

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 to the Ninth Circuit

***AMICUS CURIAE* BRIEF OF MATTHEW
DOHERTY, SHAUN DONOVAN, FRED KARNAS,
AND BARBARA POPPE IN SUPPORT OF
RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

This brief is submitted to the Court by Matthew Doherty, Shaun Donovan, Fred Karnas, and Barbara Poppe, each of whom has significant and recent experience addressing issues related to homelessness and people affected by it. Matthew Doherty was the executive director of the United States Interagency Council on Homelessness (USICH) from 2015 to 2019. Matthew Doherty currently provides consulting services to national, state, and local entities focused on strategic responses to homelessness and the implementation of best practices.

Shaun Donovan is the President and CEO of Enterprise Community Partners,² a national nonprofit that exists to make a good home possible for the millions of families without one. Enterprise supports community development organizations on the ground, aggregates and invests capital for impact, advances housing policy at every level of government, and builds and manages communities. Prior to Enterprise, Shaun Donovan served as the Director of the U.S. Office of Management and Budget from 2014 to 2017, the United States Secretary of Housing and Urban Development (HUD) from 2009 to 2014, and the

¹ Pursuant to Rule 37.6, Amici state as follows: (1) neither party's counsel authored the brief in whole or in part; (2) neither party nor their counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person other than amici, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief. Counsel of record for all parties received timely notice of Amici's intention to file this amicus brief.

² See <https://www.enterprisecommunity.org/>

Commissioner of the New York City Department of Housing Preservation and Development from 2004 to 2009.

Fred Karnas is the director of the Mental Health Strategic Impact Initiative (S2i), a project focused on helping to transform the nation’s mental health system. Prior to being a Senior Fellow at Richmond Memorial Health Foundation, Fred Karnas served as a senior advisor to then-HUD Secretary Shaun Donovan, acting as a liaison between the Department of Health and Human Services and the USICH. Fred Karnas also served as a deputy assistant secretary for special needs at HUD, director of the Office of AIDS Housing, executive director of the USICH, director of the Arizona Department of Housing, and a senior policy advisor at the Department of the Treasury.

Barbara Poppe is the founder of Barbara Poppe and Associates, a consulting group dedicated to reducing homelessness and housing instability.³ Prior to founding Barbara Poppe and Associates, Barbara Poppe served as the executive director of the USICH from 2009 to 2014. In 2010, while at the USICH, she led the development of “Opening Doors,” the first comprehensive federal plan to prevent and end homelessness using research and evidence-based strategies.⁴

Together, the signatories worked together in the federal government to implement “Opening Doors” and demonstrated through sustained national reductions in homelessness that the right strategies

³ See poppeassociates.com.

⁴ *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*, United States Interagency Council on Homelessness (2015) [USICH OpeningDoors Amendment2015 FINAL 1.pdf](#).

combining housing and services can end homelessness for families and individuals. Ordinances such as those in Grants Pass are not an effective solution to homelessness. In fact, as national experts on homelessness and housing policy, the signatories submit this brief to explain to the Supreme Court of the United States that the Grants Pass ordinances are unconstitutional because they constitute cruel and unusual punishment under the Eighth Amendment

SUMMARY OF THE ARGUMENT

Under the Eighth Amendment of the United States Constitution, it is unconstitutional to punish a person for an involuntary condition. Homelessness is just such a condition, yet local governments, like Grants Pass, Oregon, have criminalized the state of being involuntarily and physically unable to access shelter. The Grants Pass ordinances punish people for the universally human acts of, for example, sleeping or resting and using blankets to keep warm on publicly-owned property. The punishments are overly harsh for wholly innocent, universal, and unavoidable human behavior. The Grants Pass ordinances also set off a banishment race with other municipalities, resulting in a spate of local punishment schemes that collectively could operate as a nationwide ban on homelessness and effect cruel and unusual punishment on people who are unable to access shelter.

Homelessness is not voluntary. Homelessness can affect anyone, and, worse still, it disparately impacts the most vulnerable among the United States population. Criminalizing an involuntary condition is unconstitutional, and, worse still, rather than providing a solution for the problems meant to be addressed,

criminalization measures only exacerbate the challenges on an individual, local, and national level.

The Grants Pass ordinances do not break these cycles. With this brief, the *amici curiae* highlight for this Court that ordinances like those at issue in this case cause more problems and solve exceedingly few, if any at all. Instead, individuals with no option other than to seek shelter in public spaces, and with little to no resources to combat criminal charges or financial penalties, are subjected to myriad and mounting penalties that do little more than ensure they will remain trapped in the cycle. The Ninth Circuit's opinion should be affirmed lest this Court permit localities around this country to worsen an issue that both is indiscriminate in its pervasiveness and disparately affects many of the most vulnerable among us.

ARGUMENT

I. A BRIEF HISTORY OF HOMELESSNESS IN AMERICA.

The “poor laws” refer to a set of laws instituted by Queen Elizabeth that allowed local governments in colonial America to increase taxes and use those funds to build and maintain housing for individuals who were unable to work, often for age or health-related reasons, as well as assist in finding work for those who could work but could not find a job.⁵ Those laws not only excluded involuntary vagrancy from punishment, but also affirmatively provided for funds to “maintain[] and provide[] for” “poor, old, blind, impotent and lame persons or other persons not able to work within” a city.⁶ These laws offered protections to people who would now be considered “homeless.”

The term “homelessness” can be traced back to the 19th century, which intended to describe people who traveled in search of a job.⁷ During the Industrialization Movement, more and more individuals travelled to cities like Boston and Philadelphia in search of

⁵ Lesley Kennedy, *How ‘Poor Laws’ Tried to Tackle Poverty in Colonial America*, History (June 29, 2023), <https://www.history.com/news/colonial-america-poor-laws>

⁶ Act of Mar. 9, 1771, ch. 635, § 4, 1771 Pa. Laws 75, 77.

