

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 THE WESTERN REGIONAL
ADVOCACY PROJECT AS AMICI CURIAE
IN SUPPORT OF RESPONDENTS**

JUSTIN OLSON
Counsel of Record
BERGMAN OSLUND UDO
LITTLE, PLLC
520 Pike Street, Ste. 1125
Seattle, Washington 98101
(206) 957-9510
justin@bergmanlegal.com

Additional Counsel Listed On Inside Cover

SARA RANKIN
HOMELESS RIGHTS ADVOCACY PROJECT
SEATTLE UNIVERSITY SCHOOL OF LAW
901 12th Avenue
Seattle, Washington 98122
(206) 398-4393
rankins@seattleu.edu

ALEX MATAK
WESTERN REGIONAL ADVOCACY PROJECT
2940 16th Street, Suite 200-2
San Francisco, CA 94103
(415) 621-2533
amatak@wraphome.org

TRISTIA BAUMAN
LAW FOUNDATION OF SILICON VALLEY
4 North Second Street, Suite 1300
San Jose, CA 95113
(408) 280-2445
tristia.bauman@lawfoundation.org

VICTORIA LARETT
HOMELESS ADVOCACY CLINIC
MCGEORGE SCHOOL OF LAW
UNIVERSITY OF THE PACIFIC
3200 Fifth Avenue
Sacramento, CA 95817
(916) 739-7107
tlarett@pacific.edu

RON S. HOCHBAUM
HOMELESS ADVOCACY CLINIC
MCGEORGE SCHOOL OF LAW
UNIVERSITY OF THE PACIFIC
3200 Fifth Avenue
Sacramento, CA 95817
(916) 325-4685
rhochbaum@pacific.edu

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE¹

The Western Regional Advocacy Project (WRAP) is a non-profit organization founded in 2005 by social justice organizations across the West Coast to expose and eliminate the root causes of homelessness and poverty, empower communities to demand protection of civil and human rights, and advocate for restoring federal funding for affordable housing. A coalition of nine member organizations in five states,² WRAP is led by people with experience living unhoused. WRAP pushes for policies that protect those most in need rather than punishing them for their circumstances. The lower court’s determination that the ordinances enacted by the City of Grants Pass (hereafter “the City”) violates the Eighth Amendment’s prohibition against cruel and unusual punishment is just one example of what WRAP members viscerally know: homelessness is a socio-political problem, not an issue of criminal law.

SUMMARY OF ARGUMENT

In enacting its anti-camping ordinance, the City of Grants Pass explicitly intended to make the municipality “uncomfortable enough for [unhoused people]” that they would decide to “move on down the road.”³ Cities across the country pursue this goal—to banish unhoused individuals from communities—through policies that criminalize basic survival

¹ No counsel for a party authored any part of this brief and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. Only the amicus and its attorney have paid for the filing and submission of this brief.

² See Appendix A for a full list of WRAP member organizations.

³ *Johnson v. City of Grants Pass*, 72 F.4th 868, 876 (9th Cir. 2023).

activities. Anti-homeless ordinances like the City's public camping prohibition result in fines, citations, arrests, harassment, and forced displacement for the inescapably human act of taking up space. These ordinances inflict significant physical and emotional trauma, cause people to lose essential belongings, and severely curtail people's ability to achieve economic and housing security.

Homelessness is not a choice. It is a socially-constructed status resulting from policy decisions. Yet rather than eradicating *homelessness*, governments try to eradicate *homeless people*. The inherent violence of criminalizing an involuntary status is at the heart of this case. WRAP urges the Court to consider the severe patterns of violence that underlie the ordinances at issue in Grants Pass. Criminalizing homelessness not only fails to address systemic causes of mass homelessness, it also exacerbates underlying structures of oppression and drains communities of capacity to build toward better futures. Given that Black, Indigenous, Latinx, LGBTQ+, and Disabled populations are overrepresented in homeless communities, the survival of those who have long been systematically oppressed is at stake.

This brief first illustrates how anti-homeless ordinances result in cruel and unusual punishment for an unavoidable human act. Next, it outlines rejected historical laws banishing "undesirable" people from public spaces and explains how the ordinances at issue here are strikingly similar, in purpose and tone, to those shameful laws of years past. The brief then explains how the use of civil penalties and forced displacement of unhoused residents today are clear forms of punishment, with severe collateral con-

sequences that make finding housing, achieving economic stability, and sometimes even just surviving impossible. Finally, this brief articulates the policy choices that precipitated modern homelessness and argues that the Court should follow historical precedent and deem the criminalization of basic survival unconstitutional.

ARGUMENT

I. ANTI-HOMELESS LAWS: SANITIZED VERSIONS OF REJECTED HISTORICAL EFFORTS TO ERASE “UNDESIRABLE” PEOPLE FROM PUBLIC SPACE

A. Anti-Camping Laws, Forced Displacement, and Contemporary Banishment

“Sleeping is a life-sustaining activity – i.e., it must occur at some time in some place ... If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless.”⁴

“You can do the sweeps, you can kick at people, you can arrest people. But they don’t disappear.”⁵

While anti-camping ordinances may seem like banal bureaucratic measures, their goals, means, and impacts are inherently violent. Thousands of local

⁴ Los Angeles Community Action Network (“LACAN”), *Dirty Divide: “Out of Service”* 19 (2017), <https://wraphome.org/wp-content/uploads/2019/04/Out-of-Service-Report-1.pdf>.

⁵ Invisible People, *Criminalization of Homelessness: San Diego’s Failed Response to a Homeless Crisis*, YouTube (June 3, 2023), https://www.youtube.com/watch?v=Uhb_cgwFrFQ.

ordinances in hundreds of cities restrict to varying degrees engaging in necessary, life-sustaining activities, such as sitting, sleeping, and protecting oneself against the elements.⁶ The principal tool cities use to enforce anti-homeless laws are colloquially called “sweeps.”⁷ Sweeps involve removing unhoused individuals from public space and forcibly disbanding homeless communities, typically through citation, fines, arrest, harassment, property seizure, and/or the *threat* of such actions if people do not leave on their own.⁸

A typical sweep goes something like one experienced by WRAP members in Denver: on January 5, 2024 around 10:00 a.m., several police officers arrived at a thirty-person encampment on the corner of Colfax and Mariposa Streets. Tents were on the public right-of-way, not blocking the sidewalk. It was 32 degrees with a windchill of 27; below-freezing temperatures persisted nearly the entire month. Officers told residents they had 72 hours to pack up and leave. Twenty minutes later, however, city workers began throwing tents, backpacks, and other belongings into garbage trucks. Residents asked for time to pack their belongings, but crew members ignored them, trashing personal items: food, essential paperwork, sleeping bags, clothing, work tools, medication, identification,

⁶ National Homelessness Law Center (“NHLC”), *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* 9 (2019), <https://homelesslaw.org/housing-not-handcuffs-2019>.

⁷ *Id.* at 15.

