

No. 23-175

IN THE
Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,
Petitioner,

v.

GLORIA JOHNSON AND JOHN LOGAN, ON BEHALF OF
THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

**BRIEF OF CHICAGO COALITION FOR THE
HOMELESS ET AL. AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTERESTS OF THE *AMICI CURIAE*¹

Amici curiae are nonprofit organizations in Chicago and Illinois that provide services to and advocate for people experiencing homelessness. If the Ninth Circuit's decision below were reversed, it would have devastating consequences for people experiencing homelessness nationwide, and particularly in Chicago and Illinois. Homelessness affects people of all demographics, including the young, the old, people with disabilities, and it disproportionately impacts people of color. Among those experiencing homelessness, the most vulnerable include, but are not limited to, individuals with chronic physical and mental health conditions, survivors of domestic violence, immigrants, as well as formerly incarcerated individuals and others with criminal backgrounds.

The following *amici* have a compelling interest in ensuring such people receive support to attain stable income, healthcare, and housing, rather than facing fines and potential criminalization.

AIDS Foundation Chicago (AFC)

In 1985, physicians, advocates, and community members came together to form AFC to support the HIV community. More than thirty-five years later, AFC continues this critical lifesaving work to end the

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, and their counsel made any monetary contribution intended to fund the preparation and submission of this brief.

HIV epidemic and ensure everyone has a home in Chicago and beyond.

All Chicago Making Homelessness History

All Chicago Making Homelessness History provides system-level support and coordination for nonprofits and government agencies dedicated to preventing and ending homelessness in Chicago. All Chicago provides strategic coordination for partner agencies, fosters innovation and systems improvement, and offers targeted emergency funds for people at risk of or experiencing homelessness.

BEDS Plus, Inc.

BEDS Plus is a leading homeless services provider in Southwest Suburban Cook County, Illinois. Its clients include families, transition aged youth, older adults, domestic violence survivors, victims of crime, justice involved households, veterans, and people with serious health conditions and disabilities. BEDS Plus works diligently to provide shelter and connections to housing and supportive services for people experiencing homelessness and imminent risk of homelessness, but the lack of beds and affordable housing in our communities leads to long waitlists for BEDS Plus's programs.

Chicago Coalition for the Homeless (CCH)

CCH organizes and advocates to prevent and end homelessness, because housing is a human right in a just society. Staffed by public policy specialists, legal aid attorneys, and community organizers, CCH works

with those impacted by homelessness or at-risk of homelessness, including families, unaccompanied youth, returning citizens, and low-wage workers. CCH leads strategic campaigns, community outreach, and public policy initiatives that target the lack of affordable housing in metropolitan Chicago and across Illinois while working to advance racial equity. CCH partners with over 300 homeless service, homeless youth advocacy, shelter, and supportive housing providers throughout Illinois.

Chicago Rehab Network (CRN)

CRN is guided by a vision of grassroots development that prioritizes affordability over profit and establishes affordable housing for all including homeless individuals and households. Through educational programming, technical assistance, research, and advocacy, CRN supports community-based organizations to increase the affordability of existing housing and development and preservation of additional housing.

Chicago Urban League

The Chicago Urban League fights for equity and justice for Black Chicagoans and other underserved citizens.

Chicago Women Take Action (CWTA)

CWTA is a diverse group of women from the Chicago area working to better the lives of women, their families, and communities. CWTA works on a wide range of issues, including protecting voting

rights, housing, healthcare, environmental justice, criminal justice reform, and education, focusing on the particular ways each of these issues affect women. On every issue, CWTA is committed to addressing the pervasive economic, racial, and gender inequities that define every aspect of women's lives.

Covenant House Illinois

Covenant House Illinois provides safe harbor and supportive services to young people ages eighteen to twenty-four who are facing homelessness, disconnection, and exploitation.

Deborah's Place

In Chicago, thousands of unaccompanied adult women spend nights on the streets due to a lack of shelter beds and affordable housing. Deborah's Place provides housing to this vulnerable population, but there is not enough housing for all who need it.

Farmworker and Landscaper Advocacy Project (FLAP)

FLAP aims to improve working conditions and opportunities for low-income workers and their households in industries including cannery, farms, greenhouse, landscaping, among others. FLAP advances its mission through advocacy, community outreach and education, litigation, and partnerships with other organizations. FLAP provides these services free of charge and without regard to immigration status.

Healthcare Alternative Systems, Inc. (HAS)

HAS provides a continuum of multicultural and bilingual (English/Spanish) behavioral care and social services that empower individuals, families, and communities. HAS implements sustainable programs to improve the well-being and recovery efforts of individuals, families, and communities impacted by behavioral health problems. The majority of HAS's participants experience homelessness or housing instability.

Heartland Alliance Health

Heartland Alliance Health provides health care, housing, and other social services to people experiencing homelessness in Chicago.

Housing Action Illinois

Housing Action Illinois is a statewide coalition that mobilizes organizations to end homelessness by addressing the shortage of affordable rental housing and working on related issues. Its members include homeless service providers, developers of affordable housing, and others.

Illinois Public Health Institute (IPHI)

IPHI mobilizes stakeholders, catalyzes partnerships, and leads action to improve public health systems to maximize health, health equity, and quality of life for people and communities. In collaboration with community partners, IPHI works to address health inequities for people experiencing homelessness.

Impact for Equity

Since 1969, Impact for Equity (formerly BPI) has been committed to addressing the structural racism and systemic oppression that has led to inequities and injustices, particularly for people and communities of color, in Chicago and Illinois. Dedicated to advancing nuanced solutions to pressing racial, economic, and social justice issues, Impact for Equity's work focuses on housing, police accountability, and the criminal legal system.

James B. Moran Center for Youth Advocacy

The James B. Moran Center for Youth Advocacy champions justice and restores hope with innovative, holistic legal and social work programs because all kids deserve justice in the courtroom, access to the classroom, and restoration in the community.

