

FILED
SUPREME COURT
STATE OF WASHINGTON
7/26/2024 12:42 PM
BY ERIN L. LENNON
CLERK

No. 102814-8

SUPREME COURT OF THE STATE OF
WASHINGTON

JEWELS HELPING HANDS and BEN STUCKART,

Appellants/Plaintiffs,

v.

BRIAN HANSEN, CITY OF SPOKANE, SPOKANE
COUNTY and SPOKANE COUNTY AUDITOR VICKY
DALTON,

Respondents/Defendants.

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL
LIBERTIES UNION OF WASHINGTON

ACLU OF WASHINGTON FOUNDATION
Sagiv Galai, WSBA #61383
Jazmyn Clark, WSBA #48224
Brent Low, WSBA #61795
La Rond Baker, WSBA #43610
PO Box 2728
Seattle, WA 98111
sgalai@aclu-wa.org
jclark@aclu-wa.org
blow@aclu-wa.org
baker@aclu-wa.org

Attorneys for *Amicus Curiae*
American Civil Liberties Union of Washington

TABLE OF CONTENTS

I.	IDENTITY OF <i>AMICUS</i> AND SUMMARY OF ARGUMENT	1
II.	STATEMENT OF THE CASE.....	2
III.	ARGUMENT	2
A.	Homelessness Is an Involuntary Condition that Results From Our Failure to Invest in Affordable Housing.	2
1.	Homelessness is a housing problem.....	2
2.	This Court has acknowledged that people are forced into homelessness and that the causes of homelessness are beyond an individual's control.	6
B.	Being Unhoused Is Dangerous to One's Health.....	10
1.	Homelessness shortens one's lifespan.	10
2.	The criminalization of homelessness further exacerbates the health dangers associated with homelessness.....	12
3.	Spokane's law banishes the homeless.....	17
IV.	CONCLUSION	21

TABLE OF AUTHORITIES

Washington Cases

<i>City of Seattle v. Long</i> , 198 Wn.2d 136, 493 P.3d 94 (2021)	7, 8
<i>Jewels Helping Hands v. Hansen</i> , 29 Wn. App. 2d, 539 P.3d 68 (2023)	19
<i>State v. City of Sunnyside</i> , 2024 WL 3058780, 550 P.3d 31 (June 20, 2024).....	9
<i>State v. Pippin</i> , 200 Wn. App. 826, 403 P.3d 907 (2017).....	2

Statutes

Spokane Municipal Code 12.02.1010	18
---	----

Books and Publications

Adam M. Lippert & Barrett A. Lee, <i>Stress, Coping and Mental Health Differences Among Homeless People</i> , 85(3) SOCIO. INQUIRY (2015)	10, 11
Anna Patrick, <i>HUD reports record-high homeless count in 2023 for U.S., WA</i> , SEATTLE TIMES (Dec. 19, 2023), https://www.seattletimes.com/seattle-news/homeless/hud-reports-record-high-homeless-count-in-2023-for-u-s-wa/	6
<i>Areas Impacted by Proposed 2023 Anti-Encampment Initiative (Prop 1) in the City of Spokane</i> , https://www.arcgis.com/apps/instant/interactivelegend/index.html?appid=06016f9ad9694eb2a609a05d290b0336	18

