No. 23-175

IN THE

Supreme Court of the United States

ON WRIT OF CERTIORARI TO THE UNITED STATES
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T.C.A. § 39-14-414(b)(2)

INTEREST OF AMICI CURIAE

the Southern Poverty Law Center (SPLC)[1] is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. One of the SPLC's goals is to eradicate poverty by expanding access to economic opportunity and eliminating racial economic inequality. The SPLC works to end the criminalization of homelessness across the U

disenfranchised residents, while focusing on criminal justice reform, homelessness and poverty, disability

advocates for low-income tenants and individuals facing homelessness through legal assistance, representation, and educational programs. LASPBC has litigated cases in state and federal court to enforce the Fair Housing Act on behalf of Palm Beach County tenants and homeless

Florida's experience is relevant, as the state has the third largest total population of individuals experiencing homelessness and the second largest unsheltered population in the U.S. U.S. Dep't of Hous. & Urb. Dev., , 18 (2023), https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf.

The types of prohibitions at issue (hereinafter "sleeping/camping ordinances") are not "generally applicable prohibitions against the act of camping on

ARGUMENT

I. Robinson's prohibition against status crimes squarely applies to laws like petitioner's that punish people for the status of homelessness.

The Ninth Circuit properly applied the constitutional prohibition against status crimes in to strike down sleeping/camping ordinances that punished people for being homeless in violation of the Eighth Amendment.

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Eighth Amendment by prohibiting homeless individuals from sleeping outside with blankets or other bedding, even when there is nowhere else in the city for them to sleep. Pet. App. 57a. These decisions were correct applications of .

Petitioner's assertion (Br. 37) that its ordinances prohibit the "specifc act[]" of "'occupy[ing] a campsite' on public property" obfuscates their function and disregards the basic science of sleep. First, the ordinances do not implicate a constitutional "right to camp." Pet. Br. 42. Whatever petitioner may label them, F00544d1(b)-()-1(,FE)15(l)-15(i)15(t)-7(l t)

which a person is guilty by being in a certain condition or of a specifc character"). Like the statute struck down in that made narcotics addiction a continuous crime, petitioner's ordinances make people experiencing homelessness "continuously guilty" every day that they are forced to sleep outside. , 370 U.S. at 666. It is impossible for homeless and involuntarily unsheltered individuals to conform their sleeping "conduct" to the law by choosing not to sleep. . , 444 F.3d 1118, 1136 (9th Cir. 2006) ("Whether sitting, lying, and sleeping are defned as acts or conditions, they are universal and unavoidable consequences of being human."),

that, contrary to petitioner's claims (Br. 43–45), the "involuntariness" and shelter availability standards are workable in practice. Furthermore, petitioner's claim (. at 14) that "calls into doubt many other criminal prohibitions" contradicts decades of decisions illustrating that this narrow application of does not disturb substantive criminal law and will not create mayhem in the lower courts.

individual's control." . at 1563 ("[P]eople rarely choose to be homeless.").

Applying to these facts, the court held:

> Because of the unavailability of low-income housing or alternative shelter, plaintiffs have no choice but to conduct involuntary, life-sustaining activities in public places. The harmless conduct for which they are arrested is inseparable from their involuntary condition of being homeless . . . . As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the eighth amendment—sleeping, eating and other innocent conduct.

. at 1564–65. The court directed the creation of two or more arrest-free zones where the city would be enjoined from arresting individuals experiencing homelessness for such involuntary, innocent conduct. at 1584. , rendered 25 years before , has been followed by localities in Florida that conformed their ordinances and police practices with this basic rule of law.[3] Indeed, cited approvingly, observing "[w]e are not alone in reaching this conclusion" that "as long

3. For instance, a former law enforcement offcial reported conforming police policies in Broward County, Florida, with to ensure that homelessness is not a crime. Decl. of Robert R. Pusins ¶¶ 1–6, , 519 F. Supp. 3d 1045 (M.D. Fla. 2021) (No. 5:19-cv-00461), ECF No. 108-18.

as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter." 920 F.3d at 617.

In 1998, following two appeals and court-ordered mediation, , 40 F.3d 1155 (11th Cir. 1994) & 76 F.3d 1154 (11th Cir. 1996), the parties entered into a landmark settlement agreement that protected the rights of people experiencing homelessness, Settlement Agreement, , (No. 1:88-cv-02406), ECF No. 382. The agreement created, among other reforms, a law enforcement protocol that prohibited police from arresting individuals experiencing homelessness for

including simply being homeless or sleeping with bedding. at 1048–49. The court found that all of the following unambiguously fit under the definition of lodging: "using bags of belongings as a pillow, sleeping on a park bench with belongings, sleeping in a covered alcove, sleeping using clothing as a pillow, sleeping with blankets and sleeping bags, sleeping wrapped in blankets, sleeping with a backpack as a pillow, and sleeping on top of a pair of jeans." . at 1053.

