

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 THEM-
SELVES AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

**On Writ Of Certiorari To The
United States Court of Appeals
For The Ninth Circuit**

***AMICUS CURIAE* BRIEF OF OREGON FOOD BANK,
CASCADE AIDS PROJECT, HYGIENE4ALL,
COMMUNITY ALLIANCE OF TENANTS, HABITAT
FOR HUMANITY OF OREGON, ET AL. IN SUPPORT
OF RESPONDENTS**

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INTERESTS OF AMICUS CURIAE¹

Amici are service providers and non-profit organizations that provide for communities of the State of Oregon. They have seen first-hand the circumstances driving individuals to homelessness, as well as the effects of their efforts on helping individuals experiencing homelessness stabilize and improve their condition.

Oregon Food Bank (“OFB”) is a nonprofit association that serves Oregon and Southwest Washington, with the goal that no one should be hungry. OFB’s service to individuals and families experiencing homelessness occurs on a daily basis because everyone who experiences homelessness also experiences varying degrees of food insecurity or hunger.

Founded in 1983 as a grassroots response to the AIDS crisis, Cascade AIDS Project (“CAP”) is the oldest and largest HIV-services provider in Oregon. CAP’s Housing & Support Services program helps people who are living with HIV and experiencing housing instability to obtain the stable housing they need to be healthy.

Since 2020, Hygiene4All has worked for a city that enhances the health and well-being of all residents by offering welcoming, health-enhancing access to showers, bathrooms, foot & wound care, access to first aid, health workers, medications, and clean clothing and bedding.

Since 1996, the Community Alliance of Tenants

¹ Pursuant to this Court’s Rule 37.6, no part of this brief was authored in whole or in part by counsel for any party. No person or entity other than *amici* or their counsel made any monetary contribution to the preparation or submission of the brief.

(“CAT”), a non-profit tenant education and advocacy organization, has primarily served low-income tenants. CAT also serves homeless individuals and families because low-income tenants are at risk of homelessness and need knowledge of their rights, advocacy, and referral services to find secure housing.

Ecumenical Ministries of Oregon (“EMO”) is a statewide nonprofit organization of faith partners working together to improve the lives of Oregonians and to create a more just, compassionate, sustainable, and peaceful world. Its direct services address youth homelessness, refugee resettlement, HIV/AIDS, immigration law, domestic violence/sexual assault, and food insecurity. EMO stands in solidarity with homeless communities and their right to not be criminalized for their adversity.

Driven by the vision that everyone deserves a decent place to live, Habitat for Humanity of Oregon brings people together to build homes, community, and hope. Household stability is at the heart of its mission and it believes that access to resources and opportunity is the means to an economically vibrant and just society where every person is welcomed, respected, and valued.

The Mid-Willamette Valley Community Action Agency (“MWVCAA”) is a nonprofit based in Salem, Oregon, providing self-sufficiency, harm reduction, and anti-poverty services to Marion, Polk, Yamhill and eight other Oregon counties. MWVCAA houses, shelters, and serves thousands of homeless children, youth, and adults each year with an array of supportive services and financial assistance.

Partners for a Hunger Free Oregon is a nonprofit that works to address the root causes of hunger.

Hunger and homelessness are directly linked—we cannot expect to end hunger in Oregon while our neighbors remain unhoused.

PDX Saints Love’s goals are to reduce and eliminate barriers for individuals living unsheltered that prevent them from living safe, healthy, and supported lives. It believes that criminalization of poverty of any kind should be stopped. There cannot be policies or ordinances in place that ever place a punitive action on people experiencing poverty or the trauma and unsafety of living unsheltered due to systemic issues outside of their control.

Rogue Retreat is a non-profit organization which has been operating in the Rogue Valley since 1998. Rogue Retreat operates several levels of interconnected housing and shelter, including street outreach, low-barrier shelter, transitional housing, and affordable apartments. It envisions a community where all people have a place to call home and serves appropriately 415 people on any given night. Rogue Retreat provides Case Management and Peer Support at every level of its services and believes in empowering people experiencing homelessness with the tools and support they need to move into a life with stability, health, and hope.

ROSE Community Development Corporation was created in 1992 to revitalize neighborhoods in outer southeast Portland, Oregon. ROSE builds affordable homes and community to make the neighborhoods it serves strong and equitable. ROSE believes everyone in its community has a right to a good home.