- Bruce D. Meyer, Angela Wyse & Ilina Logani, *Life and Death at the Margins of Society: The Mortality of the U.S. Homeless Population*, NAT'L BUREAU OF ECON. RSCH. (Nov. 2023), <https://www.nber.org/papers/w31843>..... 11
- Christopher R Adamson, *Punishment after slavery: Southern state penal systems, 1865-1890*, 30(5) SOC. PROBS. (1983). 20
- GREGG COLBURN & CLAYTON PAGE ALDERN, HOMELESSNESS IS A HOUSING PROBLEM: HOW STRUCTURAL FACTORS EXPLAIN U.S. PATTERNS (2022)..... 2, 3, 4, 5
- HUD Press Room, *HUD Releases January 2023 Point-in-Time Count Report*, HUD.GOV (Dec. 15, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_278. See also, HUD, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress* (Dec. 2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>..... 6
- Jennifer Castellow et al., *Previous Homelessness as a Risk Factor for Recovery from Serious Mental Illnesses*, 51(6) CMTY. MENTAL HEALTH J. (2015)..... 11
- Johanna Reilly, et al., *A systematic review of the effect of stigma on the health of people experiencing homelessness*, 30(6) HEALTH & SOC. CARE IN THE CMTY. (2022) 17
- Joshua A. Barocas, et al., *Population-Level Health Effects of Involuntary Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities*. 329(17) JAMA, E8 (2023), <https://jamanetwork.com/journals/jama/fullarticle/2803839?ut>

- m_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jama.2023.4800..... 15
- KATHERINE BECKETT AND STEVE HERBERT, *BANISHED: THE NEW SOCIAL CONTROL IN URBAN AMERICA* (2009) 19, 20
- Marisa Westbrook & Tony Robinson, *Unhealthy by Design: Public Health Consequences of Denver’s Criminalization of Homelessness*, DENVER HOMELESS OUT LOUD (2019), <https://perma.cc/Y7R5-UC3G> 12, 13, 14, 15
- National Health Care for the Homeless Council, *Issue Brief: Impact of Encampment Sweeps on People Experiencing Homelessness*, NHCHC.ORG (Dec. 2022), <https://nhchc.org/wp-content/uploads/2022/12/NHCHC-encampment-sweeps-issue-brief-12-22.pdf>..... 16, 17
- National Health Care for the Homeless Council, *National Homeless Mortality Overview*, NHCHC.ORG (2020), <https://nhchc.org/wp-content/uploads/2020/12/Section-1-Toolkit.pdf> 11
- Rachel Scott, et al., *Without shelter, people die: disproportionate mortality among King County’s homeless population, 2009–2019*, 32(2) J. OF SOC. DISTRESS AND HOMELESSNESS (2022), <https://www.tandfonline.com/doi/full/10.1080/10530789.2021.2021360?scroll=top&needAccess=true>..... 15
- Rebecca T. Brown, et al., *Factors Associated with Mortality Among Homeless Older Adults in California: The HOPE HOME Study*, 182(10) JAMA INTERNAL MED. (2022) 11
- Robert Sauders, *How the Proposed Anti-Encampment Initiative*

<i>Impacts the City of Spokane</i> , LINKEDIN (Oct. 2, 2023), https://www.linkedin.com/pulse/how-proposed-anti-encampment-initiative-impacts-city-spokane-sauders/?trackingId=5ikpIrKH0DefaLC19I9OYw%3D%3D	18
Sara K. Rankin, <i>Punishing Homelessness</i> , 22 NEW CRIM. L. REV. 99 (2019)	10, 11

Other Authorities

<i>Banishment definition</i> , Black’s Law Dictionary (4th ed., 1951), https://thelawdictionary.org/banishment/#:~:text=BANISHMENT%20Definition%20%26%20Legal%20Meaning&text=A%20punishment%20inflicted%20upon%20criminals,of%20time%2C%20or%20for%20life	18
---	----

I. IDENTITY OF *AMICUS* AND SUMMARY OF ARGUMENT

As further described in the accompanying Motion for Leave to File *Amicus Curiae* Brief, the American Civil Liberties Union of Washington is a nonprofit organization dedicated to the preservation of civil liberties. Amicus is interested because the decision in this case will contribute to shaping local governments' understanding of Washington's homelessness crisis, and their ability to criminalize homelessness. Amicus believes that the briefing provided will strengthen this Court's understanding of the homelessness crisis facing our state and the harms associated with criminalization.

This brief demonstrates that homelessness is the result of structural forces, such as the lack of affordable housing, and that while homelessness is dangerous to the health of the people experiencing it, the criminalization of homelessness further exacerbates their health risks. Finally, this brief explains that Spokane's law banishes the City's unhoused residents.

