

No. 19-247

In The
Supreme Court of the United States

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CITY OF BOISE,

Petitioner,

v.

ROBERT MARTIN, LAWRENCE LEE SMITH,
ROBERT ANDERSON, JANET F. BELL,
PAMELA S. HAWKES, AND BASIL E. HUMPHREY,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF AMICUS CURIAE OF
BRENTWOOD COMMUNITY COUNCIL
IN SUPPORT OF PETITIONER**

—◆—
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**IDENTITY AND INTEREST
OF *AMICUS CURIAE***

Pursuant to Supreme Court Rule 37, we respectfully submit this brief *amicus curiae* in support of Petitioner City of Boise.¹ Founded in 1998, the Brentwood Community Council is a local advocacy organization based in the Brentwood neighborhood of West Los Angeles; the Brentwood neighborhood is adjacent to the West Los Angeles VA campus. The Brentwood Community Council covers territory of approximately 15 square miles and represents numerous stakeholders in the community, including individuals, schools, religious organizations, and businesses in the Brentwood neighborhood of Los Angeles, California. The Brentwood Community Council is an unincorporated association. We are adversely impacted every single day by the City's inability, arising from the lack of coherent guidance from judicial decisions, to enact and enforce rational legislation that protects the health, safety and welfare of our residents and manages the ongoing homeless crisis in our city. We are interested in the

¹ Pursuant to this Court's Rule 37.2, all parties with counsel listed on the docket have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court. Counsel of record for all parties listed received notice at least ten days prior to the due date of the *amicus curiae's* intention to file this brief.

Pursuant to Rule 37.6, *amicus curiae* 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 *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

outcome of *Martin v. Boise*, No. 15-35845 (9th Cir.) (amended opinion issued, judgment entered, and petition for rehearing *en banc* denied Apr. 1, 2019; mandate issued Apr. 9, 2019) (“*Boise*”) because its ruling creates confusion and inhibits the ability of local governments to effectively and humanely manage the homeless crisis and protect the health and safety of all their citizens, both the homeless and sheltered. It is necessary for this Court to review *Boise* to provide clarity and guidance to local governments concerning measures that can be implemented without violating the constitutional rights of any citizen.

We have included as Appendices A and B letters of support for this *amicus curiae* brief from the Pacific Palisades Community Council, a similar organization representing the residents and other stakeholders of nearby Pacific Palisades, along with one of our constituent homeowners associations, the Brentwood Homeowners Association.

We have information to share with this Court that we believe may not come from any other source, and will be helpful in the Court’s analysis of Petitioner’s Writ of Certiorari.

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SUMMARY OF ARGUMENT

Our neighborhood, Brentwood, is relatively unique, because the VA Greater Los Angeles Healthcare System (the “VA”) is situated on Federal land within our neighborhood. The sidewalks and streets abutting the VA are within the local jurisdiction of the County of Los

Angeles (“County”) or the State of California (“State”). We accordingly will speak throughout this brief to the State of California and the City and County of Los Angeles.

The *Boise* decision, rather than providing local governments with clear and sound guidance as to conduct that may be prohibited without running afoul of the Eighth Amendment, simply strikes the ordinance for punishing “a person for lacking the means to live out the ‘universal and unavoidable consequences of being human’ in the way the ordinance prescribes.” (*Id.* at 1136) As the dissent in *Boise’s en banc* denial to hear the matter warns, “the panel’s reasoning will soon prevent local governments from enforcing a host of other public health and safety laws, such as those prohibiting public defecation and urination.” (Pet. App. 19a) These laws regulating conduct serve to protect both the homeless and sheltered. Consequently, the homeless population as well as the sheltered are harmed by *Boise*, as further explained below.

Our community has a significant population of “service resistant homeless,” including service resistant veterans. We have learned that the best outcomes for the homeless are when the homeless accept services that address the underlying causes of their homelessness, including mental illness, PTSD, substance abuse, or some combination thereof. The same regulations that protect the health and safety of our community at large often serve as the “stick” that can be used by our service providers to convince the homeless to accept the “carrot” of services.

