

**PUNISHMENT, CRUELTY & JUSTICE:  
CRITICALLY INTERROGATING *GRANTS PASS V.  
JOHNSON*<sup>\*1</sup>**

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Thank you to the *North Carolina Civil Rights Law Review* (NCCRLR) for hosting this Conference on Race, Class, Gender, and Ethnicity (CRCGE). For many, it's scary to identify with or work on these topics. That's especially the case now. As someone whose work focuses on homeless rights advocacy, I think a lot about how marginalized people are disproportionately represented in homeless populations.<sup>2</sup> That's not an accident. Homelessness is the expression of

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1. Editor's Note: The following is a transcript of the keynote address delivered by Sara K. Rankin, Professor of Law, at the North Carolina Civil Rights Law Review's Conference on Race, Class, Gender, and Ethnicity on February 28, 2025. The transcript has been lightly edited for publication.

\* Professor, Seattle University School of Law; J.D., New York University School of Law; M.Ed., Harvard Graduate School of Education; B.A., University of Oregon. Justice Sotomayor quoted Professor Rankin's scholarship in the *Johnson* dissent. See *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 577-78 (2024) (Sotomayor, J., dissenting) (quoting Sara Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 CAL. L. REV. 559, 561 (2021)).

2. See generally Kaya Lurie & Breanne Schuster, *Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups*, SEATTLE UNVI. SCH. OF L., May 2015, at 2 n.33-34, <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1002&context=hrap>; ERIC TARS AND SIYA HEDGE, NAT'L HOMELESSNESS L. CTR. & TAMAR EZER AND ABIGAIL WETTSTEIN, UNIV. OF MIAMI SCH. OF L. H.R. CLINIC, RACIAL INJUSTICE IN HOMELESSNESS AND HOUSING IN THE UNITED STATES (2023), [https://homelesslaw.org/wp-content/uploads/2023/11/Racial-Injustice-in-Homelessness-and-Housing-in-the-United-States\\_Final\\_10-6-23-2.pdf](https://homelesslaw.org/wp-content/uploads/2023/11/Racial-Injustice-in-Homelessness-and-Housing-in-the-United-States_Final_10-6-23-2.pdf) (surveying the impact of systemic racism and the overrepresentation of racial groups in homelessness); Lisa Sloane, *Priced Out: The Affordable Housing Crisis for People with Disabilities in 2024*, TECH. ASSISTANCE COLLABORATIVE (Jan. 10, 2024), <https://www.tacinc.org/blog/priced-out-the-affordable-housing-crisis-for-people-with-disabilities-in-2024/> (discussing systemic injustices resulting in overrepresentation of disabled individuals); *Understanding*

sustained, systemic oppression and discrimination against human beings based on their race, class, gender, gender identity, sexual orientation, disability, immigration status, and ethnicity.

So, what's the law's role in our country's homelessness crisis? It helps to think of homelessness as a two-handed challenge: the right hand and the left hand. The right hand is the hand we traditionally think of when we consider solutions to homelessness: investments in programs, housing, and services. But we tend to ignore, or not even be aware of, what the left hand is doing. The left hand creates and enforces laws that can make homelessness better or worse. These hands rarely work in concert: the left hand is often undoing any progress the right hand might otherwise be making.

A critical illustration of the damage the left hand can inflict is the criminalization of homelessness. Criminalization refers to laws that prohibit or severely restrict someone's ability to engage in necessary, life-sustaining activities in public even when they have no reasonable alternative because they lack a private place to be.<sup>3</sup> Examples include laws that punish someone if they sit, stand, sleep, eat, go to the bathroom, ask for help, or even protect themselves from the elements.<sup>4</sup> We must all do these things to survive. And yet when someone is unsheltered, their survival—their very existence—becomes criminal. An unsheltered person is inevitably caught in a web of laws that punish them for their status.