II. STATEMENT OF THE CASE

Amicus adopts Petitioners' Statement of the Case.

III. ARGUMENT

A. Homelessness Is an Involuntary Condition that Results From Our Failure to Invest in Affordable Housing.

1. Homelessness is a housing problem.

As this Court contends with the reality surrounding us,¹ it will benefit from the work of local researchers who have tasked themselves with exploring the underlying causes of homelessness.²

¹ This Court should not “walk blindly among the realities around us.” *State v. Pippin*, 200 Wn. App. 826, 845, 403 P.3d 907 (2017). In *Pippin*, the appellate court rebuked the argument that a homeless defendant chose to be unhoused, and thus did not deserve the privacy protections afforded by Article I, section 7. As the Chief Judge explained, “to call homelessness voluntary, and thus unworthy of basic privacy protections, is to *walk blindly among the realities around us*. Worse, such an argument would strip those on the street of the protections given the rest of us directly because of their poverty. Our constitution means something better.” *Id.* (emphasis added).

² GREGG COLBURN & CLAYTON PAGE ALDERN, HOMELESSNESS IS A HOUSING PROBLEM: HOW STRUCTURAL FACTORS EXPLAIN U.S. PATTERNS (2022).

The unique utility of *Homelessness is a Housing Problem* lies in the authors' ability to explain the relationship between structural forces and an individual's experience of homelessness. The book reviews different factors that have been suggested to cause homelessness and assesses which of these account for the varied homelessness rates witnessed across the country.³

So, "[w]hat explains the substantial variation in per capita homelessness rates in the United States?"⁴ The authors found that "[r]egional variation in rates of homelessness can be explained by the cost and availability of housing. Housing market conditions explain why Seattle has four times the per capita homelessness of Cincinnati. Housing market conditions explain why high-poverty cities like Detroit and Cleveland have low rates of homelessness."⁵ This explanation should guide the

³ *Id.* at 7-8.

⁴ *Id.* at 9.

⁵ *Id.* at 10.

Court's understanding of the forces that create and perpetuate Washington's homelessness emergency.

What most determines whether one will become unhoused is the housing market that surrounds them.⁶ While there is no single, unifying aphorism for explaining how housing market conditions create the context in which our neighbors become unhoused, one market phenomenon accounts for the national variation in per capita homelessness rates: “*High rental costs and low vacancy rates* create a challenging market for many residents in a city, and those challenges are compounded for people with

⁶ *But see also id.* at 42. “While Black people account for only 13 percent of the U.S. population, 40 percent of all people experiencing homelessness on any given night are Black. This racial disproportionality must undergird any analysis of homelessness in the country. Decades of overt and structural racism—lending practices and employment opportunities, eviction rates and over-policing, from Jim Crow to the present day—have made it far too easy to lose your housing if you live in the United States and you’re Black.”

low incomes and / or physical or mental health concerns.”⁷ Thus, homelessness is a housing problem.⁸

Generally, vulnerabilities to homelessness include poverty, mental illness, addiction, and domestic violence. These factors “increase the risk or likelihood of experiencing homelessness for any given person.”⁹ Furthermore, individual attributes like “race and sexual orientation increase the risk of homelessness when they interact with structural barriers like racism and other forms of discrimination and oppression.”¹⁰ But vulnerabilities that increase the risk of homelessness are not root causes.¹¹

Armed with the knowledge that homelessness is a housing problem, this Court’s decision should reflect the fact that unhoused people are not to blame for their circumstances.

⁷ *Id.* at 10 (emphasis added).

⁸ *Id.* at 55-57.

⁹ *Id.* at 51.

¹⁰ *Id.*

¹¹ *Id.* at 94.

2. This Court has acknowledged that people are forced into homelessness and that the causes of homelessness are beyond an individual's control.

