

COLORADO COURT OF APPEALS Ralph L. Carr Judicial Center 2 East 14th Avenue, Denver, CO 80203	DATE FILED May 19, 2025 6:45 PM FILING ID: BD525278B005A CASE NUMBER: 2025CA110
DISTRICT COURT, BOULDER COUNTY Honorable Robert R. Gunning Case No. 2022CV30341	▲ COURT USE ONLY ▲
<p>Plaintiffs/Appellants: FEET FORWARD – PEER SUPPORTIVE SERVICES AND OUTREACH d/b/a FEET FORWARD, a nonprofit corporation; JENNIFER SHURLEY, JORDAN WHITTEN, MARY FALTYNISKI, ERIC BUDD, and JOHN CARLSON, individuals,</p> <p>v.</p> <p>Defendants/Appellees: CITY OF BOULDER and MARIS HEROLD, Chief of Police for the City of Boulder</p>	Case No. 2025 CA 000110
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<p align="center">BRIEF OF AMICUS CURIAE NATIONAL HOMELESSNESS LAW CENTER</p>	

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INTERESTS OF AMICI CURIAE

Amici are organizations whose goals include, inter alia, supporting those who experience homelessness and advocating for those at risk of homelessness. Amici have an interest in ensuring proper disposition of this case given their work and expertise in issues that impact unhoused persons. Amici write separately to (1) demonstrate that Colorado courts need not follow the U.S. Supreme Court's decision in *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024) because Colorado courts are free to engage in an independent analysis of its own constitutional principles; and (2) explain the regulations at issue in the present litigation criminalize the *status* of homelessness.

The following amici are organizations interested in advocating for or serving the unhoused persons population:

- National Homelessness Law Center;
- National Alliance to End Homelessness;
- National Low Income Housing Coalition

SUMMARY OF ARGUMENT

In 1980, the City of Boulder passed B.R.C. §§ 5-6-10 (the “Blanket Ban”), and 8-3-21(a) (“Tent Ban”) (collectively, “Boulder Regulations”), criminalizing camping on Boulder parks, parkway, recreation area, open space, or other city property. Until 2016, the Boulder Regulations were not actively or regularly enforced against unhoused persons. The City of Boulder passed these regulations to eliminate the right of nearly 500 unhoused persons to exist in Boulder by targeting the unavoidable impacts of extreme indigence. Indeed, Boulder offers grossly inadequate resources, unable to provide shelter for this number of individuals. There is no question that the Boulder Regulations are directed to punishing homeless individuals for their lack of options—they face a fine up to \$2,650 and 90-days in jail for each violation.

The Boulder district court upheld the Boulder Regulations in light of the United States Supreme Court’s decision in *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024). *Grants Pass* held that three ordinances criminalizing “camping” on public property targeted the conduct of camping in public places, not the status of being unhoused, and therefore did not violate the U.S. Constitution Eighth Amendment’s prohibition to cruel and unusual punishment. *Id.* at 546-49. The Boulder district court reasoned that Grants Pass’ interpretation of those regulations

under the Eighth Amendment were applicable to the constitutionality of the Boulder Regulations under Article II, Section 20 of the Colorado Constitution. *See* Order Granting Motion to Dismiss at 11, *Feet Forward v. City of Boulder*, No. 2022-CV-30341 (Colo. Dist. Ct. Dec. 6, 2024) (“*Feet Forward* Order”).