Founded in 1979, Sisters of the Road is a social justice organization that uplifts the dignity and autonomy of people experiencing poverty through

nutritious meals, a barter work program, and advocacy, and provides a welcoming space for all. Its programs promote community building and collaboration among various organizations who share our goals, breaking down the silos that so commonly plague nonprofits. It believes change happens one relationship at a time, one conversation at a time.

The Springfield Eugene Tenant Association (“SETA”) is a nonprofit association dedicated to renters’ rights and interests that operates primarily in Lane County. SETA’s services primarily revolve around homelessness prevention to impede the traumatic experience of houselessness. As a direct service provider to low-income tenants in Lane County, it knows the cost of re-housing an individual comes with significant barriers, including the extremely high financial cost, and that additional barriers only harm individuals’ ability to be safe, stable, and housed.

SquareOne Villages was formed in 2012 to start a new model of shelter for people experiencing homelessness using individual sleeping cabins and shared common facilities. Since opening its first village for the unhoused in 2013, nearly 300 people have been sheltered in the program anywhere from one week to five years. Nearly all have been traumatized in some way from living on the street and often have suffered from criminal penalties simply as a result of being unhoused.

Street Books believes that all people deserve a place to belong, to be known, and to have access to safety, security, and the resources to thrive. Since 2011, it has operated a bicycle-powered mobile library with books, reading glasses, and survival gear, for people living outside and at the margins in Portland.

It works every day to build a community of support and connection on the streets for everyone.

Welcome Home Coalition is a coalition of over 60 nonprofit housing developers and service providers in the Portland Metro Region with a vision of a future where everyone has a safe, affordable place to call home. It works to champion empathetic and efficient policy solutions to the region's housing crisis. It knows that policies that criminalize homeless only increase barriers to housing stability, and ultimately undermines community efforts to address the root causes of homelessness. It also knows that policies created without the input of those most impacted by affordable housing shortages generate flawed programs that do not reflect the real needs of its neighbors.

SUMMARY OF ARGUMENT

Individuals who are homeless are not homeless by choice. It is an inescapable result of factors outside of these individuals' control: a shortage of affordable housing, high housing prices, and near-poverty-level incomes.

The City of Grants Pass ("the City") asks this Court to make it illegal for such individuals to try to stay warm or avoid exposure to the elements even when there were no adequate available shelter beds. Criminalization of their condition is not the answer. It is an inhumane means to punish individuals experiencing homelessness for using a blanket or bedding to survive Oregon's cold climate.

The undersigned *Amici* have seen first-hand the causes of homelessness and the effectiveness of solutions other than criminalization. There are effective measures local governments can take to address

homelessness by addressing the issues at its core. Individuals experiencing homelessness will respond to such programs and use them to their fullest potential. Indeed, studies show that criminalizing homeless individuals exacerbates underlying causes. Local governments like the City have at their disposal the means to implement or support housing and assistance programs that help battle homelessness at its core.

Branding these individuals criminals for merely existing in a homeless state, on the other hand, exacerbates the problem and is a poor investment of resources that could have been used for programs proven to reduce the causes behind homelessness.

The ordinances that Grants Pass seeks to uphold are not just constitutionally impermissible measures. They are unnecessary and counterproductive. The Ninth Circuit's decision correctly held that the Eighth Amendment prohibits a local government from criminalizing the condition of homelessness by completely barring individuals without access to shelter from residing in the jurisdiction. The opinion should be upheld.

ARGUMENT

I. Homelessness is an involuntary condition.

Nationally, there is a shortage of available and affordable housing, particularly for households whose incomes are at or below the federal poverty line.² Many of these households are severely cost-burdened, which means that they are spending more than half

² See National Low Income Housing Coalition, "The Gap: A Shortage of Available Homes," <https://nlihc.org/gap>.

of their income on housing.³ As a result, these households are forced to make tradeoffs on all other necessities, such as food and healthcare, just to pay rent. Given this combination of factors—the high percentage of low-income households, the shortage of homes and the high costs to rent homes—homelessness is an inevitability.