The state of homelessness in Washington is dire.¹² As the circumstances of our unhoused neighbors worsen due to a litany of municipal laws that criminalize the status of homelessness, it is extremely likely that this Court will continue to be petitioned to review controversies that emanate out of the crisis facing our state.¹³

¹² Anna Patrick, *HUD reports record-high homeless count in 2023 for U.S., WA*, SEATTLE TIMES (Dec. 19, 2023), <https://www.seattletimes.com/seattle-news/homeless/hud-reports-record-high-homeless-count-in-2023-for-u-s-wa/>.

¹³ United States Department of Housing and Urban Development estimates that more than 650,000 people experience homelessness on a given night in the United States. HUD Press Room, *HUD Releases January 2023 Point-in-Time Count Report*, HUD.GOV (Dec. 15, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_278. See also, HUD, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*, 2 (Dec. 2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>. That number represents a 12 percent increase from the 2022 count. *Id.* HUD also estimates that at least 28,000 Washingtonians experienced homelessness in 2023 (an 11 percent increase from 2022). *Id.* at 16. In 2023, Spokane was

When addressing these controversies, this Court should employ an understanding of homelessness as a phenomenon that is inseparable from our nation’s social and economic failures. Such an understanding of homelessness has already animated this Court’s jurisprudence, albeit implicitly. For example, in *Seattle v. Long*, this Court held that courts imposing fines on Washingtonians experiencing poverty must conduct “an ability to pay inquiry,” and noted that *inter alia* “[t]he homelessness crisis” supports this holding.¹⁴ This Court attributed homelessness to colossal factors which exceed the agency of any one individual, such as “volatile housing markets, uncertain social safety nets, colonialism, slavery, [...] discriminative housing practices” and the pandemic.¹⁵

home to about 2,390 unhoused people (36 percent increase from 2022), with 955 individuals experiencing unsheltered homelessness.

¹⁴ *City of Seattle v. Long*, 198 Wn.2d 136, 171, 493 P.3d 94 (2021).

¹⁵ *Id.* at 172.

Mr. Long petitioned this Court because the fines the City of Seattle imposed on him and the vehicle impoundment he suffered deprived him of his home and threatened his health and livelihood,¹⁶ and thus jeopardized his ability to exit homelessness.¹⁷ This Court agreed with Long when it decided that the impoundment and fine assessed against him were unconstitutionally excessive. The Court reasoned that the history of the excessive fines clause contains an overarching purpose: “to protect individuals from fines that would deprive them of their ability to live.”¹⁸ Accordingly, the Court recognized that this purpose was specifically implicated in a case concerning “homelessness *and the circumstances forcing individuals into it*.”¹⁹ Thus, implicit in the reasoning and holding of *Long* is the

¹⁶ *Id.* at 174-75.

¹⁷ *Id.* at 175 (“It is difficult to conceive how Long would be able to save money for an apartment and lift himself out of homelessness while paying the fine and affording the expenses of daily life.”).

¹⁸ *Id.* at 172.

¹⁹ *Id.* (emphasis added).

premise that individuals are pushed into homelessness by factors that surpass their individual agency or control, and that laws which jeopardize or deprive homeless individuals of their ability to live violate our most venerated constitutional protections.

Similarly, in *Washington v. Sunnyside*, the Court’s analysis of the underlying facts highlighted how factors outside the control of individual tenants, like the unscrupulous interference of Sunnyside police with eviction procedures, pushed people into homelessness.²⁰ There, the Court described homelessness as a “profoundly traumatic experience[.]”²¹

As the Court recounted, the stories of the individuals who Sunnyside thrust into homelessness demonstrate that homelessness is an experience that disturbs one’s life, causing geographic displacement and significant emotional suffering.

²⁰ *State v. City of Sunnyside*, 2024 WL 3058780, 550 P.3d 31, at *9 (June 20, 2024) (the Court referenced evidence provided by the state which shows that Sunnyside’s crime-free rental housing program “forc[ed] [...] residents to separate their families and experience homelessness.”)

