No. 102814-8

SUPREME COURT FOR
THE STATE OF WASHINGTON

JEWELS HELPING HANDS and BEN STUCKART,
Appellants,

vs.

BRIAN HANSEN, CITY OF SPOKANE, SPOKANE COUNTY, and VICKY DALTON, in her official capacity as auditor for Spokane County,
Respondents.

BRIEF OF *AMICI CURIAE* OF GREATER SPOKANE INC. AND DOWNTOWN SPOKANE PARTNERSHIP

Jackson Maynard
MAYNARD LAW PLLC
111 21st Ave SW
Olympia, WA 98501
jackson@maynardlawpllc.com
(850) 519-3495

Attorney for Amici Curiae Greater Spokane Inc. and Downtown Spokane Partnership

TABLE OF CONTENTS

CASES

STATUTES

I. INTRODUCTION

In 2022, the Spokane City Council eased its ban on "camping" (including constructing tent encampments) on public property. This did not sit well with residents, who realized that the city approach was not solving the homeless crisis and was creating adverse economic and social consequences. This was in accordance with a then-recent ruling—*Martin v. City of Boise, Idaho*, 920 F.2d 584 (9th Cir. 2018)—that partly limited local governments' authority to remove private, unpermitted encampments from public property. *City of Grants Pass, Oregon v. Johnson et al.*, 144 S.Ct. 2202 (2024) would go on to abrogate *Martin*'s principal holding, thus returning to localities the full power to regulate the private conduct on public property.

On November 7, 2023, shortly before the U.S. Supreme Court began reviewing *Grants Pass,* Spokane's electorate overwhelmingly approved a ballot initiative prohibiting all camping inside and within 1,000 feet of schools, parks, playgrounds, and licensed daycare centers. Though well within Spokanites' legal and constitutional powers to enact (especially after *Grants Pass*), the Proposition drew opposition from

homeless advocacy groups and individuals prioritizing well-intended yet misplaced policy agendas over the will of the voters.

The Proposition was designed to protect public safety and public lands and by providing children safe and unfettered access to schools and parks. Contrary to detractors' claims, the Proposition was not intended to—nor does it—undermine state and local efforts to reduce homelessness and other social ailments flowing therefrom. To the contrary, the Proposition provides additional tools and authority for city officials to refer homeless individuals to services provided by the community.

Just weeks before the election, Jewels Helping Hands and Ben Stuckart ("Appellants" or "JHH") appealed an order of the Superior Court of Spokane County which had held the initiative to be *intra vires*—that is, well within—the electorate's broad police powers. JHH then turned to the Court of Appeals, Division III, ignoring the fact that the Superior Court's order was a final judgment unappealable under RCW 29A.68.011.

Surprisingly, the Court of Appeals (which never should have

taken the case) upheld the Superior Court's order. It found, *inter alia*, that Section 1010 did not (a) usurp powers exclusively delegated to the City Council; nor (b) interfere with state law; and was not (c) administrative in nature (which would have placed it outside of the local initiative power). The ruling—and Respondents' arguments in support thereof—speaks for itself. Instead, *amici* submits this brief to highlight the people's longstanding authority to regulate the private conduct on public property and how laws like Section 1010 ensure the successful exercise of this core police power.

II. INTEREST OF *AMICI CURIAE*

Amici Greater Spokane Inc. ("GSI") is the Spokane region's leading business development and advocacy organization, focused on building their economy and creating a thriving Spokane region. It serves as the Spokane Regional Chamber of Commerce and Economic Development organization that supports the success of businesses of all sizes across the Inland Northwest.

Amici Downtown Spokane Partnership ("DSP") is a private, not for profit, 501(c)6 membership organization that serves as Spokane's

central city advocate and service provider, dedicated to advancing the quality and vitality of Downtown Spokane as the basis for a healthy region. The DSP fosters economic development and neighborhood revitalization by advocating for policies that improve prospects for current and future economic growth.

Amici have a strong interest in the outcome of this case, as they are committed to the economic health and prosperity of all Spokanites. Specifically, GSI and DSP worry that invalidating Spokane's Proposition No. 1 ("Proposition" or "Section 1010"), despite its legal and proper enactment via initiative, will severely impede—if not entirely extinguish—its members' capacity to address the homelessness crisis and its impacts in their community. Striking this Ordinance would deprive the voters of Spokane of their voice.

The initiative process undergirds a core and fundamental right of the people to legislate and exercise their sovereignty. *Amalgamated Transit Union Local 587 v. State* 142 Wash.2d 183, 11 P.3d 762, as amended, opinion corrected 27 P.3d 608 (2000) (an exercise of the ini-

tiative power is an exercise of the reserved power of the people to legislate.). *Amici* are vitally interested in the proper interpretation of the state protecting the power of the local initiative process and ensuring that the changes to Spokane's camping ordinance made in the Proposition remain in place and that the right of the people to legislate by initiative is not undermined and compromised.

III. STATEMENT OF THE CASE

Amici adopt Respondents' Statement of the Case. Resp. Ans. at 3–12.

