No. 23-175

IN THE

Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,

Petitioner,

v.

GLORIA JOHNSON AND JOHN LOGAN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

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

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

In an effort to force its homeless residents into other jurisdictions, the City of Grants Pass, Oregon, decided to aggressively enforce a set of ordinances that nominally prohibit camping, but in reality punish homeless people for sleeping or resting anywhere on public property at any time with so much as a blanket to survive the cold, regardless of whether they have anywhere else to go. The ordinances make it physically impossible for a homeless person who does not have access to shelter to remain in Grants Pass without facing endless fines and jail time.

The question presented is whether the City's punishment scheme transgresses the Eighth Amendment's Cruel and Unusual Punishments Clause by inflicting punishment on the City's homeless residents for simply existing in the community without access to shelter.

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In an effort to force its homeless residents into other jurisdictions, the City of Grants Pass, Oregon, decided to aggressively enforce a set of ordinances that nominally prohibit camping, but in reality make it unlawful for homeless people to sleep or rest anywhere on public property at any time with so much as a blanket to survive the cold, even if they have no access to shelter. The plan was to inflict fines and jail time on the City's homeless residents until they were "uncomfortable enough" that they left Grants Pass.

Respondents, two of Grants Pass's homeless residents, brought suit challenging the City's punishment scheme as a violation of the Cruel and Unusual Punishments Clause. As the Ninth Circuit recognized, that claim is controlled by *Robinson v. California*, 370 U.S. 660 (1962), which holds that the Punishments Clause forbids governments from punishing someone for living with a status. Although the ordinances purport to criminalize the "conduct" of camping, punishing homeless people for resting or sleeping outside anywhere at any time when they have no access to shelter and need a blanket to survive is not the punishment of "conduct" in any meaningful sense of the word—it is akin to punishing the "conduct" of breathing outside as a homeless person. The offense is simply a description of living in the community without access to shelter; put differently, "the status [of homelessness] is defined by the very behavior being singled out for punishment." U.S. Br. 15.

In resisting *Robinson*'s application, the City ignores the true nature of its ordinances and instead

defends its authority to regulate unsanitary encampments, fires, illegal drug use, violent behavior, refusal of shelter options, and obstructed sidewalks and roads. But that authority is not remotely called into question by respondents' challenge. The sole question in this case is whether the Punishments Clause permits the City to inflict punishment on homeless people for resting or sleeping with a blanket anywhere in public at any time when they have nowhere else to go—in other words, for their continued physical existence in the community. *Robinson* provides the answer: No.

I. Factual Background

Like many west coast cities, Grants Pass has a significant housing shortage. *See* Pet. App. 167a. The vacancy rate is one percent, which "essentially means that there's no vacancy," and the stock of affordable housing "has dwindled to almost zero." *Id*. As a result, hundreds of Grants Pass residents are homeless. *See id.* at 167a-168a. A 2019 point-in-time count in Grants Pass counted 602 homeless people and another 1,045 individuals who were "precariously housed." *Id*.

In March 2013, the Grants Pass City Council held a public meeting to "identify solutions to current vagrancy problems." Joint App. (JA) 111-12. Participants discussed strategies for pushing homeless residents into neighboring jurisdictions and "leaving them there." *Id.* at 113. 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." *Id.* at 114. The

council president proposed instead "mak[ing] it uncomfortable enough for [homeless people] in our city so they will want to move on down the road." *Id.* To this end, City leaders decided to aggressively enforce a set of ordinances designed to make it impossible for the City's homeless residents to remain in Grants Pass without facing punishment. *See* Pet. App. 17a, 168a-169a.

The operative provisions, §§ 5.61.010 and 5.61.030, purport to prohibit "camping" on public property. "Camping," however, is expansively defined: A person "camps" whenever she "occup[ies]" a "place where bedding, sleeping bag, or other material used for bedding purposes … is placed, established, or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent … or any other structure." *Id.* at 221a-222a. It is undisputed that "bedding" could be as little as a blanket, which is necessary to survive Grants Pass's cold temperatures. And a homeless person temporarily "lives" wherever she rests or sleeps, including her car if she has one. The ordinances thus equate camping with living as a homeless person outside.[1] Because this prohibition on "camping" extends to all "publicly-owned property" at all times, *id.* at 222a, it is physically impossible for a homeless person

[1] A third and largely overlapping provision, § 6.46.090, reiterates that "camping" is prohibited in public parks, and also prohibits leaving a vehicle in a park parking lot overnight. Pet. App. 223a. And a "sleeping" ordinance, § 5.61.020, prohibits sleeping specifically on public sidewalks, streets, and alleyways. *Id.* at 221a-222a.

who lacks shelter access to live in Grants Pass without violating the ordinances.

Every violation of the "camping" prohibition triggers a presumptive $295 fine, which increases to $537.60 if unpaid. *Id.* at 175a. After two citations, the police may issue an exclusion order that renders the person guilty of criminal trespass if she remains on public property. *See id.* at 224a; Or. Rev. Stat. § 164.245.[2] Each count of criminal trespass is punishable with up to 30 days in jail and a $1,250 fine. Or. Rev. Stat. §§ 161.615(3), 161.635(c)(1). These punishments can pile up within the course of a single day. *See* JA 181-82.

Grants Pass does not have any homeless shelters for adults. *See* Pet. App. 169a. There is an 18-bed shelter that serves only unaccompanied minors aged 10-17. *Id.* at 22a. And there is a transitional housing program that limits initial stays to 30 days and requires participants to work for the organization full-time without pay. *See id.* at 169a. People with physical or mental disabilities that prevent them from working are ineligible. *Id.* Participants may not look for outside work during their stay, and they are required to attend chapel twice daily, as well as Sunday church

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[2] The temporary exclusion provision, § 6.46.350, provides for exclusion from "City Park Properties," Pet. App. 224a, which is defined by a different provision to cover not only "parks" but also "landscaped areas surrounding or upon City developments, such as city halls, community centers, police and fire stations, parking lots, traffic islands and dividers, or urban beautification areas owned or maintained by the City," Grants Pass Municipal Code § 6.46.020. The exclusion orders in the record thus cover all "City property." JA 100, 185.

services. *Id.* The program also has limited capacity: 78 spaces for men and 60 spaces for women and children. *Id.*[3]

From February to March 2020, a nonprofit organization briefly opened a "warming center" that held up to 40 individuals on nights when the temperature was either below 30 degrees or below 32 degrees with precipitation, which amounted to 16 days. *See* JA 178. The center did not have beds, and it turned people away every night but the first. *See id.* The center did not open at all during the winter of 2020-2021. Pet. App. 22a.

Consistent with the City Council's strategy, police officers enforced the ordinances against the City's homeless residents despite the lack of shelter options. On a daily and nightly basis, homeless individuals were awakened, threatened with punishment, moved along, and cited for simply resting or sleeping outside, subjecting them to fines, arrest, and criminal prosecution. *See id.* at 175a; JA 1-4, 64-66, 133-35, 180-82; SER 6-9, 14-16, 20; ER 385-411.[4] The City later confirmed that the aim of these enforcement efforts was to push its homeless population to "federally managed land," county parks, and state rest stops outside city

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[3] In 2021 (after summary judgment), a nonprofit organization opened another transitional housing facility in Grants Pass with 17 beds. *See Introducing Foundry Village*, Rogue Retreat (Dec. 20, 2021), https://www.rogueretreat.org/introducing-foundry-village.

[4] ER and SER refer to the Excerpts of Record and Supplemental Excerpts of Record filed in the Ninth Circuit, respectively.

limits. Def.'s Mot. Summ. J. 11-12, ECF No. 80; *see* Pet. App. 180a.

II. District Court Proceedings

In October 2018, respondents filed suit on behalf of themselves and all other involuntarily homeless people in Grants Pass, seeking to enjoin the City from punishing them for "resting, sleeping[,] or seeking shelter" outside when "[t]hey have no place else to go." JA 51. As relevant here, respondents alleged that the City's enforcement of the ordinances under these circumstances "punishes and criminalizes the status of homelessness" in violation of the Eighth Amendment. *Id.*

A. Class Certification

The district court granted respondents' motion for class certification on August 7, 2019. Pet. App. 206a-220a. The class is defined as "[a]ll involuntarily homeless individuals living in Grants Pass, Oregon, including homeless individuals who sometimes sleep outside city limits to avoid harassment and punishment" by the City. *Id.* at 211a-212a.

The court found that the proposed class satisfied Rule 23's numerosity requirement based on evidence it contained at least 600 individuals. *Id.* at 212a. The court found the commonality requirement satisfied because the suit presented questions common to the class that were susceptible to common answers, including whether the City's "custom, pattern, and practice of enforcing" its ordinances "against involuntarily homeless individuals violates the Eighth Amendment." *Id.* at 214a-215a.

Finally, the court found that the three class representatives satisfied the typicality and adequate representation requirements, as all three were involuntarily homeless residents of Grants Pass who faced a real and imminent risk of punishment under the ordinances for sleeping or resting in public. *Id.* at 215a-219a. Debra Blake lost her job and housing a decade earlier and was beyond her permitted stay in transitional housing at the time of class certification. *Id.* at 170a-171a. By summary judgment, she was again living outside and owed more than $5,000 in unpaid fines under the ordinances. *Id.* at 171a.

John Logan had been intermittently homeless in Grants Pass for ten years and slept in his truck at a rest stop outside the City to avoid being ticketed for sleeping in his truck within the City. *Id.* He was a licensed home care provider and had previously been able to sleep in his clients' storage room for part of each week, but that job ended in Fall 2019. *Id.*

Gloria Johnson lived in her van after she was evicted and could not afford other housing. *Id.*; JA 1, 14. She recounted "dozens of occasions" in which the "camping" ordinances were enforced against her. Pet. App. 74a. Because she lived in Grants Pass without access to shelter, she could "[a]t any time … be arrested, ticketed, fined, and prosecuted for sleeping outside in [her] van or for covering [her]self with a blanket to stay warm." *Id.* (first alteration in original).

