

No. 23-175

IN THE
Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,
Petitioner,
v.

GLORIA JOHNSON, *et al.*, on Behalf of Themselves and
All Others Similarly Situated,
Respondents.

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

**BRIEF FOR PUBLIC HEALTH PROFESSIONALS
AND ORGANIZATIONS AS AMICI CURIAE
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICI CURIAE¹

Amici are medical and public health professionals and organizations from across the country whose research, teaching, and professions focus on public health. Their expertise is relevant to the impacts on public health of laws regulating camping on public property under the Eighth Amendment. Amici also have a strong professional interest in the proper disposition of cases involving public health implications. Amici agree with Respondents that the City of Grant Pass's ordinances that make the status of homelessness unlawful violate the Eighth Amendment. They write separately to address the public health implications of regulating camping on public property. Specifically, Amici focus on the direct and indirect medical impacts associated with the disruption of sleep and its greater impact on public health by focusing on recent research and literature on the biological need for sleep, the factors that contribute to adequate sleep, and the negative effect disrupted sleep has on the health and well-being of unhoused individuals. This brief highlights studies that detail the unique health impacts experienced by unhoused persons when sleep is disrupted or takes place in unsafe conditions.

Amici, listed below, submit this brief in their individual capacities and include their affiliations when applicable for identification purposes only:

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

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- Massachusetts Public Health Association
- AIDS Healthcare Foundation
- Ritter Center
- The Night Ministry
- Heartland Alliance Health
- American Public Health Association

SUMMARY OF ARGUMENT

The Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment. The City of Grants Pass instituted three ordinances that criminalize “camping” on public property, including using a blanket to sleep in public spaces. Unfortunately, unhoused individuals in Grants Pass have no option but to violate these laws. Moreover, the Grants Pass Ordinances fail to promote public health in the unhoused persons community and, instead, disregard scientific

evidence that, for decades, has shown how similar ordinances have led to negative health outcomes.

Over half a million people across the country are without housing. This humanitarian crisis can be attributed to several factors, including stagnant wages and the lack of affordable housing; the impact of mental health, addiction and other disability challenges; family conflict and domestic violence; and the negative effect of criminal history on access to housing. Communities frequently lack the resources to address this crisis and local shelters are frequently full or cannot accommodate individual medical or disability needs.

As a result, many unhoused people have no practical choice but to sleep outside, including on public streets and other public property. Because of the elements, unhoused individuals living outside naturally seek to protect themselves by erecting tents or other forms of temporary shelter. In certain parts of the country, such measures can be necessary to engage in basic human function like sleep.

Sleep is not a luxury; it is a biological necessity as it is a restorative process for the human brain and body. Although the biological necessity for sleep has been known for centuries, the importance of sleep has only recently been confirmed by modern medicine and scientific studies. These studies demonstrate that poor sleep quality directly leads to profound negative health outcomes, such as hypertension, sleep apnea, and stroke. Variables that relate to poor sleep outcomes include unregulated temperature, lighting, and the availability of bed coverings. For unhoused persons, many of these factors are beyond their control.

Unlike housed persons who can easily change the temperature of their bedroom, unhoused individuals

must fight weather conditions that impact their sleep as well as the many other challenges that come with lacking a physical home.

Homeless persons, like any other person, must sleep to live. However, the Grants Pass Ordinances makes it impossible for them to do so. The ordinances ignore public health science by criminalizing the mere existence of unhoused persons by forcing them to risk their lives by sleeping in harsh winter conditions without a blanket or sufficient coverings.

By criminalizing unhoused individuals for engaging in life sustaining conduct like sleeping, the Grants Pass Ordinances create an environment where unhoused persons lack a single place that they can lawfully be. The Eighth Amendment's cruel and unusual punishment clause forbids government actors from using criminal process to compel compliance with bans on living in public places when those subject to such process have no alternative place to stay.

ARGUMENT

I. THE GRANTS PASS ORDINANCES REGULATING CAMPING ON PUBLIC PROPERTY HAVE PROFOUND NEGATIVE CONSEQUENCES ON PUBLIC HEALTH

The City of Grants Pass, Oregon instituted ordinances that make it illegal to sleep anywhere in public at any time. Grants Pass Municipal Code §§ 5.61.020(A), 5.61.010(B), 5.61.030, 6.46.090 (together, Grants Pass Ordinances). More specifically, Section 5.61.020(A) criminalizes sleeping “on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety.” Similarly, Sections 5.61.030 and 6.46.090 criminalize “[c]amping” in public places, where Section 5.61.010(B) defines a “[c]ampsite” as “any place where

bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed.” Under these ordinances, sleeping with bedding, like a blanket, is considered a violation of law. *Id.* § 5.61.010(B). Enforcing these ordinances has significant negative consequences on public health.

