



DATE: July 15, 2024  
TO: Robert Barr  
FROM: CBJ Law Department  
SUBJECT: Grants Pass U.S. Supreme Court decision update

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## **Big Picture**

On June 28, 2024, the U.S. Supreme Court ruled 6-3 in the case of *City of Grants Pass, Oregon v. Johnson et al.*<sup>1</sup> The issue before the Supreme Court centered on the City of Grants Pass, Oregon’s municipal code, which prohibits “activities such as camping on public property or parking overnight in the city’s parks.”<sup>2</sup> Violators of the code are initially subject to civil fines, and multiple violations may result in jail time.<sup>3</sup>

The Court’s decision found that Grants Pass’ code, which penalizes people who sleep on public property, did not amount to cruel and unusual punishment under the Eighth Amendment. The court determined it is up to states and cities -- not the federal courts -- to establish restrictions.<sup>4</sup> “Homelessness is complex” and “[i]ts causes are many. So may be the public policy responses required to address it.”<sup>5</sup> The court ruled that the Eighth Amendment’s Cruel and Unusual Punishment Clause does not prohibit the enforcement of generally applicable laws regulating camping on public property and that Grants Pass’ code is enforceable, and thus overturned the Ninth Circuit’s highly influential decision.

Previously, in *Martin v. City of Boise*, the Ninth Circuit Court ruled that municipal codes prohibiting sleeping in public places violated the U.S. Constitution’s Eighth Amendment Cruel and Unusual Punishment Clause in situations when homeless individuals have no access to shelter beds.<sup>6</sup> As a result, most western state communities, including Juneau, have taken the position that no civil or criminal penalties will be pursued unless shelter beds are available, such as the warming shelter in the winter.

In *Grants Pass*, the Supreme Court explained that the “Constitution’s Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest ... [the] rights and responsibilities from the American people” to decide “how best to handle a pressing social question like homelessness” and “in their place dictate this Nation’s homelessness policy.”<sup>7</sup>

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<sup>1</sup> *City of Grants Pass v. Johnson*, No. 23-175, U.S. 603 \_\_\_\_ (2024), *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023)

<sup>2</sup> Grants Pass Municipal Code §§ 5.61.030, 6.46.090-100.

<sup>3</sup> *Grants Pass at 8*.

<sup>4</sup> *Id. at 19*.

<sup>5</sup> *Id. at 34*.

<sup>6</sup> *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), amended on denial of reh’g, 920 F.3d 584 (9th Cir. 2019).

<sup>7</sup> *Grants Pass, supra*, at 34-35.

## **Key Points**

- The Eighth Amendment focuses on the types and methods of punishment that can be imposed for criminal violations, aiming to end punishments that would evoke “terror, pain, or disgrace.”
- The Eighth Amendment concerns the response to criminal actions (the punishment), not whether certain behaviors can be criminalized.<sup>8</sup>
- Grants Pass’ code does not qualify as cruel, in part because it imposes limited fines for first-time offenders, increased responses to repeat offenders (e.g. trespass orders), and limited jail time (30 days) if they are charged with a crime.<sup>9</sup>
- Grants Pass’ code does not qualify as unusual, as these are common punishments for similar offenses throughout the country.<sup>10</sup>
- States and cities have broad power to respond to behavior and to prohibit certain behaviors. The Grants Pass law criminalizes behavior, such as camping rather than status, such as homelessness. The laws apply equally to anyone camping on public land.<sup>11</sup>
- The Court does not agree that cities must ask whether homelessness is involuntary, whether shelter is available, or keep a tally of beds.<sup>12</sup> The justices agree that this has created confusion. Rather, the issue is left to be decided by the people. For example, a defendant in a criminal trial could argue a defense of necessity (e.g., they had no other option but to trespass due to homelessness).<sup>13</sup> A city is not required to have anti-camping rules, but if they do, and they are generally applicable, they do not violate the Constitution.
- Fundamentally, the Court concludes that deciding how to respond to the issue of homelessness should be left to communities.

## **What does this mean for Juneau?**

The Court’s decision leaves it up to policy-makers to decide on a path forward with CBJ’s camping policies, prohibitions, and other related code. This ruling allows cities to enforce laws relating to camping on public property, such as trespassing and littering but does not require it. With respect to CBJ’s homeless population, prior to enforcement, first responders and enforcement officers are no longer required to check for available shelter beds. CBJ’s current ordinances are generally applicable to everyone living in or visiting Juneau and they may be enforced accordingly.

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<sup>8</sup> *Id.* at 17-21.

<sup>9</sup> *Grants Pass* at 11.

<sup>10</sup> *Id.* at 15-17.

<sup>11</sup> *Id.* at 20.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Grants Pass* at 14, 21-14.