Oregon is a microcosm of this affordable housing crisis in the United States. For example, 138,104 renter households in Oregon (or 22 percent) have extremely low incomes, with a household total income at or below the federal poverty line, or 30 percent of their area median income (AMI).⁴ Oregon also has a shortage of over 100,000 rental homes that are affordable and available for households with extremely low incomes—the annual household income needed to afford a two-bedroom rental home is roughly \$62,000.⁵

The housing and cost-of-living crises also often impact various populations in disproportionate ways. In the 2022–23 school year, an estimated 21,478 children enrolled in Oregon’s school districts—approximately 3.9 percent of all students in the state—experienced homelessness.⁶ Oregonians who identified as

³ 24 C.F.R. § 91.5 (2020).

⁴ National Low Income Housing Coalition, “Housing Needs by State, Oregon,” <https://nlihc.org/housing-needs-by-state/oregon>.

⁵ *Id.*

⁶ Greene, J. et al., “2023 Oregon Statewide Homelessness Estimates,” Portland State University Homelessness Research & Action Collaborative (Jan. 2024) at 4. *See also* SchoolHouse Connection, “Infant & Toddler Homelessness Across 50 States: 2021–2022” (Mar. 20, 2024), <https://schoolhouseconnection.org/infant-and-toddler-homelessness/> (estimated total

“American Indian, Alaska Native, or Indigenous; Black, African American, or African; or Native Hawaiian or Pacific Islander often experienced homelessness at much higher rates than their proportion of the overall population in nearly every county.”⁷ Additionally, nearly 20 percent of all Oregonians experiencing homelessness were age 55 or older.⁸ Finally, homelessness also disproportionately affected veterans, who accounted for 7.5 percent of the total state population, but 9 percent of the homeless population.⁹

Considering the concurrent crises affecting the high costs of living, particularly with respect to the cost of housing, it is all-too common for households like those in Grants Pass to lose their housing arrangements and become homeless.

Homelessness is a condition. It is not a choice. It is an unavoidable result of a confluence of factors. The housing shortage, the cost-of-living crisis, and any number other personal crises drive individuals to homelessness.¹⁰

population of Oregon children aged 0–3 experiencing homelessness is 5,392, or 3.31% of all infants and toddlers).

⁷ *Id.* at 5.

⁸ *Id.* at 27.

⁹ Tapogna, J. and Baron, M., “Homelessness in Oregon: A Review of Trends, Causes, and Policy Options” (Mar. 2019) at 15, <https://oregoncf.org/assets/PDFs-and-Docs/PDFs/OregonHomelessness.pdf>.

¹⁰ *See id.* at 20.

II. The criminalization of homelessness is an excessive punishment, not a solution.

Respondents correctly argue in their brief that the criminalization of trying to survive while homeless, with no emergency shelters available, would violate the Cruel and Unusual Punishments Clause under the Eighth Amendment. As the Court recognized in *Robinson v. California*, the City’s imposition of fines and jail time may not seem at first blush cruel or unusual “in the abstract.” *See* 370 U.S. 660, 667 (1962). But one must consider the impact of those punishments. The reality is that they will have lasting, widespread effects on the lives of homeless individuals.

Criminalization will only worsen the pressures that push individuals towards homelessness and away from being able to secure stable homes, employment, medical care, and/or social services.

A. The measures implemented by the City criminalize the state of being homeless.

The City’s ordinances criminalize the population of Grants Pass for simply *existing* while experiencing homelessness. The punitive measures designed by the City target people experiencing homelessness without regard for any of the negative behavioral, criminal, or other voluntary acts some may associate with homelessness.

Although referred to as an “anti-camping” measure, the ordinances at issue here reach much farther. It is not limited to the elimination of “encampments.” That word evokes an image of a settlement—something semi-permanent, crowded with tents. But the ordinances are *expressly* not that narrow. They define

“camping” in such a sweeping manner that it encompasses the mere *existence* outdoors without supplies to survive the elements or shelter beds to turn to.

Grants Pass Municipal Code (“GPMC”) § 5.61.030 prohibits a person from occupying a “campsite” on public property, such as parks, benches, or rights of way. The term “campsite,” however, is defined as:

any place where *bedding, sleeping bag, or other material used for bedding purposes*, or any stove or fire is placed, established, or maintained for the purpose of maintaining *a temporary place to live*, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

GPMC § 5.61.010 (emphasis added).

By their very words, the ordinances seek to eliminate a person with no place to live from finding a place to live. This broad definition of “campsite” enables the City to arrest any individual experiencing homelessness who attempts to protect themselves from harsh weather conditions such as snowstorms or below-freezing temperatures. Homeless individuals who use blankets to keep warm during cold winters would be branded criminals. A folded piece of clothing used as a pillow could lead to fines or even jail time.

