WISCONSIN LEGISLATIVE COUNCIL

IssueBrief

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Developments in Constitutional Law: *City of Grants Pass v. Johnson*

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In its recent decision in *City of Grants Pass v. Johnson*, 603 U. S. ___ (2024), the U.S. Supreme Court held that the Cruel and Unusual Punishments Clause of the Eighth Amendment does not restrict the government from enforcing laws prohibiting camping or sleeping in public against homeless individuals. In doing so, the Court overturned the U.S. Court of Appeals for the Ninth Circuit's 2019 decision in *Martin v. City of Boise*, which held that the city could not enforce a law prohibiting camping on public property against homeless individuals who do not have access to alternative shelter. This issue brief discusses prior precedents relevant to the Eighth Amendment, summarizes the Court's decision in *Grants Pass*, and describes the impact of the decision in Wisconsin.

THE EIGHTH AMENDMENT AND PRIOR LEGAL PRECEDENTS

The Eighth Amendment to the U.S. Constitution states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Regarding the Cruel and Unusual Punishments Clause, the U.S. Supreme Court has explained that punishments are cruel when they are designed to impose terror, pain, or disgrace, and unusual when they had long fallen out of use by the time of the Eighth Amendment's adoption.[1] Also, generally, the Supreme Court has interpreted the Cruel and Unusual Punishments Clause to limit only the method or kind of punishment that a government may impose after a criminal conviction, while other constitutional provisions, such as the First, Fifth, and Fourteenth Amendments, have been interpreted to limit the behaviors a government may criminalize and the processes used to obtain convictions.[2]

In a 1962 decision, *Robinson v. California*, the U.S. Supreme Court departed from this general understanding of the Cruel and Unusual Punishments Clause to create a limitation on a government's authority to punish a person based on their status. In *Robinson*, the Court struck down a law that provided that "[n]o person shall … be addicted to the use of narcotics." According to the Court, California could not criminalize the *status* of narcotic addiction, and even a short jail sentence would be considered cruel and unusual.[3] The Court was asked to expand this exception several years later, in *Powell v. Texas*, but it declined to do so. The plaintiff in *Powell* challenged a law that made it illegal to "get drunk or be found in a state of intoxication in any public place." The Court characterized this law as a type that criminalizes conduct that may be viewed as involuntary or occasioned by a particular status and distinguishable from the type of law in *Robinson* that criminalizes mere status.[4]

More recently, in *Martin v. Boise*, the U.S. Court of Appeals for the Ninth Circuit applied the *Robinson* exception to a law prohibiting camping in public. The Ninth Circuit specifically held that a government cannot prosecute individuals for sitting, lying, or sleeping in public places so long as the number of homeless individuals outnumbers available shelter beds in that jurisdiction. In the Ninth Circuit's view, sleeping on public property is "involuntary and inseparable" from the status of being homeless when no alternative exists, and thus punishment is cruel and unusual.[5]

CITY OF GRANTS PASS V. JOHNSON

In *Grants Pass*, the Supreme Court held in a 6-3 decision that the Eighth Amendment's prohibition on cruel and unusual punishment does not preclude a government from enacting and enforcing a law that prohibits camping in public, even when the homeless population in a given jurisdiction exceeds the number of practically available shelter beds in that area.

This case began when two homeless individuals who generally slept in their vehicles filed a lawsuit to enjoin or prevent the City of Grants Pass from enforcing ordinances that prohibit camping and sleeping on public property. Specifically, the challenged ordinances prohibited the following: (1) sleeping on public sidewalks or alleyways; (2) camping on public property; and (3) camping and overnight parking in the city's parks. A violation of these ordinances could result in a fine and multiple violations could result in an order barring the individual from city parks for 30 days. Violating that order could constitute criminal trespass, which carries a maximum punishment of 30 days in prison and a $1,250 fine.[6]

Bound by the Ninth Circuit's earlier decision in *Martin*, the district court enjoined the city from enforcing these ordinances against homeless individuals. The court reasoned that because the number of homeless individuals in Grants Pass consistently exceeded the number of practically available shelter beds, the ordinance unconstitutionally criminalized the status of being homeless. This decision was affirmed by the Ninth Circuit.[7]

On review, the Supreme Court reversed and also overruled the Ninth Circuit's decision in *Martin*. The Court held that the Eighth Amendment's prohibition against cruel and unusual punishment focuses on the method or kind of punishment a government may impose for violating a law, not what a government may criminalize. In essence, the Eighth Amendment "focuses on what happens next" after someone has already violated a law.[8] Further, the Supreme Court held that the jail time and fines imposed for violating a law prohibiting camping on public property are neither cruel nor unusual.[9]

Importantly, the Court in *Grants Pass* did not view the ordinances as criminalizing status, like being addicted to the use of narcotics in *Robinson*, for which any punishment would be cruel and unusual. The Court explained that "[u]nder the city's laws, it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building."[10] In doing so, the Court declined to expand the exception in *Robinson*. Instead, the Court likened the camping ordinances to the intoxication law at issue in *Powell*. Just as public intoxication may be occasioned by the status of alcoholism, sleeping outside may be occasioned by the status of being homeless. Thus, the Court held that the ordinances in Grants Pass criminalize conduct, rather than status, and do not fit within the framework of the *Robinson* exception.

APPLICATION TO WISCONSIN

Ordinances that prohibit camping or sleeping on public property, such as those in *Grants Pass*, exist in municipalities across Wisconsin. For example, in Waukesha it is unlawful for any person to lodge, camp, or take up a temporary place of residence in City Park, Plaza Area, or any municipal parking lot or ramp.[11] The City of La Crosse prohibits any person from camping on city park property, public parking ramp property, or in areas of city-owned property unless expressly authorized.[12] Also, in Eau Claire, no person may camp in or upon any city property unless otherwise authorized.[13] Although Wisconsin ordinances were unaffected by the Ninth Circuit's decision in *Martin,* they remain enforceable following the Supreme Court's decision in *Grants Pass*.

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[1] *Bucklew v. Precythe*, 587 U.S. 119, 130 (2019).
[2] *Grants Pass,* 603 U.S. ____ at 15.
[3] *Robinson v. California*, 370 U.S. 660, 667 (1962). Historically, crimes in the United States have required proof of an act undertaken with some measure of volition. [*Morissette v. United States*, 342 U.S. 246, 251-52 (1952).]
[4] *Powell v. Texas*, 392 U.S. 514, 532-33 (1968). In *Powell*, the Court described *Robinson* as a "very small" intrusion by courts "into the substantive criminal law" using the Eighth Amendment. *Id.* at 533.
[5] *Martin v. City of Boise*, 920 F.3d 584, 616-17 (9th Cir. 2018).
[6] *Grants Pass,* 603 U.S. ____ at 11-12.
[7] *Id.* at 12-13.
[8] *Id.* at 15.
[9] *Id.* at 17.
[10] *Id.* at 20.
[11] City of Waukesha, Wis., *Municipal Code* s. 11.37.
[12] City of La Crosse, Wis., *Code of Ordinances* s. 32-5.
[13] City of Eau Claire, Wis., *Code of Ordinances* s. 9.74.