In total, the plaintiffs had been arrested and convicted for violating the ordinance 18 times. at 1049 ("On some of those occasions, Plaintiffs were arrested for sleeping outdoors and, upon being awoken, advised that they were homeless."). An Assistant Professor of Medicine at the University of Miami School of Medicine who had treated hundreds of homeless patients explained the medical requirement of sleep for all human beings. Decl. of Dr. Armen Henderson ¶ 2,

No. 108. Over five years, the city convicted 264 unique homeless individuals of the crime of open lodging 406 times. These individuals spent 5,393 days in jail and were assessed $301,067.00 in fees and fines.

"involuntariness" at the time of enforcement. Pet. App. 40a n.23, 52a n.31.

D.

Amicus Br. 13–14 (implying that without the ability to arrest people who have nowhere to sleep but outside,

First, this Court should reject arguments raised by petitioner and some of its that the shelter availability test is unworkable because governments can neither shelter everybody nor determine who is "choosing" to sleep outside. Pet. Br. 43 ("Courts also have no discernible standards by which to judge involuntariness."); , City of Chico Amicus Br. 18–20 (discussing difficulties of counting homeless individuals and available beds and deciding whether individuals are "voluntarily" homeless).[4] But these protests ring hollow. Objections to "workability" ultimately reveal a deeper motivation: governments defend sleeping laws because, like vagrancy laws before them, they are expedient. Affirming the Ninth Circuit's finding that these sleeping/camping ordinances

169 (1990).

As Judge O'Scannlain explained twenty years ago, "[i]n our system of government, courts base decisions not on dramatic H

III. The history of vagrancy laws does not justify the

A. Courts have repeatedly found that vagrancy laws are unconstitutional status crimes under the Fourteenth and Eighth Amendments.

In 1972, this Court struck down a vagrancy law from the City of Jacksonville, Florida, that criminalized a grab-bag of statuses, including "rogues and vagabonds," "habitual loafers," "persons wandering or strolling around from place to place without any lawful purpose or object," and "persons able to work but habitually living upon the earnings of their wives or minor children"—or, as the Court summarized, "poor people, nonconformists, dissenters, idlers." , 405 U.S. at 156 n.1, 170. This Court specifically discussed and rejected the historical justifications for vagrancy laws. It unequivocally concluded that vagrancy laws "teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together." , 405 U.S. at 171; , 301 F. Supp. 266, 271 (S.D. Fla. 1969) (facially invalidating Florida vagrancy law), , 401 U.S. 987 (1971) (vacated on U

(invalidating statute punishing "idleness or indigency coupled with being able-bodied"); , 306 F. Supp. 58, 63 (W.D.N.C. 1969) (three-judge court) ("Idleness and poverty should not be treated as a criminal offense."), , 401 U.S. 987 (1971) (vacated on grounds); , 285 F. Supp. 556, 558 (E.D.N.C. 1968) (invalidating vagrancy statute on multiple constitutional grounds, including that it "creates a crime of the status of indigency").

B. This Court has explicitly rejected this country's history of using vagrancy laws as a tool of racial and economic subjugation.

During the founding era, U.S. vagrancy laws served as the criminal enforcement mechanism behind early U.S. poor laws, which rendered poor people "petty criminals" and "poverty [] a crime."[5] William P. Quigley, , 31 U. Rich. L. Rev. 111, 160, 164 (1997); , (11th ed. 2019)

its purpose—to deter migration of persons experiencing poverty—like its historical antecedents, was no longer constitutionally permissible), , , 415 U.S. 651 (1974).

Other illegal aspects of colonial-era vagrancy laws, such as involuntary servitude, were similarly rejected. , , 322 U.S. 4, 17 (1944) (invalidating Florida contract labor law as unconstitutional involuntary servitude, reasoning that the Thirteenth Amendment as implemented by the Anti-Peonage Act of 1867 was intended "not merely to end slavery but to maintain a system of completely free labor[.]" [illegible] 6d3044(r)

After the repeal of Black Codes, with the passage of the Civil Rights Act of 1866, , 451 U.S. at 132–33, Southern states resorted to disproportionately enforcing antebellum vagrancy statutes—ostensibly race-neutral—against Black people. Goluboff, , at 116; , , 76 Ga. 326, 328 (1886) ("[T]he law of vagrancy should be rigidly enforced, against the colored population especially, because many of them do lead idle and vagrant lives[.]"). Then, in tandem with Jim Crow segregation laws, all but one of the former Confederate states adopted new vagrancy laws from 1893 to 1909. William Cohen, , 42 J.S. Hist. 31, 48, 50 (1976).

