

No. 23-175

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IN THE  
**Supreme Court of the United States**

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CITY OF GRANTS PASS, OREGON,

*Petitioner,*

*v.*

GLORIA JOHNSON, *et al.*, ON BEHALF OF  
THEMSELVES AND ALL OTHERS SIMILARLY  
SITUATED,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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

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**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
IDENTITY AND INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	6
I. LOCAL GOVERNMENTS' HANDS ARE TIED.....	6
II. REGULATIONS HELP THE HOMELESS .....	10
III. THE HEALTH AND SAFETY OF ALL CONCERNED ARE AT RISK.....	13
CONCLUSION .....	18

**TABLE OF CITED AUTHORITIES**

	<i>Page</i>
<b>Cases:</b>	
<i>Johnson v. City of Grants Pass</i> , Nos. 20-35752 and 20-355881 (9 <sup>th</sup> Cir.), (July 5, 2023) (amended opinion upon denial of rehearing) . . . . .	1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 17, 18
<i>Jones v. City of Los Angeles</i> , 444 F.3d 1118 (9th Cir. 2006), <i>vacated</i> 505 F.3d 1006 (9 <sup>th</sup> Cir. 2007) . . . . .	7
<i>Martin v. City of Boise</i> , 902 F.3d 1031 (9th Cir. 2018). . . . .	1-2, 3, 5, 8, 9, 18
<i>O'Connor v. Donaldson</i> , 422 U.S. 563 (1975). . . . .	9
<b>Constitutional Provisions:</b>	
U.S. Const., amend. VIII . . . . .	3, 6, 7, 13, 14
<b>Statutes:</b>	
Los Angeles Municipal Code, § 41.18. . . . .	7, 8
<b>Other Authorities:</b>	
Anna Gorman and Kaiser Health News, “ <i>Medieval Diseases Are Infecting California’s Homeless</i> ” (The Atlantic, Mar. 8, 2019). . . . .	17

*Cited Authorities*

	<i>Page</i>
Doug Smith, <i>Mentally ill homeless people keep going to jail. But a study says L.A. County can fix that</i> , Los Angeles Times, April 22, 2019 . . . . .	12
Jones v. City of Los Angeles Settlement Agreement, quoted in Ron Galperin, <i>Report on Homeless Encampments</i> (Sep. 27, 2017) . . . . .	7
Julia Harris, “ <i>The 25 U.S. Cities with Largest Homeless Populations</i> ”, (U.S. News and World Report, December 27, 2023) . . . . .	2
<a href="https://apnews.com/article/los-angeles-coronavirus-pandemic-fires-health-31f69b284aa04103f0a2c494fd2ce8d8">https://apnews.com/article/los-angeles-coronavirus-pandemic-fires-health-31f69b284aa04103f0a2c494fd2ce8d8</a> (May 13, 2021). . . . .	15
<a href="https://www.housingisahumanright.org/homeless-deaths-increase-for-seventh-year-in-a-row-in-los-angeles/#:~:text=It's%20a%20devastating%20trend%20that's,2020%2C%20and%202%2C201%20in%202021">https://www.housingisahumanright.org/homeless-deaths-increase-for-seventh-year-in-a-row-in-los-angeles/#:~:text=It's%20a%20devastating%20trend%20that's,2020%2C%20and%202%2C201%20in%202021</a> . . . . .	10
<a href="https://www.latimes.com/california/story/2021-09-15/homeless-veteran-stabbed-to-death-near-west-la-va-in-an-encampment">https://www.latimes.com/california/story/2021-09-15/homeless-veteran-stabbed-to-death-near-west-la-va-in-an-encampment</a> . . . . .	14
<a href="https://www.nbclosangeles.com/investigations/Homeless-Man-Killed-Burned-Lake-Balboa-Park-LAPD-Van-Nuys-560147871.html">https://www.nbclosangeles.com/investigations/Homeless-Man-Killed-Burned-Lake-Balboa-Park-LAPD-Van-Nuys-560147871.html</a> (Sep. 12, 2019) . . . . .	11