We urge the Supreme Court to review *Boise*. As residents of the City of Los Angeles, we are facing an unprecedented humanitarian crisis. No one, neither the homeless nor the sheltered, is served today by our City, County and State being stripped of legislative tools that provide for safe and orderly conduct, which is the effect of the *Boise* decision. By eliminating rational tools for governmental bodies to protect their citizens' health, safety, and welfare, the homelessness crisis is not going to be solved – it is going to get worse.

We urge the Supreme Court to weigh in on this issue that threatens the very fabric of our neighborhood, and every neighborhood across our Country.



ARGUMENT

I. UNLESS *BOISE* IS REVISITED, LOCAL GOVERNMENTS' HANDS ARE TIED

The *Boise* decision effectively ties the hands of local governments and precludes their ability to craft ordinances that would protect public health, safety and welfare vis-à-vis encampments. If camping cannot be regulated, camping in high fire areas cannot be regulated, camping on our beaches cannot be regulated, relieving one's self in public cannot be regulated, and myriad other forms of conduct cannot be regulated.

Without regulation of encampments, we face an unprecedented public health and safety crisis that results from unsanitary streets, dangerous runoff

resulting from encampment cleanups ultimately polluting our ocean, growing rat infestations resulting from unsanitary conditions at encampments, and other health, safety and environmental impacts from homeless encampments.

It simply can't be the underpinning of the Eighth Amendment prohibition on cruel and unusual punishment that the homeless are free to dictate the location of their campsites to the exclusion of the local governments that are charged with making those same public locations safe and accessible to all their citizens. The petitioner's writ of certiorari lays out quite effectively the legal issue, the split among Circuits, and the numerous decisions that support the enactment of regulations that permit punishment for proscribed conduct, even if such conduct is perhaps derived from a state of being, and is not repeated here. If *Boise* is not reviewed, municipalities are left without meaningful guidance as to what conduct may be proscribed and what parameters on camping may be constructed while respecting the Eighth Amendment.

City of Los Angeles ordinance, LAMC §41.18, is strikingly similar to the ordinance in controversy in *Boise*. The City of Los Angeles, in a settlement vacating the decision of the Ninth Circuit in *Jones vs. City of Los Angeles*,² agreed not to enforce LAMC §41.18 (ordinance regulating camping) until the City had available an additional 1,250 units of permanent supportive

² *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), vacated, 505 F.3d 1006 (9th Cir. 2007).

housing for the homeless, 625 of which were to be in or near the Skid Row area.³ Los Angeles Mayor Garcetti announced in June, 2018 that the City had fulfilled this requirement.⁴ On August 21, 2019, and apparently in light of the *Boise* decision, the Homelessness and Poverty Committee of the Los Angeles City Council recommended repealing LAMC §41.18, and replacing it with a more narrowly drawn ordinance. At first blush, this would seem permissible under *Boise*, which in a footnote states:

“Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying or sleeping outside at particular times or in particular locations might well be constitutionally permissible.” (*Boise* at 1123). “So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the ‘universal and unavoidable consequences of being human’ in the way the ordinance proscribes.” (*Id.* at 1136)

³ Jones v. City of Los Angeles Settlement Agreement, quoted in Ron Galperin, *Report on Homeless Encampments*, p. 3 (Sep. 27, 2017).

⁴ Ron Galperin, *Report on Homeless Encampments*, (Sep. 27, 2017); Susan Shelley, *Los Angeles is Right to back away from the Jones Settlement* (Orange County Register, Jun. 26, 2018).

That language has proven to provide insufficient guidance to local legislators and is only likely to lead to further unnecessary litigation.

Our City is presently grappling with how to thread the needle given *Boise*. The City is examining prohibiting camping near enumerated “sensitive uses.”⁵ However, our councilmembers cannot seem to agree on what *Boise* means, and some have expressed the view that any revisions to LAMC §41.18 that would impose restrictions on behavior arising from being homeless will be struck down by the courts.⁶ Many others are expressing concerns that the current efforts to revamp LAMC §41.18 may meet muster under *Boise*, but in practice will be so complicated as to be unworkable.