These laws are proven to make unhoused people more likely to become sick, to be incarcerated, and even more likely to die.<sup>5</sup> Studies also repeatedly show what we should intuitively understand: running an already vulnerable person through the criminal or civil legal system leaves them more vulnerable and less likely to emerge from homelessness.<sup>6</sup>

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*LGBTQ Homelessness*, NAT'L COAL. FOR THE HOMELESS, <https://nationalhomeless.org/lgbtq-homelessness/> (last visited Jan. 15, 2025) (presenting data on the overrepresentation of LGBTQ individuals experiencing homelessness).

3. See Sara Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 106-07 (2019).

4. *Id.* at 108.

5. *Id.*

6. See, e.g., Sara Rankin, *Civilly Criminalizing Homelessness*, 56 HARV. C.R.-C.L. L. REV. 368, 379 (2021) (discussing how civil infractions harm unhoused people); Roshan Abraham, *Sweeps Aren't Outreach—Policing Homelessness Still*

Simply put, criminalization harms vulnerable people and makes homelessness worse. It is the most expensive and least effective way to respond to homelessness.<sup>7</sup> It is also the most popular method cities turn to. Why? Because it is the fastest and easiest way to hide homelessness by removing visible poverty—visibly poor people—from view.<sup>8</sup>

Criminalization is proliferating nationwide. Even before *Johnson*,<sup>9</sup> these punitive laws were already growing, both in terms of number and severity.<sup>10</sup>

The constitutional, civil, and human rights issues stemming from punishing unsheltered people for public survival are clear but often contested. The “winner” of that contest was recently decided in the United States Supreme Court’s extraordinarily dehumanizing decision in *Johnson vs. Grants Pass*, where the Court determined that it is not cruel and unusual punishment to jail or fine an involuntarily homeless person for surviving in public space.<sup>11</sup>

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*Doesn't Work*, SHELTERFORCE (June 30, 2023), <https://shelterforce.org/2023/06/30/sweeps-arent-outreach-policing-homelessness-still-doesnt-work/> (discussing various studies showing criminalization’s harms); Marcy Thompson, *The Role of Law Enforcement in Homelessness Response*, NAT’L ALL. TO END HOMELESSNESS (July 23, 2024), <https://endhomelessness.org/blog/the-role-of-law-enforcement-in-homelessness-response/> (highlighting recent examples of police violence and fatal interactions in policing homelessness); *Policing- and Punishment-Based Approaches: A Really Expensive Way to Make Homelessness Worse*, NAT’L COAL. FOR HOMELESS VETERANS (Sept. 28, 2021), <https://nchv.org/policing-and-punishment-based-approaches-a-really-expensive-way-to-make-homelessness-worse/> (summarizing various risks of policing homelessness to unhoused people).

7. See Rankin, *supra* note 3.

8. See generally Sara Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 CAL. L. REV. 559 (2021) (discussing the use of legal and nonlegal approaches to “hide” homelessness).

9. 72 F.4th 868 (9th Cir. 2023) [hereinafter *Johnson I*], *cert. granted sub nom.*, City of Grants Pass, Oregon v. Johnson, 603 U.S. 520, *rev’d and remanded sub nom.* City of Grants Pass, Oregon v. Johnson, 603 U.S. 520 (2024) [hereinafter *Johnson II*].

10. See, e.g., NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 37-49 (2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>

11. See *Johnson I*, 72 F.4th 868, *cert. granted sub nom.* City of Grants Pass, Oregon, 603 U.S. 520, *rev’d and remanded sub nom.* *Johnson II*, 603 U.S. 520 (2024). See also Sara Rankin & Laura Riley, *The Unavoidable Consequences*

This ruling begs the questions: What is cruelty? What is punishment? What is justice?

Let's step back for a moment. From early childhood, we understand what punishment means. Do something wrong, and you get punished. It might be corporal or physical; it might be verbal or symbolic shaming, where you are degraded, segregated, or put in a time out.

As we grow up, we begin to comprehend that sometimes people get punished when they don't do anything wrong at all. That's when we begin to understand cruelty. We bear witness to the cruelty of abuse, assault, and neglect.