*Cited Authorities*

	<i>Page</i>
<a href="https://www.nbclosangeles.com/news/local/Map-2018-Homeless-Encampment-Fires-Los-Angeles-513201591.html">https://www.nbclosangeles.com/news/local/Map-2018-Homeless-Encampment-Fires-Los-Angeles-513201591.html</a> (July 25, 2019) . . . . .	15
<i>LAFD Determines Cause of Skirball Brush Fire</i> , (Los Angeles Fire Department Press Release, Dec. 13, 2017) . . . . .	14
Los Angeles Homeless Services Authority: “ <i>2019 Homeless Count- Greater Los Angeles County</i> ”, <a href="https://www.lahsa.org/documents?id=3423-2019-greater-los-angeles-homeless-count-los-angeles-county.pdf">https://www.lahsa.org/documents?id=3423-2019-greater-los-angeles-homeless-count-los-angeles-county.pdf</a> . . . . .	5-6
Los Angeles Homeless Services Authority: “ <i>LAHSA Releases 2022 Point in Time Homeless Count</i> ”, <a href="https://www.lahsa.org/news?article=895-lahsa-releases-2022-great-los-angeles-homeless-count-results-released">https://www.lahsa.org/news?article=895-lahsa-releases-2022-great-los-angeles-homeless-count-results-released</a> . . . . .	4
Los Angeles Homeless Services Authority, “ <i>LAHSA Releases Results of 2023 Greater Los Angeles Homeless Count</i> ”, June 29, 2023, updated June 30, 2023, <a href="https://www.lahsa.org/news?article=927-lahsa-releases-results-of-2023-greater-los-angeles-homeless-count#:~:text=LOS%20ANGELES%20%E2%80%93%20The%202023%20Greater,to%20an%20estimated%2046%2C260%20people">https://www.lahsa.org/news?article=927-lahsa-releases-results-of-2023-greater-los-angeles-homeless-count#:~:text=LOS%20ANGELES%20%E2%80%93%20The%202023%20Greater,to%20an%20estimated%2046%2C260%20people</a> . . . . .	4
Mental Illness Policy Org. “ <i>Dangerous Standard: O’Conner v. Donaldson Case Survey</i> ”, <a href="https://mentalillnesspolicy.org/legal/survive-safely-oconnor-donaldson.html">https://mentalillnesspolicy.org/legal/survive-safely-oconnor-donaldson.html</a> . . . . .	9

*Cited Authorities*

	<i>Page</i>
<i>Skirball Fire Update</i> (Los Angeles Fire Department Press Release, Dec. 15, 2017) . . . . .	14
Steve Lopez, “He died homeless and alone, but his wife had never lost hope he’d return.” <i>Los Angeles Times</i> (Sep. 7, 2019). . . . .	10
Susan Shelley, <i>Los Angeles is Right to back away from the Jones Settlement</i> (Orange County Register, Jun. 26, 2018). . . . .	7
Thomas Fuller, “A Rising Tally of Lonely Deaths on the Street,” <i>New York Times</i> , Apr. 18, 2022 (updated Sept. 26, 2022) . . . . .	10
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
United States Interagency Council on Homelessness report: “ <i>Searching Out Solutions – Constructive Alternatives to the Criminalization of Homelessness</i> ” reported on “ <i>Solution III – Alternative Justice System Strategies</i> ,” June 2012 . . . . .	12, 13

## 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 Grants Pass.<sup>1</sup> Founded in 1998, the Brentwood Community Council is a local advocacy organization based in the Brentwood neighborhood of Los Angeles. The Brentwood neighborhood is immediately adjacent to the West Los Angeles VA campus, separated merely by a sidewalk owned by the County of Los Angeles, and the VA, while on Federal land, is effectively part of the Brentwood neighborhood. The Brentwood Community Council represents approximately 35,000 stakeholders in its approximately 15 square mile community, including individuals, schools, religious organizations, and businesses in the Brentwood neighborhood of Los Angeles, California. The Brentwood Community Council is an unincorporated association. Our community is adversely impacted every single day by the City's and County's inability, arising from the lack of coherent guidance from judicial decisions, to enact and consistently enforce rational legislation that protects the health, safety and welfare of our residents and manages the ongoing homeless crisis in our city and county. We are interested in the outcome of *Johnson v. Grants Pass*, Nos. 20-35752 and 20-35881 (9<sup>th</sup> Cir.) ("**Grants Pass**"), which relied and expanded upon the controversial and troubling ruling of *Martin v. Boise*, 902 F.3d 1031 (9<sup>th</sup> Cir. 2018) No. 15-35845

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1. 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.

