Count Finds Nearly 7,000 People Homeless in Phoenix*, PHX. NEW TIMES (May 24, 2024), <https://www.phoenixnewtimes.com/news/phoenix-homeless-population-small-decrease-point-in-time-count-19051146> [https://perma.cc/RUW8-23M4].

82. U.S. DEP’T OF HOUS. & URB. DEV., *supra* note 6, at 17 Exhibit 1.7.

83. *Id.*

84. *Id.*

85. *Id.* at 5.

86. *Id.*

87. See *Maricopa County Quick Facts*, MARICOPA CNTY., <https://www.maricopa.gov/3598/County-Quick-Facts> [https://perma.cc/L4V6-3PY8].

88. MARICOPA ASS’N OF GOV’TS, *supra* note 8, at 1.

89. *Id.* at 4.

90. *Id.* at 4. Additionally, the unsheltered population is generally more susceptible to undercounting because they are more difficult to find, the count is only conducted over one day, and counting happens in January, when people often seek temporary shelter to escape the cold. See Jared Kofsky et al., *You Can’t Be Accurate: Annual Count of US Homeless Population Misses Large Numbers of People, Experts Warn*, ABC News (Feb. 3, 2024), <https://abcnews.go.com/US/accurate-annual-count-us-homeless-population-misses-large/story?id=106671876> [https://perma.cc/95VD-TAGA].

Phoenix called “The Zone,” where nearly 1,000 “unhoused people congregated and were easier to find.”⁹¹

2. State-Specific Causes of Homelessness

In Arizona, some of the specific factors leading to the high rate of homelessness are the state’s rapid growth,⁹² costly utility bills, high eviction rates, and the end of eviction moratoriums after the pandemic.⁹³ Phoenix and Scottsdale, Arizona, have also had “some of the highest rent increases in the nation, climbing as much as 30% year to year.”⁹⁴ Some barriers to Arizona adopting affordable housing policies include the following facts: Arizona law preempts enacting rent control policies;⁹⁵ “Arizona is one of only seven states that prohibit local governments from enacting mandatory inclusionary zoning;”⁹⁶ and Arizona is the *only* state that prohibits tax increment financing.⁹⁷ Besides a lack of affordable housing, Arizona’s climate also contributes to the state’s homelessness problem.⁹⁸ Unhoused people from colder states relocate to Arizona because the state’s mild winters make it more comfortable for people to live outside, even though temperatures

91. L’Heureux, *supra* note 81; Oakley Seiter, *Phoenix Successfully Clears Its Largest Homeless Encampment by Deadline, Shifts Focus to Long-Term Solutions*, CRONKITE NEWS (Dec. 4, 2023), <https://cronkitenews.azpbs.org/2023/12/04/phoenix-the-zone-homeless-encampment/> [https://perma.cc/AE3R-H3ZQ]. See further discussion about “The Zone” *infra* Section II.C.3.

92. As of 2025, Phoenix, Arizona, was the fifth most populous city in the United States. *Largest US Cities by Population 2025*, WORLD POPULATION REV., <https://worldpopulationreview.com/us-cities> [https://perma.cc/43JK-DCJZ].

93. See Sahara Sajjadi, *Arizona’s Homeless Could Be Targeted by Police Under Supreme Court Ruling*, AZ MIRROR (July 5, 2024), <https://azmirror.com/2024/07/05/arizonas-homeless-could-be-targeted-by-police-under-supreme-court-ruling/> [https://perma.cc/8B6J-2TYQ]; see also Seiter, *supra* note 91; Carroll, *supra* note 36.

94. Baker, *supra* note 80.

95. Rent control policies limit how much landlords can charge people for rent. *Id.*

96. Mandatory inclusionary zoning policies require real estate developers to build a certain number of affordable housing units. *Id.*

97. *Id.* Tax increment financing uses future property tax revenue to fund new infrastructure improvements. See *Tax Increment Financing*, FED. HIGHWAY ADMIN., https://www.fhwa.dot.gov/ipd/value_capture/defined/tax_increment_financing.aspx [https://perma.cc/47V8-DELQ]. “The intent is for the improvement to enhance the value of existing properties and encourage new development in the district.” *Id.*

98. See *Homelessness in Phoenix Statistics: Understanding the Growing Crisis in 2024*, HOMELESS NO MORE (Jan. 10, 2025), <https://homelessemore.com/homelessness-in-phoenix-statistics-understanding-the-growing-crisis-in-2024/> [https://perma.cc/NZ3D-VZ52].

skyrocket in the summer.⁹⁹ These factors have created a perfect storm that has led to Arizona's severe homelessness problem.¹⁰⁰

3. “The Zone”

A review of how the Phoenix Police Department (the “PPD”) treated unhoused people living in a homeless encampment called “The Zone” provides insight into how the law has influenced the PPD’s behavior. In 2023, nearly 1,000 unhoused people resided in The Zone.¹⁰¹ The Zone encompassed roughly fifteen blocks of Phoenix’s downtown area and comprised tents, temporary shelters, tarps, and platforms.¹⁰² In the center of The Zone was Keys to Change (previously named the Human Services Campus),¹⁰³ a hub for various social service organizations with around 900 shelter beds.¹⁰⁴ The encampment likely formed in part due to people’s desire to be close to these services and await open shelter beds.¹⁰⁵

Many unhoused people lived in The Zone for years,¹⁰⁶ accumulating a variety of belongings and gaining a sense of community. A sense of community and the forming of close interpersonal relationships has been shown to significantly improve one’s health and well-being, which is vital for unhoused individuals.¹⁰⁷ Having a large, centralized area where unhoused people resided made it easier to locate people to provide them with services

99. See *id.*; see also Julia Chambers, *Unintended Consequences: Leaving a Wake of High Living Costs in Tourist Destinations*, NAT’L COAL. FOR THE HOMELESS, <https://nationalhomeless.org/tourism-homelessness-related/> [https://perma.cc/3FME-SUDM].

100. See *Homelessness in Phoenix Statistics: Understanding the Growing Crisis in 2024*, *supra* note 98.

101. Seiter, *supra* note 91.

102. *Id.*

103. Erica Stapleton, *It’s Been a Year Since ‘The Zone’ Homeless Encampment Shut Down in Phoenix. What Does the City’s Homeless Crisis Look Like Now?*, 12 NEWS (Oct. 30, 2024), <https://www.12news.com/article/news/local/valley/its-been-a-year-since-the-zone-homeless-encampment-shut-down-in-phoenix-what-does-the-citys-homeless-crisis-look-like-now/75-56e98bf2-7ceb-474d-83fd-230aa84132f4> [https://perma.cc/UDM2-DMGB].

104. Seiter, *supra* note 91.

105. See Katya Schwenk, *Phoenix’s Largest Homeless Encampment Has Sparked a Lawsuit. What Now?*, PHX. NEW TIMES (Aug. 17, 2022), <https://www.phoenixnewtimes.com/news/phoenixs-largest-homeless-encampment-sparks-lawsuit-14213947> [https://perma.cc/EH7B-Y9N9] (quoting Elizabeth Venable, “an organizer with the Fund for Empowerment,” as saying, “[p]eople come to where there are resources”).