⁸ Western Regional Advocacy Project (“WRAP”), *House Keys Not Sweeps Fact Sheet* (2019), <https://wraphome.org/wp-content/uploads/2020/01/sweeps-fact-sheet1-22.pdf>.

blankets, survival gear, and more. Police instructed residents to “move south” to avoid citation.

Though methods vary, forced displacement is *always* traumatic, causing severe physical and mental health challenges and loss of personal property.⁹ Examples abound of harsh impacts of displacement tied to anti-camping ordinances in WRAP members’ communities. For example, in July 2022, an unhoused Oaklander was tased by police after attempting to save their possessions from confiscation. During the same sweep, city contractors destroyed a wooden shelter while someone *was still inside*. Workers occasionally “knife” tents – cut them open – without first checking if they are occupied. In Modesto, a woman sleeping in a cardboard box was killed when a California Department of Transportation crew bulldozed her encampment.¹⁰ One person explained the cruelty of sweeps: “I lost everything on December 20, 2022. Christmas time ... It was cold and raining. They didn’t even leave me a blanket.” Yet another shared, “The worker ripped tarps and blankets off us, even as we told him there were females changing underneath ... He was saying degrading things to me. One of them said something about pimping me and her out.”¹¹ Another person tried to retrieve their purse containing ID, money, and phone during a sweep, as city workers dragged their tent away. The worker tried to grab the

⁹ WRAP, *supra* 8, at 2.

¹⁰ Hannah Fry, *Woman Killed as Caltrans crew clears homeless encampment in Modesto*, LA Times (Aug. 30, 2018), <https://www.latimes.com/local/lanow/la-me-ln-modesto-death-20180830-story.html>.

¹¹ Stolen Belonging, *Stolen Belonging Episode 3: City as Abuser*, YouTube (Nov. 14, 2022), <https://www.youtube.com/watch?v=z-LHy9mZ30o>.

purse from its owner's hands, swung them around, and slammed them against a trash compactor. Yet, police threatened to arrest the *purse's owner* if they didn't let go.¹²

WRAP members and their neighbors have experienced the unthinkable during sweeps: loved one's cremated remains, trashed; a wheelchair crushed in a trash compactor; life-dependending medicines, discarded; work computers and tools, lost; benefits cards and housing applications, destroyed; a grandmother's antique dishes, the only remaining family memento, broken into shards.¹³ Occasionally cities store possessions taken in sweeps, but people are rarely successful in retrieving them.¹⁴

Compounding physical and emotional trauma, consequences quickly snowball: fines become warrants, arrests, and incarceration; people move to isolated and unsafe places; and people are disqualified from jobs and essential services that stigmatize a "criminal" record. People surviving unhoused live in constant fear of being punished for *merely existing* in a country with some of the most unaffordable housing in the world.

Studies show what WRAP members know through personal experience: the enactment of anti-camping ordinances and their enforcement via sweeps is on the

¹² *Id.*

¹³ Chris Herring, et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 SOC'Y FOR THE STUDY OF SOC. PROBS. 1, 10 (2020).

¹⁴ Marisa Kendall, *Hundreds Seek Payouts in Lawsuit Over Caltrans Homeless Camp Sweeps*, East Bay Community Law Center (Oct. 20, 2020), <https://ebclc.org/news/hundreds-seek-payouts-in-lawsuit-over-caltrans-homeless-camp-sweeps/>.

rise nation-wide. Between 2006 and 2019, there was a 92 percent increase in new laws prohibiting camping *citywide* in a survey of 187 cities.¹⁵ Seventy percent of homeless residents surveyed in San Francisco report being forced to move.¹⁶ A third of those indicated being swept “at least once a month,” while 20 percent reported being forced to move weekly.¹⁷ Members of marginalized groups experience disproportionate policing while homeless. They are cited, searched, and lose property at higher rates than their white counterparts.¹⁸

Some states are joining localities in further entrenching people in homelessness. Tennessee became the first state in the country to deem camping on public property a Class E felony,¹⁹ and the Kentucky House of Legislators just passed a bill that expressly authorizes use of deadly force against individuals “unlawfully camping.”²⁰ It is a legal fiction to deem such laws “generally applicable” when they are written to *deliberately* target a class of people carrying the status of unhoused.

¹⁵ NHLC, *supra* note 6, at 13. While a majority of cities have laws restricting camping in public spaces, only 37% of cities have one or more laws prohibiting camping *citywide*. *Id.* at 38.

¹⁶ Herring et al, *supra* 13, at 7.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Crystal Harris, *Tennessee’s Approach to the Rise in Homelessness*, LINCOLN MEM’L U.L. REV. (July 31, 2022) (discussing Tennessee House Bill 0978), <https://mulawreview.scholasticahq.com/post/1602-tennessee-s-approach-to-the-rise-in-homelessness>.

²⁰ H. B. 5, 2024 Leg., Reg. Sess. (Ky 2024).

B. History of Banishment Through Criminalization

The banishment of people deemed a threat to property, profits, and quality of life for white, upper classes began with the country's founding. Today's use of state violence to erase "undesirable" people is deeply rooted in this past.

i. Early vagrancy laws

Laws banning "vagrancy" were first codified in England in the fourteenth century.²¹ Colonizers brought these anti-poor sentiments across the Atlantic, enacting "warning-out" laws that enabled towns to force unemployed individuals out of the area.²² Warning-out laws ostensibly protected towns from "economic instability" brought on by newcomers lacking gainful employment and provided a legal mechanism for authorities to control public space.²³

ii. Blacks Codes, Jim Crow, and Sundown Towns

Following the abolition of slavery, vagrancy laws were repurposed to control and *re-enslave* Black people. Black Codes, passed in nearly every Southern state, established brutal punishments for "vagrancy"—unemployment.²⁴ Tens of thousands of Black people were arrested and fined, and failure to pay fines

²¹ Javier Ortiz, et al., *The Wrong Side of History: A Comparison of Modern Historical Criminalization Laws*, Homeless Rights Advocacy Project 2 (May 2015), <https://digitalcommons.law.seattleu.edu/hrap/7>.

²² *Id.* at 3.

²³ *Id.*

²⁴ Michelle Alexander, *The New Jim Crow* (2010).

resulted in forced labor.²⁵ Southern states then banished Black individuals from public space using Jim Crow laws.²⁶ Simultaneously, cities across the country adopted “Sundown Town” policies, prohibiting the presence of Black, Chinese, and Latinx people in public after dark.²⁷ In 1844, Oregon outright banned Black people from the state.²⁸ In fact, the City of Grants Pass itself was a Sundown Town, and leaders *explicitly targeted the act of sleeping* while terrorizing Black, Brown, and Indigenous people in editorials:

“The attitude of the people of this peaceful, law abiding community toward the encroachments of the black, brown or red races of the land, or the world for that matter is N*** WE DON’T WANT YOU HERE - AND WE WON’T HAVE YOU HERE - YOU HAD BETTER ROLE UP YOUR BED AND RIDE - THIS IS TO BE A WHITE MAN’S COUNTRY, YESTERDAY, TODAY, AND FOREVER.”²⁹

²⁵ *Id.*

²⁶ *Id.*

²⁷ Ortiz et al., *supra* 21, at 11 (for example, in Rogers, Arkansas, a city sign read “N—, You Better Not Let the Sun Set on You in Rogers.” In Colorado, signs said “No Mexicans After Night.” In Connecticut, “Whites Only Within City Limits After Dark.”)

