



Disability Justice In a Post Grants Pass World

**Presented by Siya Hegde from the
National Homelessness Law Center**

Defining Criminalization

From appointed officials, policymakers and persons with lived experience:

“These hospitals are really just prisons by another name—constantly overcrowded and overstimulating, not exactly the most healing system for anyone, let alone someone experiencing a mental health crisis.”

– **Arvind Sooknanan, Fountain House**

“...punitive responses for persons with psychosocial disabilities result in extended isolation, segregation, further deterioration of mental health and an ongoing cycle of homelessness and incarceration.”

– **Leilani Farha, former U.N. Special Rapporteur on Adequate Housing**

“It is unsurprising that the burdens of homelessness fall disproportionately on the most vulnerable in our society.”

– **Justice Sonia Sotomayor, SCOTUS**



Scope of Grants Pass v. Johnson Ruling

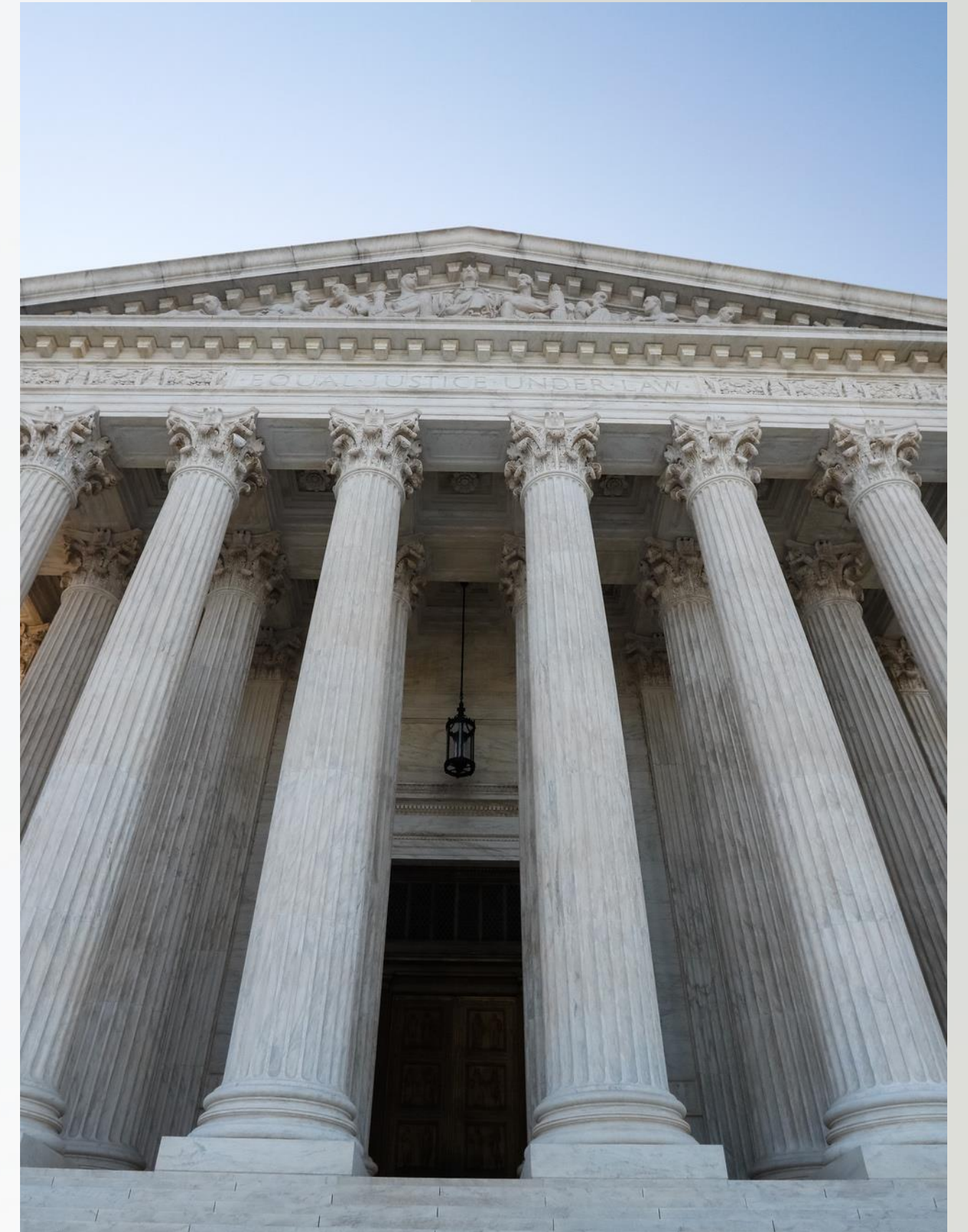
Where does the majority opinion mention mental health or disabilities?

"...perhaps 78% of the unsheltered suffer from mental health issue," (California Policy Lab, (p. 2));

Incorrectly claims that public camping rules are not meant to criminalize people, but instead encourage them to use other available services, like mental health facilities (p. 6).

States that people with physical disabilities find it hard to move around because of encampments (p. 4). This does not refer to homeless people with disabilities living in these encampments, who might experience policing and criminalization.

- This attempts to pit struggling groups of people against each other, rather than recognizing that those with physical disabilities, housed and unhoused alike, are often forced to navigate a world not built for them.



Dissenting Opinion

Where does the dissenting opinion mention mental health/disability?

