

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 AND JOHN LOGAN, on Behalf  
of Themselves and All Others Similarly Situated,

*Respondents.*

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

—◆—  
**BRIEF OF THE STATES OF MARYLAND,  
ILLINOIS, MASSACHUSETTS, MINNESOTA,  
NEW YORK, AND VERMONT AS AMICI CURIAE  
SUPPORTING RESPONDENTS**

—◆—  
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**INTERESTS OF AMICI CURIAE**

Like all states, amici curiae Maryland, Illinois, Massachusetts, Minnesota, New York, and Vermont are home to thousands of people experiencing homelessness. Our unhoused residents include parents, children, co-workers, and veterans whose only “crime” is the misfortune of having no roof under which to sleep. Of the 650,000 people who experienced homelessness on a single night in 2023, nearly 30% were members of families with children under 18, including over 17,000 left without any shelter at all.<sup>1</sup> Another 35,000 were unaccompanied youth,<sup>2</sup> many from foster care systems that had failed them.<sup>3</sup> Indeed, the United States has more homeless families than any other industrialized country.<sup>4</sup> These families go to the same schools, pray at the same houses of worship, shop at the same grocery stores, and use the same libraries and parks as all of us. Many people experiencing homelessness are employed.<sup>5</sup> Many have been our neighbors, because

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<sup>1</sup> U.S. Dep’t of Housing & Urban Development, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress 2* (Dec. 2023) (*2023 AHAR*), <https://tinyurl.com/3y2smj3c>.

<sup>2</sup> *Id.* at 42.

<sup>3</sup> National Homelessness Law Center & University of Miami School of Law Human Rights Clinic, *Criminalization of Homelessness and Mental Health in the United States* (Sept. 12, 2023), <https://tinyurl.com/2m54n42c>.

<sup>4</sup> See Camila Beiner, *These Moms Overcame Homelessness. But the Fight for a Better Life Is Far from Over*, NPR (Dec. 5, 2021), <https://tinyurl.com/2uejdfx>.

<sup>5</sup> Bruce D. Meyer et al., *Learning About Homelessness Using Linked Survey and Administrative Data* 32, 63-64 (Becker

homelessness is most often temporary.<sup>6</sup> Still others have risked their lives to defend our nation at home and overseas, with over 35,000 veterans experiencing homelessness in 2023.<sup>7</sup> And many face poverty, addiction, and illness that leave them reliant on others' kindness for their survival.<sup>8</sup>

Amici have an interest in ensuring stability and opportunity for all people experiencing homelessness, such as the fully employed parents of four living in a tent,<sup>9</sup> the former chef sleeping on a sidewalk,<sup>10</sup> the optometry assistant and single mother of two who works full-time and sleeps in her car,<sup>11</sup> the security guard who works at a shelter but has no home of her own,<sup>12</sup> and

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Friedman Inst. for Econ. at Univ. of Chi., Working Paper No. 2021-65, 2021), <https://tinyurl.com/3wuperes>.

<sup>6</sup> 2023 AHAR 26, 78.

<sup>7</sup> *Id.* at 65.

<sup>8</sup> Stefan Gutwinski et al., *The Prevalence of Mental Disorders Among Homeless People in High-Income Countries: An Updated Systematic Review and Meta-Regression Analysis*, 18(8) PLOS Med. (Aug. 23, 2021), <https://tinyurl.com/36hwybzy>.

<sup>9</sup> Alexa Gagosz, *How a Hard-Working, Middle-Class Family Spiraled into Homelessness*, Boston Globe (Dec. 17, 2022), <https://tinyurl.com/2s473t8t>.

<sup>10</sup> Shannon Lilly, *Baltimore Homeless Man Calls for Relief Soon; "It's Cold Out Here and People Are Dying,"* WBFF (Mar. 1, 2022), <https://tinyurl.com/3bcvsecb>.

<sup>11</sup> David Wagner, *Working While Homeless: A Tough Job for Thousands of Californians*, NPR (Sept. 30, 2018), <https://tinyurl.com/4hcpdkym>.

