No. 23-175

In The Supreme Court of the United States

CITY OF GRANTS PASS,
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 FOR THE LONANG INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

KERRY LEE MORGAN, ESQ.*
RANDALL A. PENTIUK, ESQ.
PENTIUK, COUVREUR, KOBILJAK, P.C.
2915 Biddle Avenue
Suite 200
Wyandotte, MI 48192
(734) 281-7100
KMorgan@pck-law.com
Rpentiuk@pck-law.com

GERALD R. THOMPSON, ESQ.
37637 Five Mile Rd, #397
Livonia, MI 48154
(734) 855-6494
thompson@t-tlaw.com

Counsel for Amicus Curiae
* *Counsel of Record*

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INTEREST OF THE AMICUS CURIAE[1]

The LONANG Institute is a Michigan-based, nonprofit and nonpartisan research and educational institute. Application of the "Laws of Nature and Nature's God" to contemporary legal disputes is its specialty. The "Laws of Nature and Nature's God" constitute the legal foundation of the civil governments established State by State and of the United States. The law was specifically adopted and referenced in the Declaration of Independence of 1776. Though widely disregarded, it nevertheless legally binds the States and the national government.[2] Its legal principles also bind the courts. See https://lonang.com/

The Laws of Nature expresses various legal principles of relevance here, including the creation of

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than the amicus curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] For a legal analysis of the binding effect of the laws of nature through the Declaration of Independence, see, K. Morgan, The Laws of Nature and of Nature's God: The True Foundation of American Law.
https://lonang.com/commentaries/conlaw/declaration/laws-of-nature-and-natures-god/

For an examination of the true roots of American constitutional law as found in the Bible and the nation's civil covenants, see H. Titus & G. Thompson, America's Heritage: Constitutional Liberty.
https://lonang.com/commentaries/conlaw/americas-heritage-constitutional-liberty/introduction/

human beings and their endowment with the capacity for self-government. It also affirms that the duty to love one's neighbor, in this case the homeless neighbors of Grants Pass, cannot be compelled by force as the Ninth Circuit commands, but must look only to the voluntary exercise of each person's conscience.

STATEMENT OF THE CASE

Beginning in *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), A divided panel of the Court held that the Eighth Amendment protects "involuntary conduct" (such as sleeping on public property) that is "inseparable from [the] status" of homelessness. Id. at 1136. In the latest extension of this doctrine, the Ninth Circuit held the Eighth Amendment invalidated Appellant's public camping ordinances on the basis that the number of "involuntarily homeless' persons outnumber the available shelter beds in secular shelter space.

SUMMARY OF ARGUMENT

The Ninth Circuit Court of Appeals decision strains the bounds of credulity by venturing where the Constitution and laws of the United States have never gone, and where the principles of the Declaration of Independence would never rationally lead.

Never mind that the Ninth Circuit limited its analysis to secular beds rather than all available beds. Never mind that the Court's analysis is utterly devoid of any connection to the text, intent, or history of the Eighth Amendment. Never mind that the municipal

ordinances at issue are not criminal statutes, and no criminal punishments were applied to any of the plaintiff class members, cruel, reasonable, unusual, perfectly ordinary, or otherwise. The Ninth Circuit would have us believe the Eighth Amendment, properly understood, is essentially a prohibition on the states to regulate homelessness. It would subsidize indigency. It would wrench a social issue from the popular branches of government. Each such misadventure is against reason and law.

I. THE EIGHTH AMENDMENT DOES NOT EMBODY A MATHAMETICAL FORMULA OR DEFINE HOMELESSNESS AS A DISEASE.

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." In these sixteen words the Ninth Circuit has discovered a mathematical formula. If A>B=unconstitutional, where "A" is the number of involuntarily homeless people, and "B" is the number of secular shelter beds. If A is greater than B, then laws punishing camping are unconstitutional. Nothing in the text supports such a formula or meaning. Nor does a federal court possess the jurisdiction to run helter-skelter through the Constitution's text in search of a term or clause to "solve" social problems such as indigency or homelessness, which are best left to the popular branches to solve.[3]

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[3] As Chief Justice Rehnquist explained, "The Judicial Branch derives its legitimacy, not from following public opinion, but from deciding by its best lights whether legislative enactments of the

Presumably intending to elevate the status and treatment of homeless people by inventing a previously unknown kind of constitutional protection, the Ninth Circuit is demeaning homeless people, treating them like victims who cannot help themselves. Wrapping their analysis in the verbal cellophane of a prohibition criminalizing the status of being homeless, the Court has expressly limited their analysis to the class of homeless people who are homeless involuntarily, but who, coincidentally, comprise the vast bulk of homeless people.