²⁸ Tiffany Camhi, *A racist history shows why Oregon is still so white*, OPB (June 9, 2020), <https://www.opb.org/news/article/oregon-white-history-racist-foundations-black-exclusion-laws/>.

²⁹ *Sunrise Project*, Or. Remembrance Project, <https://oregonremembrance.org/sunrise-project/> (last visited Mar. 21, 2024).

iii. Ugly Laws

Disabled Americans have been subject to similar forms of status-based punishment. “Ugly Laws” of the 1800s banned anyone “diseased, maimed, mutilated or in any way deformed” from public spaces,³⁰ punishable by fine and imprisonment.³¹ Some local governments paid people with disabilities to move to another city—a tactic this Court will recognize in the present case. *Johnson v. City of Grants Pass*, 72 F.4th 868, 876 (9th Cir. 2023) (“The City’s Public Safety Director noted police had bought [unhoused] persons bus tickets out of town . . .”).

iv. Anti-Okie Laws

During the Great Depression and Dust Bowl, hundreds of thousands of displaced farmers referred to derogatorily as “Okies” migrated to western states, constructing “shantytowns.”³² Local governments passed “Anti-Okie” laws to punish the presence of displaced farmers. For example, a Yuba County ordinance said “[e]very person [or entity] that brings or assists in bringing into the State any indigent person who is not a resident of the State . . . is guilty of a misdemeanor.”³³

Thanks to the Civil Rights Act of 1964, the Americans with Disabilities Act, *Edwards v. California*, 314 U.S. 160 (1941), and other cases, the above laws have been rescinded. Yet banishment of Black, Disabled, poor, and other marginalized people

³⁰ Ortiz et al., *supra* 21, at 9-10; Susan M. Schweik, *The Ugly Laws: Disability in Public*, NYU Press (2009).

³¹ Ortiz et al., *supra* 21, at 10; Schweik, *supra* 30, at 25.

³² Ortiz et al., *supra* 21, at 4-5.

³³ *Id.*

from our communities lives on in contemporary anti-homeless laws and enforcement practices.

C. Continuing the Historical Legacy of Banishing Marginalized Groups

Due to ongoing legacies of historical systemic oppression compounded by present-day structural violence, homelessness disproportionately impacts people of color, LGBTQ+ communities, Disabled people, and other marginalized groups. Studies verify that criminalization “not only reproduces homelessness, but also widens racial, gender, and health inequalities among homeless and precariously housed people.”³⁴ This is particularly true where individuals hold multiple marginalized identities.³⁵

In considering the remarkably egregious laws at issue in Grants Pass, the Court must reconcile with the fact that contemporary anti-homeless ordinances have the same impacts as their historic predecessors: disappearing people deemed “undesirable” by those in political power.

i. Race and homelessness

“Race is the most established demographic illustrating the discriminatory impact of homelessness on marginalized groups.”³⁶ While Black and Latinx people

³⁴ Herring et al., *supra* 13, at 2.

³⁵ Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability, Status, Race/Ethnicity, and Gender*, 107 AM. J. PUB. HEALTH 1977 (2017).

³⁶ Kaya Lurie, et al., *Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups*, Homeless Rights Advocacy Project 2 (2015), <https://digitalcommons.law.seattleu.edu/hrap/8>.

each represent roughly 12 percent of the general national population, they make up around 42 and 20 percent of the national homeless population respectively.³⁷ In major urban centers, the statistics are even more disparate, with Black and Latinx people comprising up to 88 percent of local unhoused populations in some cities.³⁸ These racial disparities are the direct result of compounding policy choices in housing, healthcare, legal systems, education, employment, and elsewhere.³⁹ Considering housing policy alone, it is no surprise that Black communities end up disproportionately unhoused. Legacies of redlining and segregated zoning, discriminatory lending, and racist federal housing policies have made homeownership debilitatingly challenging for Black communities.⁴⁰ For Black and Brown renters, the situation is equally bleak: they face far higher rates of eviction than their white neighbors, and are much more likely to be subject to serial eviction cases.⁴¹ This is partly a product of racial bias and a severe racial wealth gap that leaves Black and Latinx renters more “rent burdened.”⁴²

Not only are non-white communities dramatically over-represented in unhoused populations, they are also disproportionately targeted and punished by the

³⁷ *Id.* at 2-3.

³⁸ Coalition for the Homeless, *State of Homelessness 2020* 11 (2020), <https://nyf.issuelab.org/resources/37960/37960.pdf>.

³⁹ Sara K. Rankin, *Civilly Criminalizing Homelessness*, 56 Harv. C.R.-C.L. L. Rev. 367 (2021).

⁴⁰ *Id.*; see also Keeyanga-Yamahtta Taylor, *Race for Profit* (2021).

⁴¹ Peter Hepburn, et al., *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 649–662 (2020).

⁴² *Id.* at 658–659.

criminal justice system. Black and Latinx people are 9.7 and 5.8 times more likely, respectively, to be given citations for conduct like sleeping or sitting in public than white people in California.⁴³ Black people are *twelve times* more likely to experience police misconduct than white people⁴⁴ and are significantly more likely to have routine interactions with police result in death.⁴⁵

ii. Disability and homelessness

Contemporary anti-homeless laws also continue the legacy of historical predecessors in criminalizing the act of being Disabled in public. Disabled individuals are both more likely to be unhoused and more likely to end up punished under anti-homeless laws. This is both because ableism disrupts gainful employment and inhibits stable housing, and because homelessness itself *is a disabling experience*.

The federal government’s own definition of “chronic homelessness” reflects the interrelationship between disability and homelessness. An individual is “chronically homeless” if they (1) *have a disability*, and (2) go unhoused for a certain amount of time or with a certain frequency.⁴⁶ Point-in-Time counts estimate that

⁴³ San Francisco Lawyers Committee on Civil Rights (“LCCR”), *Cited for Being in Plain Sight: How California Polices Being Black, Brown, and Unhoused in Public* 5 (2020), https://lccrsf.org/wp-content/uploads/LCCR_CA_Infraction_report_4WEB-1.pdf.

⁴⁴ Leah Wang, *New data: Police use of force rising for Black, female, and older people; racial bias persists*, Prison Policy Initiative (Dec. 22, 2022), https://www.prisonpolicy.org/blog/2022/12/22/policing_survey/.

⁴⁵ LCCR, *supra* 43, at 36.

