

No. 23-175

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 *AMICI CURIAE*
LA ALLIANCE FOR HUMAN RIGHTS,
HISTORIC CORE BUSINESS IMPROVEMENT
DISTRICT PROPERTY OWNERS
ASSOCIATION, CENTRAL CITY EAST
ASSOCIATION OF LOS ANGELES,
HOLLYWOOD MEDIA DISTRICT PROPERTY
OWNERS ASSOCIATION, HOLLYWOOD
PROPERTY OWNERS ALLIANCE, DOWNTOWN
SPOKANE DEVELOPMENT ASSOCIATION,
AND EAST SPOKANE BUSINESS ASSOCIATION
IN SUPPORT OF PETITIONER**

MATTHEW DONALD UMHOFFER
Counsel of Record
UMHOFFER, MITCHELL & KING LLP
767 S. ALAMEDA STREET, SUITE 270
LOS ANGELES, CA 90021
(213) 394-7979
matthew@umklaw.com

JEFFREY C. BRIGGS
Assisting Counsel
Briggs Law Office
3373 COUNTRY HOME CT.
THOUSAND OAKS, CA 91362
(323) 461-5400
jbriggs@jbriggslaw.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Homelessness is a national crisis. It is particularly acute in large urban areas such as Los Angeles, but equally devastating in smaller cities like Spokane. No doubt the Ninth Circuit supports municipal efforts to balance the need for clean and safe public spaces with the needs of people having nowhere else to go who camp in such spaces. But its decision in *Johnson* only has exacerbated the struggle its earlier *Martin* ruling has caused local governments in finding this balance. Those in the private sector, like the *amici* here, on whom many cities rely to meet their “clean and safe” service obligations in busy urban cores, are equally flummoxed as *Johnson* handcuffs municipal response to the homeless crisis and further erodes urban public space health and welfare for the housed and unhoused alike.

Amicus LA Alliance for Human Rights is a non-profit coalition of unhoused, formerly unhoused, and housed residents, property and business owners, nonprofit service providers, and other community members committed to ensuring local government takes prompt and ongoing action to help the homeless and to return public spaces to clean and safe conditions for the benefit of all throughout Los Angeles.

Amici Historic Core Business Improvement District Property Owners Association, Central City East Association, Hollywood Media District Property

¹ Rule 37 statement: All parties received timely notice of *amici* intent to file this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* and its members made any monetary contribution to its preparation or submission.

Owners Association, and Hollywood Property Owners Alliance are non-profit entities managing “business improvement districts” (“BIDs”) formed under California law. Similarly, *amici* Downtown Spokane Development Association and East Spokane Business Association manage BIDs formed under Washington law. BIDs are supported by extra taxes property owners impose on themselves in highly trafficked areas needing more waste management, street and sidewalk cleaning, public park maintenance, visitor hospitality, and security services than the city otherwise can provide. The BID *amici* operate where all manner of business and residential neighbors live jowl-by-jowl with schools, parks, museums, walking paths and bikeways, and other public spaces.

LA Alliance members and BID “clean and safe” teams bear witness to the metastasizing health and safety cataclysm homelessness presents their busy and dense communities. From a front-line reality they confront every day at all hours, they know only too well the urgent need to employ any and all means and mechanisms of aid, incentive, and inducement to connect precious shelter and services with those who need them. They are equally familiar with the plight of their housed constituents, who bear their own crushing burdens from the humanitarian catastrophe that continues to challenge relief efforts.

Amici are uniquely situated to provide the Court a ground-zero picture of the exceptionally important real-life consequences of *Johnson’s* Eighth

Amendment and class action decisions for those required to deal with them.

SUMMARY OF THE ARGUMENT

Johnson has made efforts to aid the homeless, like those of *amici* and the cities they support, exponentially more difficult. At face value, *Johnson* might seem only to provide well-intentioned encouragement for cities to use less penal means of protecting public health and safety while following *Martin's* requirement that those who need a place to sleep may find one in public spaces absent sufficient alternative shelter beds. *Johnson* instead has chilled new municipal health and safety initiatives designed to end this stain on our nation's fabric, and frozen some such plans altogether.

First, the supposed "limits" on the court's ruling are nothing of the sort for those who must interpret them while trying to get help to those who need it. The requirements *Johnson* imposes, such as determining the number of "involuntarily" homeless and the kind of "camping" that can be prohibited in order to keep public spaces clear for all to enjoy, now are all but impossible to meet without running the prohibitive financial risk of a class action lawsuit. Already narrow goalposts through which cities were trying to navigate have become mere mouseholes for even the bravest and best-intentioned government efforts to alleviate the suffering occasioned by public space camping. The chilling result is municipal abandonment of public health and safety regulations protecting everyone in favor of the now legally and financially safer

relinquishment of public spaces to even more dangerous, but less litigious, chaos.