Grants Pass does not govern this Court’s analysis of Article II, Section 20 of the Colorado constitution for several reasons. **First**, in interpreting the Colorado constitution, Colorado courts are not bound by interpretations of parallel federal constitutional provisions without accounting for the unique facts of the ordinance at issue and issues specific to the State of Colorado. The Colorado Supreme Court has recognized that Colorado courts should “engage in an independent analysis of state constitutional principles in resolving a state constitutional question.” *People v. Young*, 814 P.2d 834, 842 (Colo. 1991) (en banc), *superseded by statute on other grounds*, C.R.S. § 16-12-102(1) (1993), *as recognized in People v. Vance*, 933 P.2d 576 (Colo. 1993). This principle has been continuously reinforced by Colorado state courts. For example, the Colorado Supreme Court has emphasized that, in interpreting its own constitution, Colorado does not have to follow federal constitutional provisions because Colorado courts “are in [their] own house” when interpreting the Colorado constitution. *Rocky Mountain Gun Owners v. Polis*, 467 P.3d 314, 324 (Colo. 2020) (en banc). In other words, Colorado courts have

consistently recognized the importance of state individualism in interpreting its own constitution.

Second, the regulations at issue on appeal impermissibly criminalize the *status* of being unhoused as opposed to conduct. The U.S. Supreme Court has continuously emphasized that criminalizing a persons' status is unconstitutional. *See Robinson v. California*, 370 U.S. 660, 666-67 (1962). In this case, the punishment of up to 90-days of imprisonment and a fine of up to \$2,650 for each "offense" of sleeping outside targets the unavoidable status of homelessness. In the City of Boulder, the number of unhoused persons is more than double the number of available shelter beds on any given day—leading to many unhoused persons being forced to sleep outside in violation of the Boulder Regulations. The fines imposed by this activity are grossly disproportionate to the offense under federal law, but significantly more disproportionate when considering Colorado jurisprudence. Although it largely tracks the U.S. Supreme Court's precedent outlined in *United States v. Bajakajian*, 524 U.S. 321, 337 (1998) to analyze what constitutes an excessive fine under the U.S. Constitution's Eighth Amendment, Colorado jurisprudence adds on an additional "ability to pay" factor unique to Article II, Section 20 of Colorado's constitutional analysis in assessing whether a fine is unconstitutional. *Colo. Dep't of Labor & Emp't v. Dami Hospitality, LLC*,

442 P.3d 94, 101 (Colo. 2019) (en banc). The Colorado Supreme Court explained “[a] fine that would bankrupt a person or put a company out of business would be a substantially more onerous fine than one that did not” and “[f]or some types of criminal or regulatory infractions, a penalty that would have that kind of grave consequence might be warranted, whereas for others the severity of that outcome may be out of proportion to the gravity of the offense for which the fine is imposed.” *Id.* at 102. Here, the fines and the punishment are grossly disproportionate for an unhoused person who has nowhere to sleep in a city that lacks shelter beds for even half the unhoused population.

Finally, the criminalization of homelessness leads to negative public policy consequences, including an economic burden to the State of Colorado. Criminalizing homelessness includes laws and ordinances that prohibit and punish people for sleeping, among other activities, or sheltering themselves with anything from a blanket to a tent, or other life-sustaining activities unavoidable to unhoused people. Rather than decrease the number of unhoused individuals in the United States, research suggests such criminalizing ordinances often result in unhoused individuals simply shifting to another public space. As such, the criminalization of homelessness does not result in reduced homelessness in public spaces, increased public safety, improved treatment outcomes for unhoused individuals, such as

entering shelter or seeking treatment for medical or mental health issues, or improved public health. Instead, it can lead to increased economic burdens on unhoused persons and increased economic burdens on cities that criminalize the status of homelessness.

ARGUMENT

I. THIS COURT NEED NOT FOLLOW THE SUPREME COURT’S DECISION IN *GRANTS PASS V. JOHNSON* BECAUSE COLORADO COURTS HAVE EMPHASIZED ENGAGING IN INDEPENDENT ANALYSIS OF STATE CONSTITUTIONAL PRINCIPLES