The City, despite the clear need for shelter and other life-saving services for its residents, provided “zero emergency shelter beds.” Pet. App. at 179a. Because of the absence of available resources in Grants Pass, the only available option to individuals experiencing homelessness is to exist outside. In cold climates like that of Oregon, one has no choice but to use

something as a source of warmth. Under the City’s ordinances, that option is punishable by fine and jail time, placing these individuals in an impossible situation in which their very existence within city limits is a crime under city ordinances.

B. Criminalization further prevents individuals from securing housing and employment.

Amici for Petitioner argue that the Ninth Circuit’s opinion “limits the tools available to local governments for tackling this complex and difficult human issue.” *See* Brief for the League of Oregon Cities as Amicus Curiae, at 2. But the scope of the question before the Court does not extend that far. The issue at hand—whether one can try to exist in the City while homeless—is not a complex policy question. And time has proven that the “tool” proposed here—criminalization—is not the solution either.

In fact, the record shows that subjecting individuals that are homeless to the criminal legal system does not only fail to stem homelessness, but it worsens the battles those individuals face, thus contributing to homelessness. Measures that criminalize the mere existence of people experiencing homelessness do little—if anything—to address the housing and homelessness challenges impacting jurisdictions like Oregon. Instead, they exacerbate existing physical, psychological, and socioeconomic issues causing the condition. Two kinds of impacts merit mention. Criminalization (1) impedes the treatment of medical conditions afflicting people experiencing homelessness; and (2) makes it harder for people to secure stable housing and employment.

1. Criminalization impedes the treatment of associated medical conditions.

Certain health conditions are more common among individuals experiencing homelessness. Among the most prevalent are chronic lung disease, viral, chronic, or acute hepatitis, epilepsy, severe foot infections that impede mobility, and HIV/AIDS.¹¹ These conditions often result in these individuals becoming permanently disabled. As a result, they are even less likely to find employment and accessible, affordable housing to help restabilize their lives. Ensuring proper care and treatment for these conditions up front would prevent many of these illnesses and injuries.

Criminalization would be counter-productive to these efforts. The City’s ordinances have consequences greater than mere fines—they can, and did, lead to incarceration. Joint App. at 42, 59.

Necessary medical care in a correctional facility is often inaccessible. In many correctional systems, an

¹¹ U.S. Interagency Counsel on Homelessness, “ALL IN: The Federal Strategic Plan to Prevent and End Homelessness,” at 18 (Dec. 19, 2022), https://www.usich.gov/sites/default/files/document/All_In.pdf; *see also* National HIV/AIDS Housing Coalition, “HIV & Housing Resources,” <https://nationalaidshousing.org/hivhousing/> (People living with HIV (PLWH) are at much greater risk of homelessness than the general population, and one in four HIV patients had shelter or housing service needs. When out of stable housing, PLWH face more barriers to accessing the regular healthcare visits and medication necessary to achieve suppression of the virus and live long, healthy lives, because people with HIV/AIDS who are homeless or unstably housed are less likely to receive and adhere to anti-retroviral therapy (an effective treatment for HIV).).

inmate who needs medical care must first be seen by a correctional officer, and must pay between two and five dollars (or even more) to see a physician even if the correctional officer approves the care.¹² Collecting such a sum for much-needed medical care is difficult for the majority of incarcerated individuals, who earn less than one dollar in a single day.¹³ These individuals may also lose access to medical care altogether after they exit the correctional system. Many states, for example, maintain a Medicaid exclusion policy, suspending or terminating coverage for a recipient upon that recipient entering prison. Reactivating Medicaid upon exit can often be a long and difficult administrative process. All of this prolongs the individual's inability to access critical medical care.¹⁴

To illustrate how this impacts individuals experiencing homelessness, consider the example of individuals living with HIV/AIDS witnessed by Cascade AIDS Project ("CAP"). HIV is now a manageable chronic condition—but only by adhering to an individual's medication regimen. Medication adherence is a common issue for individuals with HIV experiencing homelessness. Lack of a stable, secure place to store prescription medications often leads to those medications being lost or stolen. It is not unusual for CAP's unhoused clients to be hospitalized due to an inability

¹² Sawyer, W. "The Steep Cost of Medical Co-pays in Prison Puts Health at Risk," Prison Policy Initiative (Apr. 19, 2017), <https://www.prisonpolicy.org/blog/2017/04/19/copays/>.

