

In the
Supreme Court of the United States

CITY OF GRANTS PASS,

Petitioner,

v.

GLORIA JOHNSON, ET AL.,

Respondents.

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

BRIEF OF AMICUS CURIAE
VENICE STAKEHOLDERS ASSOCIATION
IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICUS CURIAE¹

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

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

The VSA provides research, education, advocacy and litigation support for Venice Beach residents to ensure that their voices are heard. VSA was in litigation against the City of Los Angeles, the California Coastal Commission and the Los Angeles County Metropolitan Transportation Authority over the erection of a 154-bed homeless shelter complex in violation of the California Environmental Quality Act, *VSA v. City of Los Angeles*, LASC, Case No. 19STCP00044 and *VSA v. Los Angeles County Metropolitan Transportation Authority*, LASC, Case No. 19STCP00629 until the

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

State Legislature excluded the City of Los Angeles, and only the City of Los Angeles, from CEQA protections in instances of development projects serving the homeless population. More recently, the VSA filed a lawsuit against the City of Los Angeles for failing to obtain a current Coastal Development Permit (CDP) under California's Coastal Act for the same 154-bed homeless shelter complex in Venice, *VSA v. City of Los Angeles, et al.*, LASC Case No. 23STCP00346. After months of delay and the prospect of a trial looming, the city filed for and obtained a CDP for the lease extension until December 31, 2024; the VSA subsequently dismissed its suit.

The extreme imbalance between the rights of the homeless, and those of Venice's residents and business owners, will continue, and the latter will continue to suffer the daily burdens of homeless individuals camping rough a few yards from their homes or businesses unless *Johnson* and *Martin* are reversed.

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

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

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



ARGUMENT

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

The increase in homeless on Venice's sidewalks, alleys, parks and along its beach is in significant measure due to the laissez-faire conditions following the 2007 settlement reached in *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), vacated, 505 F.3d 1006 (9th Cir. 2007). *Jones* was brought by six homeless individuals challenging enforcement of criminal penalties for lying, sitting or sleeping on a sidewalk. The *Jones* plaintiffs challenged the criminal penalties on the grounds that Los Angeles had insufficient shelters and, therefore, the punishment was cruel and unusual within the meaning of the Eighth Amendment.

In 2006, the Ninth Circuit found in favor of the *Jones* plaintiffs and found a violation of the Eighth Amendment. Legal scholars condemned the *Jones* decision as an unwarranted impairment of the power of cities to protect the public health. See Emily N. McMorris, *Jones v. City of Los Angeles: A Dangerous Expansion of Eighth Amendment Protections Stifles Efforts to Clean up Skid Row*, 40 LOY. L.A. L. REV. 1149, 1150 (2007) [referring to the *Jones* opinion as a "misinterpretation and exceedingly broad reading" of

Eighth Amendment precedent]; and Mary Boatright, *Jones v. City of Los Angeles: In Search of a Judicial Test of Anti-Homeless Ordinances*, 25 LAW & INEQ. 515, 527 (2007) [referring to the *Jones* analysis as “oblique and confusing.”]

Following the 2006 ruling in *Jones*, a settlement was reached in 2007. The City of Los Angeles agreed to forgo enforcement of its “No lying, sitting or sleeping on a sidewalk” ordinance (L.A. Mun. Code § 41.18(d))² between the hours of 9 p.m. and 6 a.m. until 1,250 units of permanent, supportive housing for the homeless were constructed.

Los Angeles Mayor Eric Garcetti announced³ in January 2018 that the necessary permanent additional 1,250 units had been constructed and the City would begin returning to nighttime enforcement of Section 41.18(d) in instances when the city had offered a shelter bed and it had been declined. After the Ninth Circuit decided *Martin*, this return to enforcement was abandoned and the homeless population expanded in Los Angeles by 12% in 2018 and by 16% in Venice in the same period.⁴

² Further statutory references are to the Los Angeles City Municipal Code.

