**7/2/2024; Criminalizing Homelessness?**

**[HALF SECOND OF SILENCE]**

**[BILLBOARD]**

JULIA LONGORIA (FILL-IN HOST): We’ve been swimming in Supreme Court headlines since the term ended yesterday.

SCORING IN <Embers Bounce Around You On the Way Down (Drum Machine Version)-01 BMC>

*<CLIP>WFAA*

*Anchor: Justices granting former President Donald Trump some immunity from prosecution*

*<CLIP> Face The Nation*

*Anchor: The supreme court has overturned a landmark 40 year old decision that gave federal agencies broad regulatory power.*

*<CLIP> WSJ, TNB Tech Minute*

*Anchor: It sidestepped a ruling on the constitutionality of state laws seeking to limit the company's ability to suppress user speech.*

JULIA: One big decision you might’ve missed… is one where the Supreme Court weighed in on homelessness policies. For the first time in a while. They ruled it’s NOT cruel and unusual to criminalize camping in public spaces. That’s just as record numbers of Americans are unhoused.

*<CLIP> KGW News*

*Unhoused Person: right now this whole community, the homeless community is in fear right now of that they’re going to start being arrested and going to jail*

JULIA: How this ruling could affect towns and cities across the country… Coming up on Today Explained.

**[THEME]**

JULIA:It’s Today, Explained. I’m Julia Longoria filling in as host today. I used to host a podcast called More Perfect about the Supreme Court so I’ve been watching the Court’s case on homelessness this term since last summer. As soon as a decision came down, I reached out to Steve Mazie, who covers the Supreme Court for *The Economist* magazine.

STEVEN MAZIE (SCOTUS CORRESPONDENT, THE ECONOMIST) : The decision is called City of Grants Pass versus Johnson. And Grants Pass is a city in Oregon of about 38,000 people, about 600 of whom are homeless on any given day.

*<CLIP> KPTV FOX 12 Oregon*

*Reporter: the city of Grants Pass claims it does not have enough space and shelters for their homeless population at the same time its laws impose civil penalties including fines on people sleeping outside on public property if the fines are not paid they can become criminal charges*

STEVEN: So some homeless people filed a lawsuit saying this is unconstitutional. And it is a violation of the Eighth Amendment's ban on cruel and unusual punishments. You're punishing us as homeless people. You're punishing homelessness, which, under a decision in the Ninth Circuit Court of Appeals from a few years back, was determined to be unconstitutional. It's the largest of the circuits in the federal appellate court system. And so this is a decision that applied to all the western states, which happened to be the states that have among the worst homelessness crises in in the country.

JULIA: And so what happened here in this case, in Grants Pass?

STEVEN: There have been a number of claims since 2018 from homeless people living in various places on the West Coast, saying these ordinances are unconstitutional under the 2018 ruling.

JULIA: hmm  
  
STEVEN: And this is one examplethat you can't ban public sleeping. And this is a decision from the Ninth Circuit that got up to the federal Supreme Court and what the court decided, 6 to 3, with all six conservatives on one side and the three liberal justices on the other, they decided that homeless people in Grants Pass do not have a constitutional claim, that the Eighth Amendment does not protect them from ordinances that criminalize sleeping in public or in public parks.

<CLIP> KGW News

Anchor: the US Supreme court has sided with Grants Pass Oregon.

ABC7 News Bay Area

Anchor: the high court’s decision is the most significant ruling on the issue in decades  
  
<CLIP> KGW News

Anchor: and it comes as cities in the west like Portland, Seattle and San Francisco have struggled to manage tent and outdoor encampments.

STEVEN: And basically, this gives cities everywhere in the West and across the country more tools at their disposal to address the homelessness crisis, but which the liberal justices thought was unconscionable.

