



Camping on Public Property

The New Florida Law and Trends in Enforcement To Prevent or Treat Homelessness

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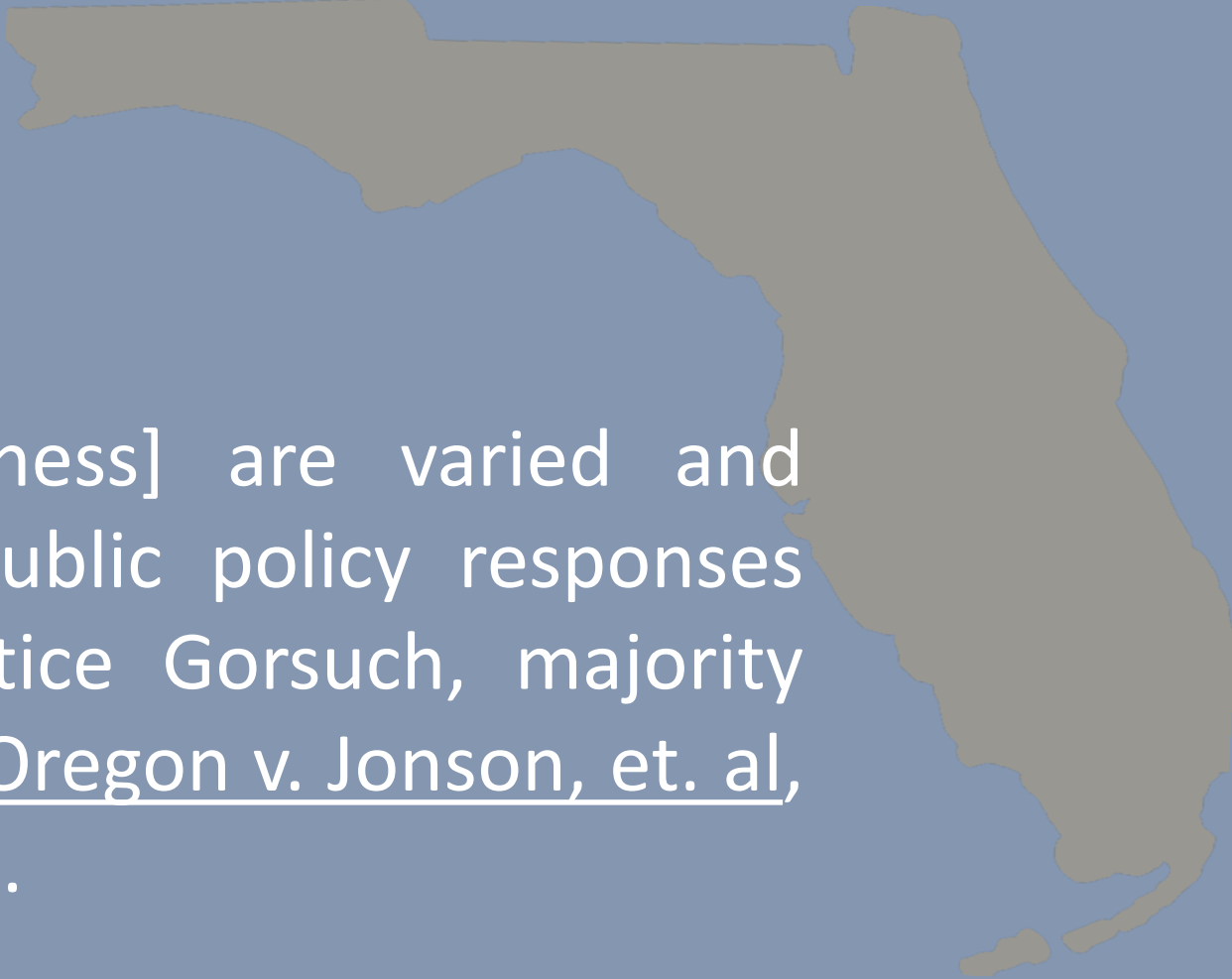
Outline of Presentation

- The Issue of Homelessness
- Chapter 2024-11, Laws of Florida
- *City of Grants Pass, Oregon v. Johnson, et al.*
- Solutions to Comply with the New Law
- Legal Trends
- Questions



Homelessness

The Issue



“The causes [of homelessness] are varied and complex, the appropriate public policy responses perhaps no less so.” – Justice Gorsuch, majority opinion, City of Grants Pass, Oregon v. Jonson, et. al, 603 U.S. ____ (June 28, 2024).

