

No. 23-175

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IN THE  
**Supreme Court of the United States**

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CITY OF GRANTS PASS, OREGON,  
*Petitioner,*

v.

GLORIA JOHNSON, ET AL. ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,  
*Respondent.*

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*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT*

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**BRIEF OF CONGRESSIONAL *AMICI CURIAE*  
IN SUPPORT OF RESPONDENTS**

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**INTERESTS OF *AMICI CURIAE***<sup>1</sup>

*Amici* are members of Congress elected to represent Americans across *seventeen* districts in *eleven* of these United States of America. As members of the Senate and the House of Representatives, *Amici* are lawmakers in this nation's third co-equal branch of federal government. Accordingly, *Amici* have representative interests in the social and economic prosperity of all Americans, and a governmental duty to preserve and maintain the thriving and unburdened flow of economic exchange and migration between and among their jurisdictions.

Moreover, *Amici* hail from *eight* federal judicial circuits, including the Ninth Circuit, where this case and its predecessor, *Martin v. Boise*, initiated. Their home districts and states run a socially and economically diverse gamut, from this nation's wealthiest communities to some of its most impoverished; from rural and agrarian countryside to unrivaled urban metropolises; from jurisdictions contending with unsheltered homelessness for the first time to those with budgeted agencies dedicated solely to housing those in need. Yet all of them have experienced unprecedented growth of homelessness rates and housing costs simultaneously, along with a record-breaking period of wage stagnation. This is not coincidence. Indeed, many of *Amici's* constituents—and some of *Amici* themselves, for that matter—have

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<sup>1</sup> Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae*, its members, and its counsel made a monetary contribution to its preparation or submission.

personally experienced the hopelessness and indignity of struggling to survive without access to shelter. Accordingly, *Amici* have a strong interest in preserving the civil and human rights of the people experiencing unsheltered homelessness in Grants Pass, Oregon, and everywhere else in the modern United States of America.

A full list of *Amici* appears in the Appendix.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Petitioner and many of its supporting *amici* invite the Court to believe that the cudgel of police power is their only option for addressing homelessness. But punishing human beings for existing when they have nowhere safe to rest is not only unconstitutional, it is also the least effective and most costly response a city can choose. From the recent infusion of historic levels of federal aid to readily available best practices supported by decades of evidence-based research,<sup>2</sup> Grants Pass had many other effective options available to it, but instead chose to punish its most vulnerable residents. Criminalizing innocent people simply for existing is fundamentally anathema to our modern sensibilities, but it was also un-American at the founding. Moreover, punishing poverty traps people in cycles of debt, unemployment, and hopelessness, increasing the likelihood someone will become chronically homeless, which makes the

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<sup>2</sup> See generally, U.S. Interagency Council on Homelessness, *All In: The Federal Strategic Plan to Prevent and End Homelessness* (2022).

problem worse for everyone and therefore serves no legitimate penological purpose.

While the members of Congress signing here agree that the political branches have at least partially failed homeless Americans by turning away from their historical role in ensuring broad access to affordable housing, this Court has never permitted a local government to inflict pain on its own innocent residents for the deliberate purpose of running them off and making them someone else's burden. For the good of the people our Constitution protects, and for the health of the interstate relationships it governs, we undersigned lawmakers implore this Court to affirm the ruling of the Ninth Circuit Court of Appeals.

## **ARGUMENT**

### **I. HOMELESSNESS DECLINES WHEN WE ENSURE BROAD ACCESS TO AFFORDABLE HOUSING.**

From founding era laws mandating public assistance for the impoverished incapable of supporting themselves through our first confrontation with modern homelessness after the Great Depression, we have long known how to effectively address homelessness in this country. Nonetheless, Grants Pass asks the Court to believe that it is powerless to address homelessness without terrorizing its poorest residents with crippling fines and jail terms simply for existing without a private place to rest. Petitioner is mistaken. There are myriad successful models and options available.

**A. Our first battle with modern homelessness showed us that we can address it without punishing poverty.**

Homelessness has existed in the United States since the country's founding. Prior to the 1920s, rates were low, and founding era vagrancy laws provided for the unhoused who qualified for aid with a stipend, housing, clothing, food, education, materials with which to work, legal counsel, and healthcare, with the costs paid by the locality.<sup>3</sup>

The United States' first major *modern* battle with homelessness began in 1929 as the country faced an unemployment rate of 25% and an economy in free-fall during the Great Depression. The federal government acted swiftly to decrease rising levels of homelessness throughout the country by creating the Federal Housing Administration (FHA) in 1934 and the U.S. Housing Act in 1937, which provided public housing for people experiencing or at risk of experiencing homelessness. Both the creation of the FHA and the U.S. Housing Act paved the way to accessible, affordable housing for millions of Americans.

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<sup>3</sup> See, e.g., An Act for the Relief of the Poor, ch. 225, § 3, 1 Laws of the State of Delaware 544, 545 (Samuel & John Adams eds., 1797) (providing the poor "proper houses and places" and a supply of "hemp, flax, thread and other materials"); *accord* Act of Feb. 11, 1794, ch. 8, 1794 Ma. Laws 347, 347 ("That legal settlements in any town or district in this Commonwealth, shall be hereafter gained, so as to subject and oblige such town or district to relieve and support the persons gaining the same, in case they become poor and stand in need of relief . . .").