³ Los Angeles Times, *Garcetti says L.A. can resume disputed ban on overnight sidewalk sleeping*, <https://www.latimes.com/local/lanow/la-me-ln-sidewalk-sleeping-20180622-story.html>, last accessed September 22, 2023.

⁴ Courthouse News Services, *‘Commercialized Grittiness’ Taking Hold in Free-Spirited Venice, California*, <https://www.courthouse-news.com/commercialized-grittiness-taking-hold-in-free-spirited-venice-california/>, last accessed September 22, 2023.

The homeless population increase in Venice results from a convergence of Venice's historic luster as a tourist destination, its delightful weather, the easy availability of drugs, and the well-publicized roll back of both State law against possession of drugs for personal use and any municipal enforcement of ordinances meant to promote civil society, public health and safety, and quality of life for residents and visitors alike. This population further increased again during the Pandemic when city elected officials misread CDC guidelines that suggested that homeless individuals should not be moved because it might lead to a spread of the virus. Prior to this decision, the city enforced Los Angeles Municipal Code section 63.44, which bans camping and tents in all its parks and beaches, and establishes a nighttime curfew in these venues. (This code section was adopted years ago when city authorities determined that the Los Angeles Police Department had insufficient officers to keep its citizens and visitors safe in parks and along beaches.) Even though it was the homeless campers who had moved to Venice, the city stopped this enforcement at Venice Beach (and elsewhere in the city) and a relatively small homeless presence of approximately 30 people then in the Venice Beach Recreation Area increased to over 260, with an accompanying shanty/tent/tarp encampment that resembled a Third World refugee camp.

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

this has extended to occupation of buildings unoccupied due to recent sale or under construction, leading to a hellacious fire in 2022 in Venice’s fabled Canals that destroyed three homes.

Under the *Jones* settlement, while the City of Los Angeles could enforce Section 41.18(d) during the day from 6 a.m. to 9 p.m. to push homeless encampments—at least during the day—away from burdened residents, it rarely did. To prosecute individuals who failed to abide by Section 41.18(d)’s prohibition on lying, sitting or sleeping on a sidewalk after 6 am required four (4) hours of work by two officers: to arrest that person, confiscate and inventory his/her belongings, and then transport and book that individual at the Pacific Division station. With an already understaffed police force, the LAPD would only rarely enforce Section 41.18(d).

In 2018, the Ninth Circuit issued its decision in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018). *Martin* held that imposing criminal penalties for sleeping in public violated the Eighth Amendment if the government has not provided public areas or shelters for those individuals to sleep.

The broad and contradictory language of *Martin* left the Los Angeles City Attorney to advise the LAPD to not enforce Section 41.18(d) and aspects of the related parks ordinance, Section 63.44.⁵ The result was large encampments on world famous Venice Beach,

⁵ See July 30, 2019 Motion by City of LA Committee of Homelessness and Poverty recommending deletion of Section 41.18(d) based on *Martin*, http://clkrep.lacity.org/onlinedocs/2019/19-0602-s1_mot_07-30-2019.pdf, accessed on September 23, 2023.

with certain sections taken over permanently by the homeless.⁶

On one hand, the *Martin* court disingenuously held that it was not dictating “to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place,”⁷ while at the same time holding “that so long as there is a greater number of homeless individuals in a jurisdiction than the number of available beds in shelters, the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying and sleeping in public.”⁸

In the second quoted clause above, the *Martin* court overturned the permission it affords jurisdictions in the first clause to enforce restrictions on where individuals sit, lie or sleep on the streets . . . and at what time or place they may do this.

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

⁷ *Martin*, at 1048.

⁸ *Martin*, at 1048.

Based on the current average construction cost of a brick-and-mortar homeless serving structure of over \$600,000 per room (and in some instances as high as \$830,00), and the recent city homeless count of 46,000, the city would have to spend at least \$27,600 billion to house this population in permanent housing, which is over \$14 billion more than the city's total \$13 billion 2023-24 budget. The city will never have the financial resources internally or from federal, state or philanthropic sources to underwrite such a construction effort, leaving residents and businesses to endure nearby homeless encampments in perpetuity unless *Johnson* and *Martin* are reversed.