The Center for Disease Control and Prevention (CDC) defines “public health” as “the science and art of preventing disease, prolonging life, and promoting health through the organized efforts and informed choices of society, organizations, public and private communities, and individuals.”² The concept of public health calls for the protection of all people and communities through such proactive education and engagement, and drives to eradicate health disparities amongst different populations.³ As the World Health Organization (WHO) has succinctly and powerfully suggested in its own Constitution, “[h]ealth is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”⁴

The Grants Pass Ordinances do not promote public health in the unhoused persons community and, instead, disregard scientific evidence that demonstrates how

² *Introduction to Public Health*, Centers for Disease Control & Prevention, <https://www.cdc.gov/training/publichealth101/public-health.html> (visited Mar. 27, 2024).

³ *What is public health?*, Harvard School of Public Health, <https://www.hsph.harvard.edu/communications-guide/what-is-public-health/> (visited Mar. 27, 2024).

⁴ *WHO Constitution*, World Health Organization, <https://www.who.int/about/accountability/governance/constitution> (visited Mar. 27, 2024).

such ordinances will lead to negative results.⁵ The National Law Center on Homelessness & Poverty suggest that “[c]riminalization policies make the problem of homelessness worse.”⁶ By incarcerating homeless individuals “for having to live outdoors, it hurts their employment and housing options, access to education, family stability, and communities.”⁷ “[I]n 2023, roughly 653,100 people—or about 20 of every 10,000 people in the United States—[] experience[ed] homelessness” each day.⁸ Four in ten of those unhoused individuals were in unsheltered locations, including on the street, in abandoned buildings, or in makeshift encampments with varied levels of resources available to them.⁹ From 2022 to 2023, the total number of unhoused persons nationwide

⁵ Robinson, *No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness*, 55 *Urban Affairs Rev.* 41, 41 (Jan. 2019) (“The data reveal that the oft-stated goal of improving the quality of life of homeless residents through ‘tough love’ policing campaigns has not been met. Instead, most homeless residents report their lives have become more challenging, more stressful, and less safe following expansion of quality of life policing.”).

⁶ *Housing Not Handcuffs Fact Sheet: The Top Five Ways Criminalization of Homelessness Harms Communities*, Nat’l L. Ctr. on Homelessness & Poverty, 1 (2016), <https://housingnohandcuffs.org/wp-content/uploads/2016/07/HNH-Crim-One-Pager.pdf>.

⁷ *Id.*

⁸ de Sousa et al., *The 2023 Annual Homeless Assessment Report (AHAR) to Congress, Part 1: Point-in-Time Estimates of Homelessness*, U.S. Dep’t of Housing & Urban Dev., 2 (Dec. 2023), <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>.

⁹ *Id.*

has increased by about 70,650 (12%).¹⁰ These individuals¹¹ are vulnerable to various public health concerns, including the biological necessity of quality sleep.

Individuals experiencing homelessness often lack the necessary environment to obtain quality sleep, which inflicts profound negative consequences on their own well-being and overall public health. Those experiencing homelessness—like everyone else—must sleep. However, individuals experiencing homelessness lack that ability to obtain quality sleep, which inflicts profound negative consequences on their own well-being and public health more generally. By criminalizing sleep, the Grants Pass Ordinances make an already challenging situation for unhoused persons even worse by depriving individuals experiencing homelessness of

¹⁰ *Id.*

¹¹ It is well established that indigenous and minority populations have experienced significant hardships. *See, e.g., Haaland v. Brackeen*, 599 U.S. 255, 296-305 (2023) (Gorsuch, J., concurring) (surveying history of schooling for indigenous children); *Brown v. Board of Educ.*, 347 U.S. 483, 486-494 (1954) (surveying history of school segregation and overturning *Plessy v. Ferguson*, 163 U.S. 537 (1896), which permitted “separate but equal” facilities). Homelessness is no exception. According to the 2023 Oregon Statewide Homelessness Estimates, “Native Hawaiian or Pacific Islander Oregonians experienced homelessness at a rate 3.58 times higher than their overall share of the state population. Black, African American, or African Oregonians experienced homelessness at a rate 3.27 times higher than their share of the population. American Indian, Alaska Native, or Indigenous Oregonians experienced homelessness at a rate 2.43 times higher than their share of the population. Multiracial Oregonians experienced homelessness at a rate 1.66 times higher than their share of the population.” Greene et al., *2023 Oregon Statewide Homelessness Estimates*, Portland State Univ. Homelessness Research & Action Collaborative, 13 (Jan. 2024), https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1042&context=hrac_pub.

basic, life-sustaining, human function. The Grants Pass Ordinances make hard circumstances worse.

Under basic principles of criminal law, including the bedrock constitutional prohibition against cruel and unusual punishment, people cannot face law enforcement action for conduct they were powerless to avoid. *See Martin v. City of Boise*, 920 F.3d 584, 604 (9th Cir. 2019); *Robinson v. California*, 370 U.S. 660, 667 (1962). Here, the Grants Pass Ordinances ignore scientific and public health concerns by depriving individuals experiencing homelessness the ability to sleep, let alone to have quality sleep, in violation of the Eighth Amendment’s provision against cruel and unusual punishment.