Sacramento is experiencing similar confusion regarding what is permissible in light of *Boise*, and is turning to other measures in an effort to address the challenges that unmonitored camping creates. “After the *Boise* decision, tickets for unlawful camping dropped dramatically across the cities and suburbs of Sacramento. On the American River Parkway, rangers shifted instead to increasing citations for other behaviors such as littering, typing [sic] ropes to trees and

⁵ Matt Tinoco, *LA’s Rules About Where Homeless People Are Allowed To Sit And Sleep Could Get Even More Complicated* (LAist Aug. 22, 2019).

⁶ Emily Alpert Reyes, Matt Stiles and Ryan Menezes, “*Plan could limit where homeless sleep in L.A.*” (Los Angeles Times, Sep. 10, 2019).

having a shopping cart, a move that some advocates said violates the spirit of the Boise decision.”⁷

If our representatives in Los Angeles and other cities and counties charged with legislating cannot sort through how to legislate in light of *Boise*, *Boise* must be revisited. We will otherwise face endless litigation over what is permissible and what is not, and in the meantime not make any progress in addressing this humanitarian crisis.

We have seen similar resulting confusion arise from other court decisions intended to protect one’s civil liberties. In *O’Connor v. Donaldson*, 422 U.S. 563 (1975), this Court held a state cannot constitutionally confine a non-dangerous individual who is capable of surviving safely in freedom by themselves or with the help of willing and responsible family members or friends. Some argue the decision was a reasonable one, but has been interpreted unreasonably.

“The mental health bar argues the individual is ‘surviving safely’ if he is not on the point of death. But mental health law expert Paul Stavis, counsel to the New York Commission on Quality of Care, argues that the ACLU interpretation of the Donaldson decision is wrong. When it ruled by ‘surviving safely in freedom,’ the Supreme Court did not have in mind rummaging in garbage cans for food or lying in the street in one’s own waste. Nowhere in the Donaldson decision did it

⁷ Alexandra Yoon-Hendricks, “*Sacramento wants to overturn this homeless ruling. Now it’s asking the Supreme Court for help*” (Sacramento Bee, Sep. 10, 2019).

say that the individual must be permitted to deteriorate to the point he is dangerous. Stavis is convinced a well crafted ‘need for treatment’ statute will survive Supreme Court scrutiny (and hopes a case reaches the Court which enables the justices to make that clear).”⁸

As with *O’Connor*, we run the risk that *Boise* will be interpreted unreasonably, to the point of eviscerating effective state and local regulations that balance the needs of both the homeless and those who are sheltered. Moreover, we are witnessing today the *Boise* decision rendering the City of Los Angeles unable to enforce LAMC §41.18 regulating camping, causing confusion among Los Angeles legislators as to what might be permissible under *Boise*, and generally calling into question the enforceability of rational legislative tools regulating conduct. Our concern is that *Boise* leaves our City with no ability to manage the growing homelessness crisis or protect its citizens’ health, safety and welfare in response to the homelessness crisis. The Supreme Court’s grant of Petitioner’s Writ of Certiorari will afford this Court the opportunity to provide clarity to local and state governments throughout our Country in the responsible, constitutionally permitted regulation of conduct that may be associated with homelessness.

⁸ Mental Illness Policy Org. “*Dangerous Standard: O’connor [sic] v. Donaldson Case Survey*,” <https://mentalillnesspolicy.org/legal/survive-safely-oconnor-donaldson.html>.

II. REGULATIONS MAY HELP THE HOMELESS

The homeless in our community need help and guidance. Many of the homeless in our neighborhood of Brentwood, including veterans, are “service resistant homeless,” *i.e.*, those individuals who either refuse to engage with the service providers who frequent our encampments, or to accept services made available to them. We care about these individuals, none the least of which are our veterans who served our country with honor and were willing to sacrifice their lives for our freedom. Their reward for service should not now be putting their lives at risk by living on the streets.

Some 921 homeless individuals died on the streets of Los Angeles in 2018, and this year 680 homeless individuals have died as of September 7, 2019. It is expected that the number of homeless deaths in Los Angeles will exceed 1,000 by the end of 2019.⁹ Further, the homeless fall victim to unimaginable crimes. As reported by NBC LA News:

“Detectives from the LAPD’s Robbery Homicide Division are investigating the apparent murder of a homeless man, whose burned body was found Tuesday morning smoldering in a shopping cart along the bike path at Lake Balboa Park in Van Nuys. Law enforcement sources told NBC-LA it appeared the person had been killed and burned elsewhere, then placed in the shopping cart and pushed on to the path that crosses underneath Balboa Boulevard. The victim is likely the

⁹ Steve Lopez, “*He died homeless and alone, but his wife had never lost hope he’d return.*” Los Angeles Times (Sep. 7, 2019).

