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 Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit

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BRIEF OF CITY OF LOS ANGELES AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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INTEREST OF AMICUS CURIAE[1]

The City of Los Angeles (hereafter, the City) is a sprawling metropolis covering 469 square miles[2] with a 2022 estimated population of 3,822,238.[3] The City's homeless population is roughly 46,260, more than 32,000 of whom are unsheltered on any given night.[4] As the second most populous city in the United States, and the largest in the Ninth Circuit, the City of Los Angeles has a unique interest in its ability to protect its residents and to regulate its public spaces. The City does not support efforts to criminalize people who are experiencing involuntary homelessness. However, the City does have a paramount interest in its ability to protect public health and safety, to regulate public spaces, and to develop and implement policies and plans that address these interests and improve conditions for its residents, whether or not housed or sheltered, as the City may reasonably determine and as individual circumstances and resources permit. The Ninth

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[1] No party or counsel authored any part of this brief or made a monetary contribution intended to fund the preparation or submission of this brief. Sup. Ct. R. 37.6.

[2] Los Angeles Almanac, City of Los Angeles, http:/www.laalmanac.com/LA/index.php (last visited February 29, 2024).

[3] U.S. Census Bureau, *City of Los Angeles Quick Facts* (July 1, 2022) ("Census Quick Facts"), https://www.census.gov/quickfacts/fact/table/losangelescitycalifornia (last visited February 29 2024).

[4] See L.A. Almanac, http://www.laalmanac.com/social/so14.php; and see, Los Angeles Homeless Services Authority ("LASHA"), Results of 2023 Greater Los Angeles Homeless Count, https://www.lahsa.org/news?article=927-lahsa-releases-results-of-2023-greater-los-angeles-homeless-count.

Circuit's decision in this case has injected an insupportable lack of clarity into the process of regulating public spaces in a constitutional manner and infringed upon the City's substantial interest in its ability to protect public health and safety for all of its residents.

The City has prioritized addressing the humanitarian tragedy facing its unhoused residents, while simultaneously dealing with the health and safety concerns raised by having tens of thousands of people living with their possessions in public spaces intended for other, shared purposes. Given the unparalleled scope of the crisis, the City's current mayor, as her first act in office, declared a state of emergency to more readily muster and more efficiently direct resources to address homelessness.[5] Both the Mayor and the City Council have dedicated unprecedented resources to these efforts and lifted impediments that cause delay and unwarranted expense in creating shelter and housing. The City has a long history with the competing policies and issues that come into play when there are unsheltered people living in public areas. Like the cities of Boise and Grants Pass, the City of Los Angeles once had a citywide ordinance banning dwelling in the public right of way. Eighteen years ago, in the first reported case to find that prohibiting public dwelling in public rights of way violated the Eighth Amendment, the Ninth Circuit invalidated the City's ordinance. See *Jones v. City of Los Angeles,* 444 F.3d 1118 (9th Cir.

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[5] Mayor Karen Bass, posted December 12, 2022, https://mayor.lacity.gov/news/mayor-karen-bass-declares-state-emergency-homelessness

2006), vacated, 505 F.3d 1006 (9th Cir. 2007) (*Jones*) (the former ordinance is quoted at 1123)[6]. The City settled the *Jones* case, vacating the published opinion, under a negotiated enforcement plan that effectively legalized public dwelling during overnight hours. The City has been grappling with the ramifications of that settlement (*i.e.,* the strain of having a large population of persons experiencing homelessness dwelling on shared public spaces) for 18 years.

More than a decade after the *Jones* settlement, in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (*Martin*), a deeply divided Ninth Circuit delivered an opinion that purported to be "narrow" in scope, but was delivered in such sweeping, ambiguous, and ill-defined language that the public entities and lower courts within its boundaries have struggled to comply with *Martin* while urgently addressing the continuing problem of homelessness. The critical issue to the City was and remains whether the City can offer or require an individual to accept available shelter or housing and clear the public right of way incrementally as shelter and housing becomes available or whether there is a constitutional requirement that there first be sufficient shelter or housing for all those who are unsheltered before taking enforcement measures. While the Ninth Circuit in *Martin* was ambiguous regarding the possibility of incremental or individual offers of shelter or housing, in the case currently