B. Summary Judgment

Following class certification and extensive discovery, the district court granted summary judgment to respondents on their Eighth Amendment claims. Pet.

App. 163a-164a, 176a-191a. The court first held that the City's "policy and practice of punishing homelessness" violates the Cruel and Unusual Punishments Clause. *Id.* at 176a. The court relied on *Martin v. City of Boise*, 920 F.3d 584 (9th Cir.), *cert. denied*, 140 S. Ct. 674 (2019), which held that the government cannot punish homeless people for resting or sleeping outside when "they have no access to shelter." Pet. App. 176a. The court rejected the City's "remarkable" claim that "it should be permitted to continue to punish its homeless population because [they] have the option to just leave the City," explaining that the City's efforts to "drive its homeless population onto 'nearby' federal, state, or Josephine County land" violated *Martin*. *Id.* at 180a.

The district court also held that the City's enforcement of the ordinances against involuntarily homeless people violates the Eighth Amendment's Excessive Fines Clause. *Id.* at 187a-191a. The evidentiary record established that the fines are punitive because they serve "no remedial purpose" but rather are "intended to deter homeless individuals from residing in Grants Pass." *Id.* at 189a. And the court found the fines "grossly disproportionate to the gravity of the offense." *Id.* at 190a (internal quotation marks omitted).

The district court concluded by emphasizing what it had *not* held: "The holding in this case does not say that Grants Pass must allow homeless camps to be set up at all times in public parks." *Id.* at 199a. To the contrary, "[t]he City may implement time and place restrictions for when homeless individuals may use their belongings to keep warm and dry and when they must have their belonging[s] packed up." *Id.* The City

may also "ban the use of tents in public parks without going so far as to ban people from using any bedding type materials to keep warm and dry while they sleep." *Id.* at 199a-200a. And the City may "limit[] the amount of bedding type materials allowed per individual in public places." *Id.* at 200a. Moreover, the court noted, its holding did not limit the City's "ability to enforce laws that actually further public health and safety, such as laws restricting littering, public urination or defecation, obstruction of roadways, possession or distribution of illicit substances, harassment, or violence." *Id.* In short, the City "retain[ed] a large toolbox for regulating public space without violating the Eight[h] Amendment." *Id.*

The district court then issued a permanent injunction that, as relevant here, enjoined the City from enforcing the "camping" ordinances against class members in certain city parks at night. JA 189-91. The order permitted the City to enforce the ordinances on all other public property, and in city parks during daytime hours so long as a warning is given 24 hours in advance. *See id.* And, per the summary judgment order, the injunction excluded "individuals who do have access to adequate temporary shelter, whether they have the means to pay for it or because it is realistically available to them for free." Pet. App. 199a (quoting *Martin*, 920 F.3d at 617 n.8).

III. Court Of Appeals Proceedings

The Ninth Circuit affirmed in part and vacated in part. Pet. App. 13a-58a.

The court of appeals rejected the City's challenge to the district court's class certification determination. *Id.* at 34a-42a. Although the City argued that the

commonality requirement was not met because some class members might have shelter options, the court explained that this argument "misunderstands the class definition." *Id.* at 39a. "Individuals who have shelter or the means to acquire their own shelter simply are never class members." *Id.* at 40a-41a. And "[a] person with access to temporary shelter is not involuntarily homeless unless and until they no longer have access to shelter." *Id.* at 41a n.24. Accordingly, if police officers determine "at the enforcement stage that a homeless individual has access to shelter, then they do not benefit from the injunction and may be cited or prosecuted under the anti-camping ordinances." *Id.* at 40a-41a n.23.

The panel agreed with the district court that the undisputed evidence established that the class representatives were each involuntarily homeless as defined for the purposes of the injunction, *id.* at 52a-53a & n.31, and that each had established that they faced a credible threat of future punishment under the ordinances, *id.* at 30a-32a & nn.15-16. The panel noted, however, that Debra Blake had died while the appeal was pending. *Id.* at 30a. Her death had "possib[le] … jurisdictional significance" because Blake was the only class representative with standing to challenge § 5.61.020, the ordinance that prohibited sleeping specifically on sidewalks, streets, and alleyways. *Id.* at 30a-32a. The panel thus vacated summary judgment as to that provision and remanded "to determine whether a substitute representative is available as to that challenge alone." *Id.* at 34a.

The panel then addressed the City's merits arguments. Like the district court, the panel found *Martin* directly on point. *Id.* at 25a. But, the panel explained,

this did not mean "the anti-camping ordinances were properly enjoined in their entirety." *Id.* at 55a. The record did not establish, for example, that the ordinances' "fire, stove, and structure prohibitions" deprived respondents of their "limited right to protection against the elements," *id.*; indeed, the district court had specifically recognized that the City was free to "ban the use of tents in public parks," *id.* at 55a n.34. And, the panel held, the ordinances should be enforceable "when a shelter bed is available." *Id.* at 55a. The panel thus ordered the district court to "craft a narrower injunction" on remand. *Id.*

Because the City "present[ed] no meaningful argument on appeal regarding" the district court's holding on the Excessive Fines Clause and the panel had largely upheld the injunction under the Punishments Clause, the panel found it unnecessary to reach respondents' excessive fines claim. *Id.* at 56a.

Judge Collins dissented from the panel decision. *Id.* at 59a-95a. The Ninth Circuit denied the City's petition for rehearing en banc by a 14-13 vote. *Id.* at 96a-162a.

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This Court granted the City's petition for a writ of certiorari, which sought review on a single question: whether the Punishments Clause prohibits "the enforcement of generally applicable laws regulating camping on public property." Pet. i.

SUMMARY OF ARGUMENT

The challenged ordinances are not "camping" regulations in any ordinary sense of the word. By design, they define "camping" so expansively that it is physically impossible for someone without access to shelter to live in Grants Pass without risking punishment. The City's goal was to make its homeless residents so "uncomfortable" that they would move to other jurisdictions.

The Ninth Circuit correctly held that the City's punishment scheme violates the Eighth Amendment. *Robinson v. California*, 370 U.S. 660 (1962), which holds that the Cruel and Unusual Punishments Clause forbids governments from punishing someone for living with a status, is directly on point. Although the ordinances purport to criminalize the "conduct" of camping, the offense is simply a description of living in the community without access to shelter. In other words, "the status [of homelessness] is defined by the very behavior being singled out for punishment." U.S. Br. 15.

The City criticizes *Robinson* as "moribund and misguided" and "an outlier in reasoning and result." Petr's Br. 15, 38. But the City's petition did not ask the Court to overrule *Robinson*, and the City identifies no basis for doing so in any event. *Robinson* is firmly anchored in a century of Supreme Court precedent recognizing that the Punishments Clause prohibits "not only those punishments that are 'barbaric' but also those that are 'excessive' in relation to the crime committed." *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (plurality opinion) (citing cases). *Robinson*'s substantive limitation on status-based punishment

reflects the application of the proportionality principle to circumstances in which any infliction of punishment is unconstitutionally excessive: "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." 370 U.S. at 667.

So, too, for the "crime" of being homeless without access to shelter. It is difficult to imagine a more blameless offense than resting outside with a blanket to survive the cold when you have nowhere else to go. And the City's punishment scheme is excessively harsh: Each count of "criminal trespass" on public property triggers up to 30 days of jail and a $1,250 fine, with infinite violations possible if the person remains in Grants Pass and is thereby "continuously guilty," *id.* at 666, of trespass whenever she is not serving jail time for her last violation.

The infliction of this punishment also has no penological justification, but rather serves only the City's illegitimate aim of forcing its homeless residents to leave Grants Pass. Indeed, although the City and its amici's constant refrain is that the decision below constrains their ability to mitigate the homelessness crisis and protect the homeless population, not one of them offers any explanation for how punishing homeless people for resting or sleeping outside with a blanket advances these goals when shelter is unavailable and there is nowhere else to go. And not one of them grapples with the chaos that will follow if the City sets off a banishment race with other municipalities, resulting in a spate of local punishment schemes that collectively operate as a nationwide ban on homelessness.

Although the City attempts to normalize its punishment scheme as a modern-day version of founding-era poor laws, its ordinances are a radically different species from the vagrancy restrictions of early America, which prescribed compulsory labor for people who chose not to work even though they were capable of doing so. Those laws not only excluded involuntary vagrancy from punishment, but also affirmatively provided for funds to "maintain[] and provide[] for" "poor, old, blind, impotent and lame persons or other persons not able to work within" a city. Act of Mar. 9, 1771, ch. 635, § 4, 1771 Pa. Laws 75, 77. The founding-era generation would have been appalled by the City's enforcement regime, which subjects all homeless people—including those who are sick, disabled, elderly, or otherwise incapable of providing for themselves—to continuous punishment if they do not leave the community. Modern society agrees: Governments at all levels have demonstrated a strong legislative consensus against extreme "camping" bans that make it physically impossible for homeless residents to remain in their communities without facing punishment.

The City's constitutional defense of its punishment scheme centers on its claim that the Punishments Clause prohibits only certain "methods of punishment" that were deemed barbaric at the founding. By the City's account, the Punishments Clause has no application whatsoever to the City's enforcement of its ordinances so long as the inflicted punishment involves fines and jail time rather than quartering or public dissection. Absent from the City's Eighth Amendment theory is any real engagement with the multitude of Supreme Court cases rejecting it. This

Court has rebuffed prior attempts by parties to sweep away precedent they depict as "inconsistent with the Constitution's original meaning" when those parties "neither ask [the Court] to overrule the precedent they criticize nor try to reconcile their approach with it." *Haaland v. Brackeen*, 599 U.S. 255, 279 (2023). The Court should do so again here.