106. Seiter, *supra* note 91.

107. See Helen Rummel, *Hundreds Were Moved to Shelters From ‘The Zone.’ What About Everyone Else?*, AZCENTRAL. (Nov. 29, 2023), <https://www.azcentral.com/story/news/local/phoenix/2023/11/17/hundreds-were-moved-to-shelters-from-the-zone-what-about-the-rest-phoenix-homelessness/71350541007> [https://perma.cc/U4KT-PF63].

and accurately count the population.¹⁰⁸ However, The Zone was also prone to drug use, violence, and unsanitary living conditions.¹⁰⁹ Over the years, the number of people living in The Zone grew tremendously.¹¹⁰ One possible reason for this growth was that in 2018, the Ninth Circuit in *Martin* held that it was unconstitutional for cities to enforce their anti-camping or sleeping ordinances against unhoused people if there was no “adequate temporary shelter” available.¹¹¹ Specifically, unhoused individuals could not be prosecuted for “involuntarily sitting, lying, and sleeping in public” if there was a “greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters].”¹¹² These kinds of anti-camping and sleeping citations had previously been used and leveraged by the PPD to order unhoused people to “move along.”¹¹³ After *Martin*, the PPD issued significantly fewer urban camping citations than it previously had.¹¹⁴ By 2021, the PPD issued only nine urban camping citations compared to the 283 it issued in 2017 before *Martin*.¹¹⁵ As shown in Figure 1 below,¹¹⁶ from 2017 to 2023, the number of unhoused individuals in Maricopa County always exceeded the number of temporary housing beds.¹¹⁷ Thus, under *Martin*, unhoused individuals should not have been issued anti-camping or sleeping citations.¹¹⁸

108. *See id.*; *see also* L’Heureux, *supra* note 81.

109. Schwenk, *supra* note 105.

110. *See* Seiter, *supra* note 91; Javier Soto, *What’s Next in the Homeless Crisis After Cleanup of ‘The Zone’?*, ABC15 (Jan. 18, 2024), <https://www.abc15.com/news/local-news/whats-next-in-the-homeless-crisis-after-cleanup-of-the-zone> [<https://perma.cc/7N7V-NQDZ>].

111. *Martin v. City of Boise*, 920 F.3d 584, 617 n.8 (9th Cir. 2019), *abrogated by*, *City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520, 555–56 (2024).

112. *Id.* at 617 (citing *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136 (9th Cir. 2006)).

113. TRISTIA BAUMAN ET AL., NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 53 (2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [<https://perma.cc/773F-VGF4>].

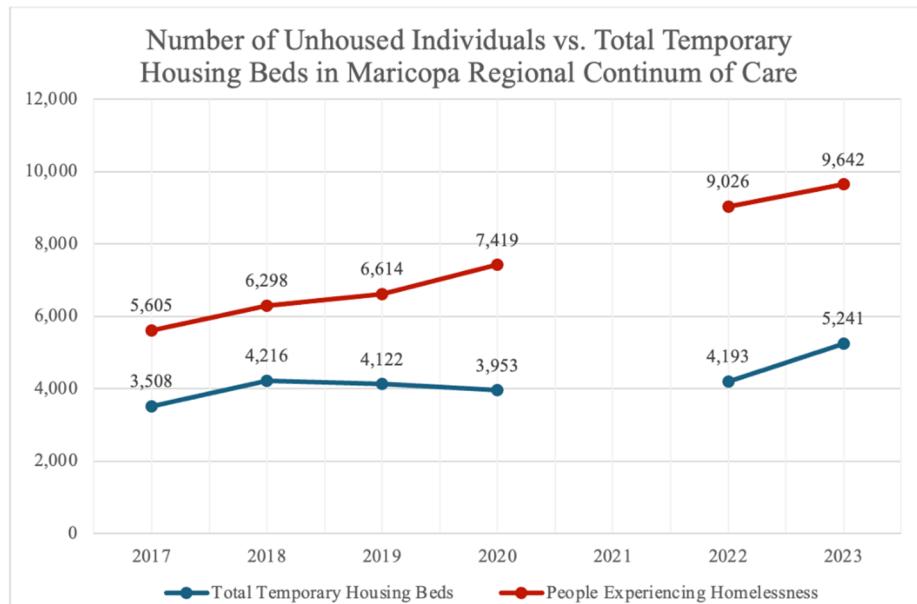
114. Schwenk, *supra* note 105.

115. *Id.* (reporting that Phoenix police issued 283 urban camping tickets in 2017, 172 in 2018, 85 in 2019, and only 9 in 2021).

116. *See SOH: State and CoC Dashboards*, NAT’L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-dashboards/?State=Arizona> [<https://perma.cc/36Q6-B7AG>]; *see also* MARICOPA ASS’N OF GOV’TS, *supra* note 8, at 1; MARICOPA ASS’N OF GOV’TS, 2020 POINT-IN-TIME (PIT) COUNT REPORT 1 (2020), <https://azmag.gov/Portals/0/Documents/MagContent/PIT-Count-Report-2020.pdf?ver=AiZpbG6pLffUL6eOkvmc9A%3d%3d> [<https://perma.cc/8DZF-B82P>].

117. Figure 1; *see also SOH: State and CoC Dashboards*, *supra* note 116; MARICOPA ASS’N OF GOV’TS, *supra* note 8, at 1; MARICOPA ASS’N OF GOV’TS, *supra* note 116, at 1.

118. *See Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019), *abrogated by*, *City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520, 555–56 (2024).

Figure 1. Unhoused Individuals vs. Total Housing Beds

Note: The number of people experiencing homelessness in this graph includes those experiencing sheltered and unsheltered homelessness. The number of permanent housing beds is not reflected in this graph. There is no data for 2021 because of COVID-19.

Unhappy with the state of the growing encampment, fifteen property and business owners located around The Zone filed a lawsuit on August 10, 2022, *Brown v. City of Phoenix*, claiming the area was a “public nuisance.”¹¹⁹ The lawsuit stated that Phoenix used the *Martin* ruling “as an excuse to completely wash its hands of the [homelessness] crisis” and failed to enforce other lawful ordinances like those “against public urination and defecation, drug use, and other disorderly conduct.”¹²⁰

After this lawsuit was filed, but before the court issued a decision, the American Civil Liberties Union (“ACLU”) filed a lawsuit against Phoenix on behalf of a homeless advocacy group called Fund for Empowerment.¹²¹ The lawsuit claimed city “‘sweeps’ of homeless encampments [were]

119. Schwenk, *supra* note 105; *Brown v. City of Phoenix*, No. CV 2022-010439, 2023 WL 8524163, at *1 (Ariz. Super. Mar. 27, 2023).

120. Schwenk, *supra* note 105.

121. First Amended Complaint for Declaratory and Injunctive Relief at 1, *Fund for Empowerment v. City of Phoenix*, 646 F. Supp. 3d 1117 (D. Ariz. 2022) (No. CV-22-02041-PHX-GMS), *abrogated by City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520 (2024).

unconstitutional” and violated the Fourth, Eighth, and Fourteenth Amendments.¹²² Accordingly, the ACLU requested an injunction prohibiting Phoenix’s upcoming planned “enhanced cleaning” of The Zone.¹²³ In *Fund for Empowerment v. City of Phoenix*, district court Judge Murray Snow found the planned “enhanced cleaning” could proceed.¹²⁴ But Phoenix was preliminarily enjoined from citing people under camping and sleeping bans if there were more unsheltered people in Phoenix than available shelter beds in the city; seizing unsheltered individuals’ property without prior notice except under specific conditions; and destroying such property without holding it in a secure location for less than thirty days.¹²⁵

Following this case, in March of 2023, the Maricopa County Superior Court finally decided *Brown*.¹²⁶ The court held that The Zone was a public nuisance as defined under Arizona law,¹²⁷ and that Phoenix created and maintained the conditions in The Zone by failing “to enforce criminal and quality of life laws” after the *Martin* decision in 2018.¹²⁸ Accordingly, the court granted the property and business owner’s request for a preliminary injunction and ordered Phoenix to “abate the nuisance . . . on the public property in the Zone” and clear the encampment.¹²⁹

In May 2023, Phoenix began clearing The Zone block by block to comply with the injunction by the November 4, 2023 deadline.¹³⁰ In doing so, Phoenix also had to comply with Judge Snow’s prior injunction in *Fund for Empowerment* by ensuring enough available shelter beds and proper handling of unhoused individuals’ property.¹³¹ The Human Services Campus helped by sending people to notify unhoused individuals living in The Zone that they needed to move ahead of the city’s clearing schedule.¹³² Members of the outreach team talked to people in the community daily and discussed

122. Erica Stapleton, *Federal Judge to Make Ruling on ‘Enhanced Cleaning’ Plan for ‘The Zone’ Homeless Encampment*, 12 NEWS (Dec. 14, 2022), <https://www.12news.com/article/news/local/judge-to-rule-cleaning-plan-the-zone-homeless-encampment/75-46969af7-fcad-4db8-8693-1c9d7560b4ce> [https://perma.cc/V4V4-53DS].