In analyzing the constitutionality of Colorado ordinances, Colorado courts should not simply apply interpretations of parallel federal constitutional provisions without taking into account the unique facts of the ordinance at issue and issues specific to Colorado. The Colorado Supreme Court has emphasized that Colorado courts should “engage in an independent analysis of state constitutional principles in resolving a state constitutional question.” *People v. Young*, 814 P.2d 834, 842 (Colo. 1991) (en banc), *superseded by statute on other grounds*, C.R.S. § 16-12-102(1) (1993), *as recognized in People v. Vance*, 933 P.2d 576 (Colo. 1993). This responsibility “springs from the inherently separate and independent functions of the states in a system of federalism.” *Id.* (citing *Michigan v. Long*, 463 U.S. 1032, 1037-42 (1983)); *see Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940) (explaining “[i]t is fundamental that state courts be left free and unfettered by [the

U.S. Supreme Court] in interpreting their state constitutions”). For example, in *Rocky Mountain Gun Owners v. Polis*, the Colorado Supreme Court explained, “[w]hen interpreting our own constitution, we do not stand on the federal floor; we are in our own house.” 467 P.3d 314, 324 (Colo. 2020) (en banc). Although the Colorado Supreme Court concedes to “lean[ing]” on federal analysis in situations where the state and federal provisions are identical or substantially similar and where consistency between the two have been a goal of precedent, it concludes that “even parallel text does not mandate parallel interpretation[,]” to include when a party has argued that the Colorado provision calls for a distinct analysis. *Id.* at 324-25 (distinguishing from federal Fourth Amendment jurisprudence (citing *People v. McKnight*, 446 P.3d 397, 406-08 (Colo. 2019))).

As applied to Article II, Section 20, the Colorado Supreme Court has explained Colorado’s “history reflects [the] repeated recognition that the Colorado Constitution, written to address the concerns of our own citizens and tailored to our unique regional location, is a source of protection for individual rights that is independent of and supplemental to the protections provided by the United States Constitution.” *Young*, 814 P.2d at 843; *see also id.* at 842-43 (cataloguing determinations of Colorado constitutionality differing from the U.S. Supreme Court’s analysis of the Fourth, Fifth, Eighth, and Ninth Amendments). More

specifically, in *Wells-Yates v. People*, the Colorado Supreme Court deviated from the U.S. Supreme Court’s proportionality test set out in *Solem v. Helm*, 463 U.S. 277, 290-92 (1983). *Wells-Yates v. People*, 454 P.3d 191, 196 (Colo. 2019) (en banc), *as modified on denial of reh’g* (Dec. 16, 2019). Instead, *Wells-Yates* held that when conducting an abbreviated proportionality analysis of a criminal sentence, the Colorado Supreme Court’s “treatment of the harshness of the penalty ... is somewhat unique in that [the Colorado Supreme Court] explicitly consider[s] parole eligibility.” 454 P.3d at 198. While the Colorado Supreme Court began its analysis using the U.S. Supreme Court’s proportionality framework, it deviated by incorporating an analysis that aligns with the values and social evolution of the state, without “expanding” the underlying protections found in Article II, Section 20 of the Colorado Constitution. *See id.*

As another example, The Colorado Supreme Court has incorporated an “ability to pay” factor unique to Article II, Section 20 of Colorado’s Constitution. *United States v. Bajakajian*, 524 U.S. 321, 337 (1998); *see Colo. Dep’t of Labor &*

Emp’t v. Dami Hospitality, LLC, 442 P.3d 94, 101 (Colo. 2019) (en banc).¹ In *Bajakajian*, the U.S. Supreme Court explained a fine violates the Eighth Amendment of the U.S. Constitution when it is “grossly disproportional to the gravity of the defendant’s offense[.]” *Bajakajian*, 524 U.S. at 337. Colorado added the additional consideration of a defendant or respondent’s “ability to pay”—a factor unique to Colorado’s constitutional analysis. *Dami Hosp.*, 442 P.3d at 101-02. The Colorado Supreme Court reasoned, “[a] fine that would bankrupt a person or put a company out of business would be a substantially more onerous fine than one that did not.” *Id.* at 102. As the Colorado Supreme Court explained, “[f]or some types of criminal or regulatory infractions, a penalty that would have that kind of grave consequence might be warranted, whereas for others the severity of that outcome may be out of proportion to the gravity of the offense for which the fine is imposed.” *Id.*

