

Right-wing Supreme Court majority seems ready to sanction arrest of homeless people for sleeping in public

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The Supreme Court majority indicated Monday during oral arguments in *City of Grants Pass, Oregon v. Johnson* that it is likely to overturn a lower court injunction against a local ordinance that allows police to arrest people for sleeping in public, although they have nowhere else to go.

The six right-wing justices who dominate the high court, including the openly corrupt Clarence Thomas—recipient of a \$250,000 recreational vehicle that allows him to sleep comfortably while outside his home—showed no empathy for the plight of people who literally cannot afford a roof over their head. Instead, these reactionaries appear willing to approve the arrest of the homeless under the guise of deferring to local officials in matters of “policy.”

The case has been closely watched, especially by local governmental entities, many of which filed “friend of the court” briefs complaining that allowing the injunction to stand would “tie their hands.” There are more than 650,000 unhoused people in the United States, according to a 2023 count by the Department of Housing and Urban Development (HUD). The homeless population has increased by almost 15 percent since 2007, when HUD began collecting the data, with the growth of homelessness concentrated among older women and military veterans.

Provisions that criminalize extreme poverty harken back to an era of anti-vagrancy laws and debtors’ prisons. As the poet Anatole France famously wrote more than a century ago:

The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal loaves of bread.

Grants Pass, Oregon, with a population 40,000, has a one percent housing vacancy rate, reflecting the severe shortage of affordable units afflicting much of the nation, and an

estimated 600 homeless, many of whom are long-time Grants Pass residents. Initially, the city provided bus tickets to ship the homeless out of town, but most soon returned, in many cases with neighboring municipalities providing the return fare.

To force the homeless out of Grants Pass permanently, in 2013 the City Council announced it was enacting prohibitions against sleeping in public, including in cars, with any form of “bedding... for the purpose of maintaining a temporary place to live.” Penalties escalated from a \$300 fine to 30 days in jail.

The only alternative to sleeping in public or leaving Grants Pass was a total of 138 beds at Gospel Rescue Mission, where stays were limited to 30 days. Residents were required to attend religious services twice daily and perform hours of chores without pay. They were not allowed to look for outside work while living at the Mission. Disabled people unable to work were ineligible, and no pets were allowed.

Three homeless residents of Grants Pass sued in federal district court, which certified them as class representatives and enjoined enforcement of the statute. The court cited evidence that over a period of seven years, Grants Pass police officers roused unhoused residents repeatedly, citing them for sleeping outside or in their cars and subjecting them to fines, arrest and criminal prosecution. One plaintiff, who died at age 62 while the case was pending, owed more than \$5,000 in fines for sleeping in public.

City officials admitted in depositions that the aggressive enforcement was meant to push the unhoused out of Grants Pass and into “federally managed land” or other locations. Police officers confirmed that people who could show they had a “place to live” and were just napping on a blanket in a park or “stargazing” would not be cited.

The United States Court of Appeals for the Ninth Circuit, which covers the western states, including Oregon, affirmed the injunction, as it had done in 2019 with a similar

injunction against Boise, Idaho.

The 1962 Supreme Court decision in *Robinson v. California* held that the Constitution’s prohibition against “cruel and unusual punishment” found in the Eighth Amendment of the Bill of Rights prevents criminalizing someone’s “status”—in that case drug addiction—rather than the person’s conduct. The Ninth Circuit ruled that same principle applies equally to people compelled by circumstances beyond their control to sleep in public.

The callous attitude of the right-wing justices was epitomized by Chief Justice John Roberts, who openly suggested that the Supreme Court—and by extension the entire federal judiciary—should wash its hands of the plight of the unhoused by asking, rhetorically, “Why would you think that these nine people [the members of the Supreme Court] are the best people to judge and weigh those policy judgments?”

Justice Brett Kavanaugh echoed Roberts’ sentiment, stating that the Supreme Court should not “constitutionalize a role for federal judges” in regard to how cities address their homeless. “I think one of the questions is, who takes care of it on the ground,” Kavanaugh said. Ignoring the issue of the constitutional separation of church and state, he continued, “Is it going to be federal judges? Or is it the local jurisdictions working with the non-profits and religious organizations?”

Justice Amy Coney Barrett, a religious fundamentalist appointed by Donald Trump, expressed concern whether affirming the Ninth Circuit decision would prevent Grants Pass from arresting the homeless for stealing food or for urinating or defecating in public. Kelsi Brown Corkran, who represented the plaintiffs, assured Barrett that these issues were not part of the injunction.

Justices Clarence Thomas and Samuel Alito rejected the concept that homelessness is a status similar to drug addiction. Alito said that although “status is different from conduct ... there are some instances of conduct that are closely tied to status,” and “if homelessness is defined as simply lacking a place to stay in a particular night, they amount to the same thing.”

Justice Neil Gorsuch suggested that people prosecuted for sleeping in public could raise the common law “necessity defense,” a practical impossibility where the law is being used by police officers to harass the unhoused, who generally lack the ability to appear in court and defend themselves.

The three moderate justices spoke in favor of the injunction. “Homelessness is a status,” Justice Elena Kagan said bluntly to the attorney for Grants Pass. “Sleeping is a biological necessity. It’s sort of like breathing. I mean, you could say breathing is conduct, too. But, presumably, you

would not think that it’s okay to criminalize breathing in public, and for a homeless person who has no place to go, sleeping in public is kind of like breathing in public.”

Justice Ketanji Brown Jackson analogized the law to a hypothetical prohibition against eating in public. Most people would be fine, she said, because “they could just eat at home or in a restaurant,” but some “have to eat in public, because they’re unhoused and they can’t afford to go to a restaurant.”

The sharpest comment came from Justice Sonia Sotomayor, who told the lawyer for Grants Pass, “Where do we put them if every city, every village, every town lacks compassion and passes a law identical to this? Where are they supposed to sleep? Are they supposed to kill themselves not sleeping?”

The case raised, according to Kagan, a “super-hard policy problem for all municipalities.” While unmentioned by any justice or attorney, the “policy problem” arises because the fundamental issue is social class, and the Supreme Court, like the local governments that must deal with the unhoused population, are instruments of capitalist rule. A rational and humane society, in other words, a socialist society, would allocate resources to house the entire population, including the aged, infirm and mentally ill.

Monday’s argument demonstrated that social horrors like homelessness cannot be resolved under capitalism. More than a century and a half ago, in *Das Kapital*, Karl Marx wrote:

Accumulation of wealth at one pole is... at the same time accumulation of misery, agony of toil slavery, ignorance, brutality, mental degradation at the opposite pole.

The simultaneous growth in the United States of the wealth of billionaires and the homeless population confirms Marx’s maxim.



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