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[6] In *Jones*, the Ninth Circuit held in a broad decision that it was cruel and unusual punishment under the Eighth Amendment for the City to enforce its ban on "sitting, lying or sleeping" on the sidewalk against a person experiencing homelessness when more people experiencing homelessness than shelter beds existed in the City. 444 F.3d at 1138.

before this Court, *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) (*Johnson*), the Ninth Circuit has exacerbated the uncertainty for local and state governments intolerably. The *Johnson* decision appears to have limited the City's ability to take individual circumstances into account and foreclosed the opportunity for prosecutorial discretion based on individual circumstances by certifying a class of persons as "involuntarily homeless" with standing to facially challenge any attempt to regulate public spaces.

Bringing the unhoused inside remains the priority for the City until every single person experiencing homelessness has a safe place to sleep. In the interim, the City has a significant interest in seeking judicial clarity on the legal principles applicable to the regulation of shared public spaces because this is essential to a well-run city maintaining the delicate balance of subsistence and safety in our communities. The City of Los Angeles has a far larger population of persons who are unhoused or unsheltered than the City of Grants Pass and has been dealing with the complexities of legalized public dwelling for nearly two decades. This brief reflects the City's well-founded concerns with the *Johnson* opinion gained from the City's experience and enduring commitment to reducing and resolving homelessness.

SUMMARY OF ARGUMENT

The City does not take issue with the broad premise underlying the *Martin* and *Johnson* decisions: when a person has no other place to sleep, sleeping at night in a public space should not be a crime leading to an arrest, criminal conviction, or jail. *Martin*, 920 F.3d at 617. The City files this brief in the hope that this Court will better clarify the applicable law and provide local governments with the guidance and certainty that *Martin* and *Johnson* failed to provide, focusing on four issues.

First, by generally citing *Jones* and *Martin* with approval and side-stepping the issue, *Johnson* seems to require that local public entities must conduct a nightly count of all persons experiencing homelessness and confirm that suitable shelter beds exist for *every* person before the local entity can enforce a dwelling ban against *any* person. *Jones* held that until every homeless person in the City had an available bed, the City could not take any enforcement action against sleeping in public. See *Martin*, 920 F.3d at 617. This undertaking would be impossible for our City – a current count[7] of both homeless individuals and beds. As the dissenters to the denial of *en banc* rehearing in *Martin* observed, this requirement is impossible to administer even in the City of Boise (with 125 of its 867 homeless population unsheltered). *Id*., at 594 (Smith, dissenting opinion). The challenge is exponentially greater, and effectively

[7] The City conducts its point in time count each year and that is, an extraordinary annual undertaking that in 2024 took over 5700 volunteers counting for 3 days and nights to complete. *Infra* at p. 12.

impossible, in the City of Los Angeles (with most of its 46,260 homeless population unsheltered). *Id*., at 594-95. In combination with its endorsement of class litigation, *Johnson* appears to agree that the City may not enforce a public dwelling ban against someone who refuses to accept available and appropriate shelter, unless the City has sufficient beds available for all other homeless and unsheltered individuals. The result would be that shelter beds that the City struggles to fund and supply will remain empty unless and until the City is able to provide enough beds for everyone.

Second, the sweeping rationale in *Martin,* now affirmed by *Johnson*, implicates not just public dwelling bans but *any* regulation of acts that are "universal and unavoidable consequences of being human." *Martin*, 920 F.3d at 617, n.8; and see *Johnson*, 72 F.4th at 892. This rationale calls into question whether cities can enforce public health and safety laws that prohibit public urination, defecation, and indecency, or public use or storage of hazardous and flammable materials (including cooking fuel) in public spaces. Undermining the City's ability to regulate such activities makes public spaces less safe and sanitary for everyone.

Third, *Johnson* purportedly limits potential criminal enforcement, but the named plaintiffs only received civil citations and the City of Grants Pass never criminally prosecuted them. See *Johnson*, 72 F.4th at 933-34 (Graber, separate opinion). The Grants Pass ordinances only temporarily allow criminal prosecution after two infractions and a discretionary prior exclusion order and Grants Pass

did not issue that order to any named plaintiff. *Johnson* further proclaims that its "decision does not address a regime of purely civil infractions" while affirming an injunction that barred Grants Pass from enforcing its ordinances using civil infractions. *Id*., at 896. The effect of *Johnson*, therefore, is to improperly bar cities from using civil citations or infractions to enforce public dwelling laws.

