

Navigating New Camping Terrain

Grants Pass v. Johnson and Its Impacts on Real Estate

By Chelsea J. Glynn



On June 28, 2024, in *Grants Pass v. Johnson*, the U.S. Supreme Court ruled that cities can criminally prosecute people experiencing homelessness for sleeping and camping on public property. 144 S. Ct. 2202 (2024). Before this ruling, jurisdictions across the country had differed as to whether a municipality could enforce criminal ordinances penalizing public camping when the city did not have enough beds for its homeless population.

The subject of public camping ordinances has been the source of ongoing policy debates. Some people advocate enforcing such ordinances to address perceived safety issues and infringement of their own rights to enjoy public

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spaces. Others view these ordinances as worsening the cycle of homelessness, pointing to negative impacts of criminal prosecution on individuals, such as the loss of personal property and the stigma of a criminal record, which in turn can make it more challenging to find housing and gainful employment.

This ruling creates a pivotal shift across the country in the legal landscape surrounding municipal regulation of people experiencing homelessness. Although it remains to be seen how municipalities will respond, their responses will inevitably have direct implications for urban development and real estate professionals.

Grants Pass and Its Ordinances

Grants Pass is a small city in southern

Oregon along the Rogue River, about an hour north of the California border. It has a population of about 39,149. At the time of the opinion, Grants Pass had about 600 people who were experiencing homelessness, and, like many cities in the United States, Grants Pass has laws restricting camping in public spaces. The district court opinion noted that the development of affordable housing in Grants Pass has not kept up with the population growth. A community action advocate testified that Grants Pass' stock of affordable housing has dwindled to almost zero. Landlords routinely require an applicant to have an income that is three times the monthly rent. Rental units that cost less than \$1,000/month are virtually unheard of in Grants Pass."

There were three ordinances

primarily at issue in *Grants Pass v. Johnson*. The first ordinance prohibited sleeping on public sidewalks, streets, or alleyways. The second ordinance prohibited "camping" on public property, with "camping" defined as setting up or remaining in or at a campsite, and a "campsite" defined as any place where bedding, sleeping bags, or other material used for bedding purposes, or any stove or fire is placed for the purpose of maintaining a temporary place to live. Finally, a third ordinance prohibited "camping" and "overnight parking" in the city's parks.

The penalties for violating these ordinances increased for repeated offenses. A person with one initial violation may receive a fine, but a person who violates the ordinance multiple times may be subject to an order



barring them from city parks for 30 days. Finally, violations of such an order barring a person from a city park could constitute criminal trespass, punishable by a maximum of 30 days in prison and a \$1,250 fine.

The Procedural Background

The *Grants Pass v. Johnson* case began in the Medford division of the U.S. District Court for the District of Oregon. Two individuals experiencing homelessness, Gloria Johnson and John Logan, sued the city of Grants Pass on behalf of a class of unhoused persons, claiming that the ordinances violated the Eighth Amendment. The plaintiffs argued that the city ordinances violated the Cruel and Unusual Punishments Clause because (a) they punish the plaintiffs' mere existence or status as a homeless individual and (b) sleep is a physical need and Grants Pass did not have enough shelter beds available for all the people in the city experiencing homelessness. The district court certified the class and entered an injunction

prohibiting Grants Pass from enforcing its ordinances against individuals experiencing homelessness in the city, reasoning that because the total homeless population outnumbered the practically available shelter beds, the plaintiffs were involuntarily homeless.

On July 5, 2023, the Ninth Circuit Court of Appeals agreed, concluding that the city's anti-camping ordinances violated the Eighth Amendment to the extent that they prohibited homeless persons from taking necessary measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available in Grants Pass.

Grants Pass filed a petition for certiorari and many states, cities, and counties from across the Ninth Circuit urged the Court to grant review.

The Eighth Amendment and the *Martin* and *Robertson* Cases

The *Grants Pass* decision centered around the Eighth Amendment of the US Constitution and two prior cases

interpreting it: *Robinson v. California*, 370 U.S. 660 (1962), and *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019). As a constitutional refresher, the Eighth Amendment's Cruel and Unusual Punishments Clause prohibits the government from inflicting cruel and unusual punishments on criminal defendants. Unlike most constitutional restrictions on government power, the Cruel and Unusual Punishments Clause limits substantively what the government can do for punishment, as opposed to serving as a procedural limitation.

In *Robinson v. California*, a jury found a defendant guilty under a California statute that criminalized being addicted to narcotics. 370 U.S. 660 (1962). A Los Angeles officer had found scars and needle marks on both of Robinson's arms and Robinson had allegedly admitted that he had previously used narcotics. Robinson was convicted in municipal court and eventually appealed to the Supreme Court. The Supreme Court held that laws

imprisoning persons afflicted with the “illness” of drug addiction amounted to cruel and unusual punishment in violation of the Eighth Amendment. The Supreme Court reasoned that the statute was akin to making it a criminal offense “to be mentally ill, or a leper, or to be afflicted with a venereal disease.” The Court ruled that the state could not punish persons merely because of their “status” of being an addict.