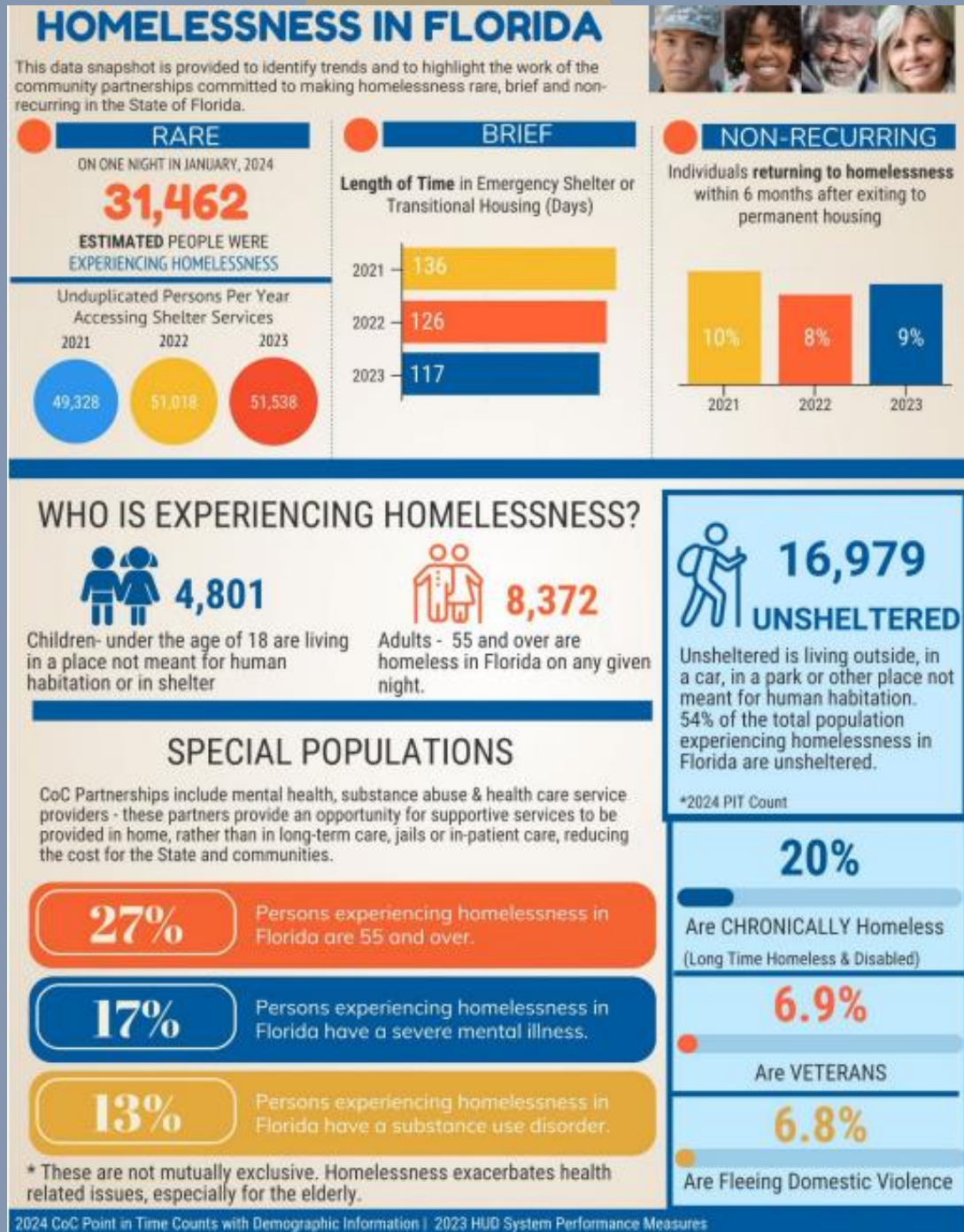
Homelessness in the United States - Demographics



In the United States the Largest Population of Homeless Individuals are persons **age 35 to 44**, in Florida it is persons **age 55 to 64**— HUD 2023 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations Report, issued November 19, 2023.