These cases demonstrate that Colorado courts have, historically, deviated from allowing federal constitutional jurisprudence to limit the analysis of Colorado

¹ Although the U.S. Supreme Court did not evaluate whether the Grants Pass ordinances violate the Eighth Amendment’s Excessive Fines Clause, we discuss fines in the context of Colorado state law for purposes of explaining its tie to the Colorado Constitution. *City of Grants Pass v. Johnson*, 603 U.S. 520, 588 (2024) (Sotomayor, J. dissenting).

state specific issues. As such, this Court is not bound by federal constitutional provisions when analyzing its own state constitution.

II. THE BOULDER REGULATIONS IMPERMISSIBLY CRIMINALIZE STATUS, NOT CONDUCT

A. Criminalizing Housing Status By Imposing High Fines And Lengthy Stays In Prison Is Impermissible

Under a Colorado constitutional analysis, the Boulder Regulations impermissibly criminalize *status*, not conduct by imposing a significant fine up to \$2,650 and imprisonment up to 90-days for each offense. The United States Constitution’s Eighth Amendment protection against cruel and unusual punishment traditionally—and historically—prohibits states from criminalizing a person’s *status*. See *Robinson v. California*, 370 U.S. 660, 666-67 (1962). Relevant here, criminalizing *status* can come in the form of: (1) disproportionate punishments that individuals are unable to avoid due to housing status; or (2) fines disproportionate to the criminalized offense.

First, a regulation unconstitutionally punishes an individual’s status when the regulation targets a characteristic that an individual cannot change or avoid. For example, the law at issue in *Robinson v. California* made “it a criminal offense for a person to ‘be addicted to the use of narcotics’” and imposed a penalty of up to 90-days in prison for the offense even during the person’s rehabilitation period.

370 U.S. at 660 (quoting Cal. Health & Safety Code § 11721). Although imprisonment itself is not viewed as cruel or unusual, when such a punishment is imposed due to a person’s status, just “one day in prison is cruel or unusual punishment.” *Id.* at 667. In other words, because the law at issue in *Robinson* made the *status* of narcotic addiction a criminal offence, the law inflicted impermissible cruel and unusual punishment. *Id.* This prohibition against criminalizing a person’s *status* has been consistently upheld. *See Grants Pass*, 603 U.S. at 574 (Sotomayor, J., dissenting) (recognizing *Robinson*’s holding that the Eighth Amendment “imposes a substantive limit on what can be made criminal and punished as such”); *Rhodes v. Chapman*, 452 U.S. 337, 346 n.12 (1981) (similar); *see Gregg v. Georgia*, 428 U.S. 153, 172 (1976) (“The substantive limits imposed by the Eighth Amendment on what can be made criminal and punished were discussed in *Robinson*[.]”); *see also*, Order Denying Motion to Dismiss at 6-7, *Williams v. City of Albuquerque*, No. D-202-CV-2022-07562 (D.N.M. Mar. 18, 2025) (finding the *Grants Pass* majority’s “status-versus-conduct” analysis flawed because an unhoused person’s “status” of being unhoused is inextricably linked to their conduct of “being outside[.]” because “there is no adequate indoor place for that person to be”).

