MEMORANDUM CITY OF PINEY POINT VILLAGE

TO: Planning & Zoning

FROM: R. Pennington, City Administrator

MEETING DATE: September 2024

SUBJECT: Park Ordinance.

Agenda Item:

Summary:
In response to complaints about homelessness, the council has requested the drafting of a park ordinance to address the safety of transients who occupy our parks and public spaces for unintended uses.

Current Proposal:

1. **Comprehensive Ordinance:** The ordinance prohibits entering restricted areas, staying in parks after closing hours, camping in unauthorized areas, consuming alcohol in open containers, leaving unattended hand carts, and matters of public decency.

Other Methods and Rulings:

1. **SCOTUS Ruling**: The initial proposal comes after clarity from the U.S. Supreme Court's decision in the case of City of Grants Pass v. Johnson, as well as recent action in California to dismantle homeless encampments. The Supreme Court's ruling allows local governments to enforce bans on homeless people sleeping outdoors, even if there is no available shelter space. This decision reversed a previous ruling by a San Francisco-based appeals court that had restricted such enforcement. The ruling is seen as providing clarity and authority to local officials, who have been limited by legal ambiguities in addressing homelessness. The Supreme Court's decision is likely to lead to a reevaluation of homelessness policies nationwide, with potential shifts towards more enforcement-oriented strategies, while also sparking discussions on sustainable, long-term solutions.
2. **Regional Implementation:** Have the Memorial Villages collaborate with Harris County and the City of Houston to implement similar measures as California's, which would not only address park misuse but also directly improve the homeless problem.

Attachment:

DRAFT Park Ordinance
SCOTUS City of Grants Pass, Oregon v. Johnson- Syllabus

ORDINANCE NO._____

AN ORDINANCE OF THE PINEY POINT VILLAGE, TEXAS, AMENDING CHAPTER _____ OF THE CODE OF ORDINANCES BY CREATING A NEW ARTICLE _____ REGARDING MISCELLANEOUS PROVISIONS AND OFFENSES, DELETING DUPLICATE PROVISIONS, CONTAINING A PENALTY AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF PINEY POINT VILLAGE, TEXAS:

Purpose. The City recognizes that miscellaneous provisions and offenses are necessary to protect the City's image, maintain a safe community, and enhance the overall quality of life. This article sets forth a mandate and criteria for miscellaneous provisions and offenses. The provisions established below are meant to protect, preserve, and promote the safety and welfare of the public, including but not limited to ensuring the physical safety of residents and visitors.

1. **Restricted areas.** It shall be unlawful for any person to enter or remain in a park or recreation area that is designated as restricted or is closed during designated hours. Restricted areas will be designated by posted signs.

2. **Curfews.** With the exception of designated camping areas and exempt events, individuals are prohibited from entering or remaining in any park while the park is closed. Events that are approved in advance by a city official as exempt from curfew restrictions will be specified by the designated city official. The daily closing hours for all community parks are from 1:00 a.m. to 5:00 a.m., and these closing hours will be visibly posted at all parks.

3. **Camping.** It shall be unlawful for any person, family, or other groups of persons to camp in a park or recreation area or any other public place within the corporate limits.
    a. The prohibition of this paragraph does not apply to camping under a city-sponsored or authorized event.

4. **Alcoholic beverage in an open container.** It is prohibited for any individual to consume or possess an alcoholic beverage in an open container in a park, recreation area, or any other public place within the city boundaries.
    a. There exists a rebuttable presumption that an individual in possession of an alcoholic beverage in an open container intends to consume the beverage.
    b. It is a valid defense against prosecution under this provision if the individual consumed or possessed the alcoholic beverage in an open container at a time and place where the sale or consumption of alcoholic beverages is permitted under a special events permit or obtained from a city-sponsored or authorized event.

5. **Displays and hand carts.** It is prohibited for any individual, family, or group to place or maintain an unattended display or hand cart in a park, recreation area, or any public space within the city's jurisdiction.

a. An unattended display encompasses any visual depiction or expression of an idea, such as a picture, statue, or symbol, where the responsible party is not present or in close proximity to the displayed item.
b. A hand cart is defined as a basket mounted on wheels or a similar device primarily utilized by customers to transport goods within a retail establishment.
c. The city reserves the right to remove any display or hand cart found to be in violation of this regulation.
d. This prohibition does not extend to an unattended display or hand cart necessitated by, or placed by, the city or another governmental entity for official purposes.

6. **Public urination and defecation**. A violation of this section is declared a nuisance and may be within the city limits. A person commits an offense if the person urinates or defecates:
    a. In or on a public street, alley, sidewalk, yard, park, building, structure, plaza, or right-of-way, or any other public place;
    b. In any place that may be seen from a residence; or
    c. In public or open view.
    d. It is an affirmative defense to prosecution under this section if the person is in a restroom using a receptacle designed for urination or defecation.

Penalty. Anyone violating this ordinance shall be punished as provided in [insert relevant law or regulation].

