

No. 23-175

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IN THE  
*Supreme Court of the United States*

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CITY OF GRANTS PASS, OREGON,

*Petitioner,*

v.

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

*Respondents.*

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On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

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**BRIEF OF THE EMORY CIVIL RIGHTS  
SOCIETY AS *AMICUS CURIAE* IN SUPPORT OF  
RESPONDENTS**

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PAUL KOSTER

*Counsel of Record*

EMORY LAW SCHOOL

SUPREME COURT ADVOCACY

PROGRAM

*1301 Clifton Road*

*Atlanta, Georgia 30322*

*(404) 727-3957*

*Paul.Koster@emory.edu*

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### **INTEREST OF AMICUS CURIAE**<sup>1</sup>

The Emory Civil Rights Society is a student organization at Emory University School of Law. *Amicus*'s members are students at Emory Law School, who seek to promote civil rights law dialogue, practice, policy, and scholarship within the Emory Law School community and beyond. Advocating for the civil rights of individuals experiencing homelessness falls squarely within *amicus*'s purpose.

### **SUMMARY OF THE ARGUMENT**

“The basic concept underlying the Eighth Amendment is nothing less than the dignity of [the person].” *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958). Its protections apply not only to the severity of punishment, but also to the method, kind, and reason of punishment. *Ingraham v. Wright*, 430 U.S. 651, 667 (1977).

Following this Court's holding in *Robinson v. California*, the Ninth Circuit in *Martin v. City of Boise* recognized the Eighth Amendment protects individuals from being punished for engaging in activities that are “universal and unavoidable consequences of being human.” 920 F.3d 584, 617 (9th Cir. 2019). Such activities relevant to those experiencing homelessness include “sitting, lying, or sleeping on the streets.” *Id.* These are essential for human survival: a person cannot live without sleep,

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<sup>1</sup> Pursuant to Sup. Ct. R. 37.6, *amicus curiae* affirm that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

nor can they be expected to stand or walk for hours on end. Thus, this type of conduct is “involuntary and inseparable from status.” *Id.*

As more fully discussed below, reversing the judgment of the court of appeals would allow cities to criminalize a broad array of involuntary acts, and thus individuals’ status, in contravention of its precedent.

## **ARGUMENT**

### **I. BARRIERS TO SHELTER FACED BY INDIVIDUALS EXPERIENCING HOMELESSNESS**

To explain the impact of criminalizing involuntary homelessness, this brief highlights certain barriers to shelter faced by individuals experiencing homelessness, such as barriers based on medical conditions, mental health-related issues, substance abuse-related issues, shelter-imposed restrictions, and loss of personal belongings.

#### **A. Medical conditions, mental health-related issues, and substance abuse-related issues as barriers to accessing shelter**

Loss of employment due to a medical condition can quickly lead to homelessness.<sup>2</sup> For individuals suffering from a medical condition, staying in a shelter can pose the risk of worsening their condition. For example, due to confined or overcrowded conditions, a

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<sup>2</sup> NATIONAL INSTITUTE OF HEALTH, COMMITTEE ON HEALTH CARE FOR HOMELESS PEOPLE, HOMELESSNESS, HEALTH, AND HUMAN NEEDS 22, 40 (1988).

shelter may foster the spread of an illness or disease.<sup>3</sup> In addition, many shelters are unable to adhere to specific diets required for certain medical conditions, making them untenable destinations for the medically vulnerable.<sup>4</sup>

Similarly, shelters can be particularly difficult for people experiencing mental health-related issues.<sup>5</sup> For example, in Atlanta, individuals experiencing homelessness have been expelled involuntarily from a shelter because they are suffering from a mental health crisis.<sup>6</sup> This reflects a common practice throughout the country.<sup>7</sup>

Furthermore, substance abuse acts as a barrier to accessing shelter. Individuals experiencing homelessness struggle with substance abuse at higher rates than the general population, and substance abuse acts as both a “result and a cause of homelessness.”<sup>8</sup> However, shelters often have rules that require “cold-turkey” sobriety—contrary to best

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<sup>3</sup> Suzanne Skinner & Sara Rankin, Homeless Rights Advocacy Project, *Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter* 12, 16 (2016), Seattle Univ. School of Law Digital Commons.

<sup>4</sup> Ben McJunkin, *The Negative Right to Shelter*, 111 CALIF. L. REV. 127, 168 (2023).