¹³ *Id.*

¹⁴ Edmonds, M., *The Reincorporation of Prisoners into the Body Politic: Eliminating the Medicaid Inmate Exclusion Policy*, 28 *Geo. J. on Poverty L. & Pol'y* 3, 279-320 (2021).

to take their prescribed medications. Ordinances like those challenged here exacerbate the problem. Arrest or relocation can wreak havoc on the state of the person's belongings, making it even more difficult for them to safely keep track of their medications.

Homeless individuals with HIV—especially those forced to live outside—also often need persistent support from CAP's staff for their care. Many of these clients do not have a means to contact them such as a phone, and can only be served by in-person visits. When clients are forced to relocate—simply because they were trying to stay warm with a blanket—CAP staff members can lose contact with them. These clients fail to continue their medical care and can become seriously ill as a result. Lost contact with a client can also mean a lost housing opportunity that was time sensitive.

Additionally, many unsheltered people suffer from impediments to mobility and foot injuries and infections that makes complying with the city ordinances physically and medically impossible. Many are mobility challenged. Many of Hygiene4All's patrons, for example, require help from friends to merely walk across the street to get a shower and have their feet treated by Hygiene4All staff. These individuals are physically incapable of maintaining the ability to move without protection from the elements. A law prohibiting them from resting in public spaces with blankets will cost them life or limbs.

Consider the story of one patron of Hygiene4All who came in with trench foot. His toes were severely infected due to ingrown toenails. He resided just a few blocks away, but he could only move or walk with the help of a friend. This individual was medically

required to spend most of his time off his feet without shoes to avoid amputation. He would need to cover his feet with blankets to stay warm *just to keep them*. Many other homeless persons also suffer from serious foot infections.¹⁵ Forced marches because of the inability to use blankets could be a death sentence for some.

None of these outcomes help reduce the time an individual experiences homelessness. The challenged ordinances only make it harder for the undersigned *amici* to improve the plight of these individuals such that they might escape the conditions that have forced them to be unhoused.¹⁶

2. Diversion through the criminal justice system places additional hurdles.

Petitioner attempts to downplay the enforcement of the challenged ordinances by arguing “[p]olice-department policy ... made clear that ‘[h]omelessness is not a crime.’” Pet’r. Br. at 7. It argues just “fewer than

¹⁵ To, M., et al., “Foot Conditions among Homeless Persons: A Systematic Review,” PLOS ONE (Dec. 9, 2016) at 8, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5147925/pdf/pone.0167463.pdf>.

¹⁶ Dennison, B., “Services Not Sweeps: Ending the Criminalization and Forced Displacement of Unhoused People,” Nat’l Alliance to End Homelessness (June 8, 2022), <https://endhomelessness.org/blog/services-not-sweeps-ending-the-criminalization-and-forced-displacement-of-unhoused-people/> (“[a]s providers, our experience is clear that the effects of criminalization makes it harder for us to do our jobs: moving people into housing quickly and smoothly. . . . Additionally, outreach connected to threats of enforcement and displacement only further isolates most people who have been pushed around from the streets to shelters to jail and back to the streets for years.”).

100 citations” were issued. *Id.* But this claim dismisses the actual impact. Former class representative Debra Blake was convicted and fined \$590—money she did not have. The same officer wrote her another citation for criminal trespass *that same morning*. *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 U.S. Dist. LEXIS 129494, at *11 (D. Or. July 22, 2020) (explaining Debra Blake owed over \$5,000 in fines related to these ordinances).

This is by design. City officers are permitted to issue an exclusion order for repeated violations of the ordinances. “Camping” once more can result in criminal trespass. GPMC §§ 1.36.010(I)-(J), 6.46.350; Or. Rev. Stat. § 164.245. Individuals experiencing homelessness—who are disposed to repeat violations by simply having no other options for shelter—are likely to be impacted by the prospect of a charge of trespass.