28th homeless person murdered in the city so far this year, according to LAPD crime data.”¹⁰

Living on the streets is fraught with peril that no one should be subjected to, and that rationally, no one would choose to be exposed to. We believe the best outcomes for the homeless occur when they accept services, including those that address underlying causes of their homelessness, whether that may include mental illness, PTSD, or substance abuse. The same regulations that provide health and safety protections to our residents also serve as the proverbial “stick” that may be used by service providers to convince the homeless to accept the “carrot” of services.

ABT Associates, in a July 2019 study published on the U.S. Department of Health and Human Services website, found “a variety of innovative and promising pre-booking jail diversion programs” to address drug addiction, including among the homeless.¹¹ A Los Angeles County diversion program is having some early success.¹² Diversion programs necessarily rely on underlying violations of law in order to persuade the impacted

¹⁰ <https://www.nbclosangeles.com/investigations/Homeless-Man-Killed-Burned-Lake-Balboa-Park-LAPD-Van-Nuys-560147871.html> (Sep. 12, 2019).

¹¹ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, “Approaches to Early Jail Diversion: Collaborations and Innovations,” Sue Pfefferle, Sarah Steverman, Elle Gault, Samantha Karon, and Holly Swan, ABT Associates, July 2019.

¹² Doug Smith, “*Mentally ill homeless people keep going to jail. But a study says L.A. County can fix that.*,” Los Angeles Times (Apr. 22, 2019).

individual to accept services. If conduct such as camping, urinating in public, and the like, is not regulated, state and local agencies will lose the “stick” that often ensures the “carrot” of services is accepted.

The June 2012 United States Interagency Council on Homelessness report: “*Searching Out Solutions – Constructive Alternatives to the Criminalization of Homelessness*” reported on “*Solution III – Alternative Justice System Strategies*,” including a review of the homeless court system employed in the County of San Diego since 1989, the first in the country. The San Diego homeless court is

“designed for citizens experiencing homelessness to resolve outstanding misdemeanor warrants and offenses (principally ‘quality-of-life’ infractions such as unauthorized removal of a shopping cart, disorderly conduct, public drunkenness, and sleeping on a sidewalk or on the beach). Participants voluntarily sign up for the HCP through a participating homeless service provider and participate in a series of program activities before appearing in court. Participants get credit for ‘time served’ in program activities that address the underlying causes of their homelessness, like life-skills, chemical dependency or AA/NA meetings, computer and literacy classes, training or searching for employment, healthcare (physical and mental), and counseling.” (*Id.* at 26)

The report found that there were benefits from such an approach and solution, noting that:

“Alternative justice system strategies provide a balanced approach to the needs of individuals experiencing homelessness without overburdening the criminal justice and emergency health system. Solution III approaches are tailored to address the root causes of homelessness and provide restorative interventions that halt the harmful cycling of people from criminal justice systems to the street.” (*Id.* at 30)

As noted in the description of the San Diego homeless court, the infractions that allow for intervention, and help to the homeless, are principally “quality of life” infractions, the same sort of infractions that *Boise* would ostensibly nullify. These alternatives should not be lost from the options to address the homelessness crisis.

III. THE HEALTH AND SAFETY OF ALL CONCERNED ARE AT RISK

The *Boise* ruling creates confusion as to the ability of local governments to enact regulations that would make unlawful conduct that is a danger to the public’s health and safety that may also be “an unavoidable consequence of being human.” (*Boise* at 1136) Los Angeles residents are experiencing a number of challenges as a result of encampments located throughout our City and County without regulatory controls in place. As concerned residents, it is imperative we share with you some of the challenges we and our neighbors and friends face each and every day.