123. *Id.*

124. *See* 646 F. Supp. 3d 1117, 1132–33 (2022).

125. *See id.*

126. *Brown v. City of Phoenix*, No. CV 2022-010439, 2023 WL 8524163 (Ariz. Super. Mar. 27, 2023).

127. *Id.* at *8–9.

128. *Id.* at *9.

129. *Id.* at *14.

130. Seiter, *supra* note 91.

131. *Fund for Empowerment v. City of Phoenix*, 646 F. Supp. 3d 1117, 1132–33 (D. Ariz. 2022), *abrogated by* *City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520 (2024).

132. Seiter, *supra* note 91.

available shelter and transportation options, substance abuse treatment availability, and storage programs they could use to store their possessions.¹³³ In 2023, Phoenix and its partners added 482 new temporary shelter beds and temporarily expanded the capacity of the Washington Relief Shelter.¹³⁴ Another temporary solution offered to residents of The Zone was The Safe Outdoor Space, “[a]n open air shelter with restrooms, showers, meal service, property storage, 24/7 security and a code of conduct for [their] residents.”¹³⁵ However, despite these efforts, many unhoused people claimed they were unaware the encampment was being cleared, and had some or all of their personal belongings disposed of without their consent.¹³⁶

After fully complying with the Maricopa County Superior Court’s injunction, Phoenix reported that 718 unhoused people living in The Zone were offered services and 585 people “accepted placement at an indoor location.”¹³⁷ Those who did not accept placement elsewhere dispersed from The Zone and relocated to smaller encampments in Phoenix.¹³⁸ Despite the displacement of some unhoused individuals and claims of people’s property being destroyed, the clearing of The Zone could ultimately be viewed as a success given the large amount of people that accepted placement at a shelter.¹³⁹ However, it was *Martin*, which held that camping and sleeping citations could not be issued if there were more unhoused people than available shelter beds, that required Phoenix to find temporary housing for people in The Zone before forcing them to leave.¹⁴⁰ Now that *Grants Pass* has held that anti-camping and sleeping ordinances are constitutional, and enforcement is *not* dependent on shelter availability, the PPD could resume issuing these citations as a way to quickly remove encampments.¹⁴¹

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. U.S. DEP’T OF JUST., C.R. DIV., INVESTIGATION OF THE CITY OF PHOENIX AND THE PHOENIX POLICE DEPARTMENT 42 (2024), <https://www.justice.gov/d9/2024-06/Phoenix%20Findings%20Report%20Final%20-%20Final%20508.pdf> [https://perma.cc/WJ3R-BN8V].

139. See Seiter, *supra* note 91.

140. *Fund for Empowerment v. City of Phoenix*, 646 F. Supp. 3d 1117, 1123–24 (D. Ariz. 2022).

141. See *supra* Figure 1.

4. The Department of Justice

On August 5, 2021, the Department of Justice (the “DOJ”) began a “pattern or practice investigation”¹⁴² into the enforcement activities of the PPD and Phoenix.¹⁴³ After a roughly thirty-four-month investigation,¹⁴⁴ the DOJ issued its report, finding that Phoenix and the PPD “engage[d] in a pattern or practice of conduct that deprive[d] people of their rights under the Constitution and federal law.”¹⁴⁵ For example, the DOJ found Phoenix and the PPD violated federal law by “unlawfully detain[ing], cit[ing], and arrest[ing] people experiencing homelessness” without reasonable suspicion of criminal activity and by “unlawfully dispos[ing] of their belongings.”¹⁴⁶ Notably, this was the first time a DOJ pattern or practice investigation has ever found that police officers violated unhoused people’s civil and constitutional rights.¹⁴⁷

Despite city officials stating that Phoenix police officers are told to “lead with services,”¹⁴⁸ the DOJ found that between January 2016 and March 2022, unhoused people made up over one-third of all misdemeanor arrests and citations.¹⁴⁹ This is significant because, out of the roughly 1.6 million people

142. A pattern or practice investigation is conducted by civil rights attorneys at the Justice Department. *FAQ About Pattern or Practice Investigations*, U.S. DEP’T OF JUST., C.R. DIV., https://www.justice.gov/d9/2023-10/pattern_or_practice_investigation_faqs_english.pdf [<https://perma.cc/XB8W-FP5K>]. The purpose of the investigation is to determine whether or not a police department has a pattern of misconduct and if there are “any systemic issues in the department [that] contribute to or enable misconduct.” *Id.* During the investigation the Justice Department “interview[s] community members, police officers, local officials, and other community stakeholders.” *Id.* The Justice Department also evaluates specific relevant incidents; reviews body-worn camera footage and documents; and accompanies officers on their shifts. *Id.*

143. U.S. DEP’T OF JUST., C.R. DIV., *supra* note 138, at 4.

144. *DOJ Investigation Report Incidents*, CITY OF PHX., <https://dojrecords.phoenix.gov> [<https://perma.cc/6KB4-VQJM>] (Sept. 5, 2024).

145. U.S. DEP’T OF JUST., C.R. DIV., *supra* note 138, at 4.

146. *Id.*

147. Janelle Griffith, ‘*This Is Validation*’: Phoenix Homeless Welcome Justice Department’s *Findings, Call for Consent Decree*, NBC NEWS: U.S. NEWS (June 18, 2024), <https://www.nbcnews.com/news/us-news/validation-phoenix-homeless-welcome-justice-departments-findings-call-rcna157626> [<https://perma.cc/US85-85N5>].

148. Helen Rummel, *Treatment of Unhoused People: DOJ Report Says Their Rights in Phoenix Are Trampled*, AZCENTRAL. <https://www.azcentral.com/story/news/local/phoenix/2024/06/13/phoenix-police-violated-rights-of-homeless-justice-department-report-says/74092674007/> [<https://perma.cc/CNC7-SXTA>] (June 13, 2024).

149. U.S. DEP’T OF JUST., C.R. DIV., *supra* note 138, at 43 (“[B]etween January 2016 and March 2022, people who were homeless accounted for . . . 37%—of all PhxPD misdemeanor arrests and citations.”).

who resided in Phoenix in 2022,¹⁵⁰ only 6,038 were experiencing homelessness.¹⁵¹ Therefore, roughly 0.3% of Phoenix's population accounted for 37% of misdemeanor arrests and citations.¹⁵² The investigation also revealed that despite the *Martin* and *Fund for Empowerment* rulings in 2018 and 2022 respectively, the PPD still routinely detained unhoused people for sleeping in public without reasonable suspicion of criminal activity.¹⁵³ These unlawful detentions frequently occurred in the early mornings when police officers would wake unhoused people, demand their identification, check for arrest warrants, and then order them to move.¹⁵⁴

The DOJ, Phoenix, and the PPD were negotiating a possible consent decree.¹⁵⁵ But after President Trump took office, the DOJ retracted its findings and closed the investigation into the PPD despite the fact that the "investigation[] [was] led by career attorneys [and] based on data, body cam footage and information provided by officers themselves"¹⁵⁶ As Part II will describe in depth, since the DOJ report originally found that the PPD violated the rights of the unhoused even with the legal protection the *Martin* and *Fund for Empowerment* rulings provided,¹⁵⁷ now that these rulings have been overturned,¹⁵⁸ the PPD's treatment of the unhoused will likely worsen.

