



Agenda
City Council Workshop Meeting
Tuesday, July 23, 2024
Richland City Hall ~ Council Chambers
625 Swift Boulevard

City Council Workshop - 6:00 p.m.

Agenda Items:

1. Public Safety Power Shutoffs (20 minutes)
 - Clint Whitney, Energy Services Director
2. 2025 Legislative Priorities - Initial Discussion (30 minutes)
 - Joe Schiessl, Deputy City Manager
3. Revisions to Chapter 8.10 RMC Public Camping (20 minutes)
 - Joe Schiessl, Deputy City Manager

Adjournment

This meeting will be broadcast live on [CityView Channel 192](#) on the City's website and on the [City's YouTube Channel](#).

Richland City Hall is ADA accessible. Requests for sign interpreters, audio equipment, and/or other special services must be received 48 hours prior to the meeting by calling the City Clerk's Office at 509-942-7389.



COUNCIL WORKSHOP COVERSHEET

Council Date: 7/23/2024

Department: Energy Services

Strategic Priority 4 - Quality of Life

Subject:

Public Safety Power Shutoffs (20 minutes)

Summary:

The purpose of this presentation is to introduce and discuss Public Safety Power Shutoff (PSPS). PSPS began to be utilized at other western electric utilities in 2018 after notable wildfires. Power shutoffs can be initiated for non-wildfire events, including to prevent system overloading.

Washington State passed legislation through HB 1032 that requires all electric utilities to adopt a wildfire mitigation plan and submit it to DNR by October 31, 2024. Richland Energy Services (RES) plans to present a wildfire mitigation plan to the Utility Advisory Committee (UAC) in September and will recommend City Council to adopt the plan in September/October.

Attachments:

- I. Public Safety Power Shutoff Presentation



Public Safety Power Shutoff

Clint Whitney, Energy Services Director

July 23, 2024

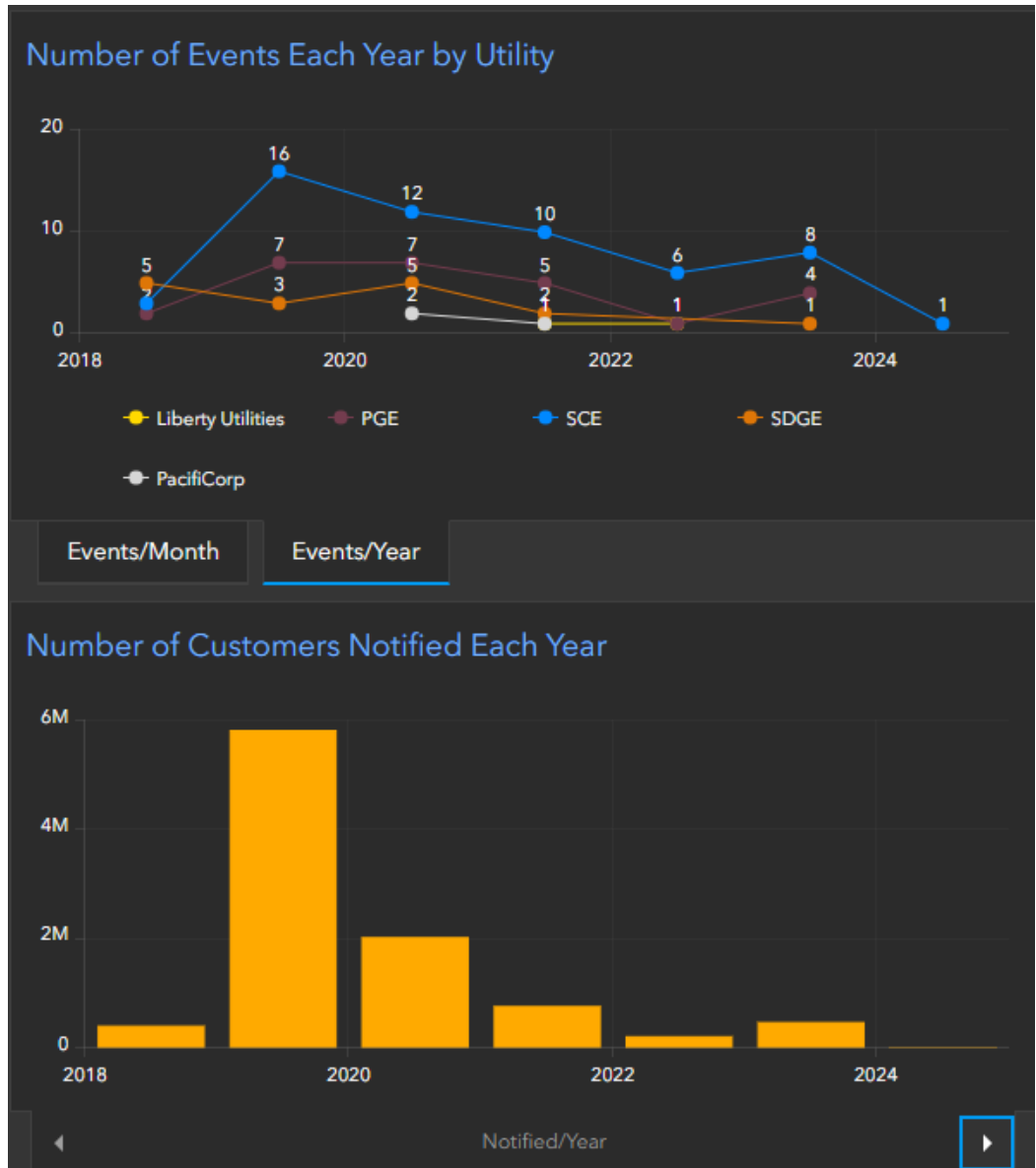
PSPS Objectives

- Preparation & Planning
- Preventing
 - August 8, 2023 – Lahaina, HI
 - Labor Day 2020 – Slater Fire in OR & CA (\$1B PacificCorp settlements)
 - 2021 – Marshall Fire in CO (XL Energy)
 - 2019 – Dixie Fire (CA Pacific Gas & Electric bankruptcy)
 - 2018 – Camp Fire through Paradise, CA
- Richland Energy Services (RES) Wildfire Mitigation Plan