Law Center for Better Housing (LCBH)

LCBH is the only nonprofit law firm in the Chicago area that focuses solely on low- and moderate-income renters in the private housing market. LCBH provides free legal and supportive housing services to lower income renters while advocating for the rights of all renters until everyone in Chicago has a safe, decent, and affordable place to call home. LCBH is also the home of the Chicago Evictions Data Portal, where a decade of Chicago eviction data was collected and analyzed.

Legal Council for Health Justice (LCHJ)

LCHJ is a nonprofit public interest law organization based in Chicago. For nearly forty years, LCHJ has used the power of the law to secure dignity, opportunity, and wellbeing for its clients. LCHJ works in community partnerships to deliver accessible, trauma-informed legal support to hundreds of people living with disabling behavioral health conditions and experiencing homelessness each year.

LYTE Collective

LYTE Collective supports young people facing poverty and homelessness in Chicago.

North Suburban Legal Aid Clinic (NSLAC)

NSLAC provides accessible, quality, equitable, free legal services to low-income, at-risk community members regarding matters of domestic violence, housing, and immigration. NSLAC's Housing Law Practice helps renters in the north Chicago suburbs who face housing insecurity due to evictions, landlord-tenant disputes, conditions issues, and illegal lockouts.

Organized Communities Against Deportations
(OCAD)

OCAD works directly with undocumented tenant immigrants, some of the most vulnerable among the population experiencing homelessness, as many social services exclude these individuals due to their immigration status.

Red Line Service Institute

Red Line Service is a community of artists who have experienced or are currently experiencing homelessness, collaborating with other artists and cultural institutions to reduce barriers to participation in the arts and address the lack of support services for artists experiencing homelessness. The organization works to decrease social isolation, de-stigmatize homelessness, and shift the narrative about homelessness away from individual blame and moral failure and towards the systems that cause it. Red Line Service is the only art organization nationally led by people with lived experience of homelessness.

Safer Foundation

From its start in 1972, Safer Foundation's mission has been to pave that road with stabilizing support, employment, education, and advocacy that empower justice-involved individuals to achieve their true potential.

South Suburban Public Action to Deliver Shelter (PADS)

South Suburban PADS is a nonprofit organization dedicated to preventing and ending homelessness in the south suburbs of Chicago. Over the past thirty-three years, it has provided 656,598 nights of shelter and 1.98 million meals to enable 19,817 people to overcome homelessness.

Street Samaritans

Street Samaritans, a grassroots nonprofit organization based in Chicago, stands dedicated to providing vital support and resources to individuals experiencing homelessness. Its mission involves addressing urgent physical needs and facilitating connections to housing, healthcare, and social services essential for exiting homelessness.

The Network: Advocating Against Domestic Violence

The Network is a collaborative group of member organizations dedicated to improving the lives of those impacted by gender-based violence. The Network has worked tirelessly to end our society's tolerance of gender-based violence through public policy and advocacy work, promoting educational opportunities, connecting the public to services, and providing centralized resources to service providers in the gender-based violence community for the past forty years. The Network engages in housing advocacy focused on assisting housing providers in providing trauma-informed, confidential, and safe services, increasing access to housing for survivors of gender-based violence, and improving system responses to those who are at risk of experiencing homelessness due to gender-based violence. The Network works directly with survivors experiencing housing issues related to gender-based violence and also connects service providers to victims and survivors in need.

The Night Ministry

The Night Ministry is a Chicago-based organization that provides human connection, housing support, and health care to those who are unhoused or experiencing poverty. With an open heart, The Night Ministry compassionately accepts each individual as they are and works alongside them to advocate for their immediate physical, emotional, and social needs while affirming our shared humanity.

Thresholds

Founded in 1959, Thresholds provides healthcare, housing, and hope for thousands of persons with mental illnesses and substance use disorders. The Thresholds Homeless Outreach Program is Chicago's only citywide mental health homeless outreach program. Thresholds workers reach out to homeless individuals on the streets, in shelters, and elsewhere to provide assertive outreach, linkage to primary and psychiatric care, and connection to essential resources. Thresholds is also the largest provider of supported housing in Illinois with residential programs offering a variety of community-based options for persons with serious mental health and substance use conditions, including those exiting homelessness.

SUMMARY OF THE ARGUMENT

Homelessness is a pervasive problem nationwide, including in Chicago and Illinois. It is undeniable that Chicago and other communities in Illinois lack sufficient shelter for their residents experiencing homelessness. Also obvious is that forcing people to sleep outside without bedding or other protection from the elements has life-threatening consequences in places like Chicago and Illinois. Yet, in response to the homelessness crisis, cities like Grants Pass have penalized individuals experiencing homelessness merely for sleeping outside with a blanket or other form of bedding. Rather than solving the problem, such penalties only serve to exacerbate it and do not address the myriad causes of homelessness.

Instead, our communities should consider alternatives to penalizing Chicagoans, Illinoisans, and other Americans experiencing homelessness. Examples of such alternatives, including increasing and improving housing and supportive services, have proven successful in addressing homelessness in Chicago.

Amici urge the Court to affirm the Ninth Circuit's decision below.

ARGUMENT

I. Reversal of the Ninth Circuit’s decision below would be devastating for people experiencing homelessness in Chicago and Illinois.

A. Homelessness is a pervasive crisis in Illinois and especially in Chicago.

Homelessness is not a problem unique to Grants Pass, Oregon, of course.² In major cities and small towns nationwide, homelessness remains a major crisis.³ Chicago and Illinois are no exception. In Chicago, an estimated 68,440 people experienced homelessness in 2021, representing a 2,289-person increase from 2020.⁴ In Illinois, an estimated 120,000 people experience homelessness annually.⁵ A recently published report by the U.S. Department of Housing and Urban Development (HUD)—albeit imprecise, for reasons explained below—found that in 2023, for

² See generally U.S. DEP’T OF HOUS. AND URB. DEV., 2023 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS (Dec. 2023), <https://tinyurl.com/cnedm2ac> [hereinafter AHAR 2023].