*<CLIP> Forbes Breaking News, oral arguments in City of Grants Pass v. Johnson*

*Elena Kagan: 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.*

JULIA: So just to review, like before this case, if you were an unhoused person in the West, you had a pretty good legal case to say you can't criminalize me sleeping in public. But now it's going to be a lot easier for cities and states around the country to criminalize camping outside. Can you tell me about the majority opinion? Who wrote it and how did they come to this opinion?

STEVEN: The majority opinion was written by Justice Neil Gorsuch, who was the first of Donald Trump's justices, who he nominated to the court when he first got into office. And Gorsuch begins by acknowledging that homelessness is a crisis, especially in the West. He quotes someone who says it's the defining public health and safety crisis of the day. But then he says, you know, it's not just a crisis for homeless people. It's a crisis for everyone. And that large public encampments bring with them a lot of crime and disease and drugs. And it's not the role of the Supreme Court to hamper the efforts of cities to try to address that crisis.

*<CLIP>KTVU FOX 2 San Francisco*

*Anchor: He said that this is essentially a matter of local control. Saying in part quote “a handful of federal judges can’t begin to match the collective wisdom the American people possess in deciding how best to handle a pressing social question like homelessness” end quote.*

STEVEN: The basic reasoning that Gorsuch summoned in this case is that the Eighth Amendment, when it bans cruel and unusual punishment, it's only banning certain methods or kinds of punishment. So he gives the examples of things like disembowelment and public dissection and burning people alive. Right. These are cruel and unusual kinds of punishment that the Eighth Amendment prohibits. So those things unconstitutional, but imposing civil fines on people for sleeping in public or ordering people to stay out of public parks. Those, he said, are not terrible. They are not painful. They are not cruel or unusual. He also makes a point that the only argument on the other side involves. A position that criminalizing someone's status is unconstitutional. And there is one Supreme Court case that suggests that. But he says in this case, homeless people are not being criminalized as people. They're being criminalized for the things they do, which is sleeping in public with a blanket on them or with a pillow under their head. And then he says this: “it makes no difference whether the 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.”

JULIA: Interesting. So basically, the unhoused people in this case, we're trying to say, look, you're criminalizing my status as a homeless person. You can't do that. But Gorsuch is basically saying, no, it's not - it's not criminalizing a status. It's criminalizing the action of camping.

STEVEN: Exactly. That is an idea that Justice Sotomayor, in her dissent, took great issue with. She was aghast during the argument back in April…

*<CLIP> Oyez, oral arguments in City of Grants Pass v. Johnson*

*Sonia Sotomayor: 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?*

STEVEN: And she makes the point over and over, and she develops it– that Grants Pass is punishing homeless people because they are homeless. So in one section of her dissent search, Sotomayor looks at Gorsuch's point about backpackers and such being subject to the same rules. And she says this describes a fantasy. She says on the ground, this is not how it actually works.

*<CLIP> Oyez, oral arguments in City of Grants Pass v. Johnson*

*Sonia Sotomayor: it's only stopping you from sleeping in public if you -- for the purpose of maintaining a temporary place to live. And the police officers testified that that means that if a stargazer wants to take a blanket or a sleeping bag out at night to watch the stars and falls asleep, you don't arrest them.*

STEVEN:So in practice, she says, Grants Pass is treating homeless people differently from other kinds of people, people who do have homes. And that means that they are criminalizing a status which, in her view, is unconstitutional.

JULIA: So zooming out for a second, what does this decision mean for the country and for the court?

STEVEN: Well, for the country, it puts another tool back in the hands of officials in western cities who didn't have this tool for the last six years, which is to impose fines on people for sleeping in public and hope to deter that sort of behavior. And what it might do ultimately is sort of force homeless people to move from town to town, depending on how draconian their local ordinances are. Which is sort of like, regional game of whack-a-mole for the homeless population, which is really not a public policy solution at all. And then there's sort of a jurisprudential truism at the core of this case.

JULIA: Oh, gosh, a jurisprudential truism. Well, what does that mean?

STEVEN: Okay. It's about the Constitution.