⁷ National Academies of Sciences, Engineering, and Medicine, et al, *Permanent Supportive Housing: Evaluating the Evidence for Improving Health Outcomes Among People Experiencing Chronic Homelessness*. Washington (DC): National Academies Press (US), Appendix B, The History of Homelessness in the United States (July 11, 2018),: <https://www.ncbi.nlm.nih.gov/books/NBK519584/>

work.⁸ “By the 1850s, lodging rooms for vagrants located in police stations served as the major shelter system, and most major cities reported increasing numbers of vagabonds[.]”⁹ Following the construction of the railways, able-bodied men began traveling cross-country in search of work. Years later, “the typical individual experiencing homelessness continued to be disproportionately white and male but became increasingly older (usually over 50 years old), disabled, dependent on welfare or social security, and resided in cheap hotels, flophouses, and in single room occupancy hotels (SROs) located in the poorest neighborhoods and Skid Row areas of urban America.”¹⁰

Following World War II, the United States government began attempting to address the shortage of housing, enacting the Housing Act of 1949 to combat America’s housing shortage. In 1965, the government both enacted the Housing and Urban Renewal Act¹¹ and formally created HUD to provide Americans with greater access to housing.¹² The 1970’s brought rising homeownership rates and construction of new rental housing, with homelessness a rare and temporary

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Notably, this Act hurt more than it helped and increased housing discrimination by displacing minorities in favor of white Americans. See George Lipsitz, *Government Policies and Practices that Increase Discrimination*, Poverty & Race Research Action Council (July 15, 2008), http://www.prrac.org/projects/fair_housing_commission/chicago/lipsitz.pdf. [Reference list]

¹² National Academies of Sciences, Engineering, and Medicine, et al, *supra* note 7.

situation.¹³ In the early 1980's a surge of people experiencing homelessness emerged as federal investment in affordable housing dramatically decreased.¹⁴ America again saw increased numbers of those experiencing homelessness following the Great Recession of 2007 and the COVID-19 pandemic.¹⁵

There is not enough federal, state, and local funding to support people currently experiencing homelessness secure and sustain permanent housing, or to address the housing crises that leads to homelessness in the first place. But we have seen what works—despite the overall trends, the rate of homelessness among military veterans has dropped by more than one-half since 2010 due to increased investment in proven solutions to provide housing, services, and healthcare.¹⁶ Additionally, some communities have created local response systems that are effectively reducing unsheltered homelessness. For example,

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Jon Kamp and Shannon Najmabadi. *U.S. Homelessness Count Surges 12% to Highest-Recorded Level*. Wall Street Journal (Dec. 15, 2023), <https://www.wsj.com/us-news/record-homeless-united-states-2023-ef86f904>; *HUD Releases 2023 AHAR Data: 12 Key Data Points to Understand the Current State of Homelessness in America*, National Alliance to End Homelessness (Dec. 15, 2023), <https://endhomelessness.org/blog/hud-releases-2023-ahar-data-12-key-data-points-to-understand-the-current-state-of-homelessness-in-america/>.

¹⁶ Tara Law, *Why the Major Drop in Veteran Homelessness Offers Hope to Others*, TIME (Nov. 30, 2023), <https://time.com/6341061/veteran-homelessness-hope/>

Houston cut homelessness by nearly two-thirds over a twelve-year period.¹⁷

Recently-published research shows that factors such as mental illness, substance abuse, poverty, and regional conditions do not explain variations, and it suggests that people who experience homelessness are most impacted by macro-economic conditions rather than things people can choose or control.¹⁸ These macro-economic conditions include the rising cost of rent and low wages that price people out of housing in the area(s) where they work.¹⁹

Homelessness is not voluntary. Consider this Court's decision in *Robinson v. California*, where this Court addressed the question of whether California could criminalize the status of being a narcotics addict.²⁰ The Court recognized a narcotics addiction is an illness, one "which may be contracted innocently or involuntarily," and observed that a "law which made a criminal offense of ... a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment."²¹ *Robinson* held the challenged

¹⁷ Alan Greenblatt, *How Houston Cut Its Homelessness Population by Nearly Two-Thirds*, *Governing* (Aug. 20, 2023), <https://www.governing.com/housing/how-houston-cut-its-homeless-population-by-nearly-two-thirds>.

¹⁸ See, e.g., Gregg Colburn and Clayton Page Aldern. *Homelessness Is a Housing Problem: How Structural Factors Explain U.S. Patterns*. 1st ed. University of California Press, 2022. <https://doi.org/10.2307/j.ctv2kx88m9>.

¹⁹ Zillow Research. *Homelessness Rises Faster Where Rent Exceeds a Third of Income*. Zillow (Dec. 11, 2018) <https://www.zillow.com/research/homelessness-rent-affordability-22247/>

²⁰ 370 U.S. 660, 666-67 (1962).

²¹ *Id.*

statute violated the Eighth Amendment. The Ninth Circuit in *Martin v. City of Boise*, 920 F.3d 584, 615 (9th Cir. 2019), addressed *Robinson* and later Supreme Court decisions and found that “five Justices gleaned from *Robinson* the principle that ‘that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.’”²² The Supreme Court should apply similar logic here — people experience homelessness for involuntary reasons, and such a punishment of an involuntary attribute constitutes cruel and unusual punishment.

II. HOMELESSNESS HAS A DISPARATE IMPACT ON CERTAIN VULNERABLE POPULATIONS BUT IS INDISCRIMINATE IN WHO IT AFFECTS.

A. Almost No Population is Immune to Homelessness

Because of the macro-economic factors mentioned above, people of various backgrounds can experience involuntary homelessness.

Homelessness affects more than 650,000 people on any given night, with over 250,000 of that population living in unsheltered homelessness,²³ and it cuts across all sectors of society. In data from 2022, 60% of the homeless individuals identified were located in

²² *Id.* (citing *Jones v. City of Los Angeles*, 444 F.3d 1118, 1135 (9th Cir. 2006)).

