

No. 23-175

IN THE
Supreme Court of the United States

CITY OF GRANTS PASS,
Petitioner,

v.

GLORIA JOHNSON AND JOHN LOGAN, ON
BEHALF OF THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,
Respondents.

**On Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit**

**BRIEF FOR *AMICUS CURIAE*,
THE COUNTY OF LOS ANGELES
IN SUPPORT OF NEITHER PARTY**

Mira Hashmall
Counsel of Record
Nadia A. Sarkis
MILLER BARONDESS, LLP
2121 Avenue of the Stars, Suite 2600
Los Angeles, California 90067
(310) 552-7560
mhashmall@millerbarondess.com

Counsel for Amicus Curiae,
The County Of Los Angeles

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INTEREST OF *AMICUS CURIAE*¹

By size and scale, the County of Los Angeles could not be more differently situated than Grants Pass, a small city of 38,000 people with between 50 and 600 unhoused individuals and zero available shelter beds. *Johnson v. City of Grants Pass*, 72 F.4th 868, 874-75 (9th Cir. 2023). The County spans a geographic area larger than Delaware and Rhode Island combined, with nearly 10 million residents in 88 incorporated cities, in addition to over 2,600 square miles of unincorporated areas.² With between 70,000 and 75,000 unhoused constituents, it has the largest population of people experiencing homelessness (“PEH”) in California, over 70 percent of whom are unsheltered.³

The County has invested billions of dollars to develop a wide range of dynamic interim and permanent housing solutions, provide wrap-around services for PEH, and deploy preventative strategies

¹ Per this Court’s Rule 37.6, this brief was not authored in whole or in part by any party, and no one other than amicus or its counsel made a monetary contribution to its preparation or submission.

² The areas outside these 88 cities are unincorporated. For the approximately 1 million people living in these areas, the County Board of Supervisors is their “city council” and the Supervisor representing the area is their “mayor.”

³ U.S. Dep’t of Hous. & Urban Dev., *2023 Annual Homelessness Assessment Report (AHAR) to Congress Part 1: Point-In-Time Estimates of Homelessness* (Dec. 2023), <http://tinyurl.com/3ssxzvsu>; L.A. Homeless Servs. Auth., *2023 Greater Los Angeles Homeless Count* (June 29, 2023), <http://tinyurl.com/8h9a937w>.

in collaboration with other government and community partners. Those tools include mobile outreach and engagement services, eviction prevention, mental health services and substance use disorder treatment, rapid re-housing, and short-term financial assistance, among many others.

Those efforts—grounded in a sense of urgency and an evidence-based, care-first approach—have shown real progress. Since the passage of Measure H in 2017—a voter-approved ¼-cent sales tax to address and prevent homelessness—the County’s homeless services system has grown exponentially. Over a six-year period, the County provided permanent housing to 98,905 people and interim housing to 137,656 people.⁴ After declaring a state of emergency on homelessness in January 2023, those efforts have accelerated. The County succeeded in making 23,600 placements into permanent housing, 38,000 interim placements, as well as preventing over 11,000 people from becoming homeless in the last year alone.⁵ In addition, the County’s development of 2,013 new affordable and permanent supportive housing units in 2023 reflects a 67 percent increase from 2022, and an additional 4,587 units are in the pipeline countywide.⁶

⁴ Fesia A. Davenport, *Homeless Initiative Quarterly Report* (Oct. 18, 2023), <http://tinyurl.com/35rbu4br>.

⁵ Christina Villacorte, *L.A. County Reports Significant Progress in First Year of Emergency Homeless Response* (Feb. 13, 2024), <http://tinyurl.com/muy8ccpb>.

⁶ L.A. County Homeless Initiative, *By the Numbers – L.A. County Homeless Emergency Response* (2023), <http://tinyurl.com/3sks6yx7>.

Despite these achievements, with a massive and long-standing affordable housing shortage and a population of 800,000 low-income and extremely low-income residents, the inflow into homelessness in the County still outpaces the outflow.⁷ Thus, encampments in Los Angeles persist and present serious public health and safety risks to the housed and unhoused alike.

