

No. 23-175

IN THE
Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,

Petitioner,

v.

GLORIA JOHNSON, *et al.*, ON BEHALF
OF THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF *AMICI CURIAE* CORPORATION
FOR SUPPORTIVE HOUSING, *ET AL.*
IN SUPPORT OF RESPONDENT**

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INTERESTS OF AMICI CURIAE¹

Since its founding in 1991, the Corporation for Supportive Housing (“CSH”) has worked to advance affordable housing aligned with services by advocating for effective policies and funding, equitably investing in communities, and strengthening the supportive housing field. CSH works at the intersection of homelessness, health, and the justice system to break cycles of homelessness, crisis response, and unnecessary institutionalization, and its efforts have been proven to promote safety and housing stability. Through loans, grants, project assistance, and advocacy, CSH has created access to more than 385,000 homes for those who need housing along with supportive services that help individuals achieve stability and transform their lives. CSH has distributed over \$1.5 billion in loans and grants and has worked in more than 3550 communities in 48 states, Puerto Rico, and the U.S. Virgin Islands.

Amici Supportive Housing-Focused Organizations are 36 independent organizations who work in the supportive housing space.² These organizations include developers of supportive housing, entities that provide supportive housing-adjacent services, and associations that work to

1. No counsel for any party authored this brief in whole or in part. No party or counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than Amici, their members, or counsel made have made a monetary contribution to the preparation or submission of this brief.

2. A list of all amici curiae that join in this brief is set forth in Appendix A.

advance policy and practice that furthers the creation and sustainability of supportive and affordable housing. Many amici work directly with homeless individuals to ensure that they can obtain and keep affordable housing.

Individual amici Samantha Batko and Sarah Gillespie work on homelessness and housing-related issues at the Urban Institute. Ms. Batko is a senior fellow in the Metropolitan Housing and Communities Policy Center, where her research focuses on homelessness, housing instability, housing assistance, and supportive services. She has developed expertise on homelessness and housing policy over an almost 18 year career in the sector that has included research, federal policy, and technical assistance and training. As associate vice president for metropolitan housing and communities policy, Ms. Gillespie focuses on housing and homelessness, place-based initiatives, and performance measurement. Before joining Urban, Ms. Gillespie was a program manager at the U.S. Department of Housing and Urban Development, where she developed and managed public-private partnerships to support departmental priorities.

Despite their diverse backgrounds and perspectives, Amici, as a result of their research, advocacy, and on-the-ground experience, have gained a shared understanding of the relationship between housing and homelessness, the harms caused by criminalization, and the effectiveness and value of supportive housing-based responses to homelessness.

SUMMARY OF ARGUMENT

The Ninth Circuit held that Petitioner in this case could not constitutionally fine and incarcerate people who have no access to shelter for sleeping outside with rudimentary bedding supplies, such as a blanket or pillow. That narrow ruling is entirely consistent with this Court's Eighth Amendment jurisprudence. Petitioner's scheme to criminally punish people who, through no choice of their own, are homeless and cannot find shelter for engaging in an act necessary for survival serves none of the legitimate goals of criminal punishment and thus lacks any legitimate penological justification.

A common narrative among Petitioner's amici is that homelessness, and particularly unsheltered homelessness, is chosen by those who experience it. This narrative is contradicted by the economic and sociological evidence. Homelessness is extremely geographically concentrated and highly correlated with scarcity of affordable housing. In jurisdictions where there is little affordable housing, high rents and low vacancy rates prevail, and rates of homelessness are substantially higher. The relationship between housing scarcity and homelessness is not just correlative, but causative. On an individual level, episodes of homelessness often follow an adverse event, such as incarceration, domestic violence, job loss, or conflict between residents. And where affordable housing is harder to find, such an event is much more likely to result in an episode of homelessness.

Contrary to many of Petitioner's amici, criminalizing homelessness is not a "tool" for fighting homelessness; instead, it makes the problem worse. Incarceration and homelessness operate as a self-reinforcing cycle:

incarceration makes individuals more vulnerable to homelessness, and homelessness makes them more vulnerable to incarceration. Nowhere in any of the briefs filed in this case can one find an example of a jurisdiction that has prosecuted and jailed its way out of a homelessness crisis. Moreover, criminalization is costly—not just on state and local budgets, but to incarcerated individuals, their families, and society.

Alternatives to criminalization have, by contrast, proven effective at both mitigating and reducing homelessness. Amici have extensive experience in running, evaluating, and advising on supportive housing programs, which combine permanent, affordable housing with services aimed at helping tenants remain housed. The evidence overwhelmingly demonstrates that supportive housing not only helps individuals, including individuals in vulnerable populations, escape homelessness, but that it achieves a significant cost savings from reduced utilization of other public services including shelters, jails, and hospitals.

ARGUMENT

I. The Eighth Amendment Prohibits the State from Punishing Unsheltered Homeless Persons for Sleeping in the Only Place They Can Sleep.

This Court has held that criminal punishment that “lack[s] any legitimate penological justification” violates the Eighth Amendment.³ Thus, if “none of the legitimate

3. *Graham v. Florida*, 560 U.S. 48, 71 (2010); *see also Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) (infliction of pain without any penological purpose violates the eighth amendment) (citing

goals of penal sanctions—retribution, deterrence, incapacitation, and rehabilitation”—justifies punishment, the punishment is cruel and unusual.⁴ Such is the case with the ordinances at issue here, as applied to the class of persons covered by the injunctive relief approved by the Ninth Circuit.

Retribution seeks to ensure that a criminal “offender gets his just ‘deserts.’”⁵ In other words, the punishment “must be directly related to the personal culpability of the criminal offender.”⁶ Retribution is generally a poor fit for regulatory, *mala prohibita* offenses like those defined by the ordinances at issue here.⁷ And it is particularly inapposite where the offense at issue (i.e., sleeping outside with a blanket or a pillow) is in no sense voluntary, which is the case for most homeless persons (and all of those covered by the injunction).

Deterrence likewise cannot justify laws that prohibit involuntary unsheltered homeless persons from sleeping in public places. Deterrence relies on the threat of

Estelle v. Gamble, 429 U.S. 97, 103 (1976)); *Gregg v. Georgia*, 428 U.S. 153, 183 (1976) (criminal punishment “cannot be so totally without penological justification that it results in the gratuitous infliction of suffering”).

4. *Graham*, 560 U.S. at 71 (citing *Ewing v. California*, 538 U.S. 11, 25 (2003) (plurality op.)).

5. *Atkins v. Virginia*, 536 U.S. 304, 319 (2002).

6. *Graham*, 560 U.S. at 71 (quoting *Tison v. Arizona*, 481 U.S. 137, 149 (1987)); see also *Atkins*, 536 U.S. at 319 (under a retributive theory, “the severity of the appropriate punishment necessarily depends on the culpability of the offender”).

7. *Morissette v. United States*, 342 U.S. 246, 260 (1952).

punishment disincentivizing conduct that constitutes an offense, so for deterrence to work, individuals must be able to choose not to engage in that conduct. The goal of deterrence is not “served by imposing sanctions for involuntary action, as such action cannot be deterred.”⁸ Respondents and the other individuals protected by the injunction in this case cannot be deterred from sleeping, which is a basic biological function. And because the injunction only covers homeless persons for whom no shelter is available, there is nowhere for Respondents and others covered by the injunction to sleep other than outside, in public. Petitioner’s punishment scheme cannot serve the deterrence goal when there are no other choices available.

Unsheltered homeless persons can be “incapacitated” from sleeping in public by confinement in jails or prisons. But incapacitation cannot justify criminal punishment where the state seeks to prevent unsheltered homeless persons who cannot obtain shelter from engaging in a necessary activity (sleeping) in the only place where they can perform that activity (in public). Incapacitation, like retribution, is simply a poor fit for low-level, *mala prohibita* public welfare offenses.⁹ Incapacitation justifies

8. LaFave, 1 Substantive Criminal Law § 6.1(c), 425–26 (2d ed. 2003); *accord* American Law Institute, Model Penal Code Comments § 2.01, 119 (Tentative Draft No. 4 1955) (“The law cannot hope to deter involuntary movement or to stimulate action that cannot physically be performed....”). Section 2.01 of the Model Penal Code requires a “a voluntary act or the omission to perform an act of which [the defendant] is physically capable” as a prerequisite to any criminal offense. American Law Institute, Model Penal Code § 2.01.

9. See Roberts, *Informed Misdemeanor Sentencing*, 46 Hofstra L. Rev. 171, 194 (2017) (“For the very low-level, often *mala*

punishment where, and to the extent that, the offender's conduct poses a risk to society.¹⁰ But sleeping outside, with or without a bed, blanket, or pillow, poses no meaningful risk to society. Thus, incapacitation does not justify criminalizing the act of sleeping outside by those who are homeless and cannot obtain shelter.

Finally, criminalization of involuntary, unsheltered homeless persons does not advance rehabilitation. In the criminal law context, "rehabilitation" refers to "[t]he process of seeking to improve a criminal's character and outlook so that he or she can function in society without committing other crimes..."¹¹ Simply sleeping outside when one has nowhere else to sleep is not demonstrative of deficiencies in "character" or "outlook" that need improvement. To be sure, many homeless persons, including those with substance use problems or mental (or indeed other) health issues, experience difficulties that could benefit from rehabilitation in a broad sense. But incarceration and fines do not serve the goal of rehabilitation, just as they do not serve the goals of retribution and incapacitation, as sleeping outdoors with a blanket does not involve conduct that is in any sense immoral.¹²

prohibita, offenses, it is difficult to conceptualize sentencing as retributivist, or as fulfilling the need for incapacitation or even rehabilitation.").

10. *See Graham*, 560, U.S. at 73 (incapacitation does not justify life without parole sentence for juvenile non-homicide offenders because such offenders cannot be deemed incorrigible).

11. REHABILITATION, Black's Law Dictionary (11th ed. 2019).

12. Roberts, *supra*, at 194.

II. Homelessness Is Not an Individual Choice, but a Societal Problem Caused by Shortage of Housing, Especially Affordable Housing.

As explained above, and as the Ninth Circuit correctly held, “it is ‘unconstitutional to punish simply sleeping somewhere in public if one has nowhere else to do so.’”¹³ Not surprisingly, many of Petitioner’s amici spend pages of text trying to portray homelessness, in particular unsheltered homelessness, as a choice that many, or even most, homeless people make.¹⁴ The overwhelming weight of available evidence refutes this narrative.

The highly variable regional distribution of homelessness undermines the idea that homelessness is a choice. Homelessness is a serious problem in this country, but not one that affects each state or city equally. Substantial variations in homelessness rates exist between states and cities, and these disparities have existed for as long as the Department of Housing and Urban Development (“HUD”) began conducting

13. *Johnson v. City of Grants Pass*, 72 F.4th 868, 896 (9th Cir. 2023) (quoting *Martin v. City of Boise*, 920 F.3d 584, 590 (9th Cir. 2019)).

14. *See, e.g.*, Br. of Amici Curiae Thirteen California Cities at 13 (“The evidence shows that a majority of the homeless population choose to be unsheltered....”); Br. of Amicus Curiae Office of the San Diego County District Attorney at 10 n.3 (“A substantial number of homeless individuals prefer encampments to residing in shelters for a variety of reasons.”); Br. of Amicus Curiae the County of Orange, California, at 13 (“[M]any homeless individuals simply will not accept shelter.”); Br. Amicus Curiae of Goldwater Institute at 16 (“[T]here are many individuals who do not want housing—at least, not at the cost of giving up their addictions or other poor lifestyle choices....”).

annual “point-in-time” (or “PIT”) counts of the homeless population in 2007. State-by-state homelessness rates in HUD’s 2023 Annual Homelessness Assessment Report ranged from a low of 3 in 10,000 people in Mississippi to 52 in 10,000 people in New York.¹⁵ Oregon, where Grants Pass is located, has the third highest homelessness rate in the country, behind only New York and Vermont.¹⁶ Variations between cities and counties are even starker. New York City’s homeless population of 88,025 persons in the 2023 PIT count represents more than 1% of its population.¹⁷ Just across the Hudson River, Bergen County, New Jersey has managed to reduce chronic and veteran homelessness to a “functional zero” level—i.e., a state at which “a community can ensure homelessness remains rare, brief, and nonrecurring.”¹⁸ Bergen County’s homelessness rate according to the 2023 PIT counts was 4 per 10,000 persons.¹⁹

15. U.S. Department of Housing & Urban Development, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*, at 98–114, available at <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>.

16. *Id.*

17. *Id.* at 20; U.S. Census Bureau, *QuickFacts, New York city, New York* (2023), available at <https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045223>.

18. Batko, Solari & DuBois, Urban Institute, *The Value of Ending Veteran and Chronic Homelessness in Four Communities*, at 1 (2021), available at <https://www.urban.org/sites/default/files/publication/104640/the-value-of-ending-veteran-and-chronic-homelessness-in-four-communities.pdf>.

19. U.S. Dep’t of Housing & Urban Development, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*,

These substantial regional variations in homelessness cast serious doubt on the proposition that homelessness is a voluntary choice for “most,” or even “many,” people experiencing homelessness. There is no reason to believe that people from New York State are 17 times more likely than people from Mississippi to choose homelessness over housing.

As Gregg Colburn and Clayton Page Aldern explain in their 2019 book *Homelessness is a Housing Problem*, these regional variations in rates of homelessness “can be explained by the costs and availability of housing.”²⁰ Put simply, the problem is that the supply of suitable and available housing in certain parts of the country is insufficient to accommodate the demand for housing by those who live there. As even one of Petitioner’s amici observes:

“A large body of academic research has consistently found that homelessness in an area is driven by housing costs, whether expressed in terms of rents, rent-to-income ratios, price-to-income ratios, or home prices ... housing costs explain far more of the difference in rates of homelessness than variables such as substance use disorder, mental health, weather,

2007–23 Point-in-Time Estimates by CoC, available at <https://www.huduser.gov/portal/sites/default/files/xls/2007-2023-PIT-Counts-by-CoC.xls>; U.S. Census Bureau, *QuickFacts, Bergen County, New Jersey (2023)* available at <https://www.census.gov/quickfacts/fact/table/bergencountynewjersey/PST045222>.

20. Colburn & Aldern, *Homelessness is a Housing Problem* 9 (2019).

the strength of the social safety net, poverty, or economic conditions.”^[21]

Housing shortages have been a policy concern in the United States for a long time, but the problem has been exacerbated over the past 15 years following a steep decline in housing construction during the Great Recession.²² It is no coincidence that this sustained period of sluggish housing construction preceded the recent increase in homelessness since 2017.

Colburn and Aldern’s work shows that regional increases in homelessness result from a combination of increasing housing demand and inelastic housing supply.²³ When housing supply is inelastic, the housing stock cannot keep up with the growing population and employment in an area. The analysis in Colburn and Aldern’s book demonstrates strong correlation between metrics associated with a housing shortage—specifically, low rental vacancy rate, low first quartile rental vacancy

21. Br. Amicus Curiae of Pacific Legal Foundation and California Business Properties Association at 17–18 (quoting Horowitz, Hatchett & Staveski, Pew Charitable Trusts, *How Housing Costs Drive Levels of Homelessness* (2023), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness>).

22. Ullrich, *Why is housing inventory so low? Understanding the U.S. housing shortage*, Bankrate (Sept. 28, 2023), available at <https://www.bankrate.com/real-estate/low-inventory-housing-shortage/>; Federal Reserve Bank of St. Louis, *New Privately-Owned Housing Units Started: Total Units*, available at <https://fred.stlouisfed.org/series/HOUST>.

23. Colburn & Aldern, *supra* at 135–42.

rate, and high median and first quartile market rents—and homelessness.²⁴ In areas with declining population and total employment—a combination typical of many Rust Belt cities, homelessness is below the national average. And housing in booming regions with a sufficiently elastic housing supply has managed to keep pace with, or at least not fall too far behind, growing populations and employment in those regions, with the same result—below-average homelessness rates. For example, Mecklenburg County, North Carolina, where Charlotte is located, grew substantially between 2007 and 2019, but “quick and substantial construction of new housing” has managed to keep homelessness rates “well below” those of growing cities like Seattle and Portland that have not expanded their housing stock.²⁵ Homelessness is concentrated in regions that display both positive population growth and an inelastic housing supply.²⁶

A shortage of affordable housing is also correlated with unsheltered homelessness. “In jurisdictions that have the most unsheltered homelessness and where unsheltered homelessness is increasing most drastically, measures of housing affordability ... are significantly worse than national averages.”²⁷ Unsheltered homelessness is, unsurprisingly, also higher in areas with a shortage of

24. *Id.* at 121–43.

25. *Id.* at 135–36.

26. *Id.* at 160–62.

27. Batko, Gillespie *et al.*, Urban Institute, *Alternatives to Arrests & Police Responses to Homelessness*, at 5 (Oct. 2020), available at <https://www.urban.org/sites/default/files/publication/103158/alternatives-to-arrests-and-police-responses-to-homelessness.pdf>.

temporary shelter. “Lower numbers of temporary beds available per person are associated with higher rates of unsheltered homelessness among individuals, reflecting a demand for assistance that outpaces supply.”²⁸

Sociological data demonstrates that the relationship between lack of housing (especially affordable housing) and homelessness is more than mere correlation, and that, on an individual level, most people become homeless not because they choose to be homeless but because of a confluence of various individual or social factors, bad luck, and consistently, an inability to find housing they can afford. According to a survey conducted as part of a UC Irvine study, the top two reasons participants experienced homelessness were inability to find a job that pays a sufficient wage and inability to find affordable housing.²⁹ Among rent-paying leaseholders in the California statewide study who thereafter experienced homelessness, “66% met the criteria for rent burden (spending at least 30% of income on rent) and 42% met criteria for severe rent burden (spending at least 50% of income on rent).”³⁰

28. Batko, Oneto & Shroyer, Urban Institute, *Unsheltered Homelessness*, at 13, 20 (Dec. 2020), available at <https://www.urban.org/sites/default/files/publication/103301/unsheltered-homelessness.pdf>.

29. Orange County United Way & University of California, Irvine, *Homelessness in Orange County: The Costs to Our Community*, at 6 (June 2017), available at <https://cdn.shopify.com/s/files/1/0072/3019/3782/files/united-way-cost-study-homelessness-2017-report-jamboree.pdf?11157>

30. Kushel & Moore, *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness*, at 33 (June 2023), available at <https://homelessness>.

Amici that have addressed the economic aspects of the problem recognize that it is “undeniable” that high levels of homelessness are a consequence of the lack of available, affordable housing.³¹ To be sure, other causal factors may contribute to an individual experiencing an episode of homelessness. The UCI survey identified family issues, such as divorce or domestic violence, as the third most significant cause of homelessness.³² Other factors, such as a traumatic childhood experience, mental health problems (including problems arising from an individual’s prior military service), conflicts with roommates, and substance abuse can also contribute to an individual experiencing an episode of homelessness. But these problems are not unique to the regions and cities experiencing a homelessness crisis and, accordingly, are not in and of themselves root causes of homelessness.

Indeed, occurrences such as divorce, domestic violence, or conflict with co-residents, situations referred to by Colburn and Aldern as “precipitating events,” happen everywhere, yet they do not invariably lead to homelessness.³³ However, when housing is scarce and rents

ucsf.edu/our-impact/studies/california-statewide-study-people-experiencing-homelessness.

31. Br. Amicus Curiae of Pacific Legal Foundation and California Business Properties Association at 15; *see also id.* at 4 (“[A] key source of the growing homeless population is the lack of affordable housing in many if not most American cities today.”); Br. for California Governor Gavin Newsom as Amicus Curiae at 1 (“The homelessness crisis will never be solved without solving the housing crisis.”).

32. *Homelessness in Orange County, supra*, at 6

33. Colburn & Aldern, *supra*, at 13–14.

are high, many more people “are precariously situated on the cliff of financial stability,” such that “a divorce, a lost job, a fight with a roommate, or a medical event can result in homelessness.”³⁴ Indeed, research has found that when median housing costs exceed 30%—the threshold for rent-burden, *see supra*—homelessness “begins to quickly increase.”³⁵

At bottom, a large body of research shows that homelessness, as a societal problem or “crisis” and as something homeless people experience, results from the shortage in affordable housing. That shortage is particularly acute in the locations where homelessness is most severe. Homelessness emphatically does not result from individual choices of homeless people and cannot be solved by criminal punishment for sleeping outside with a blanket.

III. Criminalization Does Not Solve Homelessness but Makes it Worse, at Great Expense to Individuals, Their Families, and Society.

Countless amici for Petitioner complain that a holding confirming an injunction against criminalizing involuntary,

34. Demsas, *The Obvious Answer to Homelessness* (The Atlantic, Jan/Feb. 2023), available at <https://web.archive.org/web/20240103200724/https://www.theatlantic.com/magazine/archive/2023/01/homelessness-affordable-housing-crisis-democrats-causes/672224/>.

35. Glynn, Byrne & Culhane, *Inflection Points in Community-Level Homeless Rates*, 15(2) Ann. Appl. Stat. 1037 (June 2021), available at https://web.archive.org/web/20240113045204/https://wp-tid.zillowstatic.com/3/Homelessness_InflectionPoints-27eb88.pdf.

unsheltered homelessness will deprive them of a critical “tool” for combating homelessness and problems which they regard as associated with homelessness.³⁶ And they complain that other, proven solutions cost too much money. Once again, the available research refutes these claims. Incarcerating homeless persons simply for being homeless does nothing to reduce homelessness, but instead makes the problem worse. And incarceration imposes significant costs on state and local budgets as well as on homeless individuals, their families, and society.

A. Homelessness and incarceration form a self-reinforcing cycle, and increasing incarceration only exacerbates the cycle.

Rates of homelessness among formerly incarcerated people are ten times higher than for the general population.³⁷ In one New York study, 80% of participants reported that “their first episode of incarceration preceded their first episode of homelessness,” and, “[b]ased on narrative descriptions of reasons for homeless

36. It bears noting that the only thing that *Martin* and *Grants Pass* prohibit cities from doing is criminalizing sleeping outside in public by those who have no other place to sleep. Cities remain free to enforce laws against sleeping outside in public by homeless individuals “who do have access to adequate temporary shelter ... but who choose not to use it.” *Johnson*, 72 F.4th at 877 (quoting *Martin*, 902 F.3d at 617 n.8). And they remain free to enforce other, generally applicable criminal laws, including those prohibiting the possession, use, and sale of narcotics.

37. Coluloute, Prison Policy Initiative, *Nowhere to Go: Homelessness among formerly incarcerated people*, at 11–12 (Aug. 2018), available at <https://www.prisonpolicy.org/reports/housing.html>.

experience, incarceration was for many a major cause or trigger for housing loss.”³⁸ The California Statewide Study of People Experiencing Homelessness found that 19% of people became homeless when released from an institutional setting.³⁹

Individuals released from criminal custody often experience difficulty in obtaining both housing and employment.⁴⁰ According to a 2021 DOJ study, individuals released from custody of the Bureau of Prisons in 2010 took, on average, more than six months from release to secure employment, notably with those who served less than one year in federal prison experiencing the longest average time to obtain their first post-incarceration job.⁴¹ Many landlords are less likely to rent to those with a criminal record,⁴² and employers are less likely to hire those with a criminal record.⁴³ An Urban Institute survey

38. Aidala *et al.*, Frequent Users Service Enhancement “FUSE” Initiative: New York City FUSE II Evaluation Report, at 14, available at https://www.csh.org/wp-content/uploads/2014/01/FUSE-Eval-Report-Final_Linked.pdf.

39. Kushel & Moore, *supra*, at 35.

40. *See, e.g., id.* at 35.

41. Carson *et al.*, U.S. Department of Justice, Bureau of Justice Statistics, *Employment of Persons Released from Federal Prison in 2010*, at 11–12 (Dec. 2021), available at <https://bjs.ojp.gov/content/pub/pdf/eprfp10.pdf>.

42. Clark, *Landlord Attitudes Toward Renting to Released Offenders*, Fed. Probation, vol. 71, no. 1 (June 2007), available at https://www.uscourts.gov/sites/default/files/71_1_4_0.pdf.

43. Kleinman & Kajeepeta, Thurgood Marshall Institute, *Barred From Work: The Discriminatory Impacts of Criminal Background Checks in Employment* (Apr. 2023), available at <https://tminstituteldf.org/wp-content/uploads/2023/07/Barred-from-Work.pdf>.

of 600 women experiencing homelessness in Los Angeles County in late 2022 found that 24.7% had lost their housing or shelter *because of* their incarceration.⁴⁴

Court-imposed fees, fines and costs associated with criminalization can further trap people in a cycle of homelessness and incarceration. “People experiencing homelessness often have trouble paying fines and appearing for court dates, which leads to more fines, new charges, and bench warrants.”⁴⁵ Homeless individuals are often unable to pay court fines and costs; for example, in San Francisco, more than 90% of homeless individuals were unable to pay the fine for their most recent citation.⁴⁶ An analysis focusing on 101 adults experiencing homelessness in Seattle, Washington found that 25% of participants who reported owing current legal fines experienced 22.9 months of additional homelessness after controlling for race, age, and gender.⁴⁷ No other type of

44. Batko *et al.*, Urban Institute, *Los Angeles County Women’s Needs Assessment*, at 53 (July 2023), available at <https://www.urban.org/sites/default/files/2023-07/Los%20Angeles%20County%20Women%E2%80%99s%20Needs%20Assessment.pdf>.

45. Batko & Gillespie *et al.*, *supra*, at 7.

46. Financial Justice Project & Office of the Treasurer & Tax Collector of City & County of San Francisco, *San Francisco Fines & Fees Task Force: Initial Findings & Recommendations*, at 15, available at <https://test-sfttx.pantheonsite.io/sites/default/files/2019-09/SF%20Fines%20%26%20Fees%20Task%20Force%20Initial%20Findings%20and%20Recommendations%20May%202017.pdf>.

47. Mogk *et al.*, *Court-imposed fines as a feature of the homelessness-incarceration nexus: a cross-sectional study of the relationship between legal debt and duration of homelessness in*

debt had a significant correlation with the duration of time an individual remained homeless.⁴⁸

Just as recent incarceration significantly increases a person's risk for homelessness, homelessness (and especially unsheltered homelessness) in turn increases the risk of negative encounters with law enforcement.⁴⁹ An Urban Institute study in Denver concluded that "being forced to live outside can lead to citations and arrests for low-level offenses (often called petty crimes), such as public drinking, that wouldn't be crimes if the person was inside a home."⁵⁰ That study found that participants in a supportive housing program were 52% less likely than the control group to be arrested for offenses relating to experiencing homelessness.⁵¹ Another Urban Institute survey of 600 women experiencing homelessness in Los Angeles County in late 2022 found that 21% of women reported being stopped, questioned, or detained for being homeless, and 20.9% of women reported being stopped, questioned, or detained for being on the streets.⁵² The California Statewide study observed that participants

Seattle, Washington, USA, 42(2) *J. Pub. Health* e107 (June 2020), available at <https://academic.oup.com/jpubhealth/article/42/2/e107/5510723?login=true>.

48. *Id.*

49. Batko & Gillespie *et al.*, *supra*, at 5.

50. Urban Institute, *Policing Doesn't End Homelessness. Supportive Housing Does* (Oct. 25, 2022), available at <https://apps.urban.org/features/ending-homelessness-through-supportive-housing-not-policing/>.

51. *Id.*

52. Batko *et al.*, *Los Angeles County Women's Needs Assessment*, *supra*, at 52.

experienced a high frequency of short-term jail stays during homelessness episodes, reflecting “the revolving door between jail and homelessness: jail stays increase the risk of homelessness and homelessness increases the risk of jail stays.”⁵³ This is particularly true for those experiencing unsheltered homelessness. An analysis by the California Policy Lab showed that people enduring unsheltered homelessness reported an average of 21 contacts with police in the previous six months, ten times the number reported by people living in shelters.⁵⁴

B. Criminalization is expensive for homeless individuals, their families, communities, and society.

In 2010, state and federal governments spent a combined \$80 billion on incarceration.⁵⁵ Moreover, this figure “considerably underestimates the true cost of incarceration by ignoring important social costs,” and indeed does not fully reflect even the budgetary costs alone of incarceration.⁵⁶ A recent 2021 report published

53. Kushel & Moore, *supra*, at 65.

54. Rountree, Nathan Hess & Austin Lyke, California Policy Lab, *Health Conditions Among Unsheltered Adults in the U.S.*, at 7 (Oct. 2019), available at <https://www.capolicylab.org/wp-content/uploads/2023/02/Health-Conditions-Among-Unsheltered-Adults-in-the-U.S..pdf>.

55. U.S. Dep’t of Justice, *Smart on Crime: Reforming The Criminal Justice System for the 21st Century*, at 1 (Aug. 2013) available at <https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>.

56. McLaughlin *et al.*, Institute for Justice Research & Development, *The Economic Burden of Incarceration in the*

by the New York City Comptroller found an annual cost per incarcerated person of over \$550,000 in FY 2021, with a majority of those expenses (specifically, for fringe benefits, pensions, and medical services) not included in the Department of Corrections budget.⁵⁷

The budgetary costs of criminalization are dwarfed by the cost of criminalization on incarcerated persons and on their families, children and communities—costs estimated at over \$390 billion and \$530 billion annually, respectively.⁵⁸ A single conviction, even for a minor offense, can reduce earnings for a lifetime.⁵⁹ A prison stay reduces post-incarceration annual earnings on average 52%.⁶⁰ Even conviction of a misdemeanor offense reduces

United States, at 1, 6, available at https://ijrd.csw.fsu.edu/sites/g/files/upcbnu1766/files/media/images/publication_pdfs/Economic_Burden_of_Incarceration_IJRD072016_0_0.pdf.

57. New York City Comptroller, *NYC Dep't of Correction* (Dec. 2021), available at <https://comptroller.nyc.gov/reports/nyc-department-of-correction/#:~:text=This%20report%20analyzes%20jail%20population,to%20%24556%2C539%20in%20FY%202021.>

58. McLaughlin *et al.*, *supra*, at 16.

59. Grawert & Craigie, Brennan Center for Justice, *Mass Incarceration Has Been a Driving Force of Economic Inequality* (Nov. 2020), available at <https://www.brennancenter.org/our-work/analysis-opinion/mass-incarceration-has-been-driving-force-economic-inequality>.

60. Craigie, Grawert & Kimble, Brennan Center for Justice, *Conviction, Imprisonment & Lost Earnings*, at 6 (Sept. 2020), available at https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf.

earnings by 16% annually.⁶¹ Combined with the challenges in finding housing and employment experienced by those leaving incarceration, *see supra* § III.A, reduced earning potential from a conviction can mean the difference between economic stability and inescapable poverty.

Criminalizing homelessness also carries significant opportunity costs in the form of law enforcement resources diverted from other priorities. The Urban Institute’s Denver study concluded that, in 2018, Denver police spent 2,789 hours of time on minor homelessness-associated offenses such as trespassing, public-order crimes, and liquor possession among a target population of 2,181 people experiencing chronic homelessness, plus another 3,627 hours on warrants among that population.⁶² More effective, evidence-driven approaches to homelessness free up law enforcement to focus on “other community activities, such as outreach and general traffic stops, instead of responding to homelessness.”⁶³

In sum, criminalization of homelessness imposes substantial costs on society without providing any benefits. In fact, it makes the problem worse. It is telling that neither Petitioner or its many amici can offer a single example of a state, county, or city prosecuting its way out of a homelessness crisis. At any rate, Petitioner and its amici’s misconceptions about homelessness and criminalization cannot justify the imposition of punishment that will serve no legitimate purpose and thus violates the Eighth Amendment.

61. *Id.*

62. Urban Institute, *Policing, supra*.

63. Batko, Solari & DuBois, *supra*, at 21.

IV. Cost-effective Alternatives to Criminalization Exist and Have Been Proven to Work.

While criminalization is an ineffective and expensive response to the homelessness crisis, supportive housing-based approaches have proven both more effective and cost efficient. Supportive housing combines permanent, affordable housing with multi-disciplinary services aimed at helping tenants remain housed.⁶⁴ Supportive housing initiatives tend to focus on vulnerable populations, including youth,⁶⁵ persons with disabilities or other medical challenges,⁶⁶ and seniors⁶⁷ (who represent the fastest-growing segment of the unhoused population⁶⁸). Amici have been closely involved in implementing supportive housing programs across the country. Three

64. Dohler *et al.*, Center for Budget & Policy Priorities, *Supportive Housing Helps Vulnerable People Live & Thrive in the Community* (May 2016), available at <https://www.cbpp.org/research/supportive-housing-helps-vulnerable-people-live-and-thrive-in-the-community>.

65. Corp. for Supportive Housing, *No Strings Attached: Helping Vulnerable Youth with Non-Time-Limited Supportive Housing* (Mar. 2016), available at http://www.csh.org/wp-content/uploads/2016/03/CSH_NonTimeLimitedYouthSH_3.25.16.pdf.

66. Sadowski *et al.*, *Effect of a Housing and Case Management Program on Emergency Department Visits and Hospitalizations Among Chronically Ill Homeless Adults*, 301 *J. Am. Med. Ass'n* 1771 (May 2009).

67. Corp. for Supportive Housing, *Healthy Aging in Supportive Housing*, available at <https://www.csh.org/aging/>.

68. Crock, Abt, *Addressing Soaring Homelessness in America Among Senior Citizens. What Can Reverse the Trend?*, available at <https://www.abtglobal.com/who-we-are/news/feature-stories/addressing-soaring-homelessness-in-america-among-senior-citizens>.

examples of supportive housing programs that have proven successful at reducing homelessness and less expensive than incarceration follow.

Denver. In 2016, the City and County of Denver launched the Denver Supportive Housing Social Impact Bond (“SIB”) Initiative, which sought “to increase housing stability and decrease jail stays for people trapped in the homelessness-jail cycle.”⁶⁹ Through the SIB Initiative, the Colorado Coalition for the Homeless and the Mental Health Center of Denver provided supportive housing services to participants.⁷⁰ Urban Institute’s analysis of program costs showed that the annual per-unit cost of the program attributable to city and state governments was just over \$20,000.⁷¹ Moreover, over half of per-person costs of the program were offset by savings in other public services—savings which are a testament to the program’s effectiveness.⁷²

The SIB Initiative undeniably succeeded in improving outcomes for individuals experiencing homelessness. SIB participants were arrested for 52% fewer offenses over two years than individuals in the control group.⁷³ SIB

69. Gillespie *et al.*, Urban Institute, *Costs & Offsets of Providing Supportive Housing to Break the Homelessness-Jail Cycle*, at v (July 2021), available at https://www.urban.org/sites/default/files/publication/104499/costs-and-offsets-of-providing-supportive-housing-to-break-the-homelessness-jail-cycle_0.pdf.

70. *Id.*

71. *Id.* at v, 9.

72. *Id.* at vi.

73. Urban Institute, *Policing*, *supra*.

participants also saw a 40% reduction in shelter visits and a 35% reduction in days with any shelter stays because of supportive housing.⁷⁴ After three years, 77% of program participants remained in stable housing.⁷⁵

New York. Amicus CSH runs its signature Frequent Users Systems Engagement (“FUSE”) initiative in nearly 50 different cities and counties across the United States, including New York City.⁷⁶ FUSE helps individuals with complex medical and behavioral health challenges break the jail-homelessness cycle by providing those individuals with supportive housing services.⁷⁷ A long-term study of New York City’s FUSE program found that, over a 10-year period, participants experienced 44% fewer days in shelters and 63% fewer episodes of homeless shelter use than the comparison group over the 10-year period.⁷⁸ In addition, FUSE participants spent, on average, 95 fewer days in jail and 25 fewer days in inpatient hospitalization over that period.⁷⁹ Importantly, the New York City FUSE program provides significant cost-savings over

74. Urban Institute, *Housing First Breaks the Homelessness-Jail Cycle*, available at <https://urban.org/features/housing-first-breaks-homelessness-jail-cycle>.

75. *Id.*

76. Corp. for Supportive Housing, *FUSE*, available at <https://www.csh.org/fuse/>.

77. *Id.*

78. Corp. for Supportive Housing & Columbia University Mailman School of Public Health, *FUSE 10-Year Follow-Up Report*, at 6 (Apr. 2023), available at <https://www.csh.org/wp-content/uploads/2023/10/FUSE-10-Year-Report-Initial-Findings.pdf>.

79. *Id.* at 6, 9.

criminalization-based approaches. Over a period of five years, savings in homeless shelter and jail costs exceeded the cost of the FUSE program by a total of \$44,800 per participant.⁸⁰

Ohio. Two state-funded programs in Ohio have proven successful in breaking the homelessness-incarceration cycle. The Community Transition Program (“CTP”) funded by the Ohio Department of Mental Health and Addiction Services, provides transitional recovery support, including housing, to individuals leaving state correctional facilities. Returning Home Ohio (“RHO”) is a partnership between the Ohio Department of Rehabilitation and Correction and amicus CSH, which operates in nine counties across the state. RHO has helped more than 1,000 individuals obtain housing and break the cycle of institutionalization and homelessness and reduced recidivism rates by 60%.⁸¹

In sum, criminalization is ineffective and, in fact, compounds homelessness both as a condition individuals experience and as a societal concern. Petitioner and its amici ignore that there are effective and proven tools available to address homelessness. The Amici on this brief urge this Court to recognize the breadth of information that undermines the arguments advanced by and in support of Petitioner Grants Pass in its effort to overturn the Ninth Circuit’s injunction.

80. *Id.* at 16.

81. Corp. for Supportive Housing, *From Incarceration to Thriving*, available at <https://www.csh.org/wp-content/uploads/2023/06/CSH-From-Incarceration-to-Thriving-2023.pdf>.

CONCLUSION

This Court should affirm the judgment of the Ninth Circuit.

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April 3, 2024

APPENDIX

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APPENDIX — LIST OF *AMICI CURIAE*

Corporation for Supportive Housing

Samantha Batko*

Sarah Gillespie*

Ability Housing, Inc.

Amethyst Place

Caring Works, Inc

Carrfour Supportive Housing, Inc.

Coalition on Homelessness & Housing Ohio

Center for Housing & Health

Collaborative Solutions, Inc.

Community Housing Network

Englewood Community Development Corporation

Episcopal Housing Corporation

Florida Supportive Housing Coalition

* The views expressed here are those of the individuals and should not be attributed to the Urban Institute, its Board of Trustees, or its funders.

Appendix

Georgia Supportive Housing Association

Gorman & Company

HELP of Southern Nevada

Hoosier Uplands EDC

Horizon House

Illinois Housing Council

Lantern Community Services

Low Income Housing Institute

Massachusetts Housing & Shelter Alliance

Minnesota Housing Partnership

Nevada Housing Coalition

New Hope Housing, Inc.

PATH

Pathways to Housing PA

Partnership for Strong Communities

Partners for Home

3a

Appendix

Quest Communities

Shelter House Iowa

3Keys

Texas Homeless Network

Save, Inc.

Serving Seniors (the Organization)

Supportive Housing Advocates - NJ

Supportive Housing Network of NY

Virginia Housing Alliance