<sup>12</sup> Daniel E. Slotnik, *She Works in a Homeless Shelter, and She Lives in One, Too*, N.Y. Times (Apr. 16, 2021), <https://tinyurl.com/2p82bjk4>.

the delivery woman who works two jobs but still cannot afford rent.<sup>13</sup> Policies like the one Grants Pass has adopted do not reduce homelessness; they just move the problem elsewhere, as the record in this case reflects. Indeed, they may even *increase* homelessness by imposing debts or creating criminal records that make it harder to obtain secure housing.

Amici have an interest in remaining able to address the problem of homelessness, including concerns associated with encampments, in a flexible manner that allows for experimentation with different policy solutions. All states experiment with different methods, some more successful than others, to alleviate homelessness and its consequences. Amici maintain, however, that efforts to address these problems must respect the dignity of people who are experiencing homelessness. If adopted widely, policies criminalizing involuntary homelessness, such as the one that the City has adopted, could render significant portions of the country off-limits for people who are homeless and ultimately undermine governmental interests in public health and safety.<sup>14</sup> Taking these policies off the table does not interfere with our ability to address homelessness (including the effects of homelessness on surrounding communities) using other policy tools, nor does it amount to an undue intrusion on state

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<sup>13</sup> Lyanne Melendez, *Despite Two Jobs, Oakland Woman Lives in Her Car*, ABC7 (Oct. 16, 2018), <https://tinyurl.com/yb8zfsyb>.

<sup>14</sup> *See, e.g.*, 2024 Fla. Sess. Law Serv. ch. 2024-11 (West) (generally prohibiting local governments from allowing any person to sleep regularly on public property).

sovereignty. If anything, state sovereignty is threatened by policies that exacerbate the problem of homelessness, which transcends state borders and which all of us must confront.



### SUMMARY OF ARGUMENT

1. The court of appeals' ruling fits well within established Eighth Amendment jurisprudence. That ruling reduces to a simple and narrow holding: a city cannot punish a person for sleeping on public property when the person has nowhere else to sleep in the city. Sleeping is essential to human existence. For a person who is involuntarily homeless, the only way to comply with Grants Pass's anti-camping ordinances is to leave the city altogether. Punishing such a person for sleeping there is thus equivalent to punishing the person for her status of involuntary homelessness, and it has long been settled that such status-based punishments violate the Eighth Amendment. *See Robinson v. California*, 370 U.S. 660, 666-67 (1962) (holding that criminalizing the "mere status" of drug addiction violates the Eighth Amendment).

2. Affirming the court of appeals would not impair state and local governments' ability to address encampments or homelessness effectively or to enforce their criminal laws more generally. The court of appeals' decision that a city cannot punish a person for sleeping on public property does not prevent state and local governments from placing reasonable limits on

the size and location of encampments, or from punishing harmful conduct that may be associated with encampments. The decision also does not prevent state and local governments from addressing homelessness with other effective policy tools. And because the court of appeals' decision amounts to a narrow prohibition against criminalizing the status of involuntary homelessness, it does not undermine state and local efforts to prohibit and punish conduct that states have long treated as criminal.

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## ARGUMENT

### **I. The Court of Appeals' Eighth Amendment Ruling Was Narrow and Correct.**

The City and its amici repeatedly suggest that the court of appeals issued a broad ruling whose scope is difficult to cabin or that affirmance by this Court would break new Eighth Amendment ground. *See, e.g.,* Grants Pass Br. 14-15; Idaho Br. 4. To the contrary, the court of appeals' decision was narrow and well-founded, and affirmance would not extend the Eighth Amendment into new territory.

1. This case presents a single, narrow question: Can a city punish a person for sleeping on public property with protection from the elements, when the person has nowhere else to sleep in the city?<sup>15</sup> At issue are

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<sup>15</sup> As Respondents explain, the question presented does not encompass the court of appeals' application of Federal Rule of Civil Procedure 23(b)(2) and thus does not encompass the scope

two overlapping ordinances that prohibit people from sleeping on public property with bedding. One ordinance prohibits people from occupying a “campsite” on public property, Grants Pass Mun. Code § 5.61.030, with “campsite” 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, leanto, shack, or any other structure, or any vehicle or part thereof,” *id.* § 5.61.010. The other ordinance, which incorporates that definition of “campsite,” prohibits camping and overnight parking in parks. *Id.* § 6.46.090. The plaintiffs challenged application of these ordinances only to people who are “involuntarily homeless,” meaning that they “do not ‘have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free.’” Pet. App. 14a n.2 (quoting *Martin v. City of Boise*, 920 F.3d 584, 617 n.8 (9th Cir. 2018)).

