Florida Banned Homelessness. Has It Put Itself at Odds with the U.S. Constitution?

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In October 2024, Florida Statute Section 125.0231 was enacted, which criminalized sleeping and camping in public places.[1] By banning public sleeping, the law disproportionately impacts and criminalizes the homeless, who, in many cases, have nowhere else to go.[2] This law was met with backlash from the Florida public, citing the arrests of the homeless as an ineffective solution to an active crisis.[3] The effective criminalization of homelessness through Statute Section 125.0231 violates the Fourth Amendment's protection against unreasonable searches and seizures[4] as it fails to pass a rational basis test and subjects individuals to searches without probable cause.

While the statute's language does not specifically ban homelessness, an examination of its language demonstrates how it effectively bans the condition of being homeless. The law defines "public camping or sleeping" broadly, claiming it is simply living overnight in an outdoor space with or without shelter.[5] Furthermore, any evidence of habitation—pillows, tents, and storage of personal belongings—is incriminating.[6] One could claim this text is not banning being homeless, as many large Florida cities contain homeless shelters. However, shelters are only a temporary solution to homelessness, and the number of open spots in them pales in comparison to the vast homeless population in Florida.[7] In 2023, the unsheltered homeless

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[1] Fla. Stat. § 125.0231 (2024).
[2] Terry Spencer & Kate Payne, *Florida Enacts Tough Law to Get hHomeless Off the Streets, Leaving Cities and Counties Scrambling*, Associated Press (Oct. 2024), apnews.com/article/florida-homeless-ban-poverty-a70d27efb0ec5f41bfb3d6c2facc8f84.
[3] Julia Gomez et al., *Florida's New Homeless Law Bans Sleeping in Public, Mandates Camps for Unhoused People*, USA Today (Oct. 2024), www.usatoday.com/story/news/nation/2024/10/03/florida-homeless-law/75493386007.
[4] U.S. Const. amend. IV.
[5] Fla. Stat. § 125.0231 (2024).
[6] *Id.*
[7] Fla.'s Council on Homelessness, *2023 Annual Report* 15 (2023).

population in Florida increased by thirty-four percent.[8] When open spots in Florida homeless shelters are vastly outnumbered by the population of homeless individuals, the criminalization of sleeping in public spaces effectively punishes homelessness.

Historically, lower courts have maintained that criminalizing homelessness violates the Eighth Amendment's protection against cruel and unusual punishment.[9] This precedent comes from the logic that, since homeless individuals often have no alternative but to sleep outside, banning them from doing so constitutes cruel and unusual punishment.[10] In 2023, this precedent was overturned with *City of Grants Pass v. Johnson*, which made null any arguments that the statute could be an Eighth Amendment violation.[11] Because the scope of this ruling was limited to just the Eighth Amendment, the judges did not explicitly conduct a rational basis test, a basic test to determine if legislation is unconstitutional. A rational basis test requires that legislation be rationally related to a legitimate government interest.[12] This test is the most basic constitutional test, and it is applied when "no fundamental rights or suspect classifications are at issue."[13] In other words, there is a legal door open, ripe for the exploration of how the Florida statute violates other provisions of the U.S. Constitution, including the Fourth Amendment.

With this information in mind, a proper analysis of Florida Statute Section 125.0231 in relation to the Fourth Amendment is necessary. The Fourth Amendment bars unreasonable searches and seizures,[14] and requires probable cause for searches to occur. Probable cause requires specific, articulable facts that indicate the commission of a crime rather than mere suspicion.[15] For example, if a Florida police officer were to smell marajuana in a car at a traffic

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[8] *Id.* at 13.
[9] Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006).
[10] *Id.*
[11] City of Grants Pass v. Johnson, 603 U.S. 1 (2024).
[12] United States v. Carolene Products Co., 304 U.S. 144 (1938).
[13] Legal Info. Inst., *Rational Basis Test*, Cornell L. Sch. (Mar. 2024), law.cornell.edu/wex/rational_basis_test.
[14] U.S. Const. amend. IV.
[15] Benefield v. State, 160 So. 2d 706 (Fla. 1964).

stop, this observation would provide probable cause to search the car. Probable cause works slightly differently in the case of Florida Statute Section 125.0231. The search is conducted "incident to arrest,"[16] meaning probable cause for a search is assumed because the individual has already committed a crime—being homeless. While technically legal, arresting individuals under the statute lacks traditional probable cause because the offense arises from an individual's status of being homeless, a simple demographic, rather than the typical articulable, individualized suspicion required for probable cause.