²¹ *Id.* (citation omitted).

Regardless of the Court’s ultimate decision in this case, it should employ an explicit and keen understanding that homelessness is an involuntary circumstance—it is a condition which our neighbors are forced into.

B. Being Unhoused Is Dangerous to One’s Health.

1. Homelessness shortens one’s lifespan.

Homelessness jeopardizes one’s health. The “resource deprivation” unhoused people endure “naturally contributes to poor physical health indicators, such as malnutrition, hunger, lack of medical care and medicine, and ‘difficulties following treatment protocols.’”²² As a result, unhoused people disproportionately suffer from illnesses such as “tuberculosis, HIV\AIDS, heart and lung disease, hypertension, hepatitis, and most other infectious and chronic conditions.”²³ It is thus unsurprising that as a result of the health dangers associated with

²² Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 106 (2019) (citing Adam M. Lippert & Barrett A. Lee, *Stress, Coping and Mental Health Differences Among Homeless People*, 85(3) SOCIO. INQUIRY, 347 (2015)).

²³ *Id.* (citation omitted).

homelessness, unhoused people die at a much younger age than the general (housed) population.²⁴

In addition, alcohol and drug abuse, conditions that affect at least half of the chronically unhoused population, are defense mechanisms utilized to cope with “the trauma of homelessness.”²⁵ These coping mechanisms invariably lead to deteriorated health for individuals living on the street.

²⁴ National Health Care for the Homeless Council, *National Homeless Mortality Overview*, NHCHC.ORG, 3 (2020), <https://nhchc.org/wp-content/uploads/2020/12/Section-1-Toolkit.pdf> (in one example, the life of an unhoused person was calculated as 33% shorter than the national life expectancy); Bruce D. Meyer, Angela Wyse & Ilina Logani, *Life and Death at the Margins of Society: The Mortality of the U.S. Homeless Population*, NAT’L BUREAU OF ECON. RSCH., 27 (Nov. 2023), <https://www.nber.org/papers/w31843> (“a 40-year-old homeless person faces a mortality risk similar to a housed person nearly twenty years older.”). See also Rebecca T. Brown, et al., *Factors Associated with Mortality Among Homeless Older Adults in California: The HOPE HOME Study*, 182(10) JAMA INTERNAL MED. (2022).

²⁵ Rankin, *Punishing Homelessness* at 105 (citing Lippert & Lee, *Stress, Coping and Mental Health Differences* at 343). See also Jennifer Castellow et al., *Previous Homelessness as a Risk Factor for Recovery from Serious Mental Illnesses*, 51(6) CMTY. MENTAL HEALTH J. (2015).

2. The criminalization of homelessness further exacerbates the health dangers associated with homelessness.

This Court should be guided by an understanding that the criminalization of homelessness exacerbates the health risks unhoused people already face.

Many health dangers associated with experiencing homelessness stem from the enforcement of laws criminalizing homelessness and policies like sweeps, which punish unhoused people for being visible. For example, a study of the health consequences experienced by unhoused people in Denver, Colorado, explains that the criminalization of homelessness affects unhoused people's ability to sleep, exposes them to violence, interferes with their ability to utilize shelters, and threatens their mental health.²⁶

²⁶ Marisa Westbrook & Tony Robinson, *Unhealthy by Design: Public Health Consequences of Denver's Criminalization of Homelessness*, DENVER HOMELESS OUT LOUD (2019), <https://perma.cc/Y7R5-UC3G>.

It is extremely difficult for unhoused people living in cities that have criminalized homelessness to get adequate sleep.²⁷ The difficulty unhoused people experience in trying to sleep threatens their physical and mental health.²⁸ “In addition to diminished hours of sleep, people experiencing homelessness typically sleep in short bursts, subject to frequent interruption.”²⁹ These interruptions are often caused by law enforcement.³⁰ The health consequences of such routine sleep interruptions are dire.