The court of appeals decided the narrow question before it. Referring to people who are involuntarily homeless, the court held that “the anti-camping ordinances are unconstitutional as applied to them unless there is some place, such as shelter, they can lawfully sleep.” Pet. App. 54a. In so ruling, the court relied on *Martin*’s holding that the Eighth Amendment “prohibits the imposition of criminal penalties for sitting,

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and contours of the injunction issued in this case. *See* Resp’ts’ Br. 48-51.



sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” Pet. App. 18a (quoting *Martin*, 920 F.3d at 616). The court nowhere suggested that the City could not apply its anti-camping ordinances to people who are *not* involuntarily homeless—i.e., to people who might wish to sleep on public property despite having someplace else to sleep. *See* Pet. App. 57a (directing the district court to “narrow its injunction” so as to enjoin enforcement of the anti-camping ordinances “only against involuntarily homeless persons for engaging in conduct necessary to protect themselves from the elements when there is no shelter space available”). It also did not suggest that the City could not restrict or punish other conduct in which people sleeping on public property might engage. *See* Pet. App. 55a (observing that “the ordinances also prohibit the use of stoves or fires, as well as the erection of any structures,” and declining to determine the constitutionality of these prohibitions). Nor, finally, did the court impose any affirmative duty for the City to supply shelter or services to people experiencing homelessness.

2. The court of appeals’ narrow holding, as first articulated in *Martin* and reaffirmed in this case, was correct. Every human being needs to sleep, and a person who is involuntarily homeless by definition has nowhere to sleep lawfully other than on public property. Punishing such a person for sleeping on public property is equivalent to punishing her simply for being involuntarily homeless—the very criminalization of status that this Court has held the Eighth Amendment

proscribes. *Robinson*, 370 U.S. at 666-67; see *Ingraham v. Wright*, 430 U.S. 651, 667 (1977).<sup>16</sup>

Indeed, for a person who is involuntarily homeless, there is only one way to comply with the anti-camping ordinances: leave the City altogether. Even the City and its amici do not contend that the person can refrain from sleeping. And there can be no serious argument that, in a place where rainfall is frequent and temperatures commonly dip below freezing, a person can sleep with no protection from the elements. See Pet. App. 13a (anti-camping ordinances “preclude homeless persons from using a blanket, a pillow, or a cardboard box for protection from the elements while sleeping within the City’s limits”); Grants Pass Mun. Code § 5.61.030 (defining “campsite” to include “any place where bedding, sleeping bag, or other material used for bedding purposes . . . is placed, established, or maintained for the purpose of maintaining a temporary place to live” (emphasis added)).

The actual and intended consequences of the City’s anti-camping ordinances underscore that they amount to a prohibition on living in Grants Pass while involuntarily homeless. As the court of appeals observed, increased enforcement of the anti-camping ordinances’ antecedents resulted from a roundtable at which one member of the City Council “made clear the City’s goal should be ‘to make it uncomfortable

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<sup>16</sup> The theoretical possibility that a person might sleep on public property without bedding or other protection from the elements does not warrant a different conclusion, given the obvious need for some measure of protection from the elements.

enough for [homeless persons] in our city so they will want to move on down the road.’” Pet. App. 17a (quotation marks and alteration in original); *see* Pet. App. 17a (explaining that “[t]he City’s Public Safety Director noted police officers had bought homeless persons bus tickets out of town, only to have the person returned to the City from the location where they were sent”). Further, that is exactly what has taken place. *See* Pet. App. 31a-32a n.16 (discussing involuntarily homeless person’s declaration that because of the anti-camping ordinances, he has been forced to sleep in his truck outside Grants Pass and that, “but for the challenged ordinances, [he] would sleep in the city”).

