

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 DISABILITY RIGHTS  
EDUCATION AND DEFENSE FUND *ET AL.* AS  
*AMICI CURIAE* IN SUPPORT OF  
RESPONDENTS**

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**TABLE OF CONTENTS**

	<b>Page</b>
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	4
I.    The Punishments Imposed By The Ordinances Are Grossly Disproportionate To The Severity Of The Offense Because They Target Homeless People For Nonculpable, Compulsory Human Conduct .....	4
A.    That punishments must not be grossly disproportionate to the severity of the offense is a long-held principle in Eighth Amendment jurisprudence.....	4
B.    The Ordinances’ disproportionality is highlighted by their effect on people with disabilities.....	6
C.    The Ordinances punish people for existing in the community without providing alternatives .....	17
II.   The Ordinances Do Not Serve Any Acceptable Penological Purposes.....	21
A.    The Ordinances do not serve a deterrence interest.....	22

**TABLE OF CONTENTS  
(continued)**

	<b>Page</b>
B. The Ordinances do not serve a rehabilitation interest .....	25
C. The Ordinances do not serve a retribution interest .....	32
CONCLUSION .....	34
APPENDIX A: List of <i>Amici Curiae</i> .....	1a

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002) .....	4, 32, 33
<i>Ewing v. California</i> , 538 U.S. 11 (2003) .....	22
<i>Graham v. Florida</i> , 560 U.S. 48 (2010) .....	4, 21, 33
<i>Hall v. Florida</i> , 572 U.S. 701 (2014) .....	33
<i>Harmelin v. Michigan</i> , 501 U.S. 957 (1991) .....	4, 21
<i>Hodges v. Humkin</i> , 2 Bulst. 139 Eng. Rep. 1015 (K.B. 1615) .....	5
<i>Kennedy v. Louisiana</i> , 554 U.S. 407 (2008) .....	32
<i>Robinson v. California</i> , 370 U.S. 660 (1962) .....	5, 6, 32
<i>Solem v. Helm</i> , 463 U.S. 277 (1983) .....	5
<i>Tison v. Arizona</i> , 481 U.S. 137 (1987) .....	32, 33
<i>Weems v. United States</i> , 217 U.S. 349 (1910) .....	4
<b>Statutes</b>	
Chicago Mun. Code § 36034 (1881) .....	19

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
 <b>Constitutional Provisions</b>	
1771 Pa. Laws 77 (Act of March 9, 1771, ch. DCXXXV § 5).....	5–6
 <b>Other Authorities</b>	
1 W. & M., sess. 2, ch. 2 (1689).....	5
Adrienne Phelps Coco, <i>Diseased, Maimed, Mutilated: Categorizations of Disability and Law in Late Nineteenth-Century Chicago</i> , 44 J. Soc. Hist. 23 (2010) .....	20
Andrew Khouri, <i>California Outlawed Section 8 Housing Discrimination. Why It Still Persists</i> , L.A. Times (Nov. 19, 2022) .....	16
Andrew Pulrang, <i>Why Is The Employment Gap For People With Disabilities So Consistently Wide?</i> , Forbes (Oct. 31, 2022) .....	13
Andrew Wilper, et al., <i>The Health and Health Care of US Prisoners: Results of a Nationwide Survey</i> , 99 Am. J. Pub. Health 666 (2009).....	27
Ashley C. Bradford & Johanna Catherine Maclean, <i>Evictions and Psychiatric Treatment</i> , J. Pol. Analysis & Mgmt. (2024) .....	14, 15

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
Cal. Health Care Found., <i>People Experiencing Homelessness In California: California Health Care Almanac Quick Reference Guide</i> (2022).....	8
Chris Herring et al., <i>Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness</i> , 67 Soc. Problems 131 (2019).....	25, 26
Civ. Rts. Dep’t, State of Cal., <i>Fair Housing and Source of Income Fact Sheet</i> (2024).....	16
Corey McDonald, <i>Why Aren’t Homeless Shelters Accommodating People Who Have Disabilities?</i> , Shelterforce (July 19, 2023) .....	24, 25
Ctr. on Budget & Pol. Priorities, <i>United States Federal Rental Assistance Fact Sheet</i> (2022) .....	16
Ctr. Rsch. on Disability, <i>Section 6: Poverty</i> (last visited Apr. 2, 2024).....	10–11
Dennis Culhane et al., <i>The Emerging Crisis of Aged Homelessness</i> (2019). .....	8–9
Inter-Am. Comm’n on Hum. Rts., <i>REDESCA’s Visit to Los Angeles, USA: It is Urgent to Address the Human Rights Situation of Unhoused People</i> (July 12, 2023) .....	29

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
Jaboa Lake et al., <i>Recognizing and Addressing Housing Insecurity for Disabled Renters</i> , Ctr. Am. Prog. (2021) .....	9–10
Janie Har, <i>New Study Says High Housing Costs, Low Income Push Californians Into Homelessness</i> , AP News (June 20, 2023).....	12
Jennifer M. Reingle Gonzalez & Nadine M. Connell, <i>Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity</i> , 104 Am. J. Pub. Health 2328 (2014) .....	27
Jess Hallam, <i>Mental Health Disabilities and the Criminalization of Homelessness: Challenging Municipal Sit-Lie Ordinances as Disparate Impact Discrimination Under the Americans with Disabilities Act of 1990</i> , 45 N.Y.U. Rev. L. & Soc. Change 632 (2022).....	7, 26
Joana Bravo et al., <i>Avoiding Revolving Door and Homelessness: The Need To Improve Care Transition Interventions in Psychiatry and Mental Health</i> , Frontiers in Psychiatry (2022) .....	30
Joint Ctr. Hous. Studs. Harv. Univ., <i>Housing America’s Older Adults</i> (2023) .....	12
Kathryn A. Henderson et al., <i>Addressing Homelessness Among Older Adults: Final Report</i> (2023) .....	8

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
Kelly M. Doran, et al., <i>The Revolving Hospital Door: Hospital Readmissions Among Patients Who Are Homeless</i> , 51 <i>Med. Care</i> 767 (2013).....	30
L. Hafetz, <i>Homeless Legal Advocacy: New Challenges and Directions for the Future</i> , 30 <i>Ford. Urban L.J.</i> 1215 (2003) .....	28
Lilanthi Balasuriya et al., <i>The Never-Ending Loop: Homelessness, Psychiatric Disorder, and Mortality</i> , 37 <i>Psychiatric Times</i> 12 (2020).....	14, 31
Linda M. Richmond, <i>M.D.s Call for Community Resources Amid Plans to Force Homeless Into Care</i> , <i>Psychiatric News</i> (Jan. 26, 2023).....	30–31
Lindsay Augustine et al., <i>Fair Housing Trends Report</i> , Nat’l Fair Hous. Alliance (2023).....	15
<i>Love Blooms on Sidewalk</i> , <i>L.A. Times</i> , Jan. 14, 1917 .....	20
Madeline Baily et al., <i>Vera Inst. Just., No Access to Justice: Breaking the Cycle of Homelessness and Jail</i> (2020).....	26
Malik Rivers, <i>Intersectionality and Homelessness: We Need to Take a Deeper Dive</i> , Nat’l All. to End Homelessness (Feb. 23, 2023).....	6