<sup>5</sup> *Id.*

<sup>6</sup> Rebecca Lindstrom & Kristin Crowley, *'It's really rough' | How shelter rules, IDs, lack of voucher acceptance contribute to homelessness*, 11Alive (Nov. 21, 2022), <https://www.11alive.com/article/news/investigations/barriers-that-keep-people-out-of-permanent-housing/85-1cf74eff-d4ee-44d9-b72c-d94664bab647>.

<sup>7</sup> Ben McJunkin, *supra* note 4.

<sup>8</sup> Suzanne Skinner & Sara Rankin, *supra* note 3, at 20.

practices for substance abuse treatment.<sup>9</sup> Moreover, some shelters maintain stringent sobriety requirements that bar people actively struggling with their sobriety.<sup>10</sup>

### **B. Shelter-imposed restrictions as barriers to accessing shelter**

Many shelters prescribe restrictions that inhibit access to shelter. For example, some shelters require government ID to obtain a bed for the night, despite the reality that IDs for individuals experiencing homelessness are often lost or stolen.<sup>11</sup>

Furthermore, some shelters may condition admission based on family status. Of note, in 2015, 76% of cities surveyed reported that families with children were turned away from emergency shelters—even in cities that reported a decrease in family homelessness.<sup>12</sup>

At the same time, many family shelters are unable to keep families together.<sup>13</sup> For example, family shelters often impose age limits on the children allowed in the shelter; this is particularly true for male children.<sup>14</sup> One study shows that “in Los Angeles County, 37.5% of family shelters set age limits for male children, which can be as low as eleven.”<sup>15</sup> Additionally, “seven percent of homeless parents in

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<sup>9</sup> *Id.* at 20.

<sup>10</sup> *Id.* at 21.

<sup>11</sup> Rebecca Lindstrom & Kristin Crowley, *supra* note 6.

<sup>12</sup> Suzanne Skinner & Sara Rankin, *supra* note 3, at 31.

<sup>13</sup> *Id.* at 30.

<sup>14</sup> *Id.* at 32.

<sup>15</sup> *Id.*

Minnesota said age limits for children forced them to send their older children elsewhere to get beds for their younger children.”<sup>16</sup>

Additionally, nearly 30% of shelters have religious affiliations, and thus impose religious restrictions or requirements upon their residents.<sup>17</sup> Often, these shelters require mandated attendance at religious activities.<sup>18</sup> These restrictions and requirements impose barriers to shelter for individuals who do not share the same religious beliefs as those espoused by the shelter, and in some cities are the only shelters available to individuals experiencing homelessness.<sup>19</sup>

### **C. Loss of personal belongings as a barrier to accessing shelter**

Entering a shelter may result in the loss of an individual’s personal belongings, such as cell phones, which often provide an individual’s only connection to the outside world, as well as access to employment opportunities.<sup>20</sup> Of particular note, many shelters prohibit the presence of pets, a critical companion and connection to society for many individuals experiencing homelessness.<sup>21</sup> For example, “nearly

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<sup>16</sup> *Id.*

<sup>17</sup> Joy Kim, *The Case Against Criminalizing Homelessness: Functional Barriers to Shelters and Homeless Individuals’ Lack of Choice*, 95 N.Y.U. L. Rev. 1150, 1174 (2020).

<sup>18</sup> Susan Skinner and Sara Rankin, *supra* note 3, at 12.

<sup>19</sup> *Id.*

<sup>20</sup> Yoonsook Ha et. al, *Barriers and facilitators to shelter utilization among homeless young adults*, 53 Evaluation and Program Planning 25, 29 (2015).

<sup>21</sup> Nick Kerman et. al, *A Multilevel Intervention Framework for Supporting People Experiencing Homelessness with Pets*, 10 MDPI, 2 (2020). Research shows that “people experiencing

half of pet owners experiencing unsheltered homelessness in Los Angeles, California, report that they had been turned away from emergency shelters due to pet-related policies.”<sup>22</sup>

### CONCLUSION

Reversing the judgment of the court of appeals would allow cities to punish individuals who experience barriers to being sheltered, including barriers based on medical conditions, mental health-related issues, substance abuse-related issues, shelter-imposed restrictions, and loss of personal belongings. *Amicus*, therefore, respectfully request that the Court affirm the judgment of the court of appeals.

Respectfully submitted.

PAUL KOSTER  
*Counsel of Record*  
EMORY LAW SCHOOL SUPREME  
COURT ADVOCACY PROGRAM  
*1301 Clifton Road*  
*Atlanta, Georgia 30322*  
*(404) 727-3957*  
*Paul.Koster@emory.edu*

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homelessness report that their pets provide a sense of responsibility and are a reason to live, reduce substance use, and seek healthcare.” *Id.*

<sup>22</sup> *Id.* at 3.