⁴⁶ U.S. Dep’t of Housing & Urban Dev., *The 2023 Annual Homeless Assessment Report (AHAR) to Congress (2023)*,

around one in three unhoused people meet this definition.⁴⁷ Beyond the “chronically homeless,” studies reveal that 67 percent of unhoused populations have one or more disabilities.⁴⁸

So many Disabled people end up homeless because they face significantly higher rates of housing discrimination, unemployment, and poverty than non-Disabled individuals.⁴⁹ Other contributors include barriers to healthcare, education, and transportation.⁵⁰ Moreover, many people develop disabilities *after* becoming unhoused. Homelessness creates disabilities due to living in a highly stressful environment.⁵¹ PTSD, depression, anxiety, and other mental health conditions are all common impacts of homelessness, and physical disabilities result from injuries or illnesses sustained while living unhoused.⁵²

iii. Gender and homelessness

Women similarly are overrepresented in unhoused populations and are exceedingly likely to experience

<https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

⁴⁷ *Id.* at 26.

⁴⁸ Coalition for the Homeless, *supra* 38, at 1.

⁴⁹ Kayla Robbins, *Homelessness and Disabilities Are Intertwined in Ways Most People Don't Even Realize*, Invisible People (November 9, 2023), <https://invisiblepeople.tv/the-vicious-cycle-of-disability-and-homelessness>; Colorado Coalition for the Homeless (“CCH”), *Disability and Homelessness Issue Brief 2022* (2022), https://www.coloradocoalition.org/sites/default/files/2022-10/Disability_Issue_Brief_Digital_FINAL_2022.pdf.

⁵⁰ CCH, *supra* 49.

⁵¹ Robbins, *supra* 49.

⁵² *Id.*

violence while homeless. The vast majority of unhoused families are headed by single women.⁵³ Relatedly, a quarter of adults reported that domestic violence caused their homelessness, and most homeless women have experienced domestic or sexual violence at some point in their lives.⁵⁴ From 2003 through 2004, 76 percent of women and 88 percent of children living in shelters were there to escape domestic violence.⁵⁵ In a survey of over 800 unhoused women, 23 percent had experienced sexual abuse or assault in the previous 30 days, and over 11 percent had experienced sex trafficking while homeless; more than three quarters had experienced sexual abuse in their lifetimes.⁵⁶ And mundane challenges like lack of bathroom access disproportionately affect women, resulting in disproportionate rates of urinary tract infections and toxic shock syndrome, for example.⁵⁷

iv. Sexuality and homelessness

Homelessness also disproportionately affects LGBTQ+ people: 17 percent of queer adults have experienced homelessness, more than double the rate for the

⁵³ Lurie et al., *supra* 36, at 12.

⁵⁴ NLCHP, *There's No Place Like Home: State Laws that Protect Housing Rights for Survivors of Domestic and Sexual Violence (2012)*, https://homelesslaw.org/wp-content/uploads/2018/10/Theres_No_Place_Like_Home.pdf.

⁵⁵ Lurie, *supra* 36, at 13.

⁵⁶ Alison Green, et al., *Trauma Experience Among Women WHO Have Substance Use Disorders and are Homeless or Near Homeless* (July 18, 2023), <https://link.springer.com/article/10.1007/s10597-023-01162-6>.

⁵⁷ LACAN, *supra* 4.

general population.⁵⁸ This number is even higher—nearly one-third (30 percent)—for transgender individuals.⁵⁹ Among youth the numbers are higher still: while 5-10 percent of the national youth population identifies as LGBTQ+, 40 percent of unhoused youth are queer or transgender.⁶⁰ Unhoused queer and trans people experience assault, discrimination, and criminalization with alarming frequency.⁶¹

⁵⁸ Bianca D.M. Wilson, et al., *Homelessness Among LGBTQ Adults in the U.S.* 4 (2020), <https://escholarship.org/content/qt9kp233rh/qt9kp233rh.pdf>.

⁵⁹ Sandy E. James, et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey* 21 (Nat'l Center for Transgender Equality 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf.

⁶⁰ Matthew H. Morton, et al., *Prevalence and correlates of youth homelessness in the United States.* *Journal of Adolescent Health*, 62 J. OF ADOLESCENT HEALTH 14 (2018), [https://www.jahonline.org/article/S1054-139X\(17\)30503-7/fulltext](https://www.jahonline.org/article/S1054-139X(17)30503-7/fulltext).

⁶¹ Dilara Yarbrough, *The carceral production of transgender poverty: How racialized gender policing deprives transgender women of housing and safety*, 25 PUNISHMENT & SOCIETY 141 (2021), <https://journals.sagepub.com/doi/full/10.1177/14624745211017818>; Lauren Abern, et al., *Sexual Assault and Homelessness in the Transgender Population: Are We Doing Enough?*, 89 OBSTETRICS & GYNECOLOGY 139 (2022), https://journals.lww.com/greenjournal/abstract/2022/05001/sexual_assault_and_homelessness_in_the_transgender.306.aspx; Ariana Abouafia, *The New John Lawrence: An Analysis of the Criminalization of LGBTQ Homelessness*, 19 CONN. PUB. INT. L.J. 199, 209-14 (2019), <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2020/03/CPILJ-19.1-The-New-John-Lawrence-An-Analysis-of-the-Criminalization-of-LGBTQ-Homelessness-by-Ariana-H.-Abouafia.pdf>.

D. Overt Policies of Banishment Are “Sanitized” Versions of Historical Precedents

Given that modern unhoused populations are overwhelmingly made up of the same groups targeted by the discriminatory—and widely rebuked—laws of the past, the City’s extreme anti-homeless laws achieve the same impacts as historic predecessors even as it attempts to evade constitutional scrutiny. While the details about *who* is disproportionately included in unhoused communities is strategically left out of modern discourse, the *goal* of banishing these groups from public spaces, rather than addressing the structural problems *leading* to mass housing and economic insecurity, is clear.⁶²

Local governments often use forced displacement “to deconcentrate and make invisible homeless populations.”⁶³ From mass clearance of encampments before the Super Bowl⁶⁴ and the Asia-Pacific Economic Cooperation conference⁶⁵ to especially aggressive policing of unhoused people within thousands of blocks

⁶² Ananya Roy, “Grammars of Dispossession: Racial Banishment in the American Metropolis,” *Grammars of the Urban Underground* (Ash Amin and Michele Lancione eds., 2022).

⁶³ Chris Herring, *The New Logics of Homeless Seclusion: Homeless Encampments in America’s West Coast Cities*, CITY & COMMUNITY, 13 AM. SOCIO. ASS’N. 285, 291 (2014).

⁶⁴ Julia Carie Wong, *Homeless ordered to vacate camp they were pressured into before Super Bowl*, The Guardian (Feb. 25, 2016), <https://www.theguardian.com/us-news/2016/feb/25/san-francisco-homeless-encampment-relocation-super-bowl>.

⁶⁵ Sydney Johnson, *San Francisco Is Clearing Homeless Encampments Ahead of APEC*, KQED (Nov. 10, 2023), <https://www.kqed.org/news/11966960/san-francisco-is-clearing-homeless-encampments-ahead-of-apec>.

encompassed by “Business Improvement Districts” across the country,⁶⁶ forced relocation arises from economic and political concerns, not criminal concerns. WRAP members explained this occurs even in small cities like Missoula: “Police [say] ... there will be landscape work ... in the area later. When unhoused community members comply [and move], they often return to an area that has been fenced off,” indefinitely preventing return. Any decision that removes the meager protections the Ninth Circuit has afforded under the Eighth Amendment inherently approves of overt repression of vulnerable, historically marginalized people.