Then, upon exiting the criminal justice system, it can be difficult—or impossible—to obtain housing or employment. A criminal record can be an albatross around the neck. An estimated 70 to 100 million individuals in the United States have a criminal record, and those criminal records severely impact those individuals’ ability to obtain financial independence.¹⁷

A recent report showed that 72 percent of all post-release restrictions had negative impacts on job opportunities in trades that require licensure or strict

¹⁷ “Americans with Criminal Records,” The Sentencing Project, <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

background checks.¹⁸ It should be no surprise that formerly incarcerated individuals are almost ten times more likely to experience homelessness than the general public.¹⁹

Criminalization serves only to prolong a vicious cycle wherein individuals are incarcerated for experiencing homelessness. This imposes on them the burden of criminal records that hinder their ability to find employment and housing to escape their situation. What the City claims to be the “standard tools ... to preserve public spaces,” Pet’r. Br. at 47, actually worsens the homelessness crisis.

III. Local governments have tools at their disposal other than criminalization.

Criminalizing the mere existence of homeless individuals is an ineffective way of addressing the root causes of homelessness. The City and its *amici* would have the Court believe that there is simply no other solution. But the undersigned in Oregon have witnessed that investment in housing and support programs are far more effective at addressing homelessness and its causes. Where these programs are available, they are always in high demand and have assisted individuals in finding housing.

¹⁸ Council of State Governments, “After the Sentence, More Consequences: A National Snapshot of Barriers to Work,” at 1, (Jan. 2021), <https://csgjusticecenter.org/publications/after-the-sentence-more-consequences/national-snapshot/>.

¹⁹ Couloute, L., “Nowhere to Go: Homelessness Among Formerly Incarcerated People,” Prison Policy Initiative (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

A. The City's choice to use its resources to criminalize homelessness is a poor investment.

Despite the City's *amici* contending that ordinances like the Grants Pass ordinances are necessary for public health and safety (*see, e.g.*, Brief of League of Oregon Cities as Amicus Curiae, at 17-20; Brief of City of Phoenix & The League of Arizona Cities and Towns as Amicus Curiae, at 16, *City of Grants Pass v. Gloria Johnson et al.*, No. 23-175 (2024)), this has not been the experience of numerous non-profit organizations.

Homelessness requires a comprehensive, community-based approach that includes housing options, behavioral and mental health services, addiction treatment, and/or vocational training. Studies have shown that investments in law enforcement are fiscally poor decisions relative to community-based approaches. A study on Central Florida, for example, revealed that the region's investment in law enforcement as the solution to homelessness cost three times as much as the cost of assigning each impacted individual a home and a caseworker.²⁰

A study of the Housing for Health Program in Los Angeles County further emphasized the cost-effectiveness of these alternative approaches.²¹ The county

²⁰ *See* Orlando Sentinel, "Cost of Homelessness in Central Florida? \$31k Per Person," (May 21, 2014) <https://www.orlandosentinel.com/2014/05/21/cost-of-homelessness-in-central-florida-31k-per-person/>.

²¹ *See* Hunter, S., et al., "Evaluation of Housing for Health Permanent Supportive Housing Program," Rand Corp. (Dec. 5,

observed 20 percent net cost savings when comparing the cost of providing supportive housing to the costs associated with service use of medical and mental health departments.²²

These alternative approaches also prevent criminalization, which is far more expensive for cities than simply providing shelter. Studies of communities revealed the exorbitant cost of criminalizing homelessness—for example, \$3.23 million was spent enforcing five ordinances in Denver between 2010 and 2014—all of which could be dedicated to alternative solutions with far greater impact.²³ Indeed, in Seattle, it costs \$87 per day to house someone in jail but only \$26 to provide that person shelter.²⁴ Criminalization also carries with it many costs: Portland taxpayers spent \$43 million arresting homeless individuals and booking them into jail between 2016 and 2019 alone.²⁵

2017) at ix, https://www.rand.org/pubs/research_reports/RR1694.html.

²² *See id.*

²³ *See, e.g.*, Homeless Advocacy Policy Project, “Too High a Price: What Criminalizing Homelessness Costs Colorado,” (Apr. 27, 2018).

²⁴ The Partnership to End Long-Term Homelessness, *Costs of Serving Homeless Individuals in Nine Cities* (Nov. 19, 2004), https://www.csh.org/wp-content/uploads/2011/12/Report_CostforIndividuals1.pdf.

