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Theane D. Evangelis

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On April 22, Theane Evangelis argued a nationally important case before the U.S. Supreme Court. And on June 28, she won.

On that morning, the court agreed with her argument that cities do have the authority to enforce public-camping regulations and that laws banning homeless encampments do not violate the Eighth Amendment's punishment. *City of Grants Pass, Oregon v. Johnson*, 2024 DJDAR 6000 (U.S. S.Ct., dec'd June 28, 2024).

Presenting the oral argument “was truly an experience of a lifetime, really a career highlight,” Evangelis said. “And I am thrilled with the court’s decision. It really was a vindication of our strategy from the very beginning on this issue.”

Although each side had been allotted just 30 minutes to argue, the hearing lasted two hours. “Even though I was at the podium for more than double the allotted time, the time really flew by because it was ... one question after another,” she said. Every justice asked the attorneys questions, especially Chief Justice John Roberts and Justice Sonia Sotomayor, who wrote the dissent for the three liberal justices.

The majority decision by Justice Neil Gorsuch reversed two decisions by the 9th Circuit that Evangelis said had tied cities’ hands in dealing with homelessness. Those rulings, “made it impossible for cities to address a growing crisis,” she said. “We saw the spread of encampments. We saw an increase in unsheltered homelessness. We saw, unfortunately, people refusing offers of shelter.”

The result was “unworkable both for courts and for cities,” Evangelis said. The 9th Circuit’s decisions “constitutionalized what is probably one of the most complex policy issues confronting our cities.”

That’s why dozens of municipalities and others filed amicus curiae arguing for the

authority to cope with homeless encampments. She said Gorsuch cited those briefs 60 times. “It was as if the cities spoke, and the court listened.”

“It was truly remarkable to see how the court was very concerned with the practical implications,” Evangelis said.

The constitutional question was easy, she told the court. Camping on the street is conduct, which can be criminalized, not status, which cannot. The policy questions are difficult.

“Who is involuntarily homeless? What does it mean for shelter to be adequate?” Evangelis said. “All of those questions became part of the constitutional analysis. And courts were really adrift ... without any principles to guide those decisions.”

In the few months since the high court’s decision, Gov. Gavin Newsom issued an executive order telling local governments to clear encampments while also offering shelter and services to the unhoused, she said. San Francisco Mayor London Breed announced sweeps of encampments.

“It’s very encouraging,” Evangelis said. “I don’t think I’ve ever seen a Supreme Court decision that’s had such an immediate, practical impact.”