



A CIVICS IN REAL LIFE SERIES THE DOCKET

Civics is all around us. The United States Supreme Court is the highest court in the land. Through its power of judicial review, its decisions have a lasting impact on "We the People". So what is the Court hearing this session and how might the justices rule? Let's help each other expand our civic literacy.

City of Grants Pass v. Johnson

The Case of Homelessness: Status or Conduct?

The Facts of *City of Grants Pass v. Johnson*:

The city of [Grants Pass, Oregon](#), has a population of approximately 38,000, and of that population, somewhere between 50 and 600 persons are unhoused. Almost always, the number of unhoused individuals exceeds the number of available shelter beds, requiring that at least some of them sleep on the streets or in parks. In 2013, the city of Grants Pass began enforcing several anti-sleeping and anti-camping [ordinances](#) in its municipal code. These ordinances bar the use of pillows, blankets, and cardboard boxes while sleeping within the town limits.

The ordinances impose a \$295 fine for violations, which increases to \$537.60 if it is not paid. After two citations, police in Grants Pass can issue an order banning the individual from city property. If an individual violates that order, they may be charged with criminal trespass, which carries a penalty of up to 30 days in jail and a \$1250 fine.

Two homeless individuals, Gloria Johnson and John Logan, contested the constitutionality of these ordinances on behalf of those who are involuntarily homeless in Grants Pass. The ordinances, they argue, essentially make the status of homelessness a crime. Citing numerous difficulties in finding acceptable shelter or affordable housing, and the cold rainy Oregon weather, Johnson contends that using a blanket while outside is necessary for survival. Johnson argues that "inflicting punishment on the City's homeless residents for simply existing in the community without access to shelter" violates her/their [8th Amendment](#) right against cruel and unusual punishment. [[Respondent's Brief](#), p. i]

The city of Grants Pass argues the constitutionality of the ordinances on multiple fronts. First, they argue that the ordinances apply to everyone, not just the homeless population. The city also insists that the 8th Amendment regulates cruel and unusual methods of punishment; it does not regulate the substance of criminal offenses. The city believes the fines and short jail terms in these ordinances are not cruel, unusual, or excessive. In their brief, the city relies heavily on the opinion written by Justice Thurgood Marshall in [Powell v. Texas](#) when he writes, "criminal penalties may be inflicted only if the accused has committed some act" that "society has an interest in preventing" [[Brief for the Petitioner](#), p. 32]. Therefore, the city is punishing conduct and not status.

With so many individualized circumstances surrounding homelessness and both sides citing similar legal precedents, this case ultimately will come down to where the justices decide to draw the line between status and conduct when it comes to homelessness.



Makeshift shelters on a block in Salem, Oregon

The U.S. District Court for the District of Oregon issued a [permanent injunction](#), certified a [class of plaintiffs](#) of involuntary unhoused persons living in Grants Pass, and ruled that based on the unavailability of shelter beds, the city's ordinances violated the 8th Amendment Cruel and Unusual Punishment Clause. A three-judge panel for the U.S. Court of Appeals for the Ninth Circuit [upheld the ruling](#). The full court of appeals denied the city's request to rehear the case by a vote of 14-13.

On appeal to the U.S. Supreme Court, the justices granted certiorari on January 12, 2024 and heard oral arguments on April 22, 2024.

The Court is being asked to address one question:

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

Legal Precedent Used in this Case:

- [Robinson v. California](#) (1962): The Supreme Court ruled that the 8th Amendment protects individuals against status-based crimes. In this case, a state law that made being a drug addict a crime was unconstitutional, however, the conduct of possessing drugs was still a crime.
- [Powell v. Texas](#) (1968): The Supreme Court ruled that the conviction of a chronic alcoholic for public intoxication was not cruel and unusual punishment in violation of the 8th Amendment. The 8th Amendment does not require states to decide what part of a defendant's personality is responsible for their actions.
- [Timbs v. Indiana](#) (2018) The Supreme Court ruled in a unanimous decision that the 8th Amendment's Excessive Fines Clause is an incorporated protection applicable to states under the 14th Amendment's Due Process Clause.
- [Martin v. City of Boise](#) (2018): The U.S. Court of Appeals for the Ninth Circuit rules that the 8th Amendment's ban on cruel and unusual punishment bars the imposition of criminal penalties for sitting or sleeping outside by people experiencing homelessness who do not have access to shelter.
- [Kahler v. Kansas](#) (2020) The Supreme Court ruled that the 8th and 14th Amendments do not require a state to adopt a particular version of an insanity test and that states retain the authority to define the precise relationship between criminal culpability and mental illness.

To Think and To Do: The [Department of Housing and Urban Development](#) estimates that there were around 650,000 homeless Americans as of January 2023. With this number growing, city and state governments face the challenge of addressing the needs of unhoused persons while also maintaining the integrity of the public spaces within their jurisdiction. While this case addresses a small city ordinance in Grants Pass, Oregon, cities across the United States have similar laws that may be impacted by the ruling. Given the precedents used in this case and the language of the [8th Amendment](#), how do you think the U.S. Supreme Court will rule? Explain.



Grants Pass, Oregon