The majority in *Grants Pass* is correct that “crisis-levels of homelessness” will not abate if jurisdictions regain “the authority to punish involuntarily homeless persons for sleeping in public with blankets,” and the County certainly does not advocate for such a right. *Johnson*, 72 F.4th at 915 (Silver, J. & Gould, J. Joint Statement Regarding Denial of Rehearing). But the majority’s presumption that neither *Grants Pass*, nor *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), hinders local governments in their ability “to pursue policies that would reduce the homeless population” is wrong. *Johnson*, 72 F.4th at 923.

Local governments need clear constitutional guidelines, so that they may address the homelessness crisis with the decisiveness and sense of urgency it requires. *Johnson* falls far short of the mark. A murky judicial standard—that local governments, large and small, uniformly report is unworkable in practice—diverts vitally needed funds towards litigation; places a disproportionate emphasis on short-term solutions; and creates uncertainty that

⁷ McKinsey & Co., *Homelessness in Los Angeles: A Unique Crisis Demanding New Solutions* (Apr. 2023), <http://tinyurl.com/a727fp4b>.

impedes progress. Such a standard impacts all municipalities—including those like the County, which favor encampment resolutions that are grounded in PEH voluntarily choosing to leave the streets in favor of provided housing options.

With deep knowledge and experience in providing housing and other services to PEH, the County—as the most impacted jurisdiction in the country—has a substantial interest and important perspective in this litigation. Its resolution will have enormous practical consequences for all the people of Los Angeles.

SUMMARY OF ARGUMENT

Under the reasoning of *Johnson* and the cases on which it relied, the availability of shelter beds is the dispositive issue in determining whether a government ordinance impermissibly punishes “status” or lawfully regulates public spaces for the common good. This logic rests on two faulty premises:

First, *Johnson* presupposes that the mere availability of shelter provides refuge from the “status” of homelessness. This is both empirically false and has the effect of disproportionately funneling limited resources towards interim housing and other short-term approaches at the expense of other, equally important longer-term interventions. *See Johnson*, 72 F.4th at 890. Interim housing is an essential first step and makes the problem of homelessness less visible. But shelters do not end homelessness.

Shifting the focus back to interim housing—at the expense of permitting individual public agencies to create a balanced homeless services system that fits their needs—exacerbates the shortage of permanent

housing solutions and stymies the overall effectiveness of the system. Robust preventive strategies and adequate permanent housing, coupled with wrap-around services, are just as vital to achieve the sustainable, long-term solutions that the homelessness crisis requires.

Second, Johnson disregards that enforcement of municipal ordinances regarding public spaces and rights of way—when properly employed—serve the interests of the unhoused. Sanitation, maintaining the public right of way, and law enforcement remain the County’s jurisdiction for the one million residents in the unincorporated areas. The County’s experience is that *all* citizens, housed and unhoused alike, benefit from a safe, clean environment. Many encampments are dangerous and unsanitary, and public health officials are rightly concerned about the impact of these congregate settings on vulnerable people.

The County has had success with encampment resolutions that constructively balance these concerns. In the span of just seven months, the County’s new Pathway Home Program has already removed 12 encampments, moving over 500 people into housing and removing 206 unsafe RVs from public roadways.⁸ The process is successful because it provides a coordinated response and respects the dignity of the unhoused.

Encampment resolution begins with outreach teams developing trusting relationships with people at

⁸ L.A. County Homeless Initiative, *Pathway Home*, <https://homeless.lacounty.gov/pathway-home/> (last visited Feb. 28, 2024).

an encampment, helping them get treatment for immediate medical needs, and offering them immediate, diverse options for interim housing that maintain community ties. Once in interim housing, participants receive supportive services such as on-site case management and connections to physical and mental health care, substance use disorder treatment, benefits enrollment, and life skills development. The County then connects individuals with housing navigation to help them obtain permanent housing, where they can continue to receive supportive services.

The County also employs Homeless Outreach and Mobile Engagement (“HOME”) teams, who have the necessary expertise to serve unhoused individuals with serious mental illnesses, substance use disorders, and other physical challenges, who are often highly avoidant of services. These teams build trust; address basic needs; conduct clinical assessments; provide street psychiatry; link people to appropriate services; and even initiate outpatient conservatorship and/or inpatient hospitalization when appropriate. Finding these individuals housing is always the goal, but there is significant work to be done before this population will even accept interim housing.