Second, *Johnson's* practical elimination of even gentle civil remedies deprives those directly trying to help the last vestige of a critical incentive in the face of the surprising but all too real reluctance of many public space campers to accept other shelter and help when it is available. Anyone who has tried to give a homeless person a sandwich instead of the requested money to buy food likely has experienced the resistance with which many sleeping in our public spaces respond to sincere offers of help—*amici* outreach teams face that resistance every hour of every day, and need every incentive reasonably available to break through it. Discussion of possible civil citations and similar enforcement consequences can be essential in connecting services to someone who needs help but is unwilling to accept it. But public space campers are well aware of the handcuffs from which *Johnson* has freed them and placed on cities themselves; resistance to help is even easier now than already rendered under *Martin*.

Petitioner Grants Pass has addressed the questionable Constitutional merits of the Ninth Circuit's decision, as have the numerous Ninth Circuit judges who so narrowly lost the chance to give the case greater review. The exceptional variance of views within the entirety of the Ninth Circuit alone supports the critical importance of this case on the Constitutional level. *Amici* here demonstrate the even greater practical real-world street level importance of getting this case right if the public health and safety dangers with which homelessness

confronts the unhoused and housed alike are to find the solution our shared humanity demands.

ARGUMENT

I. *Johnson's* Avowed “Limits” Are Illusory

In *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit held that municipalities cannot impose criminal penalties for “involuntarily” sitting, lying, and sleeping in public so long as there is a greater number of homeless individuals than the number of available shelter beds in that jurisdiction. In the present case (*Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023)), the Ninth Circuit extends *Martin's* enforcement prohibition to even *civil* citations based on anti-public space “camping” regulations, and then both broadens the sort of “camping” that municipalities must allow and grants class action status to the “involuntarily homeless.”

The court characterizes its decision as “exceptionally limited” because cities can build more shelter, and in the meantime enforcement of rules against camper occupation of public space is permitted against campers who have the means to access other shelter but choose not to, during daylight hours, and against “campsite” indicia beyond “bedding.” In the real world, however, each of these supposed limitations on the Ninth Circuit’s ruling actually swallows whole the enforcement effort it purports to still allow.

First, it is no answer simply to tell cities to build more shelter space. Homeless counts are notoriously

expensive, and cannot be accomplished on a daily, let alone weekly or monthly basis—homeless counts in Los Angeles require hundreds of volunteers, extensive training, protection for those performing the counts at night, and are accomplished annually over several days under the best of circumstances.

“Accurate” counting is, moreover, a myth:

“Counting” people who often want to avoid inclusion depends heavily on algorithms (for example, how many people likely are in a particular sized tent) and is extrapolating from certain areas physically counted to those that are not, all resulting only in wide-ranging estimates at best. *See Counting California’s Homeless Population, Public Policy Institute of California*, (June 2019),

<https://www.ppic.org/blog/2020-census-counting-californias-homeless-population>. Counting

“available” shelter beds is equally uncertain: *Martin* remarkably excludes actual public campgrounds, religiously-affiliated shelters, and beds in sober-living and similar facilities from the “available” bed count, and the Los Angeles Homeless Services Authority counts “emergency shelter” beds, “transitional housing” beds, “safe haven” beds, “permanent supportive housing” beds, and “rapid re-housing” beds—all distinctions perhaps important to the responsible agency but which make counting the “available bed” side of the *Martin* equation with any confidence nigh impossible, particularly in larger cities like Los Angeles with thousands of beds but many thousands more homeless. *See, e.g., Shelter*

Count & Housing Inventory Count, LAHSA, 2022,
<https://www.lahsa.org/homeless-count/hic/>.

In *Johnson* the Ninth Circuit exponentially increases the difficulty of applying the available bed-to-homeless calculation under the fantastical supposition that anyone accurately can determine which people camping in public spaces do so “involuntarily.” Defining such individuals as those who cannot secure shelter either because it is not available for free, or because they lack the financial ability to pay for it or lack access to some other manner of non-public space shelter, the court blithely assumes that precious municipal resources, especially of time, already stretched wafer thin trying to regularly count homeless and beds, also can be devoted to determining the truth of a public space camper’s claim that s/he has no other means of shelter. This is a slap in the face of *amici* outreach personnel and the many other non-profit and government service provider staffers with whom they devote hours every day to people on the streets who need help, each of whom regularly laments the extraordinary time and effort over multiple days it usually takes to get even a single public space camper to identify himself, let alone prove his lack of a local address or family member or friend with a couch.