Homelessness in Florida

Figure 3, page 9, Annual Report, Florida's Council on Homelessness, Submitted to State Legislature June 2024.



Comparison

TABLE 1: SYSTEM PERFORMANCE MEASURES (SPMs) - FLORIDA VS. NATIONAL AVERAGES IN 2022

SPM	Florida	National
SPM1: Length of Time Homeless	128 days	158 days
SPM 2: Returns to Homelessness	8.3% 6 Months	7.3%
	12.7% 12 Months	11.0%
	19.3% 24 Months	16.5%
SPM 3: Total HMIS Count	3% increase over 2021	17.5% increase
SPM 5: First Time Homeless	4.9% increase	26.0% increase
SPM7: Successful Exits to Permanent Housing	45.9% SO	32.4%
	43.5 % ES, TH, SH, RRH	33.9%
	95.6% PH (not RRH)	96.2%

Abbreviations:

HMIS = Homeless Management Information System

SO = Street Outreach

ES = Emergency Shelter

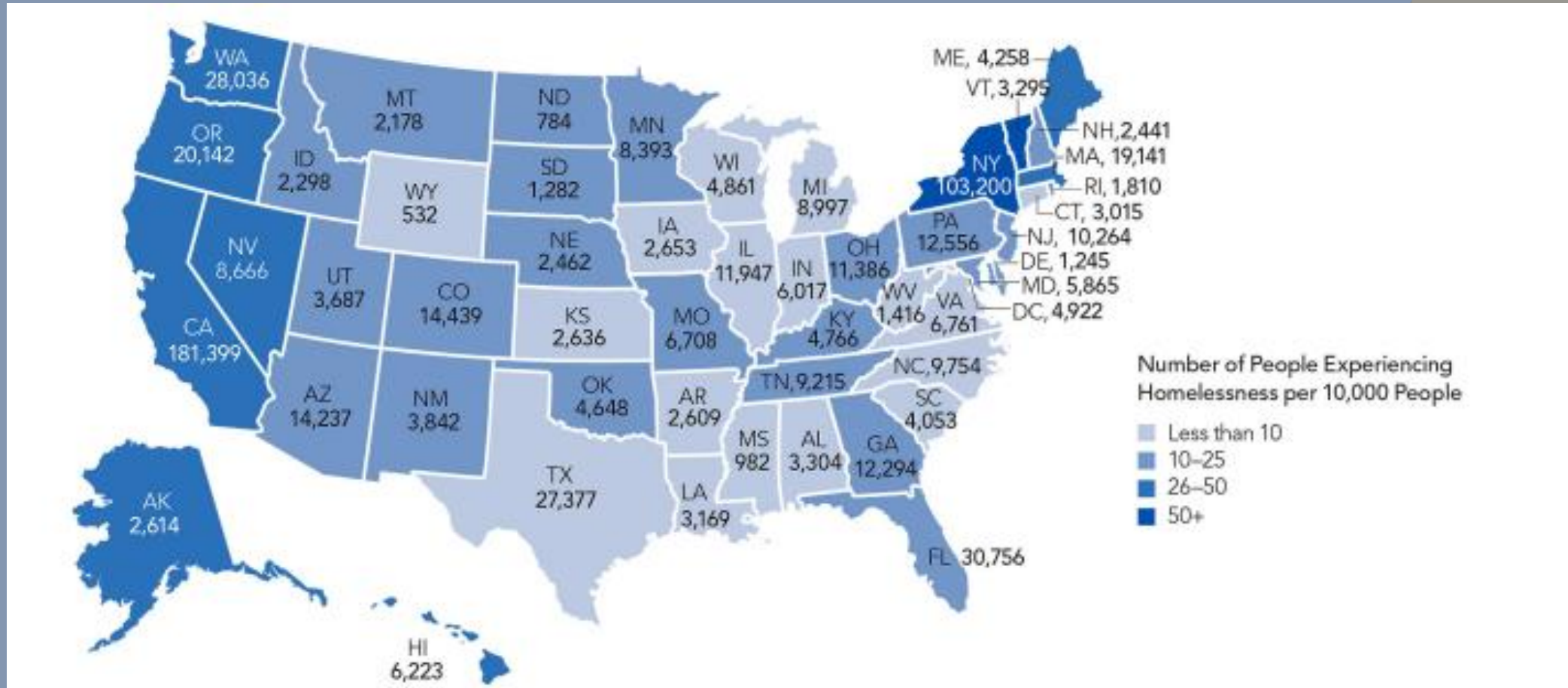
TH = Transitional Housing

SH = Safe Haven