Nor does it matter that the ordinances ban sleeping only in a certain manner, i.e., on public property. For people who are involuntarily homeless—the only people against whom the City is constitutionally prohibited from enforcing its anti-camping ordinances—that manner is inseparable from their status. If a person is involuntarily homeless, then the only place she can sleep is on public property, for by definition she has no other place to sleep. At the same time, no person other than those who are involuntarily homeless must sleep in this manner. The only real choice for people who are involuntarily homeless is to leave the City rather than subject themselves to criminal punishment.

3. The court of appeals’ holding does not, as the City’s amici would have it, expose municipalities to intrusive second-guessing of how they address

homelessness. Idaho and other states highlight one case in which a district court deemed it insufficient for Chico to construct a temporary outdoor shelter with beds for all of the city's homeless residents, as well as another case in which a district court deemed it impermissible for Santa Barbara to enforce its anti-camping ordinance only in its downtown area, and only during certain hours. Idaho Br. 11-12. *Martin* and the opinion below do not command these outcomes: neither decision says that available shelter must be indoors or that municipalities cannot place reasonable limits on where people may sleep if they are experiencing homelessness. See Pet. App. 19a (“[Under] *Martin*, it is an Eighth Amendment violation to criminally punish involuntarily homeless persons for sleeping in public if there are *no other public areas* or appropriate shelters where those individuals can sleep.” (emphasis added)). The same is true of the district court decision enjoining enforcement of Phoenix's anti-camping ordinances irrespective of a person's options for shelter, see Idaho Br. 12, for assessing those options may be necessary to determine whether “there is some place, such as shelter, they can lawfully sleep,” Pet. App. 54a.

In any event, if this Court is concerned about the court of appeals' rule being read too broadly, the solution is to articulate its bounds. For instance, the Court could make clear that local governments may place reasonable limits on where, within the city limits, homeless residents may sleep on public property. It also could hold that the rule applies only to people who lack other viable options for shelter. Refinements such

as these, if consistent with the principle that a person cannot be punished for sleeping on public property when she has nowhere else to go, *see* California Br. 2-3, could provide local governments with appropriate latitude to manage public space for the benefit of all residents.

**II. The Court of Appeals' Eighth Amendment Ruling Does Not Interfere with State and Local Governments' Ability to Address the Issues of Homelessness or Encampments or to Pursue Legitimate Penological Objectives in Other Contexts.**

Amici share the City's interest in maintaining the flexibility that federalism affords state and local governments to address homelessness and protect public health and safety. That flexibility, however, need not extend to criminalizing the act of sleeping in public out of necessity. The City and its amici surely are right that no one solution will cure homelessness everywhere, *see* Idaho Br. 12, but the court of appeals' decision does not impose a single policy or curtail experimentation, *see* Grants Pass Br. 47. Nor does it obstruct state and local governments' broad authority to penalize quality-of-life offenses, much less to make and enforce criminal laws. Instead, it removes one narrow option that, far from alleviating the problem of homelessness, pushes homeless residents into neighboring jurisdictions.

**A. *Martin and Grants Pass Do Not Prevent State and Local Governments from Ameliorating the Negative Effects of Encampments.***

Affirming the court of appeals' narrow Eighth Amendment decision would not interfere with local governments' ability to limit the negative effects that encampments may have on the communities where they are located or to respond to public health and safety concerns. For instance, a local government might choose to place reasonable limits on the location and size of encampments. It also might limit the use of fires, whether for cooking or other purposes. And it might ban (or enforce already-existing bans on) particular conduct that negatively affects other people, including harassment of passersby, illegal drug use, and littering.

Local governments have addressed encampments in these and other ways. Some localities, for instance, are experimenting with inclusive public space management.<sup>17</sup> Cities have established regulated camp spaces where homeless residents may find heating, bathroom facilities, and access to medical care and other social services.<sup>18</sup> Although these encampments

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<sup>17</sup> Samantha Batko et al., Urban Institute, *Alternatives to Arrests & Police Responses to Homelessness: Evidence-Based Models & Promising Practices* 15-16 (Oct. 2020), <https://tinyurl.com/825s5fsv>.