A. Scientific Studies And Public Health Experts Confirm The Importance Of Quality Sleep

1. Quality sleep is a biological necessity

Quality sleep is a biological necessity that dates back thousands of years. Sleep is a required health factor for survival—a basic need akin to “eating, drinking, and breathing.”¹² The importance of undisturbed rest has been recognized in biblical texts and documented in other ancient practices, such as the belief of ancient Greeks that ailments could be cured by sleeping in “temples dedicated to Asclepius, the god of healing.”¹³ Because of its biological necessity, children to centenarians

¹² *What are Sleep Deprivation and Deficiency?*, Nat’l Heart Lung, and Blood Inst., <https://www.nhlbi.nih.gov/health/sleep-deprivation> (updated Mar. 24, 2022).

¹³ *Proverbs* 3:24 (English Standard Version) (“If you lie down, you will not be afraid; when you lie down, your sleep will be sweet.”); Yount et al., *Trends in waking salivary alpha-amylase levels following healing lucid dreams*, 15 *Frontiers in Psych.* 1, 2 (Jan. 17, 2024).

know that a bad night of sleep negatively impacts the following day. It is also common knowledge that a string of days with poor sleep negatively impacts overall health and ability to function both physically and cognitively. Studies, ranging from those conducted with physicians, students, and the elderly, all consistently show that an individual's health is negatively impacted when sleep deprivation occurs.¹⁴

Although the biological necessity for sleep has been known for centuries the well-known intuition about the importance of sleep has been confirmed by modern medicine and scientific study. While individual sleep needs vary, the American Academy of Sleep Medicine and Sleep Research Society (SRS) recommend that the average adult “should sleep 7 or more hours per night on a regular basis to promote optimal health.”¹⁵ The National Sleep Foundation (NSF) provides similar consensus recommendations of 7 to 9 hours of sleep for adults and 7 to

¹⁴ *E.g.*, Trockel et al., *Assessment of Physician Sleep and Wellness, Burnout, and Clinically Significant Medical Errors*, 3 JAMA Network Open 1, 2 (Dec. 7, 2020) (“In this study, sleep-related impairment was associated with increased burnout, decreased professional fulfillment, and increased self-reported clinically significant medical error.”); *see also* Maheshwari et al., *Impact of Poor Sleep Quality on the Academic Performance of Medical Students*, 11 Cureus 1, 1 (Apr. 1, 2019); Scullin, *Do Older Adults Need Sleep? A Review of Neuroimaging, Sleep, and Aging Studies*, 3 Current Sleep Med. Rep. 204, 204 (July 27, 2017).

¹⁵ Watson et al., *Recommended Amount of Sleep for a Healthy Adult: A Joint Consensus Statement of the American Academy of Sleep Medicine and Sleep Research Society*, 11 J Clinical Sleep Med. 591, 591 (June 15, 2015) (emphasis omitted).

8 hours of sleep for older adults.¹⁶ Doctors and researchers have extensively studied the factors that contribute to quality sleep and the profound negative consequences that arise when quality sleep does not occur. Sleep serves “as a restorative process providing time for the brain and body to recover” from the events that occur during hours of wakefulness, which “not only allows for renewal of energy and mental focus”—but also has been demonstrated to increase cellular health.¹⁷

Aside from establishing the well-known fact that sleep is a biological necessity, numerous scientific studies have confirmed that quality sleep is critical to a person’s health. Scientists have used three types of studies to measure the importance of sleep: (1) sleep deprivation studies, which have shown that a lack of quality sleep can result in “increased stress, such as increased blood pressure, impaired control of blood glucose, and increased inflammation”; (2) cross-sectional epidemiological studies, which have linked improper sleep duration to hypertension, diabetes, and obesity; and (3) longitudinal epidemiological studies, which are beginning to suggest that experiencing the recommended amount of sleep on a regular basis could reduce the risk of developing a future disease or the severity of existing conditions.¹⁸ These

¹⁶ *How Much Sleep Do You Really Need?*, National Sleep Found. (Oct. 1, 2020), <https://www.thensf.org/how-many-hours-of-sleep-do-you-really-need/>.

¹⁷ Caroll & Prather, *Sleep and biological aging: A short review*, 18 *Current Opinion in Endocrine and Metabolic Res.* 159, 159-162 (2021).

¹⁸ *Why Sleep Matters: Consequences of Sleep Deficiency*, Harvard Med. Sch. Div. of Sleep Med., <https://sleep.hms.harvard.edu/education-training/public-education/sleep-and-health-education->

studies plainly establish that quality sleep is essential for the “development, behavior, and survival” of human beings.¹⁹

For example, a recent study “found that a group of healthy subjects who had their sleep cut back from 8 to 4 hours per night processed glucose more slowly than they did when they were permitted to sleep 12 hours.”²⁰ Impaired processing of glucose, the carbohydrate used by cells for fuel, can lead to a range of diseases, including type 2 diabetes.²¹ Another study, which included the wearing of a health monitor for several days and testing saliva and blood samples, demonstrated that “sleep deprivation results in increased inflammation and decreased cortisol levels in the morning, that are accompanied by deficits in vigilance and impulsivity.”²² In another study, which sampled 6,424 individuals who experienced “home polysomnography” (i.e., the monitoring of brain waves,

program/sleep-health-education-45 (expand the *Sleep and Disease Risk* section) (updated Oct. 1, 2021).