RRH = Rapid Re-Housing

PH = Permanent Housing

Estimates of People Experiencing Homelessness 2023

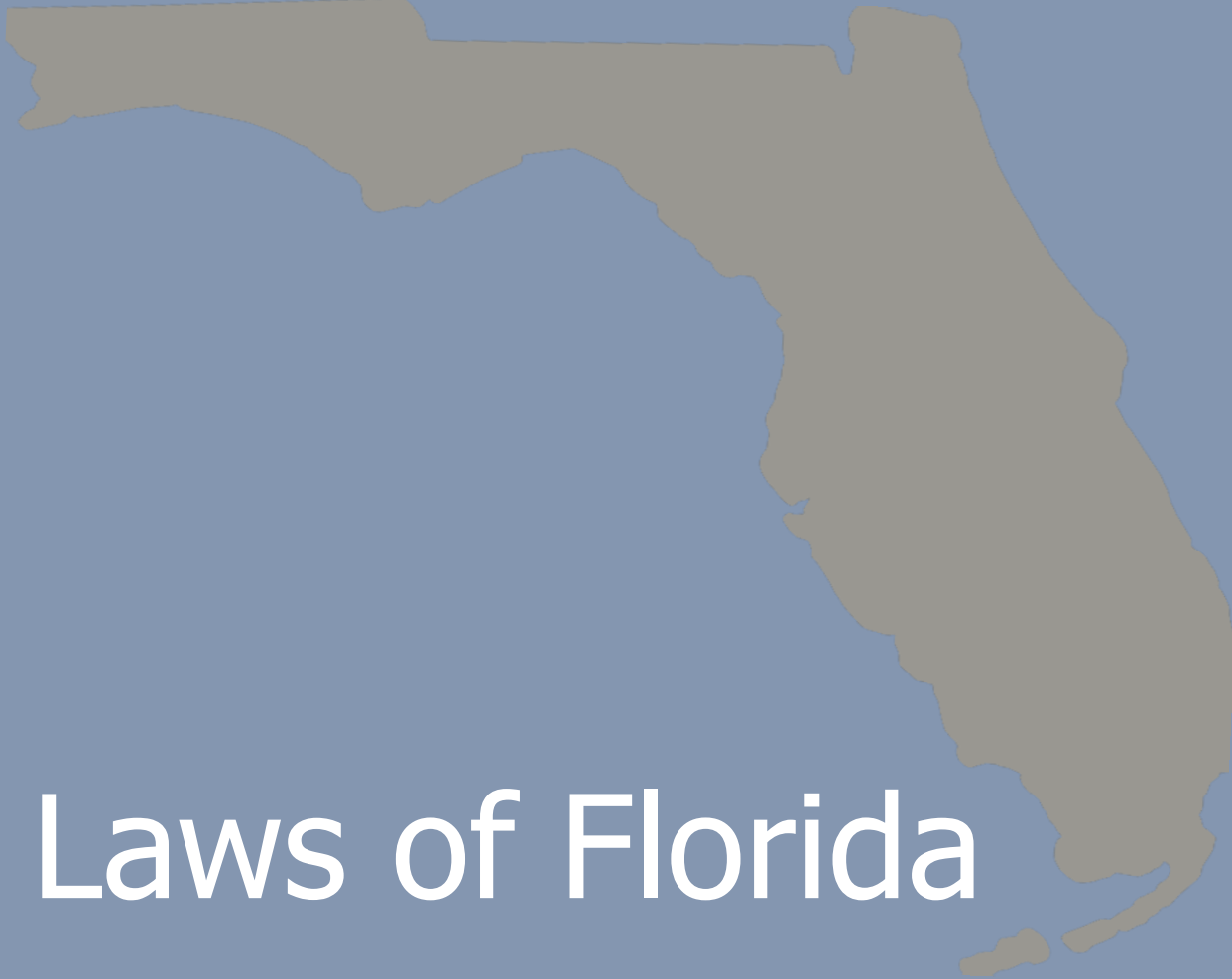


2023 Annual Homeless Assessment Report (AHAR) to Congress, U.S. Dept. Housing and Urban Development, published December 2023

Some Causes of Homelessness

- Affordable Housing - According to the 2020 Government Accountability Office Report on Homelessness, for every \$100 monthly median rent increases there is a 9% increase in homelessness. Homelessness: Better HUD Oversight of Data Collection Could Improve Estimates of Homeless Population (GAO-20-433), Government Accountability Office (GAO), Released August 13, 2020.
- Severe Mental Illness
- Chronic Substance Abuse
- Victims of Domestic Violence
- Unaccompanied Youth Ages 18-24 and Veterans also make up a large portion of the unhoused.