We begin to appreciate the intersections of punishment, power, stigma, segregation, isolation, and deprivation. We learn about mass incarceration and the death penalty. We discover that cruelty and punishment can take systemic forms, such as discrimination, oppression, and other types of structural violence.

Some of us go to law school: we learn that the law is always about power, and it is often not about justice. Never forget that the law is a human creation. Whatever you learn about legal formalism, binding authority, and jurisdiction—the law is and always will be what we human beings make it.<sup>12</sup>

I urge you to interrogate any legal construction or interpretation that dares to answer questions that are essential to our humanity, such as, “what is punishment, cruelty, and justice?” When assessing the law, always ask yourself three questions: Who benefits from this legal outcome? Who is harmed? How does the allocation of this benefit and harm square with my human understanding of justice?<sup>13</sup>

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*of Homelessness*, 2025 UTAH L. REV. (forthcoming) (for an in-depth discussion of the *Johnson* case).

12. See, e.g., MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990) (examining how the law categorizes people and enforces social distinctions, demonstrating how legal frameworks are shaped by human choices rather than objective truths); COLIN DAYAN, THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS (2013) (examining how the law constructs and deconstructs identities, particularly to deny the personhood and humanity of marginalized individuals and to serve the interests of those in power).

13. See FRANCISCO VALDES, STEVEN W. BENDER, JENNIFER J. HILL, CRITICAL JUSTICE: SYSTEMIC ADVOCACY IN LAW AND SOCIETY 6–10 (1st ed. 2021)

Such a lens is crystallizing when you consider the Supreme Court's recent *Johnson* decision.

Grants Pass is a small city in Oregon, located less than 60 miles north of the California border. Like many cities nationwide, it faces a housing affordability crisis.<sup>14</sup> When *Johnson* was first filed, about 38,000 residents lived in Grants Pass, including at least 600 unhoused people.<sup>15</sup> At the same time, Grants Pass offered “zero emergency shelter beds.”<sup>16</sup>

Amid this crisis, the city enacted three ordinances banning sleeping or camping on public property and prohibiting overnight parking in city parks.<sup>17</sup> These laws were specifically designed to apply to unhoused people only—they prohibit resting with any “material used for bedding purposes” in public, but only if you do so “for the purpose of maintaining a temporary place to live.”<sup>18</sup> If someone is not doing those things for that purpose, Grants Pass's law does not apply to them.<sup>19</sup>

So, the language of the ordinance showed the specific intent to target unhoused people. The factual record proved it: police testified they only enforced the law against unhoused people.<sup>20</sup> If that weren't enough, the Grants Pass City Council president plainly admitted that the goal of these laws was “to make it uncomfortable enough for them in our city so they will want to move on down the road.”<sup>21</sup>

The city enforced these laws at a feverish rate, and the numbers of unhoused residents cited increased year over year.<sup>22</sup> Violators faced

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(describing how to critically identify legal problems and assess whether the law is effectuating justice).

14. See April Ehrlich, More Than Half of Grants Pass Tenants Are “Rent Burdened,” JEFFERSON PUB. RADIO (Dec. 31, 2019), <https://www.ijpr.org/poverty-and-homelessness/2019-12-31/more-than-half-of-grants-pass-tenants-are-rent-burdened> (noting over half of Grant Pass renters are “rent burdened,” meaning they lose a third or more of their income to pay for rental housing).

15. *Johnson I*, 72 F.4th at 874; *Johnson II*, 603 U.S. at 520.

16. See *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 WL 4209227, at \*7 (D. Or. July 20, 2020).

17. *Johnson II*, 603 U.S. at 570.

18. GRANTS PASS, ORE. CODE § 5.61.010(A)-(B).

19. See *id.*

20. *Johnson II*, 603 U.S. at 580 (discussing the record).