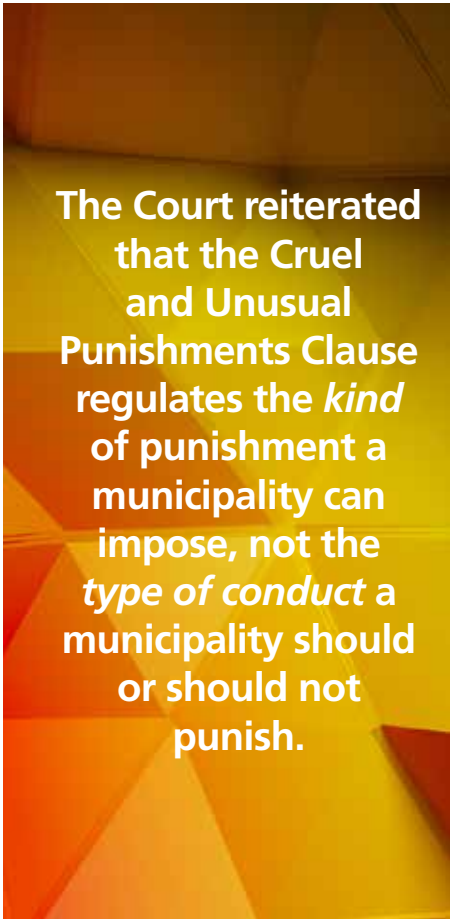
Subsequently, the Ninth Circuit Court of Appeals in *Martin v. Boise*, 920 F.3d 584 (2019), barred the City of Boise from enforcing a public-camping ordinance against homeless individuals who “lacked access to an alternative shelter.” The ruling held that cities cannot enforce anti-camping ordinances if they do not have enough homeless shelter beds available for their homeless populations. The *Martin* decision had a chilling effect on ordinance enforcement. Many cities in the Ninth Circuit took the position that anti-camping ordinances could not be enforced if the homeless population exceeded the number of available shelter beds and were reluctant to enforce their public camping ordinances.

The *Grants Pass* plaintiffs used these two cases to support their argument that the ordinances violated the Cruel and Unusual Punishments Clause because they punished their “statuses” as homeless individuals, and the city’s lack of available shelter space caused its unhoused population to be “involuntarily” homeless.

The Supreme Court’s Decision

On June 28, 2024, the US Supreme Court issued a 6-3 decision holding that Grants Pass’ enforcement of their public camping ordinances did not violate the plaintiffs’ constitutional rights. This ruling reversed the district court and overturned *Martin*.

First, the Court addressed the plaintiffs’ argument that they were “involuntarily” homeless under *Martin* because there were not enough shelter beds in Grants Pass. The Court noted that the *Martin* decision had barred the city of Boise from enforcing its public camping ordinance against individuals



The Court reiterated that the Cruel and Unusual Punishments Clause regulates the *kind* of punishment a municipality can impose, not the *type of conduct* a municipality should or should not punish.

experiencing homelessness where those individuals lacked access to shelter beds within Boise. It rejected its decision, however, reasoning that the Ninth Circuit had inappropriately limited the tools available to municipalities to pursue solutions to the homelessness crisis. As support, the decision included a quote from San Francisco’s mayor that San Francisco “uses enforcement of its laws prohibiting camping” not to criminalize homelessness but “as one important tool among others to encourage individuals experiencing homelessness to accept services and to help ensure safe and accessible sidewalks and public spaces.” 144 S. Ct. at 2211–12 (citing San Francisco Brief 7). The Court described the *Martin* ruling as an unworkable experiment and overruled it because it determined that in practice it created a standard that was simply not possible to follow. Solutions to address rising homelessness in the United States appeared too complex to be addressed by judges.

The plaintiffs also argued that the Robinson ruling should be extended to the Grants Pass case. Because Robinson’s drug use was the involuntary result of his status as an addict and because the California law unconstitutionally criminalized that status, the Court should recognize that the plaintiffs were “involuntarily” homeless and the Grants Pass ordinances unconstitutionally criminalized their status as homeless.

The Court looked at the constitutional history and reiterated that the Cruel and Unusual Punishments Clause regulates the *kind* of punishment a municipality can impose, not the *type of conduct* a municipality should or should not punish. It noted the Cruel and Unusual Punishments Clause prohibits cruel punishment designed to “superad[d] terror, pain or disgrace.” Whether a particular behavior may be criminalized or how a conviction can be secured was not part of the Court’s analysis.