The United States agrees in full with respondents on the question presented by the City, which is limited to whether the City's ordinances inflict cruel and unusual punishment on homeless people who cannot afford or access shelter. The government nonetheless argues that the Ninth Circuit erred "in failing to require a more particularized inquiry into the circumstances of the individuals subject to the City's ordinances." U.S. Br. 28. This argument raises complicated and unbriefed questions about Rule 23(b)(2) class actions—questions the government acknowledges are "not before the Court." *Id.* at 31. Because the City unquestionably declined to seek this Court's review of the district court's class certification determination, there is no basis for disturbing it.

ARGUMENT

I. The City's Ordinances Make It Physically Impossible For Its Homeless Residents To Remain In Grants Pass Without Facing Punishment.

This case is not about "camping on public property." Petr's Br. 2. Although the City uses the word "camping" to describe what its ordinances restrict,

there is no dispute the ordinances extend far beyond any ordinary sense of that word.

The operative provisions, §§ 5.61.010 and 5.61.030, define "camping" as "occupy[ing]" a location where "bedding, sleeping bag, or other material used for bedding purposes … is placed, established, or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent … or any other structure." Pet. App. 221a-222a. As the district court found, "bedding" or other material "used as 'bedding'" could be as little as a blanket or "a bundled up item of clothing" used "as a pillow." *Id.* at 177a-178a. Because Grants Pass is cold and rainy, forgoing a blanket while resting or sleeping outside is often incompatible with survival.[5] And while a person who has a home does not "maintain a place to live" when picnicking in a park or sitting on a public bench, a homeless person temporarily "lives" wherever she rests or sleeps. The ordinances thus equate camping with living as a homeless person outside in Grants Pass.

Moreover, unlike in most municipalities, *see infra* Part II.D, the City's ordinances are not simply time, place, and manner restrictions. The prohibition on "camping" extends to all public property at all times. Pet. App. 222a. And it applies even if the homeless

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[5] Jane E. Brody, *Surviving the Cold, or Even the Not So Cold*, N.Y. Times (Jan. 9, 2007), https://www.nytimes.com/2007/01/09/health/09brody.html (describing the hypothermia death of a man stranded in the wilderness near Grants Pass and noting that "temperatures need not be at freezing, or even very low, for hypothermia to occur").

person has nowhere else to go. *Id*. at 221a-222a. It is thus impossible for a homeless person who does not have access to shelter to live in Grants Pass without violating the ordinances. And anyone who violates the ordinances is subject to a cascade of fines and jail time. *See supra* p. 4.

The physical inability of homeless people without shelter access to avoid these punishments is by design. The City initially attempted to encourage homeless residents to move to other jurisdictions by buying them bus tickets out of town, but they "returned to Grants Pass with a request from the other location to not send them there." JA 114. The City then adopted a new strategy for dealing with its homeless residents: "mak[ing] it uncomfortable enough for them in our city" that "they will want to move on down the road." *Id*.

From that point until the injunction issued seven years later, the City's homeless residents were, on a daily and nightly basis, awakened, threatened with punishment, moved along, and cited for simply resting or sleeping outside, subjecting them to fines, arrest, and criminal prosecution. *See* Pet. App. 175a; JA 1-4, 64-66, 133-35, 180-82; SER 6-9, 14-16, 20; ER 385-411. The City later confirmed that the aim of these enforcement efforts was to push its homeless population to "federally managed land," county parks, and state rest stops outside city limits. Def.'s Mot. Summ. J. 11-12, ECF No. 80; *see* Pet. App. 180a (noting the City's "remarkable" claim that "it should be

allowed to drive its homeless population onto 'nearby' federal, state, or Josephine County land").

This is the government action respondents challenge—not restrictions on the use of tents or other camping gear, not encampment clearances, not time and place restrictions on sleeping outside, and not the imposition of fines or jail time on homeless people who decline accessible shelter options. The injunction in this case leaves the City free to take any and all of those steps. The sole question before the Court is whether the Cruel and Unusual Punishments Clause permits the City to inflict punishment on homeless people for resting or sleeping with a blanket anywhere in public at any time when they have nowhere else to go—in other words, for their continued physical existence in the community. The answer is no.

II. The City's Infliction Of Punishment On Its Homeless Residents For Living Without Access To Shelter Violates The Cruel And Unusual Punishments Clause.

The Court answered the question presented when it held in *Robinson v. California*, 370 U.S. 660 (1962), that the Punishments Clause forbids governments from punishing someone for living with a status. *Robinson*'s substantive limitation on status-based punishment is firmly anchored in the Court's precedents recognizing that the Clause prohibits not only barbaric methods of punishment, but also those that are excessive in relation to the offense or have no penological justification. The cruel and unusual nature of the City's punishment scheme is confirmed by both

founding-era social norms and modern standards of decency.

A. *Robinson v. California* Establishes That The City's Punishment Scheme Violates The Punishments Clause.

As the City acknowledges, Petr's Br. 29-31, *Robinson* holds that the Punishments Clause forbids governments from punishing someone for living with a status. That decision resolves this case.

1. The defendant in *Robinson* faced a 90-day jail sentence for violating a California statute that outlawed "be[ing] addicted to the use of narcotics." 370 U.S. at 662. The evidence against him was given by two police officers who testified that they observed "numerous needle marks," "scabs," and "scar tissue" on his arms and that he "had admitted to the occasional use of narcotics." *Id.* at 661-62. The Court concluded that the statute "inflict[ed] a cruel and unusual punishment in violation of" the Punishments Clause. *Id.* at 667.

The Court first emphasized "[t]he broad power of a State to regulate the narcotic drugs traffic within its borders," including "punish[ing] a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration." *Id.* at 664, 666. The California statute, however, punished far more: A person with narcotic addition could be "continuously guilty" and subject to prosecution "at any time before he reforms," regardless of whether he "used or possessed any narcotics within the State" or "has been guilty of any antisocial behavior there." *Id.* at 666.

In holding that the statute violated the Punishments Clause, the Court reasoned that it "would doubtless be universally thought to be an infliction of cruel and unusual punishment" if the government were "to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease." *Id.* "[N]arcotic addiction," the Court concluded, is "of the same category." *Id.* at 667. The Court acknowledged that the 90-day sentence imposed by the California law was "not, in the abstract, a punishment which is either cruel or unusual." *Id.* But just as "[e]ven one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold," it is cruel and unusual to punish someone at all for merely having a narcotic addiction. *Id.*

The same is true here. In issuing the injunction, the district court recognized the City's broad power to decide how to address homelessness within the community, including whether to offer shelter options or other social services, whether to restrict when and where homeless residents may sleep, and whether to prohibit tents and clear encampments, Pet. App. 199a-200a, as the City has done throughout this litigation, *see infra* p. 33. The City is also free to enforce laws that "further public health and safety … [by] restricting littering, public urination or defecation, obstruction of roadways, possession or distribution of illicit substances, harassment, or violence." *Id.* at 200a. But just as California crossed the constitutional line when it criminalized simply being in the state while having a narcotic addiction, punishing homeless people for existing in the community without shelter access is cruel, unusual, and impermissible under the Punishments Clause.

The City resists *Robinson*'s application only by failing to acknowledge the true nature of its ordinances. Contrary to the City's claim, respondents have never suggested, and no court has held, that "generally applicable public-camping ordinances … prohibit the 'status' of homelessness." Petr's Br. 37. The constitutional defect in the City's ordinances is that the purported "conduct" they criminalize—occupying any public property at any time with so much as a blanket to survive—is not camping at all, but rather a description of living in the community without access to shelter. In other words, "the status [of homelessness] is defined by the very behavior being singled out for punishment." U.S. Br. 15. Just as the California statute rendered it physically impossible for a person with narcotic addiction to remain in the state without being "continuously guilty" and subject to prosecution, the ordinances render the City's homeless residents "continuously guilty" of living in Grants Pass without access to shelter.

Moreover, the purported "conduct" criminalized by the ordinances is the biological imperative of resting while avoiding hypothermia. Punishing homeless people for resting or sleeping with a blanket anywhere outside at any time when they have no access to shelter is not the punishment of "conduct" in any meaningful sense of the word—it is akin to punishing the "conduct" of breathing outside. The City's contrary view would empower jurisdictions to circumvent *Robinson* by tying statuses to inescapable human activities.

2. The City points to *Powell v. Texas*, 392 U.S. 514 (1968), a case in which the Court fractured over *Robinson*'s application to punishing an alcoholic for public intoxication. Petr's Br. 31-37. As the United States explains, that disagreement is not implicated here because the City seeks to inflict punishment not for harmful compulsive behavior, but for the wholly innocent, universal human need to rest and sleep. *See* U.S. Br. 24-25. The City's claim that there is "no logical stopping point" between the two, Petr's Br. 48, is easily dismissed: "[T]he status of being addicted to narcotics is distinct from the conduct of using narcotics. There is no similar separation between being without available indoor shelter and sleeping in public—they are opposite sides of the same coin." U.S. Br. 25.

Indeed, although the City cites Judge Wilkinson's dissent in *Manning v. Caldwell*, 930 F.3d 264 (4th Cir. 2019) (en banc), as supporting its position, Petr's Br. 35-36, Judge Wilkinson made the same distinction: Unlike the public intoxication law that divided the *Powell* Court, a law that punishes homeless people for "essential bodily functions" like "eat[ing] or sleep[ing]" squarely violates "*Robinson*'s command that the state identify conduct in crafting its laws, rather than punish a person's mere existence." *Manning*, 930 F.3d at 290 (Wilkinson, J., dissenting). Every Justice in *Powell* embraced *Robinson*'s holding that the Eighth Amendment proscribes status-based punishment. That holding renders the City's punishment scheme unconstitutional.

3. The City asserts a handful of arguments for declining to "extend" *Robinson* to this case. Petr's Br. 38-49. As explained above, the City's efforts to punish its

homeless residents for lacking access to shelter fall squarely within *Robinson*'s rule against status-based punishments, and as such no extension is necessary. But the City's arguments also fail on their own terms.

a. The City first argues that "federalism" and "the fundamental police power that all States possess" insulate its punishment scheme from Eighth Amendment scrutiny under *Robinson*. Petr's Br. 40-41.