Information from: HUD 2023 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations Report, issued November 19, 2023.



Chapter 2024-11, Laws of Florida

Summary

- Chapter 2024-11, Laws of Florida (the Law), formally CS/CS/HB 1365, creates s. 125.0231, Florida Statutes which prohibits counties and municipalities from authorizing or otherwise allowing public camping or sleeping on public property without certification of designated public property by the Department of Children and Families.

The Law defines “public camping and sleeping” as:

- a. Lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, or the storage of personal belongings; or
- b. Lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

The term does not include: 1) lodging or residing overnight in a motor vehicle that is registered, insured and located in a place where it may lawfully be; 2) camping for recreational purposes on property designated for such purposes.

Section 1. Chapter 2024-11, Laws of Florida.

Extent of the Prohibition



- The law emphasizes that a “county or municipality may not authorize or otherwise allow any person to regularly engage in public camping or sleeping on any public property, including, but not limited to, any public building or its grounds and any public right-of-way under the jurisdiction of the county or municipality, as applicable. Section 1, Ch. 2024-11, Laws of Florida.

Exceptions to the Prohibition



- When a County, by a majority vote, designates property owned by it to be used for a contiguous period of no longer than 1 year for the purpose of public camping or sleeping.
- In such instances, a county must first provide certain documentation and seek a certification from the Florida Department of Children and Families for such designation.
- The County must also put together a plan to ensure safety, sanitation and provide behavioral health services to the property.
- Whether intentional or not municipalities are left out of this portion of the Law.

New Cause of Action Against Counties and Cities



- The Law provides that residents of the county, an owner of a business located in the county, or the Attorney General may bring a civil action in any court against the county or applicable municipality to enjoin a violation of the local government that authorizes or otherwise allows any person to regularly engage in public camping or sleeping on any public property.
- Award of Attorneys fees and Costs.

Effective Dates

- The Law took effect on October 1, 2024 with the exception of the new cause of civil action which takes effect January 1, 2025.