The term "involuntary," however, is misleading. For example, a person who is involuntarily vehicleless is a person who does not own, lease or borrow a vehicle. A person who is involuntarily foodless is a person who does not own, buy, or obtain food. In such cases "involuntary" is a function of poverty or allocation of financial resources elsewhere. That which is truly involuntary in life is confined to the military draft, imprisonment, compulsory education, and taxes—all the actions of government. The term, however, has no application here.

Nevertheless, the Court regards the members of the class of people supposedly harmed by the municipal ordinances of Grants Pass as individuals who, essentially: 1) cannot help that they are homeless (contradicting statistical data showing most homeless people are that way by choice); 2) are powerless to

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popular branches of Government comport with the Constitution." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 291 (2022)

overcome or change their circumstances; and 3) exercised no volition as to what city they have landed in, what public space they have camped at, or whether to relieve themselves of their bodily fluids and excrement in public spaces.

The Ninth Circuit didn't say so in so many words, but they have essentially treated homelessness as a disease. That is, homeless people cannot help themselves, have no choice but to squat on public lands in Grants Pass in particular, and are unable to correct or alter their behavior. They don't choose to squat on public lands, they are simply unable to find another place to sleep in the United States, even though no one is forcing them to sleep in a public space, because that's just who they are (their status). Thus, they are morally and legally unaccountable for their actions, and cannot be punished or prevented from camping on public lands.

It is tantamount to saying that people have a legal right to camp in any public space they want to, as long as that is how they self-identify. The Ninth Circuit has enlisted the Eighth Amendment in its social planning objectives to create a universal right to free public housing for all indigent persons who do not have a home. Historically, of course, homelessness is merely a form of vagrancy, which is beyond question a proper object of state police power to regulate.[4]

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[4] Absent a clear Constitutional enumeration, the Court should defer to the City of Grants Pass ordinance addressing homelessness. This deferential approach is reflected in the reapportionment cases. "The essential point is that the Dallas City Council exercised a legislative judgment, reflecting the

II. NEITHER HOMELESSNESS NOR INDIGENCY EXCUSES COMPLIANCE WITH LAW.

By the Ninth Circuit's logic, people are no longer moral human beings made in the image of God, responsible for their individual behavioral choices, but are mere mindless and amoral beings, driven by instincts and external forces over which they have no control, to do things for which they are not accountable. Treated as poor, helpless creatures, they are declared by the court as essentially slaves to their circumstances.

This is not the American legal standard, however. As per the Declaration of Independence, all people in America are deemed to be "created equal." This means, in part, that all people in the United States have equal rights from the Creator (life, liberty, the pursuit of happiness, etc.). But it also means that all people in America also have individual moral responsibility and legal accountability for their actions.

Whether rich or poor, employed or unemployed, religious or irreligious, advantaged or disadvantaged, documented or undocumented, living in homes or on

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policy choices of the elected representatives of the people, rather than the remedial directive of a federal court." *Wise v. Lipscomb*, 437 U.S. 535 (1978) citing *Burns v. Richardson*, 384 U.S. 73 (1966). This rule of deference to local legislative judgments is even more pressing here in light of the Ninth Circuit's essentially remedial decision.

the street, none are immune from generally applicable civil laws and ordinances because of who they are. The state of homelessness itself is simply another way of describing one's financial resources or the lack thereof. Were this case to involve an appeal from a criminal conviction, assistance of appointed counsel, or need for a free transcript on appeal, then certainly equal protection principles reject the concept that "the kind of an appeal a man enjoys depends on the amount of money he has." *Douglas v. People of State of Cal.*, 372 U.S. 353, 355 (1963). But the instant case is of no such pedigree. It is a case where a homeless person is either indigent or elects not to divert financial resources to a dwelling or shelter. There is nothing remarkable about such choices, let alone violating the Eighth Amendment.

III. THE LAW OF NATURE REQUIRES INDIVIDUAL PERSONAL RESPONSIBILITY AND REJECTS IMPOSING UPON THE PEOPLE OF GRANTS PASS, A LEGAL DUTY TO LOVE OR SUBSIDIZE THEIR HOMELESS NEIGHBORS.

As per the Declaration of Independence, all people are presumed to be created. As per the laws of nature and of nature's God, all people are presumed to be made in the image of God. "So God created man in his own image, in the image of God he created him; male and female he created them." (Gen. 1:27). A major consequence of this principle is that every person is a moral being. This is evidenced in the biblical account of creation by comparing Gen. 1:28 with Gen. 2:7. In the one, God gave mankind dominion

over every living thing on the earth, by which is meant the animal kingdom, excluding people. In the other, man is referred to as a living soul (KJV) or a living being (NASB).

This moral character means that the behavioral decisions of people are morally charged, that is, every person's decisions raise issues of right and wrong. Not all decisions are right, and not all are wrong. The fundamental purpose of all laws (including the ordinances at issue) is to tell people what is right and wrong. Right decisions are encouraged, and wrong decisions are punished, prevented or regulated. Learning the difference between them is where personal responsibility comes in.