In the City of Boulder, the fines criminalize the status of being unhoused and are intended to punish unhoused persons. Although the City of Boulder does not know the exact size of its homeless population, there are an estimated 450 unhoused persons seeking shelter every night, yet there are not enough shelters to hold half that number. *Homelessness in Boulder*, <https://bouldercolorado.gov/guide/homelessness-boulder#section-16957> (visited May 13, 2025).² Additionally, the closest shelter, All Roads Shelter, provides up to 180 beds—less than half of even the most conservative figure estimating the unhoused individuals in the city. All Roads, *About Us*, <https://allroadsboco.org/about-us/> (visited May 13, 2025).³ As such, there is no guarantee an individual will have a bed to sleep in and shelter beds that might seem available and accessible are simply not. For unhoused persons with nowhere to sleep, “fines and jail time do not deter behavior, reduce

² We use the conservative metric reported by the City of Boulder, which is only a quarter of that reported by other sources. In Boulder County itself, there are likely around 1,400-4,100 people seeking shelter with 75% residing in the City of Boulder itself. See Am. Compl. ¶ 16.

³ While Boulder maintains other shelters with lower capacity, each remaining shelter only accepts specific classes of unhoused individuals. Haven Ridge, the second largest shelter in Boulder, has a 22-bed capacity but is restricted to unhoused individuals who are women or transgender. Haven Ridge, *The Lodge at Haven Ridge*, <https://havenridgeboulder.org/lodge> (visited May 13, 2025). Similarly, TGTHR has a 16-bed capacity but is restricted to unhoused individuals aged 12-20. TGTHR, *Frequently Asked Questions*, <https://tgthr.org/faq/> (visited May 13, 2025).

homelessness, or increase public safety.” *Grants Pass*, 603 U.S. at 569 (Sotomayor, J., dissenting). Instead, regulations like the Boulder Regulations criminalize the status of homelessness itself.

Second, when fines imposed are grossly disproportionate to the conduct criminalized, they are unconstitutional. Fines for certain offenses must “bear some relationship to the gravity of the offense that it is designed to punish.” *Bajakajian*, 524 U.S. at 334. Fines that are designed to force unhoused persons to flee from a city are disproportionate to the gravity of the offense of sleeping in public. *Grants Pass*, 603 U.S. at 588-89 (Sotomayor, J., dissenting) (recognizing the district court determined the fines were designed to punish and that the Ninth Circuit did not have to decide whether the district court was correct on appeal).

The Boulder Regulations impose a fine of up to \$2,650 for *each* offense.⁴ By contrast, the fines in *Grants Pass*, whose proportionality was not at issue on appeal, were less than half the amount of those imposed by the Boulder Regulations. The Boulder Regulations are particularly punitive against unhoused

⁴ In *Grants Pass*, the fines had a maximum of \$1,250, less than half of those imposed by the Boulder Regulations. While the Ninth Circuit and the U.S. Supreme Court did not analyze fines in *Grants Pass*, the district court determined that they were not proportional to the offense. *See Grants Pass*, 603 U.S. at 589 (Sotomayor, J., dissenting).

persons who cannot be expected to pay \$2,650 for simply sleeping in public. As such, the Boulder Regulations are designed to punish people, who have no access to shelter, for merely sleeping outside in the City of Boulder. As the dissenting opinion in *Grants Pass* recognized, “[s]leep is a biological necessity, not a crime.” *Grants Pass*, 603 U.S. at 563 (Sotomayor, J., dissenting).

Finally, this interpretation of the constitutionality of punishments and fines follows Colorado’s expansion upon federal fines jurisprudence, which tailors the law to the State’s individualism. In determining the constitutionality of fines imposed, Colorado has largely followed U.S. Supreme Court precedent, but has incorporated an “ability to pay” factor unique to Article II, Section 20 of Colorado’s Constitution. *Bajakajian*, 524 U.S. at 337; *see Dami Hospitality*, 442 P.3d at 101.⁵

The U.S. Supreme Court’s decision in *Grants Pass* did not address the applicability of Article II, Section 20 of the Colorado constitution and, therefore, this Court need not be bound by *Grants Pass*’s outcome. The Colorado Supreme Court has recognized that it is not required to follow federal Eighth Amendment

⁵ Although the U.S. Supreme Court did not evaluate whether the Grants Pass ordinances violate the Eighth Amendment’s Excessive Fines Clause, we discuss fines in the context of Colorado state law for purposes of explaining its tie to the Colorado Constitution. *Grants Pass*, 603 U.S. at 588 (Sotomayor, J. dissenting).

jurisprudence when it can rely on its own constitution. *Sellers v. People*, 560 P.3d 954, 961 (Colo. 2024) (en banc), *cert. denied sub nom. Sellers v. Colorado*, No. 24-941 (U.S. Mar. 31, 2025).