150. *Phoenix, Arizona Population 2025*, WORLD POPULATION REV., <https://worldpopulationreview.com/us-cities/arizona/phoenix> [https://perma.cc/VVR5-MYTM] (reporting that in 2022, Phoenix, Arizona had a population of 1,643,899 people).

151. CITY OF PHX., PHOENIX HOMELESSNESS PLAN REFRESH: PUBLIC INFORMATION SESSION 5 (2025), <https://www.phoenix.gov/content/dam/phoenix/solutions/documents/8.7.25%20Info%20Session%20English.pdf> [https://perma.cc/J346-RKNF].

152. See U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 43 (captioning a graphic: "Homeless residents make up more than 37% of all arrests. But less than 1% of all Phoenix residents are homeless."); City of Phx., *supra* note 151, at 5.

153. U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 45–47.

154. *Id.* at 45.

155. Morgan Fischer, *DOJ: If Phoenix Rejects a Consent Decree to Fix its Police, We'll Sue*, PHX. NEW TIMES (Aug. 30, 2024), <https://www.phoenixnewtimes.com/news/phoenix-may-face-doj-lawsuit-if-spurns-consent-decree-police-19943447> [https://perma.cc/H3FQ-DZ2Z]. Here, a consent decree would have been an agreement between the PPD and the DOJ which would have required the PPD to make certain reforms. *Id.* The agreement would have been court-enforced, and the PPD would have been subject to independent monitoring. *Id.*

156. FOX 10 Staff, et al., *DOJ Closes Investigation into Phoenix Police Department*, FOX 10 PHX. (May 21, 2025, 5:29 P.M.), <https://www.fox10phoenix.com/news/doj-closes-investigation-phoenix-police-department> [https://perma.cc/A65X-H78J]; Carrie Johnson & Ryan Lucas, *Trump DOJ Dismisses Investigations of Police in Several Cities, Including Minneapolis*, NPR (May 21, 2025), <https://www.npr.org/2025/05/21/nx-s1-5406262/trump-administration-dismisses-police-investigations-minneapolis-george-floyd> [https://perma.cc/8YSK-EAUZ].

157. See U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 46.

158. See generally *City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520 (2024) (holding that anti-camping ordinances do not violate the Eighth Amendment).

This outcome is even more probable now that the PPD is not facing oversight or a lawsuit from the DOJ.¹⁵⁹

5. Phoenix's Anti-Camping and Anti-Sleeping Ordinances

Phoenix has anti-camping and sleeping ordinances similar to the three laws the Supreme Court found constitutional in *Grants Pass*.¹⁶⁰ Phoenix's anti-sleeping ordinance prohibits using a "public street, highway, alley, lane, parkway, sidewalk or other right-of-way . . . for lying, sleeping or otherwise remaining in a sitting position thereon, except in the case of a physical emergency or the administration of medical assistance."¹⁶¹ Additionally, Phoenix's original camping ban prohibited people from camping in any park or preserve, building, facility, parking lot or structure, or any adjacent property "that [was] owned, possessed and controlled by the City."¹⁶² It was these ordinances that the DOJ originally found the PPD was unlawfully enforcing before the *Grants Pass* decision by issuing citations when there were more unhoused people in the city than shelter beds.¹⁶³

After the *Grants Pass* decision,¹⁶⁴ Phoenix expanded the scope of its anti-camping ordinance to include more public areas where unhoused people are prohibited from cooking, sleeping, or camping.¹⁶⁵ The expanded camping ban now makes it "unlawful for any person to camp on or within 500 feet of any parcel where a school, child care facility, shelter, or City park is located if reasonable notice of the camping prohibition is provided."¹⁶⁶ For this section of the City Code, "camp" means to "use real property in the City for living accommodation purposes," such as sleeping or preparing to sleep.¹⁶⁷ One can prepare to sleep by laying down bedding; storing personal belongings; starting a fire; using a tent, shelter, other structure, or vehicle to sleep; cooking; or digging or breaking the earth.¹⁶⁸

Phoenix states it will "take a phased approach to implementation" of its expanded camping ban by "focusing first on educating the public on the

159. See Johnson & Lucas, *supra* note 156.

160. See *Grants Pass*, 603 U.S. at 537, 549–50. Phoenix's anti-camping ordinance can be found in Chapter 23, Article II, Section 30 of the Phoenix City Code and was recently amended by Ordinance No. G-7264. See PHX., ARIZ., PHX. CITY CODE § 23-30 (2024).

161. *Id.* § 23-48.01.

162. *Id.* § 23-30(A).

163. See U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 46 n.47.

164. *Grants Pass* was decided on June 28, 2024. *Grants Pass*, 603 U.S. at 520.

165. See PHX., ARIZ., PHX. CITY CODE § 23-30(C)(1) (2024).

166. *Id.* § 23-30(B).

167. *Id.* § 23-30(C)(1).

168. *Id.*

changes,” but issuing citations “when necessary, based on a violation of the law.”¹⁶⁹ Someone convicted of violating the expanded camping ban would be guilty of a Class 3 misdemeanor.¹⁷⁰ For a first-time offense, “any fine imposed [as part of a criminal penalty] must not exceed \$100.00.”¹⁷¹ As this Comment will argue in Part II, after the *Grants Pass* decision, Phoenix’s new expanded camping ban and existing anti-sleeping ordinance are likely to be enforced more frequently because these ordinances are no longer unconstitutional under the Eighth Amendment.¹⁷² An examination of the different models used to combat homelessness reveals an alternative approach to reducing homelessness besides issuing criminal citations.

D. Models to Address Homelessness

There are two common approaches to addressing homelessness: the Housing First model and the Housing Readiness model.¹⁷³ The Housing Readiness model is a traditional approach to homelessness that requires unhoused people to meet certain prerequisites before they can get permanent housing.¹⁷⁴ The Housing First model, on the other hand, focuses on providing housing without prerequisites.¹⁷⁵ This Section will focus on the effectiveness and benefits of the Housing First model.

Dr. Sam Tsemberis created the Housing First model in the 1990s.¹⁷⁶ The model has been implemented by many cities in the United States to successfully address homelessness¹⁷⁷ and is based on the premise “that people are better able to address their individual problems when [their] basic needs . . . are met.”¹⁷⁸ The model focuses on providing the unhoused with permanent

169. Christina Estes, *Expanded Public Camping Ban Will Take Effect Sunday in Phoenix*, KJZZ (Aug. 29, 2024), <https://www.kjzz.org/2024-08-29/expanded-public-camping-ban-will-take-effect-sunday-in-phoenix> [https://perma.cc/F5MZ-TKUS].

170. PHX., ARIZ., PHX. CITY CODE § 23-30(E)(1) (2024).

171. *Id.*

172. See *City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520, 543, 546–47, 549–50 (2024); *see supra* Figure 1.

173. See Aimee Majoue, *A Practical Look at Ending Homelessness*, 16 SEATTLE J. SOC. JUST. 913, 945–46 (2018).

174. *See id.* at 945.

175. Jensen et al., *supra* note 24.

176. *Housing First — Addressing Homelessness with Homes*, CENT. ARIZ. SHELTER SERVS., <https://www.cassaz.org/2021/12/housing-first/> [https://perma.cc/2W8S-QGJS].