²⁵ Harbarger, M. “Booking Homeless Portlanders into Jail Is Endless, Expensive Cycle That Arrests Don’t Curb, But Housing Does,” OregonLive (Oct. 25, 2020), <https://www.oregonlive.com/crime/2020/10/booking-homeless-portlanders-into-jail-is-endless-expensive-cycle-that-arrests-dont-curb-but-housing-does.html> (“Portland taxpayers spent about \$43 million

The numbers speak for themselves. The criminalization of homelessness is, at best, a costly and ineffective method of addressing homelessness. The “tools” the City insists are necessary, in fact waste the precious and limited resources available to local governments. These resources could be redirected to programs like rapid re-housing, permanent supportive housing, mental health services, addiction treatment, vocational training, and other supportive services that would negate the need for these ordinances in the first place.

A community like Grants Pass can reinvest in numerous services to combat the underlying factors that drive an individual to homelessness: food assistance, housing, programming to help children (such as after-school programs and childcare), mental health services, accessible health care, and addiction treatment.²⁶ Local governments can lower or end their dependence on criminalization as a tool for nonviolent instances of homelessness. Indeed, investments in the production of housing, and in wrap-around services for people who are experiencing homelessness, can

arresting homeless people and booking them into jail between 2016 and 2019”).

²⁶ *See, e.g.*, Rose Community Development, *Annual Report 2022*, <https://rosecdc.org/wp-content/uploads/2023/05/Annual-Report-2022.pdf> (every month, ROSE CDC serves people through food assistance, transportation assistance, youth through after-school programs and special programming); Rogue Retreat, “Learn More,” <https://www.rogueretreat.org/learn-more/> (known for its “creative housing programs, including tiny homes, low barrier shelters, and campgrounds,” Rogue Retreat serves 1,237 individuals and provides 214,620 bed nights per year through their “supportive services that help [their] program participants reach their highest potential”).

better address most—if not all—of the root causes of homelessness.

To properly address the homelessness crisis, local governments like Grants Pass can use supportive housing services and resources that have been shown to alleviate the root causes of homelessness. When offered treatment or other housing opportunities, people experiencing homelessness will take advantage of those opportunities.

B. Unlike criminalization, investment in other programs in Oregon have demonstrated they can be effective.

There is no need to criminalize a person’s attempt to exist by using a blanket or other bedding to survive the night. *Amici* have witnessed first-hand the effectiveness of investments in other approaches to combat homelessness.

The Oregon state legislature continues to make investments in programs to assist the homeless. This includes measures directed at rental assistance, shelter operations, permanent supportive housing (PSH), construction of new affordable housing, and the preservation of existing affordable housing. Investments like this placed 6,753 people in housing, prevented 20,170 evictions, and created or sustained 970 shelter beds from July 1, 2021 through December 31, 2023.²⁷ But more must be done.

The point is this: Cities have other means at their disposal to reduce homelessness in their

²⁷ Metro, “Supportive Housing Services: Addressing Homelessness in Greater Portland,” <https://www.oregonmetro.gov/public-projects/supportive-housing-services/progress>.

communities. Drastic measures like the City’s ordinances are not necessary. People experiencing homelessness, if given the opportunity, will use the services made available to them to stabilize their situation. They most likely did not reach their condition by choice.

The State of Oregon is making progress on this front. In 2024, the Legislature continued to provide direct appropriations to organizations and programs that think creatively and boldly to solve the housing crisis.²⁸ Investments in Project Turnkey, for example, helped restabilize families by converting motels, vacant or underused schools, and other complexes into emergency housing across the state, including rural communities in Southern and Eastern Oregon.²⁹

Local governments, like the City, can do the same. These measures have proven successful in placing homeless individuals in housing, preventing evictions, and creating and sustaining shelter.

C. Individuals experiencing homelessness will use supportive resources if available.

Grants Pass did not provide adequate shelter beds. *See* Pet. App. at 53a–54a. But individuals experiencing homelessness, when provided supportive services and resources, will use those resources to improve their situation.

For example, the Supportive Housing Social

²⁸ *See* Oregon Community Foundation, “Project Turnkey 2020–2023: Report to the Oregon Legislature,” <https://oregoncf.org/assets/PDFs-and-Docs/PDFs/Project-Turnkey-2020-2023-report.pdf>.