³ *Id.*

⁴ CHICAGO COALITION FOR THE HOMELESS, ESTIMATE OF PEOPLE EXPERIENCING HOMELESSNESS IN CHICAGO 1 (2023), <https://tinyurl.com/mr3sr3ak> (the estimated homeless population in Chicago in 2021 represents a 2,289 person increase from the estimate in 2020) [hereinafter CHICAGO ESTIMATE].

⁵ Maureen Foertsch McKinney, *Illinois homelessness chief says new state funds will produce more shelter, affordable housing*, NPR ILLINOIS (Nov. 16, 2023, 11:55 AM CST), <https://tinyurl.com/5fb48tu5>.

every 10,000 people in Illinois, nine experienced homelessness, reflecting an increase of nearly 30 percent in a one-year span.⁶

Of the 120,000 Illinoisans experiencing homelessness annually, about 44,000 experience homelessness living either on the street, in a shelter, a car, or in an abandoned building.⁷ The nearly 75,000 others may temporarily double up with friends and family.⁸ This data also reflects a significant shift in how people experience homelessness. For example, in 2021, an estimated 24,011 Chicagoans lived on the street or in shelters, a 50 percent increase from 2020.⁹

It is widely recognized that HUD's narrow definition of "homelessness" does not account for the practical challenges of counting a population without a regular or consistent place of residence. HUD includes in its definition of "homelessness" those living in "a public or private place not meant for human habitation," or in shelters such as congregate shelters and transitional housing.¹⁰ Notably excluded from their counts are people who are hospitalized, incarcerated, temporarily staying with family and friends (that is, "doubling up") in overcrowded, shared

⁶ AHAR 2023, *supra* note 2, at 102.

⁷ Foertsch McKinney, *supra* note 5.

⁸ *Id.*

⁹ CHICAGO ESTIMATE, *supra* note 4, at 3 (finding that, in 2020, an estimated 16,026 people lived on the street or in shelters).

¹⁰ *What is Homeless Category 1: Literally Homeless (§ 578.3)*, U.S. DEP'T OF HOUS. AND URB. DEV. EXCHANGE, <https://tinyurl.com/ygywrvwz> (last visited Mar. 24, 2024).

housing, or simply not visible to the people conducting the count on the particular night of the survey.

HUD obtains their data by employing a methodology known as a “point-in-time” (PIT) count, which is a “count of sheltered and unsheltered people experiencing homelessness on a single night in January.”¹¹ Because PIT counts include only those people who are visible, and do not account for individuals excluded from HUD’s narrow definition (e.g., those who are doubling up or residing in temporary institutional settings), the method of data collection drastically undercounts populations experiencing homelessness.¹² In both the decision below and *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit acknowledges this limitation, and even HUD concedes that PIT counts are “not an exact science.”¹³

People of all ages, including the young, are affected by homelessness. In Illinois, an estimated 58,498 students experienced homelessness during the 2022–23 school year, a 22 percent increase from the

¹¹ *Point-in-Time Count and Housing Inventory Count*, U.S. DEP’T OF HOUS. AND URB. DEV. EXCHANGE, <https://tinyurl.com/ywcnpbfu> (last visited Mar. 24, 2024).

¹² CHICAGO ESTIMATE, *supra* note 4, at 2–3.

¹³ Jared Kofsky et al., ‘You can’t be accurate’: Annual count of US homeless population misses large numbers of people, experts warn, ABC NEWS (Feb. 3, 2024, 4:09 AM), <https://tinyurl.com/yc76t4bt>.

year before.¹⁴ Between 2022 and 2023, Illinois ranked third among states with the largest absolute increase in unaccompanied youth experiencing homelessness.¹⁵ More than a quarter of Chicagoans who experience homelessness are children below the age of eighteen.¹⁶ In February 2024, Chicago Public Schools identified 24,157 students in Chicago experiencing homelessness, a 57 percent increase from the previous year and the highest number ever reported.¹⁷

Homelessness also severely impacts people with disabilities. Chicago has the fifth largest number of individuals with disabilities experiencing homelessness who have applied to receive federal disability benefits—i.e., Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI).¹⁸ The Social Security Administration (SSA) has identified the importance of outreach and support to applicants experiencing homelessness because of

¹⁴ *Frequently Asked Questions About Homelessness*, CHICAGO COALITION FOR THE HOMELESS, <https://tinyurl.com/5n8va6z9> (last visited Mar. 24, 2024) [hereinafter *FAQs About Homelessness*].

¹⁵ U.S. DEP'T OF HOUS. AND URB. DEV., 2023 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS 59 (Dec. 2023), <https://tinyurl.com/cnedm2ac>.

¹⁶ CHICAGO ESTIMATE, *supra* note 4, at 6.

¹⁷ *FAQs About Homelessness*, *supra* note 14.

¹⁸ Joyce Nicholas & Thomas W. Hale, *Social Security Administration Disability Programs and Individuals Facing Homelessness*, SOCIAL SECURITY BULL., vol. 81, no. 2, Table 3 (2021), <https://tinyurl.com/yy6ctrfs> (using 2007–2017 data).

the difficulties posed by the SSA’s application process.¹⁹ Once people experiencing homelessness are able to successfully submit an application for disability benefits, however, they face incredible delays and backlogs; applicants are currently waiting nearly eight months (228 days) for an initial decision from the SSA.²⁰ Over a ten-year span, nearly 13 percent of people experiencing homelessness died while waiting for the SSA to issue a decision on their requests for disability benefits.²¹ The SSA—a lifeline to people with disabilities and people living in poverty—is failing to provide timely, stable income and exacerbating the homelessness crisis among people with disabilities in Chicago, and nationally.

While homelessness affects people of all demographic groups in Chicago and Illinois, it disproportionately affects people of color, in particular, Black residents.²² Decades of systemic

¹⁹ *Id.*

²⁰ *The President’s Fiscal Year 2025 Social Security Administration Budget: Hearings before the Senate Comm. on Finance*, 118th Cong. (Mar. 20, 2024) (testimony of Martin O’Malley, Commissioner, Social Security Administration), <https://tinyurl.com/mr22jcxk>.