<sup>18</sup> Rachel M. Cohen, *Homeless Encampments—and the Debate Over What to Do About Them—Explained*, Vox (Mar. 8, 2023), <https://tinyurl.com/t2fhwvth>.

are not a perfect solution, they address many of the health and safety concerns raised by the City and its amici and smooth the way towards more permanent housing. For example, a camp in Missoula, Montana, gave residents security and facilities until they could be resettled, with about one-third of residents finding more stable housing within the first year.<sup>19</sup> Likewise, Sacramento has erected multiple “safe ground” sites with tents, security, bathrooms, showers, and food.<sup>20</sup> By gathering people experiencing homelessness in one well-managed facility, the city was able to connect them to longer-term solutions in a more efficient manner.<sup>21</sup> And in Santa Barbara, the city’s Safe Parking Program gives residents living in their vehicles a safe and clean space to sleep.<sup>22</sup> These “sanctioned camps” allow state and local governments to comply with *Martin* without losing control over where and how their homeless residents spend the night.

Elsewhere, communities have found other ways to mitigate safety and public health concerns. For example, a town near Sacramento gives camp residents \$20 gift cards in return for bagging their trash, saving the town thousands in public cleaning costs while

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<sup>19</sup> Kirk Siegler, *Why Some Cities Are Operating Legal Homeless Camps Even in the Dead of Winter*, NPR (Jan. 7, 2022), <https://tinyurl.com/5e665nyv>.

<sup>20</sup> Ken Magri, *Sacramento Homeless Sites Expanding: One Official Encampment Grows While an Unplanned One Is Approved*, Sacramento News & Rev. (Aug. 22, 2023), <https://tinyurl.com/4mabf8jp>.

<sup>21</sup> *Id.*

<sup>22</sup> Batko, *supra*, at 15.

maintaining a working relationship between the residents and town authorities.<sup>23</sup> Other communities have invested in their social work infrastructure, shifting responsibility for homelessness from law enforcement to programs that are better prepared to help unsheltered people find stability.<sup>24</sup> Eugene, Oregon, for example, dispatches medical and mental health crisis workers instead of police officers in response to homelessness reports.<sup>25</sup> This alternative response program has enabled the city to avoid millions of dollars of spending on public safety.<sup>26</sup> And other cities, like Wichita, Kansas, are training law enforcement officers to connect people experiencing homelessness with the shelter and services they need.<sup>27</sup> These “homeless outreach teams” have allowed cities like Colorado Springs to enforce their no-camping ordinances without running afoul of the principle that *Martin* and *Grants Pass* embody.<sup>28</sup>

And, of course, many communities are moving people from the streets to available shelter beds—a solution that the court of appeals’ rulings in *Martin* and

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<sup>23</sup> Lauren M. Johnson, *A California Town Is Paying Its Homeless to Clean their Encampment Sites*, CNN (Apr. 10, 2021), <https://tinyurl.com/bdzdp93a>.

<sup>24</sup> Batko, *supra*, at 19.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Bonnie Sultan, *Sharing the Solutions: Police Partnerships, Homelessness, & Public Health*, 13(12) Dispatch (Dec. 2020), <https://tinyurl.com/5n8wmx8>.

<sup>28</sup> Batko, *supra*, at 18.



*Grants Pass* allow and even encourage. See Pet. App. 57a-58a. Phoenix, for example, cleared an encampment in just a few months by placing 500 people in existing shelters and motels.<sup>29</sup> The vast majority of unhoused individuals accepted a bed when offered.<sup>30</sup> Meanwhile, Denver closed ten encampments within six months by rehousing 1,000 people around the city.<sup>31</sup> The city now aims to rehouse another 1,000 people by the end of 2024 as part of its “All In Mile High” initiative.<sup>32</sup> So far this year, the city has moved 100 residents from encampments to a new “micro-community” of tiny homes.<sup>33</sup>

**B. *Martin* and *Grants Pass* Do Not Prevent State and Local Governments from Addressing Homelessness Effectively.**

As for the problem of homelessness itself, *Martin* and *Grants Pass* leave state and local governments free to implement approaches that do not merely push homeless residents into neighboring jurisdictions. The most effective of these is to provide unhoused people

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<sup>29</sup> Anita Snow, *Phoenix Finishes Clearing Downtown Homeless Encampment After Finding Shelter for More Than 500*, AP (Nov. 4, 2023), <https://tinyurl.com/4f422cap>.