Upon initial consideration, the Fourth Amendment does not have much of a legal consequence on Florida Statute Section 125.0231. However, a legal search is not inherently a constitutional search. For a search and subsequent arrest to be unconstitutional, the statute itself must fail a rational basis test. While Florida's law aims to address the rising homeless population, criminalizing homelessness fails to provide a rational connection to reducing homelessness or addressing its root causes. In fact, some believe that this statute may make homelessness in Florida worse. The criminalization of homelessness creates the possibility of a new criminal record for homeless individuals, making it harder for them to get jobs and housing later on.[17] Furthermore, housing insecurity is a significant factor in recidivism, or the tendency of a convicted criminal to reoffend.[18] Criminalizing homelessness creates a punitive loop between housing insecurity and recidivism, exacerbating the problem of homelessness in Florida. Therefore, Florida Statute Section 125.0231 fails a rational basis test because it fails to address the problem of homelessness in Florida and has the potential to worsen the problem—it is not rationally related to a government interest. The failure of the law to meet a rational basis test is

[16] Fla. Stat. § 125.0231 (2024).
[17] Nat'l Coal. Homeless, *Civil Rights and Homelessness* (Mar. 2023), nationalhomeless.org/civil-rights-criminalization-of-homelessness.
[18] Leah A. Jacobs & Aaron Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence From a Sample of People on Probation in San Francisco*, 47 Crim. Just. & Behavior 1097 (2020).

significant not only because it highlights a deep-rooted problem in the law itself but also because it demonstrates that a search incident to arrest on the basis of the law is no longer sufficient probable cause.

It is not just the rational basis test that erodes the constitutionality of Florida Statute Section 125.0231 in light of the Fourth Amendment; other Fourth Amendment applications in case law also laid the groundwork for a clear protection of homeless individuals and their belongings from unreasonable searches. In *Katz v. United States*, the U.S. Supreme Court established a standard of a "reasonable expectation of privacy," even in public places.[19] In the lens of homeless individuals, this precedent establishes that, although homeless individuals are not in a private setting—i.e. one that would typically be protected from searches—they are still entitled to the protections of the Fourth Amendment.[20] Furthermore, the Supreme Court case *Michigan v. Clifford* established that individuals retain privacy rights in unconventional living spaces such as a home damaged by fire.[21] This precedent can plausibly be extended to say that if a right to privacy exists in an unconventional living space, it must exist in makeshift homeless shelters such as tents and encampments. Thus, privacy rights established in both public places (*Katz*) and unconventional living spaces (*Clifford*) can extend to encampments of homeless individuals in public spaces. An arrest for the act of being homeless creates an opportunity for an unconstitutional search in a protected space, based on a demographic a person occupies—being homeless—rather than an articulable fact. Thus, enforcement of Florida Statute Section 125.0231 violates the Fourth Amendment by infringing on this reasonable expectation of privacy.

The implementation of Florida Statute Section 125.0231 effectively criminalizes homelessness in Florida. Rather than address the homelessness crisis in the state, this legislation

[19] Katz v. United States, 389 U.S. 347 (1967).
[20] *Id.*
[21] Michigan v. Clifford, 464 U.S. 287 (1984)

exacerbates the problem. Furthermore, recent Supreme Court rulings such as *City of Grants Pass* have opened the door to explore potential paths of unconstitutionality of the statute, particularly in relation to the Fourth Amendment.[22] Given the statute does not rationally address the homelessness crisis in Florida, it fails the rational basis test. Thus, a search incident to arrest under Florida Statute Section 125.0231 is an unreasonable search as it lacks the specific, articulable facts necessary to establish probable cause. Further case law demonstrates that homeless shelters can be considered protected places from unreasonable searches and seizures, reinstating the absurdity of a search incident to arrest for simply being homeless. In conclusion, Florida Statute Section 125.0231 is unconstitutional and presents a flagrant violation of the Fourth Amendment.

[22] *City of Grants Pass*, 603 U.S. at 1.