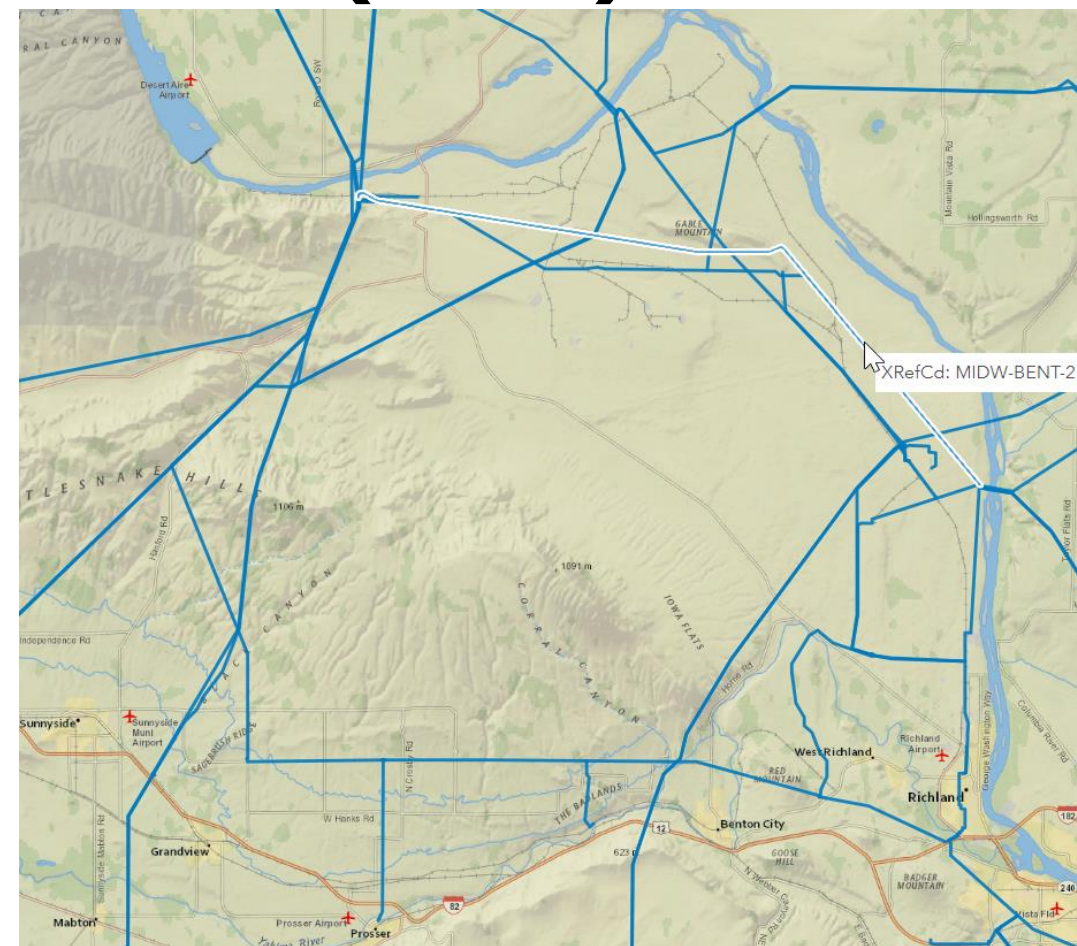
PSPS Initiated

- 2018 first PSPS
- 2019 PGE started to implement preemptive power outages.
- [CPUC PSPS Dashboard](#)



Public Safety Power Shutoff (BPA)

- **BPA action** with no options
- Activated when winds forecasted $>60\text{mph}$ and humidity $<20\%$
- Where:
 - Typically, Central Oregon
 - One transmission line from Midway-Benton No 2, 230kV identified in early 2024 but issue resolved 6/2024.



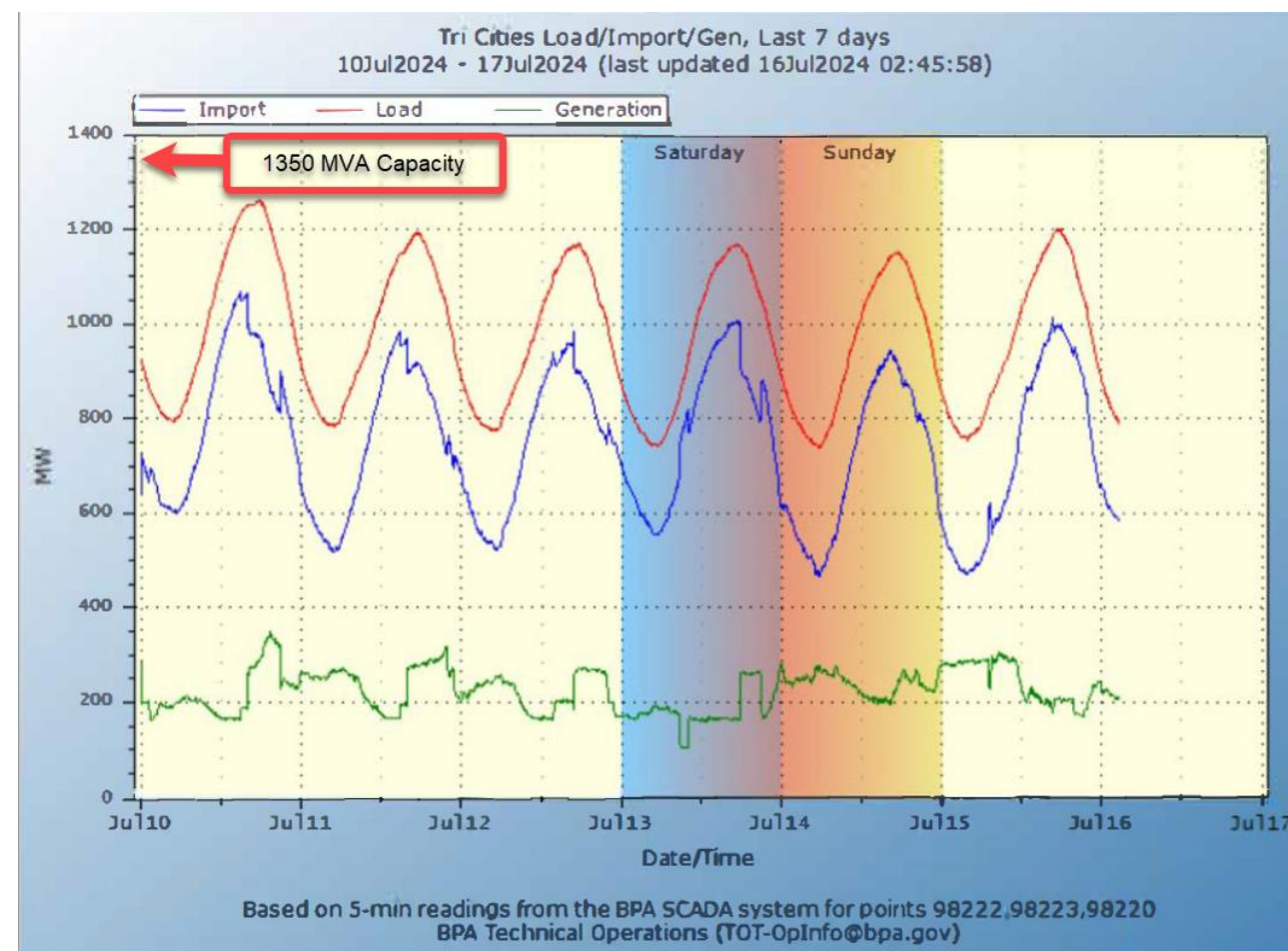
Public Safety Power Shutoff (Non-BPA)