<sup>30</sup> *Id.*

<sup>31</sup> *Mayor Johnston’s All In Mile High*, City and County of Denver (Mar. 31, 2024), <https://tinyurl.com/7kukjcss>.

<sup>32</sup> *Id.*

<sup>33</sup> Courtney Fromm, *First Homeless Encampment Sweep of 2024 Moves Residents to New Micro-Community*, Fox31 (Mar. 12, 2024), <https://tinyurl.com/ys8fh4np>.

with housing.<sup>34</sup> Extensive research supports the “Housing First” model, which places people in permanent housing with support services, without the typical strings that trip up those struggling with substance abuse, disability, or a criminal history when they seek to procure housing on their own.<sup>35</sup> Houston, for example, has drawn nationwide attention for reducing homelessness by 63% since 2011, even as homelessness rates across the country have continued to rise.<sup>36</sup> That achievement was made possible by a coalition of community partners that resettle people from encampments to stable homes, where most of them remain after two years.<sup>37</sup> Baltimore is on a similar path with its own Housing First plan, housing more than 1,400

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<sup>34</sup> Batko, *supra*, at 1. While the Housing First model has garnered recent interest, it is by no means a novel approach. In the Founding era, colonies, states, and localities often housed and provided for the poor. Phyllis J. Day, *Social Policy: History (Colonial Times to 1900)*, Encyclopedia of Social Work (2013), <https://tinyurl.com/45y67suv>; see, e.g., *Rhode Island State Almshouse (1869-1917)*, R.I. Dep’t of State Archives, <https://tinyurl.com/yx99tb2h>; *The Eighteenth-Century Records of the Boston Overseers of the Poor* 17-40 (Eric Nellis & Anne Decker Cecere eds., 2006), <https://tinyurl.com/mvxtruke>; Gregg Mangan, *Connecticut Poor Law Aimed to Care for the Needy*, Connecticut History.org (Nov. 26, 2019), <https://tinyurl.com/2zy9v5pv>.

<sup>35</sup> Michael Wilt, Texas State Affordable Housing Corp., *An Overview of the Housing First Model* (Mar. 5, 2021), <https://tinyurl.com/2yf49fe7>.

<sup>36</sup> Michael Kimmelman, *How Houston Moved 25,000 People from the Streets into Homes of Their Own*, N.Y. Times (June 14, 2022), <https://tinyurl.com/2mpkydad>.

<sup>37</sup> *Id.*

families in one year.<sup>38</sup> Likewise, Rhode Island’s Housing First policy enables 90% of unhoused people to gain a foothold and leave homelessness behind.<sup>39</sup> Moreover, once housed, these families are better able to avoid or overcome problems such as substance dependency, mental illness, recidivism, and chronic unemployment.<sup>40</sup>

Some states have adopted a “Homeless Bill of Rights” to protect the most vulnerable from “suffer[ing] unnecessarily” and from experiencing “unfair discrimination” based on their housing status. R.I. Gen. Laws § 34-37.1; 775 Ill. Comp. Stat. 45/10. These statutory protections recognize the inherent dignity of all residents and affirm their right to move freely, seek employment, vote, receive emergency medical care, and be secure in their privacy and belongings. *See* R.I. Gen. Laws § 34-37.1-3; Conn. Gen. Stat. § 1-500; 775 Ill. Comp. Stat. 45/10. Several other states have considered similar legislation,<sup>41</sup> pointing the way toward

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<sup>38</sup> City of Baltimore, *Mayor Brandon M. Scott Announces Baltimore’s Success in Housing Over 1,400 Households Experiencing Homelessness* (Feb. 14, 2023), <https://tinyurl.com/e4kj7pkr>.

<sup>39</sup> Crossroads Rhode Island, *Housing & Services Insights, Facts, & Figures* (2024), <https://tinyurl.com/455kk2au>.