Fourth, while *Johnson* endorsed *Martin*'s declaration that its "narrow" holding applied to each person's individual circumstances to determine if they were involuntarily homeless, *Johnson* compounded all of the problems above by undermining this assertion and affirming a class action remedy. See *Martin*, 920 F.3d at 617, n.8; *Johnson*, 72 F.4th at 885-886. By definition, the circumstances and reasons why an individual may be unsheltered or unhoused at any particular point in time are different and homelessness itself is a complex multi-faceted social problem that defies the one-size-fits-all solution espoused by class action litigation. The Ninth Circuit's apparent attempt to sidestep this contradiction by incorporating the term "involuntarily homeless" into the class creates a false tautology and assumes that all homelessness is involuntary, thus eliminating individual considerations and making any attempt to regulate public spaces presumptively invalid. See *Johnson*, 72 F.4th at 878 and 908-10 (Collins, dissenting opinion), and 939-40 (Smith, dissenting opinion). The use of class litigation in this context will significantly undermine, and sometimes halt altogether, the individual considerations needed to effectively address homelessness.

ARGUMENT

The City of Los Angeles is not disputing the application of the Eighth Amendment to bar the criminalization of involuntary homelessness. The priority for the City is to procure shelter and supportive housing and services for its homeless population in coordination with other public agencies and in consideration of the varying needs of its residents. The City recognizes that, until substantially more options are available, many of its homeless residents sleep outside out of necessity and not by choice. Reasonable restrictions on where and when public dwelling should occur balances the rights of City residents experiencing homelessness with the responsible stewardship of the public spaces everyone shares. To reach this goal, the City needs the flexibility to address this complex social problem and the judicial clarity to establish reasonable and constitutional policies, enacted by policymakers in clearly drafted ordinances.

I. LOCAL GOVERNMENTS MUST BE ALLOWED TO REGULATE PUBLIC SPACES WHEN THERE IS AN ACCEPTABLE ALTERNATIVE.

The broad and undefined language in *Martin* and *Johnson* regarding the ability to regulate public spaces creates significant practical problems for the City. *Johnson* imposes an unworkable regime to regulate public spaces under the guise of constitutional principles. *Johnson* follows and builds on *Martin*, which held "so long as there is a greater number of homeless individuals in a jurisdiction than the number of individual beds in shelters, the

jurisdiction cannot prosecute homeless individuals" for public habitation. *Martin*, 920 F.3d at 617, cleaned up; and see *Johnson*, 72 F.4th at 896 (anti-camping ordinances unenforceable "when there is no shelter space available"). This latest opinion of the Ninth Circuit not only follows *Martin* with respect to permitting sleeping in public spaces but expands that conclusion to prohibit cities from preventing or regulating any "conduct necessary to protect themselves from the elements," or any "life-sustaining act" on public land unless more available shelter beds exist than individuals experiencing homelessness in the jurisdiction. See *Johnson*, 72 F.4th at 896, and see 921 and 924 (Silver, concurring opinion).

The first flaw in this holding is the consideration of "shelter space" as the only relevant inquiry and the only alternative to the regulation of public land. This overly simplistic approach may stem from the fact that both Grants Pass and Boise banned sleeping or camping on all public land within city limits, effectively criminalizing all homelessness and driving any persons experiencing homelessness, and the obligation to care for those residents, into other jurisdictions. See *Martin*, 920 F.3d at 603-604, and *Johnson*, 72 F.4th at 874-875. In stark contrast, the City of Los Angeles, similar to other major cities, limits any such ban to designated public spaces considered particularly sensitive (e.g., schools, day care centers, libraries) or dangerous (e.g., roadways) while still allowing the use of other public spaces.[8]

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[8] See Los Angeles Municipal Code, § 41.18, which can be seen at https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128514#JD_41.18.

While the City strives to find a permanent and global solution, or in the meantime to construct a sufficient number of shelters for the entire unhoused population, it is crucial that local public entities be allowed to balance the interests of all residents by regulating the use of public property to protect certain sensitive or vital interests. Despite the language in *Martin* and *Johnson*, local governments should be allowed to regulate where in the public right of way unhoused persons may dwell, banning dwelling in certain designated sensitive public spaces, while making available other more appropriate public spaces.