In 1965, Congress institutionalized its successful housing investments by creating an entire agency to combat homelessness: the Department of Housing and Urban Development (hereafter, “HUD”). From the 1930s depression-era housing programs through the initiatives to end homelessness of the 1970s, the federal government played a critical role in improving housing security for millions of households. Unfortunately, the benefits of these programs were not felt equally; federal policy discriminated against households of color, entrenched racial segregation, and widened the racial wealth gap, a legacy that contributes to today’s segregated communities and deep-seated racial disparities in housing and homelessness.<sup>4</sup>

**B. Modern homelessness rose when the government abandoned its historical role of protecting access to affordable housing.**

Initiatives to end homelessness peaked in 1976, when HUD had a housing assistance budget of \$55.6 billion, the lion’s share of its \$83.6 billion agency-wide budget.<sup>5</sup> As Republican President Gerald Ford left

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<sup>4</sup> Black Americans make up 37% of people experiencing homelessness and more than 50% of homeless families with children, but they comprise only 13% of the total U.S. population. National Alliance to End Homelessness, *Homelessness and Racial Disparities* (December 2023), <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/>.

<sup>5</sup> Cushing N. Dolbeare and Sheila Crowley, *Changing Priorities: The Federal Budget and Housing Assistance 1976-2007*, NATIONAL LOW INCOME HOUSING COALITION, at 2 (August



office in 1977, his administration requested a budget that, if approved, would have funded 506,000 additional units of low-income housing.<sup>6</sup> Congress failed to approve this budget and, since 1976, has slashed spending on low-income housing assistance to a fraction of what it was pre-1976. For example, while the total federal budget nearly doubled from 1976 to 2002, the political branches gutted HUD's budget by nearly 60%.<sup>7</sup>

Facing new housing and economic challenges after disinvesting in affordable housing protections for working class Americans, the 1980s saw a proliferation in homelessness that was dramatically different from the 1920s and '30s. Unlike the homelessness crisis of the Great Depression, which was widely caused by mass unemployment and economic crisis, the rise in homelessness from 1983–85 occurred during an economic boom when the unemployment rate was in the single digits.<sup>8</sup>

In 1986, economic researchers Richard B. Freeman and Brian J. Hall investigated the homeless population, which HUD had recently attempted to count for the first time. In their 1987 article, "*Permanent Homelessness in America?*," Freeman and Hall revealed that known instances of homelessness

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2002) [https://nlihc.org/sites/default/files/Changing-Priorities-Report\\_August-2002.pdf](https://nlihc.org/sites/default/files/Changing-Priorities-Report_August-2002.pdf).

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Gregg Colburn and Clayton Page Aldern, *Homelessness is a Housing Problem: How Structural Factors Explain U.S. Patterns*, University of California Press, at 47 (2022).

increased from 279,000 to as much as 343,000 in just two years.<sup>9</sup> Forty years ago, these experts observed, “[e]conomic recovery will not solve the problem of homelessness . . . . [I]n the absence of changes in the housing market or in the economic position of the very poor, the U.S. will continue to be plagued by the problem of homelessness for the foreseeable future.”<sup>10</sup>

Freeman and Hall were right. Homelessness has increased year after year since the ‘70s and ‘80s, and so, too, have the narratives that blame the poor for their own destitution. For decades, social science data has proven that despite a broad swath of the public believing people in poverty are lazy and do not want to work, the opposite is true.<sup>11</sup> People experiencing poverty are often in their position because of structural forces, such as wage stagnation.<sup>12</sup> Nonetheless, since the late 1970s, public policy on poverty has not responded to the overwhelming data we have accumulated on the reality of people experiencing poverty and homelessness.

For example, sociologists Kathryn Edin and H. Luke Shaefer exposed how the Welfare Reform Act of 1996 promulgated harmful policy choices based on

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<sup>9</sup> Richard B. Freeman and Brian J. Hall, *Permanent Homelessness in America?*, Population Research and Policy Review at 6 (September 1986) [https://www.nber.org/system/files/working\\_papers/w2013/w2013.pdf](https://www.nber.org/system/files/working_papers/w2013/w2013.pdf).

<sup>10</sup> *Id.* at paper’s abstract.

<sup>11</sup> See generally Leonard Goodwin, *Do the Poor Want to Work? A Social-Psychological Study of Work Orientations*, Washington D.C.: The Brookings Institution (1972).

<sup>12</sup> *Id.*

public misperceptions.<sup>13</sup> In *\$2.00 A Day, Living on Almost Nothing in America*, Edin and Luke explain that Clinton’s Welfare Reform Act was built on the assumption that Americans in poverty could find full-time, stable employment at a living wage. Instead, we have a low-wage labor market with limited worker protections.<sup>14</sup> Today, policy choices fueled by public misinformation about causes and solutions<sup>15</sup> to poverty have rendered welfare almost nonexistent:

Too often, America has gone down the road of trying to shame those in need. We’ve put up barriers. We’ve made people jump through hoop after hoop—all based on the not-so-subtle presumptions that they are lazy and immoral, intent on trying to put something over on the system.<sup>16</sup>

Similarly, the federal government distributes cash aid for families in poverty directly to states, and state authorities have nearly unfettered discretion to determine how best to distribute these funds to

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<sup>13</sup> See generally Kathryn Edin and H. Luke Shaefer, *\$2.00 a Day: Living on Almost Nothing in America* (September 13, 2016).

<sup>14</sup> *Id.*

<sup>15</sup> See generally Francis Torres, *U.S. Opinions on Homelessness: A BPC/Morning Consult Poll*, Bipartisan Policy Center (June 15, 2023) (showing that 69% and 63% of adults believe that drug and alcohol use and mental illness are major causes of homelessness.).