(9<sup>th</sup> Cir.) (“**Boise**”). The Grants Pass ruling serves only to exacerbate the confusion created by the Boise decision, and to further inhibit 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 provide clarity and guidance to local governments concerning its ability to deliver on its most fundamental obligation to its residents – maintaining clean and safe public spaces - without violating the constitutional rights of any citizen.

We have information to share with this Court, arising from the lived experience of homeless encampments in our community, that we believe may not come from any other source, and will be helpful in the Court’s analysis of this case.

### SUMMARY OF ARGUMENT

The City of Los Angeles has the distinction of being ranked with the second largest homeless population in our country, second only to New York.<sup>2</sup> Our City serves as an excellent model of what does not work, and demonstrates why *Grants Pass* cannot be allowed to stand as law.

Within our City, our neighborhood, Brentwood, is unique, because the VA Greater Los Angeles Healthcare System (the “VA”) is situated on Federal land within our neighborhood. The sidewalks and the easterly half of the street abutting the VA are within the local jurisdiction

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2. Julia Harris, “*The 25 U.S. Cities with Largest Homeless Populations*”, (U.S. News and World Report, December 27, 2023).



of the County of Los Angeles (“**County**”) or the State of California (“**State**”), and the westerly half of the abutting street is within the local jurisdiction of the City of Los Angeles. We accordingly will speak throughout this brief to the State of California and the City and County of Los Angeles.

The *Grants Pass* decision expanded the decision in *Boise*, by allowing “involuntary homeless” to bring class actions under *Boise*, by prohibiting cities from regulating the use of camping equipment and other “rudimentary forms of protection from the elements” in public spaces, going beyond regulating sleeping, and by applying *Boise* to any “closely intertwined” civil ordinances. *Grants Pass* at 813. As it stands, the 9<sup>th</sup> Circuit is a stark outlier in the federal judiciary as the only Circuit to suggest that a public-camping ordinance violates the Eighth Amendment. The *Grants Pass* decision was appealed, and the appeal was denied over the objections of seventeen 9<sup>th</sup> Circuit judges, in an 18-17 vote, with five separate dissenting opinions. The strength and numbers of the dissent in *Grants Pass* alone indicates the significance of the split, even within our 9<sup>th</sup> Circuit. As one dissenting opinion in *Grants Pass*’ *en banc* denial to hear the matter aptly notes, “our expansive interpretation of the Cruel and Unusual Punishments Clause diverges from other courts on an issue of exceptional importance – and it is telling that we remain the only circuit bold enough to embrace the Eighth Amendment doctrine that effectively requires local communities to surrender their sidewalks and other public places to homeless encampments.” *Id.* at 124. Moreover, “the immodest approach to the Eighth Amendment ... undermines the power of state and local governments to address the homelessness crisis” and creates a “Hobson’s

choice,’ imposed by our Circuit, effectively require[ing] state and local officials to ‘abandon enforcement of a host of laws regulating public health and safety.’ *Id.* at 128.

While we do not agree that removing a single homeless person from a camping area near a sensitive use without having and offering immediately available suitable accommodation to the liking of that homeless person is cruel and unusual punishment, but if one accepted that premise, it is logically absurd to argue that the lack of immediately available suitable housing for tens of thousands of homeless individuals (who often do not want it) is cruel and unusual punishment for the one homeless individual at issue. For the City of Los Angeles, this would mean needing to have 46,260 shelter units (75,518 throughout the County of Los Angeles)<sup>3</sup> before one public space could be reclaimed by the City, and that is if not one additional person falls into homelessness, or moves to L.A. to join the ever-growing homeless population. No municipality can possibly shoulder that economic burden being created by the courts.

In our community, we grapple with a population of “service resistant homeless,” notably service resistant veterans. We have learned from our lived experiences and the numerous service providers with whom we interact 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

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3. Los Angeles Homeless Services Authority, “*LAHSA Releases Results of 2023 Greater Los Angeles Homeless Count*”, June 29, 2023, updated June 30, 2023.