The second flaw is the limitation that a local government cannot regulate public land unless sufficient alternatives are available for the entire homeless population. While the amended *Johnson* opinion deleted an express statement that cities could only enforce public space restrictions when sufficient shelter beds existed for all homeless individuals, that amendment did not clarify the holding's scope, but only reduced its transparency. See *Johnson*, 72 F.4th at 938-39 (Smith, dissenting opinion) ("But I fear that this amendment, in reality, does little to change the substance of *Grants Pass* and instead simply obscures what *Grants Pass* holds.") *Johnson* still compares the total number of shelter beds with the total number of unsheltered individuals as the enforcement threshold. See *id.*, at 874-75 and 879. If such a holding applies to the City of Los Angeles, then numerous available shelter beds might go unused because there are not yet enough beds for all unhoused people and persons offered shelter may, without consequences, reject objectively appropriate and empty shelter beds.

Grants Pass had a population of about 38,000, in which "at least fifty, and perhaps as many as 600" people were homeless and it apparently provided no shelter for homeless adults. *Johnson*, 72 F.4th at 874 and 894. Similarly, out of a population of over 236,000[9], Boise's homeless population totaled 867, about 125 of whom were unsheltered, and there were only three privately run shelters in Boise, the only shelters in that county. *Martin*, 920 F.3d at 604-605.

In stark comparison, the City of Los Angeles' homeless population is roughly 46,260, more than 32,000 of whom are unsheltered on any given night.[10] Because of the sheer size of the City and its population of persons experiencing homelessness, a census is a major undertaking. The City participates in an annual "Point-In-Time" count of unhoused individuals, as required by the United States Department of Housing and Urban Development.[11] This normally takes place in January, and the recent

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[9] See U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/boisecitycityidaho/PST045222

[10] See L.A. Almanac, http://www.laalmanac.com/social/so14.php; and see; LASHA Results of 2023 Greater Los Angeles Homeless Count, https://www.lahsa.org/news?article=927-lahsa-releases-results-of-2023-greater-los-angeles-homeless-count (based on the 2023 census).

[11] See, U.S. Department of Housing and Urban Development, https://www.hudexchange.info/programs/hdx/pit-hic/#general-pit-guides-and-tools (Note: HUD requires, at minimum, an annual count of sheltered persons and a biannual count of unsheltered persons.)

2024 census required over 5700 volunteers over three nights.[12]

Under *Martin* and *Johnson*, the daily count of unhoused persons must then be compared to shelter availability. Since the City provides an estimated 16,181 shelter beds in addition to approximately 16,449 permanent supportive housing beds spread throughout the City, a real time or daily total count of available beds is almost impossible.[13] This is particularly true since Los Angeles, like Boise, does not own or operate all the shelters; thus, the City is largely reliant on the shelters or other agencies to self-report when they are full and when they have availability. *Martin*, 920 F.3d at 605 and 609. As an added complication, the City must ascertain whether a private shelter with available space has "a mandatory religious focus" which is unacceptable to the person offered the shelter. See *Johnson*, 72 F.4th at 877. This does not include additional elements that the *Johnson* analysis suggests, but does not address, such as whether the shelter offered must be in a particular jurisdiction, or without conditions such as restrictions on drug use, smoking, pet-ownership, or other conduct. Because the City, or any major city

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[12] See LAHSA Statement on Completing the Volunteer Portion of the Homeless Count (January 26, 2024) https://www.lahsa.org/news?article=959-statement-on-completing-the-volunteer-portion-of-the-homeless-count (the data is being processed and should be released in late spring/early summer 2024).

[13] See the December 1, 2023, Report by the Office of the City Administrative Officer to the Los Angeles City Council, re Status Report to the State on California Shelter Crisis: https://cao.lacity.gov/Homeless/hsc20231212c.pdf

with a homeless population in the tens of thousands, cannot conduct a daily, weekly, or even a monthly city-wide count of unhoused residents to compare to a total count of acceptable shelter beds, any model with such a requirement is inherently unrealistic.