- Why?
 - Tri-Cities transmission capacity constraint until ~4Q27
 - Equipment failure
 - Wildfire
 - Weather extremes
 - More choices than community wide outage action by BPA



Tri-Cities Transmission Constraint

- ~1275MVA, July 10th @106F
- 2022-2028 with load growth?



Public Safety Power Shutoff (Non-BPA)

- How/When/Who:
 1. RES receives request from BPA for specific load amount
 2. Communication request to media for customer curtailment (thermostats, delay loads like dishwashers and dryers)
 3. Communication requests for large industrial customers to curtail
 4. RES activate substation demand response voltage reduction
 5. RES (UB as alt) schedule 5MW blocks of rolling residential disconnects
 6. COMM notify media and industrial customers at conclusion of event



Next Steps

- RES Wildfire Mitigation Plan
 - UAC in September 2024
 - Staff recommendation to Council in Sept/Oct 2024
 - Submit to WA DNR by 10/31/2024



COUNCIL WORKSHOP COVERSHEET

Council Date: 7/23/2024

Department: Deputy City Manager

Strategic Priority I - High Performance Government

Subject:

2025 Legislative Priorities - Initial Discussion (30 minutes)

Summary:

Typically, each fall Council considers the organization's state and federal legislative priorities in advance of the next upcoming legislative session. The state session begins in January next year. Tonight's discussion will be the first internal opportunity to evaluate the organization's priorities before engaging with state and federal elected officials later this year (likely September).

The City supports legislation that promotes the City Council's Strategic Leadership Plan and protects the City's ability to provide basic municipal services to its citizens and opposes legislation that would either preempt authority or discretion that is vested with local governments, or which would impose new or additional unfunded mandates upon local jurisdictions.

The 2024 priorities are attached and remain relevant, and there are new subject areas for discussion including:

- Public defense
- Energy transmission & generation (for the region, & the NW Advanced Clean Energy Park)
- TRIDEC project regarding shoreline reconveyance

Attachments:

- I. 2024 Legislative Priorities



The City of Richland is a hub for technology and innovation as well as a high quality of life. Richland is working with state partners on the following items for the 2024 legislative session.

Richland proposes a minor RCW amendment to support economic development:

When the legislature authorized targeted urban areas in 2022 legislation timelines for property tax deferrals for improvements were established. The timelines in the TUA statute do not account for the lengthy process required to comply with Nuclear Regulatory Commission requirements. A timeline adjustment for nuclear industry projects would resolve this challenge, thereby helping to maintain the region's lead in clean energy technology.