<sup>16</sup> Edin & Shaefer, *supra*, n. 13, at 179.

constituents living in poverty.<sup>17</sup> With such limited oversight, states are incentivized to drop people from their welfare role and spend federal aid on non-poverty related projects.<sup>18</sup> According to the Center on Budget and Policy Priorities, in 2021, states spent only about a fifth of their already deficient federal welfare dollars on basic assistance to meet essential needs of families with children.<sup>19</sup> In an especially egregious case, Mississippi spent its welfare funds on a new sports stadium, and other projects that benefit people who are above the poverty line.<sup>20</sup>

Mississippi is far from alone in reallocating welfare aid away from people in poverty, and towards other non-poverty related projects. Nationally, poor families only received twenty-two cents on the dollar for federal welfare funds meant to alleviate poverty in 2022.<sup>21</sup>

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<sup>17</sup> Congressional Research Service, *The Temporary Assistance for Needy Families (TANF) Block Grant* (March 22, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF10036>.

<sup>18</sup> *Id.*

<sup>19</sup> Center for Budget and Policy Priorities, *State Fact Sheets: How States Spend Funds Under the TANF Block Grant*, (March 17, 2023), <https://www.cbpp.org/research/income-security/state-fact-sheets-how-states-spend-funds-under-the-tanf-block-grant>.

<sup>20</sup> Niel MacFarquhar, *Mississippi Welfare Scandal Spreads Well Beyond Brett Favre* (Sept. 22, 2022), <https://www.nytimes.com/2022/09/22/us/brett-favre-welfare-mississippi.html>.

<sup>21</sup> Matthew Desmond, *Why Poverty Persists in America* (March 9, 2023) <https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html?smid=url-share>.

### **C. Twenty-first century homelessness is a purely economic issue.**

As federal spending on housing assistance has remained underfunded, and rental prices have increased at rates that far surpass incomes, the housing crisis has worsened, and homelessness has soared.<sup>22</sup> Congress's neglect of low-income housing assistance has driven millions of families into housing insecurity and homelessness. In 2023, 8.53 million households were reported to be struggling with worst-case housing needs: specifically, renter households with very low incomes and without government housing assistance who pay more than one-half of their income toward rent, live in severely inadequate conditions, or both.<sup>23</sup> Yet HUD's \$70 billion agency-wide budget today constitutes less than one-quarter of the \$300 billion inflation-adjusted dollars it would require to provide the same services to the same number of people as it did with only the \$55.6 billion in its 1976 housing assistance budget.<sup>24</sup>

With a nationwide shortage of 7.3 million affordable and available homes for extremely low-income renters, it is not surprising that HUD's Point

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<sup>22</sup> See generally Colburn & Aldern, *supra*, n. 8.

<sup>23</sup> Samantha Batko and Kathryn Reynolds, *Homelessness Is Solvable, But Only With Sufficient Investment in Housing* (Dec. 15, 2023), <https://www.urban.org/urban-wire/homelessness-solvable-only-sufficient-investment-housing>.

<sup>24</sup> National Low Income Housing Coalition, *With Final FY 24 Spending Bill for HUD Programs Enacted, House Republicans Turn Attention to Slashing Domestic Spending in FY25* (March 11, 2024), <https://nlihc.org/resource/final-fy24-spending-bill-hud-programs-enacted-house-republicans-turn-attention-slashing>.

in Time Count (hereafter, “PIT Count”) found more than 650,000 people were experiencing homelessness in January 2023—a 12% increase from the prior year.<sup>25</sup> Because the PIT Count is well-understood to be methodologically flawed, the actual number of Americans experiencing homelessness is likely multiplicative factors higher. For example, according to data collected from the McKinney-Vento Education for Homeless Children and Youth (“EHCY”) Program and relied on by the U.S. Department of Education, 1.4 million school-aged children<sup>26</sup> (and up to 4.2 million when including youth and young adults)<sup>27</sup> experience homelessness every year. Unlike the flawed PIT Count, the EHCY counts children who do not have a fixed nighttime residence (known as “couch surfing”), or are living in short-term stay hotels and motels, shelters, and transitional housing.<sup>28</sup> This more accurate count calculates a single-year increase in

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<sup>25</sup> Batko & Reynolds, *supra*, n. 23.

<sup>26</sup> National Center for Homeless Education at SERVE, National Overview, <https://profiles.nche.seiservices.com/ConsolidatedStateProfile.aspx>.

<sup>27</sup> Morton, M.H., Dworksy, A & Samuel, G.M., *Missed Opportunities: Counting Youth Experiencing Homelessness in America*, Chapin Hall at the University of Chicago (July 2018), <https://www.chapinhall.org/wp-content/uploads/VoYC-Youth-Count-Brief-Chapin-Hall-2018-2.pdf>; *see also Youth Homelessness Overview*, National Conference of State Legislatures (March 29, 2023), <https://www.ncsl.org/human-services/youth-homelessness-overview>.

<sup>28</sup> Morton, Dworksy, & Samuel, *supra*, n. 27.

child homelessness of 10% between 2021 and 2022,<sup>29</sup> and a staggering 90% increase since the Great Recession in '08.<sup>30</sup>

Just as cash aid for the poor has been funneled to people with wealth, and non-poverty related programs, the money the federal government invests in housing is often diverted away from low-income renters and towards homeowners. Most of the government spending on housing assistance comes in the form of the mortgage interest deduction—a tax credit for homeowners—which is one of the costliest programs in the tax code, with a price tag roughly equivalent to the entire annual HUD budget: \$70 billion.<sup>31</sup> According to the National Association of Realtors, homeowners today have a median income of \$107,000, a number that skyrocketed 20% between 2022 and 2023.<sup>32</sup> Meanwhile, as of 2021—the most

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<sup>29</sup> National Center for Homeless Education, *Student Homelessness in America: School Years 2019–20 to 2021–22*, <https://nche.ed.gov/student-homelessness-in-america-school-years-2019-2020-to-2021-2022/>.