Following that reasoning, it found the Eighth Amendment therefore does not prevent a municipality from criminalizing conduct, even if such conduct is involuntary or occasioned by a status. Here, Grants Pass’s public camping ordinances do not criminalize a status, but, rather, they prohibit conduct (i.e., camping) by a person regardless of their status.

Instead, the Court analyzed the type of punishment provided for in the Grants Pass ordinances, which included fines, an order barring a person from city parks for 30 days, and a maximum of 30 days in prison and a \$1,250 fine. The Court held that such punishment is not cruel because it is not designed to cause terror, pain, or disgrace. The Court also found the punishment was not “unusual” because similarly limited fines and jail terms are among the usual ways of punishing criminal offenses throughout the country.

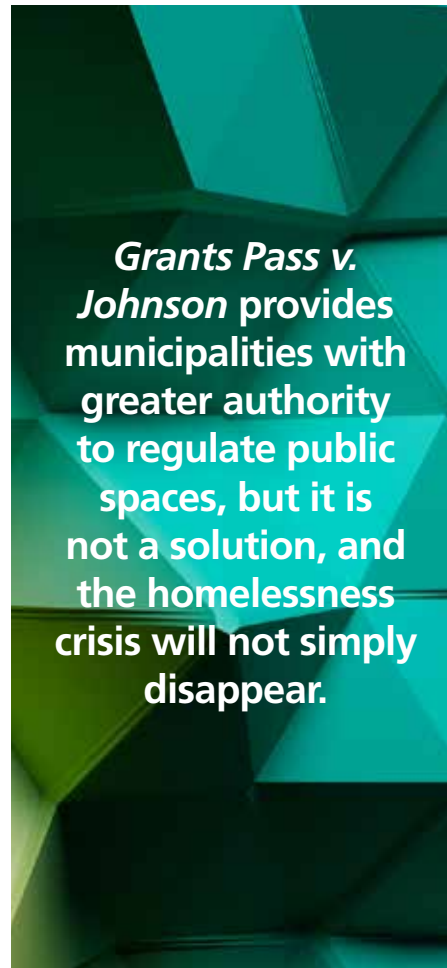
Justice Sonia Sotomayor dissented, asserting that the ordinances in question did criminalize homelessness by punishing individuals for actions they had no choice but to undertake due to their lack of shelter. She emphasized

that the ruling would cause a destabilizing cascade of harm and worsen the already dire situation for homeless individuals across the country.

In summary, it is no longer cruel or unusual punishment to criminally prosecute people for camping in public spaces, even if they have no other shelter available to them. Municipalities 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 population of homeless individuals. Challenges to public camping ordinances likely will continue shifting from petitions for injunctions based on an ordinance’s constitutionality to a courtroom dispute over the facts of individual criminal cases. And, this ruling is expected to have implications across the country, but particularly on the West Coast, where the Ninth Circuit’s earlier decisions had limited municipal enforcement of public camping ordinances. The decision has brought front and center the ongoing legal and policy debates surrounding solutions to homelessness, public order, and individual rights. In this ruling, the Supreme Court has attempted to address the complex challenges of finding solutions to homelessness within the framework of constitutional protections.

Potential Implications of *Grants Pass v. Johnson* on Real Estate Practitioners

In addition to municipalities, this ruling has implications for real estate practitioners, particularly those involved in property development, management, and municipal planning. Although the specifics of such implications remain to be seen, after *Grants Pass*, cities are more empowered to enforce ordinances prohibiting camping in public spaces and may increasingly address public camping with criminal prosecution. In certain cities adverse to punishing public camping, the ruling could prompt cities to push for more affordable housing projects as a means preemptively to



address homelessness. Real estate practitioners may find increased demand for affordable housing developments and public-private partnerships aimed at expanding shelter options.

The ability of cities to enforce public camping laws may lead to greater enforcement and fewer homeless campsites. This may influence property values or lead to an increase in real estate transactions, particularly in areas previously affected by visible homelessness.

Finally, although there will certainly be fewer *Martin* injunctions, litigation under such ordinances will not cease and debate over how to address homelessness will continue. Instead, defendants likely will shift their focus to factual matters such as whether an individual was violating an ordinance or whether such punishment is justified. Real estate professionals should continue to be aware that the authority to enforce such ordinances prohibiting

camping on public property remains with the municipality.

The Supreme Court’s decision in *Grants Pass v. Johnson* provides municipalities with greater authority to regulate public spaces, but it is not a solution, and the homelessness crisis will not simply disappear. The ruling underscores the complexities of balancing public order with individual rights, and real estate professionals will continue to be impacted by the evolving legal framework and policies implemented in response to this ongoing issue. As cities grapple with these challenges, real estate practitioners will need to stay informed and adaptable, particularly in areas such as zoning, property management, and the development of affordable housing, where new opportunities and legal considerations may arise. The intersection of homelessness policy and real estate law will remain a dynamic and critical area of focus as the country seeks sustainable solutions to address this continuing challenge. ■