Richland proposes Capital Budget funding:

Public safety communication system infrastructure upgrades for Benton and Franklin Counties and upgrading microwave technologies and transitioning fire and EMS bi-county radio systems to a single platform. (\$1 million; 8th, 15th, and 16th Legislative Districts)

Richland supports funding for infrastructure upgrades and repairs related to a potential tourism, event, including work at the Columbia Point Marina Docks and enhancements to pathways along Howard Amon and Leslie Grove Park. (\$300,000; 8th Legislative District)

Richland proposes capital assistance for Transportation and Infrastructure projects benefitting the region:

SR-240/Aaron Drive Complete Streets Improvements project will improve safety and mobility by making needed changes to a 40-year-old traffic design. The Benton-Franklin Council of Governments has named this project a top priority of their congestion management plan, and Washington State Department of Transportation and the Federal Highway Administration have each approved it.

Island View to Vista Field Trail System (see drill-down) State funding can help put in place a major component of the Island View to Vista Field Trail System which connects streets in Richland, Kennewick, and Benton County. This plan was adopted in 2021 by the cities of Richland and Kennewick and the Benton-Franklin Council of Governments.

Yakima Delta Habitat Restoration Project Richland seeks adequate funding to address the multi-agency project of removing the causeway which threatens the health of migratory fish runs..

Richland proposes assistance to help the region address a lack of low barrier homeless housing and housing inventory:

Richland supports legislation that encourages and facilitates access to housing through policies leading to increases in inventory and preservation of the current housing supply to serve a wide range of incomes and needs.

Richland supports statewide efforts of WSPSC to improve community safety:

Richland supports Washington Association of Sheriffs and Police Chiefs efforts to refine the pursuit law fix enacted in 2023 by allowing pursuit in the event of probable cause for any felony, mandatory arrest, and reasonable suspicion of DUI.

Richland supports the retention and recruitment of police and dispatch personnel by allowing jurisdictions to utilize a portion of existing sales tax revenues for funding additional criminal justice system staff including law enforcement, public defenders, prosecutors.

Modifications to RCW 13.40 to allow for quicker investigations and responses in dealing with juveniles.

Richland supports hydroelectric generation:

Richland supports clean, affordable, and reliable electricity supply. Most of the power for Richland comes from the Bonneville Power Administration which markets federal power including the Lower Snake River Dams. Richland strongly supports retaining these critical baseline energy resources as the state moves to implement emission reduction objectives.

The City will support the efforts of other state and local organizations on issues consistent with City positions. These include efforts of the Tri-City Development Council (TRIDEC), Tri-Cities Visitor and Convention Bureau (TCVCB), The Port of Benton, The Port of Kennewick, The Washington Economic Development Association (WEDA), and the Association of Washington Cities (AWC).



COUNCIL WORKSHOP COVERSHEET

Council Date: 7/23/2024

Department: Deputy City Manager

Strategic Priority I - High Performance Government

Subject:

Revisions to Chapter 8.10 RMC Public Camping (20 minutes)

Summary:

In 2018 the United States Ninth Circuit Court of Appeals ruled on a case called *Martin v. City of Boise* (Martin). The decision said that local government cannot enforce anti-camping ordinances if they do not have enough low barrier homeless shelter beds available for their homeless population. The ruling prohibited the criminalization of sitting, sleeping or lying on public property when applied to homeless or unsheltered individuals. The Court's decision is rooted in the 8th Amendment's prohibition of cruel and unusual punishment. This decision compelled local governments within Ninth Circuit jurisdiction to amend local regulations to be consistent with Martin. In Richland's case, Council amended RMC 8.10, Regulation of Public Camping in 2022.

On June 28, 2024 the United States Supreme Court ruled on a case called *Johnson v. City of Grants Pass* (Grants Pass). The Court's Grants Pass decision said that enforcement of generally applicable laws regulating camping on public property do not violate Eighth Amendment protection from cruel and unusual punishment. The Court emphasized in it's opinion that this is a complex issue requiring tailored solutions at the local level and a sustained funding expectation that not all cities can maintain alone. The Grants Pass decision reverses the Martin decision and the associated expectations placed on local governments since 2018.

Tonight's discussion will focus on the City's 2022 Martin amendments obligating the City to coordinate with Benton County social service resources prior to enforcing RMC 8.10, Regulation of Public Camping in light of the new ruling on Grants Pass. Staff will present potential amendments to RMC 8.10 in addition to operational concepts that may be implemented by administrative policy in the City's regulation of public camping.

