



City Of Grant's Pass Case & Related Homeless Litigation

HARVEY M. SHELDON, P.A., BOYNTON BEACH, FL.

PALM BEACH COUNTY BAR ASSOCIATION CLE- DECEMBER 3, 2024

Outline of Presentation

Important Previous Relevant Cases

- Monell v. Dept. of Social Services
- Martin v City of Boise
- Phillips v City of Cincinnati
- Robinson v. California

The City of Grant's Pass Case Opinions

- Camping or Sleeping is the Proscribed Conduct
- Majority Opinion Discussion
- Concurrence of Thomas, C., J.
- Dissent of Sotomayor, J. et al.

Issues for the Future

- Due Process Litigation
- Equal Protection
- Is there a Right to be Housed?
- Ordinance Specific Litigation-next speakers

(Copyright Harvey M. Sheldon, Dec.3,2024, All Rights reserved, Except Citation)

Important & Relevant Prior Cases

Monell v Dept. of Social Services, 436 U.S. 658 (1978).

The basis for civil rights liability of government entities under the Monell doctrine is established in this landmark case. The U.S. Supreme Court held that local government units could be liable under [§ 1983. Civil action for deprivation of rights](#) for deprivations of federal rights, but this liability is not based on the doctrine of respondeat superior. Instead, a municipality can only be held liable when the execution of its official policy or custom inflicts the injury that the government entity is responsible for under § 1983. [Pembaur v. City of Cincinnati, 475 U.S. 469](#), [Owen v. Independence, 445 U.S. 622](#), [Dougherty v. City of Covina, 654 F.3d 892](#).

Furthermore, the policy or custom must be so persistent and widespread as to practically have the force of law [Moore v. LaSalle Mgmt. Co., 41 F.4th 493](#). This requirement ensures that the municipality is only held liable for its own illegal acts and not merely for the actions of its employees [Pembaur v. City of Cincinnati, 475 U.S. 469](#), [Ashcroft v. Iqbal, 556 U.S. 662](#).

To establish liability under Monell, a plaintiff must demonstrate that: (1) they possessed a constitutional right of which they were deprived; (2) the municipality had a policy; (3) this policy amounted to deliberate indifference to the plaintiff's constitutional right; and (4) the policy was the moving force behind the constitutional violation [Dougherty v. City of Covina, 654 F.3d 892](#). This means that the plaintiff must show that the unconstitutional action was taken pursuant to an official policy or custom of the municipality, or by those whose actions represent official policy [Owen v. Independence, 445 U.S. 622](#), [Glisson v. Ind. Dep't of Corr., 849 F.3d 372](#).

Important & Relevant Prior Cases

Martin v City of Boise (9th Cir, 2019)

Held: An ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.

Overview: [1]-Two city ordinances -- a disorderly conduct ordinance and a camping ordinance, which criminalized sleeping outside on public property, whether bare or with a blanket or other basic bedding -- violated the Eighth Amendment insofar as it imposed criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter was available; [2]-Although amendments to the ordinances precluded the city from enforcement when there was room available at any shelter, there was a disputed issue of material fact as to whether two plaintiffs had constitutional standing and could nonetheless be prosecuted because there was substantial record evidence that whether or not the city's homeless facilities were full, the homeless shelters refused admittance to homeless people who had exhausted the number of days allotted them.

Martin v. City of Boise, 920 F.3d 584, 603

Previous Case of Note

Phillips v. City of Cincinnati, 479 F. Supp. 3d 611 *; 2020 U.S. Dist. LEXIS 145507 **; 2020 WL 4698800

HELD: [1]-In a claim that defendants' policy and custom of making homeless encampments illegal throughout the City violated their constitutional rights, the plaintiffs had sufficiently pled a First Amendment claim with respect to the City's enforcement of the permanent injunction where they alleged they were using the encampments as a means of symbolic speech, and it was plausible based on the allegations in the complaint that observers understood that plaintiffs were communicating a message about City's homelessness crisis;

[2]-The motion to dismiss plaintiffs' Fourth Amendment claim was granted because plaintiffs had failed to adequately allege that the City had a policy of seizing or destroying homeless residents' unabandoned items and had failed to adequately plead a facial challenge to the policy.

The 9th Circuit doctrine in *Martin v Boise* was cited favorably in other Circuits' district court rulings before the recent *Grant's Pass* decision.

