

Supreme Court to Decide If Homeless-Camping Bans Violate Constitution



A sidewalk filled with tents in San Diego, Calif., July 31, 2023 (Mike Blake/Reuters)

Share ➔

80 Comments 💬

Listen ▶

By **RYAN MILLS**

Jan [About Ryan Mills](#)

Wh [Follow Ryan Mills On Twitter](#)
sidi
can

e to struggle with proliferation of homeless camps in their parks and on their
as agreed to hear a case that could determine if enforcing bans on those
on.

The Supreme Court on Friday agreed to review an appellate court ruling in *Johnson v. Grants* pass, one of two Ninth Circuit rulings that limited the ability of municipalities to enforce camping bans against involuntarily homeless people with nowhere else to go and when there is not enough shelter space for all of them. Critics say the rulings have supercharged the proliferation of homeless camps in Western states.

“The court’s decision to hear this case is a welcome development for cities nationwide, but especially in the west, that have suffered from a homelessness crisis largely as a result of the Ninth Circuit’s misguided decision to essentially create a constitutional right to sleep on the streets,” Timothy Sandefur, vice president of legal affairs for the Arizona-based Goldwater Institute, said in an email to NATIONAL REVIEW.

“The Ninth Circuit’s decision,” he said, “is based on the demeaning notion that people who choose to live in public parks and on sidewalks ‘can’t help it’ — a nonsense idea that hurts both the homeless and the hardworking taxpayers who must suffer from the dangerous conditions caused by the Ninth Circuit’s ruling.” The ruling, he continued, “has destroyed businesses, wrecked public parks, and worsened conditions for the poorest Americans — many of whom need treatment that the Ninth Circuit’s ruling essentially blocks them from receiving. That’s wrong morally and constitutionally, and we look forward to the Supreme Court fixing this judge-created mess.”

In the 2022 Grants Pass case, the Ninth Circuit ruled 2-1 that the small, lower-income city of Grants Pass in southern Oregon can’t enforce anti-camping ordinances “against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the City to go.”

That case came on the heels of a 2018 ruling in *Martin v. Boise*, in which the lower court held that enforcing criminal anti-camping restrictions on people who don’t have “access to temporary shelter” violates the Eighth Amendment’s ban on cruel and unusual punishment.

The Ninth Circuit’s rulings in those cases apply to the nine Western states in its jurisdiction.

Grants Pass petitioned the Supreme Court in August, arguing that the Ninth Circuit’s ruling conflicts with rulings by the California Supreme Court and the Eleventh Circuit. The *Johnson v. Grants Pass* case offered the Ninth Circuit an opportunity to course correct after its *Martin* ruling, lawyers for the city wrote. Instead, the court “doubled down” and denied a rehearing “over the objections of 17 active and senior judges, who explained that the Ninth Circuit should have reconsidered this ill-conceived judicial experiment,” they wrote.

The Grants Pass lawyers contend that there is no reliable way for a police officer to determine if someone is “involuntarily” homeless, or to know precisely how many homeless people are on the streets and how many open shelter beds are available at any time.

“Time is of the essence,” they wrote. “The consequences of inaction are dire for those living both in and near encampments: crime, fires, the re-emergence of medieval diseases, environmental harm, and record levels of drug overdoses and deaths on public streets.”

More than two dozen amicus briefs, representing the perspective of hundreds of groups and people — including big city leaders, politicians, civic groups, business organizations, downtown residents, law-enforcement leaders, state attorneys general, and conservative think-tankers — were filed late last year urging the Supreme Court to overturn the Ninth Circuit ruling.

The briefs said that the homeless camps in their cities and states have become “hubs of drug abuse,” have “overwhelmed” parks, fouled waterways with “human waste” and “toxic materials,” littered youth-baseball dugout with drug paraphernalia and dirty needles, and have been the sites for rising numbers of fires and drug-overdose deaths.

Ed Johnson, director of litigation at the Oregon Law Center, which represents the homeless plaintiffs in Grants Pass, told in an email that the Ninth Circuit’s ruling was narrow and consistent with decades of Supreme Court precedent.

“The issue before the Court is whether cities can punish homeless residents simply for existing without access to shelter,” he said. “This case is not about a city’s ability to regulate or prohibit encampments. That has always been permissible, is explicitly allowed under the Ninth Circuit’s ruling, and is not at issue here. Nevertheless, some politicians and others are cynically and falsely blaming the judiciary for the homelessness crisis to distract the public and deflect blame for years of failed policies.”

“The U.S. Constitution does not allow cities to punish people for having an involuntary status, including the status of being involuntarily homeless,” Johnson added.

Last year, NATIONAL REVIEW reported on a ruling by an Arizona judge who ordered the city of Phoenix to dismantle a massive downtown homeless camp known as “the Zone.” Maricopa County Superior Court Judge Scott Blaney said that the Ninth Circuit rulings in the *Martin* and *Grants Pass* have “created an unworkable mandate based on questionable legal analysis,” and they “partially tie the hands of cities that seek in good faith to address the growing homeless encampment epidemic.”

“To the extent that a state trial court judge could have any influence on the United States Supreme Court’s decision to review a lower court ruling, this judge would respectfully urge the U.S. Supreme Court to review the *Grants Pass* ruling and, by extension, the *Martin* decision,” Blaney wrote in his 27-page ruling in that case.

Editor’s Note: This story has been updated with a comment from Ed Johnson, director of litigation at the Oregon Law Center, which represents the homeless plaintiffs in Grants Pass

[Send a tip to the news team at NR.](#)

 **BACK TO NEWS**

Share 

80 Comments 