

## Can Homelessness Now Be Criminalized? *The City of Grants Pass* Decision

By: Jack R. Carney, Staff Editor, Vol. 32<sup>1</sup>

### I. Introduction to America's Homelessness Crisis

The United States of America has a homelessness problem. Homelessness in the United States is not just on the rise; it is soaring.<sup>2</sup> The U.S. Department of Housing and Urban Development's 2024 report identified an 18% increase in homelessness and counted more than 770,000 homeless individuals on a single evening in January 2024.<sup>3</sup> State and local governments have employed various approaches to combat the complex issue.<sup>4</sup> Over the years, the two main approaches implemented have been “Housing First” and “Treatment First.”<sup>5</sup> The former provides housing to homeless individuals while addressing other issues, such as substance abuse, concurrently.<sup>6</sup> In this approach, housing eligibility is not dependent on receiving or completing treatment.<sup>7</sup> The latter requires that an individual become stable in other areas before becoming eligible for independent housing.<sup>8</sup> Even though the data indicates promising results from the “Housing First” method, there is a new approach gaining support amongst state and local governments—criminalization.<sup>9</sup> The Supreme Court's recent decision in *City of Grants Pass*,

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<sup>2</sup> CBS News, *Homelessness surged 18% to a new record in 2024 amid a lack of affordable housing across the U.S.*, MONEYWATCH (Dec. 27, 2024), <https://www.cbsnews.com/news/homelessness-record-level-2024-up-18-percent-housing-costs-migrants/>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Clark Merrefield, *Reducing homelessness in the US: A solutions-focused, research-based explainer*, THE JOURNALIST'S RES. (Oct. 8, 2025), <https://journalistsresource.org/politics-and-government/homelessness-solutions/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *City of Grants Pass v. Johnson*, 603 U.S. 520, 536–37 (2024).

*Oregon v. Johnson* has abrogated *Martin v. Boise* and made way for an influx of criminal regulations to fight the homelessness crisis plaguing American cities.<sup>10</sup> This blog will examine the constitutionality of public camping restrictions, the *City of Grants Pass* decision, and the potential legal consequences of the ruling.

## II. The *Martin* Era

In 2019, the Ninth Circuit held that an ordinance, making it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time” was unconstitutional as it violated the Eighth Amendment’s prohibition against cruel and unusual punishment.<sup>11</sup> The court adopted a narrow holding in *Martin v. City of Boise*.<sup>12</sup> The court made it clear that it was not requiring a city or state to provide sufficient amounts of shelter or allow the homeless to sleep on public streets.<sup>13</sup> Rather, “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”<sup>14</sup> The ruling prohibited the ordinance’s enforcement against individuals who took only basic measures to protect themselves from the outdoor elements.<sup>15</sup> However, years later, the Supreme Court of the United States took the opportunity to reevaluate and chime in on the constitutional issue in a case stemming from a city in Oregon.

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<sup>10</sup> *City of Grants Pass*, 603 U.S. 520; *Martin v. City of Boise*, 920 F.3d 584 (9<sup>th</sup> Cir. 2019).

<sup>11</sup> *Martin*, 920 F.3d at 603, 615 (internal citations omitted) (“does the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter? We hold that it does[.]”).

<sup>12</sup> *Id.* at 617.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (“For example, a Boise police officer testified that he cited plaintiff Pamela Hawkes under the Camping Ordinance for sleeping outside “wrapped in a blanket with her sandals off and next to her,” for sleeping in a public restroom “with blankets,” and for sleeping in a park “on a blanket, wrapped in blankets on the ground.”).

### III. *City of Grants Pass v. Johnson*

The City of Grants Pass is located in southwest Oregon and is home to approximately 38,000 people, 600 of whom are homeless.<sup>16</sup> As a part of its efforts to combat the homelessness problem, Grants Pass enacted laws that “restrict[] camping in public spaces.”<sup>17</sup> A class of plaintiffs challenged the ordinances,<sup>18</sup> and the court issued a *Martin* injunction against Grants Pass.<sup>19</sup> The Ninth Circuit agreed with the district court for the District of Oregon and affirmed in part.<sup>20</sup> The majority agreed with the district court’s finding that the individuals qualified as involuntarily homeless and found that the city’s ordinance was at odds with the *Martin* precedent.<sup>21</sup> Grants Pass, with support from other cities, states, and counties across the circuit, petitioned the Supreme Court for certiorari, and the Court granted the petition.<sup>22</sup>

In its review, the Supreme Court held that ordinances did not constitute cruel and unusual punishment when applied to individuals experiencing homelessness, even if homelessness was involuntary.<sup>23</sup> This decision abrogated *Martin*.<sup>24</sup> The Court reasoned that the Eighth Amendment’s cruel and unusual punishments clause was not a proper foundation for the Plaintiffs’ suit.<sup>25</sup> The clause is focused on “what happens next”, or what “method or kind of punishment” the government may impose after an individual is convicted of a crime, not what types of conduct the government may criminalize.<sup>26</sup> Furthermore, the Court did not find the

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<sup>16</sup> *City of Grants Pass*, 603 U.S at 537.

<sup>17</sup> *Id.*

<sup>18</sup> Grants Pass Municipal Code § 5.61.020(A) (2023); § 5.61.030; §§ 6.46.090(A)–(B).

