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Public Law Update - U.S. Supreme Court Rules Anti-Camping Ordinances Are Enforceable

On June 28, 2024, the Supreme Court decided *City of Grants Pass, Oregon v. Johnson et al.*, a case which affects how public agencies may enforce anti-camping ordinances in their jurisdictions. This case provides important guidance to public agencies about the legality of enforcement options affecting homeless communities.

Like many local governments, the City of Grants Pass, Oregon, has public camping laws that restrict encampments on public property. The ordinances at issue in Grants Pass prohibit activities such as camping on public property or parking overnight in the city's parks. Violating these ordinances triggers a fine, and multiple violations can result in imprisonment.

The Supreme Court's decision overturned *Martin v. Boise*, the Ninth Circuit's 2018 decision which held that the Eighth Amendment's Cruel and Unusual Punishments Clause barred cities from enforcing public-camping ordinances whenever the number of homeless individuals in a jurisdiction exceeded the amount of "practically available" shelter beds. Grants Pass was a class action brought on behalf of homeless people living in Grants Pass, claiming the city's enforcement of its anti-camping ordinances violated the Eighth Amendment as the City only had 100 shelter beds in Grants Pass for the 600 homeless individuals in its jurisdiction. The Supreme Court disagreed.

The Supreme Court rejected the Ninth Circuit's application of the Eighth Amendment to criminal enforcement of anti-camping laws on public property, determining that criminal punishment for violation of these laws does not constitute "cruel and unusual punishment." The Court reached this conclusion based on five components.

First, the Court explains that the Cruel and Unusual Punishments Clause focuses on *the kind of punishment* a government imposes after criminal conviction, and not on whether a government *may criminalize* particular behavior. Here, Grants Pass imposed limited fines for first-time offenders, an order temporarily barring an individual from camping in a public park for repeat offenders, and a maximum sentence of 30 days in jail and a fine for those who later violate that order. The Court determined those types of punishments were neither cruel nor unusual, as they are not designed to cause terror, pain, or

disgrace and are common forms of punishment.

Second, the Court determined Grants Pass's ordinances do not criminalize *status*, which the Eighth Amendment prohibits. In *Robinson v. California*, a Supreme Court decision from 1962, the Court determined imprisoning persons for being addicted to narcotics was cruel and unusual punishment. The Supreme Court reasoned that punishing someone for being addicted to drugs would be similar to punishing someone for being mentally disabled or afflicted with disease—these were things for which someone maintained a *status*. However, the *Robinson* Court had made clear that their intent was not to limit jurisdictions in their ability to criminalize knowing or intentional drug use by individuals suffering from addiction. The Court here found Grants Pass was not criminalizing the *status* of being homeless, but rather criminalizing the *conduct* of camping outside.

Third, the Court found support in its prior decision to distinguish the facts here from *Robinson* by considering its decision in *Powell v Texas* from 1968. There, a Texas statute made it a crime to get drunk or be found intoxicated in any public place. The defendant was an alcoholic who claimed his drunkenness was an involuntary byproduct of his *status* as an alcoholic. The court disagreed, finding that each state maintains authority to prevent acts which society is interested in preventing, even if the defendant's conduct may be considered involuntary or the result of a status. Finding the same to be true here, the Court found sleeping in public was not a status for purposes of the Eighth Amendment and thus punishing the conduct of sleeping in public was permissible.

Fourth, the Supreme Court took issue with requiring judges to determine who is "involuntarily" homeless and when shelter beds are "practically available." While the "involuntary" determination was one considered in the *Powell* decision, it was in *Martin v. Boise* that the Court barred cities from enforcing public-camping ordinances whenever the number of homeless individuals exceeded the number of "practically available" shelter beds. Thus, the Court found these benchmarks produced confusion in the courts, interfered with federalism, and attempted to expand the Eighth Amendment beyond *status* offenses.

Fifth, the Court confirmed the Eighth Amendment does not authorize federal judges' dictate the Nation's policy in addressing homelessness.

The Supreme Court recognized that policymakers need access to a variety of different policy tools to address the complicated issues of housing and homelessness. This decision makes clear that public agencies may criminally enforce anti-camping ordinances to address public health and safety risks associated with homeless encampments. However, cities should not expect ordinances which

target camping and homelessness to be free from further challenges.

In the dissent, three Justices foreshadow future challenges. They suggest ordinances like Grants Pass's may be contested for violating the Eighth Amendment's Excessive Fines Clause. Furthermore, they consider the possibility of future challenges under the Due Process Clause of the Fifth and Fourteenth Amendments.

In enforcing camping prohibitions, cities should remain cautious and consider establishing rules or policies regarding notice, collection, and storage of personal property to address any potential Due Process challenges under the Fifth and Fourteenth Amendments and the Fourth Amendment's prohibition against unreasonable searches and seizures.

Attorneys at Burke regularly advise clients on legal matters related to housing, homelessness and code enforcement.

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