II. FORCED DISPLACEMENT CONSTITUTES PUNISHMENT

“In international human rights law, providing shelter to people who are homeless is the absolute minimum standard for any country, regardless of resources. There’s a cruelty here [in the US] that I don’t think I’ve seen [elsewhere].”⁶⁷

⁶⁶ Tyler Walicek, *Business Improvement Districts Allow for Aggressive Policing of the Unhoused*, teenVogue (Apr. 29, 2021), <https://www.teenvogue.com/story/business-improvement-district-s-policing>.

⁶⁷ Adam Brinklow, *UN expert decries homeless conditions in Bay Area as ‘cruel,’ ‘unacceptable,’* SF Curbed (Jan. 22, 2018), <https://sf.curbed.com/2018/1/22/16920118/homeless-oakland-san-francisco-united-nations#:~:text=A%20reporter%20for%20the%20UK's,country%2C%20regardless%20of%20resources> (remarks by Leilani Farha, United Nations Special Rapporteur on Housing and Criminalization, following a 2018 visit to Northern California).

A. Civil and Criminal Penalties are Both Punishment Under the Eighth Amendment

“The Cruel and Unusual Punishments Clause is self-evidently concerned with punishment.” *Austin v. United States*, 509 U.S. 602, 609 (1993). Regardless of whether anti-homeless ordinances use criminal or civil penalties, *enforcement* of ordinances with the threat of citation or arrest like those at issue in this case results in punishment. Repeated police contact leads to pervasive harassment, interrogation, disruption, forced relocation, trauma, fear, and ultimately banishment—none of which generates an official record or affords a legal remedy.⁶⁸ While direct testimonies are abundant, cities rarely, if ever, document the countless occasions whereby unhoused residents are jostled from their sleep by police and told they need to move or risk fines or arrest.⁶⁹ As a result, the damage unhoused residents face from civil enforcement is “harder to trace, harder to prove, and harder to remedy.”⁷⁰

Civil sanctions and enforcement also evade heightened legal protections or judicial scrutiny.⁷¹ Individuals cited under a civil ordinance rarely have the right to counsel or to a jury trial. *Turner v. Rogers*, 564 U.S. 431, 443 (2011); *Palmer v. Valdez*, 560 F.3d 965, 970

⁶⁸ Rankin, *supra* 39, at 370.

⁶⁹ *Id.*

⁷⁰ *Id.* at 371.

⁷¹ *Id.* at 375–76; Justin Olson & Scott MacDonald, *Washington's War on the Visibly Poor: A Survey of Criminalizing Ordinances & Their Enforcement*, Homeless Rights Advocacy Project 13 (May 2015), <https://digitalcommons.law.seattleu.edu/hrap/9>.

(9th Cir. 2009). Many anti-homeless laws touted as merely civil are written with direct pathways to criminal punishments, for example where civil infractions are upgraded to misdemeanors for repeated offenses,⁷² or where a law vests complete discretion in a responding officer to charge an offense as either civil or criminal.⁷³ When unhoused individuals inevitably fail to pay their civil citations, bench warrants are issued leading to arrest and incarceration.⁷⁴

Here, the unambiguous evidentiary record shows the City sought to sidestep the principles articulated in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), *writ of certiorari denied*, 140 S. Ct. 674 (2019), and excessively penalize its homeless residents in the hope they would flee the jurisdiction entirely. The district court noted that Grants Pass had issued 615 citations and 541 incident reports under its anti-homeless civil ordinances. *Blake v. City of Grants Pass*, No. 1:18-CV-01823-CL, 2020 WL 4209227, at *5 (D. Or. July 22, 2020). The court also observed that fines were “grossly disproportionate to the gravity of the offense” and that homeless residents were “being punished for engaging in the unavoidable, biological, life-sustaining acts of sleeping and resting while also trying to stay warm and dry.” *Id.* at *11. Such state action must undoubtedly satisfy any definition of “punishment” the Court should choose to apply.

⁷² Seattle Municipal Code 12A.10.100.

⁷³ Burien Municipal Code 1.15.080.

⁷⁴ Rankin, *supra* 39, at 370.

B. Civil Penalties Inhibit Access to Public Housing, Services, and Employment

Strained distinctions between civil and criminal punishments are especially troubling since civil penalties also perpetuate and exacerbate homelessness. No matter how small a fine might seem to some, most unhoused people can pay no amount.⁷⁵ Moreover, nonpayment unleashes myriad other brutal consequences, ranging from civil contempt to wage garnishment, lien impositions, driver's license suspensions, towing and impounding of vehicle homes, decreased access to affordable housing options, and incarceration.⁷⁶ WRAP members have even observed a trend at the county level to increase historically small offenses to felonies. Recently, a WRAP member's neighbor who lost many personal belongings including their tent due to a fire was charged with negligent arson during freezing conditions. Acts of survival are being interpreted as crimes.

Alternative programs that allow individuals to complete community service in lieu of paying a fine are no better.⁷⁷ Community service programs fail to make disability accommodations, charge fees for participation, and have limited hours.⁷⁸ Participants describe these programs as "demeaning" and "exploitative."⁷⁹

Where civil sanctions mutate into criminal penalties, federal law creates more barriers to accessing

⁷⁵ See Herring et al., *supra* 13, at 10; LCCR, *supra* 43, at 7.

⁷⁶ See Rankin, *supra* 39, at 378.

⁷⁷ Herring et al., *supra* 13, at 12.

⁷⁸ *Id.*

⁷⁹ *Id.*

affordable housing. Public housing authorities and owners of federally-subsidized housing enjoy broad discretion in screening out applications with criminal records.⁸⁰ Federal laws vest housing providers with the authority to access tenants' criminal records⁸¹ and exclude those with records,⁸² and set no limits on how far back housing providers can look into these records.⁸³ Until 2015, a criminal arrest alone could trigger a denial even if such arrest did not lead to conviction.⁸⁴ The revolving door of homelessness and incarceration is well understood by the government.⁸⁵ Yet, those who need affordable housing the most may be denied it due to a criminal record acquired *merely because their housing status is criminalized*. Unhoused individuals are left with no options: they are repeatedly harassed and cited for behavior they cannot help while being denied access to housing and stability which would prevent that behavior.

As those with lived experiences can attest, homeless criminalization and forced displacement through sweeps are forms of punishment that exacerbate, rather than relieve, cycles of poverty and homelessness.

⁸⁰ Kim Johnson, *Housing Access for People with Criminal Records*, National Low Income Housing Coalition 28 (2020), https://nlihc.org/sites/default/files/AG-2020/6-07_Housing-Access-for-People-with-Criminal-Records.pdf.