¹⁹ Fan et al., *How Temperature Influences Sleep*, Int'l J. Molecular Scis., 1 (Oct. 13, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9603733/pdf/ijms-23-12191.pdf>; see also Aidala et al., *Housing Status, Medical Care, and Health Outcomes Among People Living With HIV/AIDS: A Systematic Review*, 106 Am. J. Pub. Health e1, e16 (Jan. 2016) (explaining that “[h]omelessness or unstable or inadequate housing was linked to higher viral loads and failure to attain or sustain viral suppression” in Human Immunodeficiency Virus (“HIV”) positive unhoused persons).

²⁰ *Why Sleep Matters*, *supra* note 18.

²¹ *Id.*

²² Thompson et al., *Acute sleep deprivation disrupts emotion, cognition, inflammation, and cortisol in young healthy adults*, 16 *Frontiers in Behav. Neurosci.* 1 (Sept. 23, 2022), <https://doi.org/10.1007/s40675-017-0086-z>.

oxygen level, heart rate, and breathing during sleep), “documented increased risk of coronary artery disease, congestive heart failure, and stroke among patients with severe sleep apnea.”²³

2. Unhoused persons have no control over the factors that impact quality sleep

Scientists and medical professionals have studied numerous variables that impact the quality of sleep in housed and unhoused individuals. These studies show that sleep quality is dictated by a number of variables including: (1) temperature and lighting; (2) the use of bed covering; (3) a consistent sleep schedule; and (4) a circadian rhythm and there is not one component that can be directly correlated to sleep quality.²⁴ Overall, these studies demonstrate the importance of certain sleep variables on individuals who have access to controlling some of these variables.

First, the temperature and lighting of a sleep environment is one of the most important factors to affect an individual’s sleep.²⁵ Research has found that

²³ Jean-Louis et al., *Obstructive Sleep Apnea and Cardiovascular Disease: Role of the Metabolic Syndrome and Its Components*, 4 J. Clinical Sleep Med. 261, 262 (June 15, 2008).

²⁴ Nelson et al., *Sleep quality: An evolutionary concept analysis*, 57 Nursing Forum 144, 144-149 (2021).

²⁵ See, e.g., Okamoto-Mizuno & Mizuno, *Effects of thermal environment on sleep and circadian rhythm*, 31 J Physiological Anthropology (May 2012), <http://www.jphysiolanthropol.com/content/31/1/14> (“The thermal environment is a key determinant of sleep because thermoregulation is strongly linked to the mechanism regulating sleep.”); *NIOSH Training for Nurses on Shift Work and Long Work Hours*, Centers for Disease Control & Prevention, <https://www.cdc.gov/niosh/work-hour-training-for-nurses/longhours/>

“[e]xcessively high or low ambient temperature [] may affect sleep even in healthy humans” who do not have pre-existing sleep conditions like insomnia or sleep apnea.²⁶ Sleep experts recommend a sleeping temperature of 65 degrees for improved sleep quality.²⁷ Sleep experts also recommend a dark environment for sleeping, as light strongly affects the ability to stay asleep.²⁸

Individuals experiencing homelessness, however, have no control over their sleeping environment. Individuals sleeping outside cannot regulate the temperature of their environment and are subject to the weather, which in today’s climate can range from extreme cold to extreme heat.²⁹ Individuals sleeping outside also cannot regulate the amount of light in their sleeping environment—they do not have blinds that block the sun or light pollution.³⁰ The Grants Pass Ordinances exacerbate these issues, as they completely deprive individuals experiencing homelessness the ability

mod6/07.html (updated Mar. 31, 2020) (“Morning light strikes the retina of your eye and sets up a chain of circadian hormonal reactions that signal the body to begin daytime alerting processes.”).

²⁶ Okamoto-Mizuno, *supra* note 25, at 1.

²⁷ *Sleep for a Good Cause*, Centers for Disease Control & Prevention, <https://www.cdc.gov/diabetes/library/features/diabetes-sleep.html> (updated July 28, 2022).

²⁸ *NIOSH Training for Nurses*, *supra* note 25.

²⁹ *E.g.*, Goodling, *Intersecting Hazards, Intersectional Identities: A Baseline Critical Environmental Justice Analysis of Homelessness*, 3 *EPE: Nature & Space* 833, 845 (2019).

³⁰ Mason et al., *Light Exposure During Sleep Impairs Carinometabolic Function*, 119 *Proceedings of the Nat’l Acad. of Scis.* (Jan. 30, 2020), <https://www.pnas.org/doi/full/10.1073/pnas.2113290119>.

to shield themselves from the elements or create a dark sleeping environment.