While the City pursues the goal of providing enough housing and shelter for all unhoused people it must be able to enforce partial solutions as they become available. The six *en banc* dissenting judges in *Martin* recognized this, stating that local public entities should not be forced into a "Hobson's choice," either to "undertake an overwhelming financial responsibility to provide housing for" all unhoused residents based on a count of "the number of homeless individuals within their jurisdiction every night, or abandon enforcement of a host of laws regulating public health and safety." See *Martin*, 920 F.3d at 594 (Smith, dissenting opinion). Given the impossibility of regularly maintaining a current global census, the City must be allowed to bring people indoors by offering specific shelter beds to specific individuals or encampments. This allows the City to more fully and immediately engage all available shelters as they are established and become available.

The alternative is to leave shelter beds empty and paralyze the City's ability to regulate any public spaces until after enough shelters and beds exist for the entire unhoused population. That scenario would be a grave disservice to the community at large and to the vulnerable populations that would benefit from the shelter and services that are currently available. Thus, local public entities must be allowed to regulate public spaces, such as by banning sleeping or camping

in designated areas so long as there are available alternatives for those individuals, whether or not enough shelter beds exist for the entire unhoused population.

II. LOCAL GOVERNMENTS MUST BE ALLOWED TO PROTECT PUBLIC HEALTH, SAFETY AND ACCESS IN PUBLIC SPACES.

Cities must be allowed to reasonably exercise their police powers to protect the public health and safety of all of their residents. See *City of Erie v. Pap's A.M.*, 529 U.S. 277, 296 (2000) ("efforts to protect public health and safety are clearly within the city's police powers"); *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 160 (1976) ("It has long been settled that [municipal police] power extends to objectives in furtherance of the public peace, safety, morals, health and welfare…"). Moreover, a core mandate for every municipality is to keep its public spaces safe and accessible to all of its residents. *Schneider v. State*, 308 U.S. 147, 160 (1939). As this Court repeatedly recognized, a municipality's duty is to keep public spaces "open and available for movement of people and property" – the "primary purpose for which the streets are dedicated" – while at the same time respecting "the constitutional liberty of one rightfully upon the street." *Id.*, at 160-161. It is important that cities have the broadest possible discretion to address the conflicting issues of public health, safety, and access in the context of such a broad and complex problem as homelessness.

The holdings in *Johnson* and *Martin*, following the lead set by *Jones*, complicate, and may even

prevent, the City's ability to protect its residents and public spaces by barring local governments from prohibiting conduct in public spaces that is an "unavoidable" result of being human. *Johnson*, 72 F.4th at 892; citing *Martin*, 920 F.3d at 616, quoting *Jones*, 444 F.3d at 1135 (vacated). This undefined holding is unworkable at a practical level for local governments. A broad array of activities are potentially "unavoidable consequences" of being human. May a local government regulate cooking food or having an open flame on a public sidewalk? What about urination and defecation in public spaces? Public indecency? Sexual activity? Succumbing to a confirmed addiction? What about the public use or storage of hazardous and flammable materials (including cooking fuel) in public spaces that support people living in homeless encampments?

Obviously sleeping is not the only activity that is "unavoidable" for humans. Surely the City can regulate behavior and actions—even "involuntary" ones—that interfere with the shared purposes of our public spaces or endanger public health or safety. For example, sidewalks currently serve two often incompatible functions: housing tens of thousands of unsheltered residents (and their personal belongings), and also providing access and a right of way for pedestrians, wheel-chair bound travelers (as required by the Americans with Disability Act), school children seeking safe passage to and from school, business owners and customers relying on accessible store fronts, and residents seeking to access services from municipal, state, and federal government offices. Cities must have the ability to balance these interests to best protect local public health and safety.

Johnson also added a new level of ambiguity by extending *Martin*'s focus on an individual's status or actions to include undefined protection for their personal belongings. For example, while *Johnson* ruled as a matter of constitutional law that a city cannot prevent "the use of rudimentary bedding supplies, such as a blanket, pillow, or sleeping bag for bedding purposes," it also suggested that a city could "limit the amount of bedding type materials allowed per individual…" See *Johnson*, 72 F.4th at 879, and 889, cleaned up. This contradiction creates an absurd level of constitutional scrutiny and tasks local governments with determining, for example, whether a person's constitutional rights extend to having two blankets or three, or one or two pillows. Local governments would also need to determine whether and when the constitutional right of a person experiencing homelessness to retain some property in a public space unreasonably burdens other's right to access public spaces, streets, and sidewalks.