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 proverbial “carrot” of services.

As residents of the City of Los Angeles, we are facing an unprecedented humanitarian crisis. No one, neither the homeless nor the sheltered, is being served today by our City, County and State being stripped of legislative tools that provide for safe and orderly conduct, that allow for the protection of the public spaces for the community of whole. The resounding effect of the *Grants Pass* decision is to strip our government bodies of the basic tools to perform their most basic function – protecting public space. Our local agencies are ignoring other important laws, such as the Americans with Disabilities Act (“ADA”), leaving sidewalks impassable by the disabled, out of fear of taking actions that might violate decisions like *Grants Pass*. 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. As we have seen, the crisis has only worsened since the *Boise* decision, with the 2022 homeless count in Los Angeles conducted by the Los Angeles Homeless Services Authority (“LAHSA”) standing at 69,144,<sup>4</sup> up from the 58,936 homeless individuals identified in the 2019 LAHSA count.<sup>5</sup>

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4. Los Angeles Homeless Services Authority: “*LAHSA Releases 2022 Point in Time Homeless Count*”, <https://www.lahsa.org/news?article=895-lahsa-releases-2022-great-los-angeles-homeless-count-results-released>

5. Los Angeles Homeless Services Authority: “*2019 Homeless Count- Greater Los Angeles County*”, <https://www.lahsa.org/>

## ARGUMENT

### I. LOCAL GOVERNMENTS' HANDS ARE TIED

The *Grants Pass* 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 homeless encampments. While *Grants Pass* stands, our local governments are rendered incapable of providing clean, safe usable parks, schools, libraries, sidewalks, to their constituents. If camping cannot be regulated, camping in high fire areas cannot be regulated, camping on our beaches cannot be regulated, relieving oneself in public cannot be regulated, and myriad other forms of conduct cannot be regulated. Violating ADA becomes the norm, accepted because the risks are too great that protecting sidewalks somehow violates the Eighth Amendment.

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 cannot 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 and outfit them with various tents, lean-

tos, and other furnishings, 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 filings 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 *Grants Pass* is not overturned, 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.

The City of Los Angeles has an ordinance, LAMC §41.18, designed to protect the public space. The City of Los Angeles, in a settlement vacating the decision of the Ninth Circuit in *Jones vs. City of Los Angeles*,<sup>6</sup> agreed not to enforce LAMC § 41.18 (ordinance regulating camping) until the City had available an additional 1,250 units of permanent supportive housing for the homeless, 625 of which were to be in or near the Skid Row area.<sup>7</sup> Los Angeles Mayor Garcetti announced in June, 2018 that the City had fulfilled this requirement.<sup>89</sup> On August 21,

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

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

8. Ron Galperin, *Report on Homeless Encampments*, (Sep. 27, 2017)

9. Susan Shelley, *Los Angeles is Right to back away from the Jones Settlement* (Orange County Register, Jun. 26, 2018)

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.

Our City grappled with how to thread the needle given *Boise* and ended up with a nuanced ordinance that prohibits camping near a few enumerated “sensitive uses,” and has a more complex process to go through with the full City Council being required to declare other areas as protected based on significant criminal and other dangerous conduct, prior to the area being able to be protected for use by the public at large. Once that many months process is completed, then the City waits months more for signs to be posted, to inform the homeless that a space is protected. Then more time passes, and whether that space will be reclaimed by the municipality and delivered back to its residents is anyone’s guess.

Our County has yet to implement an ordinance protecting any of its property; presumably they are struggling with the confusion created by *Boise* and *Grants Pass*.

Our representatives in Los Angeles and other cities and counties charged with legislating are unable to sort through how to legislate in light of *Grants Pass*, and need *Grants Pass* overturned so that order can be restored to public spaces. We will otherwise face endless litigation over what is permissible and what is not, and no progress will be made 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 can survive 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 say that the individual must be permitted to deteriorate to the point where 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).”<sup>10</sup>

As with *O'Connor*, we run the risk that *Grants Pass* 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. And many will say that *Grants Pass* has unreasonably interpreted and expanded *Boise*. This Court now has the opportunity to provide clarity to local

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

and state governments throughout our Country in the responsible, constitutionally permitted regulation of conduct that may be associated with homelessness, and to right the wrong created by the Ninth Circuit’s outlier rulings.