177. *See id.*; *see also* Sara Golestaneh, Comment, *Pushed Into the Shadows: The Criminalization of Homelessness and its Health Consequences*, 23 Hous. J. HEALTH L. & POL’Y 1, 35–36 (2024).

178. Jensen et al., *supra* note 24.

housing without first requiring them to “fix their problems.”¹⁷⁹ Under the Housing First model, unhoused individuals are not required to “graduate through a series of [social] services programs” before obtaining housing or to participate in services to keep housing.¹⁸⁰ Although not required, the Housing First model focuses on providing social services and education about legal rights to recently housed individuals.¹⁸¹

Two main program models follow the Housing First approach: Permanent Supportive Housing (“PSH”) and Rapid Re-Housing.¹⁸² PSH is designed to help “individuals and families with chronic illnesses, disabilities, mental health issues, or substance use disorders who have experienced long-term or repeated homelessness.”¹⁸³ PSH provides people with “non-time-limited affordable housing” and support services.¹⁸⁴ Rapid Re-Housing is aimed at assisting people who have recently become homeless.¹⁸⁵ The goal of Rapid Re-Housing is to place people in housing quickly and ensure they remain housed.¹⁸⁶ The Rapid Re-Housing program helps people find housing and provides them with “rent and move-in assistance,” a case manager, and social services.¹⁸⁷

1. Criticisms of the Housing First Model

Critics of the Housing First model, however, argue that the approach is costly and ineffective.¹⁸⁸ One reason critics suggest the Housing First model is ineffective is because it does not address unhoused individuals’ struggles with mental illness and substance abuse.¹⁸⁹ Many people believe offering unhoused individuals housing without requiring them to participate in social services “[does] not encourage use of [such] services.”¹⁹⁰ In fact, some critics

179. *Id.*

180. Rankin, *supra* note 32, at 131.

181. Majoue, *supra* note 173, at 946.

182. *Housing First*, NAT’L ALL. TO END HOMELESSNESS (Mar. 20, 2022), <https://endhomelessness.org/resource/housing-first/> [https://perma.cc/S5M8-QG4H]; *see also* Golestaneh, *supra* note 177, at 35.

183. *See Housing First*, *supra* note 182.

184. Rankin, *supra* note 32, at 131–32.

185. Golestaneh, *supra* note 177, at 35.

186. *Housing First*, *supra* note 182.

187. *Id.*

188. Earl Glock, *Housing First Is a Failure*, CICERO INST. (Jan. 13, 2022), <https://ciceroinstitute.org/research/housing-first-is-a-failure/> [https://perma.cc/B53L-VB22].

189. *Id.*; Andy Barr & Ben Carson, *Housing First Does Nothing to Solve the Homelessness Crisis*, RIPON F., Veterans Day 2023, at 28, 28–29, <https://riponsociey.org/article/housing-first-does-nothing-to-solve-the-homelessness-crisis/> [https://perma.cc/5JUT-MTE2].

190. Glock, *supra* note 188.

have argued that providing people with subsidized housing often encourages drug use “because there is no mandated treatment . . . and the free unit provides people with more money to pursue their habits.”¹⁹¹ Commentators also point to rising rates of homelessness as proof of the Housing First model’s ineffectiveness.¹⁹²

Despite these claims, services are more effective when participation is voluntary.¹⁹³ Additionally, recently housed individuals tend to “accept services and treatment at higher rates than before.”¹⁹⁴ In fact, the Housing First model is more effective at getting and keeping people housed and more cost-efficient than the traditional Housing Readiness model.¹⁹⁵ Roughly 88% of Housing First participants, compared to only 47% of Housing Readiness participants, are still housed after five years.¹⁹⁶ Also, the societal cost savings that result from implementing the Housing First model can exceed the intervention costs.¹⁹⁷ These economic savings come from a reduction in healthcare, shelter, judicial system, and welfare and disability costs.¹⁹⁸ One study found that the public saves, on average, anywhere from “\$900 to \$29,400 per person per year after entry into a Housing First program.”¹⁹⁹ Lastly, “correlation does not equal causation.”²⁰⁰ Rising rates of homelessness are not proof of the Housing First model’s alleged ineffectiveness.²⁰¹ But the success of the Housing First model largely depends on how it is implemented.²⁰²

191. *Id.*

192. *Id.* (“The state of Arizona has built over 7,000 permanent homes for the homeless since 2010, enough to house every unsheltered person when they began, but the number of Arizonians living on the streets has increased by 50% in recent years.”).

193. Rankin, *supra* note 32, at 131; *see also* NAT’L LOW INCOME HOUS. COAL., THE EVIDENCE IS CLEAR: HOUSING FIRST WORKS 4–5, <https://nlihc.org/sites/default/files/Housing-First-Evidence.pdf> [<https://perma.cc/2AJR-VDJY>].

194. Rankin, *supra* note 32, at 132.

195. *See* Majoue, *supra* note 173, at 948.

196. *See id.*

197. NAT’L LOW INCOME HOUS. COAL., *supra* note 193, at 3. The Community Preventive Services Task Force (“CPSTF”) based this finding on a systematic review “that showed societal cost savings of \$1.44 for every \$1 invested.” *Id.* Another study found that the Housing First model “pays for itself within 1.5 years.” *Homelessness Data & Trends*, *supra* note 23.

198. NAT’L LOW INCOME HOUS. COAL., *supra* note 194, at 3. Studies have shown that Housing First can be three times less expensive than criminalizing the unhoused. *Homelessness Data & Trends*, *supra* note 23.

199. NAT’L LOW INCOME HOUS. COAL., *supra* note 194, at 4.

200. Jack Tsai, *Is the Housing First Model Effective? Different Evidence for Different Outcomes*, 110 AM. J. PUB. HEALTH 1376, 1376 (2020).

201. *Id.*

202. *See* Jensen et al., *supra* note 24.

2. Why Implementation Matters: Houston, TX v. Los Angeles, CA

All eyes have been on Houston, Texas, after it decreased chronic homelessness by 68% after successfully implementing the Housing First model in 2011,²⁰³ but Los Angeles, California, has struggled to achieve similar results.²⁰⁴ Comparing how these two cities implemented the Housing First model can guide cities that want to replicate Houston's success.²⁰⁵ One important difference is that Los Angeles required unhoused individuals to "first be placed in a shelter, followed by temporary housing, before accessing [PSH]," while Houston rapidly placed people into PSH.²⁰⁶ Another important factor may be the number of unhoused individuals in the city.²⁰⁷ There were more than 8,400 unhoused individuals in the Houston metropolitan area before the county implemented Housing First,²⁰⁸ while over 75,000 unhoused people reside in Los Angeles County.²⁰⁹ Building or finding affordable housing for 75,000 people, as opposed to 8,400, is much more difficult.²¹⁰

Furthermore, Houston, like Texas in general, has taken a regional approach to homelessness, unlike California's more fragmented approach.²¹¹ The Houston metropolitan area has a single Continuum of Care ("CoC"), called "The Way Home,"²¹² that "[manages] federal dollars and [the county's]

203. Vanessa Brown Calder & Jordan Gygi, *In Houston, Housing Affordability Helps Reduce Homelessness*, CATO INST. (Feb. 15, 2023), <https://www.cato.org/blog/houstons-affordability-helps-reduce-homelessness> [https://perma.cc/EQ73-5RM8]. In 2023, the Houston metropolitan area had the "lowest rate of homelessness of any major U.S. city, with just 52 people per 100,000 residents experiencing homelessness." Tracy Hadden Loh & Hanna Love, *California Can't Curb Homelessness? Look What Texas Cities Have Done.*, GOVERNING (Apr. 19, 2024), <https://www.governing.com/urban/california-cant-curb-homelessness-look-what-texas-cities-have-done> [https://perma.cc/PEW8-8TC8].