IV. ISSUES TO BE ADDRESSED

Amici wish to address the following three issues:

1. Whether Section 1010 is a legal exercise of popular authority, insofar as it conforms with state law and is a police power within the scope of legislation via ballot.
2. Whether regulating private conduct on public property is within the people's broad police powers as sovereign, exercised either locally or at the state level.

3. Whether Spokane's duly enacted Proposition falls within this police power, and the adverse implications for other cities and counties in Washington were this Court to invalidate it.

V. ARGUMENT

A. Section 1010 Conforms with State Law and Is Well Within the Ambit of Initiatives

1. Section 1010 and the Homeless Housing and Assistance Act

Washington's Homeless Housing and Assistance Act ("HHAA") is a volunteer program through which cities and counties opting in may access funds for anti-homelessness efforts. Pet. Supp. Br. at 27. It imposes no restrictions or requirements on *how* local governments implement statewide policy. The Court of Appeals made this abundantly clear, concluding that the HHAA "says nothing about what cities may or may not do about individuals who are currently unhoused." Slip. Op. at 14. Indeed, quite the opposite. Under the HHAA, a county that does not opt in is subject to the State's creation and execution of a homeless-housing place *for* it. RCW 43.185C.080(3). It stands to reason, then, that local adoption of the law is license for a city or county to formulate its *own* policies, or else the HHAA would not distinguish between opt-

in and opt-out arrangements. And since "ordinances must implement state policy at the direction of the State to be immune from local [direct legislation]," *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 183 (2006) (plurality op.), it *also* makes eminent sense for opted-in jurisdictions not to be subject to the sort of state intervention observed in RCW 43.185C.080(3).

Finally, even if the HHAA controlled Spokane's anti-homelessness policies, Section 1010 falls decidedly *outside* of this subject-matter. As *amici* detail below, Section 1010 involves the protection of public safety, health, and general welfare—core police powers that simply ensure popular access to, and enjoyment of, discrete public spaces. It is not a total ban, nor does it claim to be. Indeed, it is carefully tailored not to impede Spokane's anti-homelessness efforts, but simply frees schools, parks, and playgrounds—places often hosting children and other vulnerable individuals in particular—from the ancillary (but no doubt manifold) health and safety risks that come with encampments, whether recreational or semi-permanent.

The subject-matter distinction, in addition to bolstering the argument that the HHAA actually provides *more* local autonomy to opt-ins, also strongly supports reading Section 1010 as a public-safety measure rather than anti-homelessness law. The latter is much closer to a separate state law governing religious encampments on private property, and the health, safety, and general welfare restrictions cities may and may not impose on them. RCW 35.21.915. Section 1010 works a very similar purpose, except as to public property—something neither RCW 35.21.915 nor any other state health-and-safety law restricts local governments from undertaking.

2. The Proposition Was a Permissible Use of the Initiative Power

Section 1010 is not a zoning or land-use law—areas often (but not always) prohibited from appearing on the ballot. *See, e.g.*, *Lince v. City of Bremerton*, 25 Wn. App. 309, 312–13 (1980) ("Strong policy considerations support placing the zoning power with the legislative body of the city."). It has *none* of the indicia of that category of laws.

First, Section 1010 deals exclusively with public property, whereas zoning laws as a general rule involve the regulation of uses of

private property. Slip Op. at 11 (noting that land-use laws "regulate the conduct of landowners, not land occupiers such as guests or trespassers"). And this makes eminent sense, since when it comes to *public* property, the public has a collective say on its use via (indirect or direct—e.g., ballot) legislation. The public cannot choose what one does with their own property—only what they cannot do to the detriment of the public. Once a "zoning" law begins dictating how a landowner must use their property, it is almost certainly thereby enlisted into public use and subject to just compensation under the Takings Clause. And the public, as the "owners" of public property, have just as great a right as private landowners to decide how their property should and *should not* be used.

Second, it does not regulate the use of property *per se*. As a law designed to prevent a *single* use (again, of *public* property), Section 1010 fits firmly within the ambit of anti-vagrancy laws which are meant to help ensure public health and safety. It is of the same species as laws that prohibit starting fires or littering on public property.

Third, there is no one-to-one between the conduct Section 1010 criminalizes and the uses zoning laws generally prohibit. Assuming, *arguendo*, that zoning laws extended to public property, it is quite plausible for a zoning law not to ban camping that is prohibited under a separate law (*e.g.*, anti-vagrancy). Just because two laws involve the use of or conduct on property (public or private) does not mean that the one is so akin to the other that it must fall within the other's category. The fact that zoning and anti-vagrancy laws can split on which *particular* nuisances are worth prohibiting lends strong credence to the notion that the two are distinct and distinguishable areas of law, and that Section 1010 (again, which prohibits something that zoning laws do not necessarily proscribe) falls squarely within the latter.