These strategies work and provide meaningful inroads in addressing homelessness in Los Angeles. But *Johnson* chills these and similar programs by placing undue emphasis on interim shelter. In drawing the lines between municipalities’ police powers, their unhoused constituents’ constitutional rights, and effective homeless governance, this Court

should not greenlight ordinances that disregard the humanity of this country’s most vulnerable constituents. But the Court should be wary of creating constitutional strictures that sow doubt, exacerbate legal risk, and infringe upon the role of local executives.

ARGUMENT

I. THE “SHELTER AVAILABILITY” TEST DISPROPORTIONATELY PRIORITIZES INTERIM MEASURES OVER LONG-TERM, SUSTAINABLE SOLUTIONS TO THE HOMELESSNESS CRISIS

Ignoring the critical spectrum of homeless policy decisions, *Johnson* rests on a monolithic perception of the PEH population as well as an outmoded, shelter-centered conception of homeless services. The Ninth Circuit contemplates a regime in which individuals experience homelessness on a “voluntary” or “involuntary” basis, a determination that turns exclusively on the existence of a shelter bed somewhere in the vicinity. This approach is at odds with realities of homelessness and the critical need for local agencies to formulate a suite of services that meet their constituents’ needs.

Temporary housing is an indispensable component of the County’s homelessness policy. The County has long been at the forefront of creative and effective solutions to providing temporary shelter to PEH, including “tiny home” projects, and re-purposing unused hotel/motel rooms into interim housing.⁹ The

⁹ L.A. County Homeless Initiative, *Tiny Home Village Opens In Torrance* (July 6, 2022), <http://tinyurl.com/4fw8sfrh>; L.A. Homeless Servs. Auth., *Project Roomkey Ends Homelessness For*

County's interim housing options currently include specialized placements for victims of domestic violence, PEH healing from illness or injury, and PEH in treatment for substance use disorders.¹⁰

But cookie-cutter, one-size-fits-all solutions are not workable, and interim solutions are only part of an efficient homeless services system. If interim housing is not coupled with services and a credible pathway to permanent housing, shelters can become counterproductive, and according to a 2019 report from the Department of Housing and Urban Development, even push "people to congregate in encampments."¹¹ The reasons for this are multifold:

- Shelters displace PEH from their chosen locations and communities, which can interfere with social connections and relationships with outreach workers that are critical for service delivery. The County's Pathway Home program addresses this issue by creating resolutions for entire encampments, allowing the unhoused to maintain their social connections.

4,824 People (Nov. 18, 2022), <http://tinyurl.com/47yhktwf>; L.A. County Homeless Initiative, *Homekey*, <https://homeless.lacounty.gov/homekey/> (last visited Feb. 28, 2024).

¹⁰ L.A. County Homeless Initiative, *Draft FY 2023-24 Funding Recommendations* (Dec. 8, 2022), <http://tinyurl.com/2wy2tcbm>.

¹¹ U.S. Dep't of Hous. & Urban Dev., *Understanding Encampments of People Experiencing Homelessness and Community Responses* (Jan. 7, 2019), pp. 4-5, <http://tinyurl.com/4vamwzsb>.

- While shelters remain an important first step to help PEH off the street, many PEH face acute challenges—including complex physical and mental health conditions—and need clinical care and access to specialized housing. That comes with a connection to a robust, wholesale system of services to avoid a revolving door between shelters and the street; those needs cannot be met in a shelter.¹²
- Some PEH are unwilling to stay in shelters or to go to shelters in the first place, and it is these chronically unhoused individuals who present some of the deepest challenges for municipalities. PEH may be resistant to shelters’ rules and restrictions, which may infringe on privacy and autonomy; bar the storage of personal belongings; or impose sobriety requirements that they cannot meet. Programs like Pathway Home present PEH with choices and a diverse array of interim solutions to address this problem.

Without adequate permanent housing, interim housing is often a bridge to nowhere. Because interim shelter beds are intended to be temporary, individuals residing in interim shelters are still homeless. Even the federal government’s definition of a “homeless individual” in 42 U.S.C. § 11302 *includes* PEH residing in shelters, recognizing that shelters offer

¹² See Suzanne Zerger, et al., *The Role and Meaning of Interim Housing in Housing First Programs for People Experiencing Homelessness and Mental Illness*, *American Journal of Orthopsychiatry* 431-37, <https://doi.org/10.1037/h0099842>.

only temporary housing—not a respite from homelessness.