²¹ Nicholas & Hale, *supra* note 18 (national figure for the period 2007–2017, the respective death rates of homeless individuals who had applied for disability benefits was 12.9 percent compared to 11.3 percent for housed; the age-normalized death rates also were higher for homeless disability applicants than for their housed counterparts).

²² CHICAGO COALITION FOR THE HOMELESS, ESTIMATE OF PEOPLE EXPERIENCING HOMELESSNESS IN CHICAGO 1 (2023), <https://tinyurl.com/mr3sr3ak> (finding that, 82 percent of the City’s residents experiencing homelessness are people of color).

housing discrimination, including the use of racially restrictive covenants and deed restrictions, have had lasting and devastating effects on the state's and city's Black populations.²³ Despite comprising only 29 percent of the city's total population, Black Chicagoans account for 53 percent of the people experiencing sheltered and unsheltered homelessness in Chicago.²⁴ Likewise, Black Illinoisans, who make up 14 percent of the state's population, represent 58 percent of the Illinois' homeless population.²⁵ Black Illinoisans are nearly eight times more likely to experience homelessness than white Illinoisans.²⁶

Even Petitioners do not dispute that “the homelessness crisis is a significant challenge for communities large and small throughout the Nation,” (Pet’r’s Br. at 49) and would likely agree that the problem extends to Chicago and Illinois. As the next subsection shows, it is also incontrovertible that there is insufficient shelter space for Illinoisans and Chicagoans experiencing homelessness.

²³ *Decades of Systemic Housing Discrimination Contribute to the Overrepresentation of Black Americans Among the Nation’s Homeless*, THE NIGHT MINISTRY (May 20, 2022), <https://tinyurl.com/38by4e5n>.

²⁴ CHICAGO COALITION FOR THE HOMELESS, ESTIMATE OF PEOPLE EXPERIENCING HOMELESSNESS IN CHICAGO 1 (2023), <https://tinyurl.com/mr3sr3ak>.

²⁵ U.S. DEP’T OF HOUS. AND URB. DEV. CoC ANALYSIS TOOL: RACE AND ETHNICITY (Dec. 2023), <https://tinyurl.com/4f993bu4> (follow hyperlink, download CoC Analysis Tool 4.0 (XLSX), and see “State Data for Illinois,” which is data obtained from PIT counting) (last visited Mar. 25, 2024).

²⁶ *Id.*

B. There is an inadequate supply of housing and emergency shelters for individuals experiencing homelessness in Chicago and Illinois.

The Ninth Circuit observed below that when a jurisdiction has nowhere else for an individual experiencing homelessness to go, the jurisdiction is barred from prosecuting the affected individuals and preventing them from “taking necessary minimal measures to keep themselves warm and dry while sleeping.” Pet. App. 47a.

Chicago and Illinois easily fit this test. Put simply, social service organizations are unequipped to handle the size and needs of the homeless communities in Chicago and Illinois. For example, in January 2023, Chicago provided 8,360 beds of permanent supportive housing, meaning “non-limited affordable housing with supportive services,”²⁷ and 2,099 of rapid rehousing, meaning “short to medium term (fewer than twenty-four months) of rental assistance and supportive services to help households stabilize in housing.”²⁸ Even without accounting for the thousands of Chicagoans experiencing homelessness who are not captured in HUD’s PIT count data, city agencies estimate that Chicago requires an additional 2,637 permanent supportive housing units and 3,851 rapid rehousing units to meet existing and

²⁷ CITY OF CHICAGO DEP’T OF FAMILY AND SUPPORT SERVS., 2023 ANNUAL HOMELESSNESS REPORT 7 (2023), <https://tinyurl.com/4j58kx47>.

²⁸ *Id.*

anticipated demands of those living in shelters and on the street.²⁹

Chicago's shelter program includes over fifty shelters, which offer an estimated 3,000–5,000 shelter beds on a given night.³⁰ But, considering that 11,767 Chicagoans experienced homelessness on an average day in 2023,³¹ this supply is clearly insufficient to address the demand for people in need of shelter.

In 2022, Illinois' "[e]mergency shelters [were] full and there [were] over 700 people on waiting lists in [six different counties] including families fleeing domestic violence, [v]eterans, and people with disabilities."³² Domestic violence shelters in Illinois turned away 6,187 adults and children in 2022, a 36 percent increase from 2021.³³ Even more stark, the

²⁹ *Id.* at 8.

³⁰ *Homeless Shelters*, CITY OF CHICAGO DEP'T OF FAMILY AND SUPPORT SERVS., <https://tinyurl.com/2bm4k3rv> (last visited Mar. 24, 2024); *see also Weather Relief*, CITY OF CHICAGO DEP'T OF FAMILY AND SUPPORT SERVS., <https://tinyurl.com/4fh9t9db> (last visited Mar. 25, 2024).

³¹ SYSTEM GOALS 2023 REPORT, CHICAGO CONTINUUM OF CARE, <https://tinyurl.com/ufswsyds> (last visited Mar. 26, 2024).

³² Press Release, Office of Governor JB Pritzker, *Illinois Department of Human Services Announces \$5 Million in Additional Funding to Expand Emergency Shelter Capacity*, (Dec. 8, 2022), <https://tinyurl.com/bdhaha5p> [hereinafter *IDHS Announces Funding*].

³³ *Measuring Safety Gender-Based Violence in Illinois, Data Report 2022*, THE NETWORK ADVOCATING AGAINST DOMESTIC VIOLENCE 117 (2022) <https://tinyurl.com/jaxcztvx>.

“long-term shortage” of emergency shelter beds across the state was more than 4,000.³⁴

C. Because of Illinois’ and, in particular, Chicago’s climate, in Illinois there is no material difference between the impact of an anti-sleeping ordinance, which the Ninth Circuit has held to be unconstitutional, and the anti-bedding ordinance at issue in Grants Pass.

Anti-bedding ordinances like the one at issue³⁵ are particularly harmful to people experiencing homelessness in northern climates like Illinois, and especially Chicago. As the Ninth Circuit aptly noted, when “[f]aced with spending every minute of the day and night outdoors, the choice to use rudimentary protection of bedding to protect against snow, frost, or

³⁴ *IDHS Announces Funding*, *supra* note 32.