²³ The U.S. Dep’t of Hous. and Urb. Dev., The 2023 Annual Homelessness Assessment Report (AHAR to Congress) Part 1: Point-In-Time Estimates of Homelessness, (herein, “The 2023 AHAR Report”). (Dec. 2023) <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>, at 10;

temporary, emergency shelters, while 40% had no access to emergency shelter and so struggled to survive on the streets or in places that are unfit for human habitation.²⁴

Homelessness affects people of all ages, but the population skews older, with people aged 25 or older accounting for 76% of the homeless population.²⁵ But homelessness affects young people, too: 17% are under age 18, and 7% are between the ages of 18 to 24.²⁶ It affects both sexes, with men/boys of any age accounting for around 60% of the homeless population and women/girls of any age accounting for 38%.²⁷ Homelessness also affects every race, with those identifying as white accounting for 50% of those experiencing homelessness, while racial minorities account for the rest, which is discussed below.²⁸

Homelessness amongst all these demographics is a product of challenging economic forces and a lack of funding for a problem that would take billions of dollars to address.²⁹ Currently, individuals are facing a

²⁴ Francis Torres, *Housing Supply and the Drivers of Homelessness*, BIPARTISAN POLICY CENTER (Feb. 7, 2023), https://bipartisanpolicy.org/report/housing-supply-and-homelessness/?gad_source=1&gclid=CjwKCAjwte-vBhBF Ei-wAQsv_xU1FJuBxuHChpaSA4sdZwi5-BzaX4kEJc3UKeFkEtEV3G8VO7XD6aBoCkAUQAvD_BwE.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Rob Moore, *What Would It Cost to End Homelessness In America?*, SCIOTO ANALYSIS (Jan. 16, 2024), <https://www.sciotoanalysis.com/news/2024/1/16/what-would-it-cost-to-end-homelessness-in-america>.

one-two punch of (1) a lack of affordable housing and (2) rapidly rising rental costs.³⁰ Even where systems are in place to help address the problems, those systems can be highly under-resourced. For example, the Providence Journal reported that, in 2023, there were 154 households in Rhode Island with vouchers that would subsidize their rent in private market housing, but nowhere they could use them.³¹

Historically, emergency shelter has been the last refuge protecting people from life on the street, but for many people today, homeless shelters are not an option. The shelter system is overwhelmed, as more individuals and families seek aid in response to rising rents, the lack of affordable apartments, and the expiration of the federal supports that were available during the pandemic. Research has shown that there are simply not enough beds available. In 2023, there were 449,567 shelter beds available, but there was a national shortage of about 200,000 beds for adults experiencing homelessness on a single night.³² Again, these national statistics are borne out of individual states and communities. In a report published January 2024, Oregon had 20,110 people counted as experiencing homelessness, with 13,004 unsheltered. There were only 8,705 shelter and transitional

³⁰ The 2023 AHAR Report, *supra* note 23, at 22-23.

³¹ Wheeler Cowperthwaite, *RI Keeps Adding Shelter Space for The Homeless, But It's Never Enough. Why Demand Grows*, THE PROVIDENCE JOURNAL. (Oct. 10, 2023), <https://www.providencejournal.com/story/news/local/2023/10/10/why-ri-cant-keep-up-with-the-need-for-homeless-shelter-beds-overall-housing-shortage-stokes-demand/71072433007/>.

³² The 2023 AHAR Report, *supra* note 23, at 91.

housing beds so there was a shortfall of 11,405 beds.³³ Thus, many individuals find themselves involuntarily homeless, as they are unable to afford housing and unable to find beds in a shelter.

B. Homelessness Disproportionately Affects the Most Vulnerable Populations in the United States.

1. Homelessness disproportionately impacts different racial and ethnic communities.

Homelessness has a disproportionate impact on different racial and ethnic populations within our country. For example, African Americans make up just 13% of the population but comprise 37% of the homeless population.³⁴ Similarly, Hispanics make up around 19% of the population but comprised 24% of the homeless population during a recent calculation.³⁵ Indigenous Americans make up only 1.1% of the U.S.,

³³ Jacen Greene, Franklin Holcomb Spurbeck, and Marisa Zapata. et al, *2023 Oregon Statewide Homelessness Estimates*. Portland State University Homelessness Research and Action Collaborative (Jan. 1, 2024) <https://www.pdx.edu/homelessness/oregon-statewide-homelessness-estimates>;

³⁴ The 2023 AHAR Report, *supra* note 23, at 14.

³⁵ Melissa Chinchilla et al., *Increasing Latino Homelessness—What’s Happening, Why, and What to Do About It*, NATIONAL ALLIANCE TO END HOMELESSNESS (Jan. 24, 2023), https://endhomelessness.org/wp-content/uploads/2023/01/Latino-Homelessness_ResearchBrief_01242023_FINAL.pdf#:~:text=The%20lat-est%20PIT%20Count%20data%20shows%20that%20people,around%2019%20percent%20of%20the%20total%20U.S.%20population.

population,³⁶ but indigenous people make up 4% of the homeless population and are more likely to live in unsheltered settings.³⁷

2. Homelessness disproportionately affects individuals with disabilities.

Disabilities also make it harder to avoid homelessness. As many as 31% of the chronically homeless population also has a disability.³⁸ Shelters are not always options for persons living with disabilities because shelters are overwhelmed with demand,³⁹ and they may not have features (e.g., wheelchair ramps) that are necessary to accommodate these individuals.⁴⁰ Some people with disabilities may also have mental

³⁶ Nicholas Jones et al, *Improved Race and Ethnicity Measures Reveal U.S. Population Is Much More Multiracial*, U.S. Census Bureau (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html#:~:text=In%202020%2C%20the%20American%20Indian%20and%20Alaska%20Native,such%20as%20White%20or%20Black%20or%20African%20American.>

³⁷ Jeremy Grabiner, *New Report Shows Increase in Homelessness Disproportionately Affects American Indian and Alaska Native People*, NATIONAL COUNCIL OF URBAN INDIAN HEALTH (Mar. 8, 2024), <https://ncuih.org/2024/03/08/new-report-shows-increase-in-homelessness-disproportionately-affects-american-indian-and-alaska-native-people/>.

³⁸ The 2023 AHAR Report, *supra* note 23, at 26.

³⁹ The 2023 AHAR Report, *supra* note 23, at 91.