<sup>30</sup> The National Center for Homeless Education, *Data Collection Process and Students Experiencing Homelessness* (March 2023), <https://nche.ed.gov/data-collection-process-and-students-experiencing-homelessness/>

<sup>31</sup> Will Fischer and Chye-Ching Huang, *Mortgage Interest Deduction is Ripe for Reform: Conversion to Tax Credit Could Raise Revenue and Make Subsidy More Effective and Fairer*, Center on Budget and Policy Priorities (June 25, 2013), <https://www.cbpp.org/research/mortgage-interest-deduction-is-ripe-for-reform>.

<sup>32</sup> National Association of Realtors, *NAR Finds Typical Home Buyer's Annual Household Income Climbed to Record High of \$107,000 in Wake of Rising Home Prices and Mortgage Rates*

recent year for which there is reliable data—renters have a median income of approximately \$45,991.<sup>33</sup> Nonetheless, housing aid goes mostly to high income earners, with a disproportionate rate going to people who make twice as much as renters.<sup>34</sup> Only 34 affordable and available rental homes exist for every 100 extremely low-income renter households.<sup>35</sup> There is no state or congressional district with enough affordable homes for its lowest-income renters.<sup>36</sup>

All available research indicates that it is structural factors, such as housing affordability shortages, that

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(November 13, 2023), <https://www.nar.realtor/newsroom/nar-finds-typical-home-buyers-annual-household-income-climbed-to-record-high-of-107000>.

<sup>33</sup> U.S. Census Bureau, U.S. Department of Housing, and HUD data available via 2021 American Housing Survey Data Report (September 29, 2022), <https://www.census.gov/newsroom/press-releases/2022/american-housing-survey-data.html>; see also Matthew Desmond, *How Homeownership Became the Engine of American Inequality* (2017), <https://www.nytimes.com/2017/05/09/magazine/how-homeownership-became-the-engine-of-american-inequality.html>.

<sup>34</sup> Michael J. Novogradac, *Once Again, Homeownership Gets Far More Tax Subsidies than Rental Housing*, Novogradac Journal of Tax Credits Volume 9 Issue 7, July 2, 2018, <https://www.novoco.com/periodicals/articles/once-again-homeownership-gets-far-more-tax-subsidies-rental-housing#:~:text=Even%20with%20that%20drastic%20decline,rental%20housing%20is%20no%20surprise>.

<sup>35</sup> *Id.*

<sup>36</sup> National Low Income Housing Coalition, *Out of Reach: The High Cost of Housing*, at 3 (2023).



create mass homelessness.<sup>37</sup> In their 2022 book, *Homelessness is a Housing Problem: How Structural Factors Explain U.S. Patterns*,<sup>38</sup> Scientists Gregg Colburn and Clayton Aldern explain that regional variations in homelessness show that in markets where housing vacancies are below the “national vacancy rate” average of 4–5%, homelessness is higher than where the vacancy rate is at or above the average.<sup>39</sup> Overall housing costs increase in places where there are fewer vacant and usable homes for rent or sale.<sup>40</sup>

As the City Manager of Grants Pass conceded, Petitioner has a vacancy rate of just 1%, *see* Pet. App. 167a, which falls well below the national average.<sup>41</sup> In Grants Pass and the surrounding areas, housing prices increased, vacancies dropped, and homelessness soared; just last year, while Petitioner submitted this case to the Court, its region saw a 28% homelessness increase over 2022.<sup>42</sup> This economic crisis is reflected in their average rent costs, as well,

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<sup>37</sup> Igor Popov, *Homeless Programs and Social Insurance*, Stanford Institute for Economic Policy Research (April 2016).

<sup>38</sup> Colburn & Aldern, *supra*, n. 8.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Grants Pass: Housing Affordability and Housing Production.  
<https://www.grantspassoregon.gov/DocumentCenter/View/23581/Housing-Solutions-Community-Forum?bidId=>.

<sup>42</sup> Homeless Leadership Coalition, Point In-Time Count, (2023). <https://cohomeless.org/wp-content/uploads/bsk-pdf-manager/2023/10/Official-2023-PIT-presentation.pdf>.

currently \$1,840.<sup>43</sup> Meanwhile, the average income for an individual in Grants Pass is \$28,293.<sup>44</sup> Real estate values have soared by as much as 47% in recent years.<sup>45</sup> As a result, one in four Grants Pass households dedicate 30% or more of their household income to housing costs alone, and nearly one in five are so severely cost burdened that over 50% of their income goes toward sheltering.<sup>46</sup>

These housing factors are a recipe for homelessness in Grants Pass. Without full understanding of the role of housing costs, vacancies, and affordability, Grants Pass officials have targeted the individuals most severely harmed by the housing scarcity rather than the factors that cause the housing crisis. As Colburn and Aldern explain, “[w]ithout a common understanding [of the root causes of homelessness], it is impossible for elected leaders and the community at large to marshal the resources needed to end homelessness. Much of the money spent on homelessness today constitutes a *response* to the crisis rather than an *alternative* to it.”<sup>47</sup>

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<sup>43</sup> Grants Pass: Housing Affordability and Housing Production, *supra*, n. 41.

<sup>44</sup> US Census Bureau, <https://www.census.gov/quickfacts/fact/table/grantspasscityoregon/POP060210>.