Interim housing is also a costly intervention. Shelters are more expensive to operate than almost any other form of housing—approximately \$80 per bed per day or \$28,800 per year.¹³ By comparison, chronically homeless persons cost taxpayers an average of \$35,578 per year, with costs reduced by an average of 49.5% when they are placed in supportive housing.¹⁴

A balanced homeless services system requires more than just temporary shelters; 5 permanent homes for every 1 temporary bed are needed.¹⁵ That balance ensures that people are not only able to get under a roof, but also able to access a permanent home quickly. If there is an imbalance between the number of permanent housing and interim housing beds, then individuals in interim housing will either exit back into street or remain in the interim housing bed, to the exclusion of another person on the street. Without proportionally increasing permanent housing resources, the system becomes less effective overall.

¹³ L.A. County Homeless Initiative, *Awardee Orientation* (Apr. 15, 2023 update), <http://tinyurl.com/ycxkes78>.

¹⁴ Nat'l Alliance to End Homelessness, *Ending Chronic Homelessness Saves Taxpayers Money*, <http://tinyurl.com/ytz67k45>.

¹⁵ L.A. Homeless Servs. Auth., *Homeless Services System Analysis: Envisioning an Optimal System in Los Angeles* (Mar. 2020), p. 23, <http://tinyurl.com/yc88svtt>.

Prioritizing permanent housing creates other efficiencies as well. An estimated 10 to 20 percent of the homeless population accounts for 56 to 60 percent of public service costs.¹⁶ When the most vulnerable—and highest cost—users of the homeless services system are placed in permanent housing, municipalities dramatically cut costs by (1) reducing the use of emergency services, hospitals, detoxification centers and shelters, and (2) decreasing interaction with the criminal justice system. Those cost savings are often equal to or exceed the cost of permanent supportive housing.¹⁷

The County appropriately takes this information about outcomes and best practices into account when it must make decisions on how to allocate resources, which remain scarce. *Johnson*, by artificially limiting the calculus to shelter capacity, threatens to upend the intelligent, data-driven decisions made by local governments on how to most effectively use finite, public budgets to reduce homelessness permanently.

¹⁶ D. Srebnik, et al.: *Impact of Supported Housing Prioritization System Using Vulnerability and High Service Utilization*, Journal of Social Distress and the Homeless (May 2017), <http://tinyurl.com/bdz8arsm> (noting Client Care Coordination program in King County, Washington, prioritizing housing placement based on clinical need and high-cost public service use, showed \$2.8 million reduction in the use of public services, comparing year following permanent housing entrance and the year prior).

¹⁷ See Lavena Staten & Sara Rankin, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt* (July 12, 2019), p. 28, <http://tinyurl.com/478z6ubd>.

II. LOCAL GOVERNMENTS' ABILITY TO MAINTAIN THE PUBLIC RIGHT OF WAY AS A SAFE, CLEAN SPACE POSITIVELY IMPACTS THE UNHOUSED

The en banc majority's presumption that the enforcement of municipal ordinances invariably results in a net negative impact on the unhoused creates a false binary. *Johnson* discounts how unsafe and unsanitary encampments are for the unhoused. Encampments pose acute dangers and public health risks to all community members, including the unhoused. Three key aspects of community wellbeing illustrate this point.

Encampments create fire hazards. Encampments create fire hazards and are responsible for a substantial share of total fires. In high fire hazard severity zones and environmentally sensitive areas like Los Angeles County, these conditions carry deadly and costly consequences. This results in a significant share of avoidable fires that affect both unhoused and housed persons. The loss of property is particularly devastating for unhoused people who can lose all their belongings in an instant, including personal documentation necessary to secure support services and obtain housing.¹⁸

The correlation between encampments and fires is well-documented. Since 2018, fires relating to homelessness have doubled in Los Angeles, causing around \$185 million in damage.¹⁹ In the first quarter

¹⁸ Doug Smith, et al., *24 Fires a Day: Surge in Flames at L.A. Homeless Encampments a Growing Crisis*, L.A. Times, May 12, 2021.

¹⁹ *Id.*

of 2021, over half of the fires Los Angeles Fire Department responded to were related to homeless people living in the streets or in encampments.²⁰ Even where fires do not originate in encampments, the accumulation of flammable materials—e.g., cardboard, debris, mattresses—present severe fire hazards and expose encampment residents to dangers as fires spread.

