

The *Grants Pass* Holding: Enforcing Public-Camping Laws Is Not Cruel and Unusual Punishment

In a 6-3 decision with profound implications for cities and counties, the U.S. Supreme Court has decided *City of Grants Pass v. Johnson*, Case No. 23-175 (June 28, 2024). The *Grants Pass* Court held that, as a general rule, enforcing public anti-camping laws does not constitute cruel or unusual punishment violating the Eighth Amendment to the U.S. Constitution. The Supreme Court abrogated the Ninth Circuit's decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), in which the Ninth Circuit held that the Eighth Amendment prohibited imposing criminal penalties on unhoused persons for sitting, sleeping, or lying outside.

The *Grants Pass* majority opinion, authored by Justice Gorsuch, recognizes that many view homelessness as "the defining public health and safety crisis in the western United States." The Court considered Grants Pass anti-camping ordinances, which impose civil fines and authorize orders temporarily barring violators from camping in public places. The ordinances also allow a 30-day jail sentence if an anti-camping order is violated. In rejecting the Eighth Amendment challenge, the majority decided that there was "nothing cruel or unusual" about these penalties.

The Court cited extensively to the amicus briefs filed by a broad array of local governments, including thirteen

California cities, the California governor, the League of Oregon Cities, and a group of Western States, to name a few. Many of the amici urged the Court to reconsider the Ninth Circuit's *Martin* holding and to allow local governments more latitude in designing solutions to address homelessness. The Court cited statistics indicating that the number of unhoused persons had increased since the *Martin* holding and showing that a substantial percentage of unhoused persons refused offers of shelter beds, preferring to remain in encampments and sleep outside.

At the heart of the *Grants Pass* holding is whether the Eighth Amendment prohibits criminalizing a "status." The Court refused to overturn *Robinson v. California*, 370 U.S. 660 (1972), where the Court held that criminalizing the mere status of narcotics addiction inflicted cruel and unusual punishment that violated the Eighth and Fourteenth Amendments. The Court contrasted criminalizing addiction status with the *Grants Pass* ordinances: laws that forbid specific actions, such as "'occupy[ing] a campsite' on public property 'for the purpose of maintaining a temporary place to live.'" The Court reasoned that the Grants Pass ordinances did not criminalize the status of being homeless because "it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through

town, or a student who abandons their dorm room to camp out in protest on the lawn of a municipal building."

The Court's reasoning does imply a constitutional limitation on selectively enforcing these laws against homeless persons and not others. It noted that "selective prosecution" of public camping ordinances against homeless persons "may implicate due process," but that issue was not before the Court.

The majority repeatedly recognized that homelessness presents a complex public policy problem and that the solutions to homelessness are best addressed by the people, rather than by federal judges:

"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.... The ... Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest ... rights and responsibilities from the American people and in their place dictate this nation's homelessness policy."

Justice Thomas wrote a concurring opinion, arguing that the Court should have overruled *Robinson's* holding that criminalizing a status such as narcotics addiction violates the Eighth Amendment. He also argued that the Grants

Pass ordinances were largely civil in nature, so the Eighth Amendment was never implicated.

The dissent, authored by Justice Sotomayor with Justices Kagan and Jackson joining, rejected the idea that the Grants Pass ordinances did not involve criminalizing an involuntary status. The dissenters would have found an Eighth Amendment violation under *Robinson* because homelessness is an involuntary state that is beyond the control of hundreds of thousands of Americans. The dissent also raised due process concerns about the Grants Pass ordinances.

In sum, the takeaway from *Grants Pass* is that local governments now have more leeway in choosing policy solutions and enforcement tools to address homelessness. Some constitutional limits on these choices remain, such as not criminalizing the status of being homeless and not selectively enforcing anti-camping laws against unhoused persons. Further, the Supreme Court in *Grants Pass* did not address whether any such ordinances raise other constitutional concerns, including whether and under what circumstances removing an individual's personal property constitutes a due process violation or an unconstitutional seizure under the Fourth Amendment.

If you need more information on this issue, please contact Dolores Bastian Dalton, Brandon Stracener or any other attorney at Goldfarb & Lipman LLP.

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