21. See Brief for Respondents at 1, 33, *Jackson II*, 603 U.S. 520 (2024).

22. *Johnson I*, 72 F.4th at 876–77.

progressive punishment, starting with a fine of \$295 and escalating to prosecution for criminal trespass and thirty days in jail.<sup>23</sup>

*Johnson* was filed as a class action, brought on behalf of “all involuntarily homeless individuals living in Grants Pass, Oregon,” who challenged these laws as unconstitutional under the Eighth Amendment’s prohibition against cruel and unusual punishment.<sup>24</sup> The District Court concluded the ordinances violated the Eighth Amendment,<sup>25</sup> and the Ninth Circuit affirmed.<sup>26</sup>

The City of Grants Pass assembled an army of amici and petitioned the U.S. Supreme Court for review.<sup>27</sup> They argued, among other grievances, that the Ninth Circuit decision hamstrung their ability to respond to homelessness because they needed to jail and fine involuntarily homeless people for not having shelter.<sup>28</sup> On January 12, 2024, the U.S. Supreme Court answered the petitioners’ wish, granting cert.<sup>29</sup>

Respondents and their amici explained the harms of criminalizing homelessness.<sup>30</sup> They also pointed to the Court’s own precedent for the proposition that the Eighth Amendment—as a baseline barometer of the justice and humanity of the law — should be broadly interpreted as the Court itself stated in *Weems v. United States*.<sup>31</sup> In *Trop*

23. *Johnson II*, 603 U.S. at 571.

24. *Johnson I*, 72 F.4th at 875–78.

25. *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 WL 4209227, at \*5, \*10, \*13 (D. Or. July 20, 2020).

26. *Johnson I*, 72 F.4th at 868.

27. Br. for Petitioner, *Johnson II*, 603 U.S. 520 (2024) (No. 23-175). For a full list of all the briefing, including parties and amici, see City of Grants Pass, Oregon v. Johnson, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/city-of-grants-pass-oregon-v-johnson/> (last visited Feb. 18, 2025).

28. See, e.g., Br. for Petitioner, *Jackson II*, 603 U.S. 520 (2024) (No. 23-175); Brief of Amici Curiae City of Phoenix & the League of Arizona Cities and Towns Supporting Petitioner, *Johnson II*, 603 U.S. 520 (2024) (No. 23-175).

29. *Johnson II*, 603 U.S. at 520.

30. See, e.g., Sara Rankin & Laura Riley, *The Unavoidable Consequences of Homelessness*, 2025 UTAH L. REV. (forthcoming) (summarizing the Johnson parties’ arguments).

31. 217 U.S. 349, 376–77 (1910) (observing the Eighth Amendment should be interpreted broadly, being of an “expansive and vital character.”). The *Weems* Court also explained that the “progressive” Eighth Amendment “does not prohibit merely the cruel and unusual punishments known in 1689 and 1787 but may acquire

*v. Dulles*, the Court again reinforced this principle, stating that the meaning of the Eighth Amendment must adapt to society's "evolving standards of decency."<sup>32</sup> Then in *Atkins v. Virginia*, the Court explicitly rejected applying an originalist lens to the interpretations of the Eighth Amendment, observing that what is "cruel and unusual" must be judged by today's norms, not those of the 17th or 18th century.<sup>33</sup> The respondents also emphasized other key Supreme Court precedent, such as *Robinson v. California*, in which the Court interpreted the Eighth Amendment to allow for punishment of one's voluntary conduct, but not punishment of an involuntary act that is the unavoidable consequence of one's "status" or "being."<sup>34</sup>

Despite this precedent and the factual record, the Supreme Court reversed the Ninth Circuit.<sup>35</sup> The decision was predictably split along ideological lines. Justice Neil Gorsuch penned the majority decision, hewing to originalism and requiring the majority to ignore or limit both its own precedent and the factual record to conclude the following:

First, punishment refers to sentencing only, not to whether something can be punished as a crime "in the first place."<sup>36</sup> Second, *Robinson* was not implicated because Grants Pass's laws were generally applicable to anyone based on their conduct and not on their housing status.<sup>37</sup> Third, jailing or fining involuntarily homeless people for attempting to live in public was not cruel.<sup>38</sup> To reach this conclusion, Gorsuch drastically narrowed the definition of "cruelty" by tying it to a reference from a death penalty case, asserting that a punishment is only cruel if it "superadds unnecessary terror, pain, or disgrace."<sup>39</sup> Gorsuch drew this standard from *Bucklew v. Precythe*, another

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wider meaning as public opinion becomes enlightened by humane justice." *Id.* at 350.

