

In the Supreme Court of the United States



CITY OF GRANTS PASS, OREGON,

Petitioner,

v.

GLORIA JOHNSON, ET AL.,
ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

**BRIEF OF AMICUS CURIAE
VENICE STAKEHOLDERS ASSOCIATION
IN SUPPORT OF PETITIONER**

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INTEREST OF THE AMICUS CURIAE¹

The Venice Stakeholders Association (VSA), founded in 2009, is a nonprofit organization dedicated to civic improvement. The VSA supports slow growth, the limits of the Venice Local Coastal Specific Plan, neighborhood safety, better traffic circulation, increased parking for residents, neighborhood beautification projects, historic preservation, habitat restoration and protection of coastal waters.

Representing residents in the Venice district of the City of Los Angeles, California, the VSA has grappled with the horrendous impact of the homeless population in Venice, at one point second only to downtown Los Angeles' infamous Skid Row in size, for over a decade.

The VSA provides research, education, advocacy and litigation support for Venice Beach residents to ensure that their voices are heard. VSA was in litigation against the City of Los Angeles, the California Coastal Commission and the Los Angeles County Metropolitan Transportation Authority over the erection of a 154-bed homeless shelter complex in violation of the California Environmental Quality Act, *VSA v. City of Los Angeles*, LASC Case No. 19STCP00044 and *VSA v. Los Angeles County Metropolitan Trans-*

¹ Pursuant to Rule 37.2, VSA provided timely notice to all parties. Pursuant to Rule 37.6, VSA affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than VSA, their members, or their counsel made a monetary contribution to its preparation or submission.

portation Authority, LASC Case No. 19STCP00629 until the State Legislature excluded the City of Los Angeles, and only the City of Los Angeles, from CEQA protections in instances of development projects serving the homeless population. More recently, the VSA filed a lawsuit against the City of Los Angeles for failing to obtain a current Coastal Development Permit under California's Coastal Act for the same 154-bed homeless shelter complex in Venice, *VSA v. City of Los Angeles, et al.*, LASC Case No. 23STCP00346. This litigation is ongoing.

The extreme imbalance between the rights of the homeless, and those of Venice's residents and business owners, will continue, and the latter will continue to suffer the daily burdens of homeless individuals camping rough a few yards from their homes or businesses unless *Johnson and Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) are reversed.

Mark Ryavec is the president and founder of VSA. He has an extensive career in public policy. He holds a B.A. in Psychology from UCLA and an M.A. in Urban Studies from a joint degree program of the CORO Foundation and Occidental College. He served as a Legislative Analyst in the Office of the Chief Legislative Analyst of the Los Angeles City Council and in that capacity served as the principal staff for Los Angeles Mayor Tom Bradley's Commission on the Redevelopment of Los Angeles' Central Business District. Later he served as Chief Deputy for Los Angeles County Assessor Alexander Pope. He also served as a founding Director of the non-profit American Oceans Campaign, its State Legislative Director in 1996, and as a member of the Board of Governors of Oceana, a global ocean protection NGO. For five years in the early

2000s he was Executive Director of Neighborhood Partners, a non-profit affordable housing provider in the San Fernando Valley. As a public affairs consultant he has represented clients as varied as Trump Wilshire Associates, No Oil, Inc., Browning-Ferris Industries, Marquart Corporation (a rocket propulsion firm), Writers Guild of America, West, and the Consulate General of Sweden and the Los Angeles Consular Corps.

The outcome of the decision in *Johnson* will directly and profoundly impact VSA's ability to influence local policy makers to make sound decisions regarding homelessness and its impacts on the community. If *Johnson* (and *Martin*) stand, the power of municipalities to enforce anti-loitering and anti-camping ordinances and to take other steps to protect the public welfare will be diminished to the detriment of those who suffer the adverse impacts of homelessness in their communities. The balance between the rights of the homeless and those that also suffer from the impacts of the homeless will be irrevocably altered.