204. Loh & Love, *supra* note 203. However, for the first time in years, Los Angeles County reported a 0.27% decrease in the unhoused population, indicating that although slow-moving, change may be coming. See Sam Levin, *More Than 75,000 People Unhoused in Los Angeles County, but Officials See Progress*, THE GUARDIAN (June 28, 2024), <https://www.theguardian.com/us-news/article/2024/jun/28/los-angeles-number-unhoused-homeless> [https://perma.cc/9GRS-D9MS].

205. See Golestaneh, *supra* note 177, at 38.

206. *Id.* at 38–39.

207. See Sarah Chung, *Housing First Helps but Challenges Remain*, CAPITOL WKLY. (Aug. 3, 2023), <https://capitolweekly.net/housing-first-helps-but-homelessness-challenges-remain/> [https://perma.cc/WDS2-LXXF].

208. Jensen et al., *supra* note 24.

209. Levin, *supra* note 204.

210. See *id.*; Jensen et al., *supra* note 24.

211. Loh & Love, *supra* note 203.

212. *About The Way Home*, THE WAY HOME, <https://www.thewayhomehouston.org/about-us> [https://perma.cc/GHY6-LYE8].

homelessness response.”²¹³ In 2011, the Steering Committee, The Way Home’s “lead decision-making body,” appointed a nonprofit organization called the Coalition for the Homeless of Houston/Harris County (“the Coalition”) as The Way Home’s lead agency.²¹⁴ The Coalition coordinates the homelessness response efforts among the over one hundred organizations, agencies, and local governments that make up The Way Home.²¹⁵ The Coalition also secures and grows funding, collects real-time system-level data, and monitors data trends.²¹⁶ Experts say this increased collaboration has been essential to Houston’s success.²¹⁷ Under the previous, disjointed system, each service provider tried to provide multiple kinds of services, there were service gaps and duplicative services, and people were “passed around” instead of placed in housing.²¹⁸ Unlike Texas, California has a separate CoC for every county and even some municipalities which makes it more challenging to coordinate various homelessness response efforts.²¹⁹

Also, Houston has been “building more housing of all types.”²²⁰ As of 2023, the Houston metropolitan area was ranked seventh for housing production, while Los Angeles was in the bottom half of all metropolitan areas.²²¹ Since Houston’s homelessness strategy focuses on placing people in their own apartments,²²² rental prices and the willingness of landlords to work

213. Loh & Love, *supra* note 203.

214. *About The Way Home*, *supra* note 212; Michael Kimmelman, *How Houston Moved 25,000 People from the Streets into Homes of Their Own*, N.Y. TIMES (June 15, 2023), <https://www.nytimes.com/2022/06/14/headway/houston-homeless-people.html>.

215. See Martha Teichner, *Inside Houston’s Successful Strategy to Reduce Homelessness*, CBS NEWS (Apr. 14, 2024), <https://www.cbsnews.com/news/how-houston-successfully-reduced-homelessness/> [<https://perma.cc/X74L-Y7YY>]; see also Kimmelman, *supra* note 214. Although the concept was initially met with resistance, the mayor “used a lot of political capital to push people into making a more coherent system,” and as Houston began making progress, more groups got on board. Alan Greenblatt, *How Houston Cut its Homeless Population by Nearly Two-Thirds*, GOVERNING (Aug. 30, 2023), <https://www.governing.com/housing/how-houston-cut-its-homeless-population-by-nearly-two-thirds> [<https://perma.cc/P3GM-2YQT>].

216. *What We Do*, COAL. FOR THE HOMELESS OF HOUSTON/HARRIS CNTY., <https://www.cfthouston.org/about-us> [<https://perma.cc/X94R-T9GF>]; see also Kimmelman, *supra* note 214. The Coalition “is like air traffic control for the homeless response system, while the service providers are like the airlines.” *What We Do*, *supra*.

217. Jensen et al., *supra* note 24.

218. *Id.*

219. See Loh & Love, *supra* note 203.

220. *Id.*

221. Rob Warnock, *Which Metros Are Permitting New Homes the Fastest?*, APARTMENT LIST (Mar. 12, 2023), <https://www.apartmentlist.com/research/which-metros-are-permitting-new-homes-the-fastest> [<https://perma.cc/XP37-A5VA>].

222. Greenblatt, *supra* note 215.

with the CoC have a big impact on the model's success.²²³ Currently, the average monthly rent for a studio apartment in Houston is \$1,104.²²⁴ In Los Angeles, the average monthly rent for a studio apartment is \$1,710.²²⁵ This price difference makes housing people in Los Angeles significantly more expensive than in Houston. Additionally, in Houston, The Way Home guarantees rental payments and promises that case managers will handle tenant issues to maintain positive working relationships with landlords.²²⁶ The Coalition also tries to "incentivize landlords by paying them additional fees and nonrefundable deposits."²²⁷ Along with these efforts, Houston has considered turning old motel rooms into apartments and "building new, subsidized properties."²²⁸ In the meantime, the Coalition has been meeting with property owners to "provid[e] better service and mov[e] out the few troublesome residents."²²⁹

Additionally, police officers in the two cities play different roles.²³⁰ In Los Angeles, residents can easily file nuisance complaints against unhoused individuals via a portal on the city website.²³¹ Houston, however, does not offer this kind of service.²³² In Houston, homelessness is viewed as a public health issue, and the Houston Police Department even has a homeless outreach team that "will issue identification cards, which landlords will accept, to individuals who've lost their IDs."²³³ Examining the varying success of these two cities' approaches to homelessness can be insightful for cities like Phoenix that are trying to decrease homelessness.

II. THE LIKELY EFFECT OF *GRANTS PASS* AND HOW PHOENIX CAN MOVE FORWARD

Phoenix's past approaches to the homelessness crisis and the recent Supreme Court decision in *Grants Pass* will impact how it deals with the

223. *See id.*; *see also* Golestaneh, *supra* note 177, at 37.

224. *What Is the Average Rent in Houston, TX?*, APARTMENTS.COM, <https://www.apartments.com/rent-market-trends/houston-tx/> [https://perma.cc/X48B-L5TV].

225. *What Is the Average Rent in Los Angeles, CA?*, APARTMENTS.COM, <https://www.apartments.com/rent-market-trends/los-angeles-ca/> [https://perma.cc/TB6M-ELL8].

226. Greenblatt, *supra* note 215.

227. Golestaneh, *supra* note 177, at 37.

228. Kimmelman, *supra* note 214.

229. *Id.*

230. Greenblatt, *supra* note 215.

231. *Id.*

232. *Id.*

233. *Id.*

unhoused population moving forward. This Part discusses that impact and proposes a way Phoenix can better address homelessness in the future.

A. How Grants Pass Will Impact Phoenix's Unhoused Population

The Supreme Court's recent decision in *Grants Pass* will allow Phoenix to enforce its expanded camping ban discussed above and leave little legal recourse for those negatively impacted.²³⁴ Even after the *Martin and Fund for Empowerment* rulings that prohibited the enforcement of camping bans if unhoused people could not practically obtain temporary shelter, the DOJ originally found that the PPD still detained people for sleeping in public when there were more unsheltered individuals than shelter beds.²³⁵ Therefore, now that those rulings have been overturned by *Grants Pass*,²³⁶ the PPD will be free to enforce Phoenix's camping and sleeping bans without the risk of violating *Martin and Fund for Empowerment*.²³⁷

On the other hand, it could be argued that despite the *Grants Pass* decision Phoenix will choose to not heavily enforce its camping and sleeping bans. When speaking about the DOJ report as a whole, Phoenix said it was taking steps to address some of the DOJ's concerns.²³⁸ Some of the changes Phoenix implemented included overhauling its Use of Force policy and implementing new de-escalation training.²³⁹ However, these changes were unrelated to the PPD's treatment of the unhoused. Phoenix also passed its expanded camping ban *after* the DOJ report²⁴⁰ and the DOJ retracted its original findings and closed the investigation into the PPD.²⁴¹ Additionally, Arizona voters passed Proposition 312, "a first-in-the-nation ballot initiative" which will give property owners tax rebates if they can "demonstrate a 'pattern or practice'

234. See *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024); *see supra* Figure 1 (showing that from 2017 to 2023 there were always more unhoused individuals in Maricopa County than available shelter beds).