As noted *supra* pp. 14-15, in *Bajakajian*, the U.S. Supreme Court held a fine is unconstitutional when it is “grossly disproportional to the gravity of the defendant’s offense[.]” *Bajakajian*, 524 U.S. at 337. Expanding upon *Bajakajian*, in *Dami Hospitality*, Colorado added the additional consideration of a defendant or respondent’s “ability to pay”—a factor unique to Colorado’s constitutional analysis. *Dami Hosp.*, 442 P.3d at 101-02. The Colorado Supreme Court reasoned, “[a] fine that would bankrupt a person or put a company out of business would be a substantially more onerous fine than one that did not.” *Id.* at 102. The Colorado Supreme Court continued explaining “[f]or some types of criminal or regulatory infractions, a penalty that would have that kind of grave consequence might be warranted, whereas for others the severity of that outcome may be out of proportion to the gravity of the offense for which the fine is imposed.” *Id.*

Even prior to the Colorado Supreme Court’s affirmance of the standard, the Colorado Court of Appeals applied the same logic to ordinances in the City of Boulder. In *Boulder County Apartment Association v. City of Boulder*, the court assessed whether fines imposed by an ordinance limiting rental occupancy were

excessive. 97 P.3d 332 (Colo. App. 2004). There, the court cited both the Colorado Supreme Court and Court of Appeals in noting that a fine is excessive “if the amount is so disproportionate to a defendant[’]s circumstance that there can be no realistic expectation that the defendant will be able to pay it.” *Id.* at 338 (citing *People v. Bolt*, 984 P.2d 1181 (Colo. App. 1999)); *see Bolt*, 984 P.2d at 1184 (explaining a sentencing court “must consider the defendant’s financial status in determining the appropriate amount of any fine to be levied”).

The *Grants Pass* regulations were different in that the fines were less than half of the fines in the Boulder Regulation and jail time was minor in comparison. Therefore, although fines were not on appeal in *Grants Pass*, the punishment of 90-days imposed by the Boulder Regulations (compared with 30-days in Grants Pass) and fines of \$2,650 (compared to \$1,250 in Grants Pass) lack a remedial purpose and simply target the status of homelessness. As such, this Court can and should find the fines imposed by the City of Boulder are unconstitutional under the Colorado constitution.

B. Public Policy Demonstrates The Criminalization Of Unhoused Persons Can Lead To Negative Economic Consequences

Implementing regulations and statutes that promote the criminalization of unhoused persons increases economic burden for both unhoused individuals and cities. Ordinances have been used throughout history to prevent marginalized

communities from free enjoyment of public spaces. From segregation laws to California's "anti-Okie" law, cities and states have used their legislatures to prevent "undesirable" communities from accessing certain community areas.⁶ Such laws have increased in the past two decades, with research indicating that every measured category of homelessness criminalization has increased since 2006.⁷ Criminalizing homelessness includes "laws and ordinances that prohibit and punish people for sleeping, sitting, standing, asking for donations, or sheltering

⁶ Tars, *Criminalization of Homelessness*, in *2021 Advocates' Guide '21: A Primer on Federal Affordable Housing & Community Development Programs & Policies* at 6-36 (2021), https://nlihc.org/sites/default/files/AG-2021/2021_Advocates-Guide.pdf.