First Amendment rights recognized. Search and seizure protection dismissed, but for lacking factual basis.

Important Previous Cases

Robinson v California 370 U.S. 660

Procedural Posture

Defendant appealed a decision from the Appellate Department, Superior Court of California, Los Angeles County, which upheld a trial court's judgment that **convicted him of being addicted** to the use of narcotics in violation of Cal. Health & Safety Code § 11721.

Overview

A jury found defendant guilty under Cal. Health & Safety Code § 11721 for being addicted to the use of narcotics, a conviction that was affirmed on appeal. Defendant sought further review from the United States Supreme Court. The Court reviewed the record, which included a police officer's testimony that defendant had scar tissue and discoloration on the inside of his arm, as well as needle marks and a scab below the crook of the elbow, which the officer believed was the result of injections by hypodermic needles. The officer also testified that defendant admitted to the occasional use of narcotics. At the time of his arrest, defendant was not engaged in any illegal conduct, and there was no proof that he had actually used narcotics within California. The Court concluded that § 11721 made the status of being addicted to the use of narcotics a criminal offense, whether or not he ever used or possessed narcotics within California or had been guilty of any antisocial behavior there. The Court found § 11721 to be unconstitutional and in violation of U.S. Const. amend. XIV for inflicting cruel and unusual punishment.

Holding: The state statute was unconstitutional. 8th Amendment.

Grant's Pass Majority Opinion

- ***City of Grant's Pass v. Johnson***, 144 S.Ct. 2202 (6/28/2024)
- Justice Gorsuch, joined by Roberts, Alito, Thomas and Barrett, JJ.
- Initial pages of the Opinion describe the homelessness problem in America as multifaceted, tragic, and complicated.
- The Ninth Circuit ruled in *Martin v Boise* and 8th amendment violation injunctions were affirmed in lower courts.
- In some cases, the *Martin* based injunctions worsened the problem in given cities.
- The City ordinances in question here prohibit sleeping in public rights of way, camping on public property, and camping and parking overnight in public parks
- A system of civil fines, court orders for multiple violations, culminating in criminal trespass for violating the orders (\$1250 fine plus 30 days in jail).
- Ninth Circuit split in this case, but ruled the law imposed cruel and unusual punishment for being involuntarily homeless.

(Copyright Harvey M. Sheldon, Dec.3,2024, All Rights reserved, Except Citation)

LOCAL GOVERNMENT COMMITTEE CLE-PALM BEACH COUNTY BAR ASSN.

Grant's Pass
Majority
Opinion

Majority notes that the ordinances in dispute do not expressly deal with homelessness. Anyone sleeping overnight for any reason can be cited.

The penalty system imposed here, a warning, then citation followed by fine and order followed by violation and possible short jail term is not unusual. It is neither cruel nor extraordinary.

The Robinson case decision of the US SCt is not applicable to the Grant's Pass ordinance, since it does not outlaw or sanction "status" as a homeless person.

Grant's Pass Majority Opinion (cont.)

- The Eighth Amendment has been applied to punishment after sentencing. It does not govern the civil or criminal process of prosecution. Those issues are the subject of other amendments, the due process and equal protection Clauses.
- The dissenters misapply the *Robinson* case and would apply the Eighth Amendment in a manner that would be unprecedented and inconsistent with its language, history and purpose.

Grant's Pass Concurrence

- Justice Clarence Thomas concurred in the opinion of the majority, but also wrote a concurrence focused on critiquing the Dissent.
- He indicates that the *Robinson* case was wrongly decided, because the opinion there focused on public opinion, rather than the history and wording of the Eighth Amendment. He would have overruled it in this case, given its flawed reasoning, even though it is not specifically germane.
- Punishment under the Eighth Amendment has to be punishment for a crime, and the 9th Circuit's opinion unreasonably relies on the potential for eventual criminal charges, even though the case at hand presents none, and there is no actual record of any occurring.
- The majority should have more strongly indicated that the reasoning of the Ninth Circuit panel majority as to the Eighth Amendment was overly broad and wrong as a matter of law.