The real world experiences of unregulated encampments in our and other nearby neighborhoods, and their impacts on our communities, include the following:

- many residents of our community were on evacuation alert for days in the Fall of 2017 because outdoor cooking at a homeless encampment started the Skirball Fire, not to mention the many individuals in neighboring communities who did have to evacuate, some of whom lost their homes, possessions, and precious mementos and memories,^{13, 14}
- as reported by NBC LA, “LA firefighters are now extinguishing almost seven fires a day started at homeless encampments or tents in neighborhoods across the city”;¹⁵
- nearby residents are unable to sleep at night because of fights occurring within encampments, whether between two homeless individuals (as we recently had when one homeless man beat another homeless man with a hammer during a fight over a homeless woman in the encampment), or by a homeless individual who is suffering from mental illness, PTSD, or substance abuse and fights with people who

¹³ *LAFD Determines Cause of Skirball Brush Fire* (Los Angeles Fire Department Press Release, Dec. 13, 2017).

¹⁴ *Skirball Fire Update* (Los Angeles Fire Department Press Release, Dec. 15, 2017).

¹⁵ <https://www.nbclosangeles.com/news/local/Map-2018-Homeless-Encampment-Fires-Los-Angeles-513201591.html> (Jul. 25, 2019).

do not exist, which occurs with some frequency according to our residents;

- children as young as kindergarteners walk with chaperones to a neighborhood park for recess during the school day, only to be exposed to a homeless man sitting in a wheelchair with his genitals exposed;
- residents devise alternate routes home because one homeless individual at one encampment throws objects at cars, and either is not detained by police or is released quickly after being detained;
- we fear our Santa Monica Bay is becoming increasingly polluted and hazardous, due to urine, human and other waste, as well as contraband, that is now regularly washed down our storm drains;
- some of our local businesses report to us they face ever increasing security costs in response to violent and belligerent homeless individuals who scare off patrons and damage private and public property alike (as the line where the private property ends and the public sidewalk begins is typically not marked or respected); our brick and mortar local businesses face enough challenges from the “Amazon” effect of increased online shopping that they do not need this added economic burden;
- some of our multi-family residents report that they are unable to get to their cars from their apartments without carefully walking so as to avoid stepping in human feces and urine;

- we have some teens who did not take that summer job because they would have to walk by an encampment between the location where they would park and the job location, and in that time risk being harassed and threatened;
- some of our commercial property owners struggle to attract tenants because of an encampment immediately outside the premises that scares off potential tenants;
- the homeless have no basic resources on our sidewalks, end up living in deplorable conditions on the street, are exposed to disease, and then spread those diseases, as reports indicate increased incidences of typhus and typhoid, among other diseases;¹⁶ and
- we hear a story from a friend, who meets a former boy scout at a park once each month to provide him with a new cell phone, some clean clothes, and food, because he lives exposed in the hills of Los Angeles, and, with his untreated schizophrenia, chooses homelessness, while not one concerned family member can obtain a conservatorship in order to provide the help he desperately needs.

Many of the incidents described above are reported by residents at our meetings, and occur not just in our neighborhood, but in our neighboring communities, and our City, County and State at large. As these

¹⁶ Anna Gorman and Kaiser Health News, “*Medieval Diseases Are Infecting California’s Homeless*” (The Atlantic, Mar. 8, 2019).

instances demonstrate, the health, safety and welfare of the homeless and sheltered alike are threatened. Due to the *Boise* decision, our City, County, and State cannot with any degree of certainty constitutionally regulate the existence of encampments in our neighborhood and provide relief.



CONCLUSION

As a result of the *Boise* decision, agencies charged with providing services to the homeless who desperately need help are being stripped of the very tools that encourage such help is accepted. The homeless are dying on our streets, and the homeless population in Los Angeles is growing. Today, a homeless person suffering from substance abuse, mental illness, PTSD, or some combination thereof, can make the decision to camp on the street rather than accept shelter, and can choose where to camp, and the local government, charged with protecting the health, safety, and welfare of all its citizens, has no say. When does it end?

We hope that the Supreme Court takes up and reviews the *Boise* case, so that state and local governments have the necessary guidance to enact and enforce constitutionally permissible regulations that protect their residents, the homeless and sheltered alike. We must address one of the most significant

crises facing us as a country today, and we desperately need this Court's assistance in doing so.

Respectfully submitted,

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