⁴⁰ Kayla Robbins, *The Vicious Cycle of Disability and Homelessness*, INVISIBLE PEOPLE (Nov. 9, 2023), <https://invisiblepeople.tv/the-vicious-cycle-of-disability-and-homelessness#:~:text=A%20disproportionate%20number%20of%20unhoused,unique%20barriers%20to%20supporting%20themselves..>

health challenges in the form of anxiety, PTSD, or addiction that make it difficult for them to live around other people or in crowded conditions. Individuals with disabilities are also more likely to face discrimination when attempting to rent properties, which further increases their risk of homelessness and creates barriers for people who are experiencing homelessness.

As with other populations, homelessness amongst the disabled community is also a feature of the housing crisis in the United States.⁴¹ In 2021, a one-bedroom apartment was 131% of the monthly income for a person with a disability.⁴² Disabled individuals may be unable to work and subsequently rely on Social Security Income (SSI), which is not enough to meet the escalating cost of housing. According to the Social Security Administration, the maximum federal SSI payment in 2024 is only \$943 for an individual.⁴³ This income is well below the federal poverty line and cannot meet the needs of the current housing landscape.

2. Homelessness impacts individuals of all ages.

In 2014, it was estimated that approximately 550,000 young people had experienced homelessness

⁴¹ The 2023 AHAR Report, *supra* note 23, at 26.

⁴² Suzanne Perea Burns et al., *America's Housing Affordability Crisis: Perpetuating Disparities Among People With Disability*, 36 DISABILITY & SOCIETY 1719 (2021).

⁴³ Social Security Administration, *How Much You Could Get From SSI*, <https://www.ssa.gov/ssi/amount>.

for over a week.⁴⁴ Of this population, 380,000 were under the age of 18, and 170,000 were aged 18 to 24.⁴⁵

Many youth are unhoused through no choice of their own but because a parent is unhoused. 44 percent of women between the ages 18 and 25 who experience homelessness are pregnant or are parents.⁴⁶ It is estimated that 1.1 million children have a young parent who was recently unhoused.⁴⁷ Homeless youth also face particular legal challenges in obtaining housing.⁴⁸ For example, there is a lack of homeless service providers who assist minor parents.⁴⁹ Some states may require parental consent for minors to obtain housing, and homeless youth may not have access to obtaining identification records that are necessary for obtaining work, and consequently, affording housing.⁵⁰

⁴⁴National Sexual Violence Resource Center, *Homeless Youth & Sexual Violence*, https://www.nsvrc.org/sites/default/files/publications/2019-02/HomelessYouth_Final%20508.pdf.

⁴⁵ *Id.*

⁴⁶ Chapin Hall at the University of Chicago, *Voices of Youth Count: Understanding and ending youth homelessness*, <https://www.chapinhall.org/project/voices-of-youth-count/>.

⁴⁷ Amy Dworsky et. al., *A Substantial Number of Youth Experiencing Homelessness are Pregnant or Parenting*, Chapin Hall (2018), <https://www.chapinhall.org/research/a-substantial-number-of-youth-experiencing-homelessness-are-pregnant-or-parenting/>.

⁴⁸ Chapin Hall, *supra* note 46.

⁴⁹ Dworsky, *supra* note 47.

⁵⁰ National Conference of State Legislatures, *Youth Homelessness Overview* (Mar. 29, 2023), <https://www.ncsl.org/human-services/youth-homelessness-overview>.

Homelessness presents particular dangers to youth, who are at increased risk of sexual violence. Youth experiencing homelessness are more likely to have experienced abusive home lives, including emotional abuse and neglect, physical abuse, and sexual abuse.⁵¹ They may seek refuge in the streets because they need to escape abusive conditions in their homes. Therefore, it would not be accurate to describe these youth as voluntarily homeless.

Homelessness is also increasing amongst older adults. Adults aged 50 and above are the fastest growing group of people experiencing homelessness, and many have become unhoused as a result of the affordable housing crisis.⁵² In the early 1990s, 11% of people experiencing homelessness were 50 or older. In 2003, it was 37%. Today, around 50% are 50 years or older.⁵³ Older adults have the highest risk of paying more than 30% of their income on housing.⁵⁴ The consequence of paying so much money on rent is that these elderly individuals are often unable to accumulate savings, making them particularly vulnerable to becoming unhoused as a result of a financial setback.⁵⁵

⁵¹ Kimberly Bender et al., *Experiences and Needs of Homeless Youth with A History of Foster Care*, 55 *Children and Youth Services Review* 222 (2015).

⁵² Margot Kushel, *Homelessness Among Older Adults: An Emerging Crisis*, *GENERATIONS JOURNAL* (2020), <https://generations.asaging.org/homelessness-older-adults-poverty-health>.

⁵³ *Id.*

⁵⁴ Joint Center for Housing Studies of Harvard University, *Housing America's Older Adults* (2018), https://www.jchs.harvard.edu/sites/default/files/media/imp/Harvard_JCHS_Housing_Americas_Older_Adults_2018.pdf.

⁵⁵ Kushel, *supra* note 52.

Nearly half of the older homeless population had long work histories before some pivotal event, such as divorce, job loss, illness, or death of a loved one, forced them into homelessness.⁵⁶ They then also struggle to find housing because they experience a harder time finding employment.⁵⁷

It should be noted that the stresses of life on the street often result in homeless persons in their 50's presenting as many years older physically. This presents a significant challenge regarding their ability to hold employment. And since the safety net of Social Security does not become available until age 62, many homeless older adults have no economic options to address their circumstances.

3. Homelessness affects individuals regardless of location.

Contrary to popular belief, homelessness is not only a problem for urban communities, as it is increasingly affecting rural Americans.⁵⁸ For example, half of Wisconsin's homeless population lives in rural communities.⁵⁹ Rural communities face similar challenges in establishing affordable housing as their urban counterparts because, even though housing costs are lower in rural areas, wages are also relatively

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Mary Meehan, *Unsheltered and Uncounted: Rural America's Hidden Homeless*, NPR (July 4, 2019), <https://www.npr.org/sections/health-shots/2019/07/04/736240349/in-rural-areas-homeless-people-are-harder-to-find-and-to-help>.