Equally fantastical and offensive to law and other city regulation enforcement personnel is the *Johnson* court’s assumption that any municipality has the resources to enforce anti-camping laws during the day when it cannot also do so at night. All municipalities have asked their law enforcement

agencies to do more with less for years—never more so than in the “defunding” years since *Martin*. As *amici* regularly have encountered since *Martin*, public space campers are well aware not just that no city has enough “available” shelter for everyone and so they are not required to accept what is, but also that no city has the resources to devote to moving them out of their appropriated public space during daylight hours day after day if they can just return to the same public space to sleep night after night.

Another of *Johnson*’s otherworldly assumptions is its asserted “limit” on what public space campers can keep with them before they may be cited for prohibited “camping.” “Homeless hoarding” is a hallmark symptom of mental illness, becoming even more prominent for those without secure shelter. See *Homeless and Hoarding in LA*, LA Times (July 2022) at www.latimes.com/california/story/2022-07-22/homeless-hoarding-slipping-through-the-cracks. As *amici* members and outreach personnel can attest, one person’s milk crate/suitcase/stack of lumber/cardboard box is another’s pillow, and one person’s tarp or tent is another’s blanket; in the real world where street campers sleep and defecate and catch and spread disease and shoot-up drugs and get sick and die around the clock, hoarding knows no limits—no inch is given without the proverbial mile being taken. The dangerous hoarding of materials rampant in our public spaces already makes it impossible for public space providers to continually move campers and their belongings off public rights-of-way as allowed during daylight hours, but under *Johnson* they also first have to decide which of the

public space camper's materials constitute "bedding materials" and "protection from the elements."

*And woe to the city that gets that or any other Johnson precondition wrong while trying to keep public spaces clear and clean. A city that tries to move a person into undeniably necessary care because it erroneously determines s/he has too many materials beyond "element protection," or s/he is there "voluntarily," or there are enough "available beds" for all on a given day, has just created classes of individuals whose concerted lawsuits will cost the city resources it could better use to provide more shelter and services. There certainly is no shortage of "advocates" for the homeless willing to use *Martin* and now *Johnson* to convince public space campers to stay put, and cities now face a new and prohibitively expensive consequence when guilty of nothing more than trying to be of help. A recent Spokane attempt to curb camping in public spaces was immediately challenged—cities now find themselves chilled from trying creative but reasonable solutions and consequently wind up doing less to help people get off the streets, not more.*

II. Anti-Camping Regulations Provide a Legitimate Path to Care for Those in Need

Scarce resources for processing civil citations necessarily means that actual enforcement of public space anti-camping regulations by way of any form of law or regulation enforcement is rare. But the BID *amici* "clean and safe" teams know from experience—

as do all those trying to help those who need it—that the possibility of enforcing public space anti-camping regulations can be an essential persuasion point in overcoming the all too common resistance they face to acceptance of care.

Amici have been working to provide and help public space campers find off-street care for years. Intense effort is required to gain even a single camper's trust that s/he will be safe, secure, and comfortable in an off-street environment that necessarily requires some level of behavioral compliance. Multiple outreach workers can spend months trying to get a single person out of a public space and into real shelter or care—fear and mistrust are the order of the day on the streets, and service providers need as many different ways of getting people to accept help as there are people who need it. The ability to present the recalcitrant public space camper with actual consequences for refusal is as much a part of the social worker's toolbox for getting someone to finally come in out of the cold as is the offer of a hot meal and a mattress.

Exemplary of the difficulties faced by those who seek to provide real help to those in need is the fact that even as they have expanded shelter and services to the homeless, efforts of cities like Los Angeles and Spokane to clear encampments are accompanied by well-publicized outcry from those who claim to “advocate” for homeless interests. An enormous encampment at Echo Park near downtown Los Angeles was cleared only under a declared safety emergency, only after months of outreach seeking voluntary transition of the campers, only through

enormous expense, and ultimately after a very small number of holdouts were cited for breach of some local regulation as a last resort. All of this effort necessitated *closure of the park to the housed as well as the unhoused* for many months. See One Year After Cleanup . . . Few in Stable Housing, Sam Levin (March 2022) <https://www.theguardian.com/us-news/2022/mar/23/los-angeles-echo-park-unhoused-residents-homelessness>. Several large encampments in Hollywood and near the Veterans Administration on the western edge of Los Angeles, and others in Spokane, similarly have taken months of time and millions of dollars to clear and clean.