Second, studies have established that “the use of bed covers allows for the development of an isolated high bed climate temperature, which is critical for maintaining sleep as well as determining sleep quality,” and that “[t]he temperature and humidity of the microclimate between humans and bed covers ... play crucial roles in creating a warm bed climate temperature to support increased [peripheral skin temperature] and sleep.”³¹ Studies have also shown that the use of clothing and bedding significantly contributes to the ability to maintain an acceptable body temperature by “providing thermal resistance for the human body from its environment.”³²

The Grants Pass Ordinances criminalize the use of bedding, which automatically forces unhoused individuals to violate the law or decrease sleep quality during seasons of inclement weather conditions. In cooler weather, the only way unhoused individuals have any control over their own temperature is with the use of these criminalized coverings. Faced with the decision of violating an ordinance by merely existing, sleeping with a blanket, or risking hypothermia due to inclement weather in Oregon, unhoused individuals lack sufficient options that seem basic to most.

Third, a consistent sleep schedule is a key component of quality sleep. Studies have found that irregular sleep schedules in youth are “significantly associated

³¹ Okamoto-Mizuno, *supra* note 25, at 2, 5 (citation omitted).

³² *Id.* at 1.

with a decrease in average sleep time per day.”³³ The CDC and National Sleep Foundation have affirmed this finding, issuing recommendations for individuals to go to bed at the same time each night and get up at the same time each morning, including on the weekends, for high quality sleep.³⁴

For unhoused individuals, a basic sleep schedule is unattainable. For unhoused youths, the lack of a consistent sleep schedule comes at the expense of academic achievement. For example, a study on the functional consequences of sleep problems in adolescents suggested “that sleep disruption had a negative effect on psychosocial health, school performance, and risk-taking behaviors.”³⁵ In a study of 1,629 adolescents, those with higher academic performance “had earlier bedtimes and longer sleep on weekdays, earlier bedtimes and rise times on weekends, less delay in bedtime during weekends, and less severe daytime sleepiness than those with poor grades.”³⁶ Additional studies have shown that, like

³³ Kang & Chen, *Effects of an irregular bedtime schedule on sleep quality, daytime sleepiness, and fatigue among university students in Taiwan*, 9 BMC Pub. Health 1, 1 (July 19, 2009), [https://bmcpub.elsevier.com/abstract/S1567-5161\(09\)00011-1](https://bmcpub.elsevier.com/abstract/S1567-5161(09)00011-1).

³⁴ *Tips for Better Sleep*, Center for Disease Control and Prevention, https://www.cdc.gov/sleep/about_sleep/sleep_hygiene.html (updated Sept. 13, 2022); *Setting a Regular Sleep Schedule*, Nat’l Sleep Found. (Sept. 13, 2023), <https://www.thensf.org/setting-a-regular-sleep-schedule/>.

³⁵ Medic et al., *Short- and long-term health consequences of sleep disruption*, 9 Nature & Sci. of Sleep 151, 155 (May 19, 2017).

³⁶ Chung & Cheung, *Sleep-wake patterns and sleep disturbance among Hong Kong Chinese adolescents*, 31 Sleep 185, 185, 191 (Feb. 1, 2008).

unhoused adults, unhoused youths have significantly decreased sleep and lack a consistent sleep schedule. In fact, the Institute for Children, Poverty, and Homelessness explained that homeless teens are “nearly five times as likely to get fewer than four hours of sleep.”³⁷ “Even more striking, 42% of homeless high school students sleep four or fewer hours per night.”³⁸ This not only significantly impacts homeless teens’ ability to concentrate and attend school (which increases the risk of dropping out) but also “contribute[s] to a variety of negative health outcomes including increased risk of illness, chronic stress, and a greater risk of obesity and diabetes.”³⁹

Finally, as humans, we all follow circadian rhythms, which are the “physical, mental, and behavioral changes an organism experiences over a 24-hour cycle.”⁴⁰ Circadian rhythms are controlled by a specific region of the brain (the suprachiasmatic nucleus), which “controls production of the hormone melatonin based on the amount of light the eyes receive,” and “synchronizes the circadian rhythms in different organs and tissues across the body.”⁴¹ Additionally, circadian rhythm also helps

³⁷ *More Than a Place to Sleep: Understanding the Health and Well-Being of Homeless High School Students*, Inst. for Children, Poverty & Homelessness (Mar. 13, 2017), <https://www.icphusa.org/reports/homelessstudenthealth/> (expand the *Lack of Basic Necessities* section).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Circadian Rhythms*, Nat’l Inst. of Gen. Med. Scis., <https://www.nigms.nih.gov/education/fact-sheets/Pages/circadian-rhythms.aspx> (updated Sept. 2023).