Poor sleeping patterns have a devastating effect on one’s mental and physical health. Sleep deprivation is linked to a cascade of health problems, such as increased rates of mental illness, diabetes, hypertension, drug abuse, and violence. Schizophrenia-like symptoms are associated with lack of sleep, as are increases in anxiety, memory loss, and depression. It is reasonable to expect, therefore, that the enactment of laws against

²⁷ See *id.* at 39-40; see also *id.* charts 8-9 (71% of surveyed responders sleep less six hours each night and 86% sleep less than six hours before being interrupted).

²⁸ *Id.* at 41 (“When these difficulties are exacerbated by frequent police wake-ups, orders to move along, and confiscation of blankets and bedrolls, the health of homeless individuals predictably deteriorates.”). See also *id.* at 43.

²⁹ *Id.* at 39.

³⁰ *Id.* at 40.

sleeping and resting in public spaces might exacerbate unhealthy bodily changes caused by lack of sleep. It is also reasonable to assume that loss of sleep caused by frequent policing of the homeless contributes to mental and emotional imbalance by people experiencing homelessness.³¹

Alongside the health consequences caused by an interminable routine of disrupted and insufficient sleep, laws that criminalize homelessness make unhoused people more vulnerable.³² Unhoused people stay safe by living together in encampments which provide the security distinctive of small communities.³³ To enforce unlawful camping laws, police target groups of unhoused people banded together in an encampment, breaking them up, discarding property, and displacing individuals. As a result, unhoused people resort to “sleeping locations with an aim to avoid contact with police.”³⁴ The

³¹ *Id.* at 43.

³² *Id.* at 49.

³³ *Id.* (“83.7% of all respondents noted that they sometimes sleep outside with a group. When asked why people choose to sleep with a group, personal safety was a prominent response.”).

³⁴ *Id.* at 50.

decision to sleep in hidden or isolated locations to avoid police leaves individuals “predictably more at risk of physical and sexual assault.”³⁵ In addition, the “[i]nvoluntary displacement of people experiencing homelessness may substantially increase drug-related morbidity and mortality.”³⁶ In other words, police sweeps risk killing unhoused people by increasing the chance they will die of an overdose afterwards.³⁷

Even when sweeps do not lead to an increased risk of a deadly overdose, the punitive policy of disbanding and displacing unhoused people gathered together in an encampment

³⁵ *Id.* at 52; *see also id.* at table 9; *id.* at 53.

³⁶ Joshua A. Barocas, et al., *Population-Level Health Effects of Involuntary Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities*, 329(17) JAMA, E8 (2023), https://jamanetwork.com/journals/jama/fullarticle/2803839?utm_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jama.2023.4800. *See also* Rachel Scott, et al., *Without shelter, people die: disproportionate mortality among King County’s homeless population, 2009–2019*, 32(2) J. OF SOC. DISTRESS AND HOMELESSNESS (2022), <https://www.tandfonline.com/doi/full/10.1080/10530789.2021.2021360?scroll=top&needAccess=true>.

³⁷ Barocas, et al., *Population-Level Health Effects* at E7.

tends to damage their health, exacerbate existing traumas, and interrupt their access to care.³⁸

Sweeps destroy the items individuals require to survive, such as tents, bedding, food, cooking equipment, and clothing.³⁹

Sweeps also traumatize unhoused people: “Residents report feeling dehumanized and traumatized after sweeps. Intense fear over subsequent displacement, nightmares, and sleep deprivation after sweeps all contribute to mental health deterioration.”⁴⁰

Sweeps also jeopardize one’s health by resulting in the destruction of medications used to treat serious conditions, which are difficult to replace, leaving individuals unmedicated for long periods of time.⁴¹ Tragically rendering our disabled unhoused neighbors in dangerous and undignified circumstances, sweeps

³⁸ National Health Care for the Homeless Council, *Issue Brief: Impact of Encampment Sweeps on People Experiencing Homelessness*, NHCHC.ORG, 3-4 (Dec. 2022), <https://nhchc.org/wp-content/uploads/2022/12/NHCHC-encampment-sweeps-issue-brief-12-22.pdf>.