Attachments:

- I. International Municipal Lawyers Association (IMLA) Summary of the Supreme Court of the United States (SCOTUS) Grants Pass v. Johnson Decision

From the International Municipal Lawyers Association
June 28 2024. Referenced by Association of Washington Cities.

Supreme Court Overrules *Martin v. Boise* in Important Homeless Encampment Case

Posted in [Case Notes, Commentary](#)

Written by: **Amanda Karras**

Today in *Grants Pass v. Johnson*, the Supreme Court held that the Eighth Amendment's Cruel and Unusual Punishment Clause does not prohibit the enforcement of generally applicable laws regulating camping on public property. The Court explained the "Constitution's Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest ... [the] rights and responsibilities from the American people" to decide "how best to handle a pressing social question like homelessness" and "in their place dictate this Nation's homelessness policy." The decision highlighted the complexities of the homeless crisis and noted that five years ago, the Ninth Circuit "took one of [the] tools [needed to address homelessness] off the table" in *Martin v. Boise*, 920 F. 3d 584 (2019).

This case centers on ordinances passed in Grants Pass, a city in Oregon with a population of 38,000 people, of whom approximately 600 are individuals experiencing homelessness. To understand the case, we need to travel back to 2019 when the Ninth Circuit decided *Martin v. Boise*. *Martin* involved an ordinance in Boise that made it a misdemeanor to use "streets, sidewalks, parks, or public places" for "camping." The Ninth Circuit held that "the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." Boise (and all other local governments in the Ninth Circuit), therefore could not enforce public-camping ordinances against homeless individuals who lacked "access to alternative shelter." Back to Grants Pass. The city passed several ordinances after the *Martin* decision related to the regulation of sleeping outside, which taken together made it nearly impossible to sleep outside with any form of bedding or shelter on public land in the city. See GPMC 5.61.020; GPMC 5.61.030; GPMC 6.46.090. A violation of these ordinances resulted in fines, which would escalate if left unpaid. The "park exclusion" ordinance allowed police officers to bar someone from a city park for 30 days if they received 2 more citations for violating park ordinances within one year. GPMC 6.46.350(A). If someone had received a park exclusion ordinance and was later found in a park, that could result in criminal trespass. The city amended its

camping ordinance after *Martin* to make it clear that the involuntary act of sleeping in a park was not prohibited, rather what was prohibited was “camping” – i.e., sleeping with any bedding / shelter.

Two homeless individuals in Grants Pass filed a class action lawsuit on behalf of those that are “involuntarily homeless” against the city, arguing its ordinances are unconstitutional under the Eighth Amendment’s Cruel and Unusual Punishment Clause. The Ninth Circuit upheld the district court’s class certification of all “involuntarily homeless” in Grants Pass. The Ninth Circuit also affirmed the district court’s holding that “the anti-camping ordinances violated the Cruel and Unusual Punishment Clause to the extent they prohibited homeless individuals from ‘taking necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available.’” Although the city had four temporary shelters, none were “adequate” for the city’s homeless population.

In a 6-3 opinion authored by Justice Gorsuch, the Supreme Court reversed the Ninth Circuit’s “*Martin* experiment.” In doing so, the Court explained that the Eighth Amendment’s Cruel and Unusual Punishment Clause addresses “the method or kind of punishment a government may impose for the violation of criminal statutes.” (internal quotations omitted). Noting that the Court has previously discussed the history of the clause, the majority simply explained that the clause was adopted to ensure the new Nation would not resort to certain types of “barbaric punishments” which had been tolerated in English law. The question of what type of behavior may be criminalized is not addressed by the Eighth Amendment. The Court noted instead that other provisions of the Constitution may speak to those matters. And in terms of the “method and kind[s]” of punishments at issue in this case, which included fines and up to 30 days in jail, do not qualify as cruel or unusual.