Just as this Court has rejected the history of vagrancy laws, it has also rejected the racial discrimination that such laws facilitated for over a century after emancipation. , , 139 S. Ct. at 688–89 (denouncing the

concurring in part). This Court should decline petitioner's invitation to revive the system of racial and economic subordination that vagrancy laws facilitated.

C. Sleeping/camping ordinances, by design and application, are not generally applicable and instead target only people experiencing homelessness.

Vagrancy laws have largely disappeared after , and their history of enforcement in this

of Chico compares its own anti-camping ban to an 1887 state anti-vagrancy law, California Penal Code section

ordinance, but only after striking the prohibition against "sleeping," finding that "the ordinance—after severance—gives proper and precise notice of the conduct prohibited: a person may not, in fact, remain on public property and use his motor vehicle as a living accommodation there." . at 940. The Eleventh Circuit did not address any claim that this interpretation of the ordinance, which only applied to people who were living in their vehicles, violated any other constitutional doctrine such as the Eighth Amendment's prohibition against status crimes. Thus, to avoid vagueness challenges (because sleep itself is inherently innocent and outside government's police powers to prohibit), legislators enacted ordinances specifically targeted at people who were living outside. , , 232 F.3d at 1356 (enforcement criteria adopted in response to local court rulings holding that a person must do more than sleep to be arrested).

The Ninth Circuit's decision in and saw these types of sleeping/camping ordinances for what they were: newfound ways to punish people for poverty. In , the camping ordinance criminalized using "any of the streets, sidewalks, parks or public places as a camping place at any time." , 920 F.3d at 603 (citation omitted). The ordinance defined "camping" broadly to include "the laying down of bedding for the purpose of sleeping." at 618 (citation omitted). The court relied on a well-developed record to find that the ordinance was being enforced against individuals who used minimal blankets or bedding and had nowhere else to go; therefore, they were penalized for their housing status. 920 F.3d at 609–610.

The ordinances at issue in are nearly identical to those in Individuals are prohibited from sleeping or "[c]amping" on public property. Pet. App. 221a–223a. Petitioner claims (Br. 37) that the ordinance's definition of a campsite is "solely in terms of conduct" because it is "any place where bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed" (Pet. App. 221a). Petitioner and its claim that using minimal bedding or blankets—essential to survival in cold or even moderate temperatures—is conduct that is somehow discernible and severable from sleeping. The Ninth Circuit in correctly rejected that argument and this transparent attempt to evade the core holding in . at 47a–48a.

Ordinances outside of the Ninth Circuit reveal the same underlying intent to target homeless people. For example, in , the City's ordinance facially referenced homelessness, , 519 F. Supp. 3d at 1048, as did the enforcement criteria in , 232 F.3d at 1356. The legislative history reflected that Ocala did so because it wanted to distinguish between a person who is "enjoying a nice day and is sitting on a park bench and dozes off" and someone who has "indicia of living" in public. Pls.' Resp. to Def.'s Mot. Summ. J. at 6–7, , (No. 5:19-cv-00461), ECF No. 120. Ocala's definition of lodging explicitly names the same insidious intent behind similar laws in Boise, Grants Pass, and beyond: to criminalize sleep not because it is harmful, but because it substitutes as a proxy for a person's housing status when no other shelter is available.

Tennessee, Georgia, and Florida recently enacted legislation restricting sleeping/camping in public.

Although these statutes differ from the Grants Pass ordinances (Resp. Br. 41–42), none are generally applicable camping regulations. Tennessee makes it a

where it is otherwise permissible; they are prohibiting the existence of homeless people themselves in all public places throughout entire cities 24 hours a day, 7 days a week.

Further, like vagrancy laws before them, sleeping/camping ordinances also have discriminatory impacts on the basis of race. Nationally, Black Americans make up 13 percent of the overall population, but more than 37 percent of the total homeless population and 50 percent of all families experiencing homelessness. U.S. Dep't of Hous. & Urb. Dev., , at 2. This general trend holds true in Florida. For example, Black residents of Miami make up 18 percent of the overall population but more than 57 percent of the total homeless population and 66 percent of all families experiencing homelessness. Homeless Trust Miami-Dade Cty., 2 (2020), https://www.homelesstrust.org/resources-homeless/library/racial-disparity-highlights.pdf. These racial disparities are caused by a long history of racial discrimination, segregation, and economic inequality. George R. Carter, , 13 Cityscape 33 (2011), www.huduser.gov/portal/periodicals/cityscpe/vol13num1/cityscape_march2011_from_exclusion.pdf. Enforcement of these sleeping/camping bans will undoubtedly perpetuate over-criminalization of Black A

ordinances single out people who do not have housing or shelter for punishment, resulting in disproportionate impacts on the basis of race.

CONCLUSION

The judgment below should be affrmed.

Respectfully submitted,

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