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF GRANTS PASS, OREGON *v.* JOHNSON ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23–175. Argued April 22, 2024—Decided June 28, 2024

Grants Pass, Oregon, is home to roughly 38,000 people, about 600 of whom are estimated to experience homelessness on a given day. Like many local governments across the Nation, Grants Pass has public-camping laws that restrict encampments on public property. The Grants Pass Municipal Code prohibits activities such as camping on public property or parking overnight in the city's parks. See §§5.61.030, 6.46.090(A)–(B). Initial violations can trigger a fine, while multiple violations can result in imprisonment. In a prior decision, *Martin* v. *Boise*, the Ninth Circuit held that the Eighth Amendment's Cruel and Unusual Punishments Clause bars cities from enforcing public-camping ordinances like these against homeless individuals whenever the number of homeless individuals in a jurisdiction exceeds the number of "practically available" shelter beds. 920 F. 3d 584, 617. After *Martin*, suits against Western cities like Grants Pass proliferated.

Plaintiffs (respondents here) filed a putative class action on behalf of homeless people living in Grants Pass, claiming that the city's ordinances against public camping violated the Eighth Amendment. The district court certified the class and entered a *Martin* injunction prohibiting Grants Pass from enforcing its laws against homeless individuals in the city. App. to Pet. for Cert. 182a–183a. Applying *Martin*'s reasoning, the district court found everyone without shelter in Grants Pass was "involuntarily homeless" because the city's total homeless population outnumbered its "practically available" shelter beds. App.

Syllabus

to Pet. for Cert. 179a, 216a. The beds at Grants Pass's charity-run shelter did not qualify as "available" in part because that shelter has rules requiring residents to abstain from smoking and to attend religious services. App. to Pet. for Cert. 179a–180a. A divided panel of the Ninth Circuit affirmed the district court's *Martin* injunction in relevant part. 72 F. 4th 868, 874–896. Grants Pass filed a petition for certiorari. Many States, cities, and counties from across the Ninth Circuit urged the Court to grant review to assess *Martin*.

Held: The enforcement of generally applicable laws regulating camping on public property does not constitute "cruel and unusual punishment" prohibited by the Eighth Amendment. Pp. 15–35.

(a) The Eighth Amendment's Cruel and Unusual Punishments Clause "has always been considered, and properly so, to be directed at the method or kind of punishment" a government may "impos[e] for the violation of criminal statutes." *Powell* v. *Texas*, 392 U. S. 514, 531–532 (plurality opinion). It was adopted to ensure that the new Nation would never resort to certain "formerly tolerated" punishments considered "cruel" because they were calculated to "'superad[d]'" "'terror, pain, or disgrace,'" and considered "unusual" because, by the time of the Amendment's adoption, they had "long fallen out of use." *Bucklew* v. *Precythe*, 587 U. S 119, 130. All that would seem to make the Eighth Amendment a poor foundation on which to rest the kind of decree the plaintiffs seek in this case and the Ninth Circuit has endorsed since *Martin*. The Cruel and Unusual Punishments 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. *Powell*, 392 U. S., at 531–532.

The Court cannot say that the punishments Grants Pass imposes here qualify as cruel and unusual. The city imposes only limited fines for first-time offenders, an order temporarily barring an individual from camping in a public park for repeat offenders, and a maximum sentence of 30 days in jail for those who later violate an order. See Ore. Rev. Stat. §§164.245, 161.615(3). Such punishments do not qualify as cruel because they are not designed to "superad[d]" "terror, pain, or disgrace." *Bucklew*, 587 U. S., at 130 (internal quotation marks omitted). Nor are they unusual, because similarly limited fines and jail terms have been and remain among "the usual mode[s]" for punishing criminal offenses throughout the country. *Pervear* v. *Commonwealth*, 5 Wall. 475, 480. Indeed, cities and States across the country have long employed similar punishments for similar offenses. Pp. 15–17.

(b) Plaintiffs do not meaningfully dispute that, on its face, the Cruel and Unusual Punishments Clause does not speak to questions like

what a State may criminalize or how it may go about securing a conviction. Like the Ninth Circuit in *Martin*, plaintiffs point to *Robinson* v. *California*, 370 U. S. 660, as a notable exception. In *Robinson*, the Court held that under the Cruel and Unusual Punishments Clause, California could not enforce a law providing that "'[n]o person shall . . . be addicted to the use of narcotics.'" *Id*., at 660, n 1. While California could not make "the 'status' of narcotic addiction a criminal offense," *id*., at 666, the Court emphasized that it did not mean to cast doubt on the States' "broad power" to prohibit behavior even by those, like the defendant, who suffer from addiction. *Id*., at 664, 667–668. The problem, as the Court saw it, was that California's law made the status of being an addict a crime. *Id.,* at 666–667 The Court read the Cruel and Unusual Punishments Clause (in a way unprecedented in 1962) to impose a limit on what a State may criminalize. In dissent, Justice White lamented that the majority had embraced an "application of 'cruel and unusual punishment' so novel that" it could not possibly be "ascribe[d] to the Framers of the Constitution." 370 U. S., at 689. The Court has not applied *Robinson* in that way since.