³⁵ Labeling the ordinances at issue here “anti-camping” obfuscates their wide scope; they are explicitly anti-*bedding* ordinances. More than prohibiting camping, the ordinances prohibit “occupy[ing] a campsite,” with “campsite” defined so broadly as to include “any place” where any “material used for bedding purposes . . . is placed” for a temporary place to live. City of Grants Pass Municipal Code (GPMC) § 5.61.030; § 5.61.010(B). Under these ordinances, any public place with bedding is a campsite “whether or not” a “tent, lean-to, shack, or any other structure” is erected. GPMC § 5.61.010(B). As such, a person who is covered in a blanket, sleeping bag, or even winter jacket while existing on public property ostensibly violates the ordinance by “occupy[ing]” a place with “bedding.” GPMC § 5.61.030; § 5.61.010(B).

rain is not volitional; it is a life-preserving imperative.” Pet. App. 48a n.28.

A prohibition on using a blanket or other protection from the elements bears no practical difference from an anti-sleeping ordinance in Chicago and the rest of Illinois. Chicago is the coldest large city and the largest cold city in the United States.³⁶ In January 2019, Chicago experienced colder temperatures than are recorded in regions of Siberia, the Arctic, or Mars.³⁷

Chicago’s average winter temperature is 28.1 degrees,³⁸ which often feels much colder due to the wind chill³⁹—that is, “what the air temperature feels like to the human skin due to the combination of temperatures and winds blowing on exposed skin.”⁴⁰ Wind chill is a useful predictor for potential frostbite and hypothermia.⁴¹ In January 2019, Chicago

³⁶ Jon Erdman, *America’s 20 Coldest Major Cities*, THE WEATHER CHANNEL (Jan. 27, 2014), <https://tinyurl.com/ytwm597w>.

³⁷ *It’s Official, Chicago Is Colder Than Parts Of The Arctic, Yukon, And Mars*, CBS CHICAGO (Jan. 30, 2019, 6:55 AM CST), <https://tinyurl.com/bdh5mu9f>.

³⁸ *Chicago, IL Seasonal Winter Temperature Rankings*, NAT’L WEATHER SERV., <https://tinyurl.com/w45ycdyd> (last visited Mar. 24, 2024).

³⁹ *Winter Preparedness – Wind Chill*, CITY OF CHICAGO OFF. OF EMERGENCY MGMT. & COMMS., <https://tinyurl.com/ykknsvxc> (last visited Mar. 25, 2024) [hereinafter *Winter Preparedness*].

⁴⁰ *Wind Chill*, NAT’L WEATHER SERV., <https://tinyurl.com/4kwydnp> (last visited Mar. 25, 2024).

⁴¹ *Winter Preparedness*, *supra* note 39.

experienced a polar vortex,⁴² during which temperatures fell to twenty-three degrees below zero with a wind chill of fifty degrees below zero.⁴³ Fifty people, half of whom experienced homelessness, were treated for frostbite at John H. Stroger Jr. Hospital.⁴⁴

Between 2011 and 2018, Illinois hospitals identified 23,834 cold injuries and 1,935 cold related deaths.⁴⁵ Although those findings do not identify instances specifically of those experiencing homelessness, many, if not most, of those hypothermia deaths probably occurred in people experiencing homelessness. All these deaths occurred as a result of exposure to the cold and freezing Illinois weather.

Such extreme cold conditions can cause frostbite in as little as three to ten minutes, depending on factors such as age, exposure, alcohol consumption,

⁴² *What is the Polar Vortex?*, NAT'L WEATHER SERV., <https://tinyurl.com/h34ws23t> (last visited Mar. 25, 2024) (“The polar vortex is a large area of low pressure and cold air surrounding both of the Earth’s poles Many times during winter in the northern hemisphere, the polar vortex will expand, sending cold air southward with the jet stream”).

⁴³ Adam Harrington et al., *Five years ago this week: Lows plunge below -20 during Chicago’s polar vortex cold snap*, CBS CHICAGO (Jan. 31, 2024, 8:28 PM CST), <https://tinyurl.com/532cdna6>.

⁴⁴ Holly Yan et al., *Extreme cold in Chicago may cause some frostbite victims to lose limbs*, CNN (Feb. 1, 2019, updated 4:40 AM EST) <https://tinyurl.com/57td72dt>.

⁴⁵ Lee S. Friedman et al., *Clinical outcomes of temperature related injuries treated in the hospital setting, 2011–2018*, 189 U. ILLINOIS SCH. PUB. HEALTH, DIV. OF ENVTL AND OCCUPATIONAL HEALTH SCIS. 1, 3–4 (Oct. 2020).

and whether the individual is wearing wet clothing such as gloves or socks.⁴⁶ A 2021 study by Cook County Health found frostbite was a predictive factor for premature deaths among individuals who experienced homelessness.⁴⁷

Snow presents another issue that people, particularly those experiencing unsheltered homelessness, must navigate. Chicago receives a seasonal average of 38.4 inches of snowfall.⁴⁸ Prohibiting individuals experiencing unsheltered homelessness from using a blanket or any other protection from the elements means frostbite⁴⁹ and hypothermia are likely, with death a common consequence.

Complying with an anti-bedding ordinance while sleeping outside in Chicago risks one's health even absent extreme temperatures. A 2021 study conducted in the Chicago area concluded that people experiencing homelessness experienced a higher burden of chronic conditions, were less likely to

⁴⁶ Yan, *supra* note 44.

⁴⁷ Kirsten Dickins & Keiki Hinami, *Homeless Mortality in Boston and Chicago: Implications for Medical Respite and Tailored Care Models*, NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL 20 <https://tinyurl.com/3heucuk2> (last visited Mar. 25, 2024).

⁴⁸ *Climate of Chicago*, ILLINOIS STATE CLIMATOLOGIST, <https://tinyurl.com/5brtb68m> (last visited Mar. 25, 2024).