³⁹ *Id.* at 3.

⁴⁰ *Id.*

⁴¹ *Id.*

also lead to the loss or destruction of “wheelchairs, walkers, canes, and other assistive devices.”⁴²

Finally, sweeps perpetuate the dangerous health conditions affecting our unhoused neighbors by severing their ability to access consistent healthcare because “[h]ealth care providers [...] often cannot find their patients after a sweep, and have no knowledge of where they might have gone.”⁴³

In sum, this Court should not ignore the devastating effects that laws criminalizing homelessness bear on the health of unhoused Washingtonians.

3. Spokane’s law banishes the homeless.

As a status that has been subjected to criminalization, homelessness has become a brand of inferiority, casting unhoused people as less than human.⁴⁴

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Johanna Reilly, et al., *A systematic review of the effect of stigma on the health of people experiencing homelessness*, 30(6) HEALTH & SOC. CARE IN THE CMTY. (2022).

Laws criminalizing homelessness force their targets to either constantly move around a given jurisdiction or leave the city.⁴⁵ As a result of laws like Spokane's, our unhoused neighbors are increasingly pushed to the margins of our society, excluded from public spaces,⁴⁶ and stigmatized as criminals.⁴⁷ Shying away from this, the Court of Appeals

⁴⁵ Banishment is “[a] punishment inflicted upon criminals, by compelling them to quit a city, place, or country for a specified period of time, or for life.” *Banishment definition*, Black’s Law Dictionary 183 (4th ed., 1951), <https://thelawdictionary.org/banishment/#:~:text=BANISHMENT%20Definition%20%26%20Legal%20Meaning&text=A%20punishment%20inflicted%20upon%20criminals,of%20time%20C%20or%20for%20life>.

⁴⁶ For the displacement effect of Spokane’s law see *Areas Impacted by Proposed 2023 Anti-Encampment Initiative (Prop 1) in the City of Spokane*, <https://www.arcgis.com/apps/instant/interactivelegend/index.html?appid=06016f9ad9694eb2a609a05d290b0336>; Robert Sauders, *How the Proposed Anti-Encampment Initiative Impacts the City of Spokane*, LINKEDIN (Oct. 2, 2023), <https://www.linkedin.com/pulse/how-proposed-anti-encampment-initiative-impacts-city-spokane-sauders/?trackingId=5ikpIrKH0DefaLC19I9OYw%3D%3D>.

⁴⁷ A violation of Spokane Municipal Code 12.02.1010 is a misdemeanor offense. See Spokane Municipal Code 12.02.1010(B).

described Spokane’s law as “a classic vagrancy ordinance.”⁴⁸

Yet, in casting the regulation of vagrancy as a banal police power, the Court of Appeals failed to connect the history of vagrancy laws to the banishing effect of Spokane’s law.

Vagrancy laws cannot be divorced from some of the most oppressive eras of American history.⁴⁹ For example, following the abolition of slavery, governments of the American South used vagrancy laws in an attempt to “control the [B]lack population and prevent the collapse of the sharecropping system.”⁵⁰ Tellingly, terms excised from Mississippi’s Black Code define “vagrants” in a manner that evokes the modern stereotypes that exist for unhoused people.⁵¹ Furthermore, in the early twentieth century,

⁴⁸ *Jewels Helping Hands v. Hansen*, 29 Wn. App. 2d 1, 12, 539 P.3d 68 (2023), *review granted*, 549 P.3d 115 (Wn. 2024).

⁴⁹ KATHERINE BECKETT AND STEVE HERBERT, *BANISHED: THE NEW SOCIAL CONTROL IN URBAN AMERICA*, 12-14 (2009).

⁵⁰ *Id.* at 13.