Johnson expanded the reach of *Martin* to encompass not only criminal penalties but also civil penalties and by doing so will compound the problem presented by *Martin*: forbidding local governments from enforcing its laws, based on constitutional rights not recognized by the Supreme Court, unless the local governments follow an impractically high standard for provision of public shelters for individuals who will choose, in many instances, to never use those shelters. Perhaps the unintended consequences of *Martin* were not readily apparent at the time the City of Boise sought review in this Court.⁹ Now, years later, the petition by Grants Pass to review *Johnson* presents a ripe opportunity to review the misstep of *Martin*, with the benefit of seeing how *Martin* has acted as a disservice to local government and the unhoused individuals in need of help.

⁹ The City of Boise sought review of *Martin* on June 3, 2019, Case No. 19-247. This Court denied the on December 16, 2019.

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

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

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

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

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

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

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

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

The *Martin* and *Johnson* courts also did not understand that the development of semi-permanent encampments, such as the current ones in Venice on Rose Avenue between Seventh Street and Lincoln, on Lincoln between Machado Drive and Rose, and on Mildred Avenue just east of Main Street, are themselves barriers to rescuing homeless individuals from the street. Outreach and placement efforts are frequently in conflict with the familial bonds that develop between those living in Venice's encampments. Often times, a counselee may agree to a placement—in rehab, a shelter, a shared apartment, permanent/supportive housing, or family reunification—but will not show up at the appointed time for transport. They did not want to give up the street "family" of which they had become a part. These individuals were voluntarily remaining

homeless as much as the young “travelers,” who have no interest in shelter.¹⁰

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

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

In just one example, it allowed a 20-person encampment to set up on the 200 block of Grand Boulevard (formerly a canal in the era of Venice’s founder Abbot Kinney), alongside the Venice Post Office’s large parking lot filled with 40 delivery trucks and across the street from single family homes and duplexes with an assortment of retirees, families and young couples.

In one case documented on the Neighbors of Grand email list-serve, a couple on drugs engaged in a fierce argument on July 9, 2016 at 7:30 a.m., shouting obscenities at each other. Quoting from resident John Vester’s message to his neighbors:

“The loudest, most obnoxious of the homeless across the street loudly THREATENED TO KILL one of the other homeless, then when one of our neighbors [Underwood] asked

¹⁰ CNN earlier profiled a *Yale graduate, Wall Street banker and entrepreneur, who was homeless at the time in Los Angeles*, <https://edition.cnn.com/2019/09/17/us/los-angeles-yale-graduate-homeless/index.html?no-st=1568949532>, last accessed on September 19, 2019. The story highlights the frequency of voluntary homelessness. The subject has a standing offer from his family for housing but prefers to work through the issue himself.

them to please be quiet, he started loudly mimicking her while jumping up & down then he loudly THREATENED TO BURN HER HOUSE DOWN.”

The LAPD responded an hour and a half later, after the couple had stopped fighting; the officers would not give credence to the threat reported by Mr. Vester. Such nighttime intrusions into the lives of residents are frequent occurrences all over Venice, and indeed, all over Los Angeles.