⁵⁹ Justin Runberg, *Rural Homelessness Is a Growing Unseen Crisis*, The Osceola Sun (Mar. 23, 2024), https://www.osceolasun.com/news/rural-homelessness-is-a-growing-unseen-crisis/article_4418bb88-e5fc-11ee-834a-438f4960e474.html.

lower, which causes similar financial burdens.⁶⁰ Rural communities also face unique challenges when it comes to housing accessibility. Housing in rural areas is much more likely to be older, lack basic necessities such as plumbing, and generally fall below modern construction standards.⁶¹ Additionally, a lack of access to developers, labor, and construction materials can be a significant challenge in rural communities.

Another issue that rural communities face is underfunding, which is a consequence of how federal and state funding is allocated. Federal funding is often tied to the number of people experiencing homelessness in the community.⁶² There are challenges, however, in identifying homeless individuals in rural communities because of the spread-out nature of rural spaces and the relative invisibility of rural homelessness. The issue of an insufficient number of shelter beds is also prevalent in rural communities, as was noted in Fremont, Nebraska.⁶³ Individuals in rural communities can become unhoused through no fault of their own, as they face both a lack of affordable housing and a lack of shelters.

⁶⁰ National Coalition for the Homeless, Rural Homelessness (Aug. 2020), <https://nationalhomeless.org/wp-content/uploads/2021/03/Rural-Homelessness-Fact-Sheet-2020.pdf>.

⁶¹ JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, The State of the Nation's Housing (2018), https://www.jchs.harvard.edu/sites/default/files/jchs_2016_state_of_the_nations_housing_lowres.pdf.

⁶² *Id.*

⁶³ Health Resources and Services Administration, National Advisory Committee on Rural Health and Human Services (2014), <https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/rural/2014-homelessness.pdf>.

C. Homelessness is a National Issue and the Federal Response Has Not Been Sufficient to End Homelessness

In response to growing numbers of homeless individuals and families, Congress passed the Stewart B. McKinney Act in 1987. The purpose of the Act was to “(1) establish an Interagency Council on the Homeless; (2) use public resources in a more coordinated manner to meet the needs of the homeless; and (3) provide program funds for the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.”⁶⁴ Thereafter, new funding was available from federal agencies to provide housing, services, shelter, job training and education, healthcare, mental health and substance use treatment, and other supports. A newly established interagency council, now the USICH, was charged with coordinating the federal response in partnership with state and local governments, the nonprofit and philanthropic sectors, and faith-based organizations.⁶⁵ These interventions sought to create housing stability using equity, data, and collaboration to achieve housing and supports,

⁶⁴ Stewart B. McKinney Homelessness Assistance Act, Pub. L. No. 100-77, § 102, 101 Stat 482, 485 (1987).

⁶⁵ See, e.g., *ALL IN: The Federal Strategic Plan to Prevent and End Homelessness*. United States Interagency Council on Homelessness: 2022 Dec. [All In.pdf \(usich.gov\)](#); *Home, Together: The Federal Strategic Plan to Prevent and End Homelessness*. United States Interagency Council on Homelessness: 2018. [Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness 3.pdf \(usich.gov\)](#); *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*, United States Interagency Council on Homelessness. (2015). [USICH Opening-Doors Amendment2015 FINAL 1.pdf](#).

homelessness responses, and prevention solutions. To that end, the USICH continues to track data on all types of homelessness and progress to prevent and reduce homelessness.

HUD has provided funding for programs such as Emergency Solutions Grant (ESG), which provides local and state governments with funding that can be used to provide homelessness prevention, rapid rehousing, temporary shelter and other services, and Continuums for Care (CoC), which are local planning bodies “responsible for coordinating the full range of homelessness services in a geographic area.”⁶⁶ Both of these programs are applicable to all geographic areas. Despite the government’s attempt to combat homelessness, there has simply not been enough funding or resources to assist persons remaining involuntarily unsheltered. In 2023, HUD found that 4 out of 10 people experiencing homelessness were unsheltered.⁶⁷

There are bright spots in efforts to reduce homelessness that occur when the scale of the response is sufficient and aligned with best practices. For example, the rate of homelessness among military veterans has dropped by more than one-half since 2010 due to increased investment in proven solutions to provide housing, services, and healthcare.⁶⁸ Some communities have created local response systems that are effectively reducing unsheltered homelessness. For

⁶⁶ The 2023 AHAR Report, *supra* note 23, at 4.

⁶⁷ *Id.*

⁶⁸ *Id.*

example, as noted above, Houston cut homelessness by nearly two-thirds over a twelve-year period.⁶⁹

As further noted above, homelessness is not a unique issue to Grants Pass, Oregon. Reports show that in 2023, approximately 653,000 people around the country were experiencing homelessness on any given night, and that forty-one states had increased numbers of people without permanent housing.⁷⁰

HUD is charged by Congress to fund the CoC program.⁷¹ The program “promotes a community-wide commitment to the goal of ending homelessness” and equitably deploys homelessness assistance funding. During FY 2023, \$3.2 billion in funding was distributed through a competitive process. The U.S. Department of Veterans Affairs offers an extensive array of housing, healthcare, mental health, employment/job training and services to prevent and end homelessness among military veterans.⁷²

And yet, Petitioner seems to suggest homelessness is a problem unique to Grants Pass. For Grants Pass to claim that its only viable solution is to push people experiencing homelessness outside of its city limits,

⁶⁹ Alan Greenblatt, *How Houston Cut Its Homeless Population by Nearly Two-Thirds*, GOVERNING (Aug. 30, 2023), <https://www.governing.com/housing/how-houston-cut-its-homeless-population-by-nearly-two-thirds>

⁷⁰ Adkins, Matthew. *Homelessness in America: Statistics, Analysis, and Trends*. Security.org, (Jan. 25, 2024), <https://www.security.org/resources/homeless-statistics/>.

⁷¹ Continuum of care Program. U.S. Department of Housing and Urban Development. https://www.hud.gov/program-offices/comm_planning/coc

⁷² VA Homeless Programs, U.S. Department of Veterans Affairs, <https://www.va.gov/homeless/>.

into other locales that also have homeless populations within their limits, ignores the realities of the homelessness situation across this country. The Grants Pass ordinances will only exacerbate homelessness in surrounding areas, as individuals from Grants Pass who are involuntarily homeless and unsheltered will be forced to relocate or face compounding fines, arrest, and incarceration.

