



September 19, 2024

Re: Respecting the legal rights of unsheltered Vermonters in the wake of *City of Grants Pass v. Johnson*

To Vermont's municipal leaders and agencies:

We write to clarify the legal landscape regarding unsheltered Vermonters in the wake of the U.S. Supreme Court's recent decision in [*City of Grants Pass v. Johnson*](#), and to highlight the remaining legal obligations of cities and towns as they strive to meet the unprecedented challenges created by the State's mass unsheltering of vulnerable families. We also hope to begin an open dialogue about how we can work together to address statewide policies that have severely burdened municipalities and put the health and safety of hundreds of vulnerable Vermonters at risk.

As you know, the entire country is grappling with issues of housing and homelessness—but the crisis is particularly acute in Vermont. Last summer, the State of Vermont decided [to curtail its emergency housing program](#) while refusing to invest its resources in providing sufficient alternative shelter. As a result of the State's policy choice, we saw a massive increase in the number of unhoused Vermonters¹ and [record levels of homelessness](#). This past Sunday, the State [once again unsheltered hundreds](#) of individuals and families, with approximately 900 households expected to lose access to the state's emergency housing program throughout the fall—with essentially nowhere to go.

As a result, the State has placed Vermont's towns and cities in an extremely challenging position. As municipal leaders from across the State [wrote earlier this week](#), “[m]anaging the impact of rising homelessness has fallen on the shoulders of local governments and local service providers” but “[m]unicipalities do not have the capacity, the expertise, the resources, or the formal authority to address many of the associated problems.”

To assist municipalities as they navigate this State-created crisis, the ACLU of Vermont circulated an [open letter](#) to Vermont cities and towns in 2023, highlighting legal and policy considerations when responding to the needs of our most vulnerable

¹ Although a person's place of origin has no bearing on their need for and right to safe, affordable housing, the narrative that most unhoused people seeking support in Vermont are from out of state has been [debunked](#).

community members. Among numerous other considerations, the letter advised that “ordinances and policies that punish individuals for sleeping in public when they have nowhere else to go violate the Constitution’s prohibition on cruel and unusual punishment.”

This June, the U.S. Supreme Court decided *City of Grants Pass v. Johnson*, where it ruled that enforcing generally applicable camping laws against unsheltered people does not, by itself, violate the Eighth Amendment’s ban against cruel and unusual punishment. Understandably, municipal leaders have asked how *Grants Pass* changed the legal obligations for how Vermont cities and towns may respond to the State’s unprecedented crisis.

We write today to dispel any confusion: *Grants Pass* did not fundamentally change how Vermont municipalities may respond to unhoused community members, and municipalities must continue to respect the rights of all Vermonters—including those who are unsheltered.

The question before the U.S. Supreme Court in *Grants Pass* was exceedingly narrow: whether the Eighth Amendment’s ban on “cruel or unusual punishment,” by itself, barred an Oregon city from enforcing its anti-camping ordinance against individuals who did not have access to shelter. A divided Supreme Court concluded that it did not, explaining that the “Eighth Amendment [is] a poor foundation” for such a rule, because “[t]he 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.” *Grants Pass*, 23-175 (U.S. June 28, 2024), Slip Op. at 16 (emphasis added).

Grants Pass, in other words, rejected one specific constitutional provision as posing a particular barrier to enforcing certain camping bans. The opinion in no way *authorized* additional penalties, measures, or policies against unsheltered Vermonters, nor did it address or alter the myriad additional protections unsheltered residents continue to possess beyond the Eighth Amendment.

Those rights remain numerous and robust. They include:

- **Property & Privacy Rights.** All Vermonters—including unhoused Vermonters and those living in encampments—have the right to privacy and the right to be free from having their property unreasonably seized or confiscated. That means that unhoused Vermonters retain the same expectations of privacy in their shelter and belongings as their neighbors, whether they occupy a townhome or a tent. And they retain their property rights even when municipalities clear encampments: Before individuals’ property can be seized, they must first be given notice and an opportunity to

move their belongings. Furthermore, municipalities cannot immediately dispose of that property even if it is properly seized. Instead, property must be stored and the owner given a reasonable opportunity for its retrieval.

- **Due Process Rights.** All Vermonters also possess rights to due process, under both the Vermont and federal Constitutions. Municipalities must adhere to robust due process for any governmental action that affects the legal interests of any community member—including community members that are unhoused.

These considerations are particularly important for any exclusion from public property, regardless of the reason. Unlike exclusions from *private* property, trespass notices restricting access to *public* property are subject to strict constitutional limitations, reflecting the importance of participation in public and democratic life. At a minimum, due process requires that trespass notices from public space provide recipients advance notice of why their rights are being restricted; include the factual basis for the exclusion; inform recipients how to challenge the notice; and provide a meaningful opportunity for recipients to contest trespass notices. In the past, the ACLU of Vermont has [notified](#)—and in some instances, [sued](#)—municipalities that have failed to provide sufficient procedural protections when issuing trespass notices.

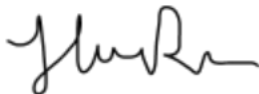
- **Free Speech.** The Supreme Court has held, repeatedly and emphatically, that asking for money or other kinds of assistance is protected free speech. The Constitution therefore prohibits municipalities from limiting free speech by punishing panhandling. Vermont already has laws that forbid threatening and intimidation; additional attempts to restrict specifically panhandling infringe upon the First Amendment rights of Vermonters in need. Vermont has already made progress: In 2018, after ACLU of Vermont outreach, several Vermont cities and towns [repealed or suspended](#) their anti-panhandling ordinances in respect of their residents' rights. Critically, *Grants Pass* did not change the protected nature of requests for assistance—it is still unlawful to target protected speech like panhandling or to arrest or ticket someone for requesting help.
- **Anti-Discrimination.** Vermonters enjoy not only strong federal restrictions against discrimination but also strong state-specific protections that prevent municipalities from targeting those who are unsheltered. Article 7 of the Vermont Constitution, the Common Benefits Clause, embraces principles of equal protection and forbids municipalities from singling out or denying any part of the community—including our unhoused community members—the same rights and protections it affords to others. Furthermore, the Vermont Fair Housing and Public Accommodations Act provides additional protections often applicable to unsheltered people, many of whom have disabilities. This

broad statute both prohibits discrimination on the basis of disability and also *requires* municipalities to make reasonable accommodations in their practices when interacting with and providing services to people with disabilities. Many of the Vermonters forcibly unsheltered by the State, particularly during this latest wave of motel evictions, are likely qualified individuals with a disability.

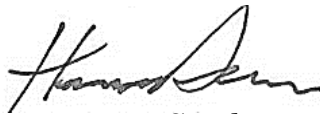
The State is once again foisting the consequences of its housing and homelessness crisis onto municipalities. We recognize that many cities and towns are in an impossible position, and that responding to the unique needs of unsheltered Vermonters during a historic housing shortage with limited resources is exceptionally challenging. Community members are understandably frustrated with the consequences of the State's policy and moral failures. But municipalities cannot—and should not seek to—respond by pushing down and dehumanizing people experiencing homelessness. They should instead direct that energy toward persuading Vermont's leaders to systematically and humanely resolve this crisis of their own making. Criminalizing homelessness or poverty is not only inhumane and ineffective—it is also overwhelmingly unlawful, even after the U.S. Supreme Court's decision in *Grants Pass*.

The ACLU of Vermont joins you in calling for systemic solutions from the State, and we look forward to working with you to ensure the rights of all Vermonters are respected during this unprecedented crisis.

Sincerely,



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