⁵¹ “[R]unaways, drunkards, pilferers; lewd, wanton, or lascivious persons...those who neglect their employment, misspend their earnings, and fail to support their families;

vagrancy laws took aim at “those who did not appear to work,” thus giving police license to harass and marginalize the poor.⁵² During this historical period, vagrancy laws were a means of accomplishing banishment: “those arrested for vagrancy were often given the option of leaving town in lieu of jail time.”⁵³ It is thus revealing that Spokane has opted to respond to the needs of its poorest, most vulnerable residents with a classic vagrancy ordinance.

Today, instead of expressly banishing its unhoused residents, Spokane’s laws criminalize their very existence in pursuit of that same effect, making life on the street more traumatizing, chaotic, dangerous, and, ultimately,

and...all other idle and disorderly persons”” *Id.* (quoting Christopher R Adamson, *Punishment after slavery: Southern state penal systems, 1865-1890*, 30(5) SOC. PROBS. (1983)). These stereotypes are perpetuated in modern times by laws that treat unhoused people as criminals.

⁵² *Id.*

⁵³ *Id.*

dehumanizing. This Court should contend with the banishing effect of Spokane's law.

IV. CONCLUSION

The Court's decision should contend with the fact that homelessness is an involuntary condition, that being unhoused shortens one's lifespan—a tragedy that is worsened by criminalization—and that the law approved by a majority of Spokane voters threatens to banish the city's unhoused residents.

This document contains 3,218 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 26th day of July,
2024.

ACLU of Washington Foundation

By /s/ Sagiv Galai

Sagiv Galai, WSBA #61383

Jazmyn Clark, WSBA #48224

Brent Low, WSBA #61795

La Rond Baker, WSBA #43610

PO Box 2728

Seattle, WA 98111

sgalai@aclu-wa.org
jclark@aclu-wa.org
blow@aclu-wa.org
baker@aclu-wa.org

Attorneys for Amicus Curiae
American Civil Liberties Union of
Washington

CERTIFICATE OF SERVICE

I certify that on the 26th day of July, 2024, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 26th day of July, 2024 at Seattle, WA.

/s/ Tracie Wells
Tracie Wells, Paralegal
ACLU OF WASHINGTON
FOUNDATION
P.O. Box 2728
Seattle, WA 98111
(206) 624-2184

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

July 26, 2024 - 12:42 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,814-8
Appellate Court Case Title: Jewels Helping Hands, et al. v. Brian Hansen, et al.
Superior Court Case Number: 23-2-03122-3

The following documents have been uploaded:

- 1028148_Briefs_20240726123934SC284885_0579.pdf
This File Contains:
Briefs - Amicus Curiae
The Original File Name was 2024-07-26--JHH v. Hansen - ACLU-WA Amicus Brief - Final.pdf
- 1028148_Motion_20240726123934SC284885_7905.pdf
This File Contains:
Motion 1 - Amicus Curiae Brief
The Original File Name was 2024-07-26--JHH v. Hansen - ACLU-WA Motion for Leave to File Amicus Brief - Final.pdf

A copy of the uploaded files will be sent to:

- ahaile@spokanecity.org
- anderson@carneylaw.com
- baker@aclu-wa.org
- blow@aclu-wa.org
- claire@smithandlowney.com
- cosgrove@carneylaw.com
- hart@carneylaw.com
- jclark@aclu-wa.org
- katelyn@pugetsoundkeeper.org
- katelyn@smithandlowney.com
- knoll@smithandlowney.com
- mcozza@spokanecounty.org
- mlamb@carneylaw.com
- mpiccolo@spokanecity.org
- nodle@spokanecity.org
- rzickau@spokanecounty.org
- scpaappeals@spokanecounty.org
- sdhansen@spokanecity.org
- twells@aclu-wa.org

Comments:

Sender Name: Sagiv Galai - Email: sgalai@aclu-wa.org
Address:
PO BOX 2728
SEATTLE, WA, 98111-2728
Phone: 917-378-6952

Note: The Filing Id is 20240726123934SC284885