The solution to homelessness in America cannot be pushing human beings outside of cities and communities over and over again via cruel ordinances criminalizing their existence while providing nowhere for them to go. The proper answer is federal, state, and local investment, and the implementation of housing and services models and programs that have been proven to be effective⁷³ at the scale necessary to address the number of people who are experiencing or at risk of homelessness. Through such housing and services models, people who are involuntarily experiencing homelessness can be supported to find and secure permanent housing and to end their homelessness. Measures which criminalize homelessness do not and will never support such outcomes for people and for our communities.

III. CRIMINALIZATION EXACERBATES HOMELESSNESS—IT DOES NOT HELP.

Criminalization is not the response needed to aid people experiencing homelessness in Grants Pass or

⁷³ USICH, The Evidence Behind Approaches that Drive an End to Homelessness, USICH (Sept. 2019), <https://www.usich.gov/sites/default/files/document/Evidence-Behind-Approaches-That-End-Homelessness-Brief-2019.pdf>

anywhere else in the United States. An increasing amount of research has been conducted in recent years to shed light on the optimal tools for helping families and individuals escape homelessness.⁷⁴ Such research has been undertaken as a coordinated effort among various federal and state agencies, including the U.S. Department of Justice, the U.S. Department of Health and Human Services, and HUD, along with local organizations.⁷⁵ These experts in homelessness have concluded that community-oriented housing and service programs, along with collaborations between health, behavioral health, and social service providers, are the most effective solutions to overcoming homelessness, instead of laws or ordinances that punish homelessness.⁷⁶ Indeed, in line with these experts' findings, the vast majority of jurisdictions have rejected sleeping bans.⁷⁷

A. Punishing Homelessness Actually Perpetuates a Cycle of Homelessness.

The Grants Pass ordinances not only fail to address any of the root causes of homelessness, but also

⁷⁴ See, e.g., U.S. Interagency Council on Homelessness, *Searching Out Solutions – Constructive Alternatives to the Criminalization of Homelessness* (2012) [hereinafter USICH Report] (documenting solutions generated at a summit dedicated to developing constructive alternatives to criminalizing homelessness).

⁷⁵ *Id.* at 44-46.

⁷⁶ *Id.* at pp. 2-4

⁷⁷ See Resp. Br. at 40-42, *City of Grants Pass v. Gloria Johnson and John Logan et al.*, No. 23-175 (2024) (81.5% of the 200 American cities with populations closest to that of Grants Pass do not impose sleeping bans, and 46 states and the District of Columbia similarly do not criminalize resting or sleeping everywhere in public, with the remaining four states having laws that are far narrower than the Grants Pass ordinances.)

trap homeless individuals in a vicious cycle that increases the likelihood of individuals remaining homeless.⁷⁸ The presence of a criminal record can disqualify these individuals experiencing homelessness from obtaining aid that is critical to lifting them out of homelessness, including disqualification from subsidized housing and drug and mental health treatments, and suspension of benefits.⁷⁹ The presence of a criminal record further impacts the ability of these individuals to seek employment and/or private housing, which often involves a background check, thus continuing the cycle of homelessness.⁸⁰

Civil citations that require a court appearance can “lead to warrants for failure to appear,” especially in cases involving homeless individuals, who “lack a physical address or phone number” and may not receive notice of relevant hearings.”⁸¹ Other barriers to attending court appearances faced by homeless individuals include a lack of transportation, a lack of storage space for their belongings, and a fear of property loss.⁸² The consequences of having a warrant for failure to appear are dire—warrants often lead to incarceration. Further, Grants Pass does not attempt to

⁷⁸ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES at 50-52 (2019) [hereinafter HOUSING NOT HANDCUFFS], <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

⁷⁹ *See id.*

⁸⁰ *See id.*

⁸¹ *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 U.S. Dist. LEXIS 129494, at *54 (D. Or. 2020); *see also* Housing Not Handcuffs at 52.

⁸² *See id.*

disguise the ordinances as mere civil citations: it admits that repeat violators of the ordinances “are subject to prosecution for criminal trespass, which is punishable by 30 days in jail and a \$1,250 fine.”⁸³

Additionally, the Grants Pass ordinances impose substantial fines that are particularly problematic for homeless individuals.⁸⁴ Each violation results in a mandatory \$295 fine that rises to \$537.60 as interest accrues.⁸⁵ These costs can quickly rise—as an example, Debra Blake received “three \$295 fines in the course of just one morning, along with an exclusion order subjecting her to arrest if she was ‘found on City property’ again.”⁸⁶ (internal citations omitted). By March 2020, Debra Blake owed over \$5,000 in fines due to her homelessness.⁸⁷ These fines remain **almost always** unpaid when the recipient of the fines is incapable of even affording shelter.⁸⁸ Thus begins a precipitous spiral, where the unpaid fines lead to poor credit, which has dire consequences on an individual’s ability to seek out housing options and employment opportunities.⁸⁹ The fines imposed by Grants Pass thus entrench homeless individuals in a continued cycle of homelessness by establishing barriers to lifting individuals out of homelessness.

⁸³ See Brief of Petitioner at 12, *City of Grants Pass v. Gloria Johnson and John Logan et al.*, No. 23-175 (2024).

⁸⁴ See Resp. Br. at 30.

⁸⁵ See *id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *id.* at 30-31; see also *Blake*, 2020 U.S. Dist. LEXIS 139494, at *54.

This Court has made it clear that defendants cannot be imprisoned for being too poor to pay fines, yet the Grants Pass ordinances call for just such imprisonment even if based on only the accumulation of fines that homeless individuals often cannot combat, in large part due to their homeless condition that itself is almost always involuntary. The Court addressed this issue in *Tate v. Short*, 401 U.S. 395 (1971). In that case, the defendant Tate was convicted of traffic offenses and fined a total of \$425.⁹⁰ According to the provisions of a Texas state statute and municipal ordinance, when Tate was unable to pay the fines, he was “committed to the municipal prison farm [and] required [to] remain there a sufficient time to satisfy the fines at the rate of five dollars for each day.”⁹¹ The Court explained the unconstitutionality of the Texas statute and resulting punishment of Tate:

[T]he Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status.” Since Texas has legislated a “fines only” policy for traffic offenses, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine. Imprisonment in such a case is not

⁹⁰ *Id.* at 396.