ARGUMENT

I. The Court Should Review and Reverse *Johnson* and Revisit *Martin* Because Cities Such as Grants Pass and Los Angeles are Hamstrung by the Requirement of Providing Beds for All Homeless Before Enforcing Municipal Laws for the Protection of Health and Public Welfare.

The increase in homeless on Venice’s sidewalks, alleys, parks and along its beach is in significant measure due to the laissez-faire conditions following the 2007 settlement reached in *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007). Legal scholars condemned the *Jones* decision as an unwarranted impairment of the power of cities to protect the public health.² The decisions in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) and *Johnson* have further impaired the power of local governments to address the homelessness crisis.

The homeless population increase in Venice also results from a convergence of Venice’s historic luster

² See Emily N. McMorris, *Jones v. City of Los Angeles: A Dangerous Expansion of Eighth Amendment Protections Stifles Efforts to Clean up Skid Row*, 40 LOY. L.A. L. REV. 1149, 1150 (2007) [referring to the *Jones* opinion as a “misinterpretation and exceedingly broad reading” of Eighth Amendment precedent]; and Mary Boatright, *Jones v. City of Los Angeles: In Search of a Judicial Test of Anti-Homeless Ordinances*, 25 LAW & INEQ. 515, 527 (2007) [referring to the *Jones* analysis as “oblique and confusing.”]

as a tourist destination, its delightful weather, the easy availability of drugs, and the well-publicized rollback of both State law against possession of drugs for personal use and any municipal enforcement of ordinances meant to promote civil society, public health and safety, and quality of life for residents and visitors alike. This population further increased again during the Pandemic when city elected officials misread CDC guidelines that suggested that homeless individuals should not be moved because it might lead to a spread of the virus.

Homeless individuals in Venice routinely camp within feet of residents' homes and businesses' front doors. Many homeless have developed a sense of entitlement to any public property and frequently extend this to occupation of private property abutting public property, such as front yards, side-yard setbacks, driveway aprons and carports. In the last few years this has extended to occupation of buildings unoccupied due to recent sale or under construction.

In 2018, the Ninth Circuit issued its decision in *Martin* holding that imposing criminal penalties for sleeping in public violated the Eighth Amendment if the government has not provided public areas or shelters for those individuals to sleep.

The broad and contradictory language of *Martin* left the Los Angeles City Attorney to advise the LAPD to not enforce local anti-camping laws.³ The result was large encampments on world famous Venice Beach,

³ See July 30, 2019 Motion by City of LA Committee of Homelessness and Poverty recommending deletion of Section 41.18(d) based on *Martin*, http://clkrep.lacity.org/onlinedocs/2019/19-0602-s1_mot_07-30-2019.pdf, accessed on September 23, 2023.

with certain sections taken over permanently by the homeless.⁴

On one hand, the *Martin* court disingenuously held that it was not dictating “to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place,”⁵ while at the same time holding “that so long as there is a greater number of homeless individuals in a jurisdiction⁶ than the number of available beds in shelters, the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying and sleeping in public.”⁷

In the second quoted clause above, the *Martin* court overturned the permission it affords jurisdictions

⁴ In the summer of 2021, the media widely reported that a homeless encampment of tents had been cleared from the Venice boardwalk. A year later, the tents are back due to a lack of enforcement by the City of Los Angeles. CBS NEWS, July 12, 2022, *Tents return to Venice Beach after massive homeless encampment cleared last year*, <https://www.cbsnews.com/losangeles/news/tents-return-venice-beach-massive-homeless-encampment-cleared-last-year/> last accessed September 22, 2023. Newly elected Mayor Karen Bass and Councilwoman Traci Park cleared the tents again in January 2023, it remains to be seen how long the tents will remain gone. *Homeless Encampments Are Gone and Crime is Way Down, So Far, in Venice*, Apr. 6, 2023, <https://www.nbclosangeles.com/investigations/homeless-encampments-crime-venice/3130573/>, last accessed on September 22, 2023.