⁸¹ *Id.* at 28–29 (citing Pub. L. No. 104–120, 110 Stat. 834, 836 (1996)).

⁸² *Id.* (citing Pub. L. No. 105–276, 112 Stat. 2461, 2518 (1998)).

⁸³ *Id.* at 29–30.

⁸⁴ *Id.* at 30.

⁸⁵ *Id.* at 32.

III. BANISHMENT IS CRUEL

Anti-camping and anti-sleeping ordinances punish unhoused people for unavoidable consequences of being human: sleeping, sheltering from the elements, and *existing*. They are not compassionate, nor do they promote health and safety or reduce homelessness. They are cruel.

A. The Myth of “Service Resistance”

*“I will move in a heartbeat ... if you say to me
‘I have a place for you to go.’”*⁸⁶

Governments and criminalization proponents often claim that unhoused people are resistant to accepting services, suggesting that people *choose* to live on sidewalks instead of accessing support.⁸⁷ But even setting aside the shortage of shelter space (and especially affordable housing placements), unhoused people are unable to access shelters for myriad reasons.

People must spend many hours waiting in line to access shelters. Working people are unable to meet strict curfew requirements. People with disabilities are often separated from their caregivers. Most shelters are restricted to either single adult men and women, automatically excluding families, youth,

⁸⁶ WRAP, *House Keys Not Sweeps*, YouTube (Mar. 31, 2020), <https://www.youtube.com/watch?v=ucOhaz6oadg>.

⁸⁷ Christina Wusinich, et al., *“If You’re Gonna Help Me, Help Me”*: *Barriers to Housing Among Unsheltered Homeless Adults* (2019), https://hpri.usc.edu/homeless_research/if-youre-gonna-help-me-help-me-barriers-to-housing-among-unsheltered-homeless-adults; Suzanne Skinner & Sara Rankin, *Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter*, Homeless Rights Advocacy Project 21 (2016), <https://digitalcommons.law.seattleu.edu/hrap/6>.

couples, and transgender people from the vast majority of shelters.⁸⁸ If they are not outright turned away, transgender people routinely experience harassment and violence in shelters.⁸⁹ Many shelters are not wheelchair-accessible.⁹⁰ They regularly refuse to admit people with mental illnesses or substance use disorders.⁹¹ Most do not accept pets, despite their emotional significance.⁹² As one unhoused Seattle resident explained, “[My pet’s] the reason why I keep going, because I made a commitment to take care of her when I adopted her ... She is the only source of daily, steady affection and companionship that I have.”⁹³ Consequently, encampments would not disappear if more indoor beds were simply made available.⁹⁴ Rather, encampments are the only choice *given the options*.⁹⁵

B. Forced Displacement Is Not Compassionate

“You feel like you gotta sneak and creep around. You can’t rest when you wanna rest. You can’t get all the rest that you [need] because you always gotta wake up.”

“Where am I gonna get the money [to replace] my medication?”

⁸⁸ Skinner, *supra* 87, at 21.

⁸⁹ *Id.* at 17, 28.

⁹⁰ Wusinich, *supra* 87, at 4.

⁹¹ Skinner, *supra* 87, at 21

⁹² Wusinich, *supra* 87, at 4, 5.

⁹³ Skinner, *supra* 87, at 33.

⁹⁴ Herring et al., *supra* 13, at 306.

⁹⁵ *Id.*

*“No car, no phone, no way to move your stuff.
Where do we go?”⁹⁶*

*“We’re homeless humans. We’re not something
to be swept under a rug, and we’re never gonna
disappear.”⁹⁷*

Following *Martin* and the Ninth Circuit’s declaration of criminalization’s cruelty, cities have sought to counter with rhetoric of “compassionate” encampment sweeps.⁹⁸ The phrase is an absolute contradiction: sweeps are inherently violent and result in physical and psychological trauma and banishment.

Medical research and the lived experiences of WRAP members consistently demonstrate that frequent police contact and forced displacement lead to trauma, anxiety, property loss, disempowerment, danger, and restricted pathways out of homelessness.⁹⁹ One resident described it as “constant pestering that keeps you from ever feeling relaxed or belonging just about anywhere.”¹⁰⁰ That sentiment is confirmed by a WRAP organizer who spoke with an unhoused neighbor who was swept and cited twice in one day:

⁹⁶ WRAP (Youtube), *supra* 86.

⁹⁷ Invisible People, *supra* 5.

⁹⁸ Press Release, Senate Minority Leader Brian W. Jones, Senate Minority Leader Jones is Fighting to Compassionately Clear Encampments (Mar. 26, 2024), <https://sr40.senate.ca.gov/senate-minority-leader-jones-fighting-compassionately-clear-encampments>.

⁹⁹ LCCR, *supra* 43, at 36; Amanda Geller, PhD, et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. OF PUB. HEALTH 12, 3-6 (2014).

¹⁰⁰ Herring et al., *supra* 13, at 309.

“[T]he cops woke her up and took her tent ... and gave her a misdemeanor. In the afternoon, she was under the freeway. She was exhausted and got a tarp and tied it to the fence and [was sleeping] under there—and got a second misdemeanor for sleeping. Both of them were for sleeping!”

Even where contact with police does not result in formal sanctions, it may carry “serious adverse consequences.”¹⁰¹ In San Francisco, homeless residents report psychic consequences, including feeling like “nuisances,” “burdens,” “trash,” “the scourge,” “the plague,” “dirt,” “a black mold you can’t get rid of,” “pests,” and “like we’re nothing, zero.”¹⁰² One WRAP member in Portland states, “A sweeps notice is judge, jury, and executioner.”

In other words, the mere posting of a sweep notice causes harm for individuals who know such notice signals imminent harassment, loss of possessions, and risk of citation. Some cities deploy near *constant* sweep notices, permanently banishing people from entire neighborhoods¹⁰³ and having a “cumulative effect of multiple exclusion zones.”¹⁰⁴ “They play with us,” notes another WRAP member, in Los Angeles. “I pack up a day in advance [of the posted sweep date] and they don’t come. They give us misinformation and get a kick out of seeing us scramble.” Even when given a week’s notice and the chance to retrieve possessions seized during sweeps, people still feel the trauma of displacement after displacement. Either the notion of “compassion”

¹⁰¹ Geller et al., *supra* 99, at 6.

¹⁰² Herring et al., *supra* 13, at 10.

¹⁰³ *Id.*

¹⁰⁴ Katherine Beckett & Steve Herbet, *Banished* 12 (2011).

must encompass tremendous trauma, harm, instability, and loss, or sweeps are not compassionate whatsoever.

C. Forced Displacement Causes Health Problems and Decreases Safety

“In order to become unhoused, most of us have already lost our home or safe spaces, and then [the] city comes and takes away what little you have built – again and again. This only compounds that harm. It makes it that much harder to pick up and start over. Some of my friends have been through these evictions enough times that their spirit has been broken and they don’t even feel like [they] should try because [they] get knocked down regardless of what they do.”