As an initial matter, the Oregon legislature has rejected any state interest in what the City seeks to do here. As explained in respondents' brief in opposition, pp. 35-36, a new state statute went into effect in 2023 that constrains the ability of municipalities to punish homeless residents for "sitting, lying, sleeping or keeping warm and dry outdoors on public property." Or. Rev. Stat. § 195.530.

Federalism, in any event, is not a shield that allows cities to violate their residents' constitutional rights with impunity. *See McDonald v. City of Chicago*, 561 U.S. 742, 783-85 (2010) (plurality opinion). "[I]f a Bill of Rights guarantee is fundamental from an American perspective, then … that guarantee is fully binding on the States and thus *limits* (but by no means eliminates) their ability to devise solutions to social problems that suit local needs and values." *Id.* at 784-85. This is especially true where, as here, a locality seeks to banish those citizens elsewhere, thereby intruding on the interests of other localities. *See Edwards v. California*, 314 U.S. 160, 173-76 (1941) (excluding indigent residents is "not a valid exercise of the police power"). Although "[i]t is frequently the case that a State might gain a momentary

respite from the pressure of events by the simple expedient of shutting its gates to the outside world," the Constitution "was framed upon the theory that the peoples of the several states must sink or swim together." *Id.* at 173-74 (internal quotation marks omitted).

b. The City next suggests that respondents' constitutional challenge "sound[s] more in due process." Petr's Br. 41. *Robinson*, however, places the right against punishment for status offenses in the Eighth Amendment, and where an Amendment "provides an explicit textual source of constitutional protection … that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Graham v. Connor*, 490 U.S. 386, 395 (1989).

That the ordinances also fail the due process standard only underscores their unconstitutionality. Founding-era common law did not allow for criminal liability when it was impossible to avoid violating the law. *E.g.*, 1 T. Rutherforth, *Institutes of Natural Law: Being the Substance of a Course of Lectures on* Grotius de Jure Belli et Pacis 434 (1754) ("No action can be criminal, if it is not possible for a man to do otherwise. An unavoidable crime is a contradiction: whatever is unavoidable is no crime; and whatever is a crime is not unavoidable."). To be sure, states may generally make policy decisions about when to impose criminal responsibility, *see, e.g.*, *Kahler v. Kansas*, 140 S. Ct. 1021, 1028-29 (2020), but penalizing a person when it is physically impossible for them to comply with the law is a sharp departure from ancient rules of criminal liability, *see Felton v. United States*, 96 U.S. 699,

703 (1877) ("All punitive legislation contemplates some relation between guilt and punishment. To inflict the latter where the former does not exist would shock the sense of justice of every one.").

c. Finally, the City argues that *Robinson*'s application to its ordinances is "practically unworkable" because the concept of "involuntariness" has "no discernible standards." Petr's Br. 43-44. But the meaning of "involuntarily homeless" is not the metaphysical inquiry the City suggests, *id.* at 43-46; it just means that a person is homeless and does not "have shelter or the means to acquire their own shelter,"[6] Pet. App. 39a-41a; *see also id.* at 14a n.2. Whether that objective test is met is a concrete factual determination that courts are well equipped to undertake based on the record developed by the parties. *See Bartlett v. Strickland*, 556 U.S. 1, 17 (2009) ("courts

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[6] A more precise term is "homeless and involuntarily unsheltered." As the Ninth Circuit made clear, the City remains free to enforce the ordinances against homeless people who have access to shelter and therefore fall outside of the class. Pet. App. 40a-41a. And it is free to choose how best to identify those individuals—other cities, for example, have tasked police with inquiring about an individual's options for shelter or with affirmatively offering shelter before enforcement. *See, e.g.*, San Gabriel, Cal., Mun. Code § 130.20(K) (requiring that an officer confirm prior to issuing a citation that "a shelter has available space that can be utilized by that particular individual"); Edmonds, Wash., Mun. Code § 5.70.050 (requiring that a homeless individual be offered space in a shelter before enforcement). Should the plaintiffs allege that the City is violating the injunction by enforcing the ordinances against class members, it will be their burden to prove that as part of contempt proceedings.

are capable of making refined and exacting factual inquiries").

The City obliquely suggests that this inquiry is not amenable to class treatment, *see* Petr's Br. 47 (criticizing "sweeping classwide injunctions" in other cases), which is the chief complaint of its amici. The propriety of class certification, however, is squarely outside the question the City presented for the Court's review, which focuses solely on whether the City's ordinances transgress the Punishments Clause. Pet. i. The City could have also asked the Court to review the class certification determination or the propriety of classwide injunctive relief, but it declined to do so. As such, those issues are not before the Court. *See* Sup. Ct. R. 14(1)(a).

B. *Robinson*'s Substantive Limitation On Status-Based Punishment Reflects The Proportionality Rule, Which Further Affirms The Punishments Clause's Application To The City's Ordinances.

The Court need go no further than *Robinson*'s substantive limitation on status-based punishment to reject the City's argument that its ordinances permissibly punish homeless residents for resting or sleeping outside even when shelter is unavailable. The City is also wrong, however, to dismiss *Robinson* as an "outlier in reasoning and result." Petr's Br. 38. The Court has recognized *Robinson*'s continuing vitality again

and again,[7] and the City does not identify a single decision calling *Robinson* into question.

Notably, a number of these cases recognize that *Robinson*'s substantive limitation rests on consideration of proportionality—i.e., that the Punishments Clause prohibits "not only those punishments that are 'barbaric' but also those that are 'excessive' in relation to the crime committed." *Coker v. Georgia*, 433 U.S. 584, 591-92 (1977) (plurality opinion) (citing *Robinson* among the cases establishing that principle); *Solem v. Helm*, 463 U.S. 277, 286-87 (1983); *Atkins v. Virginia*, 536 U.S. 304, 311 (2002). "The principle that a punishment should be proportionate to the crime is deeply rooted" in "common-law jurisprudence," *Solem*, 463 U.S. at 284, as well as over a century of precedent from this Court, *see id.* at 286-88. The Court has applied the proportionality rule in a variety of "different Eighth Amendment contexts," including in non-capital cases. *Harmelin v. Michigan*, 501 U.S. 957, 997-98 (1991) (Kennedy, J., concurring in part and concurring in the judgment in part).[8]

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[7] *See, e.g.*, *Gregg v. Georgia*, 428 U.S. 153, 172 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.); *Ingraham v. Wright*, 430 U.S. 651, 667 (1977); *Coker v. Georgia*, 433 U.S. 584, 591-92 (1977) (plurality opinion); *Enmund v. Florida*, 458 U.S. 782, 800 (1982); *Solem v. Helm*, 463 U.S. 277, 286-87 (1983); *Atkins v. Virginia*, 536 U.S. 304, 311 (2002).

[8] *See also, e.g.*, *Weems v. United States*, 217 U.S. 349 (1910); *Solem*, 463 U.S. 277; *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

Robinson establishes that there are some circumstances in which any punishment is unconstitutionally disproportionate under the Punishments Clause: "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." 370 U.S. at 667. The Court's proportionality framework further confirms *Robinson*'s application to the City's efforts to punish its homeless residents for simply living outside without access to shelter.[9]

1. The City's ordinances inflict overly harsh punishments for wholly innocent, universally unavoidable behavior.

When assessing whether a given punishment is "unconstitutionally excessive," courts compare "the gravity of the offense and the severity of the sentence." *Graham v. Florida*, 560 U.S. 48, 59-60 (2010). The gravity of the offense is determined by the level of "intentional wrongdoing," *Enmund v. Florida*, 458 U.S. 782, 800 (1982), and "the actual harm caused" by

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[9] The City's suggestion that respondents forfeited reliance on the proportionality principle, Petr's Br. 28, is easily dismissed. Because the Ninth Circuit's decision in *Martin* was controlling precedent, the litigation below focused primarily on whether *Martin* extended to classwide injunctive relief, *see* Pet. App. 25a-26a, 176a-187a, not whether *Martin* correctly applied *Robinson* or whether *Robinson* was correctly decided. The City's brief is thus replete with new arguments regarding *Robinson*'s scope and validity. *See generally* Petr's Br. 16-29, 38-40. The City cannot seriously contend that respondents' hands are tied in defending *Martin* and *Robinson* while its hands in attacking those decisions are not.

the conduct, *Graham*, 560 U.S. at 88 (Roberts, C.J., concurring in the judgment).

The "conduct" criminalized by the City's ordinances has no gravity as an offense at all. Like addiction, homelessness is a condition "which may be contracted innocently or involuntarily." *Enmund*, 458 U.S. at 800 (quoting *Robinson*, 370 U.S. at 667). And it is difficult to imagine a more blameless offense than resting outside with a blanket to survive the cold when you have nowhere else to go.