This encampment was the generator of crime of all types: car break-ins, vandalism, thefts from residents’ yards of children’s toys and lawn furniture, trespass, and defecation and urination on private and public property. In one instance a camper threw a heavy metal object over the Post Office’s fence and shattered the front windscreen of an employee’s personal vehicle. In another, one of the campers living in the encampment shot and killed a man with whom he had a verbal clash at the nearby Surfside restaurant on March 7, 2018.¹¹

The sidewalk and parkway, about 12-feet wide, were constantly blocked by the campers’ accumulation of “stuff,” including furniture such as chairs and tables, tents, dogs, mattresses, sleeping bags, duffel bags,

¹¹ ”The following day, LAPD arrested 46-year-old Robert Mewhorter in connection with the shooting. Identified from video footage and witness descriptions, Mewhorter “was spotted the next day near an encampment where he lived on Grand” Avenue in Venice. According to Stevens, Mewhorter was living in the encampment.” *Another Shooting in Venice Police Hunting for Suspect, YOU VENICE!* (March 15, 2018), <https://yovenice.com/2018/03/15/another-shooting-in-venice-police-hunting-for-suspect/> (last visited September 23, 2023.)

luggage, food, backpacks, and bicycles—and piles of trash and food waste. Despite ADA requirements, there was no passage available for the disabled. The disabled who must use a cane, walker or wheelchair, those pushing baby carriages, and other pedestrians had to walk the length of the block in the street—exposed to traffic—to get from one end of the block to the other.

This encampment resulted in the filing of an OSHA complaint against the U.S. Postal Service by letter carriers. Due to the necessary arrival throughout the night of large trucks delivering the next day's mail, the Post Office staff had to leave its driveway gate on Grand open. At night members of the encampment would trespass into the parking lot and relieve themselves between the parked delivery trucks. The next day, carriers, who spend the morning at their trucks sorting mail, would have to stand in human sewage and breathe the fumes from the accumulated urine and feces for several hours as part of their job. The U.S. Postal Service had to pay a fine as a result of the OSHA complaint.

This unacceptable situation was only remedied when neighborhood residents, at the recommendation of LAPD Captain John Roberts and Senior Lead Officer Kristen Delatori, working with the VSA and the Post Office management, raised \$35,000 and built and installed 56 4'x8' planter boxes filled with succulents on the parkway on Grand and on two other streets, Windward and Riviera, that also border the Post Office.¹² The planter boxes, placed on the parkway

¹² The installation of these planter boxes was documented by a National television news report, *Venice Beach residents rally to combat homeless encampments in their neighborhood*, Aug. 29,

between the sidewalk and curb, blocked erection of tents, or accumulation of large piles of personal possessions, and thus blocked the return of the encampment. Though such planter boxes can be permitted under the Los Angeles Municipal Code, the City's Bureau of Engineering initially denied any applications for such projects in Venice. Several projects that were installed at the urging of the Los Angeles Police Department and the 11th City Council District have been cited by the City's Street Services Bureau and threatened with removal. Only on August 26, 2019, after public outcry against the threat of removal, did the City Bureau of Street Services agree to let un-permitted planters remain in place while the sponsors of the projects applied for city permits. Oddly, due to the city's shifting requirements and last minute "moving of the goal posts," the VSA's application for the 56 planter boxes around the Venice Postal sorting facility is still pending. Despite the presence of the planter boxes and requirement for ADA passage, some homeless campers recently moved in between the boxes and onto the sidewalk on Grand Boulevard, resulting in several disabled seniors using walkers from a nearby senior daycare center having to travel on Grand itself to return to the daycare center, since the sidewalk was blocked.¹³ Fortunately, LAPD officers eventually arrived and forced the campers to remove their tents

2019, available at <https://video.foxnews.com/v/6080063740001/#sp=show-clips>

¹³ The plight of disabled seniors was recently reported by the local NBC news station, *Homeless encampments force seniors off sidewalks in Venice*, September 1, 2023, available at <https://www.nbcloseangeles.com/on-air/homeless-encampments-force-seniors-off-sidewalks-in-venice/3217577>.

and belongings from the sidewalk. The *Martin* decision has paralyzed the city of Los Angeles (and it appears other cities in the Ninth Circuit’s jurisdiction), blocking any commonsense regulation of homeless encampments and leading to a severe breakdown in the norms of civil society. The decision so broadly defined “involuntarily homeless” that it includes many who have resources or options to be housed but, for a variety of discoverable reasons, choose not to pursue them.¹⁴ It has made living in encampments preferable to accepting available options to leave the streets; food, water, blankets and tents are delivered by well-meaning service agencies, showers (24 hour) and restrooms are open a few blocks away, and there is no rent. This has placed a heavy burden on residents and business owners while preventing police from protecting them.