Acknowledges that physical and psychiatric disabilities are “complex and interconnected issues” that are causes of homelessness (p. 1), but also that people with disabilities experience policies that “increase housing instability” (p. 3)

Recognizes that shelters with stay rules based on work requirements, like the Gospel Rescue Mission in GP, made it difficult for people with disabilities to follow the rules (p. 7)

Broadened the scope of the cruel and unusual punishment clause to read that it would be “**cruel and unusual to apply any penalty ‘selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular, but whom society is willing to see suffer.’**” (p. 29)

Debra Blake was an earlier plaintiff. She was denied shelter access for failing to meet the shelter’s work requirements due to her disability.

CarrieLynn Hill was denied shelter access due to her regular use of a nebulizer to manage her disability.

Critiquing Role of Courts & The Legal System

Judicial powers are limited, especially when it comes to enforcing rights for people with disabilities and people living in poverty.

The GP ruling is highly problematic for its reinforcement of criminalization laws and practices across the country. But we should also see its disengagement with principles of disability justice as reflections of **defective court mechanisms undergirding our country's history of constitutional jurisprudence.**

- The majority opinion briefly mentioned the Equal Protection Clause (EPC) of the 14th Amendment for its role in preventing governments from adopting “invidiously discriminatory” laws.
- Limitations in a constitutional doctrine as foundational as the EPC have produced few to no judicial remedies to redress the social and economic ills associated with the causes and conditions of homelessness, housing insecurity, and poverty.



B. The Courts' Failure to Recognize Poverty as a Suspect Class Under the Equal Protection Clause and Their Limited Power to Fix Socioeconomic Issues

Even as the *Martin* and *Johnson* rulings have defended and enforced the Eighth Amendment rights of people experiencing homelessness, the courts' adjudicatory authority to rule on matters of poverty and wealth is still concerningly limited. The dicta interpreting the Equal Protection Clause of the federal Constitution's Fourteenth Amendment did not recognize poverty as a suspect classification. In what some scholars have argued is the "most famous footnote in constitutional law,"³¹ Justice Harlan Stone penned that the U.S. Supreme Court would continue to apply a heightened scrutiny standard to laws and regulations "prejudice[d] against discrete and insular minorities."³² Subsequent decisions relied on this broad language to ascribe constitutional protections to minority groups based on race, birthing the "strict scrutiny" standard to say that a law needed to be "narrowly tailored . . . to achieve a compelling governmental interest" to survive a standard of review predicated on race.³³ This scrutiny standard often attributed to a class of individuals historically subjected to discrimination—termed "suspect classification"³⁴—was never extended to individuals with disabilities, nor has constitutional law offered sufficient space outside of the Equal Protection Clause context to explore the intersections of disability law, mental health, and poverty.³⁵ Recognizing this gap in legal doctrine is important for establishing broader interpretations and reforms of the strict scrutiny standard so as to embolden the rights of people experiencing homelessness and people with mental health disabilities.

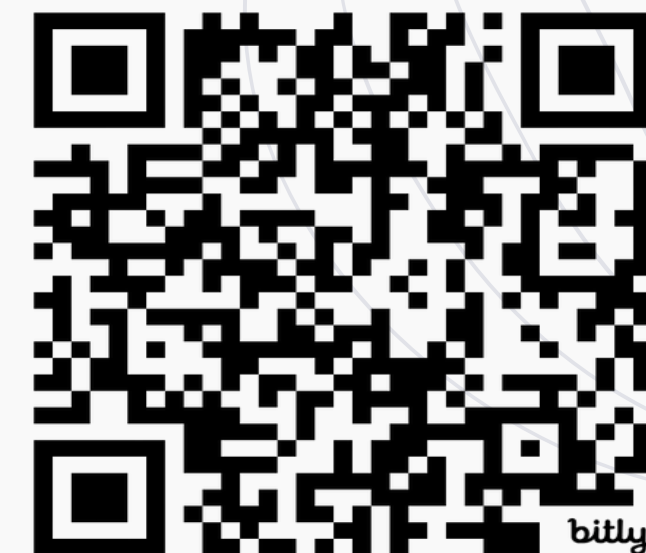
"With Liberty & Justice for ALL: The Case for Decriminalizing Homelessness and Mental Health in America"

Siya Hegde & Carlton Martin



Use url below or scan QR code for full article:

bit.ly/3XgjSCU



Advocacy Tools & Strategic Thinking

Disability Human Rights

Applying the international human rights framework to our systems of creating new laws and policies enforcing the human right to adequate housing, bearing in mind its intended impacts on people with disabilities

- Seven key dimensions, defined by the UN General Assembly, as requirements to satisfy “adequacy” of housing:

Security of Tenure (Protections Against Forced Evictions)

Availability of: Services, Materials, Facilities & Infrastructure

Affordability

Habitability

Location

Accessibility

Cultural Adequacy



Advocacy Tools & Strategic Thinking

(Continued)

Poverty Abolitionism

- Abolition, at its core, is about healing, restorative transformation, and love – not to be limited to tearing down systems of power and envisioning a world without harm, without policing, and without criminalization;
- Decriminalizing homelessness and mental health in a post-GP world require us to intentionally center disability justice and dismantle ableism because of the ways that carceral systems **“medicalize, pathologize, criminalize, and commodify survival, divergence, and resistance”** (Talila Lewis)



Resources

- [Shadow Report](#) that the NHLC and UMiami Law Human Rights Clinic submitted to the UN Human Rights Committee analyzing the criminalization of mental health in the United States (dated 9/12/23)
- ["With Liberty and Justice for ALL: The Case for Decriminalizing Homelessness and Mental Health in America,"](#) in Vol. 21 of the Indiana Health Law Review, co-authored by Siya Hegde & Carlton Martin (dated 6/28/24)
- ["The Supreme Court Just Opened the Door to the Criminalization of Disability,"](#) in Slate, authored by Evan Monod (dated 7/1/24)

Thank You For Your Time!

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