32. 356 U.S. 86, 101 (1958).

33. 536 U.S. 304, 311–12 (2002).

34. 370 U.S. 660, 666–67 (1962). For more on the *Robinson* decision and its influence on *Johnson*, see Sara Rankin, *Setting the Stage for Johnson*, 67 WM. & MARY L. REV. (forthcoming 2026) (discussing the housing, healthcare, climate, and mass incarceration crises precipitating the *Johnson* decision).

35. *Johnson II*, 603 U.S. 520, 520 (2024).

36. *Id.* at 520–21.

37. *Id.* at 522–23.

38. *Id.* at 543.

39. *Id.* at 520–22 (citing *Bucklew v. Precythe*, 587 U.S. 119, 130 (2019)).

decision for which he penned the majority decision.<sup>40</sup> The *Bucklew* Court ruled executing a capital defendant is not constitutionally cruel “so long as proper procedures are followed.”<sup>41</sup> However, the majority offered no rationale for applying a definition of cruelty derived from a death penalty case to a non-capital case like *Johnson*.<sup>42</sup> *Bucklew*’s definition refers to extreme forms of brutality—such as “disemboweling, quartering, public dissection, and burning alive”—as the benchmark for unconstitutional cruelty, implying that only deliberate bodily torture beyond an underlying criminal sentence qualifies.<sup>43</sup> This interpretation ignored the broader readings of cruelty in the Court’s other non-capital cases, such as *Robinson* and *Powell v. Cook*, which did not require such an excessive threshold.<sup>44</sup> By forcing capital punishment logic onto non-capital offenses, Gorsuch set a “new sky-high ceiling for the future potential cruelty of anti-homeless laws.”<sup>45</sup>

Having dismissed cruelty, the majority quickly concluded—with little analysis—that jail time and fines in Grants Pass were not unusual merely because such punishments are common nationwide.<sup>46</sup>

Justice Sotomayor wrote a scathing dissent, dismantling the majority’s reasoning.<sup>47</sup> I recommend reading the whole thing, but here are three highlights:

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40. Not only did Justice Gorsuch author the *Bucklew* majority decision, but it took place when the majority of conservative justices were on the bench including Chief Justice Roberts, Justices Thomas, Alito, Gorsuch, and Kavanaugh.

41. *Bucklew*, 587 U.S. at 129.

42. Sara Rankin & Laura Riley, *The Unavoidable Consequences of Homelessness*, 2025 UTAH L. REV. (forthcoming) (discussing this critique).

43. *Johnson II*, 603 U.S. 520, 520-22 (citing *Bucklew*, 587 U.S. at 130) (discussing the root of precedent authorizing capital punishment); see also Sara Rankin & Laura Riley, *The Unavoidable Consequences of Homelessness*, 2025 UTAH L. REV. (forthcoming) (discussing this interpretation of *Bucklew* and Gorsuch’s use of it in *Johnson*).

44. Sara Rankin & Laura Riley, *The Unavoidable Consequences of Homelessness*, 2025 UTAH L. REV. (forthcoming); see also Sara Rankin, *Setting the Stage for Johnson*, 67 WM. & MARY L. REV. (forthcoming 2026) (discussing *Robinson* and *Powell* in detail).

45. Sara Rankin & Laura Riley, *The Unavoidable Consequences of Homelessness*, 2025 UTAH L. REV. (forthcoming).

46. *Johnson II*, 603 U.S. at 543.

47. *Id.* at 563-92 (Sotomayor, J., dissenting).