The plaintiffs argued that *Robinson v. California*, 370 U. S. 660 (1962) should apply because the city, in their view, is criminalizing the status of being homeless. In *Robinson*, the Court held that a California law that criminalized the status of narcotics addiction constituted cruel and unusual punishment under the Eighth Amendment. The Court in *Robinson* noted that if the government punishes “status,” “[e]ven one day in prison would be . . . cruel and unusual.”

Here, the Court declined to extend *Robinson* beyond true “status” crimes. Public camping laws like the one in Grants Pass do not criminalize status, but instead make certain actions a crime, and the crime applies to any defendant, as the Court puts it, whether the person is homeless or a backpacker on vacation. The majority rejected the plaintiffs’ argument that *Robinson* should apply to laws banning public camping as applied to the homeless because they apply to an “involuntary” action

and the homeless person “cannot help but do what the law forbids.” The Court explained that its decision in *Powell v. Texas* already rejected this argument and the Court refused to “extend *Robinson* beyond its narrow holding.” The Court reiterated that other constitutional provisions may apply and individuals may have certain defenses (like necessity).

The Court not only rejected the plaintiffs’ legal arguments, but also underscored the important federalism and separation of powers issues inherent in these decisions noting “federal courts [are] removed from realities on the ground, [and the] rules have produced confusion.” The Court further noted that the Ninth Circuit’s decisions have interfered with “‘essential considerations of federalism,’ taking from the people and their elected leaders difficult questions traditionally ‘thought to be the[ir] province.’”

The majority also highlighted the unworkability of the *Martin* decision explaining: ...*Martin* exemplifies much of what can go wrong when courts try to resolve matters like those unmoored from any secure guidance in the Constitution. Start with this problem. Under *Martin*, cities must allow public camping by those who are “involuntarily” homeless. But how are city officials and law enforcement officers to know what it means to be “involuntarily” homeless, or whether any particular person meets that standard? Posing the questions may be easy; answering them is not. Is it enough that a homeless person has turned down an offer of shelter? Or does it matter why? Cities routinely confront individuals who decline offers of shelter for any number of reasons, ranging from safety concerns to individual preferences. How are cities and their law enforcement officers on the ground to know which of these reasons are sufficiently weighty to qualify a person as “involuntarily” homeless? If there are answers to those questions, they cannot be found in the Cruel and Unusual Punishments Clause. Nor do federal judges enjoy any special competence to provide them.

Additionally, the Court called the Ninth Circuit’s shelter availability test “all but impossible to administer in practice.” Citing several amicus briefs as evidence of the complexities of the problem, including the fact that it can take thousands of volunteers multiple days to count the homeless population in large cities. The Court also emphasized the line drawing problems the decisions present in terms of a lack of a definition for “adequate” and “available” shelter as well as the uncertainty as to what other biological necessities might be covered under *Martin*.

Justice Sotomayor authored the dissent, joined by Justices Kagan and Jackson. The dissent argued that because sleep is a biological necessity, for people who sleeping outside is their only option, it cannot be a crime. The dissent viewed the ordinances at issue as criminalizing status under *Robinson* and would find they violate the Eighth Amendment.

The majority noted that “an exceptionally large number of cities and States have filed [amicus briefs] in the case,” and cited to many of those briefs, including citing and quoting the one filed by the Local Government Legal Center (IMLA, NACo, & NLC), which was drafted by Brandon Rain with the City of Seattle, multiple times. The Court used the amicus briefs to highlight everything from the scope of the homelessness problem, to how *Martin* is being interpreted in lower courts to hamstringing local governments, to some of the solutions that local governments are seeking to address homelessness. One of the points the LGLC made in its amicus brief which was cited by the Court is that “these public-camping regulations are not usually deployed as a front-line response to criminalize homelessness. Instead, they are used to provide [local government] employees with the legal authority to address encampments that pose significant health and safety risks and to encourage their inhabitants to accept other alternatives like shelters, drug treatment programs, and mental-health facilities.”

The Court and many amici agree that the problem of homelessness is complex. This case returns the hard task of solving the homeless crisis to state and local policymakers, where it belongs. Rather than spending significant time, money, and resources litigating *Martin* claims, local governments can focus on expending resources to help the homeless community while ensuring their public spaces are safe and clean in a manner consistent with local needs.

To read the decision, [**click here.**](#)

To read the LGLC amicus brief, [**click here.**](#)