Encampments encourage illegal dumping. A central measure of the health and wellbeing of a municipality is the presence of trash and debris in public spaces.²¹ There is a documented nexus between illegal dumping and the accumulation of debris and bulky items endemic to homeless encampments.²²

That is because illegal dumpers—who typically are *not* unhoused—exploit homeless encampments for their own financial gain. They target areas that are already impacted by poor sanitary conditions, covertly adding trash, debris, and untreated harmful substances such as paint, appliances, construction waste, and motor oil around encampments to avoid paying the substantial fees required to dispose of such materials safely.²³ And they leave a massive amount of waste. From January to August 2020, Los Angeles

²⁰ *Id.*

²¹ L.A. City Controller report to City Council, *Piling up: Addressing L.A.'s Illegal Dumping Problem* (Mar. 24, 2021), <https://controller.lacity.gov/audits/illegaldumping>.

²² *Id.*; see Steve Lopez, *Column: There's a Trash and Rodent Nightmare in Downtown L.A., with Plenty of Blame to Go Around*, L.A. Times, May 25, 2019.

²³ *Id.*

sanitation crews collected 34,340 pounds of paint waste, 33,107 pounds of oil waste, and 9,347 pounds of corrosives (i.e., materials that can destroy bodily tissue).²⁴

With limited exceptions, these are not materials that the unhoused are introducing into encampments. The unhoused are scapegoats for other bad actors, who cause real harm to an already highly vulnerable population. Illegal dumping substantially worsens already unhealthy and dangerous living conditions. By diverting resources, it also harms municipalities, and makes it harder for local governments, like the County, to provide essential support services to PEH.²⁵

Encampments obstruct roadways and endanger PEH. PEH often seek shelter in freeways, underpasses, and rest areas. As vital infrastructure, these areas are regulated by departments of transportation that rely on a combination of local and state regulations and partnerships with other agencies to ensure roadways are safe, clear, and navigable.²⁶

²⁴ *Id.*

²⁵ *Id.*; see Chris Woodyard, *Los Angeles County Seeks Action from City on Toilets, Rats and Trash to Combat Homeless Crisis*, USA Today, June, 8, 2019.

²⁶ Jacob L. Wasserman, et al., *The Road, Home: Challenges of and Responses to Homelessness in State Transportation Environments*, 21 ScienceDirect (Sept. 2023), <https://www.sciencedirect.com/science/article/pii/S2590198223001379>.

For the unhoused, living near roadways and freeways inflicts adverse health and safety risks—including dangers of vehicle injuries and air and noise pollution.²⁷ Unlawfully parked or unsafe recreational vehicles likewise pose unique challenges.²⁸

The County's preferred approach for resolving these health and safety risks is programs like Pathway Home, which removes unsafe vehicles voluntarily relinquished by their owners, and moves people into housing, while restoring public spaces and roadways to their intended use. But other tools must be available, including enforcement of non-criminal public health and safety ordinances when constructive and necessary. Enforcement of such municipal ordinances—even without resorting to the criminalization of homelessness, which the County rejects—is sometimes necessary to ensure public safety and resolve emergent dangers.

Under existing Ninth Circuit law, it is much more challenging for municipalities to mitigate against dangerous, hazardous conditions—like those described above—while adhering to ambiguous constitutional mandates regarding unhoused citizens. With *Johnson*, the Ninth Circuit has only deepened the confusion. *Johnson* provides no clarity as to when and how a regulation aimed at protecting the wellbeing of *all* residents violates PEH's constitutional rights. And it wrongly assumes that

²⁷ *Id.*

²⁸ *Id.*

municipal ordinances that seek to maintain safe, healthy, and hazard-free public spaces are necessarily adverse to the PEH who live in those areas. In fact, the opposite is true. PEH equally benefit from regulations preserving the health and safety of public spaces.

CONCLUSION

No one doubts the severity of the homelessness crisis or the need for more housing. Local governments need clarity and momentum to address homelessness, which this Court can help provide.

Respectfully submitted,

Mira Hashmall

Counsel of Record

Nadia A. Sarkis

MILLER BARONDESS, LLP

2121 Avenue of the Stars,

Suite 2600

Los Angeles, California 90067

(310) 552-7560

mhashmall@millerbarondess.com

Counsel for Amicus Curiae

The County of Los Angeles