

GIBSON DUNN



Appellate & Constitutional Law Update

June 28, 2024

## Supreme Court Holds That The Eighth Amendment Does Not Prevent Enforcement of Camping Regulations On Public Property

*City of Grants Pass v. Johnson*, No. 23-175 – Decided June 28, 2024

**Today, the Supreme Court held 6–3 that the constitutional prohibition on “cruel and unusual punishments” does not forbid low-level fines and jail terms for camping on public property.**

*“At bottom, the question this case presents is whether the Eighth Amendment grants federal judges primary responsibility for assessing th[e] causes [of homelessness] and devising those responses. It does not.”*

JUSTICE GORSUCH, WRITING FOR THE COURT

---

**Background:**

The Eighth Amendment provides that “cruel and unusual punishments” shall not be “inflicted.” In *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit held that it would be cruel and unusual to impose any punishment, no matter how small, for sleeping on public property if a person has “no access to alternative shelter.” *Id.* at 615. Punishing a person for such “an involuntary act or condition,” the Ninth Circuit reasoned, would be tantamount to punishing the “status” of homelessness. *Id.* at 616-617.

Shortly after *Martin*, plaintiffs sued Grants Pass, a small city in Oregon. The plaintiffs claimed that Grants Pass’s prohibitions against camping on public property violate the Cruel and Unusual Punishments Clause because the number of homeless people in the jurisdiction exceeds the number of shelter beds. Applying *Martin*, the district court certified a class of “involuntarily homeless” people in Grants Pass and granted the plaintiffs summary judgment. After the Ninth Circuit affirmed, Grants Pass’s petition for rehearing en banc was denied by a 14-to-13 margin, with the dissenters joining five opinions criticizing *Martin* and its extension in this case. The Supreme Court then granted a cert petition to decide whether the Ninth Circuit has correctly interpreted the Eighth Amendment.

#### Issue:

Does the enforcement of generally applicable laws regulating camping on public property constitute “cruel and unusual punishment” prohibited by the Eighth Amendment?

#### Court’s Holding:

Low-level fines and jail terms are not cruel and unusual punishments for public camping, even as applied to someone who is involuntarily homeless.

#### What It Means:

- The Supreme Court began with a discussion of the practical implications of the Ninth Circuit’s *Martin* rule. Although the Court recognized that “the Ninth Circuit’s intervention in *Martin* was well-intended,” the Court emphasized that many cities use public-camping ordinances “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.” The Court noted evidence that acceptance of service decreased under *Martin*—for example, shelter utilization had dropped by 40% in Grants Pass since the classwide injunction.
- The Supreme Court held that low-level fines and jail terms are ordinary punishments that are neither cruel nor unusual under the Eighth Amendment. The Court also rejected the plaintiffs’ reliance on *Robinson v. California*, 370 U.S. 660 (1962), which held that the Eighth Amendment prohibited the government from making the “status” of being an addict a crime, regardless of the punishment. As the Court explained, public camping, even when purportedly compelled by one’s circumstances, is conduct rather than status under *Robinson* and therefore subject to the standard Eighth Amendment analysis.
- The Supreme Court also reasoned that the Eighth Amendment should not be distorted to address questions that other constitutional provisions and common-law doctrines address. For example, the Court identified the Due Process Clause as the traditional

basis for constitutional arguments about criminal responsibility and the defense of “necessity” as the traditional state-law doctrine potentially available to those jailed or fined for doing something (like public camping) that they had no choice but to do. The Eighth Amendment, the Court explained, simply does not provide any guideposts to decide when cities can regulate public camping.

- The Court highlighted the broad coalition of hundreds of amici that supported review of Grants Pass’s case. As the Court observed, almost half the States, California Governor Newsom, San Francisco Mayor London Breed, and the cities of Anchorage, Honolulu, Los Angeles, Phoenix, Portland, and Seattle, among many others, criticized the Ninth Circuit for tying governments’ hands in responding to the urgent homelessness crisis. The Court’s decision returns the “full panoply of tools in the policy toolbox” to “the people and their elected representatives.”

---

**Gibson Dunn represented the City of Grants Pass as Petitioner.**

---

### Gibson Dunn Appellate Honors



The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

## Appellate and Constitutional Law

Thomas H. Dupree Jr.  
+1 202.955.8547  
[tdupree@gibsondunn.com](mailto:tdupree@gibsondunn.com)

Allyson N. Ho  
+1 214.698.3233  
[aho@gibsondunn.com](mailto:aho@gibsondunn.com)

Julian W. Poon  
+1 213.229.7758  
[jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com)

Lucas C. Townsend  
+1 202.887.3731  
[ltownsend@gibsondunn.com](mailto:ltownsend@gibsondunn.com)

Bradley J. Hamburger  
+1 213.229.7658  
[bhamburger@gibsondunn.com](mailto:bhamburger@gibsondunn.com)

Brad G. Hubbard  
+1 214.698.3326  
[bhubbard@gibsondunn.com](mailto:bhubbard@gibsondunn.com)

## Related Practice: Litigation

Theodore J. Boutrous, Jr.  
+1 213.229.7804  
[tboutrous@gibsondunn.com](mailto:tboutrous@gibsondunn.com)

Theane Evangelis  
+1 213.229.7726  
[tevangelis@gibsondunn.com](mailto:tevangelis@gibsondunn.com)

## Related Practice: Real Estate

Eric M. Feuerstein  
+1 212.351.2323  
[efeuerstein@gibsondunn.com](mailto:efeuerstein@gibsondunn.com)

Jesse Sharf  
+1 310.552.8512  
[jsharf@gibsondunn.com](mailto:jsharf@gibsondunn.com)

## Related Practice: Land Use and Development

Mary G. Murphy  
+1 415.393.8257  
[mgmurphy@gibsondunn.com](mailto:mgmurphy@gibsondunn.com)

Benjamin Saltsman  
+1 213.229.7480  
[bsaltsman@gibsondunn.com](mailto:bsaltsman@gibsondunn.com)

*This alert was prepared by associates Patrick Fuster, Daniel Adler, Lefteri Christos, and Karl Kaellenius.*

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm, please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists,  
please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2024 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at [gibsondunn.com](https://gibsondunn.com)