## II. REGULATIONS 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.

Year after year, the numbers of homeless dying on the streets of Los Angeles have increased. It is a devastating trend that has shown no signs of reversing: 658 homeless deaths in the L.A. area in 2014, 766 in 2015, 884 in 2016, 1,027 in 2017, 1,129 in 2018, 1,289 in 2019, 1,811 in 2020, and 2,201 in 2021.<sup>11, 12, 13</sup>

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

12. <https://www.housingisahumanright.org/homeless-deaths-increase-for-seventh-year-in-a-row-in-los-angeles/#:~:text=It's%20a%20devastating%20trend%20that's,2020%2C%20and%20%2C201%20in%202021>.

13. Thomas Fuller, “A Rising Tally of Lonely Deaths on the Street,” *New York Times*, Apr. 18, 2022 (updated Sept. 26, 2022).



Further, the homeless fall victim to unimaginable crimes. As reported previously 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.”<sup>14</sup>

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, or a combination thereof. 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 shelter and 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

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

pre-booking jail diversion programs” to address drug addiction, including among homeless.<sup>15</sup> A Los Angeles County diversion program is having some early success.<sup>16</sup> Diversion programs necessarily rely on underlying violations of law in order to persuade the impacted 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

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15. 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

16. Doug Smith, *Mentally ill homeless people keep going to jail. But a study says L.A. County can fix that*, Los Angeles Times, April 22, 2019

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 *Grants Pass* would ostensibly nullify as violative of the Eighth Amendment. These alternatives cannot be lost from the options to address the homelessness crisis.

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

The *Grants Pass* 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, particularly now that civil fines and penalties may violate the Eighth Amendment. Los Angeles residents are experiencing a number of challenges because 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:

during the tenure of the "Veteran's Row" encampment along San Vicente Boulevard, adjacent to the VA, there were two homicides within the encampment, in Brentwood;<sup>17</sup>

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;<sup>18 19</sup>

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17. <https://www.latimes.com/california/story/2021-09-15/homeless-veteran-stabbed-to-death-near-west-la-va-in-an-encampment>.

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

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

as reported by NBC LA in 2019, “LA firefighters are now extinguishing almost seven fires a day started at homeless encampments or tents in neighborhoods across the city”;<sup>20</sup> that number increased whereby in 2021 the City was seeing up to twenty-four fires a day;<sup>21</sup>

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, engaging in loud fights with people who 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;

a woman sets up an encampment next to a neighborhood restaurant’s patio seating and defecates in public while patrons dine outdoors;

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

21. <https://apnews.com/article/los-angeles-coronavirus-pandemic-fires-health-31f69b284aa04103f0a2c494fd2ce8d8> (May 13, 2021).

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; while another person experiencing homelessness runs through the traffic, barely avoiding being hit by a car, with the same results from the police;

we fear our Santa Monica Bay is becoming increasingly polluted and hazardous, due to urine, feces, and other waste, as well as contraband, which 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 watching each step taken to avoid stepping in human feces and urine, and drug paraphernalia;

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 filth, being exposed to disease, and then spread those diseases, as reports indicate increased incidences of typhus and typhoid, among other diseases;<sup>22</sup>

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

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

## CONCLUSION

As a result of the *Grants Pass* decision, agencies charged with providing services to the homeless who desperately need help are being stripped of the very tools that encourage such help be accepted. The homeless are dying on our streets, and yet 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, can choose where to camp, and can choose what additional items to have along the sidewalk or other campsite, from tent to lean-to, to other furnishings, and the local government, charged with protecting the health, safety, and welfare of all its citizens, has no say. When does it end?

The Supreme Court should overrule the *Grants Pass* case, and with it, *Boise*. Our state and local governments have had their hands tied for far too long. Our local and state government need to be able enact and enforce regulations that protect the public space – the space meant for all to share and respect, and in so doing, also protect their residents, the homeless and sheltered alike, protect human health and safety, and provide the service providers with the necessary tools to convince the homeless to accept the assistance they desperately need but are not always willing to accept. 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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