The majorities in *Johnson* and *Martin* largely passed over these considerations, presumably because they each addressed an attempt at a de facto ban on homelessness in those jurisdictions, leaving little reason to consider these added complications. Even in *Johnson*, which technically addressed a ban on camping, the City of Grants Pass effectively banned all unhoused people by banning even a single blanket in such extreme cold. See *Johnson*, 72 F.4th at 891, n.28. However, the City of Los Angeles has not banned public dwelling in public spaces, but rather is committing significant resources to fixing the problem while protecting public health and safety with reasonable time, place, and manner regulations of

public spaces. The City urges this Court to confirm the City's authority to take all reasonable steps to protect public health and safety for all its residents, both housed and unhoused.

III. CITIES MUST BE ALLOWED TO USE ADMINISTRATIVE REGULATIONS TO REGULATE PUBLIC SPACES.

Even excluding criminal penalties, local public entities require the flexibility to govern public spaces with administrative regulations. The City of Los Angeles, like many cities, struggles to protect and serve all of its residents, both unhoused and housed, while also guarding public spaces and resources and minimizing the diversion of resources to seemingly endless litigation. *Johnson* compounds that struggle with contradictory rulings that include affirming a ban on the regulation of public spaces, using administrative regulations or otherwise. Under the Grants Pass ordinance, after a person received two similar anti-camping infractions within one year, the police could exclude that individual from city parks for 30 days, and Grants Pass could criminally prosecute a violation of that exclusion order. *Johnson*, 72 F.4th at 876. However, Grants Pass did not send any of the named plaintiffs an exclusion letter or criminally prosecute them under the ordinances. See *id.*, at 933-34 (Graber, separate opinion). Thus, while *Johnson* states that its "decision does not address a regime of purely civil infractions" the Ninth Circuit affirmed an injunction that was not limited to criminal prosecutions, but rather upheld a bar that included the use of infractions and other civil means of

enforcement. *Id*., at 896. These contradictions further undermine clarity and confidence in what tools cities may use to govern their public spaces, far beyond the context of homelessness. The City requests that this Court confirm that local entities may use administrative regulations to govern public spaces without offending the Eighth Amendment.

IV. LOCAL GOVERNMENTS NEED FLEXIBILITY TO ADDRESS THE COMPLEX ISSUE OF HOMELESSNESS ON AN INDIVIDUAL LEVEL.

The majority opinion in *Johnson* clearly erred by certifying a class action for those who are "involuntarily homeless" because whether someone is involuntarily homeless depends on their individual circumstances and the type of shelter available and offered to them. If, after taking an individual's reasonably objective circumstances into account, that individual then refuses shelter that meets those circumstances and requirements, cities should be allowed to regulate public spaces, including by enforcing health and safety laws, without judicial pre-approval. While homelessness is a broad crisis that requires large and dedicated programs to address, it is also a multifaceted problem with multiple overlapping causes that thwarts any one-size-fits-all approach. In addition to marshaling significant and diverse resources, this requires that local public entities, which are the fulcrum of any response to homelessness, have the flexibility to address this complex problem and timely deploy both financial and

social resources based on the individual circumstances of the persons affected.

The complexity in solving homelessness stems from its multiple causes, the antithesis of class action litigation. For example, poverty is an obvious and significant cause of homelessness. In Los Angeles over 16 percent of the City's residents live in poverty.[14] A significant but independent cause is the affordable housing shortage and high cost of housing. The City of Los Angeles enjoys temperate weather and significant economic engines, including the entertainment industries, resulting in one of the most expensive rental markets in the nation in terms of both rental rates and rent burden (meaning that more than 30% of residents' total income goes to rent). A 2021 study found that more than half of Los Angeles renters were rent burdened[15] and the overall median rent in the City is currently nearly $3,000 per month.[16]

Several separate causes contribute to homelessness. For example, a significant cause of homelessness is the continuing mental health crisis.

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[14] Census Quick Facts, Income and Poverty, see n.3.