SCORING IN <Huge As Horns (No Horns Version)>

STEVEN: People think of the US Constitution as this amazing document, and it has lots of virtues, but this case shows that it may, at least in the eyes of a majority, may not always be the answer, right? Not everything good is constitutionally required. Right, there's no right to health care or education in the Constitution. And not everything bad or even unjust is necessarily unconstitutional. Now, of course, when Justice Sotomayor says that what Grants Pass is doing is unconscionable and unconstitutional. You know, one of those two adjectives could still be correct after this decision. But the court's view is the Constitution itself, and the Eighth Amendment, in particular, does not provide homeless people in the West or anywhere in the country with any form of relief.

JULIA: Coming up - how are cities and towns across the U.S. getting creative in addressing homelessness. Vox correspondent Rachel Cohen after the break.

**[BREAK]**

**[BUMPER]**

JULIA: It’s Today, Explained. We’re back with Vox correspondent Rachel Cohen who has been reporting on homelessness across the country. So Rachel we now have a decision in the Supreme Court case of Grants Pass v Johnson. It affects a relatively small community in Oregon. But it has implications across the country. Give us a sense of the scale of the problem, like how many people are experiencing homelessness in the U.S. right now, roughly?

RACHEL M COHEN (SENIOR POLICY REPORTER, VOX.COM): Homelessness is a huge problem in the US.

SCORING IN <JUST LEAVE ME SUBMERGED>

<CLIP> CBS New York

Anchor: Chairs, suitcases, boxes, and even a woman using the restroom on the street.

<CLIP> FOX 7 Austin

Business owner: You know, we have a person's belongings right next to our patio. They've been here for weeks.

<CLIP> CBS New York

Unhoused New Yorker: They always keep telling you, 'well we still looking for a place for you'.

<CLIP> NBC News

Homelessness Expert: The system is completely overwhelmed.

RACHEL: Over 650,000 people experience homelessness in America. On any given night.

*<CLIP> Invisible People*

*Thomas: There's no housing for the homeless. There's no nothing for us. So soup kitchens and man its bad.*

RACHEL: Of those people, roughly 40% are sleeping outside on the streets, in cars, parks, train stations. And, you know, any setting that's not designed primarily for humans to sleep in.

*<CLIP> WTVC NewsChannel 9, Chattanooga:*

*Unknown voice: “Anybody home back here?”*

*Reporter: Today, I was taken to spots where dozens of Chattanoogans live full time, under bridges in the woods. And the shadows where you'd never think to look twice.*

RACHEL: The other 60% stay in what we call emergency or temporary shelters. And federal data published in late 2023 shows a rise in homelessness in most states in the country.

SCORING OUT

JULIA: What accounts for that rise? Do you have a sense, like, I know we have a story that the pandemic led to a rise. Is that true?

RACHEL: I wouldn't attribute the spike primarily to the pandemic.

*<CLIP> ABC 10 News*

*Reporter: According to the San Diego Housing Authority, there's a surge of COVID cases happening at San Diego homeless shelters. It says in a statement there were 50 cases at Alpha Project and Father Joe's Villages in the latest round of testing.*

RACHEL: The story, though, is that homelessness has really been going up in the US since 2016 and the real driver is rising housing costs and a lack of affordable housing, which is a problem that's been brewing for decades in this country, but has really been sort of coming home to roost over the last ten years.

*<CLIP> CBS Evening News*

*Unhoused Woman: My biggest concern is that as much as we try, we might be stuck being in the car for a long time.*

RACHEL: Just to put this in perspective: the fastest growing demographic of homelessness in America is people over 65.

*<CLIP> CBS Evening News*

*Reporter: According to research, the number of homeless people over 55 is expected to spike to 225,000 in the next four years nationwide, up from 170,000 in 2017. That's a 32% jump.*

JULIA: So, broadly speaking, how are communities handling this like record setting number of people who are unhoused?

RACHEL: Communities are pursuing, you know, a mix of different strategies.