In the first sentence of her dissent Justice Sonia Sotomayor says, “Sleep is a biological necessity, not a crime.”<sup>48</sup> The decision, she wrote, was “unconstitutional and unconscionable.”<sup>49</sup> Finally, the dissent stated that the majority decision “leaves the most vulnerable in our society with an impossible choice: Either stay awake or be arrested.”<sup>50</sup> And so— through *Johnson*, the Supreme Court has made it clear that punishment is an unavoidable consequence of being homeless.<sup>51</sup>

Before things seem too dark, it’s critical to note that *Johnson* is not the final say on the constitutionality of laws that punish someone for their housing status. It is limited to Eighth Amendment claims under U.S. Constitution; advocates retain many other arrows in our quiver.<sup>52</sup>

But *Johnson* is legally and morally wrong.<sup>53</sup>

So, I’ll ask again: What is the role of the law? What is our role? What is our purpose? What is our collective project as lawyers, law students, and people concerned with justice?

I don’t have answers to these questions, but I can offer some ideas. First, I submit that homelessness is one of the most compelling lenses through which to think about what it means to be human.

Human beings are innately designed to connect with one another. Belonging—the act of connecting with others in community—is a fundamental human need.<sup>54</sup> This is true as much for people experiencing homelessness as it is for people who are housed. In many ways, belonging in community is the realization and expression of what it means to be human. What it means to experience humanity.

But somewhere, somehow, along the American journey, our need for community and belonging morphed into a highly

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48. *Id.* at 563 (Sotomayor, J., dissenting).

49. *Id.* at 564.

50. *Id.*

51. See generally Sara Rankin & Laura Riley, *The Unavoidable Consequences of Homelessness*, 2025 UTAH L. REV. (forthcoming).

52. *Id.*

53. *Id.*

54. See generally Danieli Evans, *Institutionalized Ostracism*, 29 MICH. J. RACE & L. 155 (2025); Sara Rankin, *The Influence of Exile*, 76 MD. L. REV. 4 (2016).

individualized, isolated, fragmented, and intensely polarizing experience.<sup>55</sup> We tear apart from one another, carving our connections into smaller and smaller fragments. Dividing, subdividing, judging, fearing, atomizing ourselves to the point where we risk losing track of the whole purpose of humanity in the first place—humanity does not have meaning on an individual basis. It can only be appreciated through our collective connection. We all need community to survive.

Now, the first step toward real, genuine community is to commit to the elevation and empowerment of the most marginalized among us.

As a law professor and a lawyer, I am sad to say that the law is often a dehumanizing tool that divides us. Rather than creating community and empowering our most marginalized neighbors, the law often teaches us to fear, persecute, and banish. The law is one of many tools we use for the purpose of protecting community, but, in reality, the law destroys it. For example, consider that law is the codification of how we think about each other. It reflects how we create, construct, and defend what we perceive to be of value. The law informs who we perceive to be of value, who we embrace in community, and who we exclude.

Today, as with many areas across the country, homelessness in my own county is a profound crisis, with over 16,385 individuals experiencing homelessness in 2024—a heartbreaking 23% increase from 2022.<sup>56</sup> These numbers reflect systemic failures that disproportionately harm marginalized communities.

Seattle's response to this crisis has been to exponentially ramp up sweeps. In 2023, the city conducted a staggering 2,827 sweeps, a 207% increase from the previous year.<sup>57</sup> Sweeps not only exacerbate

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55. EZRA KLEIN AND DEREK THOMPSON, *ABUNDANCE* (2025) (arguing that embracing a “politics of abundance” can counteract polarization and restore civic trust); ERWIN CHEREMINSKY, *NO DEMOCRACY LASTS FOREVER* (2024) (explaining how structural flaws in U.S. democracy exacerbate political polarization and offering reform proposals.)

56. *Point-in-Time Count 2024*, KING CNTY REG'L HOMELESSNESS AUTH., <https://kcrha.org/data-overview/king-county-point-in-time-count/> (last visited May 12, 2026).