⁴¹ *Id.*

regulate core body temperature, which is a critical component for sleep.⁴² The core body temperature “cycles along with the sleep-wake rhythm, decreases during the nocturnal sleep phase and increases during the wake phase repeatedly in a 24-hour circadian rhythm.”⁴³ “This relationship between the sleep-wake rhythm and the circadian rhythm of [core body temperature] is important for maintaining sleep.”⁴⁴

Regardless of housing status, the inability to maintain a consistent sleep-wake cycle leads to sleep deprivation, which negatively impacts an individual’s overall health and wealth being. Scientific studies have established that those suffering from sleep deprivation are more likely to report depressive symptoms⁴⁵ and have poorer medication adherence.⁴⁶ Studies have also established that those suffering from sleep deprivation are less likely to effectively function in their communities, as sleep deprivation has been associated with worse

⁴² Okamoto-Mizuno, *supra* note 25, at 2.

⁴³ *Id.* at 1-2.

⁴⁴ *Id.* at 2.

⁴⁵ Nakata, *Work Hours, Sleep Sufficiency, and Prevalence of Depression Among Full-Time Employees: A Community-Based Cross-Sectional Study*, 72 *J. Clinical Psychiatry* 605, 609 (2011) (“Depression associated with long work hours is primarily a result of sleep deprivation.”).

⁴⁶ Riegel et al., *Excessive Daytime Sleepiness is Associated with Poor Medication Adherence in Adults with Heart Failure*, 17 *J. Cardiac Failure* 340, 340 (Apr. 2011) (“Adults with [heart failure] and [excessive daytime sleepiness] are more likely to have problems adhering to their medication regimen than those without [excessive daytime sleepiness], regardless of their cognitive status. Identifying and correcting factors that interfere with sleep may improve medication adherence.”).

pedestrian safety,⁴⁷ increased workplace accidents,⁴⁸ increased aggression, lower self-control, and increased delinquency.⁴⁹ These studies, among others, demonstrate that adhering to a consistent sleep-wake cycle to reduce sleep deprivation improves societal behaviors and engagement.

For unhoused persons, being in complete control of one's sleep-wake cycle can be extremely challenging, as going to sleep at the same time every night or practicing behaviors to promote sleep are often environment dependent.⁵⁰ As a result, homelessness has been linked to “a higher prevalence of mental and substance use disorders,” both of which correlate to increased risk for more long-lasting circadian rhythm disorders.⁵¹ This

⁴⁷ *E.g.*, Fobian et al., *The effects of sleep deprivation and text messaging on pedestrian safety in university students*, 43 *J. Sleep* 1, 1 (2020) (“University students’ pedestrian behavior was generally riskier, and their cognitive functioning was impaired, when sleep deprived compared with after normal sleep.”).

⁴⁸ *E.g.*, Uehli et al., *Sleep problems and work injuries: A systematic review and meta-analysis*, 18 *Sleep Med. Revs.* 61, 61 (2014) (“This systematic review confirmed the association between sleep problems and work injuries and, for the first time, quantified its magnitude.”).

⁴⁹ *E.g.*, Kamphuis et al., *Poor sleep as a potential causal factor in aggression and violence*, 13 *J. Sleep Med.* 327, 328-329 (2012).

⁵⁰ Wu, *What Can You Do to Decrease Homelessness in the U.S.?*, *Psychiatric News*, (Jan. 22, 2024), <https://psychnews.psychiatryonline.org/doi/10.1176/appi.pn.2024.02.2.22>.

⁵¹ Saldua, *Addressing Social Determinants of Health Among Individuals Experiencing Homelessness*, Substance Abuse & Mental Health Serv. Admin. (Nov. 15, 2023), <https://www.samhsa.gov/blog/addressing-social-determinants-health-among-individuals-experiencing-homelessness>; *see also* *Circadian Rhythm Disorders*:

disruption of a biological necessity adds another layer of difficulty in an unhoused person's pursuit of sleep. While these factors are the same regardless of one's housing status, unhoused individuals start at a baseline far from that of housed individuals. The many factors that allow individuals to experience quality sleep, already complex and numerous, are infinitely more challenging for unhoused persons. As an at-risk population with limited options to access environments supportive of quality sleep, any additional restrictions will exacerbate the existing issues experienced by unhoused persons seeking respite and rest.

B. Poor Sleep Quality Inflicts Profound Negative Consequences On Unhoused Individuals

It is no surprise that poor sleep has profound negative health consequences. These effects are amplified for unhoused individuals who experience significant barriers to obtaining quality sleep. There has been “increasing research that under-resourced and minoritized populations experience significant sleep health disparities—including insufficient and poor-quality sleep—due to structural and environmental factors.”⁵² Indeed, as recognized by the United States, “[f]or many homeless people, finding a safe and legal place to sleep can be difficult or even impossible.” *See* Statement of Interest of the

Causes and Risk Factors, Nat'l Heart, Lung, & Blood Inst., <https://www.nhlbi.nih.gov/health/circadian-rhythm-disorders/causes> (updated Mar. 24, 2022).