Additionally, each person is ultimately responsible only for himself. The person who sins will die. The son will not bear the punishment for the father's iniquity, nor will the father bear the punishment for the son's iniquity; the righteousness of the righteous will be upon himself, and the wickedness of the wicked will be upon himself. (Ezekiel 18:20).

Thus, personal responsibility is a general rule. Further, it is founded in the law of nature and is a foundational concept in understanding the nature of all government. What kind of world would it be, where people are held accountable for the wrongs of others? Indeed, the Ninth Circuit has made the citizens and taxpayers of Grants Pass responsible for the choices made by homeless people. The court made the citizens and taxpayers of Grants Pass responsible for

providing housing for private homeless people in their private capacities.

The Court has wrongfully imposed a legal duty on the taxpayers of Grants Pass to love their neighbor. They are required to do so either by opening public lands for camping without charge, or by subsidizing shelters to serve the same purpose. Yet, to compel a man to love their neighbor by charity is a duty solely owed to God. The Ninth Circuit is without jurisdiction to employ the force of law (or misuse of the Eighth Amendment) as a means of compelling charity or love.

As the *Virginia Declaration of Rights* recognized: "That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed *only by reason and conviction, not by force or violence*; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity toward each other."[5] The Ninth Circuit has chosen force in lieu of conscience.

A cardinal purpose of all civil government, and therefore the municipal government of Grants Pass, is to restrain the harms or evils flowing from camping in public spaces. It may be truly said that government is restraint. Sometimes this restraint comes in the form of the punishment of crimes. Other times this

[5] The Virginia Declaration of Rights, Article 16 (1776). https://www.archives.gov/founding-docs/virginia-declaration-of-rights

restraint comes in the form of public health and safety regulations, such as the ordinances at issue in this case. And make no mistake, these public health and safety ordinances are designed to prevent palpable evils, including the spread of disease, the proliferation of substance abuse, increased violence against persons, damage to property, the accumulation of waste materials, including human excrement, and hazards to both vehicular and pedestrian traffic.

Finally, characterizing this case as one controlled by the concept of homelessness is deceptive. It is really a case about poverty and wealth, and the power of the state to differentiate consistent with the equal protection clause of the 14th Amendment. Grants Pass may charge a fee for camping on public spaces and the camper's indigent, or homeless status does not change that option.

By analogy to the school bus transportation fee setting, this Court has held that:

> Applying the appropriate test—under which a statute is upheld if it bears a rational relation to a legitimate government objective—we think it is quite clear that a State's decision to allow local school boards the option of charging patrons a user fee for bus service is constitutionally permissible. The Constitution does not require that such service be provided at all, and it is difficult to imagine why choosing to offer the service should entail a constitutional obligation to offer it for free. No one denies that encouraging local school

> districts to provide school bus service is a legitimate state purpose or that such encouragement would be undermined by a rule requiring that general revenues be used to subsidize an optional service that will benefit a minority of the district's families. It is manifestly rational for the State to refrain from undermining its legitimate objective with such a rule.[6]

So too here, the Constitution does not require that a municipality provide homeless camping opportunities, and it is difficult to imagine why choosing to offer that service should entail a constitutional obligation to offer it for free. No one denies that municipalities may encourage housing, but such encouragement would be undermined by a rule requiring that general revenues be used to subsidize housing that will benefit a minority of the municipality's homeless residents.

CONCLUSION

Law is good, if used lawfully. (1 Timothy 1:8). In this case the Ninth Circuit has not used the Constitution's Eighth Amendment lawfully. Rather, it has enlisted the clause in a problematic social cause without nexus to its text. It has drafted and imposed a mathematical formula as if it were a legislative body. It has trampled down the laws of nature by compelling the citizens of Grants Pass to surrender use of public

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[6] *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 461–62 (1988).

land to a right to camp, and by forcing its taxpayers to subsidize the erection and maintenance of shelters.

It has made indigency constitutionally protected triggering public benefits. Its logic leads to free transportation for the involuntary vehicleless, free clothing for the involuntary clothless, and free knives and handguns for the involuntary defenseless, as well as any benefit needed based on every financial deficiency the term can be expanded to cover. In short, the Ninth Circuit is just getting started.

Whatever solution to homelessness may be desired, it cannot be squeezed out of the Eighth Amendment, or solved by a federal court through formulaic legislation embodied in its written opinion.

Respectfully submitted,

KERRY LEE MORGAN*
RANDALL A. PENTIUK
PENTIUK, COUVREUR, & KOBILJAK, P.C.
2915 Biddle Avenue
Suite 200
Wyandotte, MI 48192
(734) 281-7100
Kmorgan@pck-law.com
Rpentiuk@pck-law.com

GERALD R. THOMPSON
37637 Five Mile Rd, #397
Livonia, MI 48154
(734) 855-6494
thompson@t-tlaw.com

Counsel for Amicus Curiae
** Counsel of Record*

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