⁹¹ *Id.* at 396-97.

imposed to further any penal objective of the State. It is imposed to augment the State's revenues but obviously does not serve that purpose; the defendant cannot pay because he is indigent and his imprisonment, rather than aiding collection of the revenue, saddles the State with the cost of feeding and housing him for the period of his imprisonment.⁹²

The Court granted Tate's petition for habeas corpus and held that it is a denial of equal protection to limit punishment to payment of fines for individuals who are able to pay such fines but to convert such fines to punishments of imprisonment for those who are unable to pay them.⁹³

The Court addressed a similar situation in *Bearden v. Georgia*, 461 U.S. 660 (1983). In that case, the petitioner Bearden pled guilty to the felonies of burglary and theft by receiving stolen property.⁹⁴ Pursuant to the Georgia First Offender's Act, however, the trial court did not enter a judgment of guilt but instead deferred further proceedings and sentenced Bearden to three years' probation, fined him \$750 in fees and restitution, and ordered him to pay the amount owed via a payment plan.⁹⁵ Bearden successfully made the first few payments but eventually lost his job and could not pay the remainder.⁹⁶ When

⁹² *Id.* at 398-99 (citations omitted).

⁹³ *See id.*

⁹⁴ *Id.* at 662.

⁹⁵ *Id.*

⁹⁶ *Id.*

Bearden informed his probation officer that he was going to be late with his next payment, the State filed a petition in the trial court to revoke Bearden's probation because he had not paid the balance of his debt.⁹⁷ After an evidentiary hearing, the trial court revoked Bearden's probation and sentenced him to serve the remaining portion of the probationary period in prison, effectively imprisoning him for being too poor to pay his fines.⁹⁸ The Georgia Court of Appeals upheld the trial court's decision, and the Georgia Supreme Court denied review.⁹⁹

The Supreme Court, which has been "long . . . sensitive to the treatment of indigents in our criminal justice system," reversed the appellate court's judgment.¹⁰⁰ The Court stated, "The question presented here is whether a sentencing court can revoke a defendant's probation for failure to pay the imposed fine and restitution, absent evidence and findings that the defendant was somehow responsible for the failure or that alternative forms of punishment were adequate."¹⁰¹ The Court answered "no" because "if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it."¹⁰²

⁹⁷ *Id.* at 663.

⁹⁸ *See id.*

⁹⁹ *See id.* at 664.

¹⁰⁰ *See id.*

¹⁰¹ *Id.* at 665.

¹⁰² *Id.* at 667-68.

Accordingly, the due process and equal protection principles of the Fourteenth Amendment prohibit “punishing a person for his poverty.”¹⁰³ To comply with this constitutional requirement, state and local courts must inquire as to a person’s ability to pay prior to imposing incarceration for nonpayment, and they should do so *sua sponte*.¹⁰⁴ Further, courts should inquire as to a defendant’s ability to pay at sentencing when contemplating the assessment of fines and fees, rather than waiting until the defendant fails to pay.¹⁰⁵ In short, a court must make every effort to avoid imprisoning an indigent defendant for failure to pay fines—the Grants Pass ordinances seemingly ignore this important guidance from the Court when addressing indigent individuals, a population that makes up the vast majority of individuals experiencing homelessness across the country.

Further, homeless individuals face additional barriers to lifting themselves out of homelessness. Poor health status is often associated with homelessness. Elevated rates of mental health conditions and substance use disorders are often both a consequence and cause of homelessness.¹⁰⁶ Experiencing homelessness during the pre-natal and post-natal period is associated with increased risk of adverse birth and health outcomes as well as development delays and high health care utilization. In instances where the

¹⁰³ *Id.* at 671.

¹⁰⁴ *Id.* at 671.

¹⁰⁵ *See id.*

¹⁰⁶ Cheyenne Garcia, Kelly Doran, and Margot Kushel, *Homelessness and Health: Factors, Evidence, Innovations That Work, And Policy Recommendations*, Health Affairs (Feb. 2024), <https://doi.org/10.1377/hlthaff.2023.01049>.

homeless individuals are children, the impact of homelessness on their education is overwhelming. Homelessness is associated with achievement gaps, school absences, and other challenges.¹⁰⁷

B. Punishing Homelessness Merely Shuffles Individuals Among Jurisdictions and Has No Impact on Reducing Homelessness.

The Grants Pass ordinances punish homeless individuals without alleviating homelessness. Indeed, despite working within the City of Grants Pass, John Logan has no option but to sleep in his truck at a rest stop north of Grants Pass out of fear of being ticketed for violating the Grants Pass ordinances.¹⁰⁸ Mr. Logan is not the only homeless individual to experience this risk to health and safety, as well as discomfort, in Grants Pass.¹⁰⁹ If this Court were to permit the Grants Pass ordinances to stand, cities will begin or continue to enforce and pass similar ordinances that prohibit sleeping, and the potential for a cascading

¹⁰⁷ The Evidence Behind Approaches that Drive an End to Homelessness, United States Interagency Council on Homelessness (2019), <https://www.usich.gov/sites/default/files/document/Evidence-Behind-Approaches-That-End-Homelessness-Brief-2019.pdf>. See also MacArthur Foundation, *Housing: Why Educators, Health Professionals and Those Focused on Economic Mobility Should Care About It* (Nov. 16, 2017), <https://www.macfound.org/press/article/lessons-learned-housing-research-should-care-about-it> · MacArthur Foundation (macfound.org)

¹⁰⁸ See also *Blake*, 2020 U.S. Dist. LEXIS 139494, at *11-12.