57. Guy Oron, *Sweeps Tripled in 2023: Inside Seattle's Extensive Policy of Sweeps and Forcible Displacement of Homeless People*, REAL CHANGE (June 5, 2024), <https://www.realchangenews.org/news/2024/06/05/sweeps-tripled-2023>.

the problems unhoused individuals face, but they are also enormously traumatizing.<sup>58</sup> If you attend one in person, you'll not only witness the fear, confusion, and desperation sweeps inflict, but you'll also learn these practices routinely trash lifesaving medications, warm clothes, food, personal identification, and documents needed to access resources. The sweeps get rid of items with tremendous sentimental value, such as your mother's ashes, the only known photograph of your sibling, or your youngest child's crayon drawings.<sup>59</sup>

Seattle is not unique—in the 6 months following the *Johnson* decision, nearly 200 new laws have been proposed or enacted to punish homelessness.<sup>60</sup> Some of these laws are breathtaking in their cruelty: punishing homelessness as a felony<sup>61</sup>, granting housed people the right to use lethal force if they suspect someone is camping,<sup>62</sup> or even criminally punishing those who would help someone experiencing homelessness for “aiding and abetting.”<sup>63</sup>

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58. See *Impact of Encampment Sweeps on People Experiencing Homelessness*, NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL (Dec. 2022), <https://nhchc.org/?s=sweeps&id=284153>.

59. See, e.g., *Encampment Sweeps: What are They and the Harm They Cause*, AM. C.L. UNION (Oct. 29, 2024), <https://www.aclu-wa.org/story/encampment-sweeps-what-they-are-and-harm-they-cause%C2%A0>; *Impact of Encampment Sweeps on People Experiencing Homelessness*, NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL (Dec. 2022), [NHCHC-encampment-sweeps-issue-brief-12-22.pdf](https://nhchc.org/encampment-sweeps-issue-brief-12-22.pdf) (summarizing many harmful impacts of sweeps on unhoused people); Qi, D., Abri, K., Mukherjee, M.R. et al., *Health Impact of Street Sweeps from the Perspective of Healthcare Providers*, 37 J. GEN. INTERN. MED. 3707, 3707–3714 (2022).

60. See Robbie Sequeira, *Many More U.S. Cities Ban Sleeping Outside Despite a Lack of Shelter Space*, N.J. MONITOR (Jan. 25, 2025, 6:43 AM), <https://newjerseymonitor.com/2025/01/27/many-more-u-s-cities-ban-sleeping-outside-despite-a-lack-of-shelter-space/> (reporting 150 new laws with another 40 pending within 6 months of the decision).

61. *Tennessee is About to Become the 1<sup>st</sup> State to Make Camping on Public Land a Felony*, NAT'L PUB. RADIO (May 26, 2022), <https://www.npr.org/2022/05/26/1101434831/public-camping-felony-tennessee-homeless-seek-refuge>

62. See *Kentucky GOP's New Bill Decriminalizes Use of Deadly Force Against the Unhoused*, THE LEXINGTON TIMES (Jan. 18, 2024), <https://lexingtonky.news/2024/01/18/kentucky-gops-new-bill-decriminalizes-use-of-deadly-force-against-the-unhoused/>.

63. Marisa Kendall, *California City Makes 'Aiding' or 'Abetting' a Homeless Camp Illegal*, CALMATTERS (Feb. 12, 2025), <https://calmatters.org/housing/homelessness/2025/02/fremont-camping-ban-ordinance-folo/>.

All of this is to say that the work each of us does is in the context of a system that is fundamentally flawed and in need of change. None of us can promise to fully protect and serve our most vulnerable neighbors, but we can promise to listen, provide support, and do our best to honor the humanity of others and ourselves. We can also promise to fight for change and meaningful justice.

This work is neither easy nor fast; it is a lifelong struggle.

But as the great Angela Davis reminds us, “You have to act as if it were possible to radically transform the world. And you have to do it all the time.”<sup>64</sup>

Earlier in my remarks, I said the law is not always about justice. But it can be. Hold this possibility dear, and do not let go.

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64. See, e.g., Angela Davis, quoted in *11 Essential Books by Angela Davis*, OPRAH DAILY (Oct. 16, 2020), <https://www.oprahdaily.com/entertainment/books/g32803115/angela-davis-books/> (attributing this quote to a 2014 lecture at Southern Illinois University).