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Camping Revisited: U.S. Supreme Court Changes the Landscape of Penalizing Public Sleeping

July 15, 2024 by [Harry Boesche](#)

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The U.S. Supreme Court (Supreme Court) issued its opinion in [City of Grants Pass v. Johnson](#) (*Grants Pass*) on June 28, 2024. The case addresses the following legal question related to a local government's homelessness response: Do local ordinances imposing criminal penalties on acts like public sleeping or camping violate the Eighth Amendment's cruel and unusual punishment prohibition if they apply to unhoused persons who lack shelter options?

The *Grants Pass* opinion answers "no," reasoning that the Eighth Amendment doesn't determine *whether* localities can criminally penalize acts — it only regulates *what penalties* a locality can impose for criminal acts. The *Grants Pass* decision gives local governments a greater ability to enact and enforce criminal penalties for acts like public camping or sleeping — even in localities

unhoused population “involuntarily” homeless, essentially forcing them to violate city ordinances since there were no available shelter options.

The Oregon U.S. District Court (District Court) agreed with the plaintiffs and ordered Grants Pass to stop enforcing its ordinances. The Supreme Court agreed to hear the case after the Ninth Circuit affirmed the District Court’s decision.

The Supreme Court’s Opinion

The Supreme Court’s opinion reverses the District Court’s decision and overturns *Martin*.

The opinion holds that localities do not violate the Eighth Amendment by enacting and enforcing ordinances imposing commonly used criminal penalties (like fines and jail time) for public sleeping and camping offenses. The opinion addresses both the legal and practical aspects of these local ordinances in reaching its conclusion.

Legal considerations

On the legal side, the Supreme Court analyzed the Eighth Amendment’s prohibition on cruel and unusual punishment and what it is intended to prohibit. The Supreme Court rejected the District Court’s Eighth Amendment decisions, ruling:

- The Eighth Amendment’s prohibition on cruel and unusual punishment regulates only the *type* of punishment a locality can impose for an offense — not whether the locality *can or should* punish an offense to begin with.
- Grants Pass’s ordinances do not violate *Robinson* because they do not punish the “mere status” of homelessness. Instead, they forbid only *actions* like public sleeping and camping, and they apply regardless of “whether the charged defendant is homeless.” *Robinson* does *not* prohibit localities from criminally penalizing acts that “society has an interest in preventing,” even if a person’s status or circumstances contribute to the prohibited act “in some sense.”
- The jail time and fines imposed by the Grants Pass ordinances are not cruel or unusual punishment methods. To the contrary, these forms of punishment are not designed to inflict “terror, pain or disgrace,” and they remain commonly used across the country to address many criminal acts.

Practical considerations

ordinances and, in effect, abolishing *Martin*.

What the *Grants Pass* Decision Means for Localities

The *Grants Pass* decision means that localities may impose criminal penalties for acts like public camping and public sleeping without violating the Eighth Amendment — even if they lack sufficient available shelter space to accommodate their unhoused population.

Despite this clear Supreme Court ruling, local governments that are contemplating enacting and enforcing public camping and sleeping-related ordinances should take the following into consideration.

Punish acts, not status

In upholding Grants Pass's ordinances, the Supreme Court noted that the ordinances punished certain acts regardless of the underlying circumstances, stating:

[U]nder the city's laws, it makes no difference whether the charged defendant is 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.

Localities contemplating similar laws should ensure that they are written and enforced to punish acts regardless of the charged defendant's circumstances.

Consider types of punishment

The Grants Pass ordinances imposed progressive punishment, starting with fines and escalating to the potential for 30 days in jail for repeat violations. The *Grants Pass* decision does not explicitly require a progressive punishment scheme for public camping or sleeping offenses, but localities enacting these ordinances may want to consider a similar penalty structure (since Grants Pass's ordinances have survived Supreme Court scrutiny).

Ensure shelter and wraparound services are provided

In reaching its decision, the Supreme Court noted that Grants Pass had a "multi-faceted" approach to homelessness in its jurisdiction, which included outreach efforts and providing information about assistance programs and other resources.

While not required by the *Grants Pass* decision, adopting such practices to complement potential criminal enforcement will remain good local practices



About Harry Boesche

Harry Boesche joined MRSC as a legal consultant in 2024. Prior to this, he was the Deputy City Attorney for the City of Auburn for 17 years.

His municipal law practice includes advising elected officials and appointed board and commission members on public records act and open government issues.

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