235. U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 4, 45–46; *see supra* Figure 1.

236. *See Grants Pass*, 603 U.S. at 534, 556.

237. *See id.*; *see also supra* Figure 1 (showing that from 2017 to 2023 there were always more unhoused individuals in Maricopa County than available shelter beds).

238. Christina Estes, *Phoenix Hasn't Signed a Consent Decree over Police. No One Knows How Long the DOJ Will Wait*, KJZZ (Aug. 28, 2024), <https://www.kjzz.org/kjzz-news/2024-08-27/phoenix-hasnt-signed-a-consent-degree-over-police-no-one-knows-how-long-the-doj-will-wait> [https://perma.cc/Y4A3-9V8G].

239. *Id.*

240. *See Estes, supra* note 169 (noting Phoenix's expanded camping ban took effect September 1, 2024 and that it has not signed a consent decree); *see also* U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 1 (showing the report was published on June 13, 2024).

241. Johnson & Lucas, *supra* note 156. Without the looming threat of a lawsuit or oversight from the DOJ, the PPD will be able to fully enforce Phoenix's camping and sleeping bans.

of not enforcing laws against camping, loitering, or public drug use.”²⁴² Since the money for the tax rebates would come from money the city receives from the state, this law is expected to incentivize Phoenix to enforce its camping and sleeping bans and quickly clear encampments.²⁴³ Furthermore, Phoenix filed an *amici curiae* brief in *Grants Pass* that argued it was constitutional to enforce anti-camping and sleeping bans even when there are not enough shelter beds.²⁴⁴ These factors suggest that Phoenix will begin enforcing its expanded camping ban in the wake of *Grants Pass*.

If Phoenix’s expanded camping ban is strictly enforced, it will likely contribute to the displacement of unhoused people, leaving them constantly on the move and separated from their support networks.²⁴⁵ Phoenix’s expanded camping ban leaves unhoused people with essentially nowhere to go, other than shelters, without fear of criminal penalty, and the shelters are often at full capacity.²⁴⁶ Camping or sleeping on private property without permission, after notice or a request to leave, is trespassing,²⁴⁷ and Phoenix’s expanded camping ban covers a wide range of public areas.²⁴⁸ This ordinance

242. Noah Bierman, *Arizona Voters Back Homeless Crackdown. Will Other States Follow?*, L.A. TIMES (Nov. 8, 2024), <https://www.latimes.com/politics/story/2024-11-08/arizona-voters-back-homeless-crackdown-will-other-states-follow> [https://perma.cc/GCD6-DLU3]; Rachel Cohen Booth, *Arizona’s Unprecedented Crackdown on Homeless Encampments*, VOX (Nov. 7, 2024), <https://www.vox.com/2024-elections/383490/arizona-homeless-encampment-ballot-measure-prop312-grants-pass-nuisance> [https://perma.cc/ET7Z-VCEU]; *see also Proposition 312 Arizona Property Tax Reimbursement for Non-Enforcement of Public Nuisance Laws*, ARIZ. DEP’T OF REVENUE, <https://azdor.gov/individuals/proposition-312-arizona-property-tax-reimbursement-non-enforcement-public-nuisance-laws> [https://perma.cc/8KM9-X8SA].

243. *See* Cohen Booth, *supra* note 242. Tempe, Arizona has begun strictly enforcing its anti-camping ordinance, citing both *Grants Pass* and Proposition 312. Lauren Clark, *Tempe Begins Enforcing Camping Ordinance to Comply with Prop 312 and Supreme Court Decision*, FOX 10 PHX., <https://www.fox10phoenix.com/news/tempe-begins-enforcing-camping-ordinance-comply-prop-312-supreme-court-decision> [https://perma.cc/GPD3-GZ29] (Dec. 3, 2024).

244. *See* Taylor Selly, *Phoenix Supports Grants Pass in Landmark U.S. Supreme Court Homelessness Case. Why?*, AZCENTRAL. (Apr. 23, 2024), <https://www.azcentral.com/story/news/local/phoenix/2024/04/23/phoenixs-stance-in-the-homelessness-case-at-the-u-s-supreme-court-grants-pass/73415963007/> [https://perma.cc/5LQU-BX5B].

245. *See* McJunkin, *supra* note 29, at 139.

246. PHX., ARIZ., PHX. CITY CODE § 23-30 (2024); *see* Katherine Davis-Young, *Phoenix Key Campus Will Lose Shelter Capacity for About 100 People During Hottest Part of the Year*, KJZZ (Mar. 7, 2025), <https://www.kjzz.org/kjzz-news/2025-03-07/phoenix-key-campus-will-lose-shelter-capacity-for-about-100-people-during-hottest-part-of-the-year> [https://perma.cc/4PM2-MYYY].

247. *See* ARIZ. REV. STAT. ANN. § 13-1502 (2025) (“A person commits criminal trespass in the third degree by . . . [k]nowingly entering or remaining unlawfully on any real property after a reasonable request to leave by a law enforcement officer, the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.”).

248. PHX., ARIZ., PHX. CITY CODE § 23-30 (2024).

effectively allows for the banishment of unhoused individuals without addressing the root of the homelessness problem in Phoenix.²⁴⁹

Although enforcing these ordinances would decrease the number of encampments and prevent nuisances, heavily relying on the criminal justice system will likely worsen Phoenix's homelessness problem. For example, as mentioned, Phoenix's new expanded camping ban prohibits people from camping or sleeping within 500 feet of a shelter.²⁵⁰ Since shelter space is often limited, this ban will likely make it harder for unhoused people to wait for available beds and easily access the services they need.²⁵¹ It will also make it more challenging for people working for social service organizations to contact and build relationships with unhoused people in the community.²⁵² Without anywhere else to go in light of insufficient shelter space, unhoused people will be forced to stay on the streets and risk being criminally punished for their circumstances.²⁵³

Additionally, the enforcement of Phoenix's expanded camping ban will leave unhoused people with fines and criminal records, which only act as additional barriers to housing, services, and employment opportunities.²⁵⁴ These additional barriers will make achieving housing stability more difficult for unhoused people.²⁵⁵ With police officers permitted to freely enforce camping and sleeping bans, courts may also have more misdemeanor cases, and their dockets may become overloaded.²⁵⁶

Even though police officers could use camping and sleeping bans to encourage unhoused people to seek shelter or treatment to avoid a criminal conviction, there are oftentimes more unhoused people than available resources.²⁵⁷ Also, since the DOJ originally found that the PPD violated the rights of the unhoused before *Grants Pass*,²⁵⁸ the Supreme Court's decision

249. See *id.*; Katherine Beckett & Steve Herbert, *Penal Boundaries: Banishment and the Expansion of Punishment*, 35 L. & SOC. INQUIRY 1, 5–9 (2010).

250. PHX., ARIZ., PHX. CITY CODE § 23-30 (2024).

251. See Schwenk, *supra* note 105.

252. See Rummel, *supra* note 107.

253. See McJunkin, *supra* note 29, at 135.

254. See *id.* at 141–44.

255. See *id.*

256. TJ L'Heureux, 'When Is the Cycle Going to Stop?': Phoenix OKs Unhoused Camping Ban, PHX. NEW TIMES (May 31, 2024), <https://www.phoenixnewtimes.com/news/new-phoenix-camping-ban-homelessness-harmful-19107704> [https://perma.cc/Z2T4-6BCH].