⁴⁹ See, e.g., Joint Appendix at 107–08, ¶¶ 13–14 (Declaration of Kelly Wessels, describing an individual experiencing homelessness in Grants Pass who underwent an amputation due to frostbite; also indicating that the Grants Pass Police Department cited individuals for using sleeping bags and bedding materials even during significant snowstorms).

receive behavioral health treatment and routine health care, and experienced a higher number of emergency department visits than people with housing.⁵⁰

When someone is homeless, any existing health conditions typically worsen, and their risk of developing additional health problems increases.⁵¹ For instance, diabetes is generally a manageable condition when the person with diabetes has a safe, decent place to live. However, for individuals who live in unsheltered conditions, treatment for the same diagnosis is “virtually impossible” because there is no place to safely store syringes or refrigerate insulin if necessary, no ability to cook and maintain a therapeutic diet, and no bed for elevating one’s legs or attaining adequate sleep.⁵² In Chicago, where there is no material difference between an anti-bedding ordinance and an anti-sleeping ordinance, the Grants Pass ordinances would make it next to impossible for people experiencing homelessness to achieve or maintain good health.

⁵⁰ William Trick et al., *Variability in comorbidities and health services use across homeless typologies: multicenter data linkage between healthcare and homeless systems*, BMC PUB. HEALTH vol. 21, no. 917 (May 13, 2021), <https://tinyurl.com/msmfjc63>.

⁵¹ See generally *Homelessness, Health, and Human Needs., Health Problems of Homeless People*, INST. OF MED. (U.S.) COMM. ON HEALTH CARE FOR HOMELESS PEOPLE (1988), <https://tinyurl.com/2yve9352>.

⁵² *Id.*

D. Were Chicago or other cities in Illinois to enact a similar bedding ban, the argument advanced by the dissent below, that individuals experiencing homelessness could simply move outside the city's limits for protection, relies on a false premise.

The dissent below suggests that, in a city where purported anti-camping ordinances are in effect, those individuals experiencing homelessness can simply move outside the city's limits where such punitive ordinances do not exist. Pet. App. 90a (Collins, J., dissenting) (disagreeing with the majority's apparent reliance "on the premise that the question of whether an individual has options for avoiding violations of the challenged law must be limited to alternatives that are *within the City limits*."). This assertion is both legally dubious and wildly impractical. A shelter built on the South Side of Chicago would not remedy homelessness in the bordering city of Evanston, more than twenty miles away.

If the Court reverses the decision below, and Chicago and/or other cities in Illinois were to pass a similar bedding ban, it would leave the people experiencing homelessness in those cities with few alternatives or places to go.⁵³ The sheer geographic sizes of Chicago and Illinois make this proposition

⁵³ Joint Appendix at 114 ("Councilor Morgan stated the point is to make it uncomfortable enough for them in our city so they will want to move on down the road.").

prohibitive. Chicago alone is 227.73 square miles,⁵⁴ nearly as large as the total combined areas of Boston, San Francisco, and Atlanta,⁵⁵ and almost twenty times the size of Grants Pass, Oregon.⁵⁶ Illinois is 55,513.18 square miles,⁵⁷ larger than the areas of South Carolina, Maryland, Massachusetts, New Jersey, and the District of Columbia combined.⁵⁸

The implicit assumption of the dissent below, that alternative areas without purported anti-camping ordinances might be available and easily accessible outside of one's jurisdiction, is not only unrealistic but also relies on the false premise that a neighboring jurisdiction would never pass an ordinance like the one in question.

⁵⁴ *QuickFacts, Chicago city, Illinois*, U.S. CENSUS BUREAU, <https://tinyurl.com/34s7d73t> (last visited Mar. 18, 2024) (follow hyperlink and see “Land area in square miles, 2020”).

⁵⁵ *QuickFacts, Boston city, Massachusetts, etc.*, U.S. CENSUS BUREAU, <https://tinyurl.com/3f4yxr6w> (last visited Mar. 18, 2024) (follow hyperlink and see “Land area in square miles, 2020”).

⁵⁶ *QuickFacts, Grants Pass city, Oregon; Chicago city, Illinois*, U.S. CENSUS BUREAU, <https://tinyurl.com/w3a3tbjh> (last visited Mar. 18, 2024) (follow hyperlink and see “Land area in square miles, 2020”).

⁵⁷ *QuickFacts, Illinois*, U.S. CENSUS BUREAU, <https://tinyurl.com/53td76ru> (last visited Mar. 18, 2024) (follow hyperlink and see “Land area in square miles, 2020”).

⁵⁸ *QuickFacts, South Carolina, etc.*, U.S. CENSUS BUREAU, <https://tinyurl.com/yj5xsu87> (last visited Mar. 18, 2024) (follow hyperlink and see “Land area in square miles, 2020”).

II. The Chicago and Illinois experience show that penalizing individuals experiencing homelessness is not an effective solution to homelessness.

The outcome urged by Petitioners in this matter—upholding ordinances that encourage banishment, fines, and jail for people who are experiencing homelessness—perpetuates the root causes of homelessness. People do not become homeless by choice, but because of the failures of multiple systems. Various factors contribute to homelessness and housing instability, but homelessness is generally the result of stable housing being beyond reach due to unaffordability.⁵⁹ Those experiencing homelessness generally belong to groups historically denied the ability to build wealth and excluded from opportunities to obtain adequate income.⁶⁰ Additionally, they face barriers to community supports, including restricted access to healthcare services.⁶¹

The record shows that forcing people to pay fines or serve jail time makes obtaining housing more

⁵⁹ Mark Saldua, *Addressing Social Determinants of Health Among Individuals Experiencing Homelessness*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (Nov. 15, 2023), <https://tinyurl.com/45hatb9p>.

⁶⁰ See, e.g., Thomas Shapiro et al., *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide, Research and Policy Brief*, INST. ON ASSETS & SOC. POL'Y 6 (Feb. 2013), <https://tinyurl.com/22nvppt8>.