Whatever its persuasive force as an interpretation of the Eighth Amendment, *Robinson* cannot sustain the Ninth Circuit's *Martin* project. *Robinson* expressly recognized the "broad power" States enjoy over the substance of their criminal laws, stressing that they may criminalize knowing or intentional drug use even by those suffering from addiction. 370 U. S., at 664, 666. The Court held that California's statute offended the Eighth Amendment only because it criminalized addiction as a status. *Ibid*.

Grants Pass's public-camping ordinances do not criminalize status. The public-camping laws prohibit actions undertaken by any person, regardless of status. It makes no difference whether the charged defendant is currently a person experiencing homelessness, a backpacker on vacation, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building. See Tr. of Oral Arg. 159. Because the public-camping laws in this case do not criminalize status, *Robinson* is not implicated. Pp. 17–21.

(c) Plaintiffs insist the Court should extend *Robinson* to prohibit the enforcement of laws that proscribe certain acts that are in some sense "involuntary," because some homeless individuals cannot help but do what the law forbids. See Brief for Respondents 24–25, 29, 32. The Ninth Circuit pursued this line of thinking below and in *Martin*, but this Court already rejected it in *Powell* v. *Texas*, 392 U. S. 514. In *Powell*, the Court confronted a defendant who had been convicted under a Texas statute making it a crime to " 'get drunk or be found in a state of intoxication in any public place.' " *Id*., at 517 (plurality opinion). Like the plaintiffs here, Powell argued that his drunkenness was

an "'involuntary'" byproduct of his status as an alcoholic. *Id.*, at 533. The Court did not agree that Texas's law effectively criminalized Powell's status as an alcoholic. Writing for a plurality, Justice Marshall observed that *Robinson*'s "very small" intrusion "into the substantive criminal law" prevents States only from enforcing laws that criminalize "a mere status." *Id.*, at 532–533. It does nothing to curtail a State's authority to secure a conviction when "the accused has committed some act . . . society has an interest in preventing." *Id.*, at 533. That remains true, Justice Marshall continued, even if the defendant's conduct might, "in some sense" be described as " 'involuntary' or 'occasioned by'" a particular status. *Ibid.*

This case is no different. Just as in *Powell*, plaintiffs here seek to extend *Robinson*'s rule beyond laws addressing "mere status" to laws addressing actions that, even if undertaken with the requisite *mens rea*, might "in some sense" qualify as " 'involuntary.' " And as in *Powell*, the Court can find nothing in the Eighth Amendment permitting that course. Instead, a variety of other legal doctrines and constitutional provisions work to protect those in the criminal justice system from a conviction. Pp. 21–24.

(d) *Powell* not only declined to extend *Robinson* to "involuntary" acts but also stressed the dangers of doing so. Extending *Robinson* to cover involuntary acts would, Justice Marshall observed, effectively "impe[l]" this Court "into defining" something akin to a new "insanity test in constitutional terms." *Powell*, 392 U. S., at 536. That is because an individual like the defendant in *Powell* does not dispute that he has committed an otherwise criminal act with the requisite *mens rea*, yet he seeks to be excused from "moral accountability" because of his "'condition. '" *Id.*, at 535–536. Instead, Justice Marshall reasoned, such matters should be left for resolution through the democratic process, and not by "freez[ing]" any particular, judicially preferred approach "into a rigid constitutional mold." *Id.*, at 537. The Court echoed that last point in *Kahler* v. *Kansas*, 589 U. S. 271, in which the Court stressed that questions about whether an individual who committed a proscribed act with the requisite mental state should be "reliev[ed of] responsibility," *id.*, at 283, due to a lack of "moral culpability," *id.*, at 286, are generally best resolved by the people and their elected representatives.

Though doubtless well intended, the Ninth Circuit's *Martin* experiment defied these lessons. Answers to questions such as what constitutes "involuntarily" homelessness or when a shelter is "practically available" cannot be found in the Cruel and Unusual Punishments Clause. Nor do federal judges enjoy any special competence to provide them. Cities across the West report that the Ninth Circuit's involun-

tariness test has created intolerable uncertainty for them. By extending *Robinson* beyond the narrow class of pure status crimes, the Ninth Circuit has created a right that has proven "impossible" for judges to delineate except "by fiat." *Powell*, 392 U. S., at 534. As Justice Marshall anticipated in *Powell*, the Ninth Circuit's rules have produced confusion and they have interfered with "essential considerations of federalism," by taking from the people and their elected leaders difficult questions traditionally "thought to be the[ir] province." *Id.*, at 535–536. Pp. 24–34.

(e) Homelessness is complex. Its causes are many. So may be the public policy responses required to address it. The question this case presents is whether the Eighth Amendment grants federal judges primary responsibility for assessing those causes and devising those responses. A handful of federal judges cannot begin to "match" the collective wisdom the American people possess in deciding "how best to handle" a pressing social question like homelessness. *Robinson*, 370 U. S., at 689 (White, J., dissenting). The Constitution's Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation's homelessness policy. Pp. 34–35.

72 F. 4th 868, reversed and remanded.

GORSUCH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., filed a concurring opinion. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined.