



Perspective

Criminalizing Homelessness — The Grants Pass, Oregon, Supreme Court Case

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On April 22, 2024, the U.S. Supreme Court heard oral arguments in the case of *City of Grants Pass, Oregon v. Gloria Johnson*. Grants Pass is a city of approximately 39,000 people that,

between 2013 and 2018, penalized involuntarily unhoused people for camping or sleeping in public spaces with a blanket, pillow, or cardboard box.¹ A city councilor stated that the goal of enforcing the anticamping, antisleeping, and park-exclusion ordinances was “to make it uncomfortable enough for [homeless persons] in our city so they will want to move on down the road.”¹ Despite insufficient shelter availability in Grants Pass, people who violated these ordinances were issued fines (ranging from \$75 to \$295 for a first offense), which increased if they went unpaid and decreased if the violator pled guilty. A total of 574 tickets were issued during this period.¹ Repeat offenders were subject to additional fines and crimi-

nal prosecution for trespassing — a misdemeanor punishable by up to 30 days in jail and a \$1,250 fine.¹

In 2022, the U.S. Court of Appeals for the Ninth Circuit largely affirmed a 2020 federal district court ruling that Grants Pass could not enforce such antihomeless ordinances under the Eighth Amendment. In deciding the appeal, the court upheld a similar 2018 ruling stating that people are “involuntarily homeless” if they do not have access to adequate temporary shelter, either because they cannot pay for it or because it is not realistically available to them.¹ It further stated that it was undisputed that Grants Pass had continued inappropriately enforcing the antihomeless ordinances

after 2018.¹ As such, the court ruled that civil and criminal penalties for involuntary homelessness were unconstitutional and issued a permanent injunction largely prohibiting Grants Pass from continuing to impose them.¹

Grants Pass has since appealed to the Supreme Court, seeking to overturn the Ninth Circuit Court’s decision and reinstate its antihomeless ordinances. The city questioned whether penalties targeting involuntary homelessness are an unconstitutional form of cruel and unusual punishment. Judicial interpretations of the Eighth Amendment prohibit penalizing people by means of “excessive bail,” “excessive fines,” or “cruel and unusual punishments” on the basis of a status (e.g., drug addiction).¹ They do not, however, prohibit criminal penalties for culpable conduct (e.g., use of certain substances). Whether homelessness is considered a status or a type of conduct — and where to

draw the line between the two — has therefore emerged as a key consideration in the case. The Supreme Court's decision, which is anticipated in June 2024, could have wide-ranging implications for unhoused people, U.S. cities, and population health.

Grappling with these issues requires a contextualized understanding of the causes, consequences, and distributions of homelessness. Broadly, homelessness is a dynamic and pervasive social determinant of health that is influenced by various historical and contemporary political, economic, and social factors, as well as psychological and biologic factors. Past and present forms of housing and employment discrimination and widening income disparities have compromised social welfare programs, reduced economic mobility, limited the utility of housing vouchers, and inflated the cost of living throughout the United States. Meanwhile, individual-level vulnerabilities (such as mental illness, physical disability, and substance use disorder) and unjust acts of social exclusion (such as incarceration and discrimination based on race, sex, and gender) create additional barriers to access public resources, including temporary shelters and financial assistance. These multilevel, often systemic factors act independently and in tandem to increase the risk and exacerbate the effects of homelessness and disproportionately affect historically marginalized populations.

Descriptive data corroborate this story. In 2023, approximately 653,104 people in the United States were experiencing homelessness, according to a point-in-time estimate.² Roughly 23% of those people had experienced homelessness

for at least 1 year and were chronically homeless. People who identified as Black or African American represented 37% of people experiencing homelessness — far higher than their representation in the general population.² Approximately 11% of people experiencing homelessness identified as victims of domestic violence, and 5% were considered to be unaccompanied children or young adults under 25 years of age.² Nearly 21% of people reported being severely mentally ill and more than 16% reported chronic substance use,² conditions that frequently prevent people from staying in shelters. With most people who experience homelessness reporting multiple risk factors, these data suggest that homelessness is a status that is rarely attributable to a single characteristic or experience.

Current approaches to addressing homelessness range from inclusive practices — such as “Housing First” interventions in major U.S. cities — to exclusionary ordinances, such as those used in Grants Pass. Evidence suggests that interventions prioritizing placement in affordable housing and integration of legal, financial, and social services can reduce homelessness and improve health outcomes and reduce health care utilization among homeless populations.^{3,4} For example, a recent difference-in-differences study found that integrated Housing First interventions led to an average decrease in overall health care costs of \$10,470 per person per year among chronically homeless Medicaid enrollees in Massachusetts, as compared with a control group; these savings nearly covered the cost of the intervention.³ Nationwide implementation of

such interventions could result in substantial reductions in health care expenditures among chronically homeless populations.

Studies in various disciplines have concluded that criminalization is among the least effective and most expensive approaches to addressing homelessness.⁵ It should not be surprising that most people experiencing homelessness are unable to pay the fines associated with antihomesite citations.⁵ Including policy provisions that transform civil penalties into criminal penalties (e.g., after repeat offenses) renders people ineligible for services that could help resolve their homelessness, such as public housing and employment-related supports.⁵ Such penalties are therefore not only ineffective at reducing homelessness — they perpetuate it. As a result, these penalties also perpetuate conduct that is necessitated by involuntary homelessness (e.g., sleeping in public spaces). Criminalizing such conduct unjustly punishes people for their status of involuntary homelessness.

Enabling the criminalization of homelessness could have disastrous consequences for individual and population health. First, homelessness increases the risk of numerous health problems, many of which require high-cost, acute care.³ By perpetuating homelessness, a criminalization-focused approach will most likely increase the burden of infectious disease, mental illness, and chronic health conditions — and therefore Medicaid expenditures — in this population. Second, criminalizing homelessness disproportionately affects vulnerable subpopulations. At a single point in time in 2023, an estimated 34,703 unaccompanied children and young

adults were experiencing homelessness.² Unaccompanied young people face particular challenges in staying in shelters (e.g., safety concerns or lack of eligibility) and are especially susceptible to physical and psychosocial harms associated with unsafe, unstable, and unsanitary living environments. Criminalizing young people for a status beyond their control disrupts healthy development, exacerbates existing hardships, and threatens prospects for overcoming homelessness. Third, as suggested by the Grants Pass city councilor, antihomeless ordinances are intended to push homelessness elsewhere.¹ In addition to breaking up social networks and families, this relocation increases burdens on shelters, health care systems, and community-based organizations in other municipalities — thereby reducing their capacity for serving mem-

bers of their own communities and further widening health disparities.

We believe the Supreme Court should not enable the criminalization of homelessness. Penalties for sleeping in public spaces when no safe, affordable, or accessible alternatives are reasonably available for people experiencing homelessness are a form of cruel and unusual punishment. Systemic failures and injustices are far more important drivers of homelessness than individual actions or decisions. To work toward more just, equitable, and sustainable solutions that promote individual and population health, we believe the focus should be on interventions that integrate stable housing placements with high-quality health care and comprehensive support services.

Disclosure forms provided by the authors are available at NEJM.org.

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