The City's punishment for such unavoidable and innocent "conduct" is also exceptionally harsh under the circumstances. The ordinances impose jail time for the crime of "trespass," which occurs when a person "enters or remains" on public property after receiving an "exclusion order." Pet. App. 224a; *see supra* p. 4. The police may issue an exclusion order after citing the person twice for unlawful "camping." Pet. App. 224a. In other words, the ordinances define criminal trespass as living outside as a homeless person after being fined twice for living outside as a homeless person. Violations of an exclusion order trigger up to 30 days of jail time, *see supra* p. 4, with a countless number of violations possible if the person remains in Grants Pass and is thus "continuously guilty" of trespass whenever she is not serving jail time for her last violation, *Robinson*, 370 U.S. at 666. The devastating consequences of this cycle are both readily apparent and confirmed by research demonstrating that even short periods of incarceration serve only to entrench the status of homelessness by disrupting existing em-

ployment and creating criminal records that can disqualify individuals from future employment and housing opportunities.[10]

The fines imposed by the ordinances are similarly devastating: Each violation results in a mandatory $295 fine that increases to $537.60 when left unpaid, as will almost always happen when someone is already so impoverished that they cannot afford shelter. *See* Pet. App. 175a, 190a. Here, again, the violations can accrue quickly and indefinitely so long as the individual remains "continuously guilty" of living in Grants Pass without access to shelter. *Robinson*, 370 U.S. at 666. Debra Blake received three $295 fines over the course of just one morning, along with an exclusion order subjecting her to arrest if she was "found on City property" again. *See, e.g.*, JA 181-82, 185. As of March 2020, she owed more than $5,000 in fines imposed because of her homelessness. *Id.* at 182. Unpaid fines result in additional barriers to employment and housing—including collection efforts, drivers' li-

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[10] *See* U.S. Br. 3-4 (citing U.S. Interagency Council on Homelessness (USICH), *Collaborate, Don't Criminalize: How Communities Can Effectively and Humanely Address Homelessness* (Oct. 26, 2022), https://perma.cc/DU45-BXPR; Letter from Kristen Clarke, Assistant Att'y Gen., et al., to Att'ys, U.S. Dep't of Justice (Apr. 20, 2023), https://perma.cc/3NTG-LYE5).

cense suspension, and damaged credit—further entrenching the cycle of homelessness and poverty. *See* Pet. App. 190a.[11]

2. Punishing homeless people for simply existing outside without access to shelter serves no penological purpose.

The Court has also found punishments "by … nature disproportionate to the offense" when they "lack[] any legitimate penological justification." *Graham*, 560 U.S. at 71. There are four legitimate penological interests: "retribution, deterrence, incapacitation, and rehabilitation." *Id*. When a punishment does not serve any of these goals, it "is nothing more than the purposeless and needless imposition of pain and suffering," and that alone is sufficient to render it unconstitutional. *Coker*, 433 U.S. at 592 (plurality opinion).

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[11] The Ninth Circuit determined that it need not consider whether these civil fines in isolation violate the Eighth Amendment because (a) the citations imposing the fines culminate in jail time, which suffices to permit a claim under the Punishments Clause; and (b) the City presented "no meaningful argument on appeal" regarding the district court's determination that the fines violate the Excessive Fines Clause. Pet. App. 44a-46a, 56a. As the United States notes, the City has not presented either of these holdings for the Court's review. U.S. Br. 9 n.3, 27 n.7. Respondents maintain their position that the City's failure to preserve any challenge to the unconstitutionality of the fines under the Excessive Fines Clause renders this case an exceedingly poor vehicle for reviewing the Eighth Amendment's application to the City's ordinances. *See* Br. in Opp. 34; Fines and Fees Justice Center et al. Amicus Br. Part II (urging the Court to dismiss the petition as improvidently granted on this ground).

The City undertook exactly that sort of senseless punishment when it decided to enforce the ordinances against its involuntarily homeless residents for the sole purpose of forcing them out of the community. *See supra* pp. 2-3. It is of course "within a legislature's discretion" to choose among penological goals. *Graham*, 560 U.S. at 71. But policymakers are not free to inflict punishment on a disfavored group of people in order to make them leave the community. That objective is unrelated to, and indeed counterproductive to, any legitimate penological goal. *See* U.S. Br. 21 (the City's ordinances amount "to a form of banishment, a measure that is now generally recognized as contrary to our Nation's legal tradition"); *Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823) ("The right of a citizen of one state to pass through, or to reside in any other state. . . [is] clearly embraced by the general description of privileges deemed to be fundamental.").

Indeed, although the City and its amici's constant refrain is that the decision below constrains their ability to mitigate the homelessness crisis and protect the homeless population, not one of them explains how punishing homeless people for resting outside with a blanket advances these goals when shelter is unavailable and there is nowhere else in the jurisdiction they can lawfully go. Instead, the City and its amici are wholly preoccupied with a parade of horribles—"violent crime, drug overdoses, disease, fires, and hazardous waste," Petr's Br. 47, that have nothing to do with respondents' challenge to the City's ordinances. *See* Pet. App. 200a (reiterating the City's authority "to enforce laws that actually further public health and safety, such as laws restricting littering, public urina-

tion or defecation, obstruction of roadways, possession or distribution of illicit substances, harassment, or violence"). Even the City's complaints about encampments, *see* Petr's Br. 5, 6, 45, 47, are a red herring, as the injunction here leaves the City free to sweep encampments, which it does routinely. *See, e.g.*, *City Manager's Weekly Report* 8 (Nov. 9, 2023), https://perma.cc/6JNE-UHQS.

Even more remarkably, neither the City nor any of its amici attempt to grapple with the chaos the City seeks to unleash by making it so "uncomfortable" for its homeless residents that they will be forced to move to other jurisdictions. Pet. App. 168a. What happens if other cities get frustrated with the influx of Grants Pass's homeless residents and decide to enact their own ordinances imposing $2,000 fines and six-month jail sentences for sleeping outside without access to shelter? What happens if this banishment race results in a spate of local punishment schemes that collectively operate as a nationwide ban on homelessness? *See* U.S. Br. 27 ("[I]f every jurisdiction in the Nation adopted ordinances like those at issue here, there would be nowhere for people without homes to lawfully reside."). The City and its amici have no answer.

Because the City's punishment scheme does not serve any legitimate penological purpose—and indeed serves only the City's decidedly illegitimate goal of forcing its homeless residents into other jurisdictions—it is not valid and proportionate. Instead, it results in the "gratuitous infliction of suffering," violating the Eighth Amendment. *Gregg v. Georgia*, 428

U.S. 153, 183 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.).

C. The City's Enforcement Of Its Ordinances Against Homeless People Would Have Been Abhorrent To The Founding-Era Generation.

Although the City attempts to normalize its punishment scheme as a modern-day version of founding-era poor laws, *see* Petr's Br. 42-43, those laws establish instead that the City's enforcement efforts would have been a cruel departure from societal norms during the founding era.

Initially designed in the fourteenth century as a response to the Black Death and the decay of the feudal system, poor laws historically had three components: "(a) settlement of the able-bodied in their own parish, and provision of work for them there; (b) relief of the aged and infirm, i.e., those who could not work; (c) punishment of those of the able-bodied who would not work." *Ledwith v. Roberts* [1936] 3 All ER 570 (AC) at 593-94 (summarizing the history of poor laws in England). The City's ordinances do none of these things, but rather punish people for living without shelter access regardless of whether they have any choice in the matter. Under the City's enforcement regime, it makes no difference whether someone is sick, disabled, elderly, or otherwise incapable of providing for themselves: All involuntarily homeless people are guilty of "camping" and subject to continuous punishment if they do not leave the community.

The City's ordinances are thus a radically different species from the vagrancy laws of early America. The

City cites, as its best founding-era example, a Pennsylvania law that prescribed compulsory labor for all persons who "refuse to work for the usual and common wages given to other laborers." Act of Feb. 21, 1767, ch. 555, § 1, 1767 Pa. Laws 84, 84-85; *see* Petr's Br. 43 (citing that provision). But Pennsylvania law further directed cities to offer employment and "proper houses and places and a convenient stock of hemp, flax, thread and other ware and stuff for setting to work such poor persons as apply for relief and are capable of working." Act of Mar. 9, 1771, ch. 635, § 4, 1771 Pa. Laws 75, 77. It was only the voluntary refusal to work that provided the grounds for punishment under vagrancy laws. *See* Rollin M. Perkins, *The Vagrancy Concept*, 9 Hastings L.J. 237, 257 (1958). The founding-era laws of Pennsylvania bore no resemblance to the City's infliction of punishment on people who rest or sleep outside because they cannot afford or access shelter.

Moreover, like other founding-era poor laws, Pennsylvania law not only excluded involuntary "vagrancy" from punishment, but also provided for the maintenance of "poor, old, blind, impotent and lame persons or other persons not able to work within" a city. Act of Mar. 9, 1771, ch. 635, § 4, 1771 Pa. Laws 75, 77. Indeed, "[a]ll colonial poor laws acknowledged a public responsibility to provide for the impoverished neighbor who was unable to work." William P.

Quigley, *Work or Starve: Regulation of the Poor in Colonial America*, 31 U.S.F. L. Rev. 35, 54 (1996).[12] The responsible locality was required to provide those settled poor who qualified for aid with a stipend, housing, clothing, food, education, materials with which to work, legal counsel, and healthcare, with the costs paid by the locality. *E.g.*, An Act for the Relief of the Poor, ch. 225, § 3, 1 Laws of the State of Delaware 544, 545 (Samuel & John Adams eds., 1797) (providing the poor "proper houses and places" and a supply of "hemp, flax, thread and other materials").[13]

In short, the City's ordinances would have been abhorrent to the founding-era generation, which understood each community to have an affirmative legal obligation to provide for the needs of homeless people. The founding-era poor laws would have provided Gloria Johnson—a longtime resident of Grants Pass be-

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[12] *Accord, e.g.*, Act of Feb. 11, 1794, ch. 8, 1794 Ma. Laws 347, 347 ("That legal settlements in any town or district in this Commonwealth, shall be hereafter gained, so as to subject and oblige such town or district to relieve and support the persons gaining the same, in case they become poor and stand in need of relief ….").

[13] *See also* An Act for the Relief of the Poor, 1768 Md. Laws 486, 490 (directing the purchase of "sufficient Beds Bedding Working Tools Kitchen Utensils Cows Horses and other Necessaries"); 1712 S.C. Laws 44, 44 (providing for the poor to be appointed "learned counsel" for the prosecution of any civil suits); Act of Mar. 3, 1797, ch. 39, § 2, 1 The Laws of the State of Vermont 883, 884 (Sereno Wright ed., 1808) (requiring localities to provide qualifying poor people "houses, nurses, physicians and surgeons").

fore she lost her home, JA 1—shelter, food, and clothing, not banished her from her community. *See, e.g.*, Act of Mar. 9, 1771, ch. 635, § 16, 1771 Pa. Laws 75, 84 (granting legal settlement to most residents who lived within a city for a specified period). And if a founding-era community attempted to banish settled residents like Johnson, as the City does here, state law permitted the community that received the resident to send her back home. §§ 21, 25, 1771 Pa. Laws at 87, 91-92. To be sure, none of this suggests that local governments today have a legal obligation to provide care for impoverished community members. It does establish, however, that under the norms of the founding-era generation, the City's efforts to punish those community members for their impoverished circumstances would have been grievously offensive.