⁶¹ Saldua, *supra* note 59.

difficult and causes their health to decline.⁶² *Amicus* Legal Council for Health Justice shares an example from an anonymized client that reflects the importance of health-stabilizing partnerships to support people experiencing homelessness:

We met Mr. Johnson, age forty, in May 2021 during outreach at a public library. He reported being homeless for twenty years, after discharge from the military, and described numerous disabling conditions that made work impossible. Mr. Johnson lived next to a highway in a structure he built within the shrubbery. He wanted stability, income, and housing, but had tried and failed to secure federal disability benefits since 2008. He did not have a phone so could not follow up with his SSI application, and SSA offices were closed due to the COVID-19 pandemic. To stay in contact with Mr. Johnson, the legal aid attorney partnered with street outreach teams who provided medical care and resources to Mr. Johnson. Finally, in September 2022, fourteen years after his first attempt, he was awarded disability

⁶² See Joint Appendix at 107–09, ¶¶ 11, 16 (Declaration of Kelly Wessels, stating that fines, jailing, and convictions against people experiencing homelessness in Grants Pass have caused homeless individuals to face barriers to housing, more rapid declines in health, and increased emergency hospitalizations for chronic conditions).

benefits. After his benefits were approved and his healthcare was stabilized, he was able to move in with a family member.

Any other approach to Mr. Johnson's needs would have resulted in serious delays in his accessing income, improving his health, and ultimately obtaining stable housing.

One of the biggest obstacles to addressing homelessness is the severe lack of affordable housing for extremely low-income renters in Chicago and Illinois. Extremely low-income households are those with incomes at or below 30 percent of the average median income.⁶³ In Illinois, the annual income for extremely low-income households in 2023 was at or below \$30,200 for a family of four and \$21,150 for an individual.⁶⁴

There are 443,746 extremely low-income renter households in Illinois, yet only 150,392 affordable rental homes are available in the state, resulting in a shortage of 293,354 affordable rental homes available to Illinoisans with the lowest incomes.⁶⁵ In Chicago, overall declines in the supply of affordable housing

⁶³ U.S. DEP'T OF HOUS. AND URB. DEV. USER, FY 2023 INCOME LIMITS DOCUMENTATION SYSTEM, <https://tinyurl.com/3rfsvdd7> (last visited Mar. 24, 2024).

⁶⁴ *Id.*

⁶⁵ *Extreme Shortage of Rental Homes Results in Severe Burdens for Lowest Income Families with Children*, HOUSING ACTION ILLINOIS (Mar. 16, 2023), <https://tinyurl.com/3ndbhj5h> [hereinafter *Rental Home Shortage*].

have led to even greater disparities.⁶⁶ In 2021, Chicago experienced a 119,435-unit affordable housing gap, the largest in at least a decade.⁶⁷

In addition to the extreme shortage of affordable housing as a major cause of homelessness,⁶⁸ when asked to identify the cause or causes of their homelessness, Chicagoans cited family disputes (e.g., the result of abuse or violence at home, a parent's addiction, or the end of relationship), followed by economic precarity, such as job loss or underemployment.⁶⁹

Other significant causes included evictions and foreclosure.⁷⁰ Chicago witnessed an average of 22,571 eviction filings per year from 2010 to 2019.⁷¹ During the COVID-19 pandemic, Governor Pritzker of Illinois imposed a moratorium on evictions, which prohibited the filing of evictions for non-payment except in limited circumstances.⁷² Once the moratorium

⁶⁶ CITY OF CHICAGO DEP'T OF FAMILY AND SUPPORT SERVS., 2023 ANNUAL HOMELESSNESS REPORT 6 (2023), <https://tinyurl.com/4j58kx47>.

⁶⁷ *Id.*

⁶⁸ *Rental Home Shortage*, *supra* note 65.

⁶⁹ DEP'T OF FAMILY AND SUPPORT SERVS., CITY OF CHICAGO 2023 POINT-IN-TIME COUNT & SURVEY REPORT OF PEOPLE EXPERIENCING HOMELESSNESS 17 (2023), <https://tinyurl.com/3fj4vuuz>.

⁷⁰ *Id.*

⁷¹ *Chicago Evictions*, LAW CTR. FOR BETTER HOUS., <https://tinyurl.com/mrykz5we> (last visited Mar. 24, 2024).

⁷² Sam Carlson, *Eviction moratorium 101*, CHICAGO COALITION FOR THE HOMELESS (Sept. 14, 2020, updated Sept. 21, 2020), <https://tinyurl.com/3asv5x93>.

expired, eviction filings increased dramatically and the pre-pandemic trend continued.⁷³ In 2022 alone, over 29,000 evictions were filed in Cook County.⁷⁴

The shortage of affordable housing has left many low and extremely low-income renters unable to pay their rent, often resulting in eviction filings against them.⁷⁵ The nexus between eviction and homelessness reveals similar trends: racial disparities in homeless populations and eviction filing rates, both of which find Black communities glaringly overrepresented.⁷⁶ In Cook County, half of all evictions occur in majority-Black neighborhoods.⁷⁷ In Chicago specifically, majority-Black areas see eviction filing rates two to four times higher than majority Latinx or white areas.⁷⁸ In one study on Chicagoans facing eviction, 72 percent of those appearing in court were Black.⁷⁹

⁷³ Lizzie Kane, *As evictions tick back up in Cook County, new proposal aims to help renters who land in court*, CHICAGO TRIBUNE (Oct. 17, 2023, 6:00 AM, updated 10:00 AM), <https://tinyurl.com/47r6jb3z>.

⁷⁴ *Id.*

⁷⁵ *Opening the Door on Chicago Evictions*, LAWYERS' COMM. FOR BETTER HOUS. 3 (May 2019), <https://tinyurl.com/3yy5yu6h>.

⁷⁶ COOK COUNTY SHERIFF'S OFF., ANNUAL EVICTIONS REPORT 2 (2023), <https://tinyurl.com/4snjb8zp>.

⁷⁷ *Id.*

⁷⁸ *Addressing Eviction*, HOUS. ACTION ILLINOIS, <https://tinyurl.com/3e5maea2> (last visited Mar. 24, 2024) [hereinafter *Addressing Eviction*].