**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
Margot B. Kushel et al., <i>Revolving Doors: Imprisonment Among the Homeless and Marginally Housed Population</i> , 95 Am. J. Pub. Health 1747 (2005) .....	7, 28
Margot Kushel & Tiana Moore, <i>Towards a New Understanding: The California Statewide Study of People Experiencing Homelessness</i> , U.C.S.F. Benioff Homelessness and Hous. Initiative (2023).....	8, 10, 12
Michael Massoglia & Brianna Remster, <i>Linkages Between Incarceration and Health</i> , 134 Pub. Health Rep. 8S (2019) ...	26, 27–28
Michelle Diamant, <i>SSI Recipients Can't Afford Housing Anywhere in the US</i> , Disabilityscoop (Feb. 5, 2024) .....	11
Nat'l All. to End Homelessness, <i>Many Western and Southern States Lack Sufficient Shelter Capacity for Individual Homeless Adults</i> (Apr. 24, 2019).....	23
Nat'l All. to End Homelessness, <i>State of Homelessness: 2023 Edition</i> .....	23
Nat'l Alliance to End Homelessness, <i>Alternatives to Criminalization</i> (2021).....	31–32
Nat'l Alliance to End Homelessness, <i>Housing First</i> (Mar. 20, 2022) .....	29

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
Nikita Stewart, <i>As Shelter Population Surges, Housing for Disabled Comes Up Short</i> , N.Y. Times (Sept. 16, 2016) .....	24–25
Nikita Stewart, <i>Under Settlement, City Shelters Will Do More for the Disabled</i> , N.Y. Times (May 18, 2017) .....	24
Press Release, Bureau of Labor Stats. (Feb. 22, 2024) .....	13
Rick Paulas, <i>This is Why Homeless People Don't Go To Shelters</i> , Vice (Feb. 24, 2020) .....	23
Soc. Sec. Admin., <i>How Much You Could Get From SSI</i> .....	11
Sonali P. Kulkarni et al., <i>Is Incarceration a Contributor to Health Disparities? Access to Care of Formerly Incarcerated Adults</i> , 35 J. Comm. Health 268 (2010) .....	28
Susan Schweik, <i>Kicked to the Curb: Ugly Law Then and Now</i> , 46 Harv. C.R.-C.L. L. Rev. 1 (2011) .....	20
Tanya de Sousa et al., U.S. Dep't Hous. & Urban Dev., <i>The 2023 Annual Homelessness Assessment Report (AHAR) to Congress</i> (Dec. 2023) .....	6
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**TABLE OF AUTHORITIES  
(continued)**

	<b>Page(s)</b>
U.S. Dep't of Hous. & Urban Dev., <i>Accessibility of America's Housing Stock: Analysis of the 2011 American Housing Survey (AHS) (2011)</i> .....	9

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

*Amici* are twenty-four nonpartisan, non-profit disability rights organizations and scholars that promote the rights of disabled people to participate fully and equally in all aspects of society, and to live with dignity, free from discrimination. *Amici* advance these goals using various tools, including individual and impact litigation, as well as policy advocacy.

*Amici* have long studied the disparity in poverty and homelessness between people with and without disabilities, the grossly disproportionate impact municipal prohibitions on sleeping in public spaces have on people with disabilities, and the significant harm criminalization based on housing status causes people with disabilities. In *amici's* experience, providing housing and support services—as opposed to carceral tactics—is most successful in reducing homelessness, and is a viable alternative to criminalization.

*Amici* have a strong interest in ensuring that state and local governments are not permitted to use criminal and civil penalties to punish homeless people—many of whom are disabled—for existing in public spaces when they have no other place to go. *Amici* contend that such an approach to homelessness transgresses the Eighth Amendment's prohibition of cruel and unusual punishment in light of evolving standards of decency, and will only result in further

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, other than *amici curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

harm to homeless disabled people. A full list of *amici* appears as Appendix A to this brief.

### **SUMMARY OF ARGUMENT**

The ordinances penalizing sleeping in public spaces in Grants Pass, Oregon (the “Ordinances”) subject more than 1,000 homeless people to fines and, ultimately, criminal prosecution simply for existing in Grants Pass. But the members of Grants Pass’s homeless community do not choose to be homeless. Instead, in a city with no public shelters, they have no alternative but to sleep in parks or on the street. And because of their increased risk for homelessness, people with disabilities are more likely to be trapped in that Catch-22.

People with disabilities face unique challenges and deep-rooted stigmas that increase their risk for homelessness. Less than 5% of housing in the United States is accessible for moderate mobility disabilities, and less than 1% is accessible for wheelchair use. Housing costs are prohibitive for many disabled people who rely on public assistance for basic costs of living—the average cost of a one-bedroom apartment in the United States exceeds the maximum monthly Supplemental Security Income a person can receive. Moreover, widespread housing discrimination on the basis of disability further compounds the risk of homelessness.

The Ordinances’ impact on homeless people with disabilities highlights how grossly out of proportion the punishments they impose are to the severity of the offense. Simply put, criminalizing the involuntary conduct of being a homeless person without a place to

sleep—in a city with no public shelters—is anathema to the decency standards of any civilized society.

The Ordinances also do not serve any penological interest. None of the legitimate penological interests this Court has recognized—including deterrence, rehabilitation, and retribution—are served here. The Ordinances do not deter disabled homeless people from sleeping in public places, because they have no alternative. They do not “rehabilitate” homeless people from their involuntary conduct, but make it even less likely that they will be able to obtain adequate housing. And the Ordinances serve no retributive interest—there is no value in punishing homeless people for public sleeping unless they have viable alternatives.

Because the Ordinances are grossly disproportionate to the offense committed and they do not serve any legitimate penological interest, this Court should affirm the Ninth Circuit’s judgment that they violate the Eighth Amendment.

**ARGUMENT**

- I. The Punishments Imposed By The Ordinances Are Grossly Disproportionate To The Severity Of The Offense Because They Target Homeless People For Nonculpable, Compulsory Human Conduct**
- A. That punishments must not be grossly disproportionate to the severity of the offense is a long-held principle in Eighth Amendment jurisprudence.**

The idea that “punishment for crime should be graduated and proportioned to [an] offense” is “central to the Eighth Amendment” and “[e]mbodied in the Constitution’s ban on cruel and unusual punishments.” *Graham v. Florida*, 560 U.S. 48, 59 (2010) (citing *Weems v. United States*, 217 U.S. 349, 367 (1910)). Accordingly, the amendment prohibits “extreme sentences that are ‘grossly disproportionate’” to the crime. *Harmelin v. Michigan*, 501 U.S. 957, 997, 1000–01 (1991) (Kennedy, J., concurring in part and concurring in judgment). In assessing punishments for offenses that involve diminished culpability, the Court considers current societal standards by looking at legislative and state practice. *Graham*, 560 U.S. at 60; *Atkins v. Virginia*, 536 U.S. 304, 312–13 (2002) (explaining that “[p]roportionality review” must be informed by “evolving standards of decency” (quotations omitted)).

Criminalizing nonculpable, compulsory behavior is inherently disproportional to the offense. This Court has already acknowledged that “[i]t is unlikely

that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease.” *Robinson v. California*, 370 U.S. 660, 666 (1962). Like people who have illnesses that are likely “contracted innocently and involuntarily,” *id.* at 667, homeless people are not choosing to engage in criminal behavior when they sleep in public. They have no other place to go.

As this Court has recognized, the proportionality concept is consistent with an originalist understanding of the Eighth Amendment. *Solem v. Helm*, 463 U.S. 277, 284 (1983). Indeed, proportionality was recognized in the Magna Carta and in English common law. *Id.* at 285 (“[I]mprisonment ought always to be according to the quality of the offence.”) (citing *Hodges v. Humkin*, 2 Bulst. 139, 140, 80 Eng. Rep. 1015, 1016 (K.B. 1615) (Croke, J.)). The English Bill of Rights reiterated language that was later adopted into the Eighth Amendment: “excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.” *Id.* (citing 1 W. & M., sess. 2, ch. 2 (1689)). With that language, the Framers adopted the proportionality principle. *Id.* at 286–87; *see* Br. Const. Accountability Ctr. Part I.C.

So too would the Founders have condemned laws like the Ordinances in Grants Pass. Poor laws from the founding era refrained from criminally punishing involuntarily homeless people, and actually required community members who were able to “maintain[] and provide[] for” those who were “poor, old, blind, impotent and lame,” or otherwise “not able to work[.]” *See* Resp. Br. at 14 (citing 1771 Pa. Laws 77 (Act of



March 9, 1771, ch. DCXXXV § 5)). These Colonial-era laws created an affirmative duty to care for the poor, homeless, and disabled—the opposite of punishing them for their existence, as Grants Pass does here.

**B. The Ordinances’ disproportionality is highlighted by their effect on people with disabilities.**

The Ordinances criminalize people for sleeping in public places—something that the majority of homeless people are doing “innocently and involuntarily,” *Robinson*, 370 U.S. at 667. Indeed, the effect of these laws on people with disabilities, who make up a substantial portion of the homeless population, brings the harms of the Ordinances into focus.<sup>2</sup>

1. Homeless people are significantly more likely to have disabilities compared to both the United States population at large and individuals living in poverty. According to the U.S. Department of Housing and Urban Development (“HUD”), nearly one in three homeless individuals experiences a chronic pattern of

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<sup>2</sup> As several other *amicus* briefs make clear, the Ordinances are especially harmful to people from multi-marginalized communities who experience homelessness at disproportionately high rates, including racial minorities, LGBTQ+ individuals, and veterans. See Tanya de Sousa et al., U.S. Dep’t Hous. & Urban Dev., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress* 4, 13–14 (Dec. 2023) (“HUD Report”); Malik Rivers, *Intersectionality and Homelessness: We Need to Take a Deeper Dive*, Nat’l All. to End Homelessness (Feb. 23, 2023), <https://endhomelessness.org/blog/intersectionality-and-homelessness-we-need-to-take-a-deeper-dive/#:~:text=People%20hold%20multiple%20identities%2C%20including,equity%20and%20justice%20work%20overall>.

homelessness, “meaning that they have experienced homelessness for extended periods of time and have a disability.”<sup>3</sup> HUD Report 26. HUD estimated in its 2023 Point-In-Time count key findings that 31% of those who meet the federal definition of experiencing chronic homelessness (143,105 out of 653,104) are people with disabilities.<sup>4</sup> *Id.* at 3. A 2018 survey of homeless people found that 78% of respondents reported having mental health conditions. Jess Hallam, *Mental Health Disabilities and the Criminalization of Homelessness: Challenging Municipal Sit-Lie Ordinances as Disparate Impact Discrimination Under the Americans with Disabilities Act of 1990*, 45 N.Y.U. Rev. L. & Soc. Change 632, 643 (2022). Yet another study found that 25% of homeless individuals reported a lifetime history of psychiatric hospitalizations. Margot B. Kushel et al., *Revolving Doors: Imprisonment Among the Homeless and Marginally Housed Population*, 95 Am. J. Pub. Health 1747, 1748 (2005). In California, where a majority of the United States’ homeless population resides, the California Health Care Foundation recently reported

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<sup>3</sup> HUD defines an “individual experiencing chronic homelessness” as a person “with a disability who has been continuously experiencing homelessness for one year or more, or has experienced at least four episodes of homelessness in the last three years where the combined length of time experiencing homelessness on those occasions is at least 12 months.” HUD Report 4.

<sup>4</sup> This is undoubtedly an *under-estimate*, as not all disabled homeless people experience “chronic” patterns of homelessness or meet HUD’s definition of disability, which is more restrictive than that used in the Americans with Disabilities Act, the Rehabilitation Act, and the Fair Housing Amendments Act, among other statutes.

that 42% of California’s homeless people have a disability. *People Experiencing Homelessness In California: California Health Care Almanac Quick Reference Guide* (2022), <https://www.chcf.org/wp-content/uploads/2022/06/PeopleExperiencingHomelessnessAlmanac2022QRG.pdf>. Another California study found that 66% of participating homeless people reported having a mental health condition. Margot Kushel & Tiana Moore, *Towards a New Understanding: The California Statewide Study of People Experiencing Homelessness*, U.C.S.F. Benioff Homelessness and Hous. Initiative 7–8 (2023).

Many homeless people with disabilities are also older adults, which is one of the fastest growing age groups among people experiencing homelessness. Kathryn A. Henderson et al., *Addressing Homelessness Among Older Adults: Final Report 4* (2023). The growth of that older group means that more of the homeless population have geriatric conditions and chronic health problems. *See id.* at 5–6 (finding that, “[c]ompared to their housed counterparts,” homeless older adults have a higher prevalence and severity of memory loss, falls, difficulty performing daily tasks, cognitive impairments, functional impairments, and higher rates of mental health and substantive use disorders) (citations omitted). As compared to younger homeless adults, those over 50 years of age have higher rates of chronic illnesses, cognitive impairments, high blood pressure, arthritis, and functional disability. *Id.* at 6. Worse still, the population of homeless older adults is rapidly growing and is expected to triple by 2030 in several major United States cities. *Id.* at 14 (citing Dennis Culhane et al., *The Emerging Crisis of Aged*

*Homelessness 2–5* (2019), <https://aisp.upenn.edu/wp-content/uploads/2019/01/Emerging-Crisis-of-Aged-Homelessness-1.pdf>).

Chronic homelessness is on the rise, demonstrating the need for policy intervention rather than criminalization measures. HUD reports that there was (i) a 19.4% increase (23,292 more people) experiencing chronic homelessness between 2007 and 2023; (ii) a 34.9% increase (37,043 more people) between 2010 and 2023; and (iii) a 12% increase (15,337 more people) between 2022 and 2023 alone. HUD Report 78.

2. The relationship between homelessness and disability exists because disabled people face unique challenges and deep-rooted stigmas that present persistent challenges in accessing and navigating foundational systems for basic survival, including housing, employment, financial security, and healthcare. As a result, they are more susceptible to homelessness.

**Accessible Housing.** The lack of physically accessible housing is a barrier to disabled people. Less than 5% of housing in the United States is accessible for individuals with moderate mobility disabilities. HUD, *Accessibility of America's Housing Stock: Analysis of the 2011 American Housing Survey (AHS)* 24 (2011). Less than 1% is wheelchair accessible. *Id.* Now in a nationwide housing shortage of more than 7 million units, there are even fewer accessible and affordable housing options. Jaboa Lake et al., *Recognizing and Addressing Housing Insecurity for Disabled Renters*, Ctr. Am. Prog. (2021), <https://www.americanprogress.org/article/recognizing>

-addressing-housing-insecurity-disabled-renters/. A landmark study of homelessness in California illustrates this point. 24% of participants reported being unable to find housing that met their needs “due to a physical disability.” Kushel, *Toward a New Understanding, supra*, at 79. 14% reported that this “impacted their ability to find housing a lot.” *Id.*

These statistics reflect the harsh realities for thousands of disabled people. One such person is Natàlia Méndez, a thirty-nine year old Bronx native and the founder of Women on Wheels, a nonprofit that supports women with spinal cord injuries. *Perlman, supra*. Méndez, who uses a wheelchair since experiencing a spinal cord injury, had to move into a nursing home for two years because she did not have the income to afford rent payments. *Id.* She was unable to move in with her parents because they both lived in inaccessible walk-up buildings. *Id.* While she eventually found a wheelchair-accessible apartment for \$600 a month, the building was sold shortly thereafter. *Id.* The new owners then tripled the rent. *Id.* Nearly all of Méndez’s neighbors—most of whom also used wheelchairs—were priced out of their apartments. *Id.* In an instant, Méndez was back where she started: without accessible housing.

**Housing Costs.** Rising housing costs present another substantial barrier to disabled people. People with disabilities disproportionately live in poverty. Many rely on Supplemental Security Income (SSI) benefits to meet their basic needs. Ctr. Rsch. on Disability, *Section 6: Poverty*, <https://www.researchondisability.org/ADSC/compendium-table-contents/section-6-poverty> (last visited Apr. 2, 2024) (noting that in 2022, 24.9% of disabled people

were living in poverty compared to 10.1% of people without disabilities). In an ongoing study of the housing market for people living on SSI, the Technical Assistance Collaborative has found that “there is no United States housing market in which a person living solely on [SSI] can afford a safe, decent apartment without rental assistance.” *Priced Out: The Housing Crisis for People with Disabilities*, <https://www.tacinc.org/resources/priced-out/> (last visited Apr. 1, 2024) (emphasis omitted). The average rent for a basic one-bedroom apartment is \$1,398 per month, which constitutes 142% of the \$943 an individual can receive in maximum monthly SSI income. *Id.*; Soc. Sec. Admin., *How Much You Could Get From SSI*. Even in Dallas County, Missouri—the cheapest rental market in the country—the monthly rent for a basic one-bedroom apartment would require 64% of the maximum monthly SSI payment that a person can receive. Michelle Diament, *SSI Recipients Can’t Afford Housing Anywhere in the US*, DisabilityScoop (Feb. 5, 2024), [www.disabilityscoop.com/2024/02/05/ssi-recipients-cant-afford-housing-anywhere-in-the-us/30731/](http://www.disabilityscoop.com/2024/02/05/ssi-recipients-cant-afford-housing-anywhere-in-the-us/30731/).

Housing affordability is a particular concern for the large number of older adults, many of whom have disabilities and may live on a limited and fixed income, especially after they can no longer work. This older population, many of whom may be facing the prospect of housing insecurity for the first time, faces challenges with rising property taxes, utilities, and insurance fees. Joint Ctr. Hous. Studs. Harv. Univ., *Housing America’s Older Adults* 15 (2023). And “[t]he circumstances that cause older adults to lose their housing for the first time often include a change in

income or family composition brought on by sickness, divorce, [] the death or illness of a loved one, or a change . . . precipitated by a health crisis or new disability.” *Id.* at 17.

Intuitively, the cost of housing contributes to a person becoming homeless. Of the 3,200 participants surveyed in one study of homeless people in California, the median monthly household income six months prior to homelessness was \$950, and for renters it was \$1400. Kushel, *Toward a New Understanding, supra*, at 6. The median housing costs for both groups required nearly half of their income. *Id.*

Individual stories illustrate the broader issues. Sage Johnson’s story is just one example of this economic reality. In 2015, Johnson’s mother, who received \$1,340 in monthly disability pay, was evicted from her apartment once her rent had increased to \$1,200. Janie Har, *New Study Says High Housing Costs, Low Income Push Californians Into Homelessness*, AP News (June 20, 2023), <https://apnews.com/article/homeless-california-study-poverty-high-rent-a2a4bfc9b386cb70fdd14d593f31b68c>. Her mother then “bounced around, from LA’s notorious Skid Row to various convalescent homes,” while Johnson lived at a shelter. *Id.* Not until adulthood was Johnson able to pay for her mother to stay in a nursing home just two years before her mother died. *Id.* She reported just being relieved that, “in the end,” her mother had a bed. *Id.*

**Employment.** Yet another challenge that disabled people face is obtaining and maintaining employment. The rate of unemployment for disabled people is twice as high as for those without disabilities.

Press Release, Bureau of Labor Stats. (Feb. 22, 2024), <https://www.bls.gov/news.release/pdf/disabl.pdf>. Only 22.5% of people with a disability were employed in 2023, compared to the 65.8% of those without a disability. *Id.* The reasons for this employment gap are many. “Even under ideal conditions of accessibility and social acceptance, most disabilities require specific kinds of planning, equipment, and physical and emotional endurance that non-disabled people simply don’t need to worry about. And these resources aren’t always readily available.” Andrew Pulrang, *Why Is The Employment Gap For People With Disabilities So Consistently Wide?*, Forbes (Oct. 31, 2022), <https://www.forbes.com/sites/andrewpulrang/2022/10/31/why-is-the-employment-gap-for-people-with-disabilities-so-consistently-wide/?sh=20a73324276b>. Moreover, because many disabilities “fluctuate or are progressive,” accommodations often need to be flexible. *Id.* “Physical accessibility and standard accommodations often aren’t enough. [Many disabled people need] flexible jobs that can more easily accommodate fluctuating disabilities . . . [including] work from home opportunities, varied work schedules, more generous, creative time off provisions, and a wider variety of seasonal and part-time jobs.” *Id.*

*Amici* support clients who face these challenges day in and day out. One client, Jane<sup>5</sup>, suffered a workplace injury that left her unable to find and maintain stable employment. When her disability benefits ran out, she could no longer pay rent. Though she completed a six-month job training course, she

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<sup>5</sup> To protect their privacy, *amici* refer to their clients using pseudonyms.



remained unable to secure a new job. While she would like to go back to school, she has \$2000 in outstanding debt. The stress of the situation combined with her mental health disabilities has caused her autoimmune disease to flare up. Jane will need to file an appeal with unemployment insurance, and she is working on paying back the arrears with the support of a nonprofit. And while her rent is below market rate, she cannot afford it without any income.

**Mental Illness.** Mental illness is an independent risk factor for homelessness. The two are linked by what some psychiatrists call a “never-ending loop” in which the two reinforce each other. Lilanthi Balasuriya et al., *The Never-Ending Loop: Homelessness, Psychiatric Disorder, and Mortality*, 37 *Psychiatric Times* 12, 12 (2020). For instance, having a psychiatric disability increases a person’s risk of eviction for a variety of compounding reasons. Mental illness can make it challenging to keep track of logistics like the date when rent is due. Ashley C. Bradford & Johanna Catherine Maclean, *Evictions and Psychiatric Treatment*, *J. Pol. Analysis & Mgmt.* 5 (2024). Certain mental illnesses may result in “hallucinations or other sensory distortions” that may be misinterpreted by both landlords and other tenants as aggressive or threatening, resulting in a lease violation. *Id.* The eviction process itself poses further challenges. “[A] person with a psychiatric disorder may be less able to attend a court hearing or hire an attorney . . . or to adequately defend their case.” *Id.* at 6.

These too are challenges that *amicus’s* clients know well. Joan has autism, agoraphobia, and post-traumatic stress disorder. Her landlord demanded

periodic inspections after allegations of “tenant neglect” to her apartment. But Joan’s agoraphobia drives her to lock herself in on her own, and she has difficulty interacting with her landlord and property management staff. Joan needs reasonable accommodations to prevent loss of housing, but also needs intermediaries to avoid jeopardizing her housing in the long run. These difficulties amplify her risk of homelessness.

**Housing Discrimination.** People with disabilities face discrimination in both obtaining and remaining in housing. According to the National Fair Housing Alliance, 53.26% of the complaints filed with private non-profit fair housing organizations, HUD, and Fair Housing Assistance Program are rental-related complaints alleging discrimination based on disability. Lindsay Augustine et al., *Fair Housing Trends Report*, Nat’l Fair Hous. Alliance 12, 43 (2023). Discrimination occurs, among other situations, when “developers build units that are inaccessible to people with disabilities and when housing providers deny requests for reasonable accommodations and/or modifications.” *Id.* at 9.

In just over the past year, HUD has had to intervene in a variety of housing discrimination offenses. In Georgia, property owners denied a woman a reasonable accommodation when she requested that her service animal be in her unit. Press Release, HUD Pub. Affs. (Feb. 29, 2024), [https://www.hug.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_24\\_-43](https://www.hug.gov/press/press_releases_media_advisories/HUD_No_24_-43). In Tennessee, HUD intervened when a tenant was denied repeated requests for reasonable modifications to accommodate her disability. Press Release, HUD Pub. Affs. (Jan. 25, 2024), <https://www.hud.gov/press>

/press\_releases\_media\_advisories/HUD\_No\_24\_016. And in Hawaii, a homeless shelter failed to properly accommodate a disabled woman and subjected her to harassment and retaliation. Press Release, HUD Pub. Affs. (Sept. 12, 2022), <https://archives.hud.gov/news/2022/pr22-167.cfm>.

People with disabilities are also affected by pervasive Section 8 voucher discrimination. A Section 8 voucher is rental assistance funded by HUD and administered by local public housing authorities to help low-income households pay their rent. Civ. Rts. Dep't, State of Cal., *Fair Housing and Source of Income Fact Sheet* (2024), [https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2020/02/SourceofIncomeFAQ\\_ENG.pdf](https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2020/02/SourceofIncomeFAQ_ENG.pdf). At least 25% of people receiving federal rental assistance have a disability. Ctr. on Budget & Pol. Priorities, *United States Federal Rental Assistance Fact Sheet* (2022), <https://www.cbpp.org/sites/default/files/atoms/files/12-10-19hou-factsheet-us.pdf>. Federal law does not explicitly prohibit discrimination based on Section 8 status, and states and local municipalities that do prohibit it often do not meaningfully enforce that prohibition. *See, e.g.,* Andrew Khouri, *California Outlawed Section 8 Housing Discrimination. Why It Still Persists*, L.A. Times (Nov. 19, 2022) (“More than two years after a law in California made it illegal for landlords to refuse to rent to people who pay through Section 8 and other subsidies, leasing agents routinely reject tenants because of their vouchers or illegally discourage their applications[.]”).

*Amici* see these problems occur in real time. For example, tenant Jess is a low-income senior with disabilities who recently had a liver transplant. She

was weeks away from losing her rental unit of more than 20 years when she came off the waitlist for a Section 8 voucher. Jess asked her landlord to accept the voucher, but he refused and threatened her with eviction. Jess was able to obtain legal help to avoid losing her housing and becoming homeless. Most are not so lucky.

These extensive research findings and first-hand experiences demonstrate that the Ordinances are especially harmful to homeless people with disabilities. The barriers that homeless people with disabilities face in finding alternative options to sleeping in public places showcase how disproportionate the Ordinances' punishments are to the "offense" of their involuntary condition.

**C. The Ordinances punish people for existing in the community without providing them with alternatives.**

The Ordinances' penalties—including civil penalties that inevitably become criminal penalties—punish people for existing in the community while also failing to provide them with shelter. One harrowing example comes from CarrieLynn Hill, who was homeless and lived in Grants Pass in 2017. J.A. at 133. She was cited with trespassing for camping in a park and left her nebulizer—which she uses to treat chronic obstructive pulmonary disease—when she was cited. *Id.* When she returned to the park the next day to retrieve her nebulizer, she was handcuffed, taken to jail, and sentenced to three days in jail and one year's probation. *Id.* at 133–34. Ms. Hill was also excluded from all county, city, and state parks and fined \$626. *Id.* at 134.

In just the Grants Pass area, many hundreds of people are experiencing homelessness. But Grants Pass does not provide a single homeless shelter. J.A. at 1; Pet. App. 169a–170a; SER 20–21, 46–49, and the one means of shelter available is not accessible for people with disabilities. As the Ninth Circuit pointed out, “[m]ultiple class members submitted uncontested declarations . . . that they did not stay at the Gospel Rescue Mission because they suffer from disqualifying disabilities[.]” Pet. App. 22a. For instance, CarrieLynn Hill’s declaration states that she could not stay at Gospel Rescue Mission because she would have to check her nebulizer in as medical equipment and, though she must use it at least once every four hours, would not be able to use it in her room. J.A. at 134. That restriction made it impractical for CarrieLynn to stay at Gospel Rescue Mission because she sometimes needs to use her nebulizer to fall asleep or when she wakes up in the middle of the night. *Id.* at 134–35. Debra Blake’s declaration likewise attests that her disabilities prevent her from working, which means she cannot comply with the Gospel Rescue Mission’s requirement that its residents work 40-hour work weeks. *Id.* at 180. It is undisputed that certain chronic medical or mental health issues make compliance with the Mission’s rules impossible. Pet. App. 22a. And even putting accessibility issues aside, there is combined capacity to serve only 156 people, between the Mission and the singular facility for minors. Pet. App. 21a–22a, 169a, 179a–180a. This leaves hundreds of Grants Pass community members without any possibility of finding shelter. Rather than respond to this mismatch by increasing the availability of emergency and permanent housing and services, Grants Pass made an intentional choice—

discussed below—to use criminal and civil penalties to punish homeless people in their community in an effort to push them outside of the City’s limits.

These Ordinances—and the effect they will have on homeless people with disabilities—are reminiscent of the infamous “Ugly Laws,” that targeted people living in poverty or without shelter. These archaic laws, in effect in some cities from the 1860s to 1972, punished disabled people simply for living in their own communities. Also referred to as the “unsightly beggar ordinances,” these laws made it illegal for people with “unsightly or disgusting” disabilities to appear in public.

The most commonly cited “ugly law,” passed in Chicago, provided:

No person who is diseased, maimed, mutilated or in any way deformed so as to be an unsightly or disgusting object or improper person to be allowed in or on the public ways or other public places in this city, or shall therein or thereon expose himself to public view, under a penalty of not less than one dollar nor more than fifty dollars for each offense.

Chicago Mun. Code § 36034 (1881). The Chicago Tribune attributed these laws to “[t]he idea of a thoroughfare being obstructed by the hideous monstrosities, which are only half human, begging piteously for alms is disgraceful.” Adrienne Phelps Coco, *Diseased, Maimed, Mutilated: Categorizations of Disability and Law in Late Nineteenth-Century Chicago*, 44 J. Soc. Hist. 23, 31–32 (2010). Another story warned that seeing a person with a “repulsive

deformity” might present serious danger to “a lady in delicate health.” *Id.*

Chicago was not alone in passing—and enforcing—these disgraceful ordinances. The first law of its type was passed in San Francisco in 1867. *Id.* at 1. Portland also had an early model: “If any crippled, maimed or deformed person shall beg upon the streets or in any public place, they shall upon conviction thereof before the Police Court, be fined not less than five dollars nor more than one hundred dollars.” Charter of the City of Portland, as Amended Together With the General Ordinances by the Order of the Common Council, No. 2959, § 23 (1881). A Portland woman known as “Mother Hastings” was subject to this ordinance when law enforcement told her she was “too terrible a sight for the children to see” because she had “crippled hands.” Susan Schweik, *Kicked to the Curb: Ugly Law Then and Now*, 46 Harv. C.R.-C.L. L. Rev. 1, 1–2 (2011) (citing *Love Blooms on Sidewalk*, L.A. Times, Jan. 14, 1917, at II2). She relocated to Los Angeles only to discover that the city’s leaders were discussing enacting a version of the same type of ordinance. *Id.*

As with the Ugly Laws, there is clear evidence here that Grants Pass intended to exclude homeless people from their community. In March 2013, the Grants Pass City Council held a public meeting to “identify solutions to current vagrancy problems.” Pet. App. 168a. The Public Safety Director noted that officers “had at times tried buying [homeless people] a bus ticket” out of town, but they later “returned to Grants Pass with a request from the other location to not send them there.” J.A. at 114. The City Council President proposed instead “mak[ing] it uncomfortable

enough for [homeless people] in our city so that they will want to move on down the road.” Pet. App. 168a. To accomplish this, one of the action items was potentially creating a “most unwanted” list. Pet. 168a.

The Grants Pass Ordinances targeting these “most unwanted” people—those without shelter—are alarmingly similar to the Ugly Laws. In both cases, violators are being punished for something that they cannot avoid, and subjected to perpetual criminalization unless they leave Grants Pass. Taking the Ordinances to their logical extension, Mother Hastings’ story will become commonplace nationwide. If every city enacts or enforces laws like this, homeless people will have nowhere they can lawfully exist, outside of a prison.

## **II. The Ordinances Do Not Serve Any Acceptable Penological Purposes**

The Eighth Amendment also requires that a punishment serve a legitimate penological purpose. *Graham*, 560 U.S. at 71. “A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense.” *Id.* This Court has recognized that while “the Eighth Amendment does not mandate adoption of any one penological theory,” *Harmelin*, 501 U.S. at 999 (Kennedy, J., concurring), a penal sanction cannot lack a legitimate goal completely.<sup>6</sup>

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<sup>6</sup> In one case, the Court recognized incapacitation as a legitimate penological goal. *Ewing v. California*, 538 U.S. 11 (2003). However, it has never found that an incapacitation interest



The Ordinances serve no legitimate penological goal. They punish homeless people for an act—sleeping in public—that, without other options, is involuntary and compulsory. The effect of these Ordinances on people with disabilities—who are more likely to be homeless due to governmental failures and systemic discrimination—not only highlights this lack of legitimate justification, but amplifies the harms that these Ordinances inflict.

**A. The Ordinances do not serve a deterrence interest.**

As noted above, homeless people—and in particular disabled homeless people—face unique and persistent challenges in both accessing and navigating systems that are the foundation for basic survival. Where, as here, there are not enough shelter beds, and certainly not enough that are accessible, homeless people—including many with disabilities—have no choice but to sleep in public places. From 2012 to 2019, Grants Pass issued 615 citations for illegal sleeping, illegal camping in the park, or illegal camping. These citations did not deter people from committing additional, similar violations or fulfill the City’s insidious plan of eradicating its homeless population. J.A. at 65. To the contrary, homelessness in Grants Pass has increased by 20% since 2013. J.A. at 107. Sleeping in public places is a necessity for homeless people when no shelter is available. One cannot be deterred from doing something that is biologically

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justifies criminalizing non-serious, non-violent persons who do not have a sizeable criminal record.

necessary. There simply is no culpable behavior to deter.

The number of homeless people in America greatly outweighs the number of available shelter beds. Nat'l All. to End Homelessness, *State of Homelessness: 2023 Edition*, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness/>. Seven states—including California, Oregon, and Washington—have shelter capacity to house less than half of their individual homeless population. Nat'l All. to End Homelessness, *Many Western and Southern States Lack Sufficient Shelter Capacity for Individual Homeless Adults* (Apr. 24, 2019), <https://endhomelessness.org/resource/many-western-and-southern-states-lack-sufficient-shelter-capacity-for-individual-homeless-adults/>. As of early 2020, San Francisco had approximately 1,000 people waiting for a 90-day shelter bed. Rick Paulas, *This is Why Homeless People Don't Go To Shelters*, *Vice* (Feb. 24, 2020), <https://www.vice.com/en/article/v74y3j/this-is-why-homeless-people-doesn-t-go-to-shelters>. Around the same time, Portsmouth, New Hampshire had 163 people waiting. *Id.* And in Greenfield, Massachusetts, 25 people were waiting for one of the 20 beds available. *Id.*

This nationwide problem is even worse for homeless people with disabilities because many of the few available shelter beds lack appropriate space or accommodations for people with disabilities. In New York City, for example, shelters are often built in older buildings that are not equipped to house disabled people. Corey McDonald, *Why Aren't Homeless Shelters Accommodating People Who Have Disabilities?*, *Shelterforce* (July 19, 2023),

<https://shelterforce.org/2023/07/19/why-arent-homeless-shelters-accommodating-people-who-have-disabilities/>. In fact, many of these buildings have steps without elevators and many do not have electrical outlets for people who need to be on oxygen or have other medical devices that require electricity. Nikita Stewart, *As Shelter Population Surges, Housing for Disabled Comes Up Short*, N.Y. Times (Sept. 16, 2016), <https://www.nytimes.com/2016/09/17/nyregion/as-residents-surge-in-new-york-shelters-housing-for-disabled-comes-up-short.html>.

Jay Willis faced this issue when she was looking for shelter in New York City while seven months pregnant with a back injury. *Id.* Even with a doctor's note in hand, she was assigned a fifth-floor walk-up shelter space. *Id.* Her request to be moved was met with a hostile written response: "If you feel that we are asking too much of you then please pack your belongings, take all family members with you, and go back to [the intake center]." *Id.* "At this facility . . . it is not going to be: BURGER KING HAVE IT YOUR WAY." *Id.*

Several cities have faced lawsuits over shelter accessibility, illustrating the problem. In 2017, New York City settled one such suit and was required, "within five years, [to] have the capacity to accommodate any disabled person." Nikita Stewart, *Under Settlement, City Shelters Will Do More for the Disabled*, N.Y. Times (May 18, 2017), <https://www.nytimes.com/2017/05/18/nyregion/homeless-shelters-disabled-people-settlement.html>.

The physical inaccessibility of shelters is not the only challenge presented. Many disabled people have "hidden disabilities," or disabilities that do not have an obvious identifier, like a crutch, cane, or wheelchair.

McDonald, *supra*. Behavioral, developmental, and mental health disorders can exist alongside physical disabilities. *Id.* For example, being on the spectrum or having Tourette’s or a tic disorder resulting in sudden vocalizations can be viewed and treated as incompatible with shelter space. *Id.* Because sufficient shelter beds do not exist, do not incorporate accessibility standards or inclusive design, and/or are not adaptable to meet a variety of disability-related needs and circumstances, disabled homeless people cannot be “deterred” by ordinances like the ones at issue here.

**B. The Ordinances do not serve a rehabilitation interest.**

1. The Ordinances do not rehabilitate homeless people.

It has been repeatedly established that criminalizing homelessness is not effective. Research shows that criminalization does not alleviate homelessness, but rather perpetuates a cycle of homelessness and incarceration. Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 Soc. Problems 131 (2019). An examination of policing practices of admonishments and citations in public spaces found “the laws largely ineffective, as most banished subjects did not end up leaving the neighborhoods from which they were excluded. These exclusions also added barriers to accessing work and housing.” *Id.* at 133. An examination of move-along orders in the wake of a camping ban in Denver likewise showed that criminalizing homelessness was “ineffective at reducing street homelessness.” *Id.* Subjecting

homeless people to criminal penalties creates a criminal record, making it that much more difficult to find a job or housing. Michael Massoglia & Brianna Remster, *Linkages Between Incarceration and Health*, 134 Pub. Health Rep. 8S, 10S (2019). Indeed, citations under these types of laws create “collateral consequences that last long after the initial policing event and lock people with mental health disabilities out of the mainstream more permanently: criminal records create barriers to employment, housing, public benefits, and social support systems.” Hallam, *supra*, at 645.

Incarceration may also precipitate homelessness by disrupting family and community contacts and exacerbate existing health conditions. Without consistent access to healthcare while incarcerated or upon release, people with mental and physical disabilities “face compounding barriers to navigating . . . necessary social services.” Madeline Baily et al., Vera Inst. Just., *No Access to Justice: Breaking the Cycle of Homelessness and Jail* 11 (2020), <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/08/homelessness-brief-web.pdf>. Incarcerated people are disproportionately affected by health problems that persist for years after their release. *Id.* One study found that “[a]mong inmates with a persistent medical problem, 13.9% of federal inmates, 20.1% of state inmates, and 68.4% of local jail inmates had received no medical examination since incarceration.” Andrew Wilper, et al., *The Health and Health Care of US Prisoners: Results of a Nationwide Survey*, 99 Am. J. Pub. Health 666, 669 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661478/pdf/666.pdf>. Moreover, between 7% and 25% of

inmates are not seen by medical personnel even after suffering a serious injury. *Id.*

Incarcerated people also face issues accessing long-term medications. In fact, 26% to 42% of inmates who were taking prescription medication before they were incarcerated stopped once they were imprisoned. *Id.* Those with mental illness face an even greater barrier—40% to 50% of inmates who took medication for mental health at the time of incarceration did not receive medication in prison. Jennifer M. Reingle Gonzalez & Nadine M. Connell, *Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity*, 104 Am. J. Pub. Health 2328 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4232131/>. Beyond the medication, mental healthcare resources are lacking. A substantial portion of the prison population does not receive treatment for mental health conditions. *Id.* This treatment discontinuity has the potential to affect both recidivism and health care costs on release from prison. *Id.*

Research also shows that mental illness is more prevalent among incarcerated people, and as discussed, mental illness is an independent risk factor for homelessness. Massoglia & Remster, *supra*, at 9S. Reintegration into the community—particularly after long period of inadequate care—can exacerbate these problems “because of the economic marginalization incarcerated persons face and because of the stress and challenges to social integration caused by this economic marginalization.” *Id.* These barriers inject even more complication into the already difficult search for housing and employment.

A lack of post-carceral access to healthcare and social services exacerbates the problem. At the most basic level, those exiting prison “have difficulty obtaining medical, mental health, and substance abuse treatment after their release.” Kushel, *Revolving Doors, supra*, at 1750. A 2010 study of Los Angeles County health data showed that the formerly incarcerated “were significantly less likely to have a regular source of medical care, . . . less likely to have visited a doctor for a routine check up in the past year, . . . and more likely to have not had visited a doctor for a routine check up in more than 5 years.” Sonali P. Kulkarni et al., *Is Incarceration a Contributor to Health Disparities? Access to Care of Formerly Incarcerated Adults*, 35 J. Comm. Health 268, 270 (2010).

But a criminal conviction also creates other issues, leading to “a range of collateral consequences involving the loss of political, civil, and economic rights that can contribute to homelessness.” L. Hafetz, *Homeless Legal Advocacy: New Challenges and Directions for the Future*, 30 Ford. Urban L.J. 1215, 1229 (2003). Those with a criminal record face decreased employment opportunities, including “exclusion from jobs, many requiring a professional license,” and exclusion from federal housing programs. *Id.*

2. Grants Pass has more effective options to rehabilitate homeless people without criminalizing compulsory, nonculpable conduct.

Localities have many tools besides criminalization to address the homelessness crisis. The Inter-

American Commission on Human Rights (“IACHR”) recently conducted a study in Los Angeles in response to the homelessness “human rights situation.” The IACHR observed that the “inequality, exacerbation of poverty, criminalization, and the absence of safety nets have devolved into an unbearable crisis that at its current rate could reach almost anybody in the general population.” Inter-Am. Comm’n on Hum. Rts., *REDESCA’s Visit to Los Angeles, USA: It is Urgent to Address the Human Rights Situation of Unhoused People* (July 12, 2023), [https://www.oas.org/en/iachr/media\\_center/preleases/2023/cp\\_153\\_eng.pdf](https://www.oas.org/en/iachr/media_center/preleases/2023/cp_153_eng.pdf). The IACHR recommended policies that focus on “root causes, harm reduction, and permanent, stable housing, without the use of force or other means of coercion.” *Id.*

One well-established approach—“housing first”—prioritizes providing immediate permanent housing to people experiencing homelessness. This approach focuses on providing necessities like food and shelter first—before attending to anything less critical, like getting a job, budgeting properly, or attending to substance use issues. In this way, it serves as a “platform from which they can pursue personal goals and improve their quality of life.” Nat’l Alliance to End Homelessness, *Housing First* (Mar. 20, 2022), <https://endhomelessness.org/resource/housing-first/>. Housing first has also shown to be cost effective for communities because those with permanent housing are less likely to rely on emergency services and emergency shelter. *Id.* In fact, one study found an average cost savings on emergency services of \$31,545 per person housed over the course of two years. *Id.* Another study showed that housing first could cost



\$23,000 less per consumer annually than a shelter program. *Id.*

Other types of community care programs are also considered more effective and more cost efficient in combatting the homelessness crisis. Homeless people with health challenges are susceptible to the “revolving door problem,” or multiple hospital readmissions during a fixed period of 30, 60, or 90 days. Joana Bravo et al., *Avoiding Revolving Door and Homelessness: The Need To Improve Care Transition Interventions in Psychiatry and Mental Health*, *Frontiers in Psychiatry* (2022), <https://www.frontiersin.org/journals/psychiatry/articles/10.3389/fpsy.2022.1021926/full>; Kelly M. Doran, et al., *The Revolving Hospital Door: Hospital Readmissions Among Patients Who Are Homeless*, 51 *Med. Care* 767 (2013). They have more medical comorbidities and more mental health problems and do not receive adequate medical care. “Despite being a vulnerable population (with higher illness severity and a higher need for care continuity), they have poor care after discharge.” Bravo et al., *supra*, at 2.

Katherine Koh, M.D., a member of the street team at the Boston Health Care for the Homeless Program and Massachusetts General Hospital, called on cities and states to adopt evidence-based treatment models, such as “housing first” models. Linda M. Richmond, M.D.s *Call for Community Resources Amid Plans to Force Homeless Into Care*, *Psychiatric News* (Jan. 26, 2023), <https://doi.org/10.1176/appi.pn.2023.02.2.36>. She also cited a host of other options consisting of case managers, social workers, housing specialists, and vocational specialists to aid with street outreach, supportive employment, crisis diversion, peer support,

and homelessness prevention efforts. *Id.* Medical professionals are calling for a “team-based approach” to meet the complex mental health issues many homeless people face. Balasuriya, *supra*, at 14.

Certain localities have adopted these community-based policies or similar alternatives, aspiring to shift away from criminalization. For example, Portland, Oregon created a position of “homeless community liaison” within the police department. Nat’l Alliance to End Homelessness, *Alternatives to Criminalization* (2021), <https://endhomelessness.org/blog/alternatives-to-criminalization/>. This person is intended to serve as the “primary contact between local homeless service providers, social service agencies, and the police.” *Id.* She is charged with creating a “strategic response plan” to respond to Portland’s homeless crisis, including collaborating with the Portland’s police training to “ensure ground officers are properly trained in providing services to unsheltered people.” *Id.*

In Connecticut, service providers work directly with prosecutors to ensure that homeless people in the community will not be prosecuted for minor offenses. *Id.* “This reduces the likelihood that police officers and other system officials will attempt to arrest, harass, or institutionalize unsheltered people, and may reduce interactions between police and people experiencing homelessness altogether.” *Id.* Other cities are taking similar approaches. Denver started diverting police funding and replacing officers with mental health response teams; Minneapolis “reallocated millions of dollars to fund alternatives to policing”; and Austin has cut nearly half its police budget. *Id.*

As mentioned above, while Grants Pass issued 615 citations under the Ordinances from 2012 to 2019, homelessness in Grants Pass during that same period of time actually increased by 20%. J.A. at 65, 107. Not only do laws like the Ordinances fail to advance rehabilitation, they make the problems worse. “Rehabilitation” is, therefore, at best, a pretextual justification that cannot support the Ordinances.

**C. The Ordinances do not serve a retribution interest.**

For the goal of retribution—“the interest in seeing that the offender gets his ‘just deserts’—the severity of the appropriate punishment necessarily depends on the culpability of the offender.” *Atkins*, 536 U.S. at 319; *Kennedy v. Louisiana*, 554 U.S. 407, 442 (2008) (“The goal of retribution, which reflects society’s and the victim’s interest in seeing that the offender is repaid for the hurt that he caused[.]”).

Following retribution as a goal of the Ordinances to its end, the legislature would have to be attempting to give homeless people their “just deserts” for simply existing without alternative options. This Court has already determined that a law that punishes an “innocent[] or involuntar[y]” act is cruel and unusual. *Robinson*, 370 U.S. at 667. This principle cannot legitimately coexist with a retribution interest, because “[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.” *Tison v. Arizona*, 481 U.S. 137, 149 (1987). Retribution must credibly “express the community’s moral outrage” or “attempt to right the balance for the wrong to the victim[.]” *Graham*, 560 U.S. at 71 (quotation omitted).

Punishing homeless people for simply existing does neither.

This is especially true for homeless people with intellectual or psychiatric disabilities. The Court recognized in *Atkins* that many people with intellectual disabilities, “by definition[,] [may] have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reaction of others.” 536 U.S. at 318. While this does “not warrant an exemption from criminal sanctions,” it certainly “diminish[es] their personal culpability.” *Id.* (“If the culpability of the average [offender] is insufficient to justify the most extreme sanction . . . the lesser culpability of the [intellectually disabled] surely does not merit that form of retribution.”); *Hall v. Florida*, 572 U.S. 701, 709 (2014) (“Retributive values are . . . ill-served by executing those with intellectual disabilities.”). For those people especially, the Ordinances’ sanctions are far from “directly related” to personal culpability, *Tison*, 481 U.S. at 149.

**CONCLUSION**

For the foregoing reasons, the Court should affirm the Ninth Circuit's decision.

Respectfully submitted,

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## **APPENDIX**

**TABLE OF APPENDICES**

	<b>Page</b>
APPENDIX A: List of <i>Amici Curiae</i> .....	1a

**APPENDIX A**

**List of *Amici Curiae***

Disability Rights Education and Defense Fund  
American Association on Health and Disability  
The Arc of the United States  
Autistic Self Advocacy Network  
Autistic Women and Nonbinary Network  
The Coelho Center for Disability Law, Policy and  
Innovation  
Civil Rights Education and Defense Fund  
Disability Rights Advocates  
Disability Rights Bar Association  
Disability Rights California  
Disability Rights Legal Center  
Disability Rights Oregon  
Disability Rights Washington  
Fair Housing Council of Oregon  
Mental Health Advocacy Services, Inc.  
National Association for Rights Protection and  
Advocacy  
National Center for Law and Economic Justice  
National Council on Independent Living  
National Disability Rights Network  
National Federation of the Blind, Inc.  
New Disabled South  
Paralyzed Veterans of America  
World Institute on Disability  
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\* Participating in her individual capacity, not as a representative of her institution. Institution is listed for affiliation purposes only.