

## **Sleep Tight? Not on This Bench: Grants Pass and the Criminalization of Unhoused Individuals**

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Houselessness is a [pervasive and heartbreaking crisis](#) across the United States. Life as an unhoused individual is [scary, exhausting, and overwhelming](#). In the [winter](#), many individuals are denied temporary shelter and forced to freeze. In the [summer](#), they face extreme heat. The one thing all unhoused individuals and families must struggle with is where to sleep. Without a traditional residence, approximately [35% of unhoused individuals find themselves sleeping on streets](#), in parks, or in their cars.

Not all individuals face an equal risk of becoming unhoused. Compared to their White counterparts, Black Americans have an [83% greater chance](#) of experiencing unhoused status in their lifetimes. For every thousand Native Americans, thirteen [will become unhoused in their lives](#) compared to one in a thousand White Americans. Nearly [40% of homeless youth identify as LGBTQ](#) despite comprising approximately only 10% of the general population. Therefore, the Supreme Court's ruling in [Grants Pass v. Johnson](#) will not impact all groups equally, and those groups who are already most vulnerable will [continue the struggle for basic dignity](#).

The [estimated 650,000](#) unhoused Americans must now face a new challenge to their sleeping struggle. In June 2024, the Supreme Court of the United States decided *Grants Pass*. Here, the court held several Grants Pass, Oregon, ordinances prohibiting sleeping in public spaces did not violate the [Eighth Amendment's Cruel and Unusual Punishments Clause](#). Still, the Court insists they are not criminalizing the status of being unhoused. How can this be? The

underlying definition of, and necessity in, being unhoused is the very act of sleeping in public spaces.

### **The Laws and Their History**

For full appreciation of the case, the laws and consequences themselves are worth examining. The case notes three city laws that work in conjunction to prohibit sleeping in public spaces. Grants Pass first prohibits sleeping “on public sidewalks, streets, or alleyways” Second, it “prohibits [c]amping on public property”. Camping means setting up a campsite which is subsequently defined as “any place where bedding, sleeping bags, or other materials used for bedding purposes . . . is placed . . . for the purposes of maintaining a temporary place to live.” The third prohibits “[c]amping and [o]vernight parking” in public parks. Violations of these laws result in increasing penalties. Violations first trigger a fine. After multiple citations, police are permitted to issue an exclusion order from city parks for thirty days. If that exclusion order is violated, an individual may be charged with criminal trespass and receive a prison sentence of no more than thirty days and a \$1,250 fine.

The original argument from the plaintiffs was for an injunction on the grounds the laws violated the Eighth Amendment. The district court applied Martin v. Boise, which held that when someone has nowhere else to go, the criminalization of sleeping in public spaces is a cruel and unusual punishment. Since the number of unhoused individuals greatly outnumbered the practically available shelter beds, all were involuntarily homeless. That is, they had nowhere else to go. The Ninth Circuit affirmed the injunction. Then, the Supreme Court granted certiorari.

### **The Opinion**

The 6-3 opinion, penned by Justice Gorsuch, supports its conclusion through circular reasoning and a disregard for humanity. Justice Sotomayor notes in her strong dissent, “the

majority's analysis consists of a few sentences repeating its conclusion again and again in hopes that it will become true." Its conclusion is clear: the Eighth Amendment's Cruel and Unusual Punishments Clause does not regard or protect what may be criminalized, including status. The clause, they say, merely determines what punishments are administrable after conviction.

This conclusion cuts against precedent. *Robinson v. California* carves out an exception to judicial intrusion into criminal law in which courts may prevent criminalization of status. That statute at issue in *Robinson* criminalized the status of narcotics addiction, which the court determined was unconstitutional based on the Eighth Amendment.

The Court in *Grants Pass* reasons that the cases differ because the Grants Pass Municipal Code requires the act of reentering a park after an exclusion order, whereas *Robinson* had no such requirement. This differentiation is disingenuous. When an unhoused person has nowhere else to go, as most do not have in Grants Pass, they have no choice but to commit the very act that will criminalize them, for they must sleep somewhere. Since the act is a mere illusion of choice, Grants Pass and the Supreme Court have permitted the criminalization of unhoused status.

Despite unreasoned fears from the Court, cities are still well within their rights to punish "littering, public urination or defecation, obstruction of roadways, possession or distribution of illicit substances, harassment, or violence." That is, when there is a genuine safety or public health concern, a city may still act. This does not, however, necessitate the sleep deprivation or criminalization of unhoused individuals.

No hoops of logic, concerns about ease of calculating bed availability, or preference towards textualism can excuse the complete disregard for the well-being of unhoused Americans. Now, across the country, people will be sent through the "revolving door" of the justice system

based solely on their physiological need to sleep and their lack of possession of a permanent shelter.

### **Looking Forward**

With this decision, the Court has made it substantially more difficult to escape an unhoused status. The convictions to follow from this decision may throw wrenches into [employment](#), [social security](#), or [public housing](#). Additionally, it will further [deteriorate the relationship between the unhoused and the police](#), which works only to disadvantage those who are already afraid of reporting crimes. Through a multitude of learned negative experiences, unhoused individuals have a [dramatically lower trust in police](#) than those with a traditional residence that leads them away from reporting crimes committed against them or those in their communities.

It is currently unknown precisely how many cities will enact similar criminalization laws. The majority emphasizes the ruling is not a mandate for criminalization laws. But a substantial number will likely appear, given the pervasiveness of cities that push their unhoused populations to the wayside. Justice Sotomayor predicts this very issue will make a reappearance in the court. In the meantime, activists and community organizers must make their voices known that the criminalization of a city's unhoused population serves no purpose other than to continue the marginalization of a vulnerable group and insist their local governments do not enact such ordinances.