<sup>45</sup> Grants Pass: Housing Affordability and Housing Production, *supra*, n. 41.

<sup>46</sup> *Id.*

<sup>47</sup> Colburn & Aldern, *supra*, n. 8, at 31 (2022) (emphasis added).

When the homelessness crisis is blamed on those experiencing it, that response is all too often punitive, ineffective, costly, and inhumane.<sup>48</sup>

**D. We can only end homelessness by returning to our roots of investing in affordable, accessible housing programs.**

While the public might not be aware of the root causes of homelessness, Congress is. And we know what Congress can accomplish when it has the will to act. For example, the US Department of Housing and Urban Development-Veterans Affairs Supportive Housing program (“HUD-VASH”) provides a prime example on how adequate federal investments in housing and services can solve homelessness. From 2009 to 2019, the federal government set a goal of ending homelessness for one especially vulnerable and nationally sympathetic population: veterans. With the will to end veteran homelessness, federal spending was poured into programs designed to lift veterans out of homelessness. And the programs were widely successful. Veteran homelessness rapidly declined by 50%.<sup>49</sup> And veteran homelessness continued to

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<sup>48</sup> See generally, Peter Edelman, *Not a Crime to Be Poor: The Criminalization of Poverty in America* (2017).

<sup>49</sup> Samantha Batko, *We Can End Homelessness Through Housing First Interventions* (February 12, 2020), <https://www.urban.org/urban-wire/we-can-end-homelessness-through-housing-first-interventions>.

decrease by one person for every HUD-VASH voucher awarded during the tenure of the program.<sup>50</sup>

Again in 2020 and 2021, we got a glimpse of what massive gains the federal government could make in reducing homelessness when it took bold action to support low-income renters during the COVID-19 pandemic. The Child-Tax Credit, Emergency Rental Assistance, Emergency Housing Vouchers, and a nationwide moratorium on evictions led to a significant decrease in homelessness, despite the pandemic's negative impact on the economy.<sup>51</sup> The CARES Act and American Rescue Plan Act brought the U.S. poverty rate to a new record low of 7.8% in 2021, its lowest level since 1967.<sup>52</sup> These gains might have lasted with ongoing investment from the government. Instead, Congress allowed these resources and protections to expire, while renters faced a brutal housing market with skyrocketing rents and high inflation. This led to a resurgence in homelessness nationwide over the past two years.<sup>53</sup>

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<sup>50</sup> William N. Evans, Sarah Kroeger, Caroline Palmer, and Emily Pohl, *Housing and Urban Development—Veterans Affairs Supportive Housing Vouchers and Veterans' Homelessness, 2007–2017*, *American Journal of Public Health* 109, 1440–1445, <https://doi.org/10.2105/AJPH.2019.305231>.

<sup>51</sup> Danilo Trisi, *Government's Pandemic Response Turned a Would-Be Poverty Surge into a Record Poverty Decline*, Center on Budget and Policy Priorities. (August 29, 2023) <https://www.cbpp.org/research/poverty-and-inequality/governments-pandemic-response-turned-a-would-be-poverty-surge-into>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Without robust government investment, U.S. cities will be left to address homelessness on their own.

This challenge will be amplified by the history of systemic racial discrimination baked into federal housing policy and persisting today. People of color are more likely to rent their homes, to have extremely low incomes, to be severely cost burdened, to face eviction, and to experience homelessness. This is also the case in the region of Grants Pass, Oregon. Black/African Americans make up 1.9% of Oregon's total population but represent 6% of the population experiencing homelessness.<sup>54</sup> In almost every county in Oregon, there is a disproportionate number of people of color who experience homelessness.<sup>55</sup> Once homeless, people of color are more likely to be punished because of their homelessness.<sup>56</sup> Nineteen percent of Black households, 17% of American Indian or Alaska Native (AIAN) households, 14% of Latino households, and 9% of Asian households are extremely low-income renters, compared to 6% of white non-Latino households.<sup>57</sup> Collectively, minorities bear the disproportionate

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<sup>54</sup> Lane County Oregon, Point-In Time Count by County, 2019.

[https://www.lanecounty.org/government/county\\_departments/health\\_and\\_human\\_services/human\\_services\\_division/point-in-time\\_pit\\_homeless\\_count/oregon\\_point-in-time\\_by\\_county](https://www.lanecounty.org/government/county_departments/health_and_human_services/human_services_division/point-in-time_pit_homeless_count/oregon_point-in-time_by_county).

<sup>55</sup> *Id.*

<sup>56</sup> Lawyers' Committee for Civil Rights, *Cited for Being in Plain Sight*, 5–6 (2020). LCCR\_CA\_Infraction\_report\_4WEB-1.pdf (lccrsf.org).

<sup>57</sup> National Low Income Housing Coalition, *Gap Report: A Shortage of Affordable Homes* (March 2024). Retrieved from <https://nlihc.org/gap>

brunt of homelessness and the harm that comes with punitive ordinances like the one in Grants Pass.

## II. CRIMINALIZING POVERTY IS AN EXPENSIVE WAY TO MAKE HOMELESSNESS WORSE.<sup>58</sup>

Rather than learn from the historical success of the federal government or those of peer municipalities committed to humane and effective homelessness policies, Grants Pass decided to aggressively enforce ordinances criminalizing the ability of people experiencing homelessness to exist within city limits.