SCORING IN <CEZ\_CEZ\_4209\_00201\_Strategies\_APM>

RACHEL: Some are increasing funding for low income housing and passing these measures to make it harder for people to get evicted from their homes.

*<CLIP> WMHT, New York NOW*

*REPORTER: That's why New York's capital city of Albany recently became the first in the state to approve what’s called “Good Call” evictions. That makes it harder for landlords to evict tenants without a clear reason why*

*Council member: we have to protect tenants. There are 60% of residents in the city of Albany who are renters and we want to make sure we are protecting them.*

RACHEL: Other communities are also looking for more of these sort of stop the tide measures, like investing more in emergency shelters. Some are banning outdoor camping broadly, but then saying, okay, there can be some places within the city that people can go if they want to sleep outside, but they can't go anywhere else.

*<CLIP> KVUE*

*Anchor: For the first time we're seeing dozens of locations, the City of Austin is considering to designate as homeless camping sites.*

RACHEL: As you can probably tell, like these don't really solve homelessness. The real solutions just take time. So we're seeing a lot of communities do things that are sort of trying to deal with the problem, that might not necessarily solve the problem.

*<CLIP> NBC News*

*Program organizer: Worker: we have housing navigation, we have employment navigation, and we have an outreach doctor, an outreach nurse that comes in, we have mental health professionals.*

SCORING OUT

JULIA: So, Rachel, the Supreme Court just came down with this landmark decision. What do you expect to see from cities on the ground now?

RACHEL: Effectively, what the decision makes it easier to do is it makes it easier for cities to clear out homeless encampments, even if cities don't have actual, real other shelter options available for homeless people to go to. So it also means that it will be easier for cities to enforce their existing camping bans, which could result in more arrests and fines for people experiencing homelessness. That said, I do want to stress it's not inevitable that criminalization will occur. We could also see states step up like we saw after the overturning of Roe v Wade, to enshrine new protections for people who are homeless.

JULIA: So a big question at the center of this case has been whether the Supreme Court is going to make it easier to criminalize homelessness. How does criminalizing affect things on the ground for the people who are trying to solve the homelessness problem?

RACHEL: Criminalizing people experiencing homelessness absolutely makes it harder to get them into housing. Ultimately.

*<CLIP> VICE News*

*Unhoused woman: I got a warning ticket. They know I'm on a voucher. I'm waiting for, from HUD, I'm waiting for the apartments to be built for us to move into. And I'm still getting ticketed. They're gonna threaten to throw me in jail. If i’m going to jail. I lose my housing.*

RACHEL: You know, there are just limits to how many people are willing to rent units to people with criminal records. And so this creates such a significant barrier. Roughly 1 in 3 U.S. adults has a criminal record.

*<CLIP> VICE News*

*Advocate for the unhoused: Where do you think that they're brought when they are released from jail? They're brought back to the street, right back to where they started from. The only thing that's changed is they have another barrier to housing.*

JULIA: You've been covering solutions to the homelessness crisis from different angles, looking at ways cities are trying to combat homelessness. What are some of the more innovative strategies you find that communities are investing in?

RACHEL: So some states are investing in building more housing and shelter, which is really important. But as we've talked about, it just takes time. And a lot of people are really impatient right now. They want immediate solutions. Some of the faster things that communities are turning to are these things called tiny homes.

*<CLIP> KCRA 3*

*Sacramento advocate for tiny homes: It's pretty basic, but it gives folks a place to have their own space: a bed, a little desk, some storage.*

JULIA: Does that mean that cities are moving away from, like, temporary emergency shelters?

RACHEL: Not exactly. But there is this greater recognition these days that many people who are sleeping outside in tents just do not want to go to these emergency shelters, which at least historically, have been places without much privacy.

*<CLIP> Tristan & Robyn answer ‘Why don't you stay in shelters?’:*

*Tristan: Get your stuff stolen. People try to fight ya.*

RACHEL: Where you can't really bring many of your belongings, your pets, sometimes your partner.