⁷ *Housing Not Handcuffs (2019): Ending the Criminalization of Homelessness in U.S. Cities* 12-13, Nat'l Law Ctr. on Homelessness & Poverty (2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

themselves with anything from a blanket to a tent, or other life-sustaining activities unavoidable to unhoused people.”⁸

Rather than decrease the number of unhoused individuals in the United States, research suggests that such criminalizing ordinances often result in unhoused individuals simply shifting to another public space.⁹ Indeed, the criminalization of homelessness does not result in reduced homelessness in public spaces, increased public safety, improved treatment outcomes for unhoused individuals, such as entering shelter or seeking treatment for medical or mental

⁸ DuBois et al., *Criminalizing Homelessness Worsens the Crisis, Research Shows* at 2, National Alliance to End Homelessness (Feb. 4, 2025), [https://endhomelessness.org/wp-content/uploads/2025/02/Criminalizing WorsensTheCrisis_NAEH_2-4-25.pdf](https://endhomelessness.org/wp-content/uploads/2025/02/Criminalizing-WorsensTheCrisis_NAEH_2-4-25.pdf); see also *The Gap: A Shortage of Affordable Homes*, National Low Income Housing Coalition (Mar. 2024), https://nlihc.org/sites/default/files/gap/2024/Gap-Report_2024.pdf (explaining (1) punitive measures like the Colorado Regulations fail to reduce homelessness; (2) there is a severe shortage of affordable housing in communities across the United States; and (3) extremely low-income households bear the brunt of the lack of affordable housing even though they have the highest risk of homelessness without affordable and available homes).

⁹ See Lebovits & Sullivan, *Do Criminalization Policies Impact Local Homelessness? Exploring the Limits and Concerns of Socially Constructed Deviancy* (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4716230; see also DuBois et al., *supra* n.8, at (citing Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 Social Problems 131 (2020), <https://doi.org/10.1093/socpro/spz004>).

health issues, or improved public health.¹⁰ Despite a perceived misperception on the part of cities enacting criminalization statutes with the hope of eradicating or removing their homeless populations, “almost all homeless people are involuntarily homeless and truly have no non-public space to go to, no matter how severe the criminal penalties” for remaining in a public space may be.¹¹ As such, the criminalization of unhoused persons’ both (1) increases economic burdens on unhoused persons; and (2) increases economic burdens on cities criminalizing homelessness.

1. *Criminalization increases the economic burdens experienced by unhoused persons, negatively impacting their economic well-being*

Homeless populations subjected to criminal ordinances for their lack of stable housing—e.g., significant fines and criminal convictions—exponentially increase unhoused persons’ economic burdens. Indeed, “local policies and measures that criminalize homelessness and its associated behaviors—like sleeping outdoors—only perpetuat[e] the cycle of criminal justice involvement and

¹⁰ 57 Social Scientists Br. 4, *City of Grants Pass v. Johnson*, No. 23-175 (U.S. Apr. 3, 2024).

¹¹ *Id.* at 22.

homelessness.”¹² When an individual is criminally punished for sleeping outside, the resulting criminal record creates barriers to both that person’s ability to achieve gainful employment and be approved for either public or private housing.

When unhoused persons are unable to pay fines for violating regulations regarding camping bans, such as those imposed by the Boulder Regulations, unpaid fines can lead to the imposition of jail time, which then “can impede access to federally subsidized housing and inhibit job searches where employers run criminal background checks.”¹³ Research indicates “even misdemeanor convictions can make someone ineligible for subsidized housing under local policy, and criminal records are routinely used to exclude applicants for employment or housing.”¹⁴ For example, in a survey of 1,100 private landlords, 39% said criminal background was a factor when screening rental applicants.¹⁵

¹² *Reducing Criminal Justice System Involvement Among People Experiencing Homelessness*, U.S. Interagency Council on Homelessness (Aug. 2016), https://www.usich.gov/sites/default/files/document/Criminal_Justice_Involvement_08_2016.pdf.