Data proves just how ineffective punishing homelessness is. In fact, not only is criminalization unhelpful, *but it also perpetuates homelessness* by erecting more barriers against escaping the cycle of poverty. Incarceration lowers the chances that someone unhoused can access housing post-incarceration, not to mention gainful employment. And people experiencing homelessness often experience the worsening of mental health and physical health challenges as they languish in custody, making it even more challenging to access secure housing post-incarceration.<sup>59</sup>

Criminalization is also costly to taxpayers. The Economic Roundtable conducted a cost analysis of criminalizing homelessness versus addressing it

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<sup>58</sup> The undersigned acknowledge, with gratitude, the original source for the quote paraphrased in this point heading. Interview with David Peery, Exec. Dir., MIA. COAL. ADVANCE RACIAL EQUITY (Feb. 25, 2022).

<sup>59</sup> Alec Karakatsanis, *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System* (2019).

through investing in supportive housing.<sup>60</sup> The study included approximately 10,000 homeless people and revealed that government investment in supportive housing reduced average monthly spending by 47% per person, compared to criminalization, *even after including the cost of providing housing*.<sup>61</sup> Thus, utilizing taxpayer money to address the underlying root of homelessness (lack of affordable housing) is not only the humane option, but it is also the most fiscally responsible.

However, this is often not the chosen path. In 2017, Sociology Professors Brenden Beck and Adam Goldstein published their research on the relationship between spending on police, spending on social services designed to fight homelessness, and rising housing costs.<sup>62</sup> The researchers found that as housing prices increase, municipalities often respond by increasing spending on police and decreasing spending on social services. The Safer Cities Initiative (SCI), for example, cost Los Angeles taxpayers \$6 million annually for personnel alone.<sup>63</sup> This was more

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<sup>60</sup> Daniel Flaming, Patrick Burns and Brent Haydamack, *Homeless in LA: Research Report For the 10-Year Plan to End Homelessness in Los Angeles County*, Economic Roundtable (September 1, 2024), [www.economicrt.org/publication/homeless-in-la/](http://www.economicrt.org/publication/homeless-in-la/).

<sup>61</sup> *Id.*

<sup>62</sup> Braden Beck and Adam Goldstein, *Governing Through Police? Housing Market Reliance, Welfare Retrenchment, and Police Budgeting in an Era of Declining Crime* Get access Arrow, 96 *Social Forces* 1183 (2018), <https://doi.org/10.1093/sf/sox076>

<sup>63</sup> Gary Blasi and Forrest Stuart, *Has the Safer Cities Initiative in Skid Row Reduced Serious Crime?*, at 10 (2008),

than the city's annual budget (\$5.6 million) for all homeless shelters and services. By 2009, just four years after the SCI's inception, SCI arrests cost the city \$118 million, money that could have been spent on expanding access to affordable housing and other proven techniques for solving homelessness.<sup>64</sup>

It is disingenuous for Petitioner, or any of its supporting *amici*, to suggest that the Ninth Circuit's holding prevents local and state governments from passing policy changes to address the challenges of homelessness. Investing in affordable housing solutions, as explained above, is good for everybody; programs like the national Housing Trust Fund, rental assistance, public housing, rural and tribal housing, and other evidence-based policies designed to end homelessness and housing insecurity have demonstrably improved lives and saved tax dollars.<sup>65</sup> Yet when Grants Pass shared in over \$16.8 million dollars in State and Local Fiscal Recovery Funds (SLFRF) delivered to Josephine County during the pendency of this case, Petitioner directed merely

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[https://wraphome.org/wp-content/uploads/2008/09/safer\\_cities.pdf](https://wraphome.org/wp-content/uploads/2008/09/safer_cities.pdf).

<sup>64</sup> Alex S. Vitale, *The Safer Cities Initiative and the removal of the homeless*, Vol. 9 Issue 4 Criminology & Public Policy 867, 868 (2010), [https://www.researchgate.net/publication/263519808\\_The\\_Safer\\_Cities\\_Initiative\\_and\\_the\\_removal\\_of\\_the\\_homeless\\_Reducing\\_crime\\_or\\_promoting\\_gentrification\\_on\\_Los\\_Angeles'\\_Skid\\_Row](https://www.researchgate.net/publication/263519808_The_Safer_Cities_Initiative_and_the_removal_of_the_homeless_Reducing_crime_or_promoting_gentrification_on_Los_Angeles'_Skid_Row)

<sup>65</sup> See generally Nabihah Maqbool, Janet Viveiros, and Mindy Ault, *The Impacts of Affordable Housing on Health: A Research Summary*, Center for Housing Policy (April 2015), <https://nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Health-A-Research-Summary.pdf>.



\$250,000 towards affordable housing support while spending \$2 million on local courthouse renovations.<sup>66</sup>

On the other hand, criminalizing behavior that is inextricably linked to the status of being human and unsheltered in a cold, wet winter climate—such as using a blanket to survive the night—is as ineffective as it is unconscionable. Nonetheless, Grants Pass chose this route to the exclusion of all other available options and well-established best practices. Fortunately, the Eighth Amendment’s Cruel and Unusual Punishments Clause places limitations on what can be criminalized and punished as such.

This Court has rightly held that laws criminalizing an individual’s status, rather than specific conduct, are unconstitutional.<sup>67</sup> In *Robinson v. California*, the defendant was convicted of violating a statute criminalizing a person for being addicted to narcotics. The Court noted that the statute considered an addicted person “continuously guilty of this offense, whether or not he had ever used or possessed any narcotics within the State”<sup>68</sup>—and further that addiction is a status “which may be contracted innocently or involuntarily,” given that “a person may even be a narcotics addict from the moment of his birth.”<sup>69</sup> The Court ultimately held that the statute

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<sup>66</sup> U.S. Dept. of the Treasury, *State and Local Fiscal Recovery Fund Project and Expenditure Reports submitted for the October 2023 reporting cycle* (2023).

