

Case No. 18-6521

**In The
Supreme Court of the United States**

LEONARD J. PORTO III,

Petitioner,

vs.

CITY OF LAGUNA BEACH and JOHN PIETIG,

Respondents.

**On Petition for a Writ of Certiorari
to the Supreme Court of the United States**

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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I. INTRODUCTION

Respondents City of Laguna Beach (“City”) and John Pietig, collectively “Respondents,” submit this brief in opposition to the Petition for Writ of Certiorari (“Petition”) filed by Petitioner Leonard J. Porto III (“Petitioner”).

II. ARGUMENT: THE PETITION SHOULD BE DENIED

In April 2012, Petitioner filed an action in the District Court alleging that Respondents violated his constitutional rights relating to his experience as a homeless individual in Laguna Beach. His claims relate to the City’s operation of a year-round temporary emergency shelter for homeless persons, known as the Alternative Sleeping Location (“ASL”), and Petitioner’s alleged inability to sleep overnight at the ASL due to certain eligibility criteria. Petitioner also raised claims relating to alleged enforcement of Section 8.30.030 of the Laguna Beach Municipal Code (the “Ordinance”), which contains restrictions on camping and sleeping in public places.

The District Court, upon review and recommendations of the Magistrate Judge, granted two FRCP 12(b)(6) motions to dismiss and ultimately a motion for summary judgment in favor of Respondents. The United States Court of Appeals for the Ninth Circuit affirmed the District Court’s ruling earlier this year in an published memorandum decision, finding that Petitioner lacked standing to maintain his challenges. See Appendix, 1-5.

Much changed since Petitioner initiated his action over six years ago. In declarations that were judicially noticed by the Ninth Circuit, Petitioner

revealed that he was placed in housing in December 2012 – a fact that is not mentioned anywhere in the Petition. As a result of the change in his housing status, Petitioner’s request for declaratory and injunctive relief became moot, which Petitioner conceded during Ninth Circuit briefing. See Appendix, 3; *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 798 (9th Cir. 1999). In addition, notwithstanding his argument over the years that the eligibility criteria prevented him from staying at the ASL, Petitioner described in a declaration the prospect of staying at the ASL as “intolerable,” stated that that there were multiple reasons he never entered the lottery to obtain a spot at the ASL, and further stated that he preferred sleeping in his vehicle to staying at the ASL. See Appendix, 4.

The Petition refers to the “credible threat of enforcement” test to argue that Petitioner has standing to maintain his action and that the Ninth Circuit erred in affirming judgment against him. However, as illustrated by *Sturgeon v. Masica*, 768 F.3d 1066 (9th Cir. 2014), *Steffel v. Thompson*, 415 U.S. 452 (1974), and *Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334 (2014), the “credible threat of enforcement” test is used **only** when an individual prays for prospective relief, such as declaratory or injunctive relief. In *Sturgeon*, the parties challenged National Park Service regulations and sought both declaratory and injunctive relief. 768 F.3d at 1070. *Steffel* involved requests for declaratory and injunctive relief in response to a Georgia law. 415 U.S. at 454. In *Susan B. Anthony List*, the parties challenged an Ohio statute and

also sought declaratory and injunctive relief. 134 S.Ct. at 2339.

In this action, Petitioner **conceded** that he can seek damages only due to the change in his housing status and, therefore, his request that the Court employ the “credible threat of enforcement” test must be rejected. Further, Petitioner cannot legitimately argue that he faces a credible threat of enforcement of either the Ordinance or the ASL eligibility criteria because he has not been homeless since 2012.

Because the “credible threat of enforcement” test is inapplicable to this action, coupled with the Petition’s failure to demonstrate Article III standing for Petitioner’s challenges, the Ninth Circuit’s decision should remain undisturbed. With regard to Petitioner’s challenge to the Ordinance, the Petition does not demonstrate that he was ever cited, arrested, or even charged with a violation of the Ordinance. Thus, the Ninth Circuit correctly found that Petitioner failed to establish an injury in fact that could lead to damages. With regard to his dispute with the eligibility criteria used at the ASL, it was evident from Petitioner’s judicially noticed declaration that he would **never** stay at the ASL under any circumstances due to its alleged “chaotic conditions,” which he found to be “intolerable.” Additionally, Petitioner repeatedly refused to sign a registration form that was a condition to staying overnight at the ASL. Appendix, 3. As such, Petitioner was never harmed by the eligibility criteria and does not have standing to bring a challenge for damages.

III. CONCLUSION

In sum, the Ninth Circuit did not err in its analysis of Petitioner's lack of standing. For the foregoing reasons, the Petition should be denied.

Dated: November 29, 2018

Respectfully submitted,

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