Advocates for homeless criminalization frequently say anti-homeless laws are necessary for public health and safety. But health and safety for whom? Study after study confirms that sweeps harm the health and safety of unhoused people.¹⁰⁵ Stable housing is “a key ‘social determinant of health’ that directly impacts health outcomes.”¹⁰⁶ Homelessness both creates new health problems and greatly exacerbates existing ones.¹⁰⁷ Unhoused people experience substantially

¹⁰⁵ Erin Goodling, *Intersecting hazards, intersectional identities: A baseline Critical Environmental Justice analysis of US homelessness*, 3 ENVIRON. & PLANNING E: NATURE AND SPACE 833 (2020), <https://journals.sagepub.com/doi/full/10.1177/2514848619892433>.

¹⁰⁶ Nat’l Health Care for the Homeless Council, *Homelessness & Health: What’s the Connection?* 2 (2019), <https://nhhc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>.

¹⁰⁷ *Id.*

higher rates of illness, including diabetes, hypertension, HIV, and depression,¹⁰⁸ and die, on average, nearly 30 years younger than the average adult¹⁰⁹ as a result of sleep loss, stress, displacement, and property loss.¹¹⁰ One person explains the effects of stress compounded by lack of restroom access: “I never know when my irritable bowel syndrome is going to act up. I have to take Imodium AD every day because I don’t want to have an episode. And that’s not good for the system.” Another says, “I’m 60 plus years old and I can’t keep doing this. We lose quite a few years of life being out here.”

The impacts of criminalization on long-term health outcomes are especially acute. When faced with a threat, the body triggers processes necessary for survival, including elevated heart and respiratory rates.¹¹¹ Persistent threats result in severe wear and tear on the body,¹¹² contributing to diabetes, stroke, ulcers, cognitive impairment, autoimmune disorders, accelerated aging, and death.¹¹³ One WRAP member

¹⁰⁸ *Id.*

¹⁰⁹ U.S. Interagency Council on Homelessness (“USICH”), *Data Trends: History and Homelessness* (2020), <https://www.usich.gov/guidance-reports-data/data-trends#:~:text=In%20effect%2C%20more%20than%20half,is%20historical%20and%20ongoing%20racism>.

¹¹⁰ WRAP, *supra* 8; Margot Kushel, *Involuntary Displacements—Making a Bad Situation Worse*, 329 JAMA 1455 (2023), <https://jamanetwork.com/journals/jama/article-abstract/2803840>.

¹¹¹ Sirry Alang, et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 663 (May 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5388955/>.

¹¹² *Id.*

¹¹³ *Id.*

explains, “We have witnessed people have seizures on multiple occasions and mental health crises as a direct result of the stress of sweeps.”

Police contact and forced relocation exacerbates poor health outcomes for members of marginalized groups who already face a myriad of health stressors throughout their lifetimes. Black people in particular are overrepresented among the unhoused population and are significantly more likely to experience police brutality and its concomitant adverse health outcomes.¹¹⁴ Additionally, one study found tremendous correlations between sweeps and death for those with substance abuse disorders, reporting a 71-94 percent increase in overdose deaths for people who face continual displacement.¹¹⁵ Risks are pronounced for people with disabilities, who have a “higher cumulative probability of arrest” than people without disabilities.¹¹⁶ This risk is compounded for Disabled people who are Black and/or transgender,¹¹⁷ and the likelihood of death is much greater for people with untreated mental illness.¹¹⁸

The threat and process of displacement itself is acutely dangerous. One WRAP member in Oakland explains, “There are many occasions where residents are actively sick or injured and are afraid to seek medical care during a sweep because of the reality that

¹¹⁴ *Id.* at 662–65.

¹¹⁵ Joshua A. Barocas, et al., *Population-Level Health Effects of Involuntary Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities*, 329 *JAMA* 1478 (2023), <https://jamanetwork.com/journals/jama/fullarticle/2803839>.

¹¹⁶ McCauley, *supra* 35.

¹¹⁷ *Id.*

¹¹⁸ LCCR, *supra* 43, at 37.

they will lose all of their belongings [if they leave].” An east coast resident interviewed by WRAP members remembers,

“A guy [during a sweep] was having a mental health crisis ... He was approached by a number of police officers. He asked to be taken to the hospital. Instead, they tied him up using a device called a rip-hobble—commonly known as hog tying someone. You tie the person’s arms behind their back and tie their legs to their arms. It’s known that this can cause someone to choke to death. ... But that’s what they did. And he died because they hogtied him.”¹¹⁹

Forced displacement further endangers people by driving them to isolated, dangerous spaces that are far from services and support networks.¹²⁰ For example, sweeps disperse communities that help keep women safe: “There was a half a block street camp of women tapped into electricity, had pets, watched out for each other ... [The mayor] told them they would all have to leave ... They come and take everyone’s stuff and destroy communities.”¹²¹ Another woman reported that a sweep forced her to choose between “the threat of contact with police in a well-lit and more public location where she feels safe, and the threat of contact with ‘strange men’ in other locations where police are

¹¹⁹ Goodling, *supra*, 105.

¹²⁰ Joey C. Chiang, et al., *Health risk associated with residential relocation among people who inject drugs in Los Angeles and San Francisco, CA: a cross sectional study*, 22 BMC PUBLIC HEALTH 823, 828 (2022), <https://doi.org/10.1186/s12889-022-13227-4>; Goodling, *supra* 105.

¹²¹ Goodling, *supra* 105.

less likely to find and wake her.”¹²² In another example, sweeps pushed a California resident to live twenty feet from railway tracks upon which freight trains passed every hour, every day, around the clock.¹²³ The resident recounted several incidents of people being injured or killed by the moving trains.¹²⁴ Yet, the resident found the campsite preferable to less (seemingly) hazardous areas “[b]ecause [the city] can’t come over here and give us a paper and tell us to move.”¹²⁵ A survey of over 50 unhoused community members and supporters reveals the frequency with which people leave areas following a sweep, only to relocate to places prone to wildfire, floods, landslides, noise pollution, soil toxins, and other hazards.¹²⁶ One person in Portland explains, “People would live inside a nuclear reactor to avoid being swept.”¹²⁷

Thus, it should come as no surprise that the American Medical Association concludes that “under no model were the results of displacement beneficial or even neutral to health and safety.”¹²⁸ Policies of criminalization, forced displacement, and banishment are not merely immoral and ineffective; they kill.

¹²² Herring et al., *supra* 13, at 10.

¹²³ Goodling, *supra* 105.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Dirk Vanderhart, *Portland Might Have Found a Site for Its Next Homeless Camp*, *Portland Mercury* (Jan. 8, 2016), <https://www.portlandmercury.com/news/2016/06/08/18194976/portland-might-have-found-a-site-for-its-next-homeless-camp>.

¹²⁸ Kushel, *supra* 110, at 1455.