⁵² Moore et al., *Perspectives on Sleep as a Determinant of Health and Housing Outcomes among Veterans Experiencing Homelessness: An Exploratory, Social-Ecological Study*, 20 *Int'l J. Env'tl Res. Pub. Health* 1, 2 (May 8, 2023).

United States 2, *Bell v. City of Boise*, No. 1:09-cv-00540-REB (D. Idaho Aug. 6, 2015), Dkt. No. 276.

Even when space is available in shelters, they are not the simple fix to the complex concept of quality sleep. Studies have shown that sleep disturbances among those experiencing homelessness are “associated more closely with how safe one feels rather than one’s sheltered status.”⁵³ Findings have confirmed “that fears of violence and other forms of harm were prominent concerns for people experiencing homelessness when accessing shelters.”⁵⁴ These concerns as one factor alone can result in disrupted sleep. While shelters may vary in their structural composition, many employ a cot and group style of sleep environment, which lends itself to a more disrupted state of sleep.⁵⁵ “Crowding, pollution, noise, inadequate lighting, lack of access to green spaces, and other environmental factors associated with poor quality housing can exacerbate mental health disorders, including depression, anxiety, violence, and other forms of social dysfunction.”⁵⁶

First, when an unhoused individual is prevented access to alternative sleep environments, the

⁵³ Redline et al., *Examining Sleep Disturbance Among Sheltered and Unsheltered Transition Age Youth (TAY) Experiencing Homelessness*, 59 *Med. Care* S182, S182 (Apr. 2021).

⁵⁴ Kerman et al., *Victimization, safety, and overdose in homeless shelters: A systematic review and narrative synthesis*, 83 *Health & Place* 1 (July 27, 2023), <https://www.sciencedirect.com/science/article/pii/S1353829223001296?via%3Dihub>.

⁵⁵ Taylor et al., *Physical activity and sleep problems in homeless adults*, 14 *PLOS ONE* 1, 2 (July 5, 2019).

⁵⁶ Lima et al., *People experiencing homelessness: Their potential exposure to COVID-19*, 288 *Psychiatry Res.* 1, 1 (Apr. 11, 2020).

opportunities for undisturbed sleep decreases, which increases the risk of negative health outcomes.⁵⁷ Many existing health conditions can worsen or even begin “because of sleep deprivation.”⁵⁸ These conditions, which can be attributed in part or in full to a lack of regular, quality sleep, include, *inter alia*, type 2 diabetes, hypertension, obesity, sleep apnea, vascular disease, stroke, heart attack, depression, anxiety, and even psychosis.⁵⁹ When individuals do not get an adequate amount of sleep, underlying health conditions, including mental health conditions, can become exacerbated. A lack of sleep can make “[c]ognitive functions diminish, impairing the ability to think clearly and make decisions” with effective executive function.⁶⁰ These health conditions range from immediately recognizable in the short term, like shifts in mood, impaired mental clarity, difficulty concentrating, or difficulty processing information—to those that only are recognized following sustained and long-term sleep disruption, like diabetes, cardiovascular disease, and stroke.⁶¹ Current research suggests that there is “a significant association between sleep and the risk of developing dementia, particularly Alzheimer’s

⁵⁷ See generally *Why Sleep Matters*, *supra* note 18.

⁵⁸ *Sleep Deprivation*, Cleveland Clinic, <https://my.clevelandclinic.org/health/diseases/23970-sleep-deprivation> (updated Aug. 11, 2022)

⁵⁹ *Id.*; see also *Why Sleep Matters*, *supra* note 18.

⁶⁰ Ridenour, *Homelessness & the Lack of a Sleep Environment*, Amerisleep, <https://amerisleep.com/blog/homelessness-and-sleep/> (updated Nov. 10, 2023).

⁶¹ *Why Sleep Matters*, *supra* note 18.

disease.”⁶² Additionally, studies “have demonstrated that self-reported sleep problems, including disturbances and inadequate sleep duration, in middle-aged (45-55 years) and older adults (>55 years) at baseline are predictive of cognitive decline and dementia in the subsequent years and decades (up to 20 years).”⁶³

Second, lack of sleep also profoundly impacts unhoused individuals’ ability to interact with society, which also leads to increased rates of negative health outcomes.⁶⁴ Unhoused persons already experience increased barriers to accessing necessary healthcare for physical and medical conditions. Studies have shown that unhoused individuals feel as though the quality of their care by medical professionals is impacted by their lack of housing.⁶⁵ For example, unhoused individuals “believed they received poor quality care or were denied care” when clinicians knew of their housing status.⁶⁶ Unhoused persons similarly believe they were overprescribed medication to resolve health conditions, or were believed by medical professionals to be seeking easy access to painkillers and other medications.⁶⁷ These

⁶² Xiong et al., *Impact of sleep duration and sleep disturbances on the incidence of dementia and Alzheimer’s disease: A 10-year follow-up study*, 333 *Psychiatry Res.* 1, 1 (Jan. 28, 2024).

⁶³ *Id.* at 1-2.