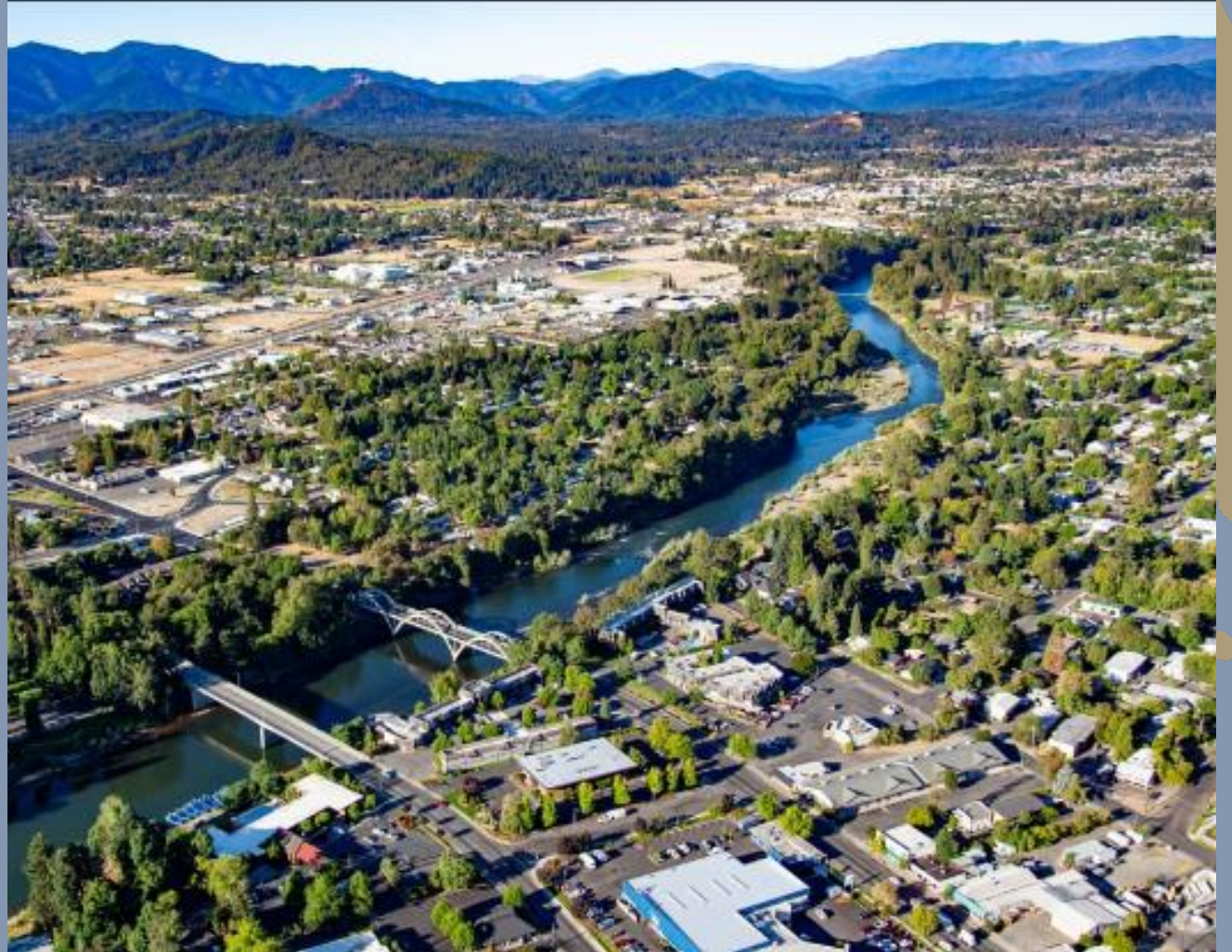
City of Grants Pass, Oregon v. Johnson, et. al., 603 U.S. _____, Case No. 2023-175 (June 28, 2024)



The Parties

City of Grants Pass, Oregon: a local government located in Oregon with roughly 38,000 people residing about 600 of whom are estimated to be homeless.

Gloria Johnson and John Logan, on behalf of themselves and all other similarly situated individuals: self identified as involuntarily homeless persons in the City of Grants Pass, Oregon.



Procedural History/Facts



- The City of Grants Pass (the City) adopted the following three laws via ordinance:
 - 1. a Law prohibiting sleeping on public sidewalks, streets and alleyways;
 - 2. camping on public property; and
 - 3. camping and overnight parking in the City's parks.
- Initial offenses of the ordinance may trigger a civil fine, repeat offenses may trigger an order temporarily barring an individual from camping in a public park. Later violations of an order may face a criminal punishment of up to 30 days in jail and a larger fine.

Procedural history/facts cont.

- Plaintiffs filed a punitive class action on behalf of the homeless living in Grants Pass.
- Claimed the Ordinances violated the Eighth Amendment.
- Trial Court: granted summary judgment in favor of Plaintiffs holding the City's "policy and practice of punishing homelessness" violates the Cruel and Unusual Punishment Clause. Injunction was issued enjoining enforcement of the City's Ordinance.
- Ninth Judicial Circuit affirmed, relying on previous case finding that punishing involuntarily homeless persons for sleeping outside when it is physically impossible for them to avoid doing so is illegal.
- The City appealed to SCOTUS.

Issues

Whether the Cruel and Unusual Punishment Clause of the Eight Amendment of the United States Constitution prohibits the enforcement of public-camping laws.

Rule

*Excessive bail shall not be required, nor excessive fines imposed,
nor cruel and unusual punishment inflicted.*

United States Constitution, Eight Amendment.

Analysis

- Cruel and Unusual Punishment clause focuses on the question what “method or kind of punishment” a government may impose after a criminal conviction, not on the question whether a government may criminalize particular behavior in the first place or how it may go about securing a conviction for that offense.
- Punishments are cruel when they are calculated to add terror, pain or disgrace. Punishments are unusual when they have long fallen out of use.
- Further, punishments are found to be Cruel and Unusual when punishing status not action.