The publicity and even controversy attendant upon these efforts demonstrate that most public space encampments cannot hope for the same treatment. City resources are incapable of accomplishing such efforts everywhere they are needed. The Spokane City Council anticipates a 2024 budget deficit of more than \$20m, about half of that being the cost of homeless shelter. First responder positions almost certainly will be among the cuts the city will make to balance the budget. See, e.g., Spokane Workers Continue to Dismantle, etc., Emma Epperly (Sept. 2022), <https://www.spokesman.com/stories/2022/sep/28/spokane-workers-continue-to-dismantle-smaller-home/>.

And yet the encampments also return. Amici experience with LA's "Bridge Home" project is instructive. In Hollywood, some 50 shelter beds were created in 2019 with the goal of providing transitional help to those then living on Hollywood's streets. Those 50 beds were intended to provide

temporary shelter only, with the goal of moving others in as the initial residents were transitioned to the next level of off-street care and/or housing. Supervising providers at Bridge Homes have come and gone in frustration over trying to operate the facilities, however, as have many residents who simply walked away or were escorted out for inability or refusal to abide by even minimal behavioral rules. Meanwhile, public space encampments have grown in the areas around some Bridge Homes—indeed, residents are known to still be storing belongings in tents on nearby streets to which they return during the day, presenting cleanup efforts the Bridge Homes were intended to aid with new difficulties. Hollywood’s experience proves that even expensive temporary shelter is no solution in the absence of coextensive law enforcement.

But Johnson not only eliminates civil regulation enforcement as a viable inducement for the unhoused to accept and stay in care off the streets, it weaponizes resistance to such care by creating a self-defining incontestable class of “involuntary homeless.” This harms more than those the Ninth Circuit professes to protect. Property and business owners, residents, and visitors also lose when an effective tool to provide safe and clean access to public space is eliminated by judicial overstep. *Amici* BIDs report fallow facilities when existing or potential tenants are forced to make their way through encampments just to return to work or to inspect a prospective new location. Fires are an almost daily occurrence on sidewalks and in parks. Business owners face exorbitant increases in

insurance costs and outright denials of coverage when inspectors see campers on their or their neighbors' doorsteps. Joel Grover and Amy Corral, *Your Insurance is Canceled Because of Homeless Tent Fires*, NBC Los Angeles (Sept. 23, 2019, 10:54 PM), <https://www.nbclosangeles.com/news/local/LA-Homeless-Encampment-Fires-Insurance-Rates-Tents-Homelessness-561145811.html>. Postal workers, utility meter readers, and delivery drivers are unable to perform their duties, handicapping economic recovery for businesses and municipalities alike. Employers are required to provide security escorts for employees to enable them to leave their workplace for lunch or to get to and from work in safety. Social media sites show more encampments than attractions when posted by disappointed tourists. Large retail chains close profitable locations out of concern for worker safety. LA Starbucks Close . . . Over Safety Concerns, Irene Cruz, ABC News (August 2022) <https://abc7.com/los-angeles-starbucks-stores-closing-closures-unions/12091667/>; Starbucks Closing Downtown Spokane Location Because of Safety Concerns, Melissa Luck (Jan. 2023), https://www.kxly.com/news/local-news/starbucks-closing-downtown-spokane-location-because-of-safety-concerns/article_8a8d2efd-bd43-56b6-ab3a-1be35d624c1f.html#:~:text=Starbucks%20closing%20downtown%20Spokane%20location%20because%2.

These property and business owners and their employees are expected to abide by local regulations—including those that prohibit residing in public spaces—and understandably wonder why

law enforcement is denied an equal hand with respect to those whom *Johnson* enables to ignore it. The consequences they face for regulation violations induce them to abide by the law, and they reasonably wonder why that inducement has been taken out of the hands of those actually trying to help people living in public spaces to everyone's detriment. Indeed, cities need to show this sort of equal enforcement treatment in trying to convince citizens to support shelters and other homeless solutions in their own neighborhoods.