²⁹ *See id.*

Impact Bond Initiative in Denver (Denver SIB) found that those who experience homelessness take advantage of housing services when presented with such an opportunity.³⁰ The Denver SIB program provides permanent supportive housing (PSH), which are on-site, wraparound services for individuals experiencing homelessness. Throughout the program, 90 percent of individuals located through this program agreed to housing within six months. Of those who moved into housing, 85 percent of participants remained in housing without exiting the program.³¹

In Oregon, programs to assist the homeless are tailored to provide a network of services, all of which work to serve those with the greatest needs. As is often the case, the demand for these services outweighs available resources. Oregon Food Bank, for example, has seen an unprecedented increase in demand for emergency food, requiring the organization to request from the Legislature additional food purchasing funds to keep up with the demand. Oregon Food Bank also saw record numbers of visits, illustrating the observation that Oregon continues to experience an ongoing hunger crisis that is getting worse, not better. Last year, Oregon Food Bank saw 1.9 million visits to food assistance sites through its network—a 14 percent increase from the previous year. Oregon Food Bank met that need by distributing over 87 million meals, an 11 percent increase from the prior year.

³⁰ Gourevitch, R. and Cunningham, M., “Dismantling the Harmful, False Narrative That Homelessness Is a Choice,” Urban Institute (Mar. 27, 2019), <https://www.urban.org/urban-wire/dismantling-harmful-false-narrative-homelessness-choice>.

³¹ *Id.*

Similarly, CAP provides housing and supportive services for nearly 1,000 people living with HIV in the Portland area each year.

The City's *amici* claims that local governments are caught between a rock and a hard place. Either they expend resources to build housing for homeless populations so that they can enforce local ordinances prohibiting "sleeping and camping in public areas," or they refuse to build shelters and are unable to enforce these ordinances. *See* Brief for the League of Oregon Cities as Amicus Curiae, at 19. This is a false dilemma based on a false premise.

Individuals living outdoors do not insist on living this way—their condition is a product of their circumstances. When the appropriate resources are offered to improve the circumstances of these individuals, they will use them. The City can, in fact, direct its resources towards a variety of other approaches to reduce the impact of homelessness on their communities.

D. Until jurisdictions do more, the City's ordinances do more harm than good.

Thus, the City's ordinances are a policy choice, not a necessity. Although the City may want to be able to clear encampments, which the Ninth Circuit's holding still allows them to do—there is no need to punish a person for trying to sleep with "the rudimentary protection of bedding" to survive cold nights when there is no place to go. Pet. App. at 57a. Left in place, these overbroad measures only reinforce the pressures that cause homelessness. Although some regional governments have invested in programs to combat homelessness and its causes, still more needs to be done. Until

then, being unsheltered will continue to be a condition for which jurisdictions are prohibited from punishing. *Robinson*, 370 U.S. at 667.

Across Oregon—and particularly in Josephine County—the number of individuals experiencing homelessness far exceeds the number of shelter beds available as a temporary place to sleep and stay. Although CAP provides housing and supportive services for nearly 1,000 people each year, more than 300 people remain on CAP’s waitlists for housing assistance due to lack of funding. In Hygiene4All’s experience assisting individuals seeking shelter in Multnomah County, it often takes up to three months simply to secure a shelter bed for individuals desperately seeking one. If those individuals need accommodations like assistance toileting or a shelter with wheelchair accessibility, the wait can be far longer. For these individuals, the available “shelters may not be an option at all.”³²

The depth of resources that can serve people experiencing homelessness in Oregon is vast. But it is not limitless. The challenged ordinances only serve to diminish the impact of these investments and perpetuate the crises that the City and its *amici* claim they want to eliminate.

CONCLUSION

There are a number of false narratives that cities

³² See Asher, A. “Unhoused and Unaided,” *Portland Mercury* (May 10, 2023), <https://www.portlandmercury.com/homeless/2023/05/10/46502004/unhoused-and-unaided>; see also Hayden, N., “Portland’s Newest Homeless Village is Not ADA Accessible,” *The Oregonian* (July 1, 2022), <https://www.oregonlive.com/portland/2022/07/portlands-newest-homeless-village-is-not-ada-accessible.html>.

have portrayed as “tools” for addressing homelessness, which in reality are unsupported and contradicted by the evidence-based practices of providing stable, affordable, and accessible housing for individuals.

Punitive measures that criminalize the mere condition of homelessness do not solve the homelessness crisis. They make it worse. As they witness homelessness on a daily basis, the undersigned *amici* know that offering care and support—not criminalization—is the way to ensure these members of our communities are housed, fed, and healthy.

The Ninth Circuit’s decision correctly held that the Eighth Amendment prohibits a local government from criminalizing the condition of homelessness. The judgment below should be affirmed.

Respectfully submitted,

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