¹⁰⁹ See *id.*; see Resp. Br. at 33 (noting “the chaos the City seeks to unleash by making it so ‘uncomfortable’ for its homeless residents that they will be forced to move to other jurisdictions”).

nationwide bans may have disastrous consequences.¹¹⁰ The City and its amici have yet to explain to this Court how pressuring homeless individuals to leave the City alleviates homelessness—these measures may reduce the number of homeless individuals identified in Grants Pass, but this statistic should not be conflated with an actual reduction in the number of people who are experiencing homelessness.

C. Punishing Homelessness Not Only Hurts Individuals, But Also Harms the Community at Large.

Taxpayers, such as Grants Pass residents, pay an exorbitant price for these measures.¹¹¹ They are not only costly, but also fail to effectively reduce homelessness.¹¹² Experts on homelessness from federal, state, and local public and non-profit agencies, who participated in a 2012 summit organized by the USICH¹¹³ reached similar conclusions: that such ordinances “are costly and consume substantial state and local resources,” and “[i]n today’s economic climate, it is important for state, county, and local entities to invest in programs that work rather than spend money on activities that are unlikely to achieve the desired result and which may, in some cases, open the

¹¹⁰ See Pet. Br. at 27 (“[I]f every jurisdiction in the Nation adopted ordinances like those at issue here, there would be nowhere for people without homes to lawfully reside”).

¹¹¹ See, e.g., Housing Not Handcuffs (“chronic homelessness” can cost the public “between \$30,000 and \$5,000 per person every year” at least in part due to criminalization).

¹¹² See *id.*

¹¹³ U.S. Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 2 (2012), https://www.usich.gov/sites/default/files/document/Searching_Out_Solutions_2012.pdf.

jurisdiction to liability.”¹¹⁴ The experts instead recommended a care-based approach that involved collaboration among health, behavioral health, and social service providers in lieu of criminalization.¹¹⁵ That is where we see both results and cost-savings, for example in Denver, providing housing and services to people who are homeless and disabled, has been demonstrated to reduce the cost of other public services.¹¹⁶

D. This Court Has Required Punishment to Have a Constructive Purpose—the Grants Pass Ordinances Do Not.

This Court has required punishment to be “justified under one or more of three principal rationales: rehabilitation, deterrence, and retribution.”¹¹⁷ The criminalization of homelessness fails to meet any of the three constructive purposes of punishment defined in *Kennedy*.

The Grants Pass ordinances do not deter people experiencing homelessness from being homeless, especially considering deterrence is not a viable solution given that homelessness, as discussed above, is almost always an involuntary condition.¹¹⁸ The punishment

¹¹⁴ *Id.* at 1.

¹¹⁵ *See id.* at 2-4.

¹¹⁶ Sarah Gillespie, *Costs and Offsets of Providing Supportive Housing to Break the Homelessness-Jail Cycle*, Urban Institute (2021), https://www.urban.org/sites/default/files/publication/104499/costs-and-offsets-of-providing-supportive-housing-to-break-the-homelessness-jail-cycle_0.pdf.

¹¹⁷ *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008) (citing *Harmelin v. Michigan*, 501 U.S. 957, 999 (1991)).

¹¹⁸ *See supra* §I (explaining that homelessness is involuntary).

of homeless individuals does not cause people to **choose** not to be homeless—indeed, these individuals are homeless because they have no viable alternative housing options, and to assume that homeless individuals have a choice in whether they are homeless or not demonstrates a lack of understanding of the causes of homelessness.¹¹⁹

The Grants Pass ordinances also do not rehabilitate homeless individuals. The definition of “rehabilitation” has evolved over the years, but it has been historically seen through the lens of treatment, training, or moral reform.¹²⁰ Rehabilitation in the form of treatment involved the idea that an individual would be punished by receiving guidance away from criminal behavior with the goal of re-entering society and not returning to the criminal behavior.¹²¹ Rehabilitation through training referred to equipping individuals with the skills to become a productive member of society at the end of the term of punishment—for example, by providing vocational training and education or drug treatment as punishment.¹²² Moral reform requires the individual to see the error of his ways and feel remorse over his behavior.¹²³ Even under this wide umbrella of potential definitions, the Grants Pass ordinances fail to serve any rehabilitative purposes. These three interpretations of rehabilitation have at least one factor in common—the individual,

¹¹⁹ *See id.*

¹²⁰ Chad Flanders, *The Supreme Court and the Rehabilitative Ideal* 5-17 (2014).

¹²¹ *See id.* at 7-11.

¹²² *See id.* at 12-14.

¹²³ *See id.* at 14-17.

having been punished for a behavior, emerges back into society and does not repeat the behavior.¹²⁴ Criminalizing homelessness has no such impact. Indeed, after having the Grants Pass ordinances enforced against them, homeless individuals will remain homeless, and they now have additional barriers to obtaining alternative housing in light of the extensive fines (and potential criminal records) levied against them.

The Grants Pass ordinances further serve no retributive purposes. “The goal of retribution ... reflects society’s and the victim’s interests in seeing that the offender is repaid for the hurt he caused.”¹²⁵ Retribution, therefore, hinges on a crime where hurt was caused unto a victim.¹²⁶ Homelessness is no such crime. There is no victim when homeless individuals sleep in locations prohibited under the Grants Pass ordinances, and the City has offered no identification of any potential “victim.”¹²⁷

The failure of the Grants Pass ordinances to meet any of the three constructive purposes of punishment is telling—the City’s attempt to punish homelessness is incompatible with this Court’s precedent.¹²⁸

¹²⁴ *See id.* at 5-17.

¹²⁵ *Kennedy*, 554 U.S. at 442 (internal citations omitted).

¹²⁶ *See id.*

¹²⁷ *See generally* Brief of Petitioner.

¹²⁸ *See Kennedy*, 554 U.S. at 420.

CONCLUSION

The Grants Pass ordinances punish individuals for an involuntary condition, resulting in cruel and unusual punishment for universal and unavoidable actions. Homelessness is pervasive, and it is not voluntary. Criminalization does not help with homelessness—if anything, it makes the problem worse. Accordingly, the amici curiae respectfully request that the Court affirm the lower court’s decision and hold in favor of Respondents.

Respectfully submitted,

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