Grant's Pass Dissenting Opinion

- Justice Sotomayor, joined by Kagan and Jackson, JJ dissented.
- The dissent expresses sympathy for all concerned with the homelessness situation in the United States.
- However, to put a vulnerable person in a position to be arrested if they fall asleep goes too far and is cruel.
- It points out that the “excessive fines” clause of the 8th Amendment was not in question for the Court.
- Much of the dissent engages in describing the complexity and scope of homelessness.
- It says: “The only question here is whether the Constitution permits criminalizing sleeping outside when there is nowhere else to go.”
- It contends the enforcement scheme in Grant's Pass further complicates our societal problems.

Grant's Pass Dissenting Opinion

- Justice Sotomayor, with Kagan and Brown concurring.
- Citing two Supreme Court cases as precedent, the dissent asserts the Eighth Amendment limits the kind of punishment, proscribes punishment disproportionate to the crime involved, and sets substantive limits on what can be made criminal. Cf. *Ingraham v Wright*, 430 U.S. 651, 667(1977).
- It cites *Robinson v California* as a substantive limit on criminal punishment, making punishment for status as an addict unconstitutional. It cites several cases where Robinson has been cited by later decisions of the Supreme Court.
- The dissent notes it sees the prohibitions on bedding and maintaining a temporary place to live in the Grant's Pass Ordinance as singling out the homeless. This introduces the issue of status and was correctly found unconstitutional under the Eighth Amendment.
- The dissent would expand the *Robinson* concept of status and uphold the Ninth Circuit injunction.

ISSUES FOR THE FUTURE: Substantive Issues For Likely Future Litigation HB 1365

- First amendment
 - An encampment as a group expression of rights or public policy protest. CF. e.g. *Phillips v Cincinnati*, *Pottinger v Miami*
- Fourth Amendment
 - Unlawful Seizure of property. Numerous cases re property seizure.
- Eighth Amendment:
 - Possible assertion of excessive fines for defendants who have little money.
- Equal Protection-
 - Infringing the right to travel? See [Pottinger v. Miami, 810 F. Supp. 1551 \(1992\)](#).
 - Is there a right to have a home?
- Due Process
 - Procedural
 - Substantive – Meyer v Nebraska (In *Meyer v. Nebraska* the Supreme Court majority stated that "liberty thus guaranteed" by the Fourteenth Amendment also includes "the **right** of the individual to establish a home."¹The full statement added that the **rights** listed are "essential to the orderly pursuit of happiness by free men." [Meyer v. Nebraska, 262 U.S. 390, 399 \(1923\)](#)).

Situation Specific re Ordinances- next Speakers

Thank You.

Harvey M. Sheldon, P.A.

Boynton Beach FL 33436

harvey@hmseldonlaw.com

Ph: 561-281-4645

www.hmseldonlaw.com

<https://www.enviroadr.com>

(Copyright Harvey M. Sheldon, Dec.3,2024, All Rights reserved. Except Citation)

LOCAL GOVERNMENT COMMITTEE CLE-PALM BEACH COUNTY BAR ASSN.

Fourth Amendment

The Fourth Amendment of the United States Constitution protects individuals from unreasonable searches and seizures, stating: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" [Morgan v. Chapman, 969 F.3d 238](#), [United States v. Gordon, 346 F. Supp. 3d 999](#).

There have been successful uses of the Fourth Amendment by homeless plaintiffs. In the case of [Lavan v. City of Los Angeles, 797 F. Supp. 2d 1005](#), the court found that the city's practice of seizing and destroying the personal property of homeless individuals without notice violated the Fourth Amendment. The court concluded that the plaintiffs had a strong likelihood of success on the merits of their claim that the city's actions constituted an unreasonable seizure of property [Lavan v. City of Los Angeles, 797 F. Supp. 2d 1005](#), [Garcia v. City of Los Angeles, 481 F. Supp. 3d 1031](#). Similarly, in [Cobine v. City of Eureka, 250 F. Supp. 3d 423](#), the court recognized that the property of homeless plaintiffs is entitled to Fourth Amendment protection and found that the plaintiffs had sufficiently alleged a credible threat of enforcement against them, making their Fourth Amendment challenge justiciable [Cobine v. City of Eureka, 250 F. Supp. 3d 423](#). Additionally, in [Pottinger v. Miami, 810 F. Supp. 1551](#), the court held that the city's practice of seizing and destroying the property of homeless individuals violated the Fourth Amendment [Pottinger v. Miami, 810 F. Supp. 1551](#).