<sup>40</sup> Alayna Calabro, National Low Income Housing Coalition, *The Evidence Is Clear: Housing First Works*, <https://tinyurl.com/4mryzzsc> (last visited Apr. 1, 2024); Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism?*, *Housing Matters* (Feb. 27, 2019), <https://tinyurl.com/y9pakw37>.

<sup>41</sup> Jonathan Sheffield, *A Homeless Bill of Rights: Step by Step from State to State*, 19 *Pub. Interest L. Rptr.* 8, 13 (2013), <https://tinyurl.com/yy6ws8je>.

a future where people experiencing homelessness have the respect and security they need to rebuild their lives.

**C. Criminalizing Homelessness Tends to Exacerbate the Problem, Rather Than Alleviate It.**

There is overwhelming evidence, meanwhile, that criminalizing involuntary homelessness makes already difficult situations even worse. People who have been incarcerated are ten times more likely to be homeless than the general population.<sup>42</sup> This statistic is unsurprising, given the many barriers between people with criminal records and the resources they need to obtain housing and employment.<sup>43</sup> In addition, efforts to clear encampments often destroy the identification papers, cellphones, laptops, and other items that people would use to find employment or housing.<sup>44</sup>

Criminalization also exacerbates the health and safety problems that the City and its amici seek to

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<sup>42</sup> Lucius Couloute, Prison Policy Initiative, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (Aug. 2018), <https://tinyurl.com/bdne2yrb>.

<sup>43</sup> Kim Johnson, National Low Income Housing Coalition, *Housing Access for People with Criminal Records* (2021), <https://tinyurl.com/yfh8xamc>; Marily J. Pittard, *Criminalization, Social Exclusion, and Access to Employment*, *Criminality at Work* 474 (Alan Bogg ed., 2020), <https://tinyurl.com/k6h8dyvw>.

<sup>44</sup> Claire Rush et al., *Crackdowns on Homeless Encampments Fuel Debate Over Effective Solutions*, PBS News Hour (Nov. 28, 2023), <https://tinyurl.com/2es78et5>.

avoid.<sup>45</sup> Encampments often offer a level of security, stability, and access to resources that homeless residents cannot find elsewhere.<sup>46</sup> Residents look out for each other, while social service providers and other local officials have the opportunity to build the relationships necessary to protect communities from danger and disease.<sup>47</sup> Law enforcement sweeps destroy those relationships, leading to increases in drug use, illness, and crime.<sup>48</sup> Sweeps also re-traumatize people who

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<sup>45</sup> Concerns regarding crime in homeless camps are, however, likely overblown. Experts have found that camps may or may not experience higher crime rates than the areas surrounding them. For example, at least one statistical model has shown that there is no significant correlation between the size of an encampment and rates of property crime. See Martin Kaste, *Homeless Camps Are Often Blamed for Crime But Experts Say It's Not So Simple*, NPR (Jan. 24, 2022), <https://tinyurl.com/3xvy9sjm>; see also Thacher Schmid, *No Link Between Homeless Villages & Crime Rates, Guardian Review Suggests*, The Guardian (May 23, 2018), <https://tinyurl.com/ybuhj7x5>.

<sup>46</sup> Evanie Parr & Sara Rankin, *It Takes a Village: Practical Guidance for Authorized Homeless Encampments* 4-5 (May 2018), <https://tinyurl.com/yc3bse6u>.

<sup>47</sup> *Id.* at 51-52; Rebecca Cohen, Will Yetvin, & Jill Khadduri, *Understanding Encampments of People Experiencing Homelessness and Community Responses: Emerging Evidence as of Late 2018*, at 5-6 (Jan. 2019), <https://tinyurl.com/yc683wvt>; National Health Care for the Homeless Council, *Impact of Encampment Sweeps on People Experiencing Homeless* 3-6 (Dec. 2022), <https://tinyurl.com/mr2mszy2>.