[15] University of Southern California Lusk Center for Real Estate, *Renter Vulnerabilities in Los Angeles, May, 2021,* https://la.myneighborhooddata.org/2021/05/renter-vulnerabilities-in-los-angeles/; and see My News LA.com re City Commission Moves Forward with Revised Proposal to Lower Rent Hikes, https://mynewsla.com/business/2023/11/01/city-commission-moves-forward-with-revised-proposal-to-lower-rent-hikes/

[16] This is currently the fourth highest in the country, after New York, Miami, and San Diego. See USA Today, at https://www.usatoday.com/story/money/2023/06/25/nyc-rent-compared-la-chicago-major-us-cities/70351677007/ (last visited February 29, 2024).

The ripple effects of the federal government's decision in 1981 to end its role in providing services to the mentally ill is still reflected in the City's homeless population. According to the Los Angeles Homeless Services Authority's 2023 report, approximately 25 percent of unhoused residents suffer from serious mental illnesses and 30 percent have substance abuse disorders.[17] A 2022 RAND study found that 54 percent of unhoused residents experience mental illness.[18] The 2022 homelessness count found that 6.7 percent of the City's unhoused population became homeless fleeing from domestic violence, while 41.5 percent of the homeless population reports being the victim of domestic violence,[19] despite significant resources devoted to assisting domestic abuse victims.[20] In addition, as of 2022, veterans comprised 4.5 percent of the homeless population in the City.[21]

The amended *Johnson* opinion both invoked and undermined the individual consideration that

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[17] See LA Almanac, Homelessness in Los Angeles County 2023, https://www.laalmanac.com/social/so14.php (last visited February 29, 2024).

[18] LOS ANGELES DAILY NEWS (January 28, 2023), Clara Harter, *LA is losing the battle against mental illness among its homeless,* https://www.dailynews.com/2023/01/28/los-angeles-is-losing-the-battle-against-mental-illness-among-its-homeless/

[19] LA Almanac, *supra*, https://www.laalmanac.com/social/so14.php#other (last visited February 29, 2024).

[20] See, e.g., Safe LA, Domestic Abuse Response Team (DART), http://www.safela.org/about/dart/ (last visited February 29, 2024).

[21] LA Almanac, *supra*, https://www.laalmanac.com/social/so14.php#other (last visited February 29, 2024).

Martin relied on for its "narrow" holding, concluding that "a person cannot be prosecuted for involuntary conduct if it is an unavoidable consequence of one's status." *Johnson*, 72 F.4th at 892. *Johnson* even quotes *Martin*: "our holding does not cover individuals who *do* have access to adequate temporary shelter…but who choose not to use it." *Id*., at 877, and 918 (separate opinion) (original emphasis). Nevertheless, *Johnson* undermined the individual consideration that *Martin* claimed to rely on—and that the complex issue of homelessness requires—by affirming an "involuntary homeless" class defined by a comparison of the total number of unhoused persons and the number of available shelter beds, thus pushing aside any individual consideration of that person's circumstances. *Id*., at 910 (Collins, dissenting opinion), 939-40 (Smith, dissenting opinion). This lack of clarity has already hindered efforts to address the complex circumstances of homelessness. See, *id.*, at 940-43 (Smith, dissenting opinion) (describing three cities' efforts to employ an individual assessment under *Martin* that the court rejected for lack of enough shelters); and *Coalition on Homelessness v. City and County of San Francisco,* 647 F.Supp.3d 806, 836 (N.D. Cal. 2022) (injunction against enforcement upheld if more homeless individuals than beds exist, citing *Martin* and *Johnson*.). In fact, neither *Johnson* nor *Martin* addresses the practical question the City of Los Angeles faces every night: what are the City's options regarding a specific homeless individual for whom a shelter bed or other alternative is available, when there may not be enough shelter beds for the entire homeless population in the City?