IV. REAL SOLUTIONS: HOUSE KEYS, NOT HANDCUFFS

“Homelessness is not a result of individual behavior or pathologies. It is part and parcel - the result of - systemic inadequacies and injustices that pervade every aspect of our economic and political system.”¹²⁹

Like any complex problem, to find the solution it is critical to understand root causes. Homelessness is not rooted in individuals’ attributes; it is a societal condition based on access to affordable housing. It will *never* be solved through the criminal justice system. Only policy choices that enable the most marginalized to access stable housing, healthcare, employment, education, and other supports needed to sustain life will eradicate homelessness.

Contemporary homelessness began forty years ago when the Reagan Administration defunded the housing-based social safety net by slashing affordable housing budgets of the Department of Housing and Urban Development (HUD) and the United States Department of Agriculture (USDA).¹³⁰ HUD’s budget dropped by nearly 80 percent.¹³¹ A depleted social safety net combined with rising housing costs dramatically increased the number of people living on the street for the first time since the Great Depression.¹³²

¹²⁹ WRAP (Youtube), *supra* 98.

¹³⁰ WRAP, *Without Housing* (2010), <https://wraphome.org/what/without-housing/>.

¹³¹ *Id.*

¹³² Don Mitchell, *Mean Streets* (Univ. G. Press, 2024).

Instead of reinvesting in housing subsidies, the Reagan Administration tasked the Federal Emergency Management Agency (FEMA) with directing a national solution to rising homelessness. FEMA, the federal agency responsible for disaster relief, created thousands of short-term, emergency shelters. For four decades and counting now, homeless shelters meant as a temporary solution to a temporary problem remain the primary response.

Between 1994 and 2021, the federal government *reduced* the supply of public housing units by 487,000.¹³³ Today, the federal Housing Choice Voucher (HCV) program is the largest housing support program in the country. But waiting lists for vouchers average two and a half years,¹³⁴ and only one in four eligible renters actually receives any form of assistance.¹³⁵

Moreover, just because one receives a voucher does not mean they secure housing. Millions of vouchers go unused every year due to landlord discrimination and funding limitations that cap subsidies below market rate rents.¹³⁶ For example, in 2021, only 77 of 1,000

¹³³ WRAP, *Pipe Dreams and Picket Fences* (2023), <https://wraphome.org/pipe-dreams-and-picket-fences/>.

¹³⁴ Sonya Acosta & Eric Gartland, *Families Wait Years for Housing Vouchers Due to Inadequate Funding*, Center on Budget & Policy Priorities (2021), <https://www.cbpp.org/research/housing/families-wait-years-for-housing-vouchers-due-to-inadequate-funding>.

¹³⁵ Will Fischer & Barbara Sard, *Chart Book: Federal Housing Spending Is Poorly Matched to Need*, Center on Budget & Policy Priorities (2017), <https://www.cbpp.org/sites/default/files/atoms/files/12-18-13hous.pdf>.

¹³⁶ Jerry Anthony, et al., *How Pervasive is Source of Income Discrimination Faced by HCV Households: Lessons from a Progressive Midwestern City*, J. OF URBAN AFFAIRS (2023).

people had moved into housing five months after receiving federal vouchers through the Denver Housing Authority. That means that *over 90 percent of people who applied and were deemed eligible did not receive housing support.*

Today, over 16 million low-income households lack rental assistance.¹³⁷ Over half of those households are headed by a person of color,¹³⁸ and millions of them include children.¹³⁹ More than half of Americans are one paycheck or crisis away from homelessness.¹⁴⁰ Though the need for affordable housing continues to rise, the federal government is not channeling sufficient housing expenditures towards those that need it most nor implementing regulations that would keep private housing affordable such as rent control or other anti-displacement measures. In 2015, the government spent \$30 billion on the HCV program, but over \$130 billion on subsidies and expenditures for homeowners in the form of the Mortgage Interest Tax Deduction.¹⁴¹

Given the structural roots of homelessness, banishing people from our cities and criminalizing people for a status that is beyond their control is cruel and will never end homelessness. The only solution to homelessness is a home.

¹³⁷ Erik Gartland, *Chart Book: Funding Limitations Create Widespread Unmet Need for Rental Assistance*, Center on Budget and Policy Priorities 3 (2022), <https://www.cbpp.org/research/housing/funding-limitations-create-widespread-unmet-need-for-rental-assistance>.

¹³⁸ *Id.* at 3, 8.

¹³⁹ *Id.* at 6.

¹⁴⁰ USICH, *supra* 109.

¹⁴¹ *Id.*

CONCLUSION

The issue at hand is whether the overt and draconian policies adopted by Grants Pass and cities throughout the country—criminalization, forced displacement, and banishment—offend this country’s evolving notions of humane punishment. Having been down this road many times before, the answer must be yes.

People cannot be punished for the unavoidable human acts of sleeping and protecting themselves from the elements. The outcome of this decision will impact not just the unhoused, but also prisoners, Disabled people, people with mental health disorders, and others who are among the most vulnerable in our society. The Court should follow historical precedent and deem the criminalization of status, and conduct that is a consequence of status, unconstitutional. As such, WRAP urges the Court to affirm that the City of Grants Pass violated the Eighth Amendment’s prohibition against cruel and unusual punishment.

Respectfully submitted,

JUSTIN OLSON
Counsel of Record
BERGMAN OSLUND UDO
LITTLE, PLLC
520 Pike Street, Ste. 1125
Seattle, Washington 98101
(206) 957-9510
justin@bergmanlegal.com

SARA RANKIN
HOMELESS RIGHTS
ADVOCACY PROJECT
SEATTLE UNIVERSITY
SCHOOL OF LAW
901 12th Avenue
Seattle, Washington 98122
(206) 398-4393
rankins@seattleu.edu

ALEX MATAK
WESTERN REGIONAL
ADVOCACY PROJECT
2940 16th Street,
Suite 200-2
San Francisco, CA 94103
(415) 621-2533
amatak@wraphome.org

TRISTIA BAUMAN
LAW FOUNDATION OF
SILICON VALLEY
4 North Second Street,
Suite 1300
San Jose, CA 95113
(408) 280-2445
tristia.bauman@
lawfoundation.org

VICTORIA LARETT
HOMELESS ADVOCACY CLINIC
MCGEORGE SCHOOL OF LAW
UNIVERSITY OF THE PACIFIC
3200 Fifth Avenue
Sacramento, CA 95817
(916) 739-7107
tlarett@pacific.edu

RON S. HOCHBAUM
HOMELESS ADVOCACY CLINIC
MCGEORGE SCHOOL OF LAW
UNIVERSITY OF THE PACIFIC
3200 Fifth Avenue
Sacramento, CA 95817
(916) 325-4685
rhochbaum@pacific.edu

Counsel for Amicus Curiae

APRIL 2, 2024

APPENDIX

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APPENDIX A

WRAP member organizations and amici for this brief include:

Coalition on Homelessness San Francisco

Sacramento Homeless Organizing Committee

Stop the Sweeps Seattle

Housekeys Action Network Denver

Street Spirit, Berkeley

Los Angeles Community Action Network

Love and Justice in the Streets, Oakland

Unhoused Neighbors Union Missoula

Judi's Midnight Diner (Medford, OR)