<sup>48</sup> Joshua A. Barocas et al., *Population-Level Health Effects of Involuntary Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities*, JAMA (Apr. 10, 2023), <https://tinyurl.com/3w973epm>; Nat'l Law Ctr. on Homelessness & Poverty, *Housing Not Handcuffs 2019*, at 68, 97 (Dec. 2019), <https://tinyurl.com/4exphet4>; United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive*

have experienced a lifetime of trauma and, in the process, deprive them of the support networks upon which they rely.<sup>49</sup> Recognizing these harms, the American Medical Association<sup>50</sup> and the American Public Health Association<sup>51</sup> have taken stances against the criminalization of homelessness, as has the National League of Cities.<sup>52</sup>

Criminalization is an expensive undertaking. The average cost of incarcerating a single person is \$47,000 per year.<sup>53</sup> In some locations, one week in jail could pay for a month in a studio apartment.<sup>54</sup> Moreover, unhoused people who enter the criminal justice system struggle to exit, which leads to a vicious cycle of homelessness and incarceration that drains the public fisc.<sup>55</sup> Criminalization is thus an inefficient, costly, and futile response to homelessness. Indeed, even officers tasked with enforcing such policies are asking for change.<sup>56</sup>

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*Alternatives to the Criminalization of Homelessness* 7 (2012), <https://tinyurl.com/5m6swumc>.

<sup>49</sup> Rush et al., *supra*.

<sup>50</sup> Press Release, AMA, *AMA to Address Health of Individuals Experiencing Homelessness* (June 12, 2019), <https://tinyurl.com/4ny8kbrm>.

<sup>51</sup> Am. Pub. Health Ass'n, *Housing and Homelessness as a Public Health Issue* (Nov. 7, 2017), <https://tinyurl.com/2y254czm>.

<sup>52</sup> Nat'l League of Cities, *An Overview of Homeless Encampments for City Leaders* 1 (2022), <https://tinyurl.com/33db5frx>.

<sup>53</sup> *Housing Not Handcuffs 2019*, *supra*, at 71.

<sup>54</sup> *Id.*

<sup>55</sup> Batko, *supra*, at 6.

<sup>56</sup> Doug Irving, RAND, *Rethinking How Police Respond to Homelessness* (Mar. 4, 2021), <https://tinyurl.com/bdh6zmqhd>.

Amici agree that state and local governments must maintain the freedom to experiment with innovative solutions to the homelessness crisis as experienced by local communities. Grants Pass Br. 13; Idaho Br. 18. But there is nothing innovative about using criminal penalties to drive the marginalized outside city limits. Prohibiting such measures does not make courts into “homelessness czars” dictating policy; it merely removes a single option that is unusually cruel and ill-advised.

**D. *Martin and Grants Pass Do Not Prevent State and Local Governments from Punishing Conduct Traditionally Regarded as Criminal.***

Because the court of appeals’ ruling falls well within established Eighth Amendment jurisprudence, it does not interfere with state and local governments’ efforts to punish conduct that they traditionally have treated as criminal. Again, the ruling is a narrow one: it bars local governments only from taking steps equivalent to punishing people for the status of being homeless or for living in a city while homeless. The anti-camping ordinances at issue here fall into these categories because they punish people who are homeless for conduct that all people must undertake.

Similar logic would not apply to other conduct that states have long treated as criminal, but that

defendants might claim is involuntary in some sense. The reason why the City cannot criminalize sleeping on public property while homeless is that sleeping is essential or unavoidable for *everyone*. Cf. *Powell v. Texas*, 392 U.S. 514, 531-35 (1968); cf. *Kahler v. Kansas*, 140 S. Ct. 1021, 1027-37 (2020). For people who are involuntarily homeless, criminalizing sleeping on public property is akin to criminalizing breathing on public property.

Affirming the decision below would not restrict states from limiting where people may live based on conduct in which they previously have engaged. Some state and local governments prohibit people who have committed certain sex offenses from living within specified distances of schools. See, e.g., Ind. Code § 35-42-4-11. To the extent that offenders are barred from living in particular areas, it is because they have engaged in specific harmful and dangerous conduct. Here, by contrast, what prevents involuntarily homeless people from living in Grants Pass is that they are involuntarily homeless, regardless of whether they may have previously committed crimes—indeed, regardless of whether they bear any fault for their own predicament.





**CONCLUSION**

The decision below should be affirmed.

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