257. See *id.*; Daniel Soucy et al., *State of Homelessness: 2025 Edition*, NAT'L ALL. TO END HOMELESSNESS (Sept. 4, 2025), <https://endhomelessness.org/state-of-homelessness/> [https://perma.cc/4XL2-VPKA]. Also, as previously discussed, social services tend to be more effective when individuals voluntarily participate. Rankin, *supra* note 32, at 131; see also NAT'L LOW INCOME HOUS. COAL., *supra* note 193, at 4–5.

258. U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 4, 41.

will likely give officers more leeway to harass and arrest unhoused people unless Phoenix makes major structural, personnel, policy, and training changes.

B. Proposed Solutions

While many are rightfully concerned about the implications of *Grants Pass*, the ruling essentially left the issue of camping and sleeping bans to states and local governments.²⁵⁹ Even though the Supreme Court refused to find camping and sleeping bans unconstitutional under the Eighth Amendment,²⁶⁰ the Phoenix City Council could vote to amend or repeal its expanded camping ban. Additionally, these kinds of ordinances could be found unconstitutional under different legal grounds in the future,²⁶¹ or the PPD could refuse to heavily enforce them.

Other than repealing Phoenix's expanded camping ban and existing sleeping ban, one way Phoenix could better address the homelessness crisis moving forward is by modeling its approach after Houston's. Phoenix is a part of the Maricopa Regional CoC, which is run by a governmental agency called the Maricopa Association of Governments.²⁶² One of the first steps to improving Phoenix's CoC would be to appoint a nonprofit agency, like the one in Houston,²⁶³ to devise solutions, coordinate efforts of individual service providers and organizations, raise funding, and observe data and homelessness trends. Along with a new governing body, the CoC and Phoenix's mayor should work to convince nonprofits, organizations, and local governments in the area to join forces under an umbrella organization. This organization can meet with individual service providers to figure out how best to use each provider's resources and ensure maximum service coverage while avoiding duplicative services.

Maricopa County's new CoC should then *fully* implement the Housing First model and focus on providing supportive services to help people remain housed. Although the Housing First model hasn't been as successful in some counties, like Los Angeles, as it has been in Houston,²⁶⁴ Maricopa County is more like Houston than Los Angeles County. As of January 22, 2024, there

259. *See City of Grants Pass v. Johnson (Grants Pass)*, 603 U.S. 520, 549–50 (2024).

260. *See id.* at 549–50, 560–61.

261. *See id.* at 549–50.

262. *See Point-In-Time Homelessness Count*, MARICOPA ASS'N OF GOV'TS, <https://azmag.gov/Programs/Homelessness/Data/Point-In-Time-Homelessness-Count> [https://perma.cc/552D-ULT6].

263. *See discussion supra* Section I.D.2.

264. *See discussion supra* Section I.D.2.

were an estimated 9,435 people experiencing homelessness in Maricopa County,²⁶⁵ which is comparable to the more than 8,400 unhoused individuals living in Houston before the county implemented Housing First.²⁶⁶ On the other hand, there were over 75,000 people experiencing homelessness in Los Angeles County in 2024.²⁶⁷ Additionally, unlike Los Angeles, Phoenix has been building more housing and is ranked eighth, behind Houston, which is ranked seventh, for the metro area with the most housing production.²⁶⁸ Finally, Phoenix's housing market is more similar to Houston's, with a studio apartment costing an average of \$1,116 per month,²⁶⁹ which is closer to Houston's cost of \$1,103 per month²⁷⁰ than LA's cost of \$1,708 per month.²⁷¹ These similarities suggest that if Phoenix implements the Housing First model appropriately, it could have success comparable to Houston's.

Aside from Phoenix re-structuring its CoC, the PPD should avoid enforcing Phoenix's expanded camping ban and existing sleeping ban to replicate Houston's results. A key component of Houston's success has been that its police officers view homelessness as a public health issue and do what they can to support the unhoused.²⁷² Whereas in Los Angeles, where homelessness is still rampant, a city portal allows people to easily report nuisances caused by unhoused individuals.²⁷³ Moreover, enforcing anti-camping and sleeping bans is costly and diverts resources that could be used to help tackle the problem.²⁷⁴ If Phoenix diligently implements these suggestions and commits to the Housing First approach, it will likely see positive results over time.

III. CONCLUSION

Despite Phoenix's best efforts and the substantial amount of funds spent on homelessness initiatives, the number of unhoused people in Maricopa

265. MARICOPA ASS'N OF GOV'TS, *supra* note 8, at 1.

266. Jensen et al., *supra* note 24.

267. See Levin, *supra* note 204.

268. Warnock, *supra* note 221.

269. *What Is the Average Rent in Phoenix, AZ?*, APARTMENTS.COM, <https://www.apartments.com/rent-market-trends/phoenix-az/> [https://perma.cc/T5M2-CVQM].

270. *What Is the Average Rent in Houston, TX?*, *supra* note 224.

271. *What Is the Average Rent in Los Angeles, CA?*, *supra* note 225.

272. See discussion *supra* Section I.D.2.

273. Greenblatt, *supra* note 215.

274. See Hannah Chimowitz & Adam Ruege, *The Costs and Harms of Homelessness*, CMTY. SOLS. (Sept. 25, 2023), <https://community.solutions/research-posts/the-costs-and-harms-of-homelessness/> [https://perma.cc/B4MB-4CQN] (reporting that during 2016 and 2017, Boulder, CO spent at least \$1.8 million a year enforcing its anti-homeless ordinances).

County has still not substantially decreased.²⁷⁵ Phoenix has previously used policing as a way to deal with the unhoused even when the law stated that officers were not allowed to issue camping citations if the number of unhoused people exceeded the number of shelter beds.²⁷⁶ Now that this legal prerequisite to issuing citations has been eliminated by *Grants Pass*, the PPD will likely begin strictly enforcing the new expanded camping ban, especially in the face of pressure to remove homeless encampments. However, since this approach has been unsuccessful in the past, it is time for Phoenix to implement a new method of combatting homelessness.

The Housing First model coupled with supportive services is likely the best option based on the evidence and the model's previous success. By breaking down barriers to housing, the Housing First model quickly re-houses people, which allows them to better address any substance abuse or mental health issues and gain employment.²⁷⁷ Re-housing individuals also leads to the closure of encampments, which city residents and business owners complain about.²⁷⁸ However, many still criticize the model despite its proven success.²⁷⁹ But as former Houston mayor, Annise Parker, says, "you can't complain about [an unhoused person] being on the street and also complain about getting [them] off it."²⁸⁰ Thus, instead of turning towards criminalization to address complaints about the large number of unhoused people on the streets and outside of businesses, Phoenix should follow Houston's lead and fully implement the Housing First model.

275. See L'Heureux, *supra* note 81.

276. See U.S. DEP'T OF JUST., C.R. DIV., *supra* note 138, at 4, 45–47.

277. See Jensen et al., *supra* note 24; see also Rankin, *supra* note 32, at 131–33; NAT'L LOW INCOME HOUS. COAL., *supra* note 193, at 1–2, 5.

278. See Greenblatt, *supra* note 215; see also Teichner, *supra* note 215.

279. See Marcy Thompson, *The Truth About Housing First*, NAT'L ALL. TO END HOMELESSNESS (Sept. 22, 2023), <https://endhomelessness.org/blog/the-truth-about-housing-first/> [<https://perma.cc/KER2-C46L>] (noting that some people have deemed Housing First a failed policy despite the evidence).

280. Kimmelman, *supra* note 214.