Findings/Holding/Disposition

- 6-3 ruling, SCOTUS reversed the decision of the lower courts and remanded.
- None of the City's sanctions qualify as cruel because none is designed to add "terror, pain or disgrace." Nor are the City's sanctions unusual, because similar punishments have been and remain among the usual modes for punishing offenses throughout the country.
- Further, the law does not criminalize mere status of people, the ordinance would apply to whomever attempts to camp or sleep on public property not just involuntarily homeless individuals.
- Note: SCOTUS in dicta also questioned the use of the word "involuntary."

Solutions to Complying With the Law



- Ordinance demonstrating the express prohibition on allowing public camping or sleeping on public property.
- Drafting a letter to local law enforcement on enforcement of local laws against public camping or sleeping on public property.

ORDINANCE 2024 - 19

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA CREATING AND AMENDING THE FOLLOWING SECTIONS OF THE OKALOOSA COUNTY CODE OF ORDINANCES: CREATING SECTION 1-19 OF CHAPTER 1, TITLED "PROHIBITION OF PUBLIC CAMPING OR SLEEPING WITHIN COUNTY BUILDINGS OR ITS GROUNDS"; CREATING SECTION 19-2 OF ARTICLE I, CHAPTER 19, TITLED "PROHIBITION OF PUBLIC CAMPING OR SLEEPING ON COUNTY STREETS, SIDEWALKS, RIGHT-OF-WAY AND OTHER PUBLIC WAYS"; AMENDING SECTION 16-41, ARTICLE II, CHAPTER 16 PROVIDING FOR A DEFINITION OF "PUBLIC CAMPING OR SLEEPING"; AMENDING SECTION 16-43(A), ARTICLE II, CHAPTER 16, TITLED "OVERNIGHT CAMPING"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, the Florida Legislature in adopting Chapter No. 2024-11, Laws of Florida, has made it impermissible, effective October 1, 2024, for counties and municipalities to authorize or otherwise allow public camping or sleeping at public buildings, on public grounds, property or rights-of-way, with the exception of very particular circumstances such as for designated recreational uses; and

WHEREAS, the intent of the Florida Legislature in adopting Chapter No. 2024-11, Laws of Florida, was to fulfill an important state interest of ensuring the health, safety, welfare, quality of life, and aesthetics of Florida communities while simultaneously making adequate provision for the homeless population of the state; and

WHEREAS, Chapter No. 2024-11, Laws of Florida, places an obligation on counties and cities to proactively avoid violations of the new law, failure to do so subjects counties and municipalities to civil actions by residents of the county, owners of a business located in the county or the Attorney General may enjoin violations of the new law, damages including attorneys' fees and costs may be imposed; and

WHEREAS, County staff has been proactive in meeting with municipal partners and law enforcement to determine the best approach forward to demonstrate proactive enforcement of the provisions of Chapter 2024-11, Laws of Florida; and

Section 1-19. Prohibition of Public Camping or Sleeping within County Buildings or Its Grounds.

(a) It shall be unlawful for any person, as defined in Section 1-2, to publicly camp or sleep in any County owned building or its grounds unless designated for public camping and sleeping for recreational purposes by the County. For purposes of this prohibition, grounds shall include the entirety of the parcel of property owned by the County beyond the building, including, but not limited to, grass areas, sidewalks and parking facilities.

(b) For purposes of this section, "Public Camping or Sleeping" shall have the following meaning:

1) Lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, or the storage of personal belonging; or

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2) Lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

3) The term does not include: 1. Lodging or residing overnight in a motor vehicle that is registered insured and located in a place where it may lawfully be; or 2. Camping for recreational purposes on property designated by the County for such purposes.

(c) Any person violating the prohibition established in subsection (a) may be subject to trespass violations in accordance with chapter 810, Florida Statutes. Law enforcement is authorized to take legal and necessary action to remove a person violating this subsection.



Anticipated Legal Trends

Trends...

- Additional Affordable Housing legislation
 - Florida's Council on Homelessness has recommended to the Florida Legislature that it consider in the next legislative session amending the current State Housing Initiative Partnership (SHIP) statute to allow local jurisdictions to allocate resources toward areas of greatest need.
- Funding Prioritization for providers that implement evidence-based and best practice models – (examples: Housing First, Participation in Local CoC Plan, Discharge Planning and Rapid Re-Housing Programs).

Questions