⁶⁴ Simon & Walker, *Sleep loss causes social withdrawal and loneliness*, 9 *Nature Commc’ns* (Aug. 14, 2018), <https://www.nature.com/articles/s41467-018-05377-0>.

⁶⁵ Gilmer et al., *Homeless Patients Associate Clinician Bias With Suboptimal Care for Mental Illness, Addictions, and Chronic Pain*, 11 *J. Primary Care & Cmty. Health* 1, 6 (2020).

⁶⁶ *Id.* at 1.

⁶⁷ *Id.*

stigmas negatively impact the quality of life of unhoused persons. Additionally, studies have shown that a lack of sleep leads to “a neural and behavioral phenotype[,]” meaning an observable behavior characteristic, “of social withdrawal and loneliness; one that can be perceived by other members of society, and reciprocally, makes those societal members lonelier in return.”⁶⁸

With the introduction of poor sleep, unhoused persons are even less likely to receive adequate care, given the negative impact of deficient sleep to cognitive understanding, communication, and interpersonal abilities.

Finally, with the long-term implications of disturbed sleep discussed in Section I.A, the factors that allow for sufficient sleep are disproportionately unavailable to unhoused persons, leading to increased health risks. For example, unhoused individuals have minimal ability to control the lighting, temperature, or safety of their sleeping environment, when compared to the ability of a sheltered individual. When not permitted freedom to choose a sleeping environment (e.g., not being permitted to sleep or establishing a sleeping space in specific areas that are particularly amenable to rest), unhoused persons are often forced to sleep in locations that do not allow for the required quality and length of sleep that supports good health. Studies have shown that “sleep deprivation disrupts the coordination of fluctuations in regulating body temperature.”⁶⁹ Many of the social determinants of health, like economic stability, access to quality education, and access to reliable

⁶⁸ Simon & Walker, *supra* note 64, at 1.

⁶⁹ *Sleep deprivation disrupts regulation of body heat*, Am. Acad. of Sleep Med. (Dec. 18, 2012), <https://sleepeducation.org/sleep-deprivation-disrupts-regulation-body-heat/>.

healthcare, are already challenging for unhoused persons to achieve.⁷⁰ “Epidemiologic research has shown that social features of environments, family, social cohesion, safety, noise, and neighborhood disorder can shape and/or impact sleep patterns.”⁷¹ The inability of unhoused persons to control and maintain strong social environments lends itself to poor quality sleep. Therefore, the poor sleep quality experienced by unhoused persons directly and severely impacts their overall quality of life and general health.

C. The At-Issue Ordinances Improperly Criminalize The Right to Remain Public Spaces, In Violation of the Eighth Amendment, To Prevent Profound Negative Health Outcomes

This Court has correctly reasoned that the Eighth Amendment prohibits the criminalization of engaging in innocent conduct, such as sleeping, as applied to homeless individuals who otherwise do not have a single place they can lawfully be. *See Robinson v. California*, 370 U.S. 660, 666 (1962); *Powell v. Texas*, 392 U.S. 514, 532-533 (1968); *see also Martin v. City of Boise*, 920 F.3d 584, 618 (9th Cir. 2019). Stated differently, the Eighth Amendment forbids government actors from using criminal process to compel compliance with bans on living in public places when those subject to such process have no alternative place to stay. *See* U.S. Const. amend. VIII.⁷²

⁷⁰ Saldua, *supra* note 51.

⁷¹ Johnson et al., *Environmental Determinants of Insufficient Sleep and Sleep Disorders: Implications for Population Health*, 5 *Current Epidemiology Rep.* 61, 61 (May 5, 2018).

⁷² We are not advocating for this Court to recognize constitutional rights that would protect the homeless while tying the hands

The Grants Pass Ordinances plainly criminalize conduct that persons experiencing homelessness need to engage in to have proper sleep. *See* Grants Pass Municipal Code §§ 5.61.020(A), 5.61.010(B), 5.61.030, 6.46.090; Pet. Br. 6-7. Unhoused persons are being threatened with arrest and prosecution merely because they have nowhere to live but the public streets.⁷³ Because it criminalizes life-sustaining activities, the Ordinances violate the Eighth Amendment. *See Martin*, 920 F.3d at 618 (prohibiting the criminalization of sleeping in public places under the Eighth Amendment).

Because the Grants Pass Ordinances pose a significant risk to public health, while criminalizing unhoused persons' existence at the most basic level, this Court should give effect to the Eighth Amendment's prohibition against cruel and unusual punishment.

CONCLUSION

The decisions below should be affirmed.

of law enforcement. Rather, we are seeking affirmance of a decision that recognizes the need for the basic human requirement of sleep.

⁷³ “It is undisputed that there is no secular shelter space available to adults [in Grants Pass].” *Johnson v. City of Grants Pass*, 72 F.4th 868, 894 (9th Cir. 2023); *see also* JA1 (Ms. Johnson declaring that “there is no available bed for me at an emergency shelter anywhere in Grants Pass”).

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