The Ninth Circuit did not acknowledge any of these issues, perhaps because the scale of homelessness in Grants Pass, or even Boise, was sufficiently limited so that these complexities were not apparent or recognized. In addition, it appears that Grants Pass did not provide any public shelter for homeless adults, so the court did not consider the type of public shelter or support provided or needed. See *Johnson*, 72 F.4th at 894 ("It is undisputed that there is no secular shelter space available to adults.") Similarly, Grants Pass did not prioritize designated public spaces over any others, but apparently attempted to effectively bar sleeping on any public land within the city limits by barring any means to survive the cold nights there. See *Johnson*, 72 F.4th at 891, n.28. Creating a class definition of all those who are "involuntarily homeless" precludes the individual inquiry needed to establish an Eighth Amendment defense to enforcement as discussed in *Martin*. *Johnson*, 72 F.4th at 908 (Collins, dissenting opinion); and see *Martin*, 920 F.3d at 607-08 and 616-617.

No comparison exists between the circumstances in Grants Pass and in Los Angeles (or any major city). People become unhoused for many different reasons and each person has a dizzying array of individual circumstances and needs, such as whether they are a couple or family group that needs to stay together, a domestic violence victim afraid of a mixed gender shelter, whether they require mental health or substance abuse support, or whether they have a disability incompatible with a particular shelter. What may be available, appropriate, or actually beneficial to one person, might not be so to

another, making class certification inappropriate. More broadly, just because there are not enough shelters for all does not mean there are not appropriate shelters for some.

Both Los Angeles elected officials and taxpayers devote significant resources to protecting the City's most vulnerable residents in a long term, multipronged effort to provide the needed shelter, services, and housing directly where possible and by providing incentives to the private market to build affordable housing.[22] In 2016, City leaders sponsored, and City voters overwhelmingly approved, Proposition HHH, a ballot measure to issue $1.2 billion in bonds to finance permanent supportive housing for the City's residents experiencing homelessness.[23] In 2017, Los Angeles County voters taxed themselves to address homelessness by adopting Measure H, which imposes a County-wide sales tax to fund homeless outreach, emergency shelters, rapid rehousing, and permanent supportive housing with an estimated $355 million revenue annually.[24] Most recently, in 2022, City voters adopted Measure ULA, which imposes a transfer tax on the sale of certain real property to fund affordable housing projects and provide resources to tenants at risk of experiencing homelessness.[25] All

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[22] See, Mayor Bass Acts to Make Housing More Affordable and Available for All, https://mayor.lacity.gov/news/mayor-bass-acts-make-housing-more-affordable-and-available-all (dated 11/8/23).

[23] See, L.A. Bureau of Contract Administration, https://bca.lacity.org/HHH_PLA_Docs

[24] See County of Los Angeles Homeless Initiative, https://homeless.lacounty.gov/measureh/

[25] Los Angeles Office of Finance, https://finance.lacity.gov/faq/measure-ula

told, the 2023-2024 budget of the City of Los Angeles provides $1.3 billion to address the homelessness crisis in this fiscal year alone, funding a multitude of interrelated programs to address the varying needs of its unhoused residents.[26] The City needs to have the flexibility to provide solutions on an individual by individual or an encampment by encampment basis unhindered by one-size-fits-all class action litigation and the resulting overlay of judicial administration and delay.

CONCLUSION

The City of Los Angeles does not take issue with the general holdings in *Martin* and *Johnson* that criminalization of involuntary homelessness violates the Eighth Amendment and should not lead to arrest and incarceration. Nevertheless, a person experiencing involuntary homelessness with no place to live other than the public sidewalk has potentially incompatible interests with children whose route to school takes them through an encampment of adults and their belongings. Similarly, the potential desire for a homeless encampment in a particular place can be incompatible with the needs of disabled residents immobilized when their wheelchair or other mobility device is blocked, or local business owners operating behind an unbroken line of encampments, or with residents unable to access public services due to impassible sidewalks or blocked doorways.

The City strives to ensure that people experiencing homelessness have appropriate places to

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[26] L.A. Budget Summary, 2023-2024, at page 4, https://cao.lacity.org/budget23-24/BudgetSummary/

sleep, that public sidewalks and other public spaces are safe and accessible for everyone, and that litigation does not divert public resources from desperately needed shelters and housing. To accomplish this, the City, indeed most every city, requires the ability to deal with the complex and intractable problem of homelessness with the discretion to consider the constellation of causes at play and how they impact each of the unhoused individuals in need of assistance. The City urges this Court to keep this in mind and provide a clear ruling with well-defined parameters and application, and not a generalized abstraction that simply invites endless new rounds of litigation and further diverts resources from this important problem.

Respectfully submitted,

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