<sup>19</sup> *City of Grants Pass*, 603 U.S at 537 (“[T]he court found, everyone without shelter in Grants Pass was “involuntarily homeless” because the city’s total homeless population outnumbered its ‘practically available’ shelter beds. . . . [and] none of the beds at Grants Pass’s charity-run shelter qualified as “available[]” . . . because that shelter offers something closer to transitional housing than “temporary emergency shelter[.]”).

<sup>20</sup> *Id.* at 539.

<sup>21</sup> *Id.* (Judge Collins’ dissent questioned the *Martin* decision, specifically its consistency with the Eighth Amendment).

<sup>22</sup> *Id.* at 540.

<sup>23</sup> *Id.* at 541-47.

<sup>24</sup> *City of Grants Pass*, 603 U.S at 541-47.

<sup>25</sup> *Id.* at 542.

<sup>26</sup> *Id.* at 542-43.

criminal punishments contained in the ordinances to be cruel nor unusual.<sup>27</sup> The punishments were similar to those for similar offenses and were the usual modes of punishment used around the country.<sup>28</sup> Also, the punishments were not cruel as they were not designed to inflict terror or pain.<sup>29</sup> In sum, this decision solidified that the Eighth Amendment does not grant federal judges primary responsibility for assessing the causes of homelessness or devising the public policy responses to such issues.<sup>30</sup>

#### **IV. Potential Consequences and Potential Solutions**

The *Grants Pass* ruling now adds another tool to the state and local government’s toolbox in the fight against homelessness. Some advocates do not believe that the Supreme Court’s ruling has the best interests of the homeless in mind.<sup>31</sup> They believe the ruling will not help homeless individuals attain what they need; rather, the ruling will criminalize the unavoidable act of sleeping.<sup>32</sup> A volunteer in the city stated, “[t]hese are our neighbors. There’s no reason to dehumanize them, . . . [p]eople have similar behaviors if they live in homes, but they have walls around them . . . when people are out here and don’t have a home, they’ve got a microscope on them.”<sup>33</sup>

However, it seems that Grants Pass has not fully taken advantage of its new tool. The city’s first action after the ruling was to consolidate fifteen camp sites to four larger ones to allow

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<sup>27</sup> *City of Grants Pass*, 603 U.S at 543.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 543.

<sup>30</sup> *Id.* at 561 (“The Constitution’s Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation’s homelessness policy.”).

<sup>31</sup> Jane Vaughan, *In Grants Pass, immediate effects of Supreme Court ruling are unclear*, OPB (Jun. 29, 2024), <https://www.opb.org/article/2024/06/29/grants-pass-supreme-court-ruling/>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

for officials to regulate with greater ease, rather than starting total homelessness criminalization across the board.<sup>34</sup>

Some governments have started taking advantage of this opportunity to enforce and punish the homeless conduct on public property.<sup>35</sup> In California, Governor Newsom signed a law directing agencies to enforce the public camping laws on state property.<sup>36</sup> Also, legislatures around the Ninth Circuit have passed new laws allowing cities to enforce the laws against the homeless citizens.<sup>37</sup> In San Francisco, “[a]rrests and citations for illegal lodging increased from 71 in the six months before the ruling to 427 in the six months after — a 500% increase.”<sup>38</sup> Other major cities in California also experienced spikes in arrests and homeless-related citations.<sup>39</sup> This trend is likely to continue; however, it may not be the solution.

Policymakers in the United States could take a different approach to the homelessness problem by creating policies attacking root causes, such as drug addiction and access to affordable housing. Rushing to the criminalization of homelessness may lead to more homeless individuals in the prison system and a decrease in federal funding to homeless service programs and affordable housing efforts.<sup>40</sup> Instead, state and local governments could take the approach of some of the biggest cities in the United States; Chicago, Los Angeles, and Detroit have partnered on an initiative “to provide more stable housing services to people leaving incarceration”<sup>41</sup>

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<sup>34</sup> Daniel Macdonald, *Law and Policy of Encampment Sweeps in the Ninth Circuit: How We Got From Martin v. City of Boise to City of Grants Pass v. Johnson*, 67 ARIZ L. REV 549, 578 (2025).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 576.

<sup>37</sup> *Id.*

<sup>38</sup> Keith Mizuguchi, *How Grants Pass Ruling Affected Homeless Enforcement In California*, KQED (Jun. 27, 2025), <https://www.kqed.org/news/12046259/how-grants-pass-ruling-affected-homeless-enforcement-in-california>.

<sup>39</sup> *Id.*

<sup>40</sup> Robert Davis, *Understanding the Potential Impact of Johnson v. Grant Pass*, INVISIBLE PEOPLE (May 20, 2024), <https://invisiblepeople.tv/understanding-the-potential-impact-of-johnson-v-grants-pass/>.

<sup>41</sup> *Id.*

Improving and investing in already existing programs such as subsidized housing is a solution that attacks the root of the homelessness problem—providing enough shelter for all.<sup>42</sup>

## V. Conclusion

The Supreme Court’s decision in *City of Grants Pass* will have a monumental impact on the homeless community for years to come. The ruling will almost certainly lead to laws being passed that criminalize involuntary behavior, even when the government does not provide enough beds or resources for the homeless community.<sup>43</sup> Hopefully, policymakers in affected communities can come up with new strategies that do not rely on criminalization.

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<sup>42</sup> See Davis, *supra* note 40.

<sup>43</sup> *City of Grants Pass*, 603 U.S. at 563 (Sotomayor, J., dissenting) (“Sleep is a biological necessity, not a crime. For some people, sleeping outside is their only option.”).