Of course, the founding-era poor laws had many indefensible features that have been appropriately swept into the dustbin of history. The Thirteenth Amendment largely rejected compulsory labor as a legitimate government interest. *E.g.*, *Thompson v. Bunton*, 22 S.W. 863, 864-65 (Mo. 1893) (striking down law allowing vagrants' labor to be auctioned off to the highest bidder); *Taylor v. Georgia*, 315 U.S. 25, 29 (1942) (striking down law that imposed criminal punishment for failure to fulfill labor contract, as a form of unconstitutional "peonage"). And the drafters of the Fourteenth Amendment repeatedly cited abuses of vagrancy laws as justifying the need for the amendment. *See Timbs v. Indiana*, 139 S. Ct. 682, 688-89 (2019); *id.* at 697-98 (Thomas, J., concurring in the judgment); Cong. Globe, 39th Cong., 1st Sess. 1124 (1866) (Rep. Cook) ("If a man can be sold as a

vagrant because he does not labor, without any inquiry as to whether he can or cannot procure labor, is he a freeman?").[14]

The City's ordinances inherit many of the worst motives of the earlier vagrancy laws—in particular, "society's perception of a continuing need to control some of its 'suspicious' or 'undesirable' members." William J. Chambliss, *A Sociological Analysis of the Law of Vagrancy*, 12 Soc. Probs. 67, 75 (1964). But even those vagrancy laws did not go so far as to punish homeless people for resting or sleeping outside when they could not afford or access shelter.[15]

D. The Ordinances Offend Modern Standards Of Decency.

It is not only the founding generation that would have considered the City's ordinances abhorrent. Inflicting punishment on homeless people for resting and sleeping outside when they have nowhere else to go is also cruel and unusual by modern standards of decency.

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[14] Vagrancy laws were often overtly racist or enforced in an overtly racist fashion. As the Georgia Supreme Court wrote, "the law of vagrancy should be rigidly enforced, against the colored population especially, because many of them do lead idle and vagrant lives." *Hicks v. State*, 76 Ga. 326, 328 (1886).

[15] The only arguable historical analogues for the City's ordinances are the so-called "ugly laws" of the late nineteenth and twentieth centuries, which punished people with physical disabilities for being present in public places. *See* Disability Rights Education and Defense Fund et al. Amicus Br. Part I.C.

Although the City rests its conception of the Punishments Clause solely on its mistaken view of the Founders' intentions, Petr's Br. 19-22, the principle that today's societal norms inform the meaning of "cruel and unusual" is deeply rooted in the Court's Eighth Amendment precedent, *see, e.g.*, *Weems v. United States*, 217 U.S. 349, 372 (1910); *Roper v. Simmons*, 543 U.S. 551, 560-61 (2005); *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008); *cf. Bucklew v. Precythe*, 139 S. Ct. 1112, 1123 (2019) (recognizing that the Founders would have understood the term "unusual" to describe methods of punishment that have "fallen out of use").

The consideration of contemporary standards of decency originates in the Eighth Amendment's text and history. In *Weems*, the Court considered the same founding-era sources that the City cites in its brief and concluded that the Eighth Amendment's drafters "intended more than to register a fear of the forms of abuse that went out of practice with the Stuarts." 217 U.S. at 373. The Punishments Clause does not "prevent only an exact repetition of history," nor is it "fastened to the obsolete"; rather, it "acquire[s] meaning as public opinion becomes enlightened by a humane justice." *Id.* at 373, 378.

Legislation is the "clearest and most reliable objective evidence of contemporary values." *Atkins*, 536 U.S. at 312 (internal quotation marks omitted). A legislative judgment need not be "wholly unanimous" to weigh "very heavily" on the side of rejecting the punishment. *Id.* (internal quotation marks omitted). If a "large number" of jurisdictions have declined to inflict the challenged punishment for the offense at issue,

that is "powerful evidence that today our society views" the punishment as cruel and unusual. *Id.* at 315-16.

The ordinances of other cities, the most relevant point of comparison here, demonstrate that the Grants Pass ordinances are a cruel and unusual outlier. Among the 200 American cities with populations closest to that of Grants Pass,[16] only 18.5 percent impose sleeping bans that make it physically impossible for homeless people to avoid punishment.[17] That statistic is consistent with the findings of prior surveys of municipal ordinances criminalizing homelessness.[18]

The absence of such sleeping bans in 81.5 percent of similarly sized jurisdictions shows a legislative consensus under this Court's precedents. *See Roper*, 543 U.S. at 564 (60 percent of states shows national consensus against a punishment); *Atkins*, 536 U.S. at

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[16] That is, the 100 cities with populations closest to but bigger than Grants Pass and the 100 cities with populations closest to but smaller than Grants Pass, according to census data. *See City and Town Population Totals: 2020-2022*, U.S. Census Bureau (June 13, 2023), https://www.census.gov/data/tables/time-series/demo/popest/2020s-total-cities-and-towns.html.

[17] An appendix to this brief identifies the relevant cities and ordinances.

[18] *See* Nat'l L. Ctr. on Homelessness & Poverty, *Housing Not Handcuffs 2019*, at 41 (2019), https://perma.cc/4M8Y-HA4Y (surveying 187 cities and finding that 21 percent prohibit sleeping in public citywide).

313-15 (60 percent); *Enmund*, 458 U.S. at 792-93 (84 percent).

The policies of similarly situated cities across the country illustrate the many ways that jurisdictions can address health-and-safety concerns arising from homeless encampments without punishing the presence of homeless people in the community. For instance, some jurisdictions bar sleeping in parks or on sidewalks but not on other public lands. *E.g.*, Clermont, Fla., Mun. Code § 26-27; Gainesville, Ga., Mun. Code § 3-5-21; New Albany, Ind., Mun. Code § 98.02(L). Others limit sleeping at night but permit it during the day, or vice versa. *E.g.*, Shelton, Conn., Mun. Code § 11-51; DeLand, Fla., Mun. Code § 21-3. Still others ban sleeping in public anywhere at any time but have exceptions for when shelter is unavailable. *E.g.*, Belleville, Ill., Mun. Code § 130.03(A); Spanish Fork, Utah, Mun. Code § 9.52.040(D). Whatever their merits as a matter of public policy, such laws do not punish the status of homelessness in the way that the City's ordinances do.

State laws further underscore that the City's ordinances are cruel and unusual. Only four states have total or near-total bans on sleeping with a blanket on public property statewide. *See* N.H. Rev. Stat. § 236:58; Tenn. Code § 39-14-414; Tex. Penal Code § 48.05; *see also* H.B. 1365 (Fla. 2024) (to be codified at Fla. Stat. § 125.0231). Even in those states, the laws are narrower than the ordinances at issue here. Although the New Hampshire statute has been on the books for decades, there is no case law interpreting it, suggesting it may never be enforced. And by its terms, the statute prohibits "sleep[ing] on the ground … on

public property." N.H. Rev. Stat. § 236:58. Unlike in Grants Pass, a person would not violate the law if they were resting awake on public property wrapped in a blanket. The Tennessee law provides for the designation of "camping area[s]" and permits prosecution for sleeping on public property only if the person "know[s] that the area on which the camping occurs is not specifically designated for use as a camping area." Tenn. Code § 39-14-414(c), (d)(1). The Texas law directs police officers to "advise the person of an alternative place at which the person may lawfully camp." Tex. Penal Code § 48.05(g)(1). And Florida's new law covers only "[l]odging or residing overnight" and permits local governments to allow public camping in certain circumstances. *See* Fla. Stat. § 125.0231(1)(b)1, (2).

The other 46 states and the District of Columbia do not criminalize resting or sleeping, with a blanket or otherwise, everywhere in public. Among those states with relevant laws, most have limited their prohibitions to specific places. *See, e.g.*, Miss. Code § 97-7-7; Neb. Rev. Stat. § 39-312; S.C. Code § 10-1-35; Vt. Stat. tit. 19, § 1106. And the Oregon legislature has expressly rejected the City's punishment scheme, having recently enacted a law intended to "ensure that individuals experiencing homelessness are protected from [city-imposed] fines or arrests for sleeping or camping on public property when there

are no other options."[19] *See* Or. Rev. Stat. § 195.530(2).

Finally, federal law also disfavors imposing criminal punishments on homeless people for living in their communities. As the United States observes, U.S. Br. 3, Congress has enacted legislation urging "constructive alternatives to criminalizing homelessness and laws and policies that prohibit sleeping, feeding, sitting, resting, or lying in public spaces when there are no suitable alternatives." 42 U.S.C. § 11313(a)(12). Consistent with that mandate, the Executive Branch has repeatedly denounced the criminalization of resting or sleeping outside when shelter is unavailable.[20] The upshot is that governments at all levels have demonstrated a strong legislative consensus rejecting the City's strategy of making it physically impossible for its homeless residents to remain in the community without facing punishment.

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[19] *Hearing on H.B. 3115 Before the H. Comm. on the Judiciary*, 2021 Reg. Sess. at 4:29 (Or. 2021) (statement of Rep. Tina Kotek), https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2021031014&startStreamAt=269#conten,mt (last visited Mar. 25, 2024).