III. Homelessness is a Crisis in Need of a Full Toolbox

It is a grave mistake to view the scourge of homelessness from the limited perspective of one city's attempt to prevent people from "camping in public places." Anti-public space camping regulations are not attacks on the bucolic image of a single tent in a city's central park. They are about protecting everyone, housed or unhoused, from the very real and present dangers of hazardous waste, drug addiction and related criminal enterprise, fire, rape, assault, untreated illness, vermin infestation, and more—even the return of medieval disease. *See, e.g., Joel Grover and Amy Corral, LA's Rat Problem Grows Even After City Cleans Up Trash Heaps Revealed* by NBC4 I-Team, NBC Los Angeles (June 10, 2019, 10:24 PM), <https://www.nbclosangeles.com/news/local/LA-Crawling-With-Rodents-511112152.html>. Those who work to get help to those on the streets cannot impress strongly enough upon those who aren't with

them in those trenches that public space camping is far more “Cocaine Bear” than Yogi Bear. These are some of those facts and a few real images *amici* and their respective and fellow cities face every day:

- A Hollywood resident watched as police officers retrieved two machetes, drug paraphernalia, and bags of human waste from a tent blocking her path to work; she no longer considers walking a viable commuting option in a city eager to get people out of their cars.



- Small business owners have had rocks hurled through their windows and have to clean human waste from their business frontage on a daily basis.

- In the Los Angeles Fashion District, customer cars are broken into and tents prevent patrons from loading their vehicles.
- City businesses have had to close public restrooms to all guests due to pathogenic remnants and misuse of such spaces for drug dealing, sleeping, exposure, prostitution, and assaults.



- City of Spokane camping abatement efforts are projected to remove over 800,000 lbs of litter and debris by the end of 2023.
- Among the 5,000 homeless individuals living in the one-square-mile of “Skid Row” in Los Angeles, the mountains of garbage, food waste, human waste, drug needles, and other contaminated items are breeding grounds for rats and disease. *Steve Lopez, Column: He died Sunday on a West L.A. Sidewalk,*

L.A. Times (Sept. 4, 2019).

www.latimes.com/california/story/2019-09-04/homeless-deaths-los-angeles-coroner-record.

- City industrial buildings face fires from homeless camps open air fires and tampered utility wiring used for encampment electricity.



- Postal workers and others refuse to deliver mail and other usual services to many areas, and are forced to don haz-mat suits when they do.
- People are openly using drugs, urinating, defecating, masturbating, having sex with others, and otherwise exposing themselves in public spaces, including those intended to be shared by children.

- Large items accumulated on sidewalks and other public spaces throughout cities like Los Angeles and Spokane obstruct the free passage and use of the streets and sidewalks, and not just for the disabled; parents must walk children in strollers in the middle of traffic, and then regularly disinfect their homes because of the fleas that ride on their pant legs as they walk past encampments.



- The anonymity afforded by tents in public spaces permits criminals to peddle weapons, narcotics, and even humans undisturbed. Eric Leonard, [Crime Amongst LA's Homeless Population Rises Again](http://www.nbclosangeles.com/news/local/Crime-Amongst-LAs-Homeless-Population-Rises-Again-505807741.html), NBC Los Angeles, www.nbclosangeles.com/news/local/Crime-Amongst-LAs-Homeless-Population-Rises-Again-505807741.html).

CONCLUSION

No one should be living in our public spaces. Homelessness is itself “cruel and unusual.” A judicial decision that takes any reasonable tool away from those trying to get public space campers to accept off-street help is even more so. No matter how well intended, *Johnson* in fact has deprived those on the front lines of this national growing crisis a reasonable tool useful in getting help to those we all know need it. *Johnson* actually jeopardizes the homeless it seeks to protect by forcing public space providers to choose between providing care or avoiding the time, expense, and risk of liability. The choice being made after *Johnson* is visible outside everyone’s front doors—even those of this Court: Homelessness, the scourge of the housed as well as the unhoused, persists.

The real-world impact of *Johnson* here explained by *amici* is Exhibit A to the principle that the people and their elected officials should make the policy decisions their public space providers are tasked to implement. Judicial assistance in identifying the outer limits of the choices so made is appropriate and necessary, but *Johnson* goes beyond those boundaries and intrudes into the heart of already challenging on-site efforts to get help to all who deserve clean and safe public spaces. The Court should grant *certiorari* to consider *Johnson* and its ilk with the benefit of *amici* input on how these decisions adversely impact the effort to get help to

those who need it. And to help us all get back our
humanity.

Respectfully Submitted,

MATTHEW DONALD UMHOFFER
Counsel of Record
UMHOFFER, MITCHELL & KING LLP
767 S. Alameda Street, Suite 270
Los Angeles, CA 90021
(213) 394-7979
matthew@umklaw.com

JEFFREY C. BRIGGS
Assisting Counsel
BRIGGS LAW OFFICE
3373 Country Home Ct.,
Thous. Oaks, CA 91362
(323) 461-5400
jbriggs@jbriggslaw.com

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