⁵ *Martin* at 1048.

⁶ The *Martin* court also failed to appreciate the exponential effect of applying its rule, developed for the City of Boise, with a population of 237,000 to the City of Los Angeles, with a population of 3.8 million.

⁷ *Martin* at 1048.

in the first clause to enforce restrictions on where individuals sit, lie or sleep on the streets . . . and at what time or place they may do this.

Based on the current average construction cost of a brick-and-mortar homeless serving structure of over \$550,000 per room (and in some instances as high as \$830,00), and the recent homeless count of 46,000, the City of Los Angeles would have to spend at least \$23 billion to house this population in permanent housing, which is \$10 billion more than the city's total \$13 billion 2023-24 budget. The city will never have the financial resources internally or from federal, state or philanthropic sources to underwrite such a construction effort, leaving residents and businesses to endure nearby homeless encampments in perpetuity unless *Johnson* and *Martin* are reversed.

Johnson expanded the reach of *Martin* to encompass not only criminal penalties but also civil penalties and by doing so will compound the problem presented by *Martin*: forbidding local governments from enforcing its laws, based on constitutional rights not recognized by the Supreme Court, unless the local governments follow an impractically high standard for provision of public shelters for individuals who will choose, in many instances, to never use those shelters. Perhaps the unintended consequences of *Martin* were not readily apparent at the time the City of Boise sought review in this Court.⁸ Now, years later, the petition by Grants Pass to review *Johnson* presents a ripe opportunity to review the misstep of *Martin*, with the benefit of seeing how *Martin* has acted as a disservice

⁸ The City of Boise sought review of *Martin* on June 3, 2019, Case No. 19-247. This Court denied the on December 16, 2019.

to local government and the unhoused individuals in need of help.

A. The *Martin* and *Johnson* Opinions erred in Requiring Beds for an Entire Homeless Population Rather than Beds for the Number of Homeless Cited on any Given Night.

The *Martin* and *Johnson* courts failed to entertain the possibility that a city would rarely if ever attempt to cite every homeless person in its jurisdiction for camping on public property at the same time (no police department has the officers nor the jails to do this), but rather would use the bar on camping judiciously, one camper or one encampment at a time, to address a particular person or group of campers that are especially destructive to the environment, or disruptive of a neighborhood through noise, accumulation of trash, human sewage and food waste, used needles, and threats to nearby residents and/or business owners. The *Martin* and *Johnson* courts thus should have only required that a shelter bed be available for those few campers the jurisdiction's officers might in the course of a typical day be called upon to ask to move on due to the harm they are causing. A requirement that in each instance an offer for a shelter bed be documented would accomplish the same result – no one would be cited if a bed was not truly available – without hamstringing the jurisdiction from addressing problematic homeless campers, some who have no interest in housing.

B. The *Martin* and *Johnson* Courts Failed to Adequately Define “Voluntary” and “Involuntary” as it Relates to Homelessness.

Similarly, the *Martin* and *Johnson* courts made no effort to examine and define the terms “voluntary” and “involuntary” in relation to the condition of being homeless. Despite the *Martin* plaintiffs’ contention that their homeless state was involuntary, VSA’s experience in Venice is that just cursory questioning leads to a different conclusion.

Some years ago, the VSA was approached by then-Captain Dominic Choi, the commander of the LAPD Pacific Division, and asked to raise funds for the LAPD’s Venice Beach Homeless Task Force, which was comprised of several LAPD officers and two local chaplains, Regina and Steve Weller. The Task Force would cruise Venice three afternoons a week getting acquainted with the homeless campers. In addition to placing any willing homeless individuals into rehab or shelters, the Wellers focused on “family reunification;” *i.e.*, re-connecting homeless individuals with family members “back home” who the individual described to the Wellers as “safe.” Captain Choi asked the VSA to provide bus tickets and meal vouchers to those individuals the Wellers’ had coaxed to accept a family member’s invitation to return home. Hundreds were sent home to welcoming families over the course of several years.