<sup>67</sup> See *Robinson v. California*, 370 U.S. 660 (1962).

<sup>68</sup> *Id.* at 666.

<sup>69</sup> *Id.* at 667, n. 9.

criminalizing the status of addiction constituted “cruel and unusual punishment.”<sup>70</sup>

The Ninth Circuit rightly applied the *Robinson* analysis in *Martin v. City of Boise* by precluding the “enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter.”<sup>71</sup> In reaching its holding, the lower court relied on *Robinson*, reasoning that “criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change.”<sup>72</sup> The appellate court concluded that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter,” explaining that such acts are “*universal and unavoidable consequences of being human*.”<sup>73</sup>

### III. GRANTS PASS SET OUT TO BURDEN ITS NEIGHBORS WITH THE CARE OF ITS IMPOVERISHED RESIDENTS, UNDERMINING ANY LEGITIMATE PENOLOGICAL INTERESTS IN THE PROCESS.

Petitioner and its supporting *amici* are correct to say that the courts are no place to resolve the ongoing issue of homelessness. As explained above, homelessness is an economic problem that is best addressed by investing in access to affordable housing. But Petitioner and its *amici* reach too far when they

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<sup>70</sup> *Id.* at 667

<sup>71</sup> *Martin v. City of Boise*, 920 F.3d 584, 615 (9th Cir. 2019).

<sup>72</sup> *Id.* at 616.

<sup>73</sup> *Id.* at 616–17 (emphasis added).

claim that the courts have no role when it comes to adjudicating the constitutionality of state actions.

As state legislatures and local governments continue to debate about root causes and implement policy solutions for homelessness, the judiciary is responsible for interpreting these laws and assessing their constitutionality. The Grants Pass ordinances are subject to judicial review, as are all laws and ordinances in the United States since *Marbury v. Madison*, 5 U.S. 137 (1803). Given the structural and historical factors contributing to homelessness, the hostility unsheltered people often face from people with wealth and power, and their unique vulnerability to repeated interactions with law enforcement and other state actors, the courts are frequently called upon to determine whether local policies targeting poverty and homelessness pass constitutional muster.

This Court specifically is well acquainted with the line between dictating local policy and calling balls and strikes in matters of poverty policing. For example, in *Edwards v. California*, this Court acknowledged that it is not the appropriate forum “to pass upon ‘the wisdom, need, or appropriateness’ of the legislative efforts of the States to solve such difficulties” as what to do with a surplus of indigent people without the means to support themselves.<sup>74</sup> Nonetheless, the *Edwards* Court still held that states cannot punish the migration of impoverished citizens without unduly burdening interstate commerce,

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<sup>74</sup> *Edwards v. California*, 314 U.S. 160, 173 (1941) (quoting *Olsen v. Nebraska*, 313 U.S. 236, 246 (1941)).

which is the sole purview of the federal government.<sup>75</sup> To reach its conclusion the Court relied on Justice Cardozo's majority opinion in *Baldwin v. Seelig*, which states, in pertinent part:

On that assumption we are asked to say that intervention will be upheld as a valid exercise by the state of its internal police power, though there is an incidental obstruction to commerce between one state and another. This would be to eat up the rule under the guise of an exception. Economic welfare is always related to health, for there can be no health if men are starving. Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. To give entrance to that excuse would be to invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. ***It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run***

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<sup>75</sup> *Id.* at 176–77.

***prosperity and salvation are in  
union and not division.***<sup>76</sup>

Similarly, in *Papchristou v. City of Jacksonville*, this Court struck down a Florida law that criminalized vagrancy, loitering, and related activity as unconstitutionally vague.<sup>77</sup> And more recently, in 1999 this Court reaffirmed longstanding principles of constitutional limitations on penalizing the right to travel between the states, to be treated like other citizens when doing so, and to permanently reside in a chosen place, regardless of one's financial status.<sup>78</sup> In sum, Petitioner and its *amici* are simply mistaken about the judiciary's role; it is imperative that our courts continue to serve as a check against improperly exercised police power, whether that power violates the commerce clause, privileges and immunities, equal protection, due process, or, as here, the Cruel and Unusual Punishments Clause.<sup>79</sup>

The Eighth Amendment, as applied to the States by the Fourteenth, makes it unconstitutional to prescribe a punishment that is cruel and unusual. This prohibition applies to both judicial and legislative

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<sup>76</sup> *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511, 523 (1935) (quoted in *Edwards*, 314 U.S. at 173–74) (emphasis added).

<sup>77</sup> *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170-71 (1972).

<sup>78</sup> *Saenz v. Roe*, 526 U.S. 489, 498–500 (1999) (citing *Edwards* with approval).

<sup>79</sup> To be clear, while this case has much in common with others that resolved by different constitutional provisions than those at issue here, *Amici*'s arguments in support of Respondents should be confined to the Eighth Amendment according to the question presented.

acts equally.<sup>80</sup> Therefore, the penological justification—or lack thereof, as is the case with the Grants Pass ordinances at issue—of a punitive law is “relevant to the analysis” of whether a punishment violates the Eighth Amendment.<sup>81</sup> Legitimate penological purposes include well-understood criminological objectives such as “retribution, deterrence, incapacitation, and rehabilitation.”<sup>82</sup> Without a “legitimate penological justification,” a punishment “is by its nature disproportionate to the offense” and, thus, unconstitutional.<sup>83</sup>

It is clear from the record that the City Council gave no consideration to the penological purposes that are supposed to guide criminal punishment. To the contrary, their goal was to make homeless people so “uncomfortable . . . in [Grants Pass] they will want to move on down the road.”<sup>84</sup> The hope was that the homeless population would end up in “federally managed land,” county parks, and/or state rest stops outside of the city’s limits.<sup>85</sup> To meet that end, the city began aggressive enforcement of punitive ordinances that would punish any homeless person simply resting and trying to endure the weather by using a blanket.