[20] USICH, *All In: The Federal Strategic Plan to Prevent and End Homelessness* (Dec. 19, 2022), https://www.usich.gov/sites/default/files/document/All_In.pdf; USICH, *From Evidence to Action: A Federal Homelessness Research Agenda, 2024-2028* (Nov. 30, 2023), https://perma.cc/G53U-XSFG; Letter from Kristen Clarke, Assistant Att'y Gen., et al., to Att'ys, U.S. Dep't of Justice (Apr. 20, 2023), https://perma.cc/3NTG-LYE5.

III. The City Does Not And Cannot Reconcile Its Eighth Amendment Theory With This Court's Precedents.

The City devotes much of its brief to the proposition that the Eighth Amendment bans only certain "methods of punishment" that were deemed barbaric at the founding. Petr's Br. 16; *see id.* at 16-28. By the City's account, the Punishments Clause has no application whatsoever to the City's enforcement of its ordinances against involuntarily homeless people so long as the inflicted punishment involves fines and jail terms rather than quartering or public dissection. *See id.* at 2-3, 16-28.

The most glaring problem with the City's theory is that it is foreclosed by a multitude of this Court's decisions spanning over a century. *Weems*, *Robinson*, *Coker*, *Enmund*, *Solem*, *Atkins*, *Roper*, *Graham*, *Miller*, and *Montgomery*—to name just a few—each held that the challenged punishment was unconstitutional based not on its barbarity but on whether it fit the crime or the person who committed it. Indeed, the Court's Punishments Clause jurisprudence has *more often* focused on the relationship between the punishment and the offense than it has on the method of punishment itself: "For the most part … the Court's precedents consider punishments challenged not as inherently barbaric but as disproportionate to the crime. The concept of proportionality is central to the Eighth Amendment." *Graham*, 560 U.S. at 59.

This Court has rejected parties' attempts to sweep away precedent "as inconsistent with the Constitution's original meaning," where those parties "offer no

account of how their argument fits within the landscape of [the Court's] case law." *Haaland v. Brackeen*, 599 U.S. 255, 279 (2023). This is especially true where the parties "neither ask [the Court] to overrule the precedent they criticize nor try to reconcile their approach with it." *Id.* The City makes exactly that mistake here. In requesting a radical reworking of the Eighth Amendment, it purports to rely on "[t]ext, history, and precedent." Petr's Br. 16. But it quickly abandons any pretense of taking the precedent part of that statement seriously, and, as its brief goes on, the City switches to referencing "text, history, or tradition," with no precedent to be found. *Id.* at 38. The City even kicks off its argument by describing the Court's Eighth Amendment doctrines as "moribund and misguided." *Id.* at 15. Another adjective that describes those precedents is "binding."

The City briefly acknowledges its precedent problems when it belatedly asks the Court to overturn *Robinson*. *Id.* at 40. That request appeared nowhere in its petition for certiorari and is thus forfeited. And the City makes no mention of overturning the many other cases rejecting its argument that the Punishments Clause bans only barbaric methods of punishment. To the limited extent the City addresses those cases, it simply dismisses them as mere exceptions to the rule that the City advocates. *See id.* at 22-24. But the number of purported exceptions demonstrates that those exceptions are in fact the rule articulated by this Court, and the City provides no guidance for how "to reconcile [its] approach" with that rule. *Brackeen*, 599 U.S. at 279.

Remarkably, even the Supreme Court case on which the City principally relies, *Pervear* v. *Commonwealth*, 72 U.S. (5 Wall.) 475 (1867), undermines its theory. *Pervear*, this Court's first decision interpreting the Punishments Clause, did not hold that fines and jail time are categorically permissible methods of punishment. Rather, the Court considered whether a $50 fine and three months of imprisonment at hard labor were "excessive, or cruel, or unusual" for the crime of keeping and selling alcohol. *Id.* at 480. In holding that they were not, the Court began by explaining that "[t]he object of the law was to protect the community against the manifold evils of intemperance." *Id.* This discussion of the gravity of the offense in relation to the sentence would have been wholly unnecessary if fines and jail terms were constitutional in all applications.

As to the City's historical arguments, Petr's Br. 19-22, the Court has already directly addressed these points—including the views of Justice Story and Patrick Henry, and the tyranny of the Stuarts—and rejected the City's claim that the Punishments Clause is unconcerned with the relationship between the challenged punishment and the underlying offense. *Weems*, 217 U.S. at 371-73 (evaluating these sources before holding that the Founders intended more than "to prevent only an exact repetition of history"). And one of the City's own amici wrote an article thoroughly debunking the City's claim that the Clause is limited to methods of punishment. *See* John F. Stinneford, *Rethinking Proportionality Under the Cruel and Unusual Punishments Clause*, 97 Va. L. Rev. 899, 946 (2011) (explaining that "the Framers

understood the prohibition of cruel and unusual punishments to encompass excessive punishments as well as barbaric ones," consistent with "preexisting common law limitations on punishment").[21]

The City's parsing of the Punishments Clause's text, Petr's Br. 16-19, similarly fails to advance its theory. No one disagrees that the question posed by the Clause is whether the punishment "inflicted" by the government is "cruel and unusual." That is the textual inquiry the Court always undertakes, whether it is assessing a punishment as a method or in relation to the offense. And it is the inquiry that respondents undertake here. For the reasons articulated throughout this brief, the City's punishment scheme "inflicts unnecessary terror, pain, [and] disgrace" on the City's involuntarily homeless residents in a manner that is "inhuman," "hard-hearted," and "destitute of pity." *Id.* at 17 (internal quotation marks omitted). City leaders expressly intended the punishment to "torment, vex or afflict," *id.* (internal quotation marks omitted), the City's homeless residents such that they would leave Grants Pass, *supra* pp. 2-3. And the City's punishment scheme is "not usual; not common; rare," Petr's Br. 18 (internal quotation marks and alteration omitted), whether viewed in light of the norms of the founding era or today, *see supra* Parts II.C & D.

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[21] Professor Stinneford's amicus brief is unfortunately cursory, as he overlooks the poor law framework discussed above in Part II.C. *See also* William P. Quigley et al. Amicus Br. Part I.

The City cannot seriously claim that the Court is foreclosed from considering anything other than the method of punishment in isolation. Its theory of the Eighth Amendment is like Ptolemy's theory that the Earth sits at the center the universe. *See* Galileo Galilei, *Dialogue Concerning the Two Chief World Systems* (1632). It is based on a false set of foundational principles. And as a descriptive matter, it fails to provide a workable account of what has come before.

IV. The Government's "Particularized Inquiry" Criticism Is Outside The Scope of The City's Petition.

The United States agrees in full with respondents on the question presented by the City for this Court's review, which is limited to whether the City's ordinances inflict cruel and unusual punishment on homeless people who cannot afford or access shelter. *See* U.S. Br. 17-27.

The United States nonetheless argues that the Ninth Circuit erred "in failing to require a more particularized inquiry into the circumstances of the individuals subject to the City's ordinances." *Id.* at 28. This argument raises complicated and unbriefed questions about Rule 23(b)(2) class actions—questions the government acknowledges are "not before the Court." *Id.* at 31. Because (b)(2) classes were designed to provide declaratory or injunctive relief for "a numerous and often unascertainable or amorphous class of persons," the determination whether a particular individual is a class member frequently requires some inquiry. 2 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 4:26 (6th ed. 2023). The plaintiffs here bore the burden of establishing that all

of the Rule 23(a) and (b)(2) factors were met, *see Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)—including that the named plaintiffs were typical members of the class. But they did not need to identify every class member or provide individualized evidence of their involuntary homelessness: those who do not meet the definition are simply not included in the class. The government's suggestion that more is required for (b)(2) class actions is far outside the question presented in this case.

The government purports to transform its objection into a "central legal error" implicating the question presented, U.S. Br. 32, but only by ignoring the fact that the Ninth Circuit defined "involuntarily homeless" precisely the same way the government does. *Compare id.* at 28 ("Only when individuals lack another place to sleep can it be said that an ordinance against sleeping or camping in public, as applied to them, effectively punishes them for something for which they may not be convicted under the Eighth Amendment." (internal quotation marks and emphasis omitted)), *with* Pet. App. 40a n.23 ("If … a homeless individual has access to shelter, then they do not benefit from the injunction and may be cited or prosecuted under the anti-camping ordinances."). And although the government criticizes what it describes as a "population-to-beds rule," U.S. Br. 29, it concedes that the panel amended its opinion on rehearing to

make clear that it *rejected* that ratio as a formula for determining shelter access, *id.*[22]

The government strays yet further afield from the question presented when it suggests that the named plaintiffs failed to show that they have nowhere to rest or sleep besides public property. *Id.* at 30. This argument can be understood only as an attack on the panel's determination that the named plaintiffs satisfy the typicality requirement for class certification—a determination, again, that is not before this Court. Indeed, the City does not mention respondents by name even once in its petition, its reply, or its merits brief, let alone challenge the lower courts' evidentiary determinations regarding their individual circumstances. And for good reason: Those determinations are supported by extensive evidence, and they are not remotely presented for the Court's review.