*<CLIP> Tristan & Robyn answer ‘Why don't you stay in shelters?’*

*Robyn: If we were to go to a shelter, we would not be able to sleep beside each other. Chances are we'd be separated or monitored or treated very differently because we are a couple.*

RACHEL: Some of these shelters have also had rules like mandatory church attendance. A lot of people have had traumatic experiences staying in shelters. And so rather than go back to one, what some people are saying is I'd rather just sleep outside.

*<CLIP> NBCLA*

*Unhoused man in LA: I'm not on parole. Probation? I'm free man. I want to be treated like I'm free. You living in shelters like you living in jail.*

JULIA: And like beyond shelters, like, what about people moving, you know, off the streets into actual, more permanent housing like apartments? Is that an option realistically, from a cost perspective, for cities?

RACHEL: Yes, it's hard, but it is. So an approach to solving homelessness that has had bipartisan support for nearly three decades is called Housing First…

SCORING IN <LQC\_INSD\_0057\_00701\_Kids\_Interlude\_APM>

RACHEL: … and its general model is getting people into permanent housing and offering them support services but the model has been coming under a lot of strain amid our housing shortage, because you can't really do Housing First without enough housing.

JULIA: How did this idea of Housing First even start?

RACHEL: Well, it really reflected a shift from how homelessness policy in the U.S. had been handled for many, many years, which was this idea of housing readiness or this idea that before we give you housing, we want to make sure you have gone through job training programs, that you have stabilized all the other issues in your life, and then there basically begin a new way of thinking about it. You know, Republicans and Democrats who came to understand that actually, it's really hard to address other parts of your life that are not working well if you don't have stable housing to come home to.

SCORING OUT

JULIA: So, like it used to be, that housing was last.

RACHEL: Right. Exactly.

JULIA: And now housing's first.

RACHEL: And this has been the policy of the federal government for almost three decades now but sort of starting, you know, in the last two years of the Trump administration, conservative think tanks began ramping up their criticism of Housing First.

JULIA: So Grants Pass is one of the most important homelessness cases to come to the Supreme Court in years. And it's, you know, it's really put a national spotlight on this issue. How have you seen it come up, if at all, in the presidential campaign this election year?

RACHEL: President Biden has generally avoided talking about homelessness on the campaign trail. He is talking actually a lot more than he has in the past about building more housing and housing affordability issues.

*<CLIP> Biden, State of the Union: I want to provide an annual tax credit that will give Americans $400 a month for the next two years, as mortgage rates come down to put toward their mortgages when they buy their first home or trade up for a little more space.*

RACHEL: But when it comes to people sleeping outside, tent encampments, you know, rising homelessness, he has not had much to say. And this is something that I know homeless advocates are really frustrated about. They want to hear the president speak more clearly. Donald Trump, on the other hand, has really been leaning into homelessness.

SCORING IN <GUM\_GMT\_8126\_00201\_Last\_Sky\_APM>

*<CLIP> Donald Trump: Our once great cities have become unlivable, unsanitary nightmares, surrendered to the homeless, the drug addicted, and the violent and dangerously deranged.*

RACHEL: He released a video in April, saying that if he were president, he would—

*<CLIP> Donald Trump: Ban urban camping. Violators of these bans will be arrested, but they will be given the option to accept treatment.*

RACHEL: He would create sanctioned campsites for treatment and send homeless people to jail who refuse to go. Now, to be clear, he does not actually have the authority to, you know, make all that happen. But he is campaigning on sending homeless people to jail right now, So I think to the extent that homelessness has been coming up, it's really been being leveraged by Trump as sort of this symbol of chaos and ~~d~~isorder and democratic failure.

This show was produced by Hady Mawajdeh, edited by Miranda Kennedy, fact checked by Amanda Lewellyn and Laura Bullard, and engineered by Patrick Boyd and Andrea Kristinsdottir. I'm Julia Longoria. This is Today, Explained.

**[10 SECONDS OF SILENCE]**