With such a low bar to returning to being housed, were these individuals really involuntarily homeless? For example, it cost about \$100 to bus to Tucson and have a few meals along the way.

In discussions over the last ten years with social service workers who counsel those who live on Venice's streets, VSA has learned that in the 16 to 24 age range over 70% are from out of state, and many are self-described "travelers" who have no interest in a shelter bed or housing. Under *Martin*, Los Angeles (and all other jurisdictions) would have to build or lease housing beds for these "travelers" who forego shelter in all instances before it could enforce anti-loitering and anti-camping laws.

C. The *Martin* and *Johnson* Courts Failed to Consider the Potential for Homeless Encampments to Become Barriers to Placement or Their Impact on Neighborhoods.

The *Martin* and *Johnson* courts also did not understand that the development of semi-permanent encampments, such as the current one on Rose at Seventh Street in Venice, are themselves barriers to rescuing homeless individuals from the street. Outreach and placement efforts were frequently in conflict with the familial bonds that develop between those living in Venice's encampments. Often times, a counselee may agree to a placement – in rehab, a shelter, a shared apartment, permanent/supportive housing, or family reunification – but would not show up at the appointed time for transport. They did not want to give up the street "family" of which they had become a part. These individuals were voluntarily remaining homeless as much as the young "travelers," who have no interest in shelter.⁹

⁹ CNN earlier profiled a Yale graduate, Wall Street banker and entrepreneur who today is homeless in Los Angeles, <https://>

The failure of the court to limit its decision to those who by some criteria are truly without some resources or options to change their status from unhoused to housed alone demands that the *Martin* decision be overturned.

The results of the wide-open nature of the *Martin* decision in a dense urban setting such as Venice, California have been catastrophic.

The *Martin* decision has paralyzed the city of Los Angeles (and it appears other cities in the Ninth Circuit's jurisdiction), blocking any commonsense regulation of homeless encampments and leading to a severe breakdown in the norms of civil society. The decision so broadly defined "involuntarily homeless" that it includes many who have resources or options to be housed but, for a variety of discoverable reasons, choose not to pursue them. It has made living in encampments preferable to accepting available options to leave the streets; food, water, blankets and tents are delivered by well-meaning service agencies, showers and restrooms are open 24 hours a few blocks away, and there is no rent. This has placed a heavy burden on residents and business owners while preventing police from protecting them.

edition.cnn.com/2019/09/17/us/los-angeles-yale-graduate-homeless/index.html?no-st=1568949532, last accessed on September 19, 2019. The story highlights the frequency of voluntary homelessness. The subject has a standing offer from his family for housing but prefers to work through the issue himself.

D. Prosecutorial Discretion Rather than Bed Counts Properly Balances the Needs of Local Government to Maintain Public Safety Against the Rights of the Homeless in Need of Services.

The *Martin* and *Johnson* decisions focused on bed counts as a limitation of the ability of local government to enforce its rules. If this Court were to conclude that bed counts is not an appropriate benchmark for whether law enforcement can enforce anti-camping rules, what limits should be place on law enforcement? One commentator criticized *Martin* and suggested that relying on prosecutorial discretion to consider an individual’s specific needs and abilities – rather than simply counting available shelter beds in deciding whether to invoke the Eighth Amendment – is a preferable way to balance the competing interests of the rights of the homeless and local government in protecting public safety. Relying on a prosecutor’s discretion “accords with communal notions of fairness . . .” Andrew I. Lief, *A Prosecutorial Solution to the Criminalization of Homelessness* (2021) 169 U. PA. L. REV. 1971, 1993.



CONCLUSION

For the foregoing reasons, the VSA urges the Court to review and reject *Johnson* (which relied on *Martin*) for its evisceration of municipalities' ability to control local health and safety, and its erosion of residents' right to the quiet enjoyment of their homes. The VSA urges this Court to grant the City of Grants Pass Petition for a Writ of Certiorari.

Respectfully submitted,

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