B. Regulating Private Conduct on Public Property Is—and Has Long Been—Well Within the People's Broad Police Powers

1. *Fundamental and Constitutional Rights Already Properly Limit the Extent of This Power*

Central to the majority's ruling in *Grants Pass* is the fact that there exists an entire universe of fundamental and constitutional rights that protect would-be encampers from governmental interference with

their bodily autonomy or access to due process. 144 S.Ct. at 2224. The minority in *Grants Pass* ignores these, and, like Petitioners hyperbolize, laws like Spokane's Proposition are "creat[ing] . . . situation[s] where homeless people necessarily break the law just by existing." *Id.* at 2236 (Sotomayor, J., dissenting). This premise is flawed, first and foremost, because it assumes that the application of such laws turns on the status of the individual charged, instead of on the willful actions taken as a result of their status. *See Robinson v. California*, 370 U.S. 660, 666 (1962) (noting that its holding against criminalizing addiction status does not extend to bans on the knowing or intentional "use of narcotics, for their purchase, sale, or possession, or for **antisocial or disorderly behavior resulting from their administration**") (emphases added). Spokane's Proposition does not make it illegal not to own or rent a home. And while it is true that such laws sometimes place the unhoused in difficult positions—research shows that they become more itinerant and less able to find official assistance—these are policy issues, not constitutional ones.

As neighbors and fellow Americans, *Amici*'s members take very

seriously the plight of the unhoused, but acknowledge—as they and this Court must—that constitutions are not designed to address policy failings, but simply to create and (through courts) uphold, the broader framework in which the policies enacted into law may operate. Provided such laws apply equally to all persons, are not vague or ambiguous, and do not interfere with existing fundamental and constitutional rights (of which camping on public property is not one), courts cannot cite harmful rather than helpful practical consequences as grounds for nullification. It is not the jurist's job to second guess the policy of an initiative or legislation. It is, simply, to determine whether such policy choices accord with constitutional precepts that function at a much higher (and far less contextual) altitude than does the nitty-gritty of law and policy.

2. *Spokane's Proposition Does Not Interfere with Existing Fundamental and Constitutional Protections*

Again, there exist ample grounds for invalidating a law—"good" or "bad"—when it interferes with fundamental and constitutional rights. Spokane's Proposition does no such thing. Under the (effec-

tively) overturned *Martin* rubric, governments in the Ninth Circuit violated the Eighth Amendment's Cruel and Unusual Punishment Clause if they banned any camping on public property if there were more homeless individuals within its boundaries than there were available shelter beds. Under *Martin*, state and local lawmakers could still impose heavy restrictions on access to and use of public property, they just could not impose blanket (or practically blanket) bans. Doing so, the Ninth Circuit reasoned, essentially punished the unhoused for being unhoused, because without enough shelter beds, they had no choice but to sleep, eat, and attend to personal needs on public property. *Grants Pass* roundly rejected this argument, holding the application of the Cruel and Unusual Punishments Clause to the *actus reus* element of a law was entirely misplaced. "But if many other constitutional provisions address what a government may criminalize and how it may go about securing a conviction, the Eight Amendment's prohibition . . . focuses on what happens next." 144 S.Ct. at 2215. No longer overweighed by this doctrinal albatross, which had "'wreak[ed] havoc on local, governments, residents, and businesses across the American

West," *id.* at 2211 (internal citation omitted), local governments may now return to the very basic work of protecting its citizens' health, safety, and general welfare—of course, still constrained by properly applied fundamental and constitutional restrictions.

C. Striking the Proposition Would Severely Hinder Local Government's Obligation to Maintain the Health, Safety, and General Welfare of Its Citizenry, in Accordance with *Grants Pass*

The people of Spokane have . . . spoken.[1] Beyond the legal and constitutional arguments decisively favoring the Proposition, its survival also ensures that, like efforts across the State that accord with *Grants Pass*, will remain firmly within the rightful purview of the people as sovereign.

Grants Pass noted the severe practical challenges lawmakers and law enforcement faced under the deeply flawed *Martin* framework—which Appellants are struggling to keep alive despite its recent, decisive abrogation. To this, *Grants Pass* offers, among other apt preemptive retorts, that under *Martin*, "the Eighth Amendment provides no

---

[1] Pun intended.

guidance to 'confine' judges in deciding what a [s]tate or city may or may not proscribe," and thus officials (and lower courts) are left simply to guess what judges will and will not find acceptable. This guesswork no doubt priorly restrains them to enforcement mechanisms far less rigorous than what the Constitution, even under *Martin*, would likely permit.

VI. CONCLUSION

For the foregoing reasons, and those discussed in Respondents' briefs, this Court should uphold the lower courts' rulings in favor of the Ordinance.

This document contains 2,562 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 2nd day of August, 2024.

Respectfully submitted,

/s/ Jackson Maynard
Jackson Maynard
WSBA No: 43481
Maynard Law PLLC
111 21st Ave SW
Olympia WA 98501
(850) 519-3495

Attorney for Amici Curiae Greater Spokane Inc. and Downtown Spokane Partnership

DECLARATION OF SERVICE

I, Paige Jaramillo, hereby declare under penalty of perjury under the laws of the State of Washington, that on August 2, 2024, I electronically filed the foregoing document via the Washington State Appellate Courts' Secure Portal, which will send e-mail notifications of such filing to all parties of record.

Signed in Olympia, Washington, this 2nd day of August, 2024.

/s/ Paige Jaramillo
Paige Jaramillo