¹³ Safety Net Project of the Urban Justice Center Br. 23, *City of Grants Pass v. Johnson*, No. 23-175 (Apr. 3, 2024).

¹⁴ *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, National Law Center on Homelessness & Poverty (Oct. 2018), <https://homelesslaw.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

¹⁵ Choi et al., *The Real Rental Housing Crisis is on the Horizon* (Mar. 11, 2022), <https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon>.

Criminal records can also prevent unhoused persons from accessing public housing, given that the U.S. Department of Housing & Urban Development authorizes public housing authorities and the owners of Section 8 public housing to exclude candidates with criminal convictions.¹⁶

The same is true for the ability of unhoused persons, with a criminal background, seeking gainful employment—the presence of criminal convictions in their criminal background hinders their ability to be selected for career opportunities. A Harvard study found “formerly incarcerated people are unemployed at a rate of over 27%—higher than the total U.S. unemployment rate during any historical period, including the Great Depression.”¹⁷

2. *Criminalization of homelessness creates unnecessary economic burdens for the cities enforcing such regulations*

Criminalization of homeless populations also creates a considerable economic burden for the states and cities who pass such regulations. For example, “[i]t costs taxpayers \$31,065 a year to criminalize a single person suffering from homelessness — through enforcement of unconstitutional anti-panhandling laws,

¹⁶ Formerly Incarcerated People and Families Movement Br. 13, *City of Grants Pass v. Johnson*, No. 23-175 (U.S. Apr. 3, 2024).

¹⁷ Couloute & Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, Prison Policy Initiative (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html>.

hostile architecture, police raids of homeless encampments, and just general harassment.”¹⁸ In a 2023 point-in-time count, it was calculated that 9,065 people were experiencing homelessness in Metro Denver, which includes the city of Boulder.¹⁹ With research indicating that criminalization does not reduce the number of homeless individuals in any given area, this number is unlikely to decrease with increased penalties—rather, the cost of addressing unhoused persons will only increase.²⁰ Research indicates when unhoused persons are placed in supportive housing, average tax payer costs are reduced by 49.5%.²¹ Inpatient visits to emergency rooms by unhoused persons decreased by 27%, relieving additional taxpayer burden. Research indicates providing supportive housing to

¹⁸ Fraieli, *The Cost to Criminalize Homelessness*, The Homeless Voice (May 10, 2021), <https://homelessvoice.org/the-cost-to-criminalize-homelessness/>.

¹⁹ *State of Homelessness 2023*, Metro Denver Homeless Initiative (2023), <https://static1.squarespace.com/static/5fea50c73853910bc4679c13/t/65a97b759426763893db64c3/1743173583283/MDHI+State+of+Homelessness+Report+2023.pdf> (covering Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties).

²⁰ DuBois et al., *supra* n.8, at 3.

²¹ *Ending Chronic Homelessness Saves Taxpayers Money*, National Alliance to End Homelessness (Oct. 2024), <https://endhomelessness.org/wp-content/uploads/2024/10/Cost-Savings-from-PSH.pdf>.

unhoused persons reduces healthcare costs by 59% overall, emergency department costs by 61%, and reduces the general inpatient hospitalization rate by 77%.²²

Therefore, the Boulder Regulations are economically imprudent, as they fail to address underlying systemic issues while imposing unnecessary costs associated with enforcement and administration. Additionally, the Boulder Regulations undermine the ability of unhoused persons to transition into stable housing by criminalizing their presence and compounding the barriers they face, rather than offering meaningful solutions to support their path toward being housed.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order and find that the Boulder Regulations are unconstitutional under Colorado's constitution.

Dated this 19th day of May, 2025.

²² Garrett, *The Business Case for Ending Homelessness: Having a Home Improves Health, Reduces Healthcare Utilization and Costs*, 5 Am. Health & Drug Benefits 17, 18 (Jan. 2012), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4046466/>.

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