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<sup>80</sup> *Furman v. Georgia*, 408 U.S. 238, 241 (Douglas, J., concurring).

<sup>81</sup> *Graham v. Florida*, 560 U.S. 48, 71 (2010).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Johnson v. City of Grant Pass*, 72 F.4<sup>th</sup> 868, 877 (9th Cir. 2023).

<sup>85</sup> Def.’s Mot. Summ. J. 11–12, ECF No. 80; *see* Pet. App. 180a.

The spiteful nature of the ordinances is reminiscent of Grants Pass’s troubling history as a “sundown town”<sup>86</sup>—American municipalities that, “via policy, violence or both, barred black people from town after dark.”<sup>87</sup> This is even more true considering the disproportionate impact the ordinances will have on people of color. Within the nationwide adult homeless population, 37% are Black, 28% Hispanic, 4% Native American, and 2% Asian.<sup>88</sup> Further, Black and Hispanic individuals are far more likely to receive citations than white people.<sup>89</sup> Taken together, it is more likely that homeless individuals who are Black or Hispanic will disproportionately face the excessive fines and unwarranted jail time that the ordinances prescribe.

Also disproportionately represented amongst the homeless population are people experiencing interpersonal or domestic violence, people with disabilities, and gay and transgender youth. With up to 40% of the 4.2 million youth experiencing homelessness identifying as LGBTQ+ while only

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<sup>86</sup> See, e.g., The Oregon Remembrance Project, *Let’s Keep Grants Pass a White Man’s Town* (Republished 2024), <https://oregonremembrance.org/sunrise-project/our-work/>.

<sup>87</sup> Logan Jaffe, *The Legend of A-N-N-A: Revisiting an American Town Where Black People Weren’t Welcome After Dark*, ProPublica Ill. (Nov. 7, 2019), <https://features.propublica.org/illinois-sundown-towns/legend-of-anna/>.

<sup>88</sup> U.S. Department of Housing and Urban Development, *The 2023 Annual Homeless Assessment Report (AHAR) to Congress*, at 27 (Dec. 2023).

<sup>89</sup> Lawyers’ Committee for Civil Rights, *supra*, n. 18, at 5–6.

representing 9.5% of the U.S. population, LGBTQ+ youth disproportionately experience homelessness compared to their straight and cisgender peers.<sup>90</sup> Once homeless, these young people are also most likely to face the harshest treatment by law enforcement officials, resulting in greater challenges when trying to access health care, housing, employment, and education.<sup>91</sup> All of these factors lead to the greater likelihood that an unhoused youth will experience homelessness as an adult.

The requirement of a penological purpose is supposed to guide the judicial and legislative imposition of punishments to avoid ineffective and malicious penalties like the ones in these ordinances. Ordinances punishing a person's ability to rest with a blanket has no penological purpose and, instead, will only cause harm to unsheltered people.

Rather than criminalize homelessness and ban the unhoused from our communities, we should invest in the proven solutions to ending poverty and homelessness for good. As Pulitzer Prize winning sociologist Matthew Desmond writes in his book *Poverty, By America*:

The end of poverty is something to stand for, to march for, to sacrifice for. It is a misery and a national disgrace, one that

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<sup>90</sup> National Network for Youth, *LGBTQ+ Youth Homelessness*, <https://nn4youth.org/lgbtq-homeless-youth/>.

<sup>91</sup> Nico Sifra Quintana, Josh Rosenthal, and Jeff Krehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth*, Center for American Progress, June 2010. <https://www.americanprogress.org/article/on-the-streets/>



believes any claim to our greatness. The citizens of the greatest nation of the world can and should put an end to it.<sup>92</sup>

### CONCLUSION

The Court should affirm the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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APRIL 3, 2024

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<sup>92</sup> Matthew Desmond, *Poverty, by America*, at 189 (2024).

## **APPENDIX**

**LIST OF CONGRESSIONAL *AMICI CURIAE***

1. The Hon. Cori Bush, 1st District of Missouri
2. Senator Ed Markey, Massachusetts
3. Senator Bernie Sanders, Vermont
4. Senator Elizabeth Warren, Massachusetts
5. The Hon. Jamaal Bowman, 16th District of New York
6. The Hon. André Carson, 7th District of Indiana
7. The Hon. Sylvia Garcia, 29th District of Texas
8. The Hon. Pramila Jayapal, 7th District of Washington
9. The Hon. Ro Khanna, 17th District of California
10. The Hon. Barbara Lee, 12th District of California.
11. The Hon. Summer Lee, 12th District of Pennsylvania
12. The Hon. Gwen Moore, 4th District of Wisconsin
13. The Hon. Alexandria Ocasio-Cortez, 14th District of New York
14. The Hon. Ayanna Pressley, 7th District of Massachusetts
15. The Hon. Delia Ramirez, 3rd District of Illinois
16. The Hon. Linda Sanchez, 38th District of California
17. The Hon. Shri Thanedar, 13th District of Michigan
18. The Hon. Rashida Tlaib, 12th District of Michigan
19. The Hon. Nydia Velázquez, 7th District of New York