In any event, if respondents prevail before this Court on the question actually presented, as the United States believes they should, the proper disposition will be to remand for the district court to narrow the injunction as the Ninth Circuit already instructed. Pet. App. 57a. To the extent this Court clarifies or adjusts those instructions, the district court will be well positioned to incorporate the Court's guidance in refashioning the injunction. The City unques-

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[22] The government also criticizes the Ninth Circuit for declining to imagine what type of evidence might be useful to establish involuntariness, U.S. Br. 29-30, but the panel had no reason to do so. Unrebutted evidence demonstrated that the named plaintiffs were involuntarily homeless. Pet. App. 52a-53a & nn.31-32.

tionably declined, however, to seek this Court's review of the district court's class certification determination, and as such, there is no basis for disturbing it.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX

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Peer Municipalities With Citywide Public Sleeping Bans

Municipality	Relevant Ordinances
Florence, Alabama	§§ 16-13, 16-14, 16-15, 18-6
Apache Junction, Arizona	§§ 10-5-1, 10-5-7
El Mirage, Arizona	§ 92.29
Claremont, California	§§ 9.30.020, 9.30.030,
Hollister, California	§§ 9.40.020, 9.40.030, 12.32.070
La Puente, California	§§ 3.70.010; 3.70.030
Manhattan Beach, California	§§ 4.140.020, 4.140.030
Montclair, California	§§ 6.25.010, 6.25.020
Moorpark, California	§§ 12.16.010, 12.16.100
Oakley, California	§§ 4.37.104, 4.37.106, 4.37.108
Stanton, California	§§ 12.36.020, 12.36.030
Temple City, California	§§ 4-10-1, 4-10-2, 4-10-3
Brighton, Colorado	§§ 9-8-90, 12-20-40
Hallandale Beach, Florida	§ 19-1

Lake Worth Beach, Florida	§§ 7-9, 7-62, 15-29
Newnan, Georgia	§§ 14-13, 18-19
Peachtree City, Georgia	§§ 50-3, 50-4
Rome, Georgia	§ 14-25
Tucker, Georgia	§§ 30-100, 30-101, 30-102
Calumet City, Illinois	§ 62-317
Park Ridge, Illinois	§ 14-7-11
Cedar Falls, Iowa	§ 19-12
Beverly, Massachusetts	§§ 210-4, 210-5
Westfield, Massachusetts	§ 10-27
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Atlantic City, New Jersey	§ 204-29
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Duncanville, Texas	§§ 12-274, 12-277
Texarkana, Texas	§ 28-11
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Midvale, Utah	§§ 9.54.070, 9.62.010, 9.62.020
Roy City, Utah	§ 5-2-9
Tooele, Utah	§ 11-1-12
Danville, Virginia	§ 23-9-1
Lynnwood, Washington	§§ 10.17.010, 10.17.020, 10.17.030
Puyallup, Washington	§§ 9.20.005, 9.20.130
Sun Prairie, Wisconsin	§§ 9.12.010, 12.44.010

Peer Municipalities Without Citywide Public Sleeping Bans

Municipality	Relevant Ordinances
Phenix City, Alabama	None
Prattville, Alabama	§§ 50-52, 51-37
Vestavia Hills, Alabama	None
Bullhead City, Arizona	§§ 9.08.020, 9.08.120, 9.08.130, 9.12.100
Hot Springs, Arkansas	§§ 13-4-1.4, 13-4-2.3, 15-8-18
Pine Bluff, Arkansas	None
Adelanto, California	§§ 9.10.030, 9.10.040, 9.35.040
Bell Gardens, California	§ 12.04.010
Calexico, California	§ 9.18.010, 9.18.020
Coachella, California	§§ 12.42.020, 12.42.030, 12.42.040, 12.42.050
Culver City, California	§ 9.10.700
Danville, California	§ 13-2.3
La Quinta, California	§§ 11.44.060, 11.85.020, 12.12.050
Martinez, California	§§ 8.26.010, 8.26.020

Monrovia, California	§ 12.32.050
Pacifica, California	§§ 4-10.101, 4-10.118
Rancho Palos Verdes, California	§ 12.16.140
San Gabriel, California	§ 130.20
West Hollywood, California	§§ 9.04.030, 9.04.040, 11.12.030
Wildomar, California	§§ 9.52.050, 9.52.070, 9.52.080, 9.52.140, 12.12.010
Northglenn, Colorado	§ 9-16-4
Norwich, Connecticut	None
Shelton, Connecticut	§§ 2-115.1, 11-51
Torrington, Connecticut	§§ 155-10, 180-16
Dover, Delaware	§ 74-23
Aventura, Florida	Ord. No. 2023-19
Clermont, Florida	§ 26-27
DeLand, Florida	§§ 2-50, 21-3
Dunedin, Florida	§§ 54-6, 54-35

Estero, Florida	§ 22-169, 22-204
Lauderdale Lakes, Florida	None
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Post Falls, Idaho	§ 12.48.010
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Addison, Illinois	§ 17-1
Bartlett, Illinois	§ 5-3-2

Belleville, Illinois	§ 130.03
Buffalo Grove, Illinois	§ 9.28.010
Carol Stream, Illinois	§§ 14-3-6, 14-3-7, 15-8-2
Carpentersville, Illinois	§ 9.12.080
Crystal Lake, Illinois	§ 383-2
DeKalb, Illinois	§ 12.01
Hanover Park, Illinois	§66-192, 86-11
Moline, Illinois	§ 23-2102
Quincy, Illinois	None
Rock Island, Illinois	§§ 10-23, 14-20
Romeoville, Illinois	§ 94.04
Streamwood, Illinois	§ 7-1-1
Urbana, Illinois	§§ 15-36, 15-59, 20-300, 20-302
Wheeling, Illinois	§§ 8.12.070, 9.18.122
Merrillville, Indiana	§ 10-5
New Albany, Indiana	§ 98.02

Portage, Indiana	None
Richmond, Indiana	§§ 95.14, 130.26
Bettendorf, Iowa	§ 7-6-5
Marion, Iowa	None
Hutchinson, Kansas	§§ 13-103, 15-103
Leavenworth, Kansas	§ 30-8
Covington, Kentucky	§ 94.033
Georgetown, Kentucky	§§ 30-19, 32-29
Lewiston, Maine	§§ 50-5, 66-71
Annapolis, Maryland	§ 11.12.060
Hagerstown, Maryland	§§ 142-2, 173-29
Amherst, Massachusetts	None
Braintree, Massachusetts	None
Chelsea, Massachusetts	None
Fitchburg, Massachusetts	§ 132-10
Holyoke, Massachusetts	§§ 54-5, 90-51

Marlborough, Massachusetts	§ 608-23
Watertown, Massachusetts	§§ 96.11, 130.02
Woburn, Massachusetts	§§ 12-29, 12-34, 12-40, 12-41
Lincoln Park, Michigan	§§ 666.01, 666.02
Midland, Michigan	§§ 16-19, 16-22
Muskegon, Michigan	§ 54-97
Cottage Grove, Minnesota	§ 7-3-3
Inver Grove Heights, Minnesota	§ 7-5-1
Maplewood, Minnesota	§§ 18-40, 26-264
Richfield, Minnesota	None
Roseville, Minnesota	§§ 502.01, 703.10
Tupelo, Mississippi	None
Jefferson City, Missouri	§§ 18-149, 18-224
Wildwood, Missouri	§ 235.050
Fort Lee, New Jersey	§§ 200-2, 293-4
Kearny, New Jersey	§§ 4-7.1, 4-7.2, 4-7.3, 11-4.2

Clovis, New Mexico	None
Hobbs, New Mexico	§§ 9.16.130, 9.16.170, 12.28.160
Valley Stream, New York	§§ 47-2, 56-18, 56-40
Hickory, North Carolina	§ 29-24
Holly Springs, North Carolina	§ 10-4
Indian Trail, North Carolina	§§ 31.08.14, 94.01.07, 132.01.01
Salisbury, North Carolina	§§ 22-5, 22-41
West Fargo, North Dakota	None
Brunswick, Ohio	None
Delaware, Ohio	None
Findlay, Ohio	None
Gahanna, Ohio	§§ 563.14, 563.16
Grove City, Ohio	§ 903.08
Hilliard, Ohio	§ 971.11
Huber Heights, Ohio	§§ 509.09, 907.01, 943.08
Lancaster, Ohio	None

Lima, Ohio	§§ 648.11, 648.16
Marion, Ohio	None
Reynoldsburg, Ohio	§ 971.21
Upper Arlington, Ohio	§§ 539.03, 539.10
Warren, Ohio	§ 509.15
Westerville, Ohio	§ 965.08
Bartlesville, Oklahoma	§ 13-6
Muskogee, Oklahoma	§§ 54-217, 58-13
Owasso, Oklahoma	§§ 10-409, 10-411, 11-104
Keizer, Oregon	Ord. No. 2023-865
Lake Oswego, Oregon	§§ 34.12.611, 42.06.350
Oregon City, Oregon	§ 12.16.040
Norristown, Pennsylvania	None
State College, Pennsylvania	§§ 5-602, 5-603, 5-604, 12-103
Woonsocket, Rhode Island	§§ 14-3, 15-5
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Hilton Head Island, South Carolina	§§ 8-1-211, 17-7-111
Spartanburg, South Carolina	None
Sumter, South Carolina	§§ 58-2, 86-6
Columbia, Tennessee	None
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Sherman, Texas	§§ 1.11.185, 1.11.204, 3.10.002
Weslaco, Texas	None
Eagle Mountain, Utah	§ 7.05.040
Kearns, Utah	§§ 13.04.200, 14.32.160
Pleasant Grove, Utah	§ 7-2-6
Saratoga Springs, Utah	None
Spanish Fork, Utah	§§ 9.52.020, 9.52.030, 9.52.040
Manassas, Virginia	§ 78-311
Bremerton, Washington	§ 9.32.020
Edmonds, Washington	§§ 5.70.030; 5.70.050
Issaquah, Washington	§§ 9.26.010, 9.26.030
Lake Stevens, Washington	§ 9.80.030
Longview, Washington	§ 7.29.010
Wenatchee, Washington	§§ 6A.18.020, 6A.18.140, 6B.06.015, 7.40.050
Beloit, Wisconsin	§§ 15.03, 18.02
Brookfield, Wisconsin	§§ 9.24.010, 9.24.020, 9.24.050, 12.24.050

Franklin, Wisconsin	§§ 183-30, 222-5
Greenfield, Wisconsin	§§ 10.05, 10.09, 10.16
Menomonee Falls, Wisconsin	§§ 62-117, 62-119, 66-36
New Berlin, Wisconsin	§§ 184-15, 230-5, 230-6
Oak Creek, Wisconsin	§§ 11.24, 11.25
Wausau, Wisconsin	§§ 9.20.020, 9.24.010, 9.24.020, 12.44.020