The VSA urges the Court to review and reject *Johnson* (which relied on *Martin*) for its evisceration of municipalities’ ability to control local health and safety, and its erosion of residents’ right to the quiet enjoyment of their homes.

¹⁴ How is society to deal with the quandary of those homeless who choose to remain homeless and those who eagerly seek employment, shelters and other resources? One commentator criticized *Martin* and suggested that relying on prosecutorial discretion to consider an individual’s specific needs and abilities—rather than simply counting available shelter beds in deciding whether to invoke the Eighth Amendment—is a preferable way to balance the competing interests of the rights of the homeless and local government in protecting public safety. (Andrew I. Lief, *A Prosecutorial Solution to the Criminalization of Homelessness* (2021) 169 U. PA. L. REV. 1971, 1993.) Relying on a prosecutor’s discretion “accords with communal notions of fairness . . .” (Andrew I. Lief, *A Prosecutorial Solution to the Criminalization of Homelessness*, 169 U. PA. L. REV. 1971, 1993 (2021).)

D. It is Inappropriate to Apply a Rule Developed for a Homeless Population of Six Hundred People in Grants Pass to Homeless Populations in the Tens of Thousands in Large Cities.

Grants Pass had a homeless population of between fifty and six hundred homeless people. *Johnson v. City of Grants Pass*, 72 F.4th 868, 874 (9th Cir. 2022). The number of shelter beds available to that small population of homeless was deemed inadequate and, therefore, enforcement of anti-camping laws was deemed to be cruel and unusual punishment. The fix the Ninth Circuit implied was to simply ensure 600 shelter beds and only then could enforcement of anti-camping laws be resumed. And a handful of social workers or law enforcement officials, with a day's work, could easily measure the homeless population against beds. But how are larger communities supposed to comply with *Martin* and *Johnson*?

There was nothing in the *Martin* or *Johnson* decisions that limited their application to small communities. The City of Los Angeles, in contrast to Grants Pass, had at last count 46,260 homeless spread across 4,000 square miles. Los Angeles Am. Brief, p. 4. The practice implied in *Johnson* is not so easily applied across a homeless population 100 times as large as Grants Pass over a much larger area. On any given evening, how are Los Angeles public officials or law enforcement to gauge in any given period the number of homeless, the number of beds and the adequacy of services for the homeless? Los Angeles only has the resources and time to conduct a homeless count once a year. And those results are not typically

released for six months. Does that mean if the homeless population exceeds beds during its annual count, that Los Angeles is barred for an entire year from enforcing its anti-camping ordinance?

Neither *Johnson* nor *Martin* took into account the difficulty in counting homeless populations or providing shelter beds on a massive scale. Worse, neither *Johnson* nor *Martin* took into account the impact of non-enforcement of anti-camping laws on a population of 46,260 as opposed to 600. One need only glance at the Venice Beach boardwalk—which once received 10 million visitors a year—to understand the impact of *Johnson* and *Martin*'s shackling of public agencies' ability to enforce its laws. Over 50 homeless individuals continue to camp out illicitly up and down Venice Beach every night, public perception of safety on the boardwalk has caused families to avoid visiting, and several businesses, including the local Ben and Jerry's franchise, have recently closed due to physical attacks on their staffs by homeless intruders.

To the extent that this Court approves of the bed-count methodology of *Martin* and *Johnson*, the Court should limit that methodology to smaller communities with smaller homeless populations that can be tallied with reasonable effort.



CONCLUSION

For the foregoing reasons, the VSA respectfully urges this Court to reverse the Ninth Circuit's judgment in *Johnson* and declare *Martin* wrongly decided.

Respectfully submitted,

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