⁷⁹ Lisa Parsons Chadha, *Time to Move: The Denial of Tenants' Rights in Chicago's Eviction Court*, LAWYERS' COMM. FOR BETTER HOUS. (Apr. 1996), <https://tinyurl.com/mtf4yzzf>.

The consequences of evictions extend far beyond simply losing an apartment. Evictions lead to instability and displacement, which can affect other areas of life, including exacerbating physical and mental health problems, disrupting children’s educations, and adversely impacting job performance.⁸⁰ Of note, “[e]victions are not just the result of poverty; they are a cause of poverty.”⁸¹ Ultimately, eviction itself or the subsequent ramifications often result in homelessness.⁸²

Alternatives to criminalization and penalties, including increasing and improving housing and supportive services, have proven successful in addressing homelessness. *Amici’s* experience serving people experiencing homelessness in Chicago and Illinois confirms that stakeholders must work together to build conditions under which people experiencing homelessness can obtain economic stability and prosper.

Recent examples of such efforts in Chicago demonstrate that homelessness must be understood as a systemic problem that requires collaboration to create stability for everyone.⁸³ For example, in March

⁸⁰ *Addressing Eviction, supra* note 78.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Mark Saldua, *Addressing Social Determinants of Health Among Individuals Experiencing Homelessness*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (Nov. 15, 2023), <https://tinyurl.com/45hatb9p> (discussing projects to address homelessness by promoting access to mental health and

2023, the Illinois Department of Transportation (IDOT) began construction on the Kennedy Expressway, a major expressway running through Chicago.⁸⁴ Initially, this project would have displaced more than thirty people experiencing homelessness in areas where construction was to occur.⁸⁵ Instead of forcing these individuals to move or imposing fines or criminal charges on them, state and local government officials collaborated with local advocacy organizations to connect those affected to temporary accommodations and supportive services to help them obtain permanent housing.⁸⁶

Chicago also successfully and expeditiously connected people experiencing homelessness to housing through a “housing first” approach using Accelerated Moving Events (AMEs), a program that streamlines the process of securing housing by assisting people in completing all steps to secure

substance use treatment, peer support and engagement, resources for permanent housing, and health insurance enrollment help and increasing Social Security benefits for eligible children and adults).

⁸⁴ *What to Know as Years-Long Construction Project Begins Monday on Kennedy Expressway*, NBC CHICAGO (Mar. 18, 2023, updated Mar. 20, 2023, 9:18 AM), <https://tinyurl.com/a36tkryp>.

⁸⁵ Mina Bloom, *Northwest Side Tent City Residents Get Housing After Kennedy Expressway Constructions Forces Them Out*, BLOCK CLUB CHICAGO (May 12, 2023, updated Dec. 13, 2023), <https://tinyurl.com/4x4573eb>.

⁸⁶ *Id.*

housing in a single day.⁸⁷ The city's Office of the Inspector General found that of people who attended an AME between November 2020 and May 2022, 224 participants, 94.1 percent, entered stable housing.⁸⁸ Of the participants that entered stable housing, 187 participants, 78.6 percent, remained housed as of October 3, 2022.⁸⁹

A key way to prevent homelessness is ensuring tenants receive adequate legal counsel prior to the entry of an eviction order. Most tenants in Chicago represent themselves in eviction proceedings.⁹⁰ This increases the likelihood that an eviction order will be entered against them by almost 40 percent compared to if a legal aid attorney had represented them.⁹¹ Having an attorney in an eviction case can make the crucial difference between remaining housed and becoming homeless.⁹²

As a response to the COVID-19 pandemic, the Cook County Board of Commissioners partnered with legal aid agencies to launch the Early Resolution

⁸⁷Deborah Witzburg, *Audit of the Department of Family and Support Services Outreach to Encampments of People Experiencing Homelessness*, CITY OF CHICAGO OFF. OF INSPECTOR GEN. 3, 10 (Aug. 23, 2023), <https://tinyurl.com/a2m4hxhc>.

⁸⁸ *Id.* at 3.

⁸⁹ *Id.*

⁹⁰ *Opening the Door on Chicago Evictions, Legal aid attorneys make the difference*, LAWYERS' COMM. FOR BETTER HOUS. 2 (May 2019) <https://tinyurl.com/3489uvu2>.

⁹¹ *Id.*

⁹² *See id.*

Program (ERP).⁹³ Through ERP, all unrepresented tenant-defendants are given the opportunity to consult with a free legal aid attorney. The demographics of tenants referred to ERP mirror the national statistics: 64 percent of tenants referred to the program are Black, despite Black people comprising less than a quarter of the county population. In spring 2023, the City of Chicago launched its Right to Counsel Pilot Project (RTC), which allows legal aid attorneys to provide full representation for defendants in eviction cases after the tenant has been advised through ERP.⁹⁴ These two programs have drastically increased the availability of attorneys for defendants in eviction cases.

While these social programs and services have yielded promising results, the ultimate, permanent solutions are to establish sufficient affordable housing and necessary social services. Until that happens nationwide, allowing state, city, and local governments to punish people experiencing homelessness is a counterproductive approach, creating grave health and safety concerns and exerting a deleterious effect on people experiencing homelessness.

⁹³ *Volunteer to Help Rebuild our Community Through the CCLAHD Early Resolution Program*, CHICAGO BAR FOUND., <https://tinyurl.com/5h4uut3v> (last visited Mar. 25, 2024).

⁹⁴ *The Chicago Department of Housing Announces Right to Counsel Pilot Program*, CITY OF CHICAGO (Apr. 4, 2022), <https://tinyurl.com/39tbtfy5>.

The measure of a society is how it treats its least fortunate and most vulnerable. It is a tangible demonstration of the character and compassion of the citizenry, and in the twenty-first century our country has made significant advances in the care and sheltering of those experiencing homelessness. A reversal of the Ninth Circuit's decision would be a major step backwards—to a society less caring and more medieval.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to affirm the Ninth Circuit's decision below.

Respectfully Submitted,

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