



Supreme Court Rules Anti-Camping Ordinances Do Not Violate the Constitution

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City of Grants Pass, Oregon v. Johnson, 144 S. Ct. 2202 (June 28, 2024)

In *City of Grants Pass, Oregon v. Johnson*, the U.S. Supreme Court addressed a question faced by cities around the country: the constitutional limits on ordinances aimed at prohibited camping, usually by unhoused people, on public land. Rejecting a longstanding precedent of the U.S. Court of Appeals for the Ninth Circuit, the Supreme Court held that such ordinances do not constitute “cruel and unusual punishment” under the Eighth Amendment of the U.S. Constitution.

The city of Grants Pass, Oregon, has a population of unhoused people, many of whom live in encampments in city parks, streets, and sidewalks. To address the challenges posed by these encampments, the city passed several ordinances that make it illegal for unhoused individuals to camp or sleep in public. Initial violations involve a fine, but repeated violations can result in jail time. But the number of unhoused persons in Grants Pass exceeds the number of shelter beds.

A group of unhoused persons challenged the ordinances in federal court, contending that the ordinances violate the Eighth Amendment’s prohibition on “cruel and unusual punishment,” due to the insufficient number of shelter beds. Following the Ninth Circuit’s opinion in *Martin v. Boise*, 920 F.3d 584 (2019), the district court agreed that the plaintiffs were “involuntarily homeless” because the unhoused population exceeded the “practically available” shelter beds. Additional charity-run beds were not considered “available,” in part because of rules prohibiting smoking and requiring attendance at religious services. The district court thus certified the class and enjoined Grants Pass from enforcing its anti-sleeping/camping laws against unhoused individuals in the city. The

Ninth Circuit affirmed in relevant part.

The U.S. Supreme Court reversed, overruling *Martinez* and holding that laws regulating camping on public property do not constitute “cruel and unusual punishment.” In a 6–3 decision authored by Justice Gorsuch, the majority concluded that, while the “[t]he Constitution’s Eighth Amendment serves many important functions . . . it does not authorize federal judges to wrest those rights and responsibilities [to deal with homelessness] from the American people and in their place dictate this Nation’s homelessness policy.” The Supreme Court concluded that the lower courts were incorrect for three reasons.

First, the Supreme Court reasoned that the Eighth Amendment’s Cruel and Unusual Punishments Clause “has always been considered, and properly so, to be directed at the method or kind of punishment a government may impose for the violation of criminal statutes.” In other words, the clause was written “to ensure that the new Nation would never resort to certain ‘formerly tolerated’ punishments.” According to the majority, the clause is used to “question what ‘method or kind of punishment’ a government may impose after a criminal conviction.” It was never intended to be used to “question whether a government may criminalize particular behavior in the first place.”

Second, the Supreme Court reasoned that the punishment imposed by Grants Pass (fines and potential jail time for repeat offenders) is not cruel and unusual. To be cruel, the punishment must be “designed” to cause “terror, pain, or disgrace.” And for a punishment to be unusual, it must be a practice that has “long fallen out of use.” In the Supreme Court’s view, fines for first-time offenders and maximum jail time of 30 days for repeat offenders are not cruel because they are not designed to cause “terror, pain, or disgrace.” Neither is the punishment unusual because “cities and States across the country have long employed similar punishments for similar offenses.”

Third, the Supreme Court reasoned that violating the city’s anti-sleeping/camping ordinances was not the result of an unhoused “status.” In *Robinson v. California*, 370 U. S. 660 (1962), the Supreme Court held that states may not “criminalize a mere status” in striking

down a law that criminalized being “addicted to narcotics.” The *Robinson* court reasoned that while using narcotics can be a crime, it is cruel and unusual to punish someone because they suffer from addiction.

The Supreme Court reasoned that “Grants Pass’s public-camping ordinances do not criminalize status.” Instead, the ordinances apply equally to all campers: “[i]t makes no difference whether the charged defendant is currently a person experiencing homelessness, a backpacker on vacation, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building.” While “some homeless individuals cannot help but do what the law forbids,” their actions, “involuntary” or not, violate the law. The Supreme Court thus concluded: “Homelessness is complex. Its causes are many. So may be the public policy responses required to address it.”

Justice Thomas authored a concurring opinion in which he primarily argued that the Court should overturn *Robinson*. That holding, Justice Thomas explained, conflicts with the text and history of the Cruel and Unusual Punishment Clause because, “[a]t the time the Eighth Amendment was ratified, the word ‘punishment’ referred to the penalty imposed for the commission of a crime.” In Justice Thomas’s view, the plaintiffs cannot “explain how the civil fines and park exclusion orders constitute a ‘penalty imposed for the commission of a crime.’”

In her dissent, Justice Sotomayor, joined by Justices Kagan and Jackson, viewed the case in straightforward, practical terms, stating that “[s]leep is a biological necessity, not a crime.” Justice Sotomayor continued, arguing that “Grants Pass jails and fines those people for sleeping anywhere in public at any time, including in their cars, if they use as little as a blanket to keep warm or a rolled-up shirt as a pillow. For people with no access to shelter, that punishes them for being homeless.” Justice Sotomayor also contended that the issue is not just one of public policy, reasoning that “[t]his Court, too, has a role to play in faithfully enforcing the Constitution to prohibit punishing the very existence of those without shelter.”

Key Takeaways

- Cities may impose criminal penalties for sleeping and camping outside, even when no shelter alternative is available.
- The Cruel and Unusual Punishments Clause of the Eighth Amendment limits the types of punishments state and local governments may impose, not on the type of